

Submission 1 - Byron Environment Centre's Cat and Dog Compliance Committee

From: [john.lazarus](#)
To: [Councillors 2016](#)
Cc: [Arnold, Mark](#); [Jones, Mila](#); [council](#)
Subject: Suggested amendments Report 13.4 Draft policy for the keeping of animals Ord Meet 25/11/20
Date: Wednesday, 25 November 2020 12:43:05 PM

Dear Councillors

Suggested amendment and additions for the Report 13.4 Draft Policy for the keeping of animals.

CONTENTS: Map 3 Incorrectly lists Fern Beach as "dogs and cats prohibited"
Fern Beach only prohibits cats -

Contents: Map 3 should be changed to "Cats prohibited - Fern Beach Ocean Shores"

Regarding:

"No. 4 Prescriptive Requirements

4.2 - **Certain statutory requirements also apply as noted in the table."**

Request that the statutory requirements listed also include the Statutory Requirements of "Restrictive Covenants that prohibit the keeping of cats or dogs."

The Restrictive Covenants are legal instruments with a statutory requirement, in a similar way as this Policy's lists that - "National Parks and Wildlife Act 1974 and Fauna Protection regulations place a general prohibition on the keeping of reptiles.." and that "Ponds are to be fenced in accordance with AS 1926.1-2012"

And

Request adding a 4.8 to the list Stating:

Certain animals are prohibited from being kept in estates adjacent to the 3 Wildlife Protection Areas, (the Tread Lightly Estate - Hardy Avenue, Lilli Pilli Estate, and Fern Beach Estate) and also from being kept in certain other estates in the shire that have restrictive covenants that are part of the title deed to all properties on the estates. These restrictions were established at the time the estates were developed, are legally enforceable, and continue to be in effect when the properties change hands.

Regarding

"No.5 Council's Power to Control and Regulate the Keeping of Animals

5.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993 and the Local Government (General) Regulation 2005."

Request that the 5.1 statement add " and Section 88b of the Conveyancing Act"

Council is the Authority for Restrictive Covenants (Section 88b of the

Conveyancing Act), and advice from the EDO is that Council can act on Breached Covenants, whether Council is noted as the Authority on the Title Deeds or not. Irrespective of whether Council, or individual owners, or a class action of owners, will act to address breaches, the potential of Council to lawfully act would be of benefit in Compliance and should be listed as a "Council power to control and regulate" (noting that Council has the lawful power to decide if it will act or not in all instances of all general breaches)

And request subsequently that the list at 5.4 also include Section 88b of the Conveyancing Act

I.E. add: **5.4.5 Section 88b of the Conveyancing Act**

Noting That

"2 Introduction

The Orders Policy aims to:

2.1.1 Minimise the incidence of nuisance being caused to persons"

(cats and dogs kept where they are prohibited causes nuisance to persons in the neighborhood, resulting in social conflict)

2.1.2 Protect the welfare of companion and farm animals **(cats and dogs kept in vegetated and wildlife areas where they are prohibited leaves the pets vulnerable to injury and death from wildlife such as snakes and raptors, and should be treated as Companion Animal Cruelty)**

2.1.3 Protect the welfare and habitat of wildlife **(cats and dogs kept in vegetated and wildlife areas where they are prohibited kill and injure wildlife, and disenfranchises wildlife from using the area and surrounding area as wildlife habitat)**

2.1.4 Minimise the disturbance of or damage to protected vegetation **(Noting that significant areas of private land where cats and dogs are prohibited are parcels of land that Council has mapped as "environmentally sensitive land" and that cats and dogs kept in vegetated and wildlife areas where they are prohibited will incur damage to vegetation by direct activities such as dogs digging, and by altered vegetation from high weed nutrient faeces residue and off site storm water run off)**

(2.1.5 Safeguard the environment (cats and dogs kept in vegetated and wildlife areas where they are prohibited kill and injure wildlife, remove areas from wildlife use by urine and faeces territory marking and by noise and visual presence, and cause environmental pollution from faecal contamination of land and waterways

Yours

John Lazarus

Per Byron Environment Centres Cat & Dog Compliance Committee

Policies for review



submission date: 10 December 2020, 5:17PM

receipt number: 2

related form version: 1

Your name John Lazarus

Email **redacted for the web**

Name of policy or policies you are providing feedback on. Review of the Companion Animals Policy

Provide your feedback here Submission - Review of Companion Animals Policy

John Lazarus

Convenor Byron environment Centre Inc (BEC)

per BEC's Cat & Dog Compliance Committee

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1) Regarding: 2.2

Request adding "or of a prohibited species":

"It is well documented that the keeping of companion animals and/or pet animals is usually most beneficial to the well-being of people. Nevertheless, on occasions, complaints are made to Council where animals of an inappropriate kind or number, or of a prohibited species are being kept or where the animals and their accommodations are not being looked after properly."

2) Regarding:

No. 4 Prescriptive Requirements

4.2 - Certain statutory requirements also apply as noted in the table.

Request that the statutory requirements listed in the "table" also

include:

the Statutory Requirements of "Restrictive Covenants that prohibit the keeping of cats or dogs."

The Restrictive Covenants are legal instruments with a statutory requirement, in a similar way as this Policy's lists that - "National Parks and Wildlife Act 1974 and Fauna Protection regulations place a general prohibition on the keeping of reptiles.." and that "Ponds are to be fenced in accordance with AS 1926.1-2012"

And

3) Regarding 4.3

Request adding: "Where a dwelling is owned within a Subdivision, it will be necessary for the Title Deeds Restrictive Covenants be examined for requirements relevant to the keeping of animals":

4.3 It should not be assumed that animals of all kinds may be kept on premises which are part of a multiple dwelling allotment. Where a dwelling is owned within Strata Plan, it will be necessary for the rules of the Body Corporate to be examined for requirements relevant to the keeping of animals. "Where a dwelling is owned within a Subdivision, it will be necessary for the Restrictive Covenants of Title Deeds be examined for requirements relevant to the keeping of animals"

Certain animals are prohibited from being kept in estates adjacent to the 3 Wildlife Protection Areas, (the Tread Lightly Estate - Hardy Avenue, Lilli Pilli Estate, and Fern Beach Estate) and also from being kept in certain other estates in the shire that have restrictive covenants that are part of the title deed to all properties on the estates. These restrictions were established at the time the estates were developed, are legally enforceable, and continue to be in effect when the properties change hands.

4) Regarding "No.5 Council's Power to Control and Regulate the Keeping of Animals

Request that the 5.1 statement add:

"and Section 88b of the Conveyancing Act":

5.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local

Government Act 1993 and the Local Government (General) Regulation 2005 and Section 88b of the Conveyancing Act." Council is the Authority for Restrictive Covenants (Section 88b of the Conveyancing Act), and advice from the EDO is that Council can act on Breached Covenants, whether Council is noted as the Authority on the Title Deeds or not. Irrespective of whether Council, or individual owners, or a class action of owners, will act to address breaches, the potential of Council to lawfully act would be of benefit in Compliance and should be listed as a "Council power to control and regulate" (noting that Council has the lawful power to decide if it will act or not in all instances of all general breaches)

5) And request subsequently that the list at 5.4 also include additions of :

- a) 5.4.5 Section 88b of the Conveyancing Act, and
- b) 5.4.6 Byron Shire Development Control Plan (DCP) 2014 – Chapter B1 –Biodiversity. :

It is advised that Council can exercise further controls over animals under the following Acts:

- 5.4.1 The Companion Animals Act 1998
- 5.4.2 The Protection of the Environment Operations 1997
- 5.4.3 The Impounding Act 1993
- 5.4.4 The Food Act 2003 (prohibits animals to be kept where food is handled for sale).
- 5.4.5 Section 88b of the Conveyancing Act
- 5.4.6 Byron Shire Development Control Plan (DCP) 2014 – Chapter B1 –Biodiversity.

