

9. REVIEW OF ANIMALS (OTHER THAN DOGS) BYLAW 2000 AND THE KEEPING OF POULTRY, ANIMALS AND BEES BYLAW OF BANKS PENINSULA DISTRICT COUNCIL

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
Officer responsible:	Programme Manager Strong Communities
Author:	Terence Moody

PURPOSE OF REPORT

1. The purpose of this report is to consider a review undertaken of the above bylaws and a proposal to consider the control of the number of cats that may be kept at premises in the city.

EXECUTIVE SUMMARY

2. Bylaws that were made under the Local Government Act 1974 and in force on 1 July 2003 (when the Local Government Act 2002 came into force) continue in force but the 2002 Act requires that they must be reviewed within five years of 1 July 2003. So they must be reviewed by 30 June 2008. Bylaws made under the 2002 Act itself must be reviewed within five years after the date they were made. Once reviewed bylaws must be reviewed 10 yearly. The Act requires the Council to use the special consultative procedure in reviewing each bylaw and the Council must, before beginning the formal review process "*determine whether a bylaw is the most appropriate way of addressing the perceived problem.*" [section 155(1) Local Government Act 2002]
3. In the normal course of events the Animals (Other than dogs) Bylaw would be due for review sometime before June 2008. However, the Council at its meeting on 30 June 2004 on the draft Long Term Council Community Plan decided:
 - (b) *That staff review the current bylaw with a view to including provisions for the control of the number of cats that a household may retain and to effective penalties for breaches of the bylaw.*²
4. In the case of a review all the matters included in section 155 must be considered, including whether a bylaw is the most appropriate way of addressing the problem. As any reviewed bylaw is likely to remain in force for a period of at least five years, but could be as long as 10 years following review, this opportunity has been taken to re-examine all provisions. In undertaking these bylaw reviews the approach that has been taken follows that of the Ministry of Economic Development *Code of Good Regulatory Practice*.³
5. The Christchurch City bylaw currently in force, as introduced in 2000, consolidated similar titled bylaw provisions previously in force in the territorial authorities that were amalgamated into the present Christchurch City in 1989. At the time of developing the bylaw the opportunity was taken to simplify the provisions compared with previous bylaws but still retain a bylaw applying over the whole city. At the time it was realised that central government legislation, introduced since previous bylaws had been made, regulated many of the matters which had been the subject of bylaw controls. The City Plan, then notified, also contained matters that previously would have been included in such bylaws.
6. It is considered sufficient legal powers exist for the control of nuisances and matters of animal welfare under national legislation such as the Health Act 1956; the Animal Welfare Act 1999; the Building Act 2004; The Agricultural Pests (Exemption of Domestic Rabbits) Order 1994; Wildlife (Farming of Unprotected Wildlife) Regulations 1985; Animal Products Act 1999; Biosecurity (National American Foulbrood Pest Management Strategy) Order 1998 and the Impounding Act 1955. A legal opinion is as follows on the matter of covering matters covered by central government legislation:

*Where the acts in question are already an offence under central government legislation it would be unwise for the Council, and indeed unnecessary, to make a bylaw duplicating those offences.*⁴

² Annual Plan Subcommittee Report, clause 24, Christchurch City Council, 30 June 2004

³ Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997

⁴ Chris Gilbert, 3 May 2005, *op cit*

7. In two years the Environmental Services Unit has dealt with 309 complaints related to animals, bees and poultry. About half of these referred to problems with poultry or birds; about a third regarding animals or stock; and 20 per cent regarding bees or wasps. The total complaints referred to 279 properties over the city over the two years, or 0.21 per cent of the estimated 135,000 households at June 2005. It is therefore not a significant issue in Christchurch City. On the basis of the examination of the problems caused by the keeping of animals it appears these are generally minimal.
8. The additional controls over cats being sought result from a relatively small number of cases occurring in the city. In the last year (September 2004 to August 2005) most complaints have related to what have been described as feral, semi feral or abandoned cats. These are not cases that could be dealt with under any bylaws relating to the keeping of animals as they effectively do not have any owners. About 40 complaints at 33 properties have been dealt with by pest control services on behalf of the Council. Given that it is estimated that there are 60,000 households keeping cats and about 20,000 with two or more cats, there are in the order of 88,000 cats kept in the city. The complaint rate is therefore very small about 0.05% of cat keeping households and of the total number of cats. No further controls are therefore considered necessary.
9. It is considered there are sufficient powers under central government legislation to control nuisances arising from the keeping of animals, and indeed to control animal welfare issues that may arise from time to time. In reality the nuisance sections of the Health Act 1956 are used to control such matters and these are wide enough to control matters that have been the subject of complaint. These provisions also cover the problems caused by noise from animals although noise provisions of the Resource Management Act 1991 are also likely to apply.
10. On the basis of this examination it is considered that any perceived problems caused by the keeping of animals relate to potential nuisances, either public or statutory, and these matters are controllable through the provisions of central government legislation. As such it is not considered that a bylaw is the most appropriate way of addressing the problem in terms of section 155(1) of the Local Government Act 2002. Accordingly it is considered that both the Christchurch City Animals (Other than Dogs) Bylaw 2000 and the Banks Peninsula District Council Animal Control Bylaw (NZS 9201 Chapter 13: 1972) should be revoked.

FINANCIAL AND LEGAL CONSIDERATIONS

11. There are limited cost implications, although changes in the staff undertaking the inspection and enforcement may be required. Such staff would still be employed in the same Unit as present. The number of cases dealt with are relatively small.

STAFF RECOMMENDATIONS

It is recommended:

- (a) That the Council resolve that it is satisfied that such bylaws are not necessary in terms of sections 155 of the Local Government Act 2002 and therefore should be revoked.
- (b) That the attached statement of proposal and summary be adopted and made available for public inspection at all Council Service Centres, Council libraries and on the Council's website.
- (c) That public notice of the proposal be given in "The Press" and in the "Christchurch Star" newspapers and on the Council's website on 21 June 2006.
- (d) That the period within which written submissions may be made to the Council be between 21 June 2006 and 9 August 2006.
- (e) That the Council appoint a Hearings Panel to consider and where necessary hear any submissions on these bylaw revocations and other bylaws being considered at a similar time.

BACKGROUND ON REVIEW OF ANIMALS (OTHER THAN DOGS) BYLAW 2000 AND THE KEEPING OF POULTRY, ANIMALS AND BEES BYLAW OF BANKS PENINSULA DISTRICT COUNCIL

12. The Local Government Act 2002 [section 158] requires that Council bylaws must be reviewed. Bylaws that were made under the Local Government Act 1974 and in force on 1 July 2003 (when the Local Government Act 2002 came into force) continue in force but the 2002 Act requires that they must be reviewed within five years of 1 July 2003. So they must be reviewed by 30 June 2008. Bylaws made under the 2002 Act itself must be reviewed within five years after the date they were made. Once reviewed bylaws must be reviewed 10 yearly. The Act requires the Council to use the special consultative procedure in reviewing each bylaw and the Council must, before beginning the formal review process, "*determine whether a bylaw is the most appropriate way of addressing the perceived problem.*" [section 155(1) Local Government Act 2002]
13. In the normal course of events the Animals (Other than Dogs) Bylaw would be due for review sometime before June 2008. However, the Council at its meeting on 30 June 2004 on the draft Long Term Council Community Plan decided:
 - (b) *That staff review the current bylaw with a view to including provisions for the control of the number of cats that a household may retain and to effective penalties for breaches of the bylaw.*⁵
14. In the case of a review all the matters included in section 155 must be considered, including whether a bylaw is the most appropriate way of addressing the problem. As any reviewed bylaw is likely to remain in force for a period of at least five years, but could be as long as 10 years following review, this opportunity has been taken to re-examine all provisions. In undertaking these bylaw reviews the approach that has been taken follows that of the Ministry of Economic Development *Code of Good Regulatory Practice*.⁶
15. Some of the relevant matters included in the above, fit well into the requirements for decision-making adopted by this Council, and include *efficiency* in adopting only regulations for which costs to society are justified by benefits to society and achieving objectives at lowest cost taking into account alternative approaches to regulation. *Effectiveness* includes designing the regulation to achieve the desired policy outcome including reasonable compliance rate i.e. it is able to be effectively enforced and that it is compatible with the general body of law. *Transparency* includes clearly defining the nature and extent of the problem and identifying how the regulation aids in reaching compliance.⁷

