

# STAFF REPORT

**TO:** Full Council

**FROM:** Regulatory Services Coordinator

**REFERENCE:** D402-1

**DATE:** 24 July 2009

**SUBJECT:** Tasman District Council Policy on Dogs 2009 and Consolidated Bylaw Chapter 2: Dog Control 2009

**Report** EP09/08/05 - Report Prepared for full Council hearings 4 & 5 August 2009 and Council meeting 20 August 2009.

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## 1. Background

- 1.1 This report initiates the final stage in the processes necessary to update Tasman District Council Policy on Dogs (the Policy) and the associated document Tasman District Council Consolidated Bylaw Chapter 2: Dog Control Bylaw 2009 (the Bylaw).
- 1.2 The formal part of this Policy and Bylaw making process was started at the Environment and Planning Committee meeting of 23 April 2009, when it was moved that the proposed Policy and Bylaw be adopted and notified to commence the consultative procedure.
- 1.3 The substantial change in the new Policy and associated Bylaw relate to simplifying the layout and attempting to make the documents easier to understand by including maps showing the various areas in which specific conditions apply. Significant changes to both the Policy and the Bylaw were aimed at providing additional "Leash Control Areas" in Faulkner Bush, and an additional "Controlled Dog Exercise Area" in Faulkner Bush and removing Commercial Street, Takaka from the list of "Dog Prohibited Areas", thus by default that area becomes "Leash Control".
- 1.4 Steps undertaken have involved the formal "Statement of Proposal" process including seeking submissions from interested parties through advertisement of the intended proposals for the Policy and Bylaw. Such advertising was undertaken from 21 to 25 May 2009 and consisted of public notices in; The Nelson Mail; The Waimea News; The Guardian Newspaper (Motueka); The Golden Bay Weekly and TDC's "Newslines" which was distributed to Tasman District Council ratepayers. In addition a brief information sheet was included with the mail-out of registration renewals to all TDC registered dog owners on 29 May 2009.
- 1.5 The full draft copy of both the Policy and the Bylaw were (and remain at the time of this report) available for viewing on the Tasman District Council Web site at: <http://www.tasman.govt.nz/index.php?ReviewofCouncilPolicyonDogs>. The period for

receiving submissions on both the proposed Policy and the proposed Bylaw was 25 May 2009 through to 30 June 2009.

## **2. Submissions Received and Issues Raised.**

- 2.1 A total of 134 submissions were received with 33 of those submitters wishing to be heard by Council. The submissions are also divided between submissions from individuals and submissions from groups and organisations. All submissions received during the consultation period are copied in appendix 1 (Submissions from those persons wishing to speak at the hearing) and appendix 2 (Submissions from those persons not wishing to speak at the hearing) and are essential reading as not all matters raised are detailed in this report. The observation is made that many of those persons wishing to speak have objected to the provisions contained in clause 3.4.2 of the Bylaw. For reasons explained later in this report, that clause has now been removed, and those persons may now not see the need to be heard.

There are some obvious “common theme” groups as follows:

- Editorial and administrative amendments to the Policy and Bylaw;
- Control of dogs on Department of Conservation (DoC) land in general;
- Issues with conflicting demands
  - Motueka Sand Spit;
  - Commercial Area of Takaka
  - Jimmy Lee Creek
  - Rototai Recreation Reserve and Beach
  - Tata Beach

### **2.2 Editorial and Administrative Amendments to the Bylaw.**

- 2.2.1 The submission from DoC (submission 24) has been useful in providing a number of comments on structure and format of the Policy and Bylaw.

#### **2.2.1.1 The following changes requested by DoC in the Policy and/or Bylaw are supported:**

- 2.2.1.2 The definition of “Dog Ranger” is moved to the correct position in the alphabetic list of definitions.

- 2.2.1.3 Correction to the reference to the Dog Control Act 1996 in the definition of “Owner”.

