

MEETING OF THE PORT PHILLIP CITY COUNCIL

6 APRIL 2022



13.5 IMPLEMENTATION OF DAMP ACTIONS - UPDATE OF COUNCIL ORDER NO 4

EXECUTIVE MEMBER: KYLIE BENNETTS, GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT

PREPARED BY: LISA DAVIS, MANAGER SAFETY AND AMENITY
DIRK CUMMINS, COORDINATOR LOCAL LAWS & ANIMAL MANAGEMENT

1. PURPOSE

- 1.1 To seek Council's approval of amendments to Council Order No. 4 (Attachment 1) to give effect to actions in the new Domestic Animal Management Plan (DAMP) and clarify the definition of 'effective control' as it applies to dogs.

2. EXECUTIVE SUMMARY

- 2.1 Port Phillip City Council has a statutory obligation to administer and enforce the Domestic Animals Act 1994. Pursuant to section 26 of the Act Council may make an Order in respect to specified places in which dogs are to be managed.
- 2.2 At its Ordinary Council Meeting on 4 November 2021, Council approved a new DAMP 2022-2025 that outlines Council's programs and policies for the management of dogs and cats over a four-year period.
- 2.3 In approving the DAMP, Council committed to changing several restrictions relating to dogs and cats. To bring these into effect, an updated Council Order is required. The relevant DAMP actions are:
- Action 2.2** Introduce a Council Order requiring dogs within 20 metres of an organised sporting event or training to be on lead; and prohibited from entering the ground/playing surface/training space while the sporting event or training is taking place.*
- Action 4.6** Introduce a 9pm to 6am cat curfew*
- Action 5.1** Introduce mandatory de-sexing of newly registered cats, with exceptions for registered breeders.*
- 2.4 The updated Council Order will also include an amendment to the definition of a dog 'under effective control'. The current Order provides an ambiguous definition of 'under effective control' which causes confusion to dog owners and creates difficulty for Authorised Officers enforcing the Order.

3. RECOMMENDATION

That Council:

- 3.1 Adopts Council Order No. 4 (Attachment 1) under section 10A, 25 and 26 of the Domestic Animals Act 1994 and authorises the Chief Executive Officer (or delegate) to make any minor editorial amendments to finalise Council Order No. 4 for gazettal.
- 3.2 Notes that Order No. 4 will be published in the Government Gazette and in a newspaper circulating in the municipal district of Council.

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- 3.3 Notes that Council Order No. 4 will take effect, once published in the Government Gazette, and Council Order No. 3 will subsequently cease at that time.

4. KEY POINTS/ISSUES

- 4.1 Port Phillip City Council has a statutory obligation to administer and enforce the Domestic Animals Act 1994. Pursuant to section 26 of the Act, Council may make an Order in respect to specified places in which dogs are to be managed.
- 4.2 At an Ordinary Council Meeting on 4 November 2021, Council approved a new DAMP 2022-2025 that outlines Council's programs and policies for the management of dogs and cats over a four-year period.
- 4.3 In approving the DAMP, Council committed to changing several restrictions relating to dogs and cats, which, to bring into effect, require an amendment to the Council Order. These are:
- **Action 4.6** Introduce a 9pm to 6am cat curfew
 - **Action 5.1** Introduce mandatory de-sexing of newly registered cats, with exceptions for registered breeders;
 - **Action 2.2** Introduce a Council Order requiring dogs within 20 metres of an organised sporting event or training to be on lead; and prohibited from entering the ground/playing surface/training space while the sporting event or training is taking place.

Proposed Amendments to the Order

- 4.4 Council Order No 4 will include new wording to reflect the DAMP decisions, and once gazetted, will replace the current Council Order No 3.
- Action 4.6 Dog Off Leash at Sporting events.
- 4.5 Dog off leash areas are made pursuant to section 26 of the Domestic Animals Act 1994. This enables Council to make an Order providing various restrictions.
- 4.6 During the development and consultation for the DAMP it was identified that there were no controls surrounding sporting games, events and training. Concerns had been raised by sporting clubs about player and umpire safety when dogs ran into training or match areas.
- 4.7 The action in the DAMP and proposed Order provides a solution for sporting events to take place safely, with dogs in attendance. Dogs will be required to be under effective control by a chain, cord or leash held by the owner and attached to the dog within 20 metres of a sporting event or training event and prohibited from being on the ground on which the sporting event or training event is occurring.
- 4.8 The new wording can be seen in Section 6 (d) of Attachment 1.
- Action 4.6 and 5.1 Mandatory cat de-sexing and cat curfew.
- 4.9 Council has statutory obligations with respect to the Domestic Animals Act 1994 in relation to cats. Pursuant to section 10A of the Act Council may make an order in relation to the conditions that must be complied with for the registration of a cat.
- 4.10 Pursuant to section 25 (2) Council has further obligations in relation to a cat curfew and permitted times for cats to be within the community. The Order requires all cats to be



confined to their owner's premises between the hours of 9pm and 6am the following day.