The Control of the Keeping of Animals

16. The general bylaw making power is contained in section 145 of the Local Government Act 2002 and covers bylaws for the purposes of *protecting the public from nuisance; protecting, promoting, and maintaining public health and safety; and minimising the potential for offensive behaviour in public places*. Section 146(a)(v) specifically allows for the making of bylaws for the *keeping of animals, bees, and poultry*.
17. The Legal Services Manager, in a legal opinion⁸ in relation to possible bylaw controls over "NOS shops" stated:

Council may pass bylaws to protect the public from "nuisance". A public nuisance is one which inflicts damage, injury, discomfort, or inconvenience on all members of the public who come within the sphere of its operation. The question of whether the number of persons affected is sufficient to render the nuisance public, one which the Council should address this is a question of fact and degree.(sic)

⁵ *Annual Plan Subcommittee Report*, clause 24, Christchurch City Council, 30 June 2004

⁶ Ministry of Economic Development, *Code of Good Regulatory Practice*, Quality of Regulation Team, Competition and Enterprise Branch, November 1997

⁷ Ministry of Economic Development, 1997 *op cit*

⁸ Chris Gilbert, Legal Services Manager, Christchurch City Council, Legal Opinion, 3 May 2005

18. The Health Act 1956 also contains the power, under section 64(1) to make bylaws for:

(a) [Improving, promoting, or protecting] public health, and preventing or abating nuisances:

(m) Regulating, licensing, or prohibiting the keeping of any animals in the district or in any part thereof:

These specific Health Act powers relate to areas broadly termed environmental health matters and the use of the term nuisance in this case would, more than likely⁹, to be in relation to offensiveness or matters injurious to health. Section 29 of the Health Act defines “nuisances” for the purpose of that Act, and contains the following provisions relate to the keeping of animals.

(j) 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:

(k) Where any animal, or any carcass or part of a carcass, is so kept or allowed to remain as to be offensive or likely to be injurious to health:

(ka) Where any noise or vibration occurs in or is emitted from any building, premises, or land to a degree that is likely to be injurious to health:]

19. The provisions of the Health Act 1956 place a duty on local authorities, and they are empowered and directed *If satisfied that any nuisance, or any condition likely to be injurious to health or offensive, exists in the district, to cause all proper steps to be taken to secure the abatement of the nuisance or the removal of the condition;*¹⁰ The Act provides the following means of requiring abatement of any nuisance. Under section 33 the matter may be considered in the District Court and the Court may require the owner and the occupier to abate the nuisance effectively, can prohibit the recurrence of the nuisance, and specify the works to be done and the time within which they shall be done. An offence under the Act is committed if any person fails to comply with an order made under section 33. If the default consists of not doing the works to abate the nuisance or prevent its recurrence the local authority shall do the works at the expense of the owner and occupier who are jointly and severally liable for the costs. Until paid they will be a charge on the land on which the premises are situated. Section 34 enables abatement of a nuisance without notice by the Engineer or Environmental Health Officer of the local authority where immediate action is required. The costs are similarly recoverable from the owner or occupier of the premises.
20. The bylaw currently in force, as introduced in 2000, consolidated similar titled bylaw provisions previously in force in the territorial authorities that were amalgamated into the present Christchurch City in 1989. At the time of developing the bylaw the opportunity was taken to simplify the provisions compared with previous bylaws but still retain a bylaw applying over the whole city. At the time it was realised that central government legislation, introduced since previous bylaws had been made, regulated many of the matters which had been the subject of bylaw controls. The City Plan, then notified, also contained matters that previously would have been included in such bylaws. While these provisions existed and minimised the need for a bylaw the Council considered a consolidated bylaw covering the amalgamated city was most appropriate at that time.
21. The District Plan, for example, contains controls restricting the boarding of animals in Living Zones to four in charge of a registered veterinarian for medical or surgical purposes only and controls in Rural Zones over intensive livestock management (including pigs and poultry) are included. The latter relate to required distances from site and residential boundaries.

