

animals

Can I keep a pet?

Maybe ... it all depends on your by-laws and the local authority rules.

What do the by-laws normally say?

All by-laws are different – so you need to obtain a copy of the by-laws for your body corporate.

Some examples of what by-laws might say:-

- Straight Out **NO**
- Straight Out **YES**
- Small pets only
- Only if you first get the written permission of the body corporate

Guide, hearing and assistance dogs

For guide, hearing and assistance dogs you can basically ignore the by-laws.

If you have a disability under the *Guide, Hearing and Assistance Dogs Act 2009* and rely on your animal, you do not need to ask permission before bringing a dog into a body corporate property.

Does NO mean NO!

The complete ban on keeping animals in a community titles scheme has been the subject of numerous dispute resolution applications lodged with the Office of the Commissioner for Body Corporate and Community Management.

Since the introduction of section 180(7) of the BCCM Act in 2008 by-laws that have prohibited pets have been consistently ruled as oppressive and unreasonable. In one application, the adjudicator's order (which supported the no pet by-law) was appealed at the Queensland Commercial and Consumer Tribunal (CCT) (now known as the Queensland Civil and Administrative Tribunal—QCAT).

In this case, decided in June 2008, the member of CCT considered whether a by-law that set an absolute ban on

all animals was reasonable. He considered a hypothetical situation where an owner sought approval to keep a gold fish, and stated:

'Since there is clearly no rational basis upon which it can be said that the keeping of a gold fish in a safe and healthy environment could be a matter which could cause any difficulty to any other lot owner, yet is the subject of an "absolute" ban, the conclusion is fairly open that such a by-law is "unreasonable".'

Based on that order, adjudicators have consistently found that by-laws that impose a complete ban on animals are invalid.

When may a body corporate reasonably say no?

There have been circumstances where a body corporate's decision to say no to a pet request has been upheld by adjudicators.

The adjudicators considered the impact of the pets on other owners when they made their decisions. In these applications other owners provided evidence that they suffered from severe allergies or phobias to dogs.

OUR RECOMMENDATION

Don't just say **NO** based on what you think is the perceived best interests of the pet.

We suggest that you consider the request very carefully and impose some reasonable conditions as follows:-

- *Written consent has been obtained from the owner, if applicable and*
- *The dog/cat must be kept completely within the lot and is not permitted onto common property (with the exception of when the dog/cat is required to enter and/or exit the scheme) and*
- *When entering and /or exiting the scheme, the animal must be restrained, such as via a leash or in a carry bag, and*
- *The dog/cat must be kept and managed in accordance with all relevant Local Authority By-laws in relation to the keeping of dogs/cats generally; and*
- *If required by law, the animal must be registered with the Local Authority and must wear an appropriate identification tag*

- *The dog/cat must not create noise likely to interfere with the peaceful enjoyment of a person lawfully on another lot or the common property; and*
- *In the event the dog/cat was to defecate on the common property or another owners lot, the owner of the offending dog/cat must appropriately clean up after it.*
- *Reasonable steps must be taken to keep the dog/cat in good health and free from fleas and parasites*
- *The authorisation is only for the <<insert breed>> as described in the letter and no other animal.*
- *Should the body corporate receive three (3) substantiated complaints in regard to the keeping of the dog/cat within a three month period the Body Corporate may withdraw the approval for the dogs/cats and the owner shall remove the dog/cat from the scheme land within 30 days of receiving a notice to do so from the Body Corporate.*

But I am still worried about the pet causing a nuisance!

Before you say no you really need to reflect about what you really know about the pet and its owner.

- Do you really know that the pet is a nuisance pet?
- Do you really know the pet owner is an irresponsible pet owner?

It is really not right to make assumptions, because if the matter is taken to dispute resolution, the pet will more than likely be allowed.

If a problem does arise – this is when you need to rely on the conditions to resolve the problem.

We totally understand it would be easier to ban the pet from the outset ... but the law simply does not support blanket bans because it would be easier.

Some people use the expression “*nip the problem in the bud*”. Once again that is more than likely not proper justification for just saying no.

We are creating a Precedent!

Creating a precedent is a concern for many owners. However, any decision to approve a pet is made on the specific circumstances of the matter on a case by case approach.

