

**CABINET**

## **Adoption of Dog Control Orders 24 July 2012**

### **Report of Head of Health & Housing**

<b>PURPOSE OF REPORT</b>			
To seek approval to make Dog Control Orders.			
<b>Key Decision</b>	<b>X</b>	<b>Non-Key Decision</b>	<b>Referral from Cabinet Member</b>
<b>Date Included in Forward Plan</b>	May 2012		
<b>This report is public.</b>			

#### **RECOMMENDATIONS OF COUNCILLOR LEYTHAM**

- (1) That four Dog Control Orders be made, to include provisions as set out in this report.
- (2) That the Leader, in accordance with Rule 1.4 of the Cabinet Procedure Rules amends the Officer Scheme of Delegation, (which forms part of the executive arrangements), to delegate to the Head of Health and Housing authority to designate in writing authorised officers for the purposes of Part 6 of the Clean Neighbourhoods and Environment Act 2005.

#### **1.0 Introduction**

- 1.1 The Cabinet meeting on 6 December 2011 approved the commencement of the public consultation process which is a statutory pre-requisite prior to making Dog Control Orders (DCOs) under the Clean Neighbourhoods and Environment Act 2005. The public consultation took place from 29 March 2012 to 11 May 2012 and received a substantial response, with 849 people responding by email, letter, face-to-face survey, paper questionnaire or online.

#### **2.0 Proposal Details**

- 2.1 After taking into consideration the representations made during the statutory public consultation, it is proposed that the council now adopts DCOs as detailed below. An analysis of the consultation responses is attached at Appendix 1.

## **Fixed Penalty Notices**

- 2.2 It is proposed that DCO Fixed Penalty Notices will carry a similar penalty to litter offences under the Clean Neighbourhoods and Environment Act 2005 which are already enforced by Environmental Services using Fixed Penalty Notices and carry an £80 penalty. Environmental Services introduced a discount for early payment due to difficulties experienced in obtaining payments. In the paper and online questionnaires provided for responses to the DCO consultation a question was included asking whether respondents felt an early-payment discount should be given. 57.3% of respondents answered yes, 28.1% answered no, and 14.6% were not sure. A further question was asked regarding what the discount should be. 82.8% responded it should be £50 instead of £80, 11.3% responded £60 instead of £80, and 5.9% responded £70 instead of £80.

It is proposed that the level of fixed penalty be set at £80 reduced to £50 for early payment.

In accordance with the Act, fixed penalty notices may only be issued by “authorised officers”, and it is recommended that the Leader amend the Officer Scheme of Delegation to authorise the Head of Health and Housing to designate such authorised officers.

## **The Original Proposals subject to public consultation**

### **Dog Control Order (1) - Removal of dog faeces**

- 2.3 This DCO would make it an offence to fail to remove dog faeces on any land which is open to the air on at least one side and to which the public are entitled or permitted to have access. It is proposed to apply a blanket designation across the entire district. The majority of respondents were in favour of this proposal, with only 5 respondents commenting that it was an over-reaction to a small problem.

### **Dog Control Order (2) - Dog Exclusion**

- 2.4 There are certain places where dogs could present particular risks and where it is prudent to ban them completely, for all or part of the year. These are termed ‘dog exclusion’ areas for purposes of this DCO proposal.
- 2.5 This DCO would make it an offence to permit a dog to enter defined areas of land from which dogs are to be lawfully excluded, and would apply to enclosed children’s playgrounds, enclosed sports pitches and the splash-pool in Happy Mount Park. Public consultation produced no objections to proposals for these places.
- 2.6 Dog Exclusion DCOs have already been in place on Morecambe’s North and South Beaches for several years. Four respondents expressed views that these beach exclusions should be extended from summer to all year round, and extended to include all beaches. However it is proposed that dog exclusion on these beaches is continued as a seasonal control.