⁹ See for example the discussion in the opinion of Simpson Grierson in *Nitrous Oxide/Party Pill Sales: Health Act 1956:Bylaws*, 3 May 2005

¹⁰ Health Act 1956, section 23

22. The legislation which covers many of the bylaw provisions includes the Animal Welfare Act 1999; the Building Act 2004; The Agricultural Pests (Exemption of Domestic Rabbits) Order 1994; Wildlife (Farming of Unprotected Wildlife) Regulations 1985; Animal Products Act 1999; Biosecurity (National American Foulbrood Pest Management Strategy) Order 1998. A legal opinion is as follows on the matter of covering matters covered by central government legislation. *Where the acts in question are already an offence under central government legislation it would be unwise for the Council, and indeed unnecessary, for Council to make a bylaw duplicating those offences.*¹¹ Attachment 1 *Matters Regulated Under the Animal Control Bylaws* sets out statutory and other than bylaw provisions related to such matters.
23. The bylaw currently includes the following provision related to the keeping of any animal. Sub-clauses 5(a) and 5(b) are captured by the provisions of the Health Act 1956 above and the provisions of subclause 5(c) are further discussed below:
- 5. GENERAL CONDITIONS OF KEEPING ANIMALS**
No person shall keep, or suffer to be kept, any animal or bees in a manner that:
 (a) *is or is likely to become a nuisance; or*
 (b) *is or is likely to become offensive, injurious to health, or dangerous.*
 (c) *every person keeping animals as permitted by this bylaw shall ensure that the animals have access to sufficient food, water and, where appropriate adequate exercise.*
24. Section 10 of the Animal Welfare Act 1999 requires that physical, health and behavioural needs of the animal are met by owners and of persons in charge of animals in a manner that is in accordance with both (a) Good practice; and (b) Scientific knowledge. The definition of "physical, health, and behavioural needs" in section 4 includes:
- (a) *Proper and sufficient food and water;*
 (b) *Adequate shelter;*
 (c) *Opportunity to display normal patterns of behaviour;*
 (d) *Physical handling in a manner which minimises the likelihood of unreasonable or unnecessary pain or distress;*
 (e) *Protection from, and rapid diagnosis of, any significant injury or disease, - being a need which in each case, is appropriate to the species, environment, and circumstances of the animal.*
25. Offences [relating to the above] under section 12 of the Animal Welfare Act 1999 expose the individual on conviction to imprisonment for up to six months or a fine not exceeding \$25,000 or both. A corporate body could be fined up to \$125,000.
26. The National Animal Welfare Advisory Committee established under the Act issues codes of welfare which have legal effect. These codes are deemed to be regulations and contain minimum standards. They may also contain recommended practice but only the minimum standards have legal effect. Failure to meet the minimum standard may be used to support a prosecution under the Act.
27. The Animal Welfare Act 1999 is administered by the Ministry of Agriculture and Forestry and the Minister may declare organizations to be approved organisations for the purposes of the Act. Apart from inspectors appointed under the State Sector Act and police officers, only approved organizations can recommend persons as inspectors with powers to deal with matters covered by the Act. The Minister appoints inspectors under the Act. The Royal New Zealand Society for the Protection of Animals is an approved organisation and may recommend persons for appointment as inspectors who must have completed the National Certificate in Compliance and Regulatory Control (Animal Welfare). The approved organization must have as its primary purpose the promotion of animal welfare and is given the powers under the Act to impound animals, to seize and destroy animals, and inspectors may issue enforcement orders under the Act. **Territorial authorities do not meet the criteria for approved organizations.**

¹¹ Chris Gilbert, 3 May 2005, *op cit*

28. As these provisions exist, in regard to care of kept animals, it is considered not appropriate to include such a provision in bylaws of a territorial authority, nor should indeed that officers of a Council be involved in such matters. These should be dealt with by inspectors appointed under the Animal Welfare Act 1999 who are trained and qualified to address the problems associated with lack of care of animals.

