

Kyogle Council

Local Orders Policy

Keeping Animals in Urban Areas

October 2022



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OBJECTIVE

The objectives of this Policy are to:

1. provide guidance for residents regarding the type and number of animals considered acceptable to be kept on a premises for domestic purposes
2. outline requirements for the keeping of animals for domestic purposes
3. advise the community when Council will proceed to serve an Order under section 124 of the *Local Government Act 1993* to prohibit, restrict or require things to be done regarding the keeping of animals.

BACKGROUND

Keeping companion animals or pet animals has a range of physical and psychological benefits for human health. Research has shown that owning and caring for an animal can increase cardiovascular health, strengthen the immune system, enhance social connectedness and social skills, improve self-esteem and decrease feelings of loneliness, restlessness, despair and boredom.

However, on occasions, animals can affect the amenity of the neighbourhood in which they are being kept (for example, by creating offensive noise and odour impacts). These impacts normally occur because animals are being kept in conditions, or in numbers, that are inappropriate for the size and location of the premises, or are not being cared for properly. Council is authorised to control and regulate the keeping of animals across the Kyogle local government area when this activity becomes a problem.

The Kyogle Council *Local Orders Policy – Animal Ownership* (this Policy) sets out Council's policy for keeping animals in the Kyogle local government area. The Policy aims to ensure that the keeping of animals on premises does not result in health, safety or amenity issues or adverse impacts on animal welfare.

SCOPE

This policy applies to animals kept for domestic purposes as companion animals, pets or for hobby interests.

The policy only applies to premises under one hectare in size within the following zones as identified under the *Kyogle Local Environmental Plan 2012*:

- R1 – General Residential
- R3 – Medium Density Residential
- R5 – Large Lot Residential
- RU4 – Primary Production Small Lots
- RU5 – Village
- B2 – Local Centre
- B4 – Mixed use
- IN1 – General Industrial
- IN2 – Light Industrial.

The scope of this Policy has been limited to the above zones recognising that conflict is more likely to occur in urban land use zones. The majority of the Kyogle local government area is characterised by rural/agricultural land uses where it should be reasonably expected or assumed that animals will be kept for domestic or commercial purposes.

The Policy may also be applied to the keeping of animals for commercial purposes including boarding, breeding, grooming, caring, treatment, training, racing, exhibiting, trading or selling. Where it is intended to keep animals for commercial purposes, development consent will need

to be obtained where required under the Kyogle Local Environmental Plan. Consent to the operation of animal establishments may not be permitted where Council considers that the proposal would be detrimental to the amenity of the locality.

Legislative Framework

Generally, Council's powers to control and regulate the keeping of animals are provided under section 124 of the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*.

Council may, in appropriate circumstances, issue an Order to:

- prohibit the keeping of various kinds of animals
- restrict the number of animals that can be kept on a premises
- require that animals be kept in a specific manner.

Council may also issue Orders requiring:

- demolition of animal shelters built without the prior approval of Council
- the owner or occupier of a premises to do, or refrain from doing, things to ensure that land or premises are kept in a safe or healthy condition.

Council can also exercise further controls over animals under the *Protection of the Environment Operations Act 1997*, the *Impounding Act 1993* and the *Companion Animals Act 1998*.

Generally, where Council identifies a problem with the keeping of animals and it cannot be resolved by consultation, Council will proceed to issue a notice of intention to serve an Order. Normally a person will be given opportunity to make a representation to Council prior to a formal Order being issued. In situations where urgency is required, an Emergency Order may be issued without prior notice.

POLICY

Animal Keeping Requirements

The number of animals that may be kept on a premises should not exceed the number prescribed in Table 1. The type and number of animals that are suitable to be kept on a premises has been determined having regard to the size of available yard area and the distance to the nearest dwelling or other prescribed building. Applicable statutory requirements have also been considered.

Animals must be kept a minimum distance from sensitive land uses including dwellings, community halls, schools, hospitals, premises used for the manufacture, preparation, sale or storage of food, or other premises as prescribed in Table 1. The minimum distances are to be measured from the animal yard or enclosure to the nearest façade of the above listed buildings and/or the nearest property boundary.

Animals must not be kept in a manner that:

- creates unclean or unhealthy conditions for people or animals
- attracts or provide a harbourage for vermin and insects including rats, mice, flies, lice, fleas or other insects
- creates offensive noise or odours
- creates waste disposal or land or water pollution problems including from a build-up of animal faeces

- causes damage to property
- creates an unreasonable nuisance or annoyance to neighbouring residents
- creates a reasonable fear of safety.