Council Adopted DCP 2014 Chapter B1 Biodiversity at the 10/12/2000 Planning meeting

Excerpts from the DCP are:

"Council will require:

.....a. a restrictive covenant under Part 6 (Division 4) of the Conveyancing Act 1919 to ensure that the domestic animal(s) in question (e.g. dogs) are not kept or brought onto the allotment"

And

"The keeping of dogs is prohibited on the title of land for any new lots arising from a subdivision of land, where that land is adjacent to or forms part of koala habitat, wildlife corridors or refugia"

Excerpts DCP 2014 Chapter B1 Biodiversity:

"Domestic animals

21. Council may prohibit the keeping of domestic animals where there is an unacceptable residual risk (i.e. a risk that cannot be adequately mitigated by other measures such as exclusion fencing) arising from the development to threatened or other significant species. In such cases Council will require:

- a. a restrictive covenant under Part 6 (Division 4) of the Conveyancing Act 1919 to ensure that the domestic animal(s) in question (e.g. dogs) are not kept or brought onto the allotment; and
- b. conditions of consent to prohibit domestic animals entering the site during construction.

29. For developments involving subdivision a restrictive covenant under Part 6 (Division 4) of the Conveyancing Act 1919 shall be applied to prohibit the keeping of declared pest animals (foxes, rabbits etc.) and/or other pest animals considered to pose a significant risk to biodiversity relevant to the site."

And B1.2.3 Koala Habitat

Prescriptive measures

The following mitigation measures are required to be addressed within any development application that has the potential to impact koalas and or koala habitat irrespective of Lot size.

Dog attack i. The keeping of dogs is prohibited on the title of land for any new lots arising from a subdivision of land, where that land is adjacent to or forms part of koala habitat, wildlife corridors or refugia. ii. A restriction on the movement of dogs; including the use of dog and koala proof fencing that effectively contains dogs and excludes koalas, with the provision of koala furniture that allows koalas to escape yards should they gain entry. iii. Dog exclusion from koala habitat areas, and only allowed off leash in areas determined as to not contain linkages to koala habitat, wildlife corridors or refugia.

6) Regarding: "No. 4 Prescriptive Requirements

4.2 - Certain statutory requirements also apply as noted in the

table."

Request that the statutory requirements listed also include:
The Statutory Requirements of "Restrictive Covenants that prohibit the keeping of cats or dogs."

The Restrictive Covenants are legal instruments with a statutory requirement, in a similar way as this Policy's lists that - "National Parks and Wildlife Act 1974 and Fauna Protection regulations place a general prohibition on the keeping of reptiles.." and that "Ponds are to be fenced in accordance with AS 1926.1-2012"

And

7) Request adding a 4.8 to the list Stating:
Where a dwelling is owned within a subdivision, it will be necessary for the Restrictive Covenants to be examined for requirements relevant to the keeping of, or the prohibition of, animals

Certain animals are prohibited from being kept in estates adjacent to the 3 Wildlife Protection Areas, (the Tread Lightly Estate - Hardy Avenue, Lilli Pilli Estate, and Fern Beach Estate) and also from being kept in certain other estates in the shire that have restrictive covenants that are part of the title deed to all properties on the estates. These restrictions were established at the time the estates were developed, are legally enforceable, and continue to be in effect when the properties change hands.

8) Regarding
"No.5 Council's Power to Control and Regulate the Keeping of Animals

Request that the 5.1 statement add "and Section 88b of the Conveyancing Act":

5.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993 and the Local Government (General) Regulation 2005 and Section 88b of the Conveyancing Act."
Council is the Authority for Restrictive Covenants (Section 88b of

the Conveyancing Act), and advice from the EDO is that Council can act on Breached Covenants, whether Council is noted as the Authority on the Title Deeds or not. Irrespective of whether Council, or individual owners, or a class action of owners, will act to address breaches, the potential of Council to lawfully act would be of benefit in Compliance and should be listed as a "Council power to control and regulate" (noting that Council has the lawful power to decide if it will act or not in all instances of all general breaches)

9) And Request subsequently that the list at 5.4 also include Section 88b of the Conveyancing Act

I.E. add: 5.4.5 Section 88b of the Conveyancing Act to the 5.4 list

10) Regarding "7 Table of Requirements"

Request that the Wildlife Protection Area table, or a new table box, have the additional statements

Dogs: The keeping of dogs on private land within these areas is prohibited as these areas have been identified as having a Restrictive Covenant.

And

Cats: The keeping of cats on private land within these areas is prohibited as these areas have been identified as having a Restrictive Covenant

11) Suggest adding to the Report for the Motion to Adopt the Review of the Companion Animal Policy:

"That Due to the recent West Byron development Consent, that Council proceed to burden the 2 parts of the West Byron subdivision be with Restrictive Covenants that prohibit the keeping of dogs and cats, and that public roads within the Subdivision be burdened with a Wildlife Protection Area status, and that the Companion Animals Policy Table of Requirements be subsequently amended and maps added."

The Reason being that the West Byron subdivision contains wildlife habitat, including known Koala habitat and movements, and that the development has margins to the Cumbebin Swamp Nature Reserve

General Reasons for the proposed changes and additions:

"2 Introduction

The Orders Policy aims to:

2.1.1 Minimise the incidence of nuisance being caused to persons" (cats and dogs kept where they are prohibited causes nuisance to persons in the neighborhood, resulting in social conflict)

2.1.2 Protect the welfare of companion and farm animals (cats and dogs kept in vegetated and wildlife areas where they are prohibited leaves the pets vulnerable to injury and death from wildlife such as snakes and raptors, and should be treated as Companion Animal Cruelty)

2.1.3 Protect the welfare and habitat of wildlife (cats and dogs kept in vegetated and wildlife areas where they are prohibited kill and injure wildlife, and disenfranchises wildlife from using the area and surrounding area as wildlife habitat)

2.1.4 Minimise the disturbance of or damage to protected vegetation (Noting that significant areas of private land where cats and dogs are prohibited are parcels of land that Council has mapped as "environmentally sensitive land" and that cats and dogs kept in vegetated and wildlife areas where they are prohibited will incur damage to vegetation by direct activities such as dogs digging, and by altered vegetation from high weed nutrient faeces residue and off site storm water run off)

2.1.5 Safeguard the environment (cats and dogs kept in vegetated and wildlife areas where they are prohibited kill and injure wildlife, remove areas from wildlife use by urine and faeces territory marking and by noise and visual presence, and cause environmental pollution from faecal contamination of land and waterways

Yours

John Lazarus

Per Byron Environment Centres Cat & Dog Compliance
Committee

Upload your feedback

SOUTH GOLDEN BEACH COMMUNITY ASSOCIATION INC.

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To: Byron Shire Council

26th December, 2020

RE: Submission: Draft Local Order for the Keeping of Animals 2020

SGBCA welcomes the review and the opportunity to make a submission on the above policy. With regard to issues arising with the keeping of animals in our area, we suggest the following revisions (in **bold**) to this draft policy, as shown for the several numbered clauses in the policy. We have added some explanatory comments in italics:

1.2 To give **consistent, accurate** guidance and advice to persons enquiring as to the keeping of animals for domestic purposes.

Comment: We are aware of numerous instances over the past several years of Council staff having given inconsistent and inaccurate guidance to people who have asked about the keeping of animals in the shire.

2.1.1 Minimise the incidence of nuisance, **threat or injury** being caused to persons or other animals **or property**.

Comment: We are aware of numerous instances over the past several years where animal behaviour has gone beyond "nuisance" to pose actual threats to person, other animals, or property.

2.2 It is well documented that the keeping of companion animals and/or pet animals is usually most beneficial to the well-being of people. Nevertheless, on occasions, complaints are made to Council where animals of an inappropriate kind or number are being kept or where the animals and their accommodations are not being looked after properly; **are disturbing, threatening, or causing injury to persons or other animals or damage to property; or causing damage to the environment; or are animals of a prohibited species.**

Comment: We suggest this revision so as to balance the reference to the benefits of companion animals with the acknowledgment of a number of challenges that this practice generates. With our proximity two Wildlife Protection Areas (Marshall's Creek Nature Reserve and Billinudgel Nature Reserve) and two Wildlife Protection Areas, we see continual invasion of those sensitive environmental areas by dogs and cats who are not properly contained and who present ongoing threats

to the flora and fauna in those areas (chasing birds and other wildlife, digging and disturbing soil, damaging vegetation, depositing faeces and urine).

2.4 Responsible ownership is a very important component of nuisance control and this document also contains advice to the animal owner regarding their responsibilities to prevent a nuisance, **injury, damage, or threat of same** from occurring.