Complaints or Requests for Action

29. Some indication of the significance of problems related to the keeping of animals can be obtained by examining the complaints received by the Council over a two year period. The table below sets out an analysis of these complaints:

Complaints – Animals/Stock	No.	Premises
Rabbits	16	14
Sheep/Lamb	12	11
Pigs	10	10
Cats *	8	7
Cats – direct calls	40	33
Horses	6	6
Goats	6	6
Cows	2	2
Rats	1	1
Totals	101	90
% of total complaints	32.7	32.3
Complaints – Poultry/Birds		
Crowing roosters	95	86
Poultry fouling/smells/nuisance	32	26
Poultry not confined	14	14
Others – bird noise	8	8
Totals	149	134
% of total complaints	48.2	48.0
Complaints – Bees/Wasps		
Ants	1	1
Bee hives #	26	22
Bee nests	9	9
Bee swarms	14	14
Wasp nests †	9	9
Totals	59	55
% of total complaints	19.1	19.7
Overall Total Complaints	309	279

Source: Environmental Services Unit May 2003 to May 2005

Notes:

* These do not include direct calls to the Environmental Effects Team comprising 40 complaints at 33 properties. Dealt with by officers under the Health Act 1956 nuisance provisions as needed.

Only 3 referred to fouling washing or house paintwork.

† Wasps are pests under Pest Management Strategies and not kept in terms of bylaws.

30. In the two years the Environmental Services Unit has dealt with 309 complaints related to animals, bees and poultry as above. About half of these referred problems with poultry or birds; about a third regarding animals or stock; and 20 per cent regarding bees or wasps. The total complaints referred to 279 properties over the city over the two years, or 0.21 per cent of the estimated 135,000 households at June 2005. It is therefore not a significant issue in Christchurch City. On the basis of the examination of the problems caused by the keeping of animals it appears these are generally minimal.

31. The recommended revocation of the bylaws will not mean the Council does not retain the ability to respond to genuine complaints about the keeping of animals causing nuisance. As pointed out sufficient controls [see Attachment 1] exist under central government legislation enforced by the Council to deal with the few problems that occur.
32. As the decision on the review has occurred subsequent to the amalgamation of the Banks Peninsula District Council (BPDC) and the Christchurch City Council the opportunity has been taken to include consideration of the BPDC bylaw.
33. The BPDC bylaw is New Zealand Standard 9201, Chapter 13:1972 and as such reflects the time it was prepared by the Standards Association of New Zealand. It contains prescriptive requirements for matters such as licensing of the keeping of pigs; construction of pigsties; cleanliness of pigsties, and the disposal or transport of manure and pigswill. The use of stables for human habitation is not permitted, and conditions regarding poultry keeping including structures for such purposes are set down. These matters are covered by the provisions of the Health Act 1956 regarding nuisances or the Building Act 2004 in regard to structures. Licensing of the keeping of bees in other than rural areas is included in the bylaw. In regard to the latter issue experience has been that there are limited, if any problems, from the keeping of bees that would create a nuisance. It is costly to introduce licensing provisions for such minor matters and generally concerns expressed are more likely to be of a private rather than public nuisance. It is unlikely that licensing would meet the efficiency criteria of the *Code of Good Regulatory Practice* on a cost/benefit basis. These are matters that were taken out of the Christchurch City Council Bylaw in the 2000 review.
34. It has been difficult to obtain information of the number of complaints received by BPDC, but anecdotally they appear to have been limited, at least in recent times. Given the form of the bylaw it is unlikely that such conditions would still exist in modern settlements.

Licensing the keeping of cats

35. It is understood that there is no legal impediment to introducing a bylaw to control the number of cats kept per household. It is, however, unclear as to what problems such a requirement would address. Over a number of years such proposals have been put forward by a number of groups and have been associated with requests for provisions for de-sexing cats, identification by micro chipping, the provision of impounding facilities for cats, and restrictions of cat from ecologically sensitive areas.^{12 13 14} It should be made clear that a territorial authority has no legal powers to require the de-sexing of cats, or requiring the identification of cats by micro chipping. The matter of providing impounding facilities for cats may be legally moot but the holding of cats for a period of seven days before disposal is not available to local authorities.¹⁵
36. Restrictions of cats from ecologically sensitive areas may be possible under the provisions of the Resource Management Act 1991, and may also be through bylaws under the Reserves Act 1977. Some Environment Court case law has dealt with the matter in regard to resource consents.¹⁶ Some provisions exist for controls over feral cats under the Canterbury Pest Management Strategy adopted by the Regional Council (aka Environment Canterbury or ECan).
37. The formation of the bylaw when introduced by the Council contained some provisions which have given the impression that the Council can undertake effective enforcement action on matters that are contained in the Animal Welfare Act 1999 and these need to be reconsidered in the review. This has created expectations that the Council will provide a caring for cats programme. There are significant resourcing issues related to this matter.