- 2.7 Dallas Road Gardens, Lancaster, is already designated as a Dog Exclusion area under council byelaws. However, dogs are permitted on leads under council byelaws in similar public gardens in the district. This proposed DCO would address the anomaly by including Dallas Road Gardens in the Dogs on Leads DCO, however six respondents have expressed a preference that Dallas Road Gardens remain an exclusion area due to frequenting by children from a nearby primary school.

### **Dog Control Order (3) - Dogs on Leads under Direction**

- 2.8 This DCO would make it an offence not to put and keep a dog on a lead when directed to do so by an officer authorised in writing by the council. This is intended to be used under exceptional circumstances where a dog is causing nuisance. It is proposed to apply a blanket designation throughout the district, enabling this power to be used as and when necessary, for example, when a dog is running around out of control during a sporting event or where lots of children are playing. Respondents raised no objections and in fact the Kennel Club and The Dogs' Trust preferred this to be used instead of a Dogs on Leads DCO in as many places as possible.

### **Dog Control Order (4) - Dogs on Leads**

- 2.9 This DCO would make it an offence not to keep a dog on a lead on defined areas of land. On the basis detailed in a report to Cabinet on 6 December 2011, it was originally proposed to apply this DCO to:

- All public highways, footways and adjoining verges, including Morecambe promenade, pedestrianised areas and off-road cycle routes.
- Car parks and public vehicle parking areas maintained by the council:
- Cemeteries and churchyards.
- Certain council parks and gardens.

It is not proposed to apply this DCO to canal towpaths.

- 2.10 The highest number of objections was received about these proposals, mostly concerning two specific issues addressed at 2.9 and 2.10 below. The remaining areas proposed in the public consultation are listed at 2.11, a summary of the public consultation response and any appropriate commentary.

#### **Off-road 'cycle ways'**

- 2.11 There was a very high volume of responses relating specifically to the River Lune Millennium Park from Glasson to Caton. On this issue the vast majority of respondents, split more or less evenly between dog walkers and cyclists, objected to this proposal. In face to face surveys carried out on the Lancaster

to Morecambe Cycleway and the River Lune Millennium Park, while 68% of respondents on the River Lune Millennium Park objected to dogs on leads controls, 64% of respondents on the Lancaster to Morecambe Cycleway, which incidentally was much busier, supported the Dogs on Leads DCO. However, this was not in line with the majority opinion. The general feeling appears to be that holding dogs on leads on cycle ways is unnecessary because most dog walkers, cyclists and other users are considerate and take steps to avoid obvious conflict with each other. A number of respondents made the observation that dogs on leads can be more hazardous to cyclists, particularly when extending type dog leads are used, because they are more likely to stretch across and block the path of cyclists, also they can be difficult for approaching cyclists to see.

A public concern was also raised that requiring dogs to be on leads could lead over time to such routes becoming viewed as cyclist-priority routes rather than multi-user routes, and that this could lead to a potential risk of cyclists travelling faster and less carefully.

Some respondents were concerned that they would not be able to give dogs sufficient exercise if they were not allowed off leads, that dogs would then be less able to socialise, and that this could contribute to aggressive behaviour.

It is proposed that the Dogs on Leads DCO does not apply to these formal off-road cycle ways.

### **The Promenade between Hest Bank and Heysham**

- 2.12 The Dogs on Leads DCO is proposed for the full length of Morecambe Promenade, extending from the highway kerb to the seaward edge of the promenade including all grassed and garden areas, jetties and slipways. With the exception of the slipways, these areas are already designated as dogs on leads areas under existing council byelaws that will cease to have legal effect when any of the proposed new DCOs are made. Three respondents have objected to the inclusion of slipways on grounds that it is not necessary.

The field at the promenade end of Whinnysty Lane, Heysham currently has no dog controls in place and is a very popular dog exercise area. Although the DCO proposals did not concern this field, public confusion arose during the consultation due to rumours that a Dog on Leads DCO was to be made there. In fact there is no change proposed under the DCOs. The opportunity will however be taken to clarify the definition of land associated with the Promenade and subject to the dogs on leads DCO.

