

10/5/2023

Snowy Valleys Council
Mayor, Councillors, General Manager

Dear Mayor, Councillors and Chief Executive Officer

RE: Draft Companion and Non-Companion Animal Policy (Draft Policy)

The Canary and Cage Bird Federation of Australia Inc. (CCBFA) is a national federation of approximately 250 avicultural (bird keeping) clubs. Our member clubs include those supporting a large and broad range of bird species.

In the submission below, we have provided the rationale for four (4) highlighted recommendations which aim to provide further clarity to the draft policy, primarily (but not exclusively) as it applies to bird keeping and aviculture, while also aligning the draft policy with relevant sections of legislation, regulations and state environmental planning policies.

CCBFA is working with Animal Care Australia (ACA) who is engaged with state governments to develop more appropriate model regulation of animal keeping nationally. In general terms, we always encourage councils to promote and encourage the keeping of animals, in our case birds.

We recommend the policy commences with a clear statement to this effect.

Recommendation 1

Add the following as an initial objective of the policy.

“Snowy Valleys Council acknowledges the importance animals play to the wellbeing of our residents. Council’s default position is to encourage and promote the keeping of animals within the shire.”

This submission primarily addresses concerns with section 10. Birds within the Draft Policy document accessed via the following link and reproduced as Appendix A.

<https://www.snowyvalleys.nsw.gov.au/files/assets/public/meeting-minutes-amp-agendas/council-meetings/20230420/10.5.-attachments-draft-companion-and-non-companion-animal-policy-public-exhibition.pdf>

The Draft Policy aims to provide guidance to compliance officers when considering issuing orders under Section 124 Order 18 of the *Local Government Act 1993*¹. Currently Snowy Valley Council has no policy expanding upon Order 18. The detail of the Non-Companion Animal parts of the Draft Policy are new and will have a significant impact on many animal keepers within the shire, therefore it is imperative that extensive communication, education and consultation with residents is undertaken to ensure support and ongoing compliance.

¹ http://classic.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/

Recommendation 2

Extensive communication, education and consultation with residents must be undertaken prior to the policy being put to council and as part of the implementation process.

Section 124 Order 18 of the *Local Government Act 1993*² reads as follows.

	Column 1	Column 2	Column 3
	To do what?	In what circumstances?	To whom?
18	Not to keep birds or animals on premises, other than of such kinds, in such numbers or in such manner as specified in the order	Birds or animals kept on premises are--(a) in the case of any premises (whether or not in a catchment district)--of an inappropriate kind or number or are kept inappropriately, or(b) in the case of premises in a catchment district--birds or animals (being birds or animals that are suffering from a disease which is communicable to man or to other birds or animals) or pigs	Occupier of premises

The *Local Government (General) Regulation 2021*³ includes further guidance under regulation 91 and 92 specified within Part 5 - Standards for keeping birds or animals within Schedule 2. There is nothing further specified regarding birds.

Sections 129-135 of the *Local Government Act 1993* details procedures that must be observed before giving orders. These sections have not been given due attention in the Draft Policy apart from some consideration in 14.12 to 14.17 of the Draft Policy under 14. Pigeons.

Recommendation 3

Add the following as an initial clause that applies generally to all of Part 2 of the Draft Policy.

On receipt of a complaint, prior to orders being made Snowy Valleys Council will advise the owner or occupier of the details of the complaint and advise their rights to respond, to be represented and have their case heard under Sections 132-135 of the *Local Government Act 1993*.

The following comments relate specifically to clauses 10.1 to 10.16 listed under “10. Birds” of the Draft Policy (included as Appendix A).

- The *NSW Code of Practice No 4 - Keeping and Trading of Birds*⁴ is not designed to be a set of enforceable standards, rather it is intended as a set of recommendations - general guidance for bird keepers. It is a specified Code for animal trades classified as Pet Shops in Schedule 1 of the *Prevention of Cruelty to Animals Regulation 2012*⁵, for other legal purposes, compliance with the code can be used as a defence to charges.