4.2 The kind of animal that is suitable to be kept at any premises will be determined having regard for the size of the available yard area, the distance to the nearest dwelling or other prescribed building, **and the existence of any restrictive covenants imposed by the estate within which the premises is contained.**

Comment: We are aware of numerous incidents of property owners who claim to not know of the restrictive animal-keeping covenants governing the estates in our area (Fern Beach Estate and Tread Lightly Estate).

4.3 It should not be assumed that animals of all kinds may be kept on premises which are part of a multiple dwelling allotment. Where a dwelling is owned within a Strata Plan, it will be necessary for the rules of the Body Corporate to be examined for requirements relevant to the keeping of animals. **Where a dwelling is owned within a designated Estate where companion animals are prohibited, the respective title deeds will need to be searched for restrictive covenants related to the keeping of animals.**

Comment: It would be very useful for the Policy to inform property owners and others that restrictive covenants may exist for certain properties.

4.8 The Wildlife Protection Areas that are associated with specific Estates in the shire also have restrictive covenants, imposed at the time the Estates were approved, that are spelled out in the title deeds to the properties on the estates: Lilli Pilli Estate, Fern Beach Estate, and Tread Lightly Estate (Hardy Avenue). These restrictions remain in effect if the properties change hands and are legally enforceable.

Comment: It would be very useful for the Policy to have this additional clause so that property owners and others in the shire are fully aware of the existence of restrictive covenants related to these Estates.

5.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993, the Local Government (General) Regulation 2005, **and Section 88b of the Conveyancing Act.**

Comment: According what we learned from the EDO, Council holds authority regarding compliance with Restrictive Covenants, as per Section 88b of the Conveyancing Act, and can take action against breaches of those Covenants with that authority. Given the numerous breaches of these covenants we have witnessed through the years in our area, we think it is important for this Policy to clearly state that Council has the authority to take action in the face of breaches of these restrictive covenants. This clarification would benefit property owners, realtors, and others who need to understand the existence and significance of these covenants.

5.4.5 Section 88b of the Conveyancing Act

5.4.6 Byron Shire Development Control Plan (DCP) 2014, Chapter B1, Biodiversity.

Comment: Adding these two items to the list in clause 5.4 will help to clarify the significance of Restrictive Covenants. We note in particular that the DCP has the following specific wording that will be supported by these additional clauses in the Policy (Chapter B1, Biodiversity):

"Domestic animals

21. Council may prohibit the keeping of domestic animals where there is an unacceptable residual risk (i.e. a risk that cannot be adequately mitigated by other measures such as exclusion fencing) arising from the development to threatened or other significant species. In such cases Council will require:

a. a restrictive covenant under Part 6 (Division 4) of the Conveyancing Act 1919 to ensure that the domestic animal(s) in question (e.g. dogs) are not kept or brought onto the allotment; and

b. conditions of consent to prohibit domestic animals entering the site during construction.

...

29. For developments involving subdivision a restrictive covenant under Part 6 (Division 4) of the Conveyancing Act 1919 shall be applied to prohibit the keeping of declared pest animals (foxes, rabbits etc.) and/or other pest animals considered to pose a significant risk to biodiversity relevant to the site."

In B1.2.3 Koala Habitat:

Prescriptive measures: The following mitigation measures are required to be addressed within any development application that has the potential to impact koalas and or koala habitat irrespective of Lot size.

Dog attack

i. The keeping of dogs is prohibited on the title of land for any new lots arising from a subdivision of land, where that land is adjacent to or forms part of koala habitat, wildlife corridors or refugia.

ii. A restriction on the movement of dogs, including the use of dog and koala proof fencing that effectively contains dogs and excludes koalas, with the provision of koala furniture that allows koalas to escape yards should they gain entry.

iii. Dog exclusion from koala habitat areas, and only allowed off leash in areas determined as to not contain linkages to koala habitat, wildlife corridors or refugia.

7 Table of Requirements

Comment: We suggest adding a row to the table under "Wildlife Protection Areas" that specifies the Restrictive Covenants that were established when the estates were developed and that are part of the title deeds associated with the properties on those estates. Specifically, we suggest the words in bold be added in Column 4:

Kind of Animal	Maximum Number...	Minimum Distance...	Applicable Regulations...
Dogs	Tread Lightly Estate, Hardy Avenue; Lilli Pilli Estate, Byron Bay	See Map 1 See Map 2	The taking of dogs (controlled or not) into public places within these areas is prohibited as these areas have been identified as Wildlife Protection Areas. Also, the keeping of dogs on private property in these areas is prohibited by the restrictive

			covenants established at the time the Estates were approved and developed.
Cats	Tread Lightly Estate, Hardy Avenue; Lilli Pilli Estate, Byron Bay; Fern Beach Estate, Ocean Shores	See Map 1 See Map 2 See Map 3	The taking of cats (controlled or not) into public places within these areas is prohibited as these areas have been identified as Wildlife Protection Areas. Also, the keeping of cats on private property in these areas is prohibited by the restrictive covenants established at the time the Estates were approved and developed.

Along with the above suggestions, we would like to voice our support for the establishment of Restrictive Covenants to prohibit the keeping of dogs and cats on private property in the newly-approved West Byron development and that Wildlife Protection Areas be established in the public spaces of this new development to protect the environmentally sensitive land that comprises West Byron (identified Koala habitat and proximity to Cumbebin Swamp Nature Reserve).

Thank you in anticipation of your consideration of this submission.

Yours sincerely

Denise Nessel,
Vice President
SGBCA

Submission 4

To whom it may concern,

Thank you for the opportunity to comment on the review of the policy *Local order on the keeping of animals 2020*. Please see my comments and suggestions below.

Kind regards,

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6 Jan 2021

2 Introduction

Re 2.2

Please add "[or of a prohibited species](#)" as follows:

"It is well documented that the keeping of companion animals and/or pet animals is usually most beneficial to the well-being of people. Nevertheless, on occasions, complaints are made to Council where animals of an inappropriate kind or number, [or of a prohibited species](#), are being kept or where the animals and their accommodations are not being looked after properly."

4 Prescriptive Requirements

Re 4.2

In addition to Wildlife Protection Areas, there are **statutory requirements associated with the "Restrictive Covenants that prohibit the keeping of cats or dogs."**

The Restrictive Covenants are legal instruments with a statutory requirement, and as such, they rank equally with other legal instruments, and their prohibitions, listed elsewhere : eg "National Parks and Wildlife Act 1974 and Fauna Protection regulations place a general prohibition on the keeping of reptiles.." and that "Ponds are to be fenced in accordance with AS 1926.1-2012". They must therefore feature in this document.

Re 4.3

Please add: "[Where a dwelling is owned within a Subdivision, it will be necessary for Title Deeds to be examined for any restrictive covenant relevant to the keeping of animals](#)", as follows:

4.3 It should not be assumed that animals of all kinds may be kept on premises which are part of a multiple dwelling allotment. Where a dwelling is owned within Strata Plan, it will be necessary for the rules of the Body Corporate to be examined for requirements relevant to the keeping of animals. [Where a dwelling is owned within a Subdivision, it will be necessary for Title Deeds to be examined for any restrictive covenant relevant to the keeping of animals.](#)

5 Council's Power to Control and Regulate the Keeping of Animals

Re 5.1

Please add: "[Section 88b of the Conveyancing Act](#)" as follows:

5.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993 and the Local Government (General) Regulation 2005 [and Section 88b of the Conveyancing Act](#).

Council is the Authority for Restrictive Covenants (Section 88b of the Conveyancing Act), and advice from the EDO is that Council can act on breached covenants, whether Council is noted as the Authority on the Title Deeds or not. Irrespective of whether Council, or individual owners, or a class action of owners, will act to address breaches, the potential of Council to lawfully act would be of benefit in compliance and should be listed as a "Council power to control and regulate" .

Re 5.4 Please add:

[5.4.5 Section 88b of the Conveyancing Act](#), and
[5.4.6 Byron Shire Development Control Plan \(DCP\) 2014 –Chapter B1 –Biodiversity](#)
as follows:

It is advised that Council can exercise further controls over animals under the following Acts:

5.4.1 The Companion Animals Act 1998

5.4.2 The Protection of the Environment Operations 1997

5.4.3 The Impounding Act 1993

5.4.4 The Food Act 2003 (prohibits animals to be kept where food is handled for sale).

[5.4.5 Section 88b of the Conveyancing Act](#)

[5.4.6 Byron Shire Development Control Plan \(DCP\) 2014 –Chapter B1 –Biodiversity](#).

