

DRAFT COUNCIL ORDER IN ACCORDANCE WITH SECTION 25(2) AND 26(2) OF THE DOMESTIC ANIMALS ACT 1994

Report Author: Manager Community Wellbeing

Responsible Officer: Director Communities

Ward(s) affected: (All Wards);

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

The Domestic Animals Act 1994 (“the Act”) provides Council the power to make orders to control both dogs and cats in public places.

Council Orders made under Section 10A(1), Section 25(2), and Section 26(2) the Domestic Animals Act 1994 are in doubt that they may not be legally enforceable due to publishing errors.

There are no significant changes proposed for a new Council Orders. The Council Orders are proposed to be remade to:

- a) Accurately reflect prior Council decisions for the compulsory desexing of cats;
- b) Accurately reflect prior Council decisions for usage of public land for on and off leash dog exercise;
- c) Accurately reflect prior Council decisions where domestic animals are prohibited throughout Yarra Ranges;
- d) Support compliance and enforcement of Council’s legislated responsibility under the *Domestic Animals Act 1994*; and
- e) Correctly publish a Council Orders as a valid instrument for legal enforcement.

The draft Council Orders and complete maps are presented in this report.

RECOMMENDATION

That Council

- 1) *Endorse the draft Council Order regarding Section 10A(1) of the Domestic Animals Act 1994.*
- 2) *Endorse the draft Council Order regarding Section 25(2) and 26(2) of the Domestic Animals Act 1994, and Area Maps.*
- 3) *Note that the Orders will be published in the Government Gazette and a local newspaper, as required by the Domestic Animals Act 1994*
- 4) *Establishes a refund scheme for those infringements previously specified under sections 25(2) and 26(2) of the Domestic Animals Act 1994*
- 5) *Accept applications for refunds for a period of 12 months, effective from 28 October 2025.*
- 6) *Authorises the Director Communities to establish the refund scheme.*

RELATED COUNCIL DECISIONS

- Council meeting 28 November 2017: Amendment to Council Order 1/2013, Park Map Updates
- Council meeting 26 April 2017: Amendment to Council Order 1/2013, Kimberly Reserve
- Council meeting 14 October 2014: Amendment to Council Order 1/2013, Park Map Updates
- Council meeting 11 March 2014: Initial adoption of Council Order 1/2013 under Section 25(2) and 26(2) of the *Domestic Animals Act 1994*
- Council meeting 9 June 2009: Resolved motion for Council Order pursuant to Section 10A(1) of the *Domestic Animals Act 1994*

DISCUSSION

Purpose and Background

During development of the Domestic Animal Management Plan and People and Dogs in Parks Plan, Council identified three separate Council Orders, for which Council officers were unable to find evidence of advertising in a local newspaper, or were gazetted without requisite details, as per the requirements of the Act:

- Section 10A(1) was neither gazetted nor published in newspapers for public advertisement

- Sections 25(2) and 26(2) were gazetted however not published in newspapers for public advertisement

Section 10A(1) of the Act states:

10A Council may refuse to register dogs and cats unless desexed

(1) A Council may resolve that it will not, after a specified future date, register or renew the registration of a dog or cat unless the dog or cat –

(a) is desexed: or

(b) is exempted under this Act from any requirement to be desexed.

Section 25(2) of the Act states:

25 Cats found at Large

(2) A Council may, by resolution, make an order under this section.

Section 26 (2) of the Act states:

(2) A Council may by resolution make an order under this section which may do all or any of the following—

(a) prohibit the presence of dogs and cats in any public place of the municipal district of the Council;

(b) impose all or any of the following conditions on the presence of dogs or cats in any public place of the municipal district of the Council—

(i) conditions as to the means of restraint of dogs or cats;

(ii) conditions as to the times at which the presence of dogs or cats is or is not permitted;

(iii) any other conditions that are specified in the order.

Council Officers sought legal advice regarding the operation of the 2013 Council order pursuant to sections 25 and 26 of the Act which was identified as being gazetted without sufficient detail during development of the Domestic Animal Management Plan and the People and Dogs in Parks Plan. While the order was gazetted, the lack of detail in the gazetted notice may form the basis of a legal challenge. Further, officers cannot find evidence that the Orders were published in a local paper, as required by the Act.

With respect to orders made pursuant to Section 10A of the Act, Council Officers were unable to find evidence of a gazetted notice, nor a notice published in a local newspaper.

The purpose of this report is to present a Draft Council Order Pertaining to Section 10A(1) of the *Domestic Animals Act 1994* (Attachment 1); a Draft Council Order

pertaining to Section 25(2) and 26(2) of the *Domestic Animals Act 1994* (Attachment 2), and updated area maps (Attachment 3) for endorsement.