¹² Forest and Bird Society, *Guarding our natural heritage – A briefing paper for the Environment Committee of the Christchurch City Council on a predator control strategy for Christchurch City*, November 2000

¹³ New Zealand Companion Animal Council, *The Community and Companion Animals*, April 2001

¹⁴ Letter from *Cats Unloved*, Christchurch, 21 February 2003

¹⁵ The seven-day holding period is contained in the Animal Welfare Act 1999 (section 141) and applies only to approved organisations under that Act. These do not include local authorities.

¹⁶ Environment Court, Decision No. A78/98, *Oceanview Properties v The Far North District Council*, Auckland, 9 July 1998.

38. A draft Code¹⁷ covering the welfare of cats has been released and is likely to be formally adopted by the Minister during the year. Among other matters the Code has grouped cats into one of three categories as follows:

Owned cats live entirely with humans as 'companion' cats; they are dependant on humans to provide their food, water and shelter; their social structure, disease control and opportunity to breed, are largely controlled by humans.

Stray/unowned cats have many of their needs indirectly supplied by humans; they usually live in shelter provided by human habitation (eg industrial or residential sites, farm sheds, etc); they acquire food either hunting, scavenging or through having it provided by carers who attend them or their colony they are likely to interbreed with the unneutered domestic cat population.

Feral cats have none of their needs provided by humans, and their population size fluctuates largely independently of humans; they do not live around centres of human habitation; the population is self-sustaining and requires no input from the owned cat population.

39. The Codes of Welfare promote appropriate behaviour, establish minimum standards, and promote best practice for people owning or looking after animals. Recommended best practices in the codes are not legally binding but minimum standards are and failure to meet these can support a prosecution under the Animal Welfare Act 1999. They can also be used as an educational tool for persons keeping animals in addition to assisting with enforcement by officers appointed under the Act.
40. There is certainly limited evidence that significant problems are being caused by the majority of cats kept as pets in Christchurch. The few cases of what could be seen as excessive numbers of cats being kept on residential properties could be largely related to animal welfare issues or, in a few cases, nuisance conditions under the Health Act 1956.
41. Two sources have been used to estimate the number of cats kept in the city. On the basis of a small survey Morgan¹⁸ estimated that there were about 80 cats for every 100 households. If the survey results were applied to the whole city of about 123,000 households the city would have a domestic cat population of almost 100,000. Further information has been obtained from a survey undertaken by Nielsen Media Research¹⁹ on the number of cats per household in Christchurch City. Applying the results to the city overall 60,000 households indicated they had one or more cats. On the basis of this data there could be 88,000 cats being kept in Christchurch. Just over 67% had one cat; 27% had two cats; 3.4% had three cats; 2% had four cats; and less than 1% had 5 or more cats. The number of households with two or more cats was 20,000 equalling approximately 47,000 cats. These figures may not include cats that could be described as strays or unwanted, or the possibly few feral cat colonies within the city boundaries.
42. While it may be possible to introduce a provision in the Animal Control Bylaw limiting the number of cats able to be kept on a property it would be a lengthy process in identifying properties and enforcing such a restriction. Information previously obtained regarding the cost of registering a dog revealed that each dog cost about \$16 to set up and maintain the register alone. A similar process would be involved in the case of cats, without taking into account the costs of identifying premises, inspections and enforcement. Such controls are unlikely to meet either the *efficiency* or *effectiveness* criteria of the Code of Good Regulatory Practice.²⁰ The costs of setting up a licensing system are considered to be considerably above any benefits to the community and it is likely to be difficult to enforce even if the Council wished to provide for such enforcement. It is not clear what exactly the purpose of licensing, or limiting the number of cats per property would be given the limited number of cases that occur creating nuisance in the city.