## Other areas proposed for 'dogs on leads' control

2.13 The other proposed areas and public consultation responses are outlined

Proposed area	Public consultation response
Car parks and public vehicle parking areas maintained by the council	No objections were received
pedestrianised areas of central Lancaster and central Morecambe	No objections were received
Cemeteries, graveyards and burial grounds, and the Lancaster and Morecambe Crematorium grounds	No objections were received
Certain public gardens: <ul style="list-style-type: none"> <li>• Dallas Road Gardens in Lancaster</li> <li>• Regent Park, Happy Mount Park and Hall Park in Morecambe</li> </ul>	A small number of objections were received regarding Dallas Road Gardens, (which is currently a Dog Exclusion Zone), due to its proximity to a primary school
Public Highways, including the adjoining footways and verges	Objections were received from several rural parishes that leads are not necessary on quiet country lanes with 40mph speed limits or above

Officers have identified no significant adverse implications if, in line with the stated preference of a number of consultees in rural areas, the proposed Dogs on Leads DCO is amended to disapply it to quiet rural lanes with speed limits of 40mph or above. A definition of 'quiet rural lanes' making compliance and enforcement straightforward will be provided in the final wording of this DCO.

2.14 Very few objections were made during public consultation about areas of land other than cycle ways and country lanes. It is the advice of officers that they are outweighed by the value of Dogs on Leads control.

2.15 The Kennel Club and the Dogs' Trust have expressed a general preference for a district wide Dogs on Leads under Direction DCO approach rather than Dogs on Leads DCO approach. Officer advice is that this method would be less effective than the Dogs on Lead approach and would require greater resources to be expended by the Council. It is therefore not a supported suggestion.

2.16 Taking these considerations into account, the proposed scope of the Dogs on Leads DCO has been revised in light of public consultation. The revised proposal is for the Dogs on Leads DCO is that it would apply district-wide as outlined at paragraph 2.7 with two exceptions: off-road cycle ways mentioned above in this report, and quiet rural roads with speed limits of 40 mph or higher.

## 3.0 Details of Consultation

3.1 The formal consultation process required under the Clean Neighbourhoods and Environment Act 2005 has been carried out, extending far beyond the minimum required. This report considers and summarises the outcome of that consultation.

#### 4.0 Options and Options Analysis (including risk assessment)

4.1 Three straightforward options reflecting responses received during public consultation are presented in the table below. Officers would advise against Option 3. Members may make DCOs on any other basis than the recommendations contained in this report. However there may be complications and it would be necessary to address legal, financial and practical implications before finalising any DCO formulated differently than either Option 1 or 2.

	<b>Option 1: Adopt the DCOs as proposed in the consultation document, including amendments so that the Dogs on Leads DCO does not apply to cycle ways or to quiet rural lanes with speed limits of 40mph or higher</b>	<b>Option 2: Adopting the DCOs as originally proposed, retaining control under the Dogs on Leads DCO for cycle ways and all highways</b>	<b>Option 3: Do not adopt the DCOs</b>
Advantages	<ul style="list-style-type: none"> <li>• Reflects the majority of representations made during the public consultation.</li> <li>• Enables less able-bodied people to continue to exercise dogs off leads on the flat hard surfaces of 'cycle ways'.</li> <li>• More consistent and less confusing enforcement.</li> <li>• More rapid, effective and efficient enforcement using Fixed Penalty Notices, compared to the majority current method of prosecuting through the court system.</li> <li>• Supportive of Dogs on Leads under Direction DCO in areas not included in a Dogs on Leads DCO.</li> </ul>	<ul style="list-style-type: none"> <li>• More consistent and less confusing enforcement.</li> <li>• More rapid, effective and efficient enforcement using Fixed Penalty Notices, compared to the majority current method of prosecuting through the court system.</li> <li>• Supportive of Dogs on Leads under Direction DCO in areas not included in a Dogs on Leads DCO.</li> </ul>	<ul style="list-style-type: none"> <li>• Saving on staff time to implement new Dog Control Orders, and advertising or signage costs.</li> </ul>
Disadvantages	<ul style="list-style-type: none"> <li>• None identified</li> </ul>	<ul style="list-style-type: none"> <li>• Unpopularity within local communities of applying Dogs on Leads DCO to cycle ways and</li> </ul>	<ul style="list-style-type: none"> <li>• Continuation of the current enforcement system which is inconsistent and confusing for the</li> </ul>