The purpose of the Orders are to:

- a) impose conditions on the registration of cats in the municipal district; and
- b) prohibit the presence of dogs and cats in designated public places under certain conditions within the municipal district; and
- c) impose conditions on the presence of dogs in any public place of the municipal district; and
- d) impose conditions on the presence of cats at large or not securely confined to the owner's premises.

The purpose of remaking the Council Orders is primarily to ensure that how Yarra Ranges registers cats in the municipality, and how Yarra Ranges off leash and prohibited areas are published correctly according to legislative requirements. This ensures that the Orders are and continue to be operable and enforceable while withstanding any legal scrutiny. The scope of remaking of these orders does not include reviewing the conditions imposed or individual areas. As a result, proposed changes are solely administrative and will have no impact on the community or how parks and bushlands are currently used or advertised.

Put simply, members of the public will see no change in the process of cat registration, or the operation of existing parks, whether designated on leash or off leash pursuant to the Act.

In remaking the Council Order pertaining to Section 10A(1) of the *Domestic Animals Act 1994* (Attachment 1), the administrative updates are as follows:

- Update of Council Order template and dates
- Inclusion of revocation and commencement statements
- Update of name of the Act

In remaking the Council Order pertaining to Section 25(2) and 26(2) of the *Domestic Animals Act 1994* (Attachment 2), the administrative updates are as follows:

- Update of Council Order template and dates
- Inclusion of revocation and commencement statements
- Consolidation of all maps of off leash or prohibited areas as previously determined by Council resolution
- Update of note referring to visual map availability to correct a spelling error
- Clearer language about the land exempted from this Order to account for changes in Government Departments

Council Officers are embarking on a significant review of dog parks in Yarra Ranges which will result in the development of a People and Dogs in Parks Plan.

Once this plan is adopted by Council, this order will need to be remade and published in the Government Gazette and newspaper as required by the Act.

Infringements

There is no dispute the Orders have been made by Council, and as such, officers have been issuing infringements in line with offences which have stemmed from those orders.

Since 2013 there have been 769 cat curfew and 21 dogs off-leash in parks infringements issues, with a value of \$61,580.

Since receiving legal advice, there has been a pause on issuing infringements. It is also apparent that there has been a concerted effort to educate residents before issuing infringement, given the relative low number of infringements issued for these types of offences.

Given the Orders were either not gazetted, or no evidence exists that notices were not placed in newspapers, Council should give consideration to refunding these infringements through a refund scheme.

Options considered

Remake the Orders

Council can remake the current Orders to be confident of a valid instrument capable of enforcement. As this is purely administrative with no practical or observable changes for residents, no community consultation is required.

Other options would continue to expose Council to legal challenge and reputational damage and are therefore not being considered.

Infringements

It is recommended that a refund scheme be established, open for a period of 12 months.

Animal owners would be required to provide either an infringement number or animal identification numbers (e.g. microchip or pet registration tag) at the time of the infringement being issued, in addition to their name and address.

Consideration was given to not embarking on a refund scheme and simply correcting the error and recommencing actively enforcing these offences, however the reputational and legal risk is considered too great.

Recommended option and justification

Council should remake new Orders, removing any doubt of a valid instrument to enforce. By remaking the order with only administrative updates and revocation of prior orders, Council can be confident in a valid instrument capable of enforcement. This will ensure that Council has accurately followed good governance procedures. By remaking the orders with no significant changes, there is no requirement to undertake community engagement in this instance and public display meets legislative requirements.

Remaking the Council Orders addresses the identified risks while providing benefits to both Council and the community.

Further, refunding those infringements issued in error shows Council are transparent, honest and committed to good governance.

Benefits:

- Council will be confident that it has followed good governance procedures and has valid instruments which is capable of enforcement by Authorised Officers.
- Council will have new Orders which can be confidently amended following future Council decisions.
- Community can feel confident in Council's ability to take action and enforce both cat and dog non-compliant related matters.

Risks:

- A clear reputational risk is apparent. There is a need for community to feel confident that the Council practices good governance and meets legislative requirements. It is clear in this case that while well intended, steps were missed which has prompted the recommended action.

FINANCIAL ANALYSIS

The initial costs to remake a Council Order are as follows:

- The cost to publish notices is \$91.30 per page or \$6.50 per column cm including GST for advertisement of the Council Order in the Government Gazette
- The cost to publish a Council Order in the newspaper is \$8,000 per page. Legal advice has been sought to clarify the extent to which the Order must be published.
- At a maximum, there is a cost of \$38,534 in refunds outlined in the table below, noting it is not likely all of these may be claimed. There is also a cost of the administration of this program, which will be absorbed as BAU.