¹⁷ National Animal Welfare Advisory Committee, *Animal Welfare (Cats) Code of Welfare 2005*, Public Draft, Wellington, 31 March 2005

¹⁸ Shelley Morgan, personal communication, 11 October 2001

¹⁹ Nielson Media Research, *Cat Incidence and Cat Numbers – Christchurch, Jan – Dec 2003*, 11 August 2004

²⁰ Ministry of Economic Development, 1997, op cit

43. The groups that have suggested limits on the keeping of cats have also requested further controls by local authorities including matters such as requiring desexing, impoundment of stray cats, and even disposal. Currently it is considered that no specific statutory authority exists for territorial authorities to undertake such actions. In a previous opinion it was noted that no bylaw making powers existed which would allow territorial authorities to impose such a requirement as a matter of general policy.²¹ The opinion considered that there may be limited circumstances in which they could require desexing under powers contained in the Local Government Act 1974 under a clause which has since been repealed. This was only if cat populations increased to the extent that they became a very serious nuisance for which there is no evidence at this time. While a few groups consider there is a problem of over breeding due to a lack of neutering of cats in the city the numbers of cases appear small in the context of the total estimated cat population. It is probable that the majority of "kept" cats in the city are neutered. In regard to the matter of impounding the opinion stated:

There is no general statutory authority which permits territorial authorities to impound and to subsequently sell, destroy or otherwise dispose of any unclaimed animals other than dogs or stock.

44. The additional controls over cats being sought result from a relatively small number of cases occurring in the city. In the last year (September 2004 to August 2005) most complaints have related to what have been described as feral, semi feral, or abandoned cats. Such cats would **not** be caught by any bylaw relating to the keeping of animals as they are by definition not owned by any person that could be identified. About 40 complaints at 33 properties have been dealt with by pest control services on behalf of the Council. Given that it is estimated that there are 60,000 households keeping cats and about 20,000 with two or more cats, there are in the order of 88,000 cats kept in the city. The complaint rate is therefore very small about 0.05% of cat keeping households and of the total number of cats. No further controls are therefore considered necessary.
45. In conclusion the evidence for requiring further bylaw controls on the keeping of cats is not available as any serious nuisances can be dealt with under current statutory provisions. The matters regarding animal welfare issues are adequately covered by provisions of the Animal Welfare Act 1999 and actions are able to be undertaken by approved organizations under that Act. Territorial authorities have no powers under that Act and arguably should not be involved in such matters. No powers exist for territorial authorities to require desexing of cats or to undertake impounding of cats. Bylaw controls, of any kind, would be neither efficient nor effective.

Options

46. **Option 1** - The *Do Nothing* Option would be to retain the current bylaws until required to review prior to 30 June 2008. Given that this current analysis indicates that continuation of such bylaws does not fulfil criteria implied by section 155(1) of the Local Government Act 2002 and the *Code of Good Regulatory Practice* of the Ministry of Economic Development it is difficult to justify such continuance. Legal advice is to the effect: *Where the acts in question are already an offence under central government legislation it would be unwise for the Council, and indeed unnecessary, for Council to make a bylaw duplicating those offences.*²²
47. **Option 2** - This option could continue the bylaw but to undertake an amendment to remove clause 5(c) on the basis that the provisions are included in the Animal Welfare Act 1999 and more properly dealt with under that legislation. This option would also include the revocation of the Bank Peninsula District Council bylaw (NZS 9201 Chapter 13:1972).

²¹ David Rolls, Solicitor, *Funding of Controls in Regard to Cats*, Legal Services Unit, 4 November 2002

²² Chris Gilbert, 3 May 2005, *op cit*

Preferred Option

48. **Option 3** - In this case both the Christchurch City Animals (Other than Dogs) Bylaw 2000 and the Banks Peninsula District Council Bylaw *The Keeping of Animals, Poultry and Bees* (NZS 9201 Chapter 13:1972) would be revoked. There is sufficient central government legislation to control the perceived problems which arise from the keeping of animals in the Christchurch City area and overall these problems are not a significant issue.