Property owners should be aware that keeping more than one type of animal on a premises may result in unacceptable cumulative impacts. Accordingly, Council may take action to address problems that arise from the keeping of more than one type of animal on a premises, even if the maximum number of each type of animal has not been exceeded.

Animals must not be kept at a premises used for the manufacture, preparation, sale or storage of food for human consumption.

Suitable shelter must be provided for all animals. Certain species of animals are required to be kept in cages to prevent escape or attack by predators. Generally, other animals must be securely enclosed with adequate fencing to prevent escape.

Certain animal shelters and facilities cannot be erected or located on a premises without the prior approval of Council. Animal owners wishing to erect such structures should consult the *NSW State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (to determine which structures require development approval).

Table 1: Animal keeping requirements

Animal species	Maximum number recommended	Minimum distances	Applicable regulations
Bees	2 hives	Hives must not be located within the vicinity of schools, childcare centres, hospitals or other public facilities.	<ul style="list-style-type: none"> • Beekeeping is regulated by the <i>NSW Apiaries Act 1985</i>. • Beekeepers must be registered in NSW –applications are available from the NSW Department of Primary Industries (DPI). • Beekeepers should also refer to the NSW Beekeeping Code of Practice on the NSW DPI website.
Small birds (including canaries, budgerigars, quails, finches)	Appropriate to location and breed (see Tables 2 and 3 for further guidance)	<ul style="list-style-type: none"> • 10 metres from neighbouring dwelling • 2 metres from property boundary 	<ul style="list-style-type: none"> • SEPP (Exempt and Complying Development Codes) 2008 outlines when the construction of aviaries do not require Development Consent. • A Biodiversity Conservation Licence under the <i>Biodiversity Conservation Act 2016</i> is required to keep certain native birds. 41 native birds bred in captivity can be <u>kept as pets without a licence</u>.
Large Birds (including cockatoos and parrots)	2	<ul style="list-style-type: none"> • 10 metres from neighbouring dwelling • 2 metres from property boundary 	<ul style="list-style-type: none"> • SEPP (Exempt and Complying Development Codes) 2008 outlines when the construction of aviaries do not require Development Consent. • A Biodiversity Conservation Licence under the <i>Biodiversity Conservation Act 2016</i> is required to keep certain native birds. 41 native birds bred in

Animal species	Maximum number recommended	Minimum distances	Applicable regulations
			captivity can be <u>kept as pets without a licence</u> .
Cats	3	<ul style="list-style-type: none"> 1 metre from property boundary 	<ul style="list-style-type: none"> Cats must be microchipped from 12 weeks of age and registered from 6 months of age. Cats must wear collars with a tag displaying their name and owners address and/or phone number with a bell attached. Cats must not roam onto neighbouring properties and must be kept indoors at night.
Cattle	0	N/A	N/A
Dogs	3	<ul style="list-style-type: none"> 1 metre from property boundary 	<ul style="list-style-type: none"> Dogs must be microchipped from 12 weeks of age and registered from 6 months of age. Dogs must wear collars with a tag displaying their name and owners address and/or phone number. Dogs must not roam onto neighbouring properties. They must also be under the effective control of a responsible person when in a public place.
Horses (excluding miniature horses) and ponies	1 per 4000 square metres	<ul style="list-style-type: none"> 10 metres from neighbouring dwelling 2 metres from property boundary 	<ul style="list-style-type: none"> See DPI Guidelines for minimum standards for keeping horses in urban areas: Factsheet 16.
Miniature horses and ponies	1 per 2000 square metres	<ul style="list-style-type: none"> 10 metres from neighbouring dwelling 2 metres from property boundary 	<ul style="list-style-type: none"> See DPI Guidelines for minimum standards for keeping horses in urban areas: Factsheet 16.
Pet rats, mice and guinea pigs	4 of each variety	<ul style="list-style-type: none"> 1 metre from property boundary 	<ul style="list-style-type: none"> Rats and mice must be kept indoors only in appropriate cages which are to be kept odour free. Care should be taken to prevent excessive breeding and release into the environment.
Pigs	0	N/A	N/A
Poultry (domestic and guinea fowl)	<ul style="list-style-type: none"> 5 in zones R1, R3, RU5 10 in zone R5 	<ul style="list-style-type: none"> 4.5 metres from neighbouring dwelling 15 metres from neighbouring dwelling (if floor of enclosure is not paved or 	<ul style="list-style-type: none"> SEPP (Exempt and Complying Development Codes) 2008 outlines when the construction of poultry enclosures do not require Development Consent. A DA is required if an enclosure is required to keep more than 5 poultry in zones R1, R3 & RU5 and more than 10 in zone R5.