	<b>Option 1: Adopt the DCOs as proposed in the consultation document, including amendments so that the Dogs on Leads DCO does not apply to cycle ways or to quiet rural lanes with speed limits of 40mph or higher</b>	<b>Option 2: Adopting the DCOs as originally proposed, retaining control under the Dogs on Leads DCO for cycle ways and all highways</b>	<b>Option 3: Do not adopt the DCOs</b>
		<p>roads with a speed limit over 40mph.</p> <ul style="list-style-type: none"> <li>• Reduced availability of off-lead dog exercise areas, particularly in areas where there are few alternatives.</li> <li>• Need for additional enforcement compared to Option 1.</li> </ul>	<p>public.</p> <ul style="list-style-type: none"> <li>• Unnecessary expense and complications in having to prosecute for offences instead of applying fixed penalty notices available under option 1 or 2, leading to delays and lower efficiency and cost-effectiveness.</li> <li>• The extent of land within the district on which regulatory dog controls apply would remain limited.</li> </ul>
<b>Risks</b>	<ul style="list-style-type: none"> <li>• The decision concerning Dogs on Leads would not reflect the views of a minority of consultees</li> </ul>	<ul style="list-style-type: none"> <li>• The decision to go against the majority opinion of consultees could lead to some public dissatisfaction.</li> </ul>	<ul style="list-style-type: none"> <li>• The decision not to introduce available dog-related regulatory measures for public protection would lead to criticism, particularly given the strength of public feeling about aspects of irresponsible dog ownership</li> </ul>

## **5.0 Officer Preferred Option (and comments)**

- 5.1 Option 1 – to adopt the DCOs as proposed in the consultation document, with the exception that the Dogs on Leads DCO does not apply to cycle ways or to quiet rural lanes with a 40mph speed limit or higher. This option addresses needs for public protection, supports future enforcement and most closely reflects the majority of public comment arising from the consultation.

## 6.0 Conclusion

- 6.1 The purpose of public consultation is to bring proposals to the attention of local communities and to consider all representations made. This particular consultation resulted in a high volume of responses, particularly relating to cycleway proposals, and the proposals have been amended to take public opinion into account. Adoption of the proposed DCOs as revised will lead to more effective dog control and enforcement in the district.

### **RELATIONSHIP TO POLICY FRAMEWORK**

Dog Control Orders are an important component of maintaining the statutory minimum level of dog-related enforcement in future.

### **CONCLUSION OF IMPACT ASSESSMENT**

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

No adverse impacts have been identified in relation to any specific groups within our communities.

### **LEGAL IMPLICATIONS**

Final DCOs to be drafted by Legal Services.

The adoption of DCOs will allow officers to discharge offences with a Fixed Penalty Notice rather than prolonged legal proceedings.

The Council's constitution (at Part 3 Section 15 paragraph 3.8.21) currently provides that the Head of Health and Housing and any staff he/she designates in writing may issue Fixed Penalty Notices under Section 4 of the Dogs (Fouling on Land Act) 1996. On the creation of the DCOs the Council will not be able to prosecute or issue Fixed Penalty Notices under the 1996 Act (pursuant to section 65 of the Clean Neighbourhoods and Environment Act 2005).

The officer scheme of delegation, which forms part of the Leader's executive arrangements, will need to be amended to enable officers to be authorised in writing to issue Fixed Penalty Notices pursuant to the DCOs.

Written authorisation will have to be given to the officers issuing Fixed Penalty Notices under the DCOs.