² http://classic.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/

³ http://classic.austlii.edu.au/au/legis/nsw/consol_reg/lgr2021328/

⁴ <https://www.dpi.nsw.gov.au/animals-and-livestock/animal-welfare/animal-care-and-welfare/other/companion-animal-files/nsw-code-of-practice-no-4-keeping-and-trading-of-birds>

⁵ http://classic.austlii.edu.au/au/legis/nsw/consol_reg/poactar2012451/

- The Associated Birdkeepers of Australia (ABA) did indeed draft the initial NSW Code of Practice No 4 - Keeping and Trading of Birds (alongside CCBFA) in the 1990s, however the ABA, although still operating, is no longer what it once was. In addition, CCBFA are in the preliminary stages of editing and updating the code in consultation with NSW DPI officers. Reference should refer to the “NSW Code of Practice No 4 - Keeping and Trading of Birds and subsequent replacements” and recommend owners aim to comply with this code.
- 10.1, 10.2, 10.3 and 10.8 are imprecise and open to interpretation, particularly given the vast range of avian species present in aviculture (over 400 species) and the broad range of legitimate aviary construction and rodent prevention procedures. CCBFA questions how these clauses will assist compliance officers to be more precise when considering complaints.
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 - Reg 2.8*⁶ specifies the development standards for aviaries, including zones, permitted size and number of aviaries that can be constructed without the need for development approval. Delete 10.9 – 10.12 of the Draft Policy and replace with a reference to the development standards in Reg 2.8 of the SEPP. A note stating that aviaries constructed outside Reg 2.8 may require council approval would then replace 10.7 and 10.12.
- CCBFA and Animal Care Australia (ACA) have been involved in numerous discussions with state MPs, Ministers, presented at parliamentary inquiries for numerous years around the distinguishing between commercial and hobbyist trade. In all such discussion there has been no clear resolution – perhaps some resolution will emerge as part of the drafting of the proposed NSW Animal Welfare Bill. We accept there are clearly commercial operations and clearly hobby-based operations. We recommend against the inclusion of 10.6 as it has little to do with making s.124 orders and in any case would only be a consideration should council approval be required.
- Policies that restrict keeping of animals in an attempt to pre-empt and hence prevent noise, odour or other issues for neighbours are discouraged. Such restrictions inflict an unnecessary compliance burden on residents and staff which only discourages animal keeping needlessly. Laws are already in place to deal with neighbourhood nuisance issues. Animal welfare matters due to poor animal keeping practices are regulated under the *Prevention of Cruelty to Animals Act 1979*⁷ – attempts to regulate animal welfare matters using Section 124 orders is not recommended. Note we are engaged in the review of animal welfare legislation in NSW which is well advanced.
- There are hundreds of avian species routinely kept in NSW and every species has its own specialised management, husbandry, enclosure size and welfare requirements. Some species are best kept as bonded pairs, some in large colonies, size is an unreliable indicator of noise, recommended enclosure size varies considerably, diet should be considered, etc, etc. The variables are numerous such that attempts to set policy often do not result in reliable indicators of noise, odour, rodent potential or any other parameter relevant to neighbourhood amenity.
- Although not directly under our remit, we note and support similar to that stated above for both pigeons and poultry.

⁶ http://www5.austlii.edu.au/au/legis/nsw/consol_reg/seppacdc2008721/s2.8.html

⁷ http://classic.austlii.edu.au/au/legis/nsw/consol_act/poctaa1979360/

Recommendation 4

Replace all clauses under “10. Birds” with the following.

- 10.1 Council recommends owners of birds comply with the *NSW Code of Practice No 4 - Keeping and Trading of Birds* and subsequent replacements. Compliance with relevant clauses in the code can be used as a defence.
- 10.2 In the interest of neighbourhood amenity, regard should be given to preventing excessive noise, rodents and odour.
- 10.3 *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 - Reg 2.8¹* specifies the exempt development standards for aviaries as follows. Aviaries constructed according to these standards do not require council approval. Aviaries outside these standards may require council approval.

