

Kyogle Council

LOCAL ORDERS POLICY

ANIMAL OWNERSHIP



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KYOGLE COUNCIL
LOCAL ORDERS POLICY

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1.0 INTRODUCTION

1.1 PREAMBLE & POLICY STATEMENT

This policy outlines the standards and requirements for the keeping of animals within the Kyogle local government area.

1.2 VALIDITY OF ORDERS POLICY

1.2.1 This policy has been prepared in accordance with Chapter 7 of the Local Government Act 1993

1.2.2 This policy was re-adopted by Council on 11 September 2017 (resolution number 110917/18)

1.3 TITLE AND OPERATION

This policy shall be known as the Kyogle Council Local Orders Policy - Animal Ownership.

The policy deals with:

1.3.1 The ownership and keeping of animals, control of straying animals including cattle and horses.

1.3.2 Related provisions of current legislation.

1.3.3 Matters Council will consider when preparing an order.

1.3.4 Procedures for the giving of Orders related to animal ownership.

1.3.5 Offences and penalties related to non-compliance with orders issued by Council.

1.4 DEFINITIONS OF TERMS USED IN THE POLICY

Animal includes poultry, ducks geese, domesticated birds, dogs, cats and any other animal that is prescribed by the regulations as a companion animal, cattle, horses, donkeys, pigs, sheep and goats.

Appropriate Authorities includes Kyogle Council

Collar means a collar of leather or other durable material.

companion animal means each of the following:

- (a) a dog,
- (b) a cat,
- (c) any other animal that is prescribed by the regulations as a companion animal

Council means Kyogle Council.

Owner(s) (i) Each of the following persons is the **owner** of a companion animal for the purposes of this Policy:

- (a) the owner of the animal (in the sense of being the owner of the animal as personal property),
- (b) the person by whom the animal is ordinarily kept,
- (c) the registered owner of the animal

(ii) Means any person who alone or jointly is entitled, whether at law or in equity, to possession of the animal

Impounded

- (1) Something is impounded as soon as an impounding officer or an occupier of private land takes possession of it under a power conferred by this Act. It continues to be impounded until it is released or disposed of in accordance with this Act.
- (2) An item does not have to be taken to a pound for it to be “impounded” for the purposes of this Act.

Provocation refers to the process or act which urges a dog to attack, bite, harass or chase any person or animal (other than vermin) whether or not actual injury is caused

Penalty Notice is a notice to the effect that, if the person served does not wish to have the matter to which the notice refers determined by a court, the person may pay within a time, and to Council, the amount of penalty prescribed by the regulations for the offence.

Penalty Notice amount is fixed by the Government on July 1 of each year.

Public Place means:

- (a) any pathway, road, bridge, jetty, wharf, road-ferry, reserve, park, beach or garden; and
- (b) any other place, that the public are entitled to use.

Public Place also means a place (other than a place declared by regulations not to be a public place) that is open to or frequented by the public;

- (a) whether or not payment for admission to the place is required; and
- (b) whether or not the place is usually open to or frequented by the public, and, in particular, includes:
- (c) any place dedicated or reserved for a public purpose; and
- (d) a place which, although privately owned, is a place to which the public are permitted to have access for the purposes of business or leisure or to use as a thoroughfare.

Registration tag registration tag provided for an animal by the Director General.

Road means the whole of a road, including the footways, the carriageway, any bridge and any gardens, reserves and the like.

Specified Premises as it relates to control of pigs; dwelling, shop, office, factory, church or other place of public worship, workshop, school or public place.

Specified Areas as it relates to control of animals other than pigs; dwelling, school, shop, office, factory, workshop, church or other place of worship, public hall or premises used for the manufacture, preparation or storage of food.

Unattended, in relation to an animal, includes abandoned or straying.

