

CITY OF WEST TORRENS



Council Policy: Animal Nuisance Complaints

Classification:	Council Policy
First Issued:	3 March 1998
Dates of Review:	17 April 2001, 1 July 2004, 4 September 2012
Version Number:	3
DW Doc set ID:	305681
Applicable Legislation:	Dog and Cat Management Act 1995 Local Government Act 1999
Related Policies or Corporate Documents:	Order Making Policy
Associated Forms:	
Note:	Formerly policy D.11-1.
Responsible Manager:	Manager, Regulatory Services
Confirmed by General Manager:	
Approved by Council:	Date 4 September 2012

Table of Contents

1. Preamble	3
2. Purpose	3
3. Scope	3
4. Definitions	3
5. Policy Statement	4

COUNCIL POLICY – Animal Nuisance Complaints

1. Preamble

- 1.1 Cases of animal nuisance can be protracted, generate conflict amongst neighbours and be difficult to resolve to the satisfaction of all parties. This can result in distress to both complainants and animal owners alike and increase pressure to find an early solution to often complex cases.
- 1.2 While Council is aware of the emotional distress that protracted cases of animal nuisance can generate, it is also mindful of the need to:
- Gather clear, factual and impartial evidence
 - Afford natural justice to all parties
 - Provide a reasonable period of time for voluntary action to occur
 - Only commence legal action as a last resort, subject to there being a reliable body of evidence to prove an ongoing offence.

2. Purpose

- 2.1 The purpose of this policy is to:
- Clarify Council's approach to animal nuisance complaints, consistent with Council's *Order Making Policy*; and
 - To specify the minimum conditions to be satisfied before Council will take legal action against an animal owner whose animal is alleged to be causing a nuisance.

3. Scope

- 3.1 This policy deals with complaints of animal nuisance received under the Dog and Cat Management Act 1995 (barking or nuisance dogs) and under the Chapter 12 Part 2 of the Local Government Act 1999 (nuisance and hazardous animals, including birds and insects). It does not deal with menacing or dangerous dogs which are covered under the Dog and Cat Management Act 1995.
- 3.2 The policy should be read in conjunction with the Dog and Cat Management Act 1995, the Local Government Act 1999 and standard operating guidelines for Regulatory Services' staff.

4. Definitions

- 4.1 **Animal nuisance** refers to:
- Dogs that are disposed to unreasonably interfere with property or the comfort or convenience of people or animals. Under the Dog and Cat Management Act 1995, this refers to a dog that has a tendency to engage in behaviour that includes:
 - Wandering at large (Section 43(1));
 - Harassing or chasing animals or birds which are pets (Section 44(2));
 - Rushing at or chasing motor vehicles (Section 45A(4));
 - Creating noises which unreasonably interfere with the peace, comfort or convenience of a person (Section 45A(5));
 - Defecating in public (Section 45A(6)); and
 - Damaging property (Section 66).

- Other animals that cause, or are likely to cause a nuisance or hazard to the health of a person, or otherwise to become a pest. Under the Local Government Act 1999, this includes insects and birds, and live or dead animals.

4.2 **Animal owner** refers to either the owner of an animal, or the person in possession of or responsible for the control of an animal.

4.3 **Legal action** refers to the:

- Issuing of a Control (Nuisance Dog) Order or a Control (Barking Dog) Order under the Dog and Cat Management Act 1995, requiring an animal owner to take steps to prevent the dog repeating the behaviour that gave rise to the order;
- Issuing of an Order under Section 254 of the Local Government Act 1999 requiring a person (the owner or occupier of land or any person apparently engaged in promoting or conducting an activity) to take action, or cease an action, so as to resolve a case of animal nuisance; or
- Direct prosecution of an alleged offender through the Courts which may result in a monetary fine and / or the imposition of a Court Order.

5. Policy Statement

5.1 General Approach

Council's approach is to only consider legal action against a person after all reasonable avenues for reconciliation of problems have been exhausted. This includes:

- Encouraging neighbours to communicate and resolve their differences early,
- Formally investigating and helping to diagnose and resolve the nuisance behaviour;
- Providing clear information to owners on their responsibilities and permitting a reasonable time for owners to rectify a breach before legal action is commenced.

This approach is in accordance with Council's *Order Making Policy* which states that Council will take reasonable steps, wherever possible, to resolve cases of local nuisance by negotiation with or education of the person involved before considering the issue of an Order.

5.2 Legal Action

Council will consider the following factors when assessing whether legal action should be pursued for a case of animal nuisance:

- The significance of the breach - whether it is relatively minor or transitory or whether the amenity or health of the local environment is affected;
- The level of detraction or impact - whether a breach results in an inconvenience or a clear risk to the health and safety of a person or integrity of a property;
- The nature of the occurrence - whether the nuisance is intermittent or continual, whether there have been previous cases of nuisance behaviour of the same or similar nature;

- The response of the owner - whether the owner has shown goodwill by attempting to abate the nuisance behaviour and / or reduce the severity of its impact;
- The response of the animal - whether there has been a reduction in the nuisance behaviour or whether it has continued unabated during the course of an investigation;
- The alternatives - whether there are other options to pursue such as negotiation, mediation, or all such options have been exhausted
- The level of evidence - whether a reliable body of evidence has been built that shows there is a clear case to answer,
- The availability of reliable witnesses - whether there are witnesses who have observed the nuisance behaviour and are willing to give evidence at court.

5.3 Evidence Collection

In order to build a reliable body of evidence, Council will normally require:

- At least two written complaints (the original and one other) before proceeding to legal action;
- The witnesses to be either living or working in a location where they could be expected to 'observe' the nuisance behaviour and reliably identify the source of the problem;
- The witnesses to reside at different addresses;
- The witnesses to be able and willing to complete a diary of the nuisance behaviour over a period of time (to show the pattern of nuisance behaviour) and to continue to do so up until a court date
- Witnesses who are prepared to give evidence in court.
- Evidence that corroborates the initial allegations i.e. agreement between different pieces of evidence on the pattern of nuisance behaviour. This includes the evidence provided through the:
 - Diary notations of the original complainant
 - Diary notations of the second complainant
 - Evidence independently gathered by Council officers
- A signed affidavit or independent report attesting to the impact that the animal nuisance has on the health of a complainant or on public health or safety, if it is considered necessary to prove the offence.

5.4 Number of Written Complaints

Council will generally require at least two written complaints (the original and one other) before proceeding to legal action. However, exceptional circumstances may occur as follows:

- If there is only one property adjacent to the property where the alleged nuisance behaviour is occurring;
- Locations where it is highly unlikely that the nuisance behaviour would impact on a property other than property making the initial complaint;
- Cases when the animal is already subject to a Council or Court Order.

In these circumstances Council may, with the approval of the Chief Executive Officer, proceed to legal action with only one written complaint.

5.5 Pursuit of Legal Action

When legal action is being considered, Council officers will follow the steps set out in their standard operating guidelines to ensure the consistent, fair and accurate application of legislation.