7 Table of Requirements

The Wildlife Protection Areas (WPA) table needs attention. The names of the WPAs are listed under a header about *numbers*, which does not make sense.

Information is missing under the 'Applicable Regulations and other advisory matters' column, in the dogs and cats section.

I suggest the following changes (for the dogs and cats rows) as per the table below.

WILDLIFE PROTECTION AREAS

[Tread Lightly Estate, Hardy Avenue, North Ocean Shores and Lilli Pilli Estate, Byron Bay](#)

Kind of Animal	Maximum Number (Excludes offspring to 3 months of age)	Minimum Distance (from certain buildings) (See Note A)	Applicable Regulations and other Advisory Matters
Dogs	None allowed	See Map 1 See Map 2	Under Section 30 (1) (b) & 14 (1) (h) of the NSW Companion Animals Act 1998 the taking of dogs (controlled or not) into public places within these areas is

			<p>prohibited as these areas have been identified as wildlife protection areas.</p> <p>Restrictive covenants also apply in these WPAs.</p> <p>The keeping of dogs on private land within these areas is prohibited as these areas have been identified as having a Restrictive Covenant.</p>
Cats	None allowed	<p>See Map 1 See Map 2 See Map 3</p>	<p>Under <i>Section 30 (1) (b) & 14 (1) (h) of the NSW Companion Animals Act 1998</i>, the taking of cats (controlled or not) into public places within these areas is prohibited as these areas have been identified as wildlife protection areas.</p> <p>Restrictive covenants The keeping of cats on private land within these areas is prohibited as these areas have been identified as having a Restrictive Covenant</p>

Submission 5



3rd January 2020

To: Byron Shire Council

RE: Submission: Draft Local Order for the Keeping of Animals Policy 2020

Community Alliance for Byron Shire Inc. appreciates the opportunity to comment on the above draft policy. With regard to issues arising with the keeping of animals throughout the shire, CABS suggests the following inclusions to the numbered clauses (in **bold**) to this draft policy. See explanatory comments in green italics.

1.2 To give **consistent, accurate** guidance and advice to persons enquiring as to the keeping of animals for domestic purposes.

Comment: There have been numerous instances over many years whereby Council staff have given inconsistent and inaccurate guidance to people who have asked about the keeping of animals in the shire. Erroneous signage has been installed and inaccurate maps included in previous policies regarding Wildlife Protection Areas (WPAs).

2.1.1 Minimise the incidence of **harm**, nuisance **or threat** being caused to persons and other animals.

Comment: We are aware of numerous instances over the past several years where animal behaviour has gone beyond "nuisance" level to cause harm and to pose actual threats to persons and other animals. A dog barking aggressively at a person from behind a fence may be a nuisance but could be considered a menace. It is also offensive, and unnecessary. We suggest that fencing should be a sufficient distance from public space so that a person does not feel threatened. The introduction of a buffer zone on the dog owner's property between the dog and the person that it barks at would substantially alleviate potential conflict. We also suggest the inclusion of definitions of the words 'harm', 'nuisance' and 'threat'

2.2 It is well documented that the keeping of companion animals and/or pet animals is usually most beneficial to the well-being of **their owners**. Nevertheless, on occasions, complaints are made to Council where animals of an inappropriate kind or number are being kept or where the animals and their accommodations are not being looked after properly; **are disturbing, threatening, or causing injury to persons, other animals, causing damage to the environment including within the three designated Wildlife Protection Areas or are animals of a prohibited species.**

Comment: CABS believes that there should be a balance to the reference to the benefits of companion animals with the acknowledgment of a number of challenges that this practice generates. We are aware of many instances wherein unrestrained cats and dogs regularly trespass into prohibited sensitive environmental areas, including the three designated Wildlife Protection Areas. These animals present ongoing threats to the flora and fauna in those areas (chasing birds and other wildlife, digging and disturbing soil, damaging vegetation, depositing faeces and urine).

2.4 Responsible ownership is a very important component of **companion animal** control and this document also contains advice to the animal owner regarding their responsibilities to prevent a nuisance, **injury, damage, or threat of same** from occurring.

3.2 The **principles** contained in the prescriptive requirements.....

Comment: This is a spelling error. Principals should be replaced with the word 'principles'.

4.2 The kind of animal that is suitable to be kept at any premises will be determined having regard for the size of the available yard area, the distance to the nearest dwelling or other prescribed building, **buffers to any public land, and the existence of any restrictive covenants** .

Comment: Numerous property owners living within WPAs claim to be unaware of the prohibitive covenants governing these estates so we suggest this inclusion for the sake of clarity.

4.3 It should not be assumed that animals of all kinds may be kept on premises which are part of a multiple dwelling allotment. Where a dwelling is owned within a Strata Plan, it will be necessary for the rules of the Body Corporate to be examined for requirements relevant to the keeping of animals. **Where a dwelling is owned within a designated companion animal prohibited Estate, the respective title deeds will need to be searched for restrictive covenants related to the keeping of animals.**

Comment: It would be very useful for the Policy to inform property owners and others that restrictive covenants may exist for certain properties.

4.8 **The Wildlife Protection Areas that are associated with specific Estates in the shire also have restrictive covenants, imposed at the time the Estates were approved, that are clearly identified in the title deeds to the properties on the three estates: Lilli Pilli Estate, Fern Beach Estate, and Tread Lightly Estate. These restrictions remain in effect if the properties change hands and are legally enforceable.**

Comment: It would be very useful for the Policy to have this additional clause so that property owners and others in the shire are fully aware of the existence of restrictive covenants related to these Estates.

5.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993, the Local Government (General) Regulation 2005, **and Section 88b of the Conveyancing Act.**

Comment: According to advice received from the Environmental Defenders Office, Council holds authority regarding compliance with Restrictive Covenants, as per Section 88b of the Conveyancing Act, and can take action against breaches of those Covenants with that

authority. Given the numerous breaches of these covenants we have witnessed and documented through the years across the shire, we think it is important for this Policy to clearly state that Council has the authority to take action in the face of breaches of these restrictive covenants. This clarification would benefit property owners, realtors, and others who need to understand the existence and significance of these covenants.

5.4.5 Section 88b of the Conveyancing Act

5.4.6 Byron Shire Development Control Plan (DCP) 2014, Chapter B1, Biodiversity.

Comment: We think adding these two items to the list in clause 5.4 will help to clarify the significance of Restrictive Covenants.

7. Table of Requirements

The Companion Animals Act 1998 requires lifetime registration, **identification**, and effective control of dogs at all times. (second row, fourth column)

Comment: Part 2 of the Companion Animals Act 1998 states that Compulsory Identification and Registration of companion animals is required from 12 weeks of age.

Kind of Animal	Maximum Number...	Minimum Distance...	Applicable Regulations...
Dogs	Tread Lightly Estate, Hardy Avenue; Lilli Pilli Estate, Byron Bay	See Map 1 See Map 2	The keeping of dogs on private property in these areas is prohibited by the restrictive covenants established at the time the Estates were approved and developed. The taking of dogs (controlled or not) into public places within these areas is prohibited as these areas have been identified as Wildlife Protection Areas.
Cats	Tread Lightly Estate, Hardy Avenue; Lilli Pilli Estate, Byron Bay; Fern Beach Estate, Ocean Shores	See Map 1 See Map 2 See Map 3	The keeping of cats on private property in these areas is prohibited by the restrictive covenants established at the time the Estates were approved and developed. The taking of cats (controlled or not) into public places within these areas is prohibited as these areas have been identified as Wildlife Protection Areas.

Comment: We suggest adding a row to the table under "Wildlife Protection Areas" that specifies the Restrictive Covenants that were established when the estates were developed and that are part of the title deeds associated with the properties on those estates. Specifically, we suggest the words in bold be added in the fourth Column.