1.5 RELATED REFERENCES

- * Local Government Act 1993
- * Local Government (General) Regulations 2005
- * Impounding Act 1993
- * Impounding Regulation 2008
- * Crimes Act 1900 (Extracts)
- * Companion Animal Act 1998 and Regulations

1.6 OBJECTIVES OF POLICY

- 1.6.1 To specify criteria Council must take into consideration in determining whether or not to give an order under Section 124 of the Local Government Act 1993.
- 1.6.2 To supplement provisions of existing legislation related to animal control matters.
- 1.6.3 To define matters under Section 124 of the Act in relation to what orders may be given, in what circumstances, and to whom.
- 1.6.4 To specify maximum numbers of specified animals able to be kept on residential premises.
- 1.6.5 To specify minimum distances for specified animals to be kept from nominated premises.
- 1.6.6 To specify minimum yard space allowable for the keeping of dogs.
- 1.6.7 To specify offences.
- 1.6.8 To specify the manner in which notices and orders are to be served.
- 1.6.9 To provide consistent and clear information to animal owners and those intending to keep animals, in regard to responsibilities inherent with the ownership of animals.
- 1.6.10 To reduce the incidence of nuisance caused to persons due to the keeping of animals by other persons.
- 1.6.11 To restrict or prevent the keeping of particular animals within urban areas.

- 1.6.12 To provide information to persons who may be adversely affected by the keeping of animals by other persons.
- 1.6.13 To implement provisions of the Impounding Act 1993.
- 1.6.14 To implement provisions of the Impounding (Penalty Notice Offences) Regulations 2003
- 1.6.15 To provide an effective deterrent to the abandoning of animals in public places.
- 1.6.16 To reduce the incidence of straying animals, particularly cattle and horses, on public roads.
- 1.6.17 To enable the authorization of Council Officers to serve Penalty Notices.
- 1.6.18 To provide clear information in regard to offences and penalties associated with straying animals.
- 1.6.19 To set the monetary level of Penalty Notices served under this Policy.

1.7 LAND TO WHICH THE POLICY APPLIES

This policy applies to all land within the Kyogle Council area for which it has a regulatory responsibility relating to the keeping of animals

1.8 COMMENCEMENT OF DATE OF POLICY

This policy shall take effect from 11 September 2017.

2.0 CRITERIA COUNCIL MUST TAKE INTO CONSIDERATION IN DETERMINING WHETHER OR NOT TO GIVE AN ORDER UNDER THE LOCAL GOVERNMENT ACT.

2.1 DOGS

2.1.1 Maximum Numbers Permitted

In all cases the maximum number of dogs to be kept on land to which this policy applies is two (2).

2.1.2 Containment of Dogs

A suitable yard area shall be provided which is securely fenced to prevent escape or straying of the dog or dogs from the yard area.

Considerations will be given to proven failsafe methods to contain dogs on land, other than physical fencing barriers.

2.1.3 Registration and Identification (Microchipped) of Dogs

All dogs over the age of six months shall be registered (life time) with Kyogle Council and all dogs over the age of 12 weeks identified (microchipped) in accordance with the provisions of the Companion Animal Act 1998 and Regulations.

2.1.4 Seizing of Dogs

All dogs found in a public place and not under effective control of some competent person as defined in the Companion Animals Act 1998, are subject to seizure and impoundment by Council.

Seized dogs will be held at Council's Dog Pound for a minimum period as set out below.

At the expiry of the prescribed holding period, Council may decide to have the dog sold or destroyed.

2.1.4.1 Holding Periods

Registered and Identified (microchipped) Dog 14 days
Unidentified Dog 7 days

2.1.4.2 Private Seizure

Provision exists under the Companion Animals Act 1998 for persons to carry out a private seizure of a straying dog or dogs.
This may occur in a number of ways including:

- Seizure of a dog by a property owner or resident upon entry of a dog onto a private property (after attack etc)
- Seizure of a dog by a private citizen where a dog is found on a public place.

Such a seizure shall involve delivery of the dog to Council's pound as co-ordinated with the Ranger or returned to the owner and authorisation of a prescribed Release Form, which formerly releases custody of the dog to Council care.

2.1.4.3 **Entry Upon Private Property**

Council Officers shall not enter upon any private land for the purpose of seizure of dog or dogs. Unless under the direction of the occupier/owner of the land, notwithstanding following a dog attack.

Notwithstanding the direction of a court order to seize a dog or dogs declared dangerous and the subject of a destruction order by the Court and;

Notwithstanding the need for Council to enter premises to consult with residents in regard to animal control matters, to carry out registration checks or for the service of orders.