Animal species	Maximum number recommended	Minimum distances	Applicable regulations
		<ul style="list-style-type: none"> composed of clean sand) 3 metres from property boundary 	<ul style="list-style-type: none"> NSW DPI website provides requirements for the keeping of backyard chickens.
Poultry (ducks, geese and turkeys)	2 in total	<ul style="list-style-type: none"> 30 metres from neighbouring dwelling 3 metres from property boundary 	<ul style="list-style-type: none"> NSW DPI website provides requirements for the keeping of ducks and geese.
Poultry (peafowl)	0	N/A	N/A
Rabbits	4	<ul style="list-style-type: none"> 1 metre from property boundary 	<ul style="list-style-type: none"> Rabbits must be domestic breed and kept in a cage. They must not be released into the environment.
Reptiles	As appropriate in circumstances with the appropriate licences	<ul style="list-style-type: none"> 1 metre from property boundary 	<ul style="list-style-type: none"> A Reptile Keepers Licence is required under the <i>National Parks and Wildlife Act 1974</i> to keep captive-bred reptiles. It is against the law to take reptiles from the wild. Advice on keeping reptiles should be sought from the National Parks and Wildlife Service in all cases. All species must be adequately housed to prevent escape.
Roosters	<ul style="list-style-type: none"> 1 in zone RU4 0 in all other zones 	See Poultry – domestic and guinea fowl	See Poultry – domestic and guinea fowl
Sheep and goats	0	N/A	N/A

Table 2: Minimum indoor or suspended cage dimensions for two birds (one pair)

Size of bird (approximate length in millimetres)	Minimum floor area (square metres)	Minimum height of enclosure (millimetres)	Increased floor area for each additional bird (square metres)
100	0.1	340	0.1
200	0.16	340	0.1
300	0.5	900	0.25
400	1.0	900	0.6
500	2.25	1500	0.85
900	4.0	1500	1.40

Source: Queensland Government Aviculture Code of Practice 1992

Table 3: Minimum outdoor aviary dimensions for two birds (one pair)

Size of bird (approximate length in millimetres)	Minimum floor area (square metres)	Minimum height of enclosure (millimetres)	Increased floor area for each additional bird (square metres)
100	0.37	1800	0.18
200	0.72	1800	0.36
300	1.0	1800	0.5
400	1.5	1800	0.75
500	2.5	1800	1.25
900	5.0	1800	2.50

Source: Queensland Government Aviculture Code of Practice 1992

Temporary Care and Accommodation

Council recognises that some property owners or occupiers in the Kyogle local government area provide temporary accommodation and care for animals as part of legitimate foster caring arrangements or for family and friends when they go on holidays etc.

Accordingly, a property owner or occupier may exceed the maximum number of animals recommended to be kept on their premises (as outlined in Table 1) to provide temporary accommodation, as long as such arrangements do not create adverse impacts for neighbouring premises, and for a period of no more than six months. However, a property owner or occupier should not house an animal on the premises that is not recommended to be kept under this Policy, even on a temporary basis.

If Council identifies a problem with the keeping of animals under a temporary accommodation and care arrangement that cannot be resolved by consultation, Council may instigate compliance action as outlined in this Policy.

Variations to the Policy

If a property owner or occupier wishes to keep animals on their premises in a manner that does not comply with the requirements outlined in this Policy, they will need to obtain written dispensation from Council. Any such request must be made in writing, and preferably accompanied by written support from neighbouring property owners. All requests will be considered on a case-by-case basis.

BUDGETING

Council will endeavour to provide a level of funding each year to meet the management requirements for the implementation of this Policy.

DURATION AND REVIEW

This Policy will be reviewed periodically as required. Under Section 165 (4) of the Local Government Act, a local approvals policy is automatically revoked 12 months after the declaration of a Council election, unless adopted again (with or without changes) within that 12-month period.

Definitions

Companion animal has the same meaning as clause 5 of the *Companion Animals Act 1998*.

Note: 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.

Note: The fact that an animal is not strictly a “companion” does not prevent it being a companion animal for the purposes of this Act. All dogs are treated as companion animals, even working dogs on rural properties, guard dogs, police dogs and corrective services dogs.

Council means Kyogle Council.

Occupier has the same meaning as ‘occupier’ in the *Dictionary of the Local Government Act 1993*.