Exempt Development Standards for Aviaries

(1) The standards specified for that development are that the development must--

- (a) be for residential uses only, and
- (b) not have a floor area of more than--
 - (i) in a rural zone--30m², or
 - (ii) in any other zone--10m², and
- (c) be not higher than--
 - (i) in a rural zone--3m above ground level (existing), or
 - (ii) in any other zone--2.4m above ground level (existing), and
- (d) be located--
 - (i) in a rural zone--at least 20m from the road boundary and 5m from each other lot boundary, or
 - (ii) in any other zone--in the rear yard and at least 900mm from each side and rear boundary, and
- (f) have an impervious floor, and
- (g) be constructed or installed so that roofwater is disposed of without causing a nuisance to adjoining owners, and
 - (g1) if it is located in a residential zone and to the extent it is comprised of metal components--be constructed of low reflective, factory pre-coloured materials, and
 - (h) if it is located on bush fire prone land and is less than 5m from a dwelling--be constructed of non-combustible material.

(2) There must not be more than 2 developments per lot.

- 10.4 On receipt of a complaint, prior to orders being made Snowy Valleys Council will advise the owner or occupier of the details of the complaint and advise their rights to respond, to be represented and have their case heard under Sections 132-135 of the *Local Government Act 1993*.

(Note: 10.4 required if our *Recommendation 3* above is not implemented).

Aviculture is a hobby activity enjoyed by many thousands of people for many hundreds of years. In recent decades it has evolved to be central to conservation efforts globally. We support regulation that ensures aviculture is practiced with due respect for neighbours and with high welfare standards.

For your information, this submission will be publicly available via our website www.ccbfa.org.au.

Please do not hesitate to make contact if we can assist further.

Kind regards,

A handwritten signature in black ink, appearing to read 'Sam Davis', written in a cursive style.

Sam Davis
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Appendix A – Excerpt from Draft Companion and Non-Companion Animal Policy (Draft Policy)

10. Birds

- 10.1 All aviaries and holding facilities must be constructed of appropriate materials and of a quality of construction and maintenance that is acceptable to Council.
- 10.2 The material must be of new or good second-hand quality and be designed to be vermin proof, well ventilated, have an impervious surface and not cause or be likely to cause injury to birds.
- 10.3 All aviaries and facilities must be well maintained by the owner so as to avoid escape and/or injury to birds.
- 10.4 Careful regard must be given to the requirements of neighbours, especially the avoidance of excessive noise and odour.
- 10.5 The NSW Animal Welfare Code of Practice prepared by the Associated Bird keepers of Australia (ABA) must be complied with at all times
- 10.6 Where the owner operates a business from home related to the commercial trade or retail of birds or associated items, provisions of the *Environmental Planning and Assessment Act 1979* may apply.
- 10.7 Extensive aviculture activities are required to submit aviary plans for development approval by Council.
- 10.8 Flooring must be constructed of an impervious material or in some external situations, sand or gravel with a rodent proof mesh underlay.
- 10.9 All aviaries and other built facilities for the keeping of caged birds require Council consent, except where aviaries do not exceed the following dimensions:
- 10.10 Five (5) Square metres surface area, a maximum height of 2.1 metres and with a set back from any boundary, fence or wall of one (1) metres; and
- 10.11 Multiple permissible aviaries may not cover an area greater than 20 square metres without prior Council approval.
- 10.12 Enclosed buildings for the primary purpose of holding caged birds require Council consent.
- 10.13 An animal trade must not be conducted without prior consent.
- 10.14 Vermin proof food storage facilities must be provided.
- 10.15 An adequate rodent and pest control program must be in place.
- 10.16 Excessive noise and odour must be controlled by the use of sound proofing materials distance and choice of bird species.