2.1.5 **Release of Seized Dogs**

Council shall release a seized dog to the registered owner or to the owners authorised agent upon payment of:

- (i) Registration fee under the Companion Animals Act 1998 and Regulations if due;
- (ii) Payment of prescribed release fee under the regulations;
- (iii) Payment of specified administration fee determined by Council from year to year;
- (iv) Payment of all sustenance and veterinary fees owing to Council and incurred during the seizure of the dog;
- (v) Payment of any and all costs associated with the seizure of the dog, including damage to Council equipment and clothing and medical costs resulting from Council staff making contact with the dog.
- (vi) Release of the dog shall also be subject to the receipt of and acknowledgment of Council's Policy for Animal Ownership and the provisions contained therein.

2.1.6 Destruction of Dogs

Where destruction of a dog becomes necessary, Council shall engage a registered veterinary surgeon or utilisation of qualified Council Officers to administer a lethal dose injection to euthanase the animal.

Council may invoke procedures to recover costs incurred for the destruction of the dog(s), from the known owner.

2.1.7 Declaration of Dangerous Dogs

Provisions of the Companion Animals Act 1998 shall apply.

Council is provided with the power to declare dogs dangerous, under the Companion Animals Act 1998.

The process is described within the subject Act and such process will be invoked by Council in the event of declaring a dog dangerous.

In general terms the procedure will involve:

- (a) Action in response to formal complaint by a member of the public, or written application of a Police Officer, or as a result of a recommendation by an authorised officer of Council.
- (b) Notification of the proposed declaration, to the owner of the dog (or dogs).
- (c) Provision of relevant information to the dog owner, particularly in regard to responsibilities under the Companion Animals Act 1998, once a declaration of a dangerous dog is imposed.
- (d) Provision of information relating to offences and penalties as prescribed under the Companion Animals Act 1998.

2.1.8 Muzzling of Restricted Dogs including Greyhounds and Other Species or Kinds of Dogs

Provisions of the Companion Animals Act 1998 shall apply.

2.1.9 Prohibited Areas in Relation to Dogs

Provisions of the Companion Animals Act 1998 shall apply.
Prohibited areas include:

- (i) Areas within 10 metres of any playground apparatus.
- (ii) Within 10 metres of food preparation areas within parks.
- (iii) Sports fields.
- (iv) Public swimming pools and grounds.
- (v) Shopping arcades.

2.1.10 Fouling of Footpaths

Provisions of the Companion Animals Act shall apply.

2.1.11 Dogs Used by the Blind and Deaf

Provisions of the Companion Animals Act shall apply.

2.1.12 Powers of Entry

Persons authorised in writing by Council may enter upon any land or premises within the area of the Council at all reasonable times, in accordance with the Local Government Act, 1993.

2.1.13 Breeding and Boarding Kennels

The establishment of dog breeding and boarding kennels is subject to the provisions of Council's Planning Scheme(s).

2.1.14 Penalty Notices for Certain Offences

On-the-spot penalties may be issued by authorised officers under the provisions of the Companion Animals Act 1998.

Persons not wishing to have the matter determined by a Court, may pay within a specified time, the amount of the penalty.

Provisions of the Companion Animals Act 1998 and Regulations shall apply.

2.1.15 Liability for Injury or Death to a Person or Another Animal

The owner of a dog shall incur liability for the death or injury to a person or another animal, caused by that dog.

Provisions of the Companion Animals Act shall apply.

2.2 ANIMALS GENERALLY

The following matters are taken to be included in the circumstances to be considered by Council, when considering the giving of an order.

2.2.1 Failure to Comply with Standards

Failure to comply with relevant standards or requirements set or made under the Local Government Act 1993 and Regulations including;

2.2.2 Petition on keeping of Pigs

A petition from at least 3 people and as defined within the Local Government Orders Regulations for Council to order pigs to be kept a greater distance

from specified premises, than is specified in the Local Government (General) Regulation 2005.

An order can be made requiring compliance with these standards if they are not being complied with.

2.2.4 Pigs (Swine)

- (i) Pigs must not be kept in such a place or manner as to pollute any water supplied for use, or used or likely to be used by a person, for drinking or domestic purposes; or
- (ii) Pigs must not be kept (and pig manure must not be deposited) within 60 metres of a dwelling, shop, office, factory, church or other place of public worship, workshop, school or public place.