Taking into account the recent approval of the West Byron Villa World development we highly recommend the establishment of Restrictive Covenants to prohibit the keeping of dogs and cats on private property and that Wildlife Protection Areas be established in the public spaces of this new development to protect the environmentally sensitive land that comprises West Byron (identified Koala habitat and proximity to Cumbebin Swamp Nature Reserve).

Sincerely Yours

Angela Dunlop
Secretary, CABS

redacted for the web

Submissions received relating to 26 November 2020 Report 13.4 - Policy Review 2020-2021

All submissions related to the Draft Local Orders for the Keeping of Animals Policy 2020.

Submission 1

Feedback received	Staff response
<p>1. Contents:</p> <p>Map 3 should be changed to "Cats prohibited - Fern Beach Ocean Shores"</p>	<p>Noted. Amended</p>
<p>2. Regarding: No. 4 Prescriptive Requirements</p> <p>4.2 - Certain statutory requirements also apply as noted in the table."</p> <p>Request that the statutory requirements also include the Statutory Requirements of "Restrictive Covenants that prohibit the keeping of cats or dogs."</p> <p>The Restrictive Covenants are legal instruments with a statutory requirement, in a similar way as this Policy's lists that - "National Parks and Wildlife Act 1974 and Fauna Protection regulations place a general prohibition on the keeping of reptiles.." and that "Ponds are to be fenced in accordance with AS 1926.1-2012"</p>	<p>Noted. Amendment incorporated as a note in the table.</p>
<p>3. Request adding a 4.8 to the list Stating:</p> <p>Certain animals are prohibited from being kept in estates adjacent to the 3 Wildlife Protection Areas, (the Tread Lightly Estate - Hardy Avenue, Lilli Pilli Estate, and Fern Beach Estate) and also from being kept in certain other estates in the shire that have restrictive covenants that are part of the title deed to all properties on the estates. These restrictions were established at the time the estates were developed, are legally enforceable, and continue to be in effect when the properties change hands.</p>	<p>Noted. Amendment incorporated as a note in the table.</p>
<p>4. Regarding: "No.5 Council's Power to Control and Regulate the Keeping of Animals</p> <p>5.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993 and the Local Government (General) Regulation 2005."</p> <p>Request that the 5.1 statement add "and Section 88b of the Conveyancing Act"</p> <p>Council is the Authority for Restrictive Covenants (Section 88b of the Conveyancing Act), and advice from the EDO is that Council can act on Breached Covenants, whether Council is noted as the Authority on the Title Deeds or not. Irrespective of whether Council, or individual owners, or a class action of owners, will act to address breaches, the potential of Council to lawfully act would be of benefit in Compliance and should be listed as a "Council power to control and regulate" (noting that</p>	<p>Noted. Not amended as this policy outlines restrictions pursuant to Section 124 of the Local Government Act (as noted in 1.4 of the policy).</p> <p>The scope of the policy (at 3.4) relates to Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.</p> <p>Council enforcement officers do not have delegations under the Conveyancing Act and the inclusion may be misleading. As noted, the section is "generally" not "all".</p>

Feedback received	Staff response
<p>Council has the lawful power to decide if it will act or not in all instances of all general breaches)</p>	
<p>5. And request subsequently that the list at 5.4 also include Section 88b of the Conveyancing Act</p> <p>I.E. add: 5.4.5 Section 88b of the Conveyancing Act noting that "2 Introduction</p> <p>The Orders Policy aims to:</p> <p>2.1.1 Minimise the incidence of nuisance being caused to persons"</p> <p>(cats and dogs kept where they are prohibited causes nuisance to persons in the neighborhood, resulting in social conflict)</p> <p>2.1.2 Protect the welfare of companion and farm animals (cats and dogs kept in vegetated and wildlife areas where they are prohibited leaves the pets vulnerable to injury and death from wildlife such as snakes and raptors, and should be treated as Companion Animal Cruelty)</p> <p>2.1.3 Protect the welfare and habitat of wildlife (cats and dogs kept in vegetated and wildlife areas where they are prohibited kill and injure wildlife, and disenfranchises wildlife from using the area and surrounding area as wildlife habitat)</p> <p>2.1.4 Minimise the disturbance of or damage to protected vegetation (Noting that significant areas of private land where cats and dogs are prohibited are parcels of land that Council has mapped as "environmentally sensitive (sic) land" and that cats and dogs kept in vegetated and wildlife areas where they are prohibited will incur damage to vegetation by direct activities such as dogs digging, and by altered vegetation from high weed nutrient faeces residue and off site storm water run off)</p> <p>(2.1.5 Safeguard the environment (cats and dogs kept in vegetated and wildlife areas where they are prohibited kill and injure wildlife, remove areas from wildlife use by urine and faeces territory marking and by noise and visual presence, and cause environmental pollution from faecal contamination of land and waterways</p>	<p>Re 5.4.5: Noted. Amendment incorporated.</p> <p>Re 2.1.1 Noted. Not updated since the current statement meets Council's requirements as to a summary of the general aim of the policy.</p> <p>As per 3.4 of the policy, the general aim relates to the purposes of Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.</p> <p>Re 2.1.2 Noted. Not updated since the current statement meets Council's requirements as to a summary of the general aim of the policy</p> <p>As per 3.4 of the policy, the general aim relates to the purposes of Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.</p> <p>Re 2.1.3 Noted. Not updated since the current statement meets Council's requirements as to a summary of the general aim of the policy</p> <p>As per 3.4 of the policy, the general aim relates to the purposes of Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.</p> <p>Re 2.1.4 – Noted. Not updated since the current statement meets Council's requirements as to a summary of the general aim of the policy</p> <p>As per 3.4 of the policy, the general aim relates to the purposes of Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.</p> <p>Re 2.1.5 - Noted. Not updated since the current statement meets Council's requirements as to a summary of the general aim of the policy</p>

Feedback received	Staff response
	As per 3.4 of the policy, the general aim relates to the purposes of Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.

Submission 2

Feedback received	Staff response
<p>1. Regarding: 2.2 Request adding "or of a prohibited species"</p> <p><i>"It is well documented that the keeping of companion animals and/or pet animals is usually most beneficial to the well-being of people. Nevertheless, on occasions, complaints are made to Council where animals of an inappropriate kind or number, or of a prohibited species are being kept or where the animals and their accommodations are not being looked after properly."</i></p>	<p>Noted. Amendment incorporated.</p>
<p>2. Regarding: No. 4 Prescriptive Requirements</p> <p>4.2 - Certain statutory requirements also apply as noted in the table."</p> <p>Request that the statutory requirements listed in the "table" also include: the Statutory Requirements of "Restrictive Covenants that prohibit the keeping of cats or dogs."</p> <p>"The Restrictive Covenants are legal instruments with a statutory requirement, in a similar way as this Policy's lists that - "National Parks and Wildlife Act 1974 and Fauna Protection regulations place a general prohibition on the keeping of reptiles.." and that "Ponds are to be fenced in accordance with AS 1926.1-2012"</p>	<p>Duplicate of Submission 1 No 2.</p> <p>Noted. Agree to include this as a note in the table.</p>
<p>3. Regarding 4.3</p> <p>Request adding: <i>"Where a dwelling is owned within a Subdivision, it will be necessary for the Title Deeds Restrictive Covenants be examined for requirements relevant to the keeping of animals":</i></p> <p><i>4.3 It should not be assumed that animals of all kinds may be kept on premises which are part of a multiple dwelling allotment. Where a dwelling is owned within Strata Plan, it will be necessary for the rules of the Body Corporate to be examined for requirements relevant to the keeping of animals. "Where a dwelling is owned within a Subdivision, it will be necessary for the Restrictive Covenants of Title Deeds be examined for requirements relevant to the keeping of animals"</i></p> <p>Certain animals are prohibited from being kept in estates adjacent to the 3 Wildlife Protection Areas, (the Tread Lightly Estate - Hardy Avenue, Lilli Pilli Estate, and Fern Beach</p>	<p>Noted. Amendment incorporated.</p>