- 2.2.1.4 Correction to the definition of “Public Place” to copy the definition in the Dog Control Act 1996.

- 2.2.1.5 The definitions for “Animal Welfare Inspector”, “Probationary Owner” and “Protected Coastal Birds” do not appear in other than the definitions sections and are therefore superfluous. They are deleted.

- 2.2.1.6 The definition of “Private Way” does not appear in other than the definitions sections of the Policy and is therefore superfluous in the Policy. It is deleted. (Note it is retained in the Bylaw)
- 2.2.1.7 The definition “Continuous Control” is altered to: “**Continuous Leash Control** means that the dog is kept under control by means of a leash which is secured or held by a person capable of restraining the dog so that the dog cannot break loose.”
- 2.2.1.8 The definition of “Controlled Dog Exercise Area” is altered to: “**Controlled Dog Exercise Area** means public place within the District, as identified in Schedule 2, where a dog may be exercised off the leash but must still be under effective control.”
- 2.2.1.9 The definition of “Dog Prohibited Area” is altered to: “**Dog prohibited Area** means public place within the District, as identified in Schedule 3, where a dog is prohibited either generally or at specified times.”
- 2.2.1.10 The definition of “Leash Control Area” is altered to: “**Leash Control Area** means public place within the District, as identified in Schedule 1, where a dog is required to be kept under continuous leash control.” See also 2.2.3.2 below.
- 2.2.1.11 Schedule 1 of both the Policy and the Bylaw is altered by deleting the words “, lead or chain”.
- 2.2.1.12 The definition of “Protected Coastal Birds” has been deleted in both the Policy and the Bylaw and replaced by a definition for “Protected Wildlife” as follows:  
“**Protected Wildlife** means any animal that is absolutely or partially protected in accordance with the Wildlife Act 1953 and any marine mammal within the meaning of the Marine Mammals Protection Act 1978. This includes indigenous and migratory birds including: Australasian Bittern, Banded Dotterel, Banded Rail, Bar-tailed Godwit, Black Shag, Black billed Gull, Black-fronted Tern, Blue Duck, Caspian Tern, Crakes, Fernbird, Fluttering Shearwater, Grey Duck Kingfisher, Kiwi, Little Black Shag, Little Shag, New Zealand Pipit, Penguins, Pied Oystercatcher, Pied Shag, Pied Stilt, Red-billed Gull, Red Knot, Reef Heron, Royal Spoonbill, Sooty Shearwater, Spotted Shag, Turnstone, Variable Oystercatcher, Weka, White Heron, White-faced Heron, White-fronted Tern, Wrybill.
- 2.2.1.13 The reference in Schedule 3 of both the Policy and Bylaw to “Otuwhero Estuary and Sandspit” is relocated to the correct geographic heading within Schedule 3 of both documents.
- 2.2.1.14 The maps provided in Schedule 3 which show the Pohara Motor Camp and the Pohara Beach are confusing and two maps showing the individual areas are added in place of the existing single map of both areas.
- 2.2.1.15 The reference in Schedule 2 of both the Policy and the Bylaw to “Motueka River Reserve- excluding picnic areas” is deleted. (This is a historical carry over from the

previous Bylaw, but no such area exists on current Council records. All of those public areas on the Motueka River that are accessible to dog walkers will remain 'effective control' by default.)

- 2.2.1.16 The exception specified for hunting dogs in the Schedule 3 of both documents is amended by adding after the words "game hunting dogs" and before the words "during the recognised hunting season." the words; "engaged in legitimate hunting activities"

**2.2.2. The following changes requested by DoC in the Bylaw are supported:**

- 2.2.2.1 The wording of clause 4.1 is altered to read "Every dog shall be kept under continuous leash control while that dog is in a Leash Control Area."
- 2.2.2.2 The wording of clause 5.1 is altered to read "Every dog shall be kept under effective control while that dog is in a Controlled Dog Exercise Area."
- 2.2.2.3 The wording of clause 6 is altered to read "Every owner of any dog shall not allow it to remain in a Dog Prohibited Area except for hunting dogs engaged in legitimate hunting activities during the recognised hunting season."
- 2.2.2.4 The term "Authorised Officer" is used in a number of locations in the Bylaw, but not defined. The Bylaw is altered at each reference to the term "Authorised Officer" and those words are replaced with the words "Dog control officer".