- 4.11 The requirement to ensure that newly registered cats are desexed, and the setting of a time period in which cats must be within the premises of their owner, will reduce the number of cats that are seized and placed within the pound. The curfew also has potential to protect other animals (including natives) by reducing the number of cats at large during the overnight 'curfew' period.
- 4.12 The new wording can be seen in Section 2 and 3 of Attachment 1.
- 4.13 New definition of "effective control" of dogs.
- 4.14 It is proposed that a new definition of "dog under effective control" is included in the new Council Order.
- 4.15 This proposal is not specifically referenced in the DAMP but responds to feedback from Authorised Officers of Council and feedback from lawyers who represent Council in prosecutions that the current definition is ambiguous and difficult to prove and understand. It will also bring Port Phillip's Order into line with neighbouring Councils including Bayside, Kingston and Stonington among others.
- 4.16 Currently, in the existing Order No. 3 subclause (3) of clause 2 states:
A dog shall be deemed to be under effective control of its owner, whether on or off leash if:
- *It will return to its owner upon command;*
 - *The owner retains a clear and unobstructed view of the dog;*
 - *It does not bother, attach, worry, or interfere with other people or animals.*
- 4.17 With this definition, a Council Officer must satisfy the Court that the dog did not return when called, was not in clear unobstructed view of the owner or did not bother another person or animal.
- 4.18 Similarly, if an owner of a dog were to have the dog off lead outside of a specified area they would have to maintain clear and unobstructed view of the dog at all times, satisfy to Council Officers that the dog returns when called, and that it does not bother any other person or animal.
- 4.19 To remove the ambiguity, it is proposed that the subclause (3) be removed and replaced with wording that states "a dog is deemed to be under effective control if the dog is secured by chain, cord or leash attached to the dog and held by the owner."
- 4.20 The new wording can be seen in Section 6 of Attachment 1.
- 4.21 Action 2.4 in the DAMP that is listed for implementation in 2023 relates to dog walking companies requiring a permit to walk more than 6 dogs at one time. This action requires a change to the Local Law before it can be implemented. Development of the new Local Law is underway and will be presented to Council for adoption in mid-2023. Shortly thereafter, Council will be asked to approve the relevant updates to the Council Order No. 4 relating to this action.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 The development of Council's DAMP included two rounds of community engagement in accordance with the Domestic Animals Act 1994 and the Local Government Act 2020.



- 5.2 The actions in the DAMP that this report responds to were presented to the community as part of the second round of community engagement.
- 5.3 All feedback from the community consultation was presented to Council and considered at the time of adopting the new DAMP in November 2021.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Council has an obligation to manage public spaces effectively and to balance the various uses and opportunities with public safety considerations.
- 6.2 Given the high number of dogs and cats residing within the municipality it is Council's responsibility to provide clear and unambiguous Orders that reflect Council's policy position and are clear and understandable for dog owners and Authorised Officers alike. This is key to helping dog owners to comply with the restrictions.
- 6.3 The legislation relevant to the new Council Order has been outlined earlier in this report.
- 6.4 Pursuant to section 38 of the Charter of Human Rights Act 2006, Council must not act in a way that is incompatible with a human right or in making a decision, to fail to give proper consideration to a relevant human right.
- 6.5 It is considered that the decision to make Order 4 is a suitable balance between the rights of individuals and needs of the community, environment and others.

7. FINANCIAL IMPACT

- 7.1 There is no financial impact arising from this report. Costs associated with implementing the new Order are within current and projected budgets.

8. ENVIRONMENTAL IMPACT

- 8.1 The requirement to desex cats and have them confined to their owner's premises overnight has potential aims to minimise harm to native animals.

9. COMMUNITY IMPACT

- 9.1 The new Order No. 4 aims to keep the community safe and provide clear and unambiguous rules for cats and dogs that are easy to understand and interpret by their owners.
- 9.2 The DAMP provides for community safety and amenity by balancing the needs of both pet owners and non-pet owners.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 Development of the DAMP was an action in the current Council Plan 2021-22. The Plan recognises the importance of responsible ownership and management of cats and dogs as a contributing factor towards a healthy, safe and liveable community.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 The new Council Order No. 4 will require six weeks of community education. Within this time, Animal Management officers will provide education to members of the community to make them aware of the requirements.

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- 11.1.2 Following the six-week education period Authorised Officers will move to fully enforcing the new Orders, noting that education, warnings and the issuing of infringements will form the enforcement approach.

12. COMMUNICATION

- 12.1 Order No. 4 will be advertised on Council's website and in local newspapers and will be printed in the State Government Gazette following Council's consideration of the matter.
- 12.2 The requirements of the new Order will be published on Council's website, via local media, social media and signage will be updated, or new information added to existing signs.
- 12.3 Officers are currently working on publishing a scheduled sporting events and games on their website and via QR codes (where feasible) to assist the community to understand dog controls. Signage will also be updated to reflect the new Order.
- 12.4 Information will be made available to cat owners via local vets, the Council registration portal and online social media.

13. OFFICER DIRECT OR INDIRECT INTEREST

- 13.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS

1. Order No. 4 of Port Phillip Council - Domestic Animals Act 1994  [Download](#)