Feedback received	Staff response
<p>Estate) and also from being kept in certain other estates in the shire that have restrictive covenants that are part of the title deed to all properties on the estates. These restrictions were established at the time the estates were developed, are legally enforceable, and continue to be in effect when the properties change hands.</p>	
<p>4. Regarding "No.5 Council's Power to Control and Regulate the Keeping of Animals</p> <p>Request that the 5.1 statement add:</p> <p>"and Section 88b of the Conveyancing Act":</p> <p>5.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993 and the Local Government (General) Regulation 2005 and Section 88b of the Conveyancing Act." Council is the Authority for Restrictive Covenants (Section 88b of the Conveyancing Act), and advice from the EDO is that Council can act on Breached Covenants, whether Council is noted as the Authority on the Title Deeds or not. Irrespective of whether</p> <p>Council, or individual owners, or a class action of owners, will act to address breaches, the potential of Council to lawfully act would be of benefit in Compliance and should be listed as a "Council power to control and regulate" (noting that Council has the lawful power to decide if it will act or not in all instances of all general breaches)</p>	<p>Duplicate of Submission 1 No 4.</p> <p>Noted. Not amended as this policy outlines restrictions pursuant to Section 124 of the Local Government Act (as noted in 1.4 of the policy).</p> <p>The scope of the policy (at 3.4) relates to Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.</p> <p>Council enforcement officers do not have delegations under the Conveyancing Act and the inclusion may be misleading. As noted, the section is "generally" not "all".</p>
<p>5. And request subsequently that the list at 5.4 also include additions of:</p> <p>5.4.5 Section 88b of the Conveyancing Act, and</p> <p>5.4.6 Byron Shire Development Control Plan (DCP) 2014 – Chapter B1 –Biodiversity: It is advised that Council can exercise further controls over animals under the following Acts:</p> <p>5.4.1 The Companion Animals Act 1998</p> <p>5.4.2 The Protection of the Environment Operations 1997</p> <p>5.4.3 The Impounding Act 1993</p> <p>5.4.4 The Food Act 2003 (prohibits animals to be kept where food is handled for sale).</p> <p>5.4.5 Section 88b of the Conveyancing Act</p> <p>5.4.6 Byron Shire Development Control Plan (DCP) 2014 – Chapter B1 –Biodiversity.</p>	<p>5.4.5 is a duplicate of Submission 1 No 5.</p> <p>Noted. Amendments incorporated.</p>
<p>6. Regarding "7 Table of Requirements"</p> <p>Request that the Wildlife Protection Area table, or a new table box, have the additional statements</p> <p>Dogs: <i>"The keeping of dogs on private land within these areas is prohibited as these areas have been identified as having a Restrictive Covenant."</i></p>	<p>Noted. Amendment incorporated as noted in Submission 1 No. 2 and Submission 2 No. 2</p>

Feedback received	Staff response
<p>And</p> <p>Cats: <i>"The keeping of cats on private land within these areas is prohibited as these areas have been identified as having a Restrictive Covenant"</i></p>	
<p>7. Suggest adding to the Report for the Motion to Adopt the Review of the Companion Animal Policy:</p> <p><i>"That Due to the recent West Byron development Consent, that Council proceed to burden the 2 parts of the West Byron subdivision be with Restrictive Covenants that prohibit the keeping of dogs and cats, and that public roads within the Subdivision be burdened with a Wildlife Protection Area status, and that the Companion Animals Policy Table of Requirements be subsequently amended and maps added."</i></p> <p>The Reason being that the West Byron subdivision contains wildlife habitat, including known Koala habitat and movements, and that the development has margins to the Cumbebin Swamp Nature Reserve</p>	<p>This is outside the scope of the current policy and is directed at Councillors.</p>

Submission 3

Feedback received	Staff response
<p>1. 1.2 To give consistent, accurate guidance and advice to persons enquiring as to the keeping of animals for domestic purposes.</p> <p><i>Comment: We are aware of numerous instances over the past several years of Council staff having given inconsistent and inaccurate guidance to people who have asked about the keeping of animals in the shire.</i></p>	<p>Noted. Amendment incorporated.</p>
<p>2. 2.1.1 Minimise the incidence of nuisance, threat or injury being caused to persons or other animals or property.</p> <p><i>Comment: We are aware of numerous instances over the past several years where animal behaviour has gone beyond "nuisance" to pose actual threats to person, other animals, or property.</i></p>	<p>Noted. Meaning of 'nuisance' in this instance covers broad range of events (including those suggested). No amendment to policy.</p>
<p>3. 2.2 It is well documented that the keeping of companion animals and/or pet animals is usually most beneficial to the well-being of people. Nevertheless, on occasions, complaints are made to Council where animals of an inappropriate kind or number are being kept or where the animals and their accommodations are not being looked after properly; are disturbing, threatening, or causing injury to persons or other animals or damage to property; or causing damage to the environment; or are animals of a prohibited species.</p> <p><i>Comment: We suggest this revision so as to balance the reference to the benefits of companion animals with the</i></p>	<p>Noted. The relevant legislative restrictions relate to the "inappropriate kind or number are being kept or where the animals and their accommodations are not being looked after properly". No amendment to policy.</p>

Feedback received	Staff response
<p><i>acknowledgment of a number of challenges that this practice generates. With our proximity two Wildlife Protection Areas (Marshalls Creek Nature Reserve and Billinudgel Nature Reserve) and two Wildlife Protection Areas, we see continual invasion of those sensitive environmental areas by dogs and cats who are not properly contained and who present ongoing threats to the flora and fauna in those areas (chasing birds and other wildlife, digging and disturbing soil, damaging vegetation, depositing faeces and urine).</i></p>	
<p>4. 2.4 Responsible ownership is a very important component of nuisance control and this document also contains advice to the animal owner regarding their responsibilities to prevent a nuisance, injury, damage, or threat of same from occurring.</p>	<p>Noted. Meaning of ‘nuisance’ in this instance covers broad range of events (including those suggested). No amendment to policy.</p>
<p>5. 4.2 The kind of animal that is suitable to be kept at any premises will be determined having regard for the size of the available yard area, the distance to the nearest dwelling or other prescribed building, and the existence of any restrictive covenants imposed by the estate within which the premises is contained.</p> <p><i>Comment: We are aware of numerous incidents of property owners who claim to not know of the restrictive animal-keeping covenants governing the estates in our area (Fern Beach Estate and Tread Lightly Estate).</i></p>	<p>Noted. Existence of restrictive covenants is incorporated into “certain statutory requirements also noted in the table”. No amendment to policy.</p>
<p>6. 4.3 It should not be assumed that animals of all kinds may be kept on premises which are part of a multiple dwelling allotment. Where a dwelling is owned within a Strata Plan, it will be necessary for the rules of the Body Corporate to be examined for requirements relevant to the keeping of animals. Where a dwelling is owned within a designated Estate where companion animals are prohibited, the respective title deeds will need to be searched for restrictive covenants related to the keeping of animals.</p> <p><i>Comment: It would be very useful for the Policy to inform property owners and others that restrictive covenants may exist for certain properties.</i></p>	<p>Noted. Amendment incorporated.</p>
<p>7. 4.8 The Wildlife Protection Areas that are associated with specific Estates in the shire also have restrictive covenants, imposed at the time the Estates were approved, that are spelled out in the title deeds to the properties on the estates: Lilli Pilli Estate, Fern Beach Estate, and Tread Lightly Estate (Hardy Avenue). These restrictions remain in effect if the properties change hands and are legally enforceable.</p> <p><i>Comment: It would be very useful for the Policy to have this additional clause so that property owners and others in the shire are fully aware of the existence of restrictive covenants related to these Estates.</i></p>	<p>Noted. This information is already outlined with the table and maps of the policy. No amendment made to policy.</p>