**2.2.3. The following changes requested by DoC in both the Policy and Bylaw are not supported:**

- 2.2.3.1 The request for an alteration of the definition of "Reserve" is unnecessary if the definition of "Reserve" is removed. On each occasion that the term "Reserve" is used in the body of the Policy and Bylaw, it was used to refer to a specific location of which the word "Reserve" forms part of the specific name of that location, e.g. Faulkner Bush Reserve. The definition of "Reserve" is therefore superfluous as it is not intended to refer to all those locations identified in the Reserves Act 1977 or generally to Council Reserves. The definition of reserve is removed from the Policy and the Bylaw.
- 2.2.3.2 The request for an alteration to the wording of Schedule 1 (Leash Control Areas), item 2 (as amended in 2.2.1.10 above) "In the presence of Protected wild life" is further amended, but not as DoC have requested. The change made is more in line with the words used in section 5 of the Dog Control Act 1996 as follows: "2. On any occasions a dog is likely to injure, endanger, or cause distress to any stock, poultry, domestic animal, or protected wildlife."
- 2.2.3.3 A corresponding change is made to the "Note" in Schedule 2 of the Policy and the Bylaw to read "**NOTE: ON ANY OCCASION A DOG IS LIKELY TO INJURE,**

**ENDANGER, OR CAUSE DISTRESS TO ANY PROTECTED WILDLIFE IT SHALL BE KEPT UNDER CONTINUOUS LEASH CONTROL, EVEN IN A CONTROLLED DOG EXERCISE AREA.**

- 2.2.3.4 The request to remove the statement relating to effective control is noted. Alteration of the format is not considered appropriate as the existing format provides guidance and assistance to lay people reading the Bylaw.
- 2.2.3.5 The request to remove the Schedule 2 “Note” is not considered appropriate. The note is intended to provide guidance and assistance to lay people reading the Bylaw and it should remain as amended.

**2.2.4 Other Editorial Changes**

- 2.2.4.1 The word “except” has been missed out in Schedule 3 of the Bylaw in relation to dog prohibited areas at Ligar Bay, Little Kaiteriteri Beach, and Stephens Bay Beach. The qualifying statement for those three locations in Schedule 3 is changed to read “ - summer months, except between the hours of 5.00am and 9.00am.”
- 2.2.4.2 The words “- summer months” have been missed out in Schedule 3 of both the Policy and the Bylaw in relation to the dog prohibited area at Collingwood Motor Camp. The qualification “- summer months” is added to the entry “Collingwood Motor Camp” in Schedule 3.
- 2.2.4.3 Editorial changes are made to the numbering of clauses in the Policy to make it more logical.

**2.3 Control of dogs on Department of Conservation (DoC) land in general**

- 2.3.1 A number of submissions, including those from DoC make comment about the control of dogs in areas that are controlled by DoC. Clause 3.4.2 of the proposed Bylaw is criticised, not only for intent, but also because submitters believe it is not legally sound. A legal opinion has been obtained from Councils solicitors and the following important points made;

- 2.3.1.1 In relation to clause 3.4.2 of the Bylaw, the advice was:

*“We consider that clause 3.4.2 does go beyond Council’s bylaw making powers for the following reasons:*

1. *Under section 20(3) of the DCA, Council does not have the power to make bylaws for dog control in a National Park under the National Parks Act 1980 or a controlled or open dog area under section 26ZS of the Conservation Act 1987. Clause 3.4.2 of the Draft Bylaw refers to ‘public conservation land’ and would therefore be in breach of section 20(3) of the DCA because the wording encompasses National Parks and (any future) controlled or open dog areas in the Tasman District*