2.2.5 Poultry

- (i) Poultry must not be kept under such conditions as to create a nuisance or to be dangerous or injurious to health.
- (ii) Poultry yards must at all times be kept clean and free from offensive odours.
- (iii) Fowls (that is, birds of the species *Gallus gallus*) or guinea fowls must not be kept within 4.5 metres (or such greater distance as the council may determine in a particular case) of a dwelling, public hall, school or premises used for the manufacture, preparation, sale or storage of food.
- (iv) Poultry (other than fowls referred to in subclause (iii)) must not be kept within 30 metres of any building referred to in subclause (iii).
- (v) The floors of poultry houses must be paved with concrete or mineral asphalt underneath the roosts or perches. However, this subclause does not apply to poultry houses:
 - (a) that are not within 15.2 metres of a dwelling, public hall or school, or
 - (b) that are situated on clean sand.
- (vi) Poultry yards must be so enclosed as to prevent the escape of poultry.

2.2.6 Horses and Cattle

- (i) Horses and cattle must not be kept within 9 metres of a dwelling, school shop, office, factory, workshop, church or other place of public worship, public hall or premises used for the manufacture, preparation or storage of food.
- (ii) Horse yards and cattle yards must be so enclosed as to prevent the escape of horses and cattle.
- (iii) A Council may decide (at a meeting of the Council) that a distance greater than the 9 metres specified is advisable in the special circumstances of a particular case, and may determine the appropriate distance.
- (iv) If the Council makes such a decision, the distance determined by the Council is, on written notification of that determination's being given to

the occupier or person in charge of the land concerned, taken to be the distance specified in relation to that land.

2.2.7 Impoundment of Animals Other Than Dogs

Provisions of the Impounding Act 1993 shall apply.

2.2.8 Private Impounding of Animals Other Than Dogs

Provisions of the Impounding Act 1993 shall apply.

2.2.9 Destruction of Animals

Council, or an authorised person, may destroy any animal found at large in a public place if the animal is considered by Council on reasonable grounds, to be a danger to the public, or is likely to die from a disease or injury from which it is suffering.

2.2.10 Penalty Notices

Penalty notices may be served by an authorised officer, on a person who appears to the officer as having committed an offence against the Act.

A penalty notice is a notice to the effect that if the person served does not wish to have the matter determined by a court, the person may pay within a specified time, a penalty prescribed by the regulations for the offence.

The amount of the penalty shall be as prescribed under the relevant Act and Regulations and the Fixed Penalty Handbook.

2.2.11 Service of Penalty Notices

The method for service of Penalty Notices shall be personally or by post.

2.2.12 General Provisions

- (a) If the amount of penalty prescribed for the purpose of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offences.
- (b) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

3.0 SAVINGS CLAUSES

3.1 GENERAL

Council does not wish to cause undue hardship on animal owners by the implementation of stringent control measures for the keeping of animals nevertheless, control measures will need to be implemented with due expediency.

For this reason the following savings or transitional provisions are available upon written request to Council.

3.1.1 SAVINGS PROVISIONS

Savings provisions apply within the Impounding Act to determine extenuating circumstances as a result of which Council would not serve a Penalty Notice. Such matters includes:

Destruction of stock fences due to flood, fire, vehicular accident or proven vandalism.

3.2 REDUCTION OF NUMBERS

A period of three (3) months may be allowed for the reduction of numbers of specified animals kept, to enable compliance with the Orders Policy, unless exceptional circumstances can be shown to exist.

3.3 SECURE FENCING AND ENCLOSURES

A period of three (3) months may be allowed to enable construction of permanent secure enclosures fencing, pens, compounds or the like to prevent escape of the animal(s) from the premises.

4.1 TABLE 1

*Distances for the keeping of animals from specified premises.

*Maximum numbers of defined animals permitted to be kept within specified areas.

ANIMAL TYPE	MINIMUM DISTANCE TO BE KEPT FROM SPECIFIED PREMISES	MAXIMUM NUMBERS PERMITTED TO BE KEPT WITHIN SPECIFIED AREAS
Dogs	(Note also prohibited areas)	2
Fowls	4.5 metres (Paved compound)	20
Fowls	15.2 metres (Unpaved compound)	20
Poultry including ducks and geese	30 metres	12
Cattle	9 metres	1
Horses and Donkeys	9 metres	1
Swine Pigs	60 metres	0 (prohibited)
Sheep	9 metres	2
Goats	9 metres	2

4.2 INFORMATION TO BE INCLUDED IN ORDERS

- * Reasons for the order.
- * Period for compliance with order.
- * Period shall be reasonable however, the order may require immediate compliance where the Council considers circumstances constitute a serious risk to health or safety.
- * Provision for appeal to the Land and Environment Court, against the order or a specified part of the order.
- * Period within which an appeal may be made.
- * Relevant provisions of the Act, Local Orders Policy or Regulations made under the Act, that is not being or has not been complied with.
- * Specify the occurrence of an offence if an order is not complied with.
- * Maximum penalty for the offence.
- * Action intended by Council if the order is not complied with, including recovery of costs to give effect to the Order, and works to ensure compliance.
- * Council may specify standards and work that will satisfy those standards.