Feedback received	Staff response
<p>8. 5.1 Generally, Council’s powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993, the Local Government (General) Regulation 2005, and Section 88b of the Conveyancing Act.</p> <p><i>Comment: According what we learned from the EDO, Council holds authority regarding compliance with Restrictive Covenants, as per Section 88b of the Conveyancing Act, and can take action against breaches of those Covenants with that authority. Given the numerous breaches of these covenants we have witnessed through the years in our area, we think it is important for this Policy to clearly state that Council has the authority to take action in the face of breaches of these restrictive covenants. This clarification would benefit property owners, realtors, and others who need to understand the existence and significance of these covenants.</i></p>	<p>Duplicate of Submission 2 No 4.</p> <p>Noted. Not amended as this policy outlines restrictions pursuant to Section 124 of the Local Government Act (as noted in 1.4 of the policy).</p> <p>The scope of the policy (at 3.4) relates to Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.</p> <p>Council enforcement officers do not have delegations under the Conveyancing Act and the inclusion may be misleading. As noted, the section is “generally” not “all”.</p>
<p>9. 5.4.5 Section 88b of the Conveyancing Act</p> <p>5.4.6 Byron Shire Development Control Plan (DCP) 2014, Chapter B1, Biodiversity.</p> <p><i>Comment: Adding these two items to the list in clause 5.4 will help to clarify the significance of Restrictive Covenants. We note in particular that the DCP has the following specific wording that will be supported by these additional clauses in the Policy (Chapter B1, Biodiversity)...</i></p>	<p>Duplicate of Submission 2 No 5.</p> <p>Re 5.4.5 - Noted. Amendment made to policy at this section and also to “related legislation” table on page 2 of policy.</p> <p>Re 5.4.6 - noted. Amendment made to policy at this section and also to “related legislation” table on page 2 of policy.</p>
<p>10. 7 Table of Requirements</p> <p><i>Comment: We suggest adding a row to the table under "Wildlife Protection Areas" that specifies the Restrictive Covenants that were established when the estates were developed and that are part of the title deeds associated with the properties on those estates. Specifically, we suggest the words in bold be added in Column 4:</i></p> <p>Dogs:</p> <p>The taking of dogs (controlled or not) into public places within these areas is prohibited as these areas have been identified as Wildlife Protection Areas.</p> <p>Also, the keeping of dogs on private property in these areas is prohibited by the restrictive covenants at the time the Estates were approved and developed.</p> <p>Cats:</p> <p>The taking of cats (controlled or not) into public places within these areas is prohibited as these areas have been identified as Wildlife Protection Areas.</p> <p>Also, the keeping of cats on private property in these areas is prohibited by the restrictive covenants</p>	<p>Noted. Amendment made to policy under ‘Dogs’ and ‘Cats’.</p>

Feedback received	Staff response
<p>established at the time the Estates were approved and developed.</p>	
<p>11. Along with the above suggestions, we would like to voice our support for the establishment of Restrictive Covenants to prohibit the keeping of dogs and cats on private property in the newly-approved West Byron development and that Wildlife Protection Areas be established in the public spaces of this new development to protect the environmentally sensitive land that comprises West Byron (identified Koala habitat and proximity to Cumbebin Swamp Nature Reserve).</p>	<p>Outside the scope of this policy</p>

Submission 4

Feedback received	Staff response
<p>1. Re 2.2</p> <p>Please add "or of a prohibited species" as follows:</p> <p>"It is well documented that the keeping of companion animals and/or pet animals is usually most beneficial to the well-being of people. Nevertheless, on occasions, complaints are made to Council where animals of an inappropriate kind or number, or of a prohibited species, are being kept or where the animals and their accommodations are not being looked after properly."</p>	<p>Noted. Amendment incorporated.</p>
<p>2. 4. Prescriptive Requirements</p> <p>Re 4.2: In addition to Wildlife Protection Areas, there are statutory requirements associated with the "Restrictive Covenants that prohibit the keeping of cats or dogs. "The Restrictive Covenants are legal instruments with a statutory requirement, and as such, they rank equally with other legal instruments, and their prohibitions, listed elsewhere : eg "National Parks and Wildlife Act 1974 and Fauna Protection regulations place a general prohibition on the keeping of reptiles.." and that "Ponds are to be fenced in accordance with AS 1926.1-2012". They must therefore feature in this document.</p>	<p>Noted. This is included in the statement "certain statutory requirements also apply as noted in the table". No amendments made to policy.</p>
<p>3. Re 4.3</p> <p>Please add: "Where a dwelling is owned within a Subdivision, it will be necessary for Title Deeds to be examined for any restrictive covenant relevant to the keeping of animals", as follows:</p> <p>4.3 It should not be assumed that animals of all kinds may be kept on premises which are part of a multiple dwelling allotment. Where a dwelling is owned within Strata Plan, it will be necessary for the rules of the Body Corporate to be examined for requirements relevant to the keeping of animals. Where a dwelling is owned within a Subdivision, it will be</p>	<p>Same as Submission 3 No. 6. Noted. Amendment incorporated.</p>

Feedback received	Staff response
<p>necessary for Title Deeds to be examined for any restrictive covenant relevant to the keeping of animals.</p>	
<p>4. 5 Council's Power to Control and Regulate the Keeping of Animals</p> <p>Re 5.1 Please add: "and Section 88b of the Conveyancing Act" as follows:</p> <p>5.1 Generally, Council's powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993 and the Local Government (General) Regulation 2005 and Section 88b of the Conveyancing Act.</p> <p>Council is the Authority for Restrictive Covenants (Section 88b of the Conveyancing Act), and advice from the EDO is that Council can act on breached covenants, whether Council is noted as the Authority on the Title Deeds or not. Irrespective of whether Council, or individual owners, or a class action of owners, will act to address breaches, the potential of Council to lawfully act would be of benefit in compliance and should be listed as a "Council power to control and regulate".</p>	<p>Same as Submission 2 No. 4 and Submission 3 No. 8</p> <p>Noted. Not amended as this policy outlines restrictions pursuant to Section 124 of the Local Government Act (as noted in 1.4 of the policy).</p> <p>The scope of the policy (at 3.4) relates to Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.</p> <p>Council enforcement officers do not have delegations under the Conveyancing Act and the inclusion may be misleading. As noted, the section is "generally" not "all".</p>
<p>5. Re 5.4 Please add:</p> <p>5.4.5 Section 88b of the Conveyancing Act, and</p> <p>5.4.6 Byron Shire Development Control Plan (DCP) 2014 – Chapter B1 –Biodiversity</p> <p>as follows:</p> <p>It is advised that Council can exercise further controls over animals under the following Acts:</p> <p>5.4.1 The Companion Animals Act 1998</p> <p>5.4.2 The Protection of the Environment Operations 1997</p> <p>5.4.3 The Impounding Act 1993</p> <p>5.4.4 The Food Act 2003 (prohibits animals to be kept where food is handled for sale).</p> <p>5.4.5 Section 88b of the Conveyancing Act</p> <p>5.4.6 Byron Shire Development Control Plan (DCP) 2014 – Chapter B1 –Biodiversity.</p>	<p>Same as Submission 2 No. 5 and Submission 3 No. 9.</p> <p>Noted. Amendment incorporated.</p>
<p>6. 7 Table of Requirements</p> <p>The Wildlife Protection Areas (WPA) table needs attention. The names of the WPAs are listed under a header about numbers, which does not make sense. Information is missing under the 'Applicable Regulations and other advisory matters' column, in the dogs and cats section.</p> <p>I suggest the following changes (for the dogs and cats rows) as per the table below.</p> <p>WILDLIFE PROTECTION AREAS</p> <p>Tread Lightly Estate, Hardy Avenue, North Ocean Shores and</p>	<p>Noted. The table column title has been adjusted and both tables rearranged.</p>

Feedback received	Staff response
<p>Lilli Pilli Estate, Byron Bay</p> <p>Dogs: None allowed. Under Section 30 (1) (b) & 14 (1) (h) of the NSW Companion Animals Act 1998 the taking of dogs (controlled or not) into public places within these areas is prohibited as these areas have been identified as wildlife protection areas.</p> <p>Restrictive covenants also apply in these WPAs. The keeping of dogs on private land within these areas is prohibited as these areas have been identified as having a Restrictive Covenant.</p> <p>Cats: None allowed. Under Section 30 (1) (b) & 14 (1) (h) of the NSW Companion Animals Act 1998, the taking of cats (controlled or not) into public places within these areas is prohibited as these areas have been identified as wildlife protection areas.</p> <p>Restrictive covenants The keeping of cats on private land within these areas is prohibited as these areas have been identified as having a Restrictive Covenant</p>	