ASSESSMENT OF OPTIONS

The Preferred Option

Option 3. - Revoke both the Christchurch City Animals (Other than Dogs) Bylaw 2000 and the Banks Peninsula District Council Bylaw *The Keeping of Animals, Poultry and Bees* (NZS 9201 Chapter 13:1972). There is sufficient central government legislation to control the perceived problems which arise from the keeping of animals in the Christchurch City area and overall these problems are not a significant issue

	Benefits (current and future)	Costs (current and future)
Social	Sufficient powers exist under central government legislation to control both nuisances and animal welfare issues	Need to maintain FAQs on keeping of animals issues and possibly educational material. Enforcement activities need to be maintained.
Cultural	N/A	N/A
Environmental	Nuisances can be controlled adequately through specific means	Minimal to no increase in costs due to statutory requirements being a duty under central government legislation.
Economic	Not significant	Not significant
<p>Extent to which community outcomes are achieved: Primary alignment with community outcome a Healthy City Also contributes to A Safe City and A Well Governed City</p> <p>Impact on Council's capacity and responsibilities: None beyond current level of inspection and enforcement activity</p> <p>Effects on Maori: None apparent</p> <p>Consistency with existing Council policies: Statutory requirements currently exist already</p> <p>Views and preferences of persons affected or likely to have an interest: City enforcement staff able to use statutory instruments rather than bylaw provisions in general. General agreement with approach suggested in this option. Wider views will be sought through SCP</p> <p>Other relevant matters:</p>		

Maintain The Status Quo (If Not Preferred Option)

Option 1 - The *Do Nothing* Option would be to retain the current bylaws until required to review prior to 30 June 2008. Given that this current analysis indicates that continuation of such bylaws does not fulfil criteria implied by section 155(1) of the Local Government Act 2002 and the *Code of Good Regulatory Practice* of the Ministry of Economic Development it is difficult to justify such continuance. Legal advice is to the effect: *Where the acts in question are already an offence under central government legislation it would be unwise for the Council, and indeed unnecessary, for Council to make a bylaw duplicating those offences.*²³

	Benefits (current and future)	Costs (current and future)
Social	Would enable continuance of bylaw for a further two years.	Require a further review at some cost again in a relatively short period which is unlikely to provide different information.
Cultural	None apparent	None apparent
Environmental	None apparent as central government legislation already used to control problems.	Retention of bylaws will have little effect.
Economic	None apparent	None apparent
<p>Extent to which community outcomes are achieved: Primary alignment with community outcome a Healthy City but by repeating statutory provisions are possibly in conflict with A Well Governed City.</p> <p>Impact on Council's capacity and responsibilities: Duplication of requirements with that contained in central government legislation</p> <p>Effects on Maori: None apparent</p> <p>Consistency with existing Council policies: Repeats statutory requirements regarding public and statutory nuisances and animal welfare issues.</p> <p>Views and preferences of persons affected or likely to have an interest: City enforcement staff using statutory instruments rather than bylaw provisions in general. Wider views will be sought through SCP.</p> <p>Other relevant matters:</p>		

²³ Chris Gilbert, 3 May 2005, *op cit*

Other Option Considered but not preferred

Option 2 - This option could continue the bylaw but to undertake an amendment to remove clause 5(c) on the basis that the provisions are included in the Animal Welfare Act 1999 and more properly dealt with under that legislation. This option would also include the revocation of the Bank Peninsula District Council (BPDC) bylaw (NZS 9201 Chapter 13:1972).

	Benefits (current and future)	Costs (current and future)
Social	Limited benefits except clarification of requirements regarding animal welfare matters. Revocation of BPDC bylaw would mean similar requirements over whole city.	Still would require further review prior to 2008 at some cost. Does not fulfil examination undertaken under s 155(1) of the Local Government Act 2002.
Cultural	None apparent	None apparent
Environmental	Central government legislation covers matters of significance in any case so bylaw not necessary.	Repeats matters already controlled so cost of maintaining bylaw unnecessary.
Economic	None apparent	None apparent
<p>Extent to which community outcomes are achieved: Primary alignment with community outcome a Healthy City but by repeating statutory provisions are possibly in conflict with A Well Governed City</p> <p>Impact on Council's capacity and responsibilities: Duplication of statutory requirements in regard to public and statutory nuisances and specific requirements re the keeping of animals</p> <p>Effects on Maori: None apparent</p> <p>Consistency with existing Council policies: Repeats statutory requirements regarding public and statutory nuisances and animal welfare issues.</p> <p>Views and preferences of persons affected or likely to have an interest: City enforcement staff using statutory instruments rather than bylaw provisions in general. Wider views will be sought through SCP</p> <p>Other relevant matters:</p>		