4.3 SERVICE OF ORDERS

Service of an order, except in circumstances considered by Council to be urgent, or where there is an immediate risk to health will be in the following manner:

- (i) Issue of a letter of notification of Council's intention to give an Order. Such notification will specify the intended terms of the Order, methods by which the person(s) concerned may achieve compliance to avoid the issue of an Order and clarification of action in event of non-compliance with the Order.
- (ii) Giving of the Order.
- (iii) Certain appeal provisions exist under current legislation. Provision is also available for representation to Council regarding extenuating circumstances.

4.4 PENALTY NOTICES

Penalty or Infringement Notices, also known as on-the-spot penalties, are administered through the State Debt Recovery Office following issue by an authorised person of Council.

Persons receiving a Penalty Notice may elect to pay the fine within a prescribed time or elect to have the matter heard in a Local Court.

Payment provisions and failure to pay are linked to the fine recovery service of the State Debt Recovery Office.

4.5 RESPONSIBILITIES OF ANIMAL OWNERSHIP

- Humane care of the animal.
- Supply of sufficient and wholesome food and water.
- Provision of adequate shelter.
- Prevention of nuisance to other persons or animals.
- Provision of secure yarding of animal to prevent escape.

Maintenance of hygienic conditions.
Regular removal and responsible disposal of animal excrement.
Attention to regular grooming and exercise of animal where appropriate.
Provision of secure and vermin free storage of animal feed.
Provision of appropriate veterinary care and vaccination.

4.6 RESPONSIBILITIES OF DOG OWNERS IN THE EVENT OF DECLARATION OF A DOG AS DANGEROUS

The owner of a dog that is declared dangerous under the Companion Animals Act, must:

- (a) Ensure the dog is kept under effective control so as to prevent it from attacking any person or animal and must not be in sole charge of a person under 18 years.
- (b) Display appropriate warning signs.
- (c) Muzzle dog when it is away from the premises where ordinarily kept.
- (d) Ensure effective control of dog when in the care of other persons or on other premises.
- (e) Inform any new owner of the declaration.
- (f) Desex (if not already desexed) within 28 days of the declaration.
- (g) Notify Council of:
 - incident of attack by the dog;
 - loss of dog;
 - death of dog;
 - change of ownership;
 - change of premises where the dog is kept.
- (h) Notify a Council whose area the dog may be moved into to be ordinarily kept.

4.7 RELATIONSHIP OF POLICY TO CRIMES ACT 1900

Specific provisions exist under the Crimes Act (S35A) in relation to maliciously causing a dog to inflict grievous bodily harm or actual bodily harm.

Such an offence may result in a jail sentence.

Dictionary

Applicant means the person making an application for a burial, burial or memorial right, or other Council consent under this Policy.

Ashes mean the cremated remains of a body.

Body means the body of a dead person.

Burial includes putting in a vault and the disposal of ashes of a body in a cemetery after cremation.

Cemetery means a building or place for the interment of deceased persons or their ashes.

Cemetery authority means the person or persons (including a council) by whom the cemetery's operations are directed.

Columbarium means a structure with recesses in the walls to receive pyxis holding ashes.

Council means the Kyogle Council.

Dead Person includes the body of a still-born child of not less than 28 weeks' gestation.

Grantee means the person to whom a right of burial is granted.

Mausoleum means a large ornate structure for use as a tomb.

Policy means the Kyogle Council Local Approvals Policy - Cemeteries and Burials.

Private burial means the burial of a body on any private land holding that is not a private cemetery or public cemetery.

Private cemetery means any cemetery where Council is not the cemetery authority.

Public cemetery means any cemetery where Council is the cemetery authority.

Pyxis means a container or casket for the holding of ashes.

Reservation of burial rights means a pre-need right of burial.

Right of burial means a written undertaking by Council to reserve the burial place in respect of which it is granted for the person to whom it is granted.