Date range infringement was issued	Cat at Large or Not Securely Confined (Volume)	Breach Council Order Dogs/Cats Public Place (Volume)	\$ Value
1 July 2013 – 30 June 2014	-	2	\$288
1 July 2014 – 30 June 2015	86	2	\$6,660
1 July 2015 – 30 June 2016	120	6	\$10,032
1 July 2016 – 30 June 2017	114	1	\$9,047
1 July 2017 – 30 June 2018	15	2	\$1,507
1 July 2018 – 30 June 2019	18	-	\$1,458
1 July 2019 – 30 June 2020	22	-	\$1,826
1 July 2020 – 30 June 2021	39	-	\$3,237
1 July 2021 – 30 June 2022	29	-	\$2,639
1 July 2022 – 30 June 2023	20	-	\$1,840
TOTAL	463	13	\$38,534

The ongoing costs of a Council Order are nil.

The ongoing costs of amendments to a Council order are the same as above per amendment, plus the following:

- \$3,200 for legal advice on the proposed Council Order.

Notes:

The table provided reflects the most accurate historical data. Officers have removed paid and withdrawn infringements, following an exhaustive internal review.

Costs are indicative and are subject to price fluctuations. Where map-only amendments occur, it is unlikely that legal advice will be required.

APPLICABLE PLANS AND POLICIES

This report contributes to the following strategic objective(s) in the Council Plan:

- Connected and Healthy Communities
 - On and off leash dog exercising promotes actively using spaces throughout Yarra Ranges
- Quality Infrastructure and Liveable Places
 - On and off leash dog exercise parks are planned for through open space planning aiming to activate community spaces while protecting the environment.
- Protected and Enhanced Natural Environment
 - Prohibited areas support the maintenance of the health and biodiversity of the natural environment in the Yarra Ranges
- Vibrant Economy, Agriculture and Tourism
 - Dog exercise areas connected to recreational trails may boost tourism to townships in Yarra Ranges

This order directly relates to the following strategies, policies, and management plans:

- Domestic Animal Management Plan
- People and Dogs in Parks Plan (In development)
- Recreation and Open Space Strategy
- Festivals and Events Policy (In development)
- Place Plans and Township Design Frameworks
- Environmental Strategy
- Flora and Fauna Management Plan
- Green Wedge Management Plan

RELEVANT LAW

Yarra Ranges Neighbourhood Amenity Local Law 2020

Domestic Animals Act 1994

- Section 10A (1) outlines Council's ability to refuse to register dogs and cats unless desexed.
- Sections 25(2) and 26(2) outline Council's ability to make this order by resolution.
- Sections 25(3) and 26(3) outline the Council requirement to publish the Council Order in the Government Gazette once endorsed.

Economic Implications

As proposed updates are solely administrative, no economic implications are expected for Yarra Ranges.

Social Implications

As proposed updates are solely administrative, no social implications are expected for Yarra Ranges.

Environmental Implications

As proposed updates are solely administrative, no environmental implications are expected for Yarra Ranges.

COMMUNITY ENGAGEMENT

Community engagement is not required in re-making these Council Orders (Attachment 1, Attachment 2) as there are no significant changes resulting in a noticeable change to the community, and any engagement would not be meaningful or influential according to the Yarra Ranges Engagement Policy 2024-2028.

The order will be publicly displayed on Council's 'Public Notices' webpage prior to resolution with a mechanism for public reply.

The orders will be advertised after Council adoption as per the requirements in the *Domestic Animals Act 1994*.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Safer Communities has sought legal advice and reviewed other Municipalities' Council Orders to determine the need to re-make these Council Orders for currency. No further collaborations with Councils, Governments or statutory bodies is required.

RISK ASSESSMENT

Risk: The current Council Orders are not enforceable.

Mitigation: This Council Order seeks to rectify discrepancies between the Council resolutions and the Gazette Published current orders. By remaking the Council

Orders, adequate informing the public, and adequately publishing the new Orders in the Government Gazette, Council can be confident in its ability to enforce these Orders.

Risk: Any infringement issued under the Current Orders may be challenged for their legality.

Mitigation: By remaking the Orders with administrative only changes, we can be confident that any future enforcement action is valid. Council Officers have been directed to educate community and issue warnings instead of infringement. Safer Communities undertaking an investigation and refund process for any challenged infringements under this Act helps mitigate risk.

Risk: Public display may renew interest and debate regarding Council Management of dogs and cats in Yarra Ranges.

Mitigation: By being transparent about what is and is not in scope for this review and new Orders, referring to previous decisions made by Council, Council can reduce the reputation risk.

Risk: Council Orders have been inconsistently gazetted.

Mitigation: Gazetting of Cat Curfew, Dogs off-leash and desexing at the same time present a single reference point for Council and ensure that those impacted or engaged on these linked Orders are made aware at a single point in time.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Draft Council Order s10A of *Domestic Animals Act 1994*
2. Draft Council Order s25 and s26 of *Domestic Animals Act 1994*
3. Maps of Prescribed Off-Leash and Prohibited Areas