Submission 5

Feedback received	Staff response
<p>1. 1.2 To give consistent, accurate guidance and advice to persons enquiring as to the keeping of animals for domestic purposes.</p> <p><i>Comment: There have been numerous instances over many years whereby Council staff have given inconsistent and inaccurate guidance to people who have asked about the keeping of animals in the shire. Erroneous signage has been installed and inaccurate maps included in previous policies regarding Wildlife Protection Areas (WPAs).</i></p>	<p>Duplicate of Submission 3 No. 1.</p> <p>Noted. Amendment incorporated.</p>
<p>2. 2.1.1 Minimise the incidence of harm, nuisance or threat being caused to persons and other animals.</p> <p><i>Comment: We are aware of numerous instances over the past several years where animal behaviour has gone beyond “nuisance” level to cause harm and to pose actual threats to persons and other animals. A dog barking aggressively at a person from behind a fence may be a nuisance but could be considered a menace. It is also offensive, and unnecessary. We suggest that fencing should be a sufficient distance from public space so that a person does not feel threatened. The introduction of a buffer zone on the dog owner’s property between the dog and the person that it barks at would substantially alleviate potential conflict. We also suggest the inclusion of definitions of the words ‘harm’, ‘nuisance’ and ‘threat’</i></p>	<p>Similar to Submission 3 No. 2.</p> <p>Noted. Meaning of ‘nuisance’ in this instance covers broad range of events (including those suggested). No amendment to policy.</p>

Feedback received	Staff response
<p>3. 2.2 It is well documented that the keeping of companion animals and/or pet animals is usually most beneficial to the well-being of their owners. Nevertheless, on occasions, complaints are made to Council where animals of an inappropriate kind or number are being kept or where the animals and their accommodations are not being looked after properly; are disturbing, threatening, or causing injury to persons, other animals, causing damage to the environment including within the three designated Wildlife Protection Areas or are animals of a prohibited species.</p> <p><i>Comment: CABS believes that there should be a balance to the reference to the benefits of companion animals with the acknowledgment of a number of challenges that this practice generates. We are aware of many instances wherein unrestrained cats and dogs regularly trespass into prohibited sensitive environmental areas, including the three designated Wildlife Protection Areas. These animals present ongoing threats to the flora and fauna in those areas (chasing birds and other wildlife, digging and disturbing soil, damaging vegetation, depositing faeces and urine).</i></p>	<p>Duplicate of Submission 3 No. 3</p> <p>Noted. The relevant legislative restrictions relate to the “inappropriate kind or number are being kept or where the animals and their accommodations are not being looked after properly”. No amendment to policy.</p>
<p>4. 2.4 Responsible ownership is a very important component of companion animal control and this document also contains advice to the animal owner regarding their responsibilities to prevent a nuisance, injury, damage, or threat of same from occurring.</p>	<p>Duplicate of Submission 3 No. 4.</p> <p>Noted. Meaning of ‘nuisance’ in this instance covers broad range of events (including those suggested). No amendment to policy.</p>
<p>5. 3.2 The principles contained in the prescriptive requirements.....</p> <p><i>Comment: This is a spelling error. Principals should be replaced with the word ‘principles’.</i></p>	<p>Noted. Policy amended</p>
<p>6. 4.2 The kind of animal that is suitable to be kept at any premises will be determined having regard for the size of the available yard area, the distance to the nearest dwelling or other prescribed building, buffers to any public land, and the existence of any restrictive covenants .</p> <p><i>Comment: Numerous property owners living within WPAs claim to be unaware of the prohibitive covenants governing these estates so we suggest this inclusion for the sake of clarity.</i></p>	<p>Similar to Submission 3 No. 5.</p> <p>Noted. Existence of restrictive covenants is incorporated into “certain statutory requirements also noted in the table”. No amendment to policy.</p>
<p>7. 4.3 It should not be assumed that animals of all kinds may be kept on premises which are part of a multiple dwelling allotment. Where a dwelling is owned within a Strata Plan, it will be necessary for the rules of the Body Corporate to be examined for requirements relevant to the keeping of animals. Where a dwelling is owned within a designated companion animal prohibited Estate, the respective title deeds will need to be searched for restrictive covenants</p>	<p>Duplicate of Submission 3 No. 6.</p> <p>Noted. Amendment incorporated.</p>

Feedback received	Staff response
<p>related to the keeping of animals.</p> <p><i>Comment: It would be very useful for the Policy to inform property owners and others that restrictive covenants may exist for certain properties.</i></p>	
<p>8. 4.8 The Wildlife Protection Areas that are associated with specific Estates in the shire also have restrictive covenants, imposed at the time the Estates were approved, that are clearly identified in the title deeds to the properties on the three estates: Lilli Pilli Estate, Fern Beach Estate, and Tread Lightly Estate. These restrictions remain in effect if the properties change hands and are legally enforceable.</p> <p><i>Comment: It would be very useful for the Policy to have this additional clause so that property owners and others in the shire are fully aware of the existence of restrictive covenants related to these Estates.</i></p>	<p>Duplicate of Submission 3 No. 7.</p> <p>Noted. This information is already outlined with the table and maps of the policy. No amendment made to policy.</p>
<p>9. 5.1 Generally, Council’s powers to control and regulate the keeping of animals is provided under Section 124 of the Local Government Act 1993, the Local Government (General) Regulation 2005, and Section 88b of the Conveyancing Act.</p> <p><i>Comment: According to advice received from the Environmental Defenders Office, Council holds authority regarding compliance with Restrictive Covenants, as per Section 88b of the Conveyancing Act, and can take action against breaches of those Covenants with that authority. Given the numerous breaches of these covenants we have witnessed and documented through the years across the shire, we think it is important for this Policy to clearly state that Council has the authority to take action in the face of breaches of these restrictive covenants. This clarification would benefit property owners, realtors, and others who need to understand the existence and significance of these covenants.</i></p>	<p>Same as Submission 2 No. 4, Submission 3 No. 8 and Submission 4 No. 4.</p> <p>Noted. Not amended as this policy outlines restrictions pursuant to Section 124 of the Local Government Act (as noted in 1.4 of the policy).</p> <p>The scope of the policy (at 3.4) relates to Order Numbers 18 and 21 of Chapter 7 of the Local Government Act 1993.</p> <p>Council enforcement officers do not have delegations under the Conveyancing Act and the inclusion may be misleading. As noted, the section is “generally” not “all”.</p>
<p>10. 5.4.5 Section 88b of the Conveyancing Act</p> <p>5.4.6 Byron Shire Development Control Plan (DCP) 2014, Chapter B1, Biodiversity.</p> <p><i>Comment: We think adding these two items to the list in clause 5.4 will help to clarify the significance of Restrictive Covenants.</i></p>	<p>Same as Submission 2 No. 5, Submission 3 No. 9 and Submission 4 No.5.</p> <p>Re 5.4.5 - Noted. Amendment made to policy at this section and also to “related legislation” table on page 2 of policy.</p> <p>Re 5.4.6 - Noted. Amendment made to policy at this section and also to “related legislation” table on page 2 of policy.</p>

Feedback received	Staff response
<p>11. 7. Table of Requirements</p> <p>The Companion Animals Act 1998 requires lifetime registration, identification, and effective control of dogs at all times. (second row, fourth column)</p> <p><i>Comment: Part 2 of the Companion Animals Act 1998 states that Compulsory Identification and Registration of companion animals is required from 12 weeks of age.</i></p> <p>Dogs: The keeping of dogs on private property in these areas is prohibited by the restrictive covenants established at the time the Estates were approved and developed. The taking of dogs (controlled or not) into public places within these areas is prohibited as these areas have been identified as Wildlife Protection Areas.</p> <p>Cats: The keeping of cats on private property in these areas is prohibited by the restrictive covenants established at the time the Estates were approved and developed. The taking of cats (controlled or not) into public places within these areas is prohibited as these areas have been identified as Wildlife Protection Areas.</p> <p><i>Comment: We suggest adding a row to the table under "Wildlife Protection Areas" that specifies the Restrictive Covenants that were established when the estates were developed and that are part of the title deeds associated with the properties on those estates. Specifically, we suggest the words in bold be added in the fourth Column.</i></p>	<p>Noted. Amendment made to policy under 'Dogs' and 'Cats'.</p>
<p>12. Taking into account the recent approval of the West Byron Villa World development we highly recommend the establishment of Restrictive Covenants to prohibit the keeping of dogs and cats on private property and that Wildlife Protection Areas be established in the public spaces of this new development to protect the environmentally sensitive land that comprises West Byron (identified Koala habitat and proximity to Cumbebin Swamp Nature Reserve).</p>	<p>Outside the scope of this policy</p>