2. *Further to this point, we do not think that Council's bylaw making powers under the LGA and the DCA extend to bylaws intended to protect native wildlife on public conservation land. Rather, the relevant parts of these Acts are concerned with protecting, promoting and maintaining public health and safety (in particular section 145 of the LGA and section 10(4) of the DCA).*
3. *In comparison, the Department of Conservation has responsibility for, and powers in relation to, the protection of wildlife on public conservation land. The Minister of Conservation has bylaw making powers for dog control under the Reserves Act 1977, and the power to declare controlled and open dog areas on other public conservation lands under the Conservation Act 1987.*
4. *The Department of Conservation administers all National Parks in New Zealand under the National Parks Act 1980. Part 5A of that Act relates to the control of dogs. Under section 56A dogs are prohibited from National Parks except in certain specified circumstances.*

*We consider that the appropriate body to regulate dog control on public conservation lands is the Department of Conservation, not the Council. We therefore recommend that Clause 3.4.2 should be removed from the Draft Bylaw."*

2.3.1.2 As a consequence of that advice, clause 3.4.2 is deleted.

2.3.1.3 Legal advice was also obtained in relation to other references in both the Policy and Bylaw to land administered by DoC. The advice received recommends deleting the current Method 2.2.8 in the Policy and substituting a new method 2.3 in its place, the wording specified as follows:

*"2.3 Inform dog owners which land, if any, within the district is included in a controlled or open dog exercise area under the Conservation Act 1987 (currently there are none) and land which is a National Park 1980 by way of a schedule 4 attached to this Policy. No Council bylaw is required in respect of these areas and they are set out for information purposes only".*

2.3.1.4 A new method 1.3 as described above is inserted.

2.3.1.5 A new Schedule 4 is inserted in the Policy as follows:

#### **"Schedule 4**

#### **National Parks and other Department of Conservation Administered Lands**

There are three National Parks within the Tasman District. They are; Kahurangi National Park, Abel Tasman National Park and Nelson Lakes National Park. Dogs are generally prohibited from National Parks under the National Parks Act 1980 (except in certain specified circumstances). National Parks are administered by the Department of Conservation.

Controlled Dog Areas and Open Dog Areas on public conservation lands are declared by the Minister of Conservation and regulated by the Department of Conservation under the Conservation Act 1987. Currently there are none in the Tasman District.

For more information on dog control in National Parks, or the Department of Conservation's policy on Controlled or Open Dog Areas on public conservation lands, please contact the Department of Conservation. The web address for the Department of Conservation is [www.doc.govt.nz](http://www.doc.govt.nz)"

2.3.1.6 The existing "Method 1.3" in the Policy is renumbered as "Method 1.4."

2.3.1.7 The reference to the three National Parks in Schedule 3 of the Bylaw is deleted.

## **2.4. Issues with conflicting demands.**

### **2.4.1 Motueka Sandspit**

2.4.1.1 The Motueka Sandspit has produced more response than all other aspects of this consultation process combined, with 59 submissions (substantially Submissions 34 to 81 inclusive and submissions 1 to 15 with some exception) in support of the status quo, that is dogs being able to access the Motueka Sandspit area on the basis of effective control. One of those submissions represents an organisation, and the remainder are from individuals. Of the 10 submissions seeking to have the Motueka Sandspit defined to a lesser or greater extent as a dogs prohibited area, or some restriction imposed on the "effective control" proposed in the Policy and Bylaw, 4 are from individuals and 6 are from groups or organisations. A simple submission count is therefore not practical to assist gauging support or opposition to a change in the status of the area (for dog walking).