Note: *Occupier* includes—

- (a) a person having the charge, management or control of premises, and
- (b) in the case of a building which is let out in separate occupancies or a lodging house which is let out to lodgers, the person receiving the rent payable by the tenants or lodgers, either on his or her own account or as the agent of another person, and, in the case of a vessel, means the master or other person in charge of the vessel.

Owner (of premises) has the same meaning as ‘owner’ in the *Dictionary of the Local Government Act 1993*.

Note: Owner—

- (a) in relation to Crown land, means the Crown and includes—
 - (i) a lessee of land from the Crown, and
 - (ii) a person to whom the Crown has lawfully contracted to sell the land but in respect of which the purchase price or other consideration for the sale has not been received by the Crown, and
- (b) in relation to land other than Crown land, includes—
 - (i) every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession, and
 - (ii) every such person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise, and
 - (iii) in the case of land that is the subject of a strata scheme under the Strata Schemes Development Act 2015, the owners corporation for that scheme constituted under the Strata Schemes Management Act 2015, and
 - (iv) in the case of land that is a community, precinct or neighbourhood parcel within the meaning of the Community Land Development Act 2021, the association for the parcel, and
 - (v) every person who by this Act is taken to be the owner, and
- (c) in relation to land subject to a mining lease under the Mining Act 1992, includes the holder of the lease, and
- (d) in Part 2 of Chapter 7, in relation to a building, means the owner of the building or the owner of the land on which the building is erected.

Owner (of an animal) has the same meaning as clause 7 of the *Companion Animals Act 1998*.

Note: Each of the following persons is the owner of a companion animal for the purposes of the Act—

- (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.

Land pollution has the same meaning as 'land pollution' in the *Dictionary of the Protection of the Environment Operations Act 1997*.

Note: Land pollution or pollution of land means placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous—

- (a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or
- (b) that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations.

Offensive noise has the same meaning as 'offensive noise' in the *Dictionary of the Protection of the Environment Operations Act 1997*.

Note: Offensive noise means noise—

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances—
 - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.

Offensive odour has the same meaning as 'offensive odour' in the *Dictionary of the Protection of the Environment Operations Act 1997*.

offensive odour means an odour—

- (a) that, by reason of its strength, nature, duration, character or quality, or the time at which it is emitted, or any other circumstances—
 - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a strength, nature, duration, character or quality prescribed by the regulations or that is emitted at a time, or in other circumstances, prescribed by the regulations

Premises has the same meaning as 'premises' in the *Dictionary of the Local Government Act 1993*

Note: Premises means any of the following:

- (a) a building of any description or any part of it and the appurtenances to it
- (b) land, whether built on or not
- (c) a shed or other structure
- (d) a tent
- (e) a swimming pool
- (f) a ship or vessel of any description (including a houseboat)
- (g) a van.

Water pollution has the same meaning as ‘water pollution’ in the *Dictionary of the Protection of the Environment Operations Act 1997*.

Note: Water pollution or pollution of waters means—

- (a) placing in or on, or otherwise introducing into or onto, waters (whether through an act or omission) any matter, whether solid, liquid or gaseous, so that the physical, chemical or biological condition of the waters is changed, or
- (b) placing in or on, or otherwise introducing into or onto, the waters (whether through an act or omission) any refuse, litter, debris or other matter, whether solid or liquid or gaseous, so that the change in the condition of the waters or the refuse, litter, debris or other matter, either alone or together with any other refuse, litter, debris or matter present in the waters makes, or is likely to make, the waters unclean, noxious, poisonous or impure, detrimental to the health, safety, welfare or property of persons, undrinkable for farm animals, poisonous or harmful to aquatic life, animals, birds or fish in or around the waters or unsuitable for use in irrigation, or obstructs or interferes with, or is likely to obstruct or interfere with persons in the exercise or enjoyment of any right in relation to the waters, or
- (c) placing in or on, or otherwise introducing into or onto, the waters (whether through an act or omission) any matter, whether solid, liquid or gaseous, that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

and, without affecting the generality of the foregoing, includes—

- (d) placing any matter (whether solid, liquid or gaseous) in a position where—
 - (i) it falls, descends, is washed, is blown or percolates, or
 - (ii) it is likely to fall, descend, be washed, be blown or percolate,into any waters, onto the dry bed of any waters, or into any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted, or
- (e) placing any such matter on the dry bed of any waters, or in any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted, if the matter would, had it been placed in any waters, have polluted or have been likely to pollute those waters.