### **FINANCIAL IMPLICATIONS**

The cost of public notices is expected to be in the region of £1,500 and any costs relating to the implementation of the fixed penalty system including officer time can be managed from within existing budgets.

The introduction of the Dog Control Orders may potentially increase revenue income through issuing fixed penalty notices, but income levels would be difficult to predict. Any income will be highlighted as part of the quarterly monitoring report and included in the revenue budget as part of the forthcoming budget processes.



**OTHER RESOURCE IMPLICATIONS****Human Resources:**

No implications identified.

**Information Services:**

No implications identified.

**Property:**

No implications identified.

**Open Spaces:**

As detailed in the report the proposals do impact on open spaces and seek to balance the use of open space in the best way.

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments.

**MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has been consulted and has no further comments.

**BACKGROUND PAPERS**

Clean Neighbourhoods and Environment Act 2005

Defra Guidance on Dog Control Orders  
Report to Cabinet 6 December 2011 –  
Consultation on Dog Control Orders  
Consultation responses

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## APPENDIX 1

### Appendix 1.

#### Dog Control Order Public Consultation - Analysis of Responses Received.

Please note that the wordings below paraphrase the responses made by consultees.

	Survey	Email	Letter	Face	Total
<b>Total Individual responses received:</b>	<b>403</b>	<b>265</b>	<b>27</b>	<b>151</b>	<b>846</b>
<b>Fouling</b>					
More dog bins needed.	18	3	3		24
More signs.	18		2		20
Irresponsible people will not clean up whatever the fine.	14	3			17
Bigger Fines.	12	2	1		15
More wardens needed.	9				9
Over reaction to a small problem, punishing sensible dog owners.	5				5
Agree about fouling there should be stricter actions taken.	4		2		6
How to identify an authorised Officer of the LA.	3		1		4
Why fine, just educate.	3				3
I am in favour of an instant fine for not cleaning up after your dog.	3				3
How much will it cost to enforce?	3				3
Dog bins need emptying more often.	2				2
Please do what you say and prosecute offenders.	1				1
<b>Dogs on lead by direction</b>					
More signs will be needed or fining will not be fair.	1				1
<b>Dog exclusion areas</b>					
Why are dogs not banned from all sports fields.	14	1	1		16
Banning dogs from Parks is a good idea.	12	2	2		16
Dogs should not be allowed in Dallas Road Gardens.		6			6
Extend beach ban.	3	1			4
More signs are needed and bigger fines.	2				2
Banning dogs from Parks may have a negative effect on tourism in area.	2				2
Continued overleaf.					
<b>Dogs on leads</b>					
Should be off the lead on cycleways. More dangerous when on a lead.	117	162	18	60	357
Dogs need proper off lead exercise.	21	19	1		41
It should be mandatory to have a dog on a lead on cyclepaths or towpaths.	17	15		86	118
Over reaction to a small problem, punishing sensible dog owners.	6	7			13
No local provision for dog exercise / meeting areas.	4	8			12
Short leads only, especially on cycleways.	6	2	1		9
More signs.	3	1			4
More wardens needed.	3				3
Dogs should be on leads in cemeteries and church yards.	3				3
Why fine? Just educate.	2	1			3
Good idea to enforce dogs on leads and extend area of control.	1	2			3
Dogs should be allowed off leads on slipway.		3			3
Dogs should be allowed off leads on promenade.		3			3
Bigger Fines.	2				2
More manpower needed to carry out patrols and catch the guilty parties.	2				2
All dogs should be microchipped.	1	1			2
Retractable leads should be allowed.	1	1			2
Dogs on leads on pavements and in towns.			2		2
How do I walk with two sticks and put my dog on a lead.	1				1
Dogs on leads everywhere between 9.30 and 18.00 in the Summer.	1				1
Dogs off lead area in Happy Mount Park.			1		1
<b>Notes: All responders may have highlighted more than one issue that has or has not been noted, dependant on relevance to information sought.</b>					