2.4.1.2 Some aspects of the discussion have been put beyond further debate through this process by the position we are placed in by the legal opinion referred to in 2.3.1.1 to 2.3.1.3 above. Some of the options sought by those wishing to ban dogs from the Motueka Sandspit are not available by virtue of much of the land being under Department of Conservation (DoC) control. It is therefore only a partial control that may be available at best through the Policy and Bylaw, over those intertidal areas under TDC control, and those areas above high water that may be used for nesting cannot be controlled through the Council Bylaw process. DoC does have the option of promulgating a Bylaw if they should choose to do so.

2.4.1.3 The current situation for the Motueka Sandspit area is that it is not defined in the Policy or Bylaw, and by default, becomes an area where dogs must be under "effective control at all times" (see clause 3 of the Bylaw). That has been the situation for a number of years and is the case with the current 2004 Policy and Bylaw. No specific change was sought from that situation although the effect of the now deleted clause 3.4.2 of the Bylaw may have effectively prevented dogs from entering that part of the Sandspit that is under the control of DoC.

- 2.4.1.4 In any circumstances, the effect of protected wildlife being present is to require dogs to be restrained by leash (see Leash Control Area in definitions of the Policy and the Bylaw). However the issue that did lack clarity are the words “in the presence” not being clearly defined (refer submission 19). That is not helped by the alteration to Schedule 1 item 2 (2.2.1.10 and 2.2.3.2 above).
- 2.4.1.4 Provisions contained in the Dog Control Act 1996 deal with dogs attacking protected wildlife and there is no need or incentive for Council to duplicate those provisions in a Bylaw.
- 2.4.1.5 A number of submitters that support the area retaining the effective control status make the observation that currently the birds make use of the area despite the historical use of this area by people walking and running their dogs and the variety of other activities that occur in that location from time to time.
- 2.4.1.5 There must be recognition that many dog owners do behave in a totally responsible manner in controlling their dogs near protected wildlife, and that it is those less responsible owners that we wish to influence with the Bylaw.
- 2.4.1.6 A compromise is available where Council puts increased effort into educating dog owners by identifying such sensitive areas and marking entry points with signage clearly defining the obligations of dog owners to ensure their dogs are on leads when in the presence of protected wild life, and advising of the dire consequences of a dog causing the death of any protected wildlife. Those consequences are substantial for both the dog and the owner. If there is a greater understanding of that detail by dog owners, the desired result of dogs causing negligible disturbance to protected wildlife may be achievable.
- 2.4.1.6 To achieve better awareness of obligations and consequences, at entry points to locations that are important to protected wildlife, warning signs should be erected. Those signs should be along the lines of:

The Tasman District Council Dog Control Bylaw requires that the owner of a dog maintains effective control at all times, and complies with the need to put dogs on a leash when in the presence of protected wildlife. The Dog Control Act 1996 (section 58) provides that the owner of any dog that kills protected wildlife is liable on conviction to imprisonment for a term not exceeding 3 years or a fine not exceeding \$20,000, or both, and that the dog may be destroyed.

- 2.4.1.7 Council may liaise with DoC in establishing locations at which such warning signs are erected.

## **2.4.2 Commercial Area of Takaka**

- 2.4.2.1 The issue relates to the Policy and Bylaw allowing the main street (Commercial Street) through the business area of Takaka township becoming a Leash Control Area by virtue of the area being urban and being removed from the list of “Dog



Prohibited Areas” defined in Schedule 3. This is a change from the previous situation where that area was defined as a dog prohibited area. Some conflict with that existing definition existed as the walk through the town with a dog on a leash was one of the walks recommended in the TDC publication “Walk Tasman” (Refer page 88 & 89 Walk Tasman: The Takaka Triangle). No other urban streets within Tasman District prohibit dogs from being walked on a leash. The Policy and Bylaw sought to achieve consistency with other areas in Tasman District.

2.4.2.2 Specifically in relation to dogs on leashes in Takaka Township, a number of submissions oppose the proposed Policy and Bylaw (submissions 27, 111 to 116, 123, and 133) and some support (submissions 28, 29, 32, 118, 127). I also note the Golden Bay Community Boards submission in which the findings of a survey of business premises found 26 people supported the Policy and Bylaw and 31 opposed it. It is not known if persons that responded to this survey of business premises may also have submitted as individuals.

2.4.2.3 There are no significant public health grounds for excluding dogs from being walked through any urban or commercial area on a leash. However, concerns about dog owners not picking up faeces left by their dogs are valid, and this may be mitigated by appropriate signage, and installation of dispensers for TDC’s “Doggy Doo Bags” at entry points to the commercial area of Takaka.

### **2.4.3 Jimmy Lee Creek**

2.4.3.1 Submissions 82 to 100 (and in part 134) inclusive express concern for the safety of native birds in the Jimmy Lee Creek area above Hill Street in Richmond. The Bylaw makes no special mention of this area so by default allows dogs to be walked “under effective control at all time”. A solution to these concerns may be for Council to erect warning signs at appropriate locations advising persons walking dogs as specified in 2.4.1.6 above.

### **2.4.4 Rototai Recreation Reserve and Beach**

2.4.4.1 Submissions 31, 32 and 101 to 110 and 127 express the wish to retain Rototai Reserve and Rototai Beach as a controlled dog exercise area. The situation in the proposed Policy and Bylaw are the same as currently existing in the current Policy and Bylaw. That is, Rototai Reserve remains a controlled dog exercise area, but in the surrounding inter-tidal zone, dogs are prohibited. Some confusion appears to exist on the part of submitters as to the current and intended status of both areas. This is a situation where updated signage will assist dog owners.

### **2.4.5 Tata Beach**

2.4.5.1 DoC and others request an extended restriction at Tata Beach (Submissions 17, 18, 24, 26). Currently Tata Beach is included in Schedule 3 of the Policy and Bylaw (Dogs Prohibited Areas) but that prohibition is limited to summer months (1 December to 1 March) and excludes the period from 7 am to 9 am, at which stage dogs may be taken on to the beach under effective control.

2.4.5.2 DoC note that the current summer closure is appropriate but seeks an extension to the remainder of the year, and submitter 26 requests that the prohibition is extended to the whole year for one hour either side of sunrise. Submitter 17 differs in that the summer time acceptance of dogs on Tata Beach between 7.00 am and 9.00 am appears unsatisfactory. I note that during the summer period specified that dawn is about 6.50 am (NZDT) on 1 December and 7.05 am on 1 March.

2.4.5.3 The behaviour of the spotted shags has been established during a period in which the above limited access for dogs has been permitted on Tata Beach. Specific signage which identifies the likely presence of the spotted shags and the advice contained in 2.4.1.6 above could be erected at entry points to Tata Beach to provide an improvement to the current situation.

### **3. Recommendation:**

- 1. THAT the Tasman District Council, ratifies the “Amended Draft Policy on Dogs 2009” as attached in Appendix 3, and “Amended Draft Consolidated Bylaw Chapter 2: Dog Control 2009” as attached in Appendix 4, and that the draft amended Policy and Bylaw be adopted by Council and come into force on 4 September 2009:**
- 2. THAT Council staff liaise with the Department of Conservation to establish locations for the warning signs referred to in paragraphs 2.4.1.6, 2.4.3.1, and 2.4.5.3 of this report.**
- 3. THAT such warning signs defined in recommendation 2 above are in place by 1 December 2009.**
- 4. THAT appropriate signage and “doggy doo bag” dispensers be provided in Takaka by 1 December 2009.**

**Graham Caradus  
Coordinator Regulatory Services**

- Appendix 1: Submissions from persons wishing to be heard by Council.**
- Appendix 2: Submissions from persons not wishing to be further heard by Council.**
- Appendix 3: Amended Draft Tasman District Council Policy on Dogs 2009**
- Appendix 3: Amended Draft Tasman District Council Consolidated Bylaw Chapter 2:  
Dog Control Bylaw 2009**