It is a “Pet Free” Building!

I purchased my unit on the basis the by-laws stated the building was “Pet Free”.

Unfortunately, you may not have taken legal advice to understand exactly what “Pet Free” actually means. Because “Pet Free” does **not** mean no pets it merely means no inappropriate pets eg Pit Bull Dogs.

Some Quotes from Adjudicator Orders

Ascot Manor [2012] QBCCMCmr 401 (31 August 2012)

“I hereby order ... the owner of Lot 5, shall be permitted to keep her dog on Lot 5 ...”

“In determining any pet application, the committee and/or body corporate must act reasonably”

Note: Costs were awarded to the owner of Lot 5

Jauloura Court [2011] QBCCMCmr 87 (28 February 2011)

“I hereby order ... the owner of Lot 3, shall be permitted to keep the cat known as ‘Gypsy’ in Lot 3 ...”

“To act reasonably I consider that the Body Corporate must consider whether a proposed pet will have any impact on other occupants, not whether they personally like or dislike the proposed pet or species of pet”

Kings Row Centre [2010] QBCCMCmr 81 (22 February 2010)

“I am further satisfied that the prohibition on the keeping of cats and dogs merely amounts to a valid regulation of the use of lots and does amount to a prohibition on the use of lots or a prohibition on the keeping of any pet.”

Moreton View Tower and Villas [2013] QBCCMCmr 391 (30 September 2013)

“I hereby order that By-law 16.3 was at all times void.”

“By-law 16.3 Irrespective of 16.1 and 16.2 no dogs are to be approved or permitted to reside or visit any Lot or Common Property.”

Nut Tree Hill [2014] QBCCMCmr 326 (8 September 2014)

“I further authorise ... of lot 35 to keep her dogs, Bella and Benji ...”

“Keeping pets is a normal residential activity”

As well as Body Corporate Approval ... some Rules from the Toowoomba Regional Council



Number of allowed dogs

The number of dogs you can keep depends on a number of circumstances including the size of your property, appropriate enclosures, supervision available, the likelihood for nuisance to neighbours, the amenity of the surrounding area and other considerations.

The number of dogs allowed (when registered) within our region:

- 1 dog* on a property with an area less than 450m²
- 2 dogs* on a property with an area between 451m² and 4,000m²
- 3 dogs* on a property with an area between 4,001m² and 40,000m²
- 4 dogs* on a property with an area greater than 40,000m²

Working dogs are considered separately.

* A dog is over the age of 12 weeks.

How to apply to keep more dogs

A keeping of animals and excess animals application form is available upon request from TRC (but may also require body corporate approval)

Prohibited dog breeds

Council prohibits the keeping of the following dog breeds, including their offspring, cross breeds or types.

- Pit Bull Terrier
- Dogo Argentino
- Fila Brasileiro
- Japanese Tosa

Number of allowed cats

The number of cats you can keep depends on a number of circumstances including the size of your property, appropriate enclosures, supervision available, the likelihood for nuisance to neighbours, the amenity of the surrounding area and other considerations. Eg:

- 2 cats* on a property with an area less than 450m²

- 3 cats* on a property with an area between 451m² and 4,000m²
- 3 cats* on a property with an area more than 4,000m².

* A cat is over the age of 12 weeks.

How to apply to keep more cats

A keeping of animals and excess animals application form is available upon request from TRC (but may also require body corporate approval)

Criteria for the keeping of animals

1. Whether the premises on which the animals are to be kept is appropriately sized.
2. Whether a residence exists on the premises.
3. Whether a proper enclosure is maintained on the premises. That this is properly maintained in a clean and sanitary condition and wastewater from enclosures are drained appropriately.
4. Whether someone will be resident on the premises on which the animals are to be kept.
5. Whether the animals will be properly supervised.
6. Whether excreta, food scraps, dead animals and any other material that may be offensive is managed appropriately.
7. That nuisance is not caused by emissions such as aerosols, fumes, light, odour, particles or smoke.
8. If the animal requires a 'Prescribed Permanent Identification Device' (PPID or microchip), whether this has been complied with. Additionally, ensure that the animal is adequately identified so that the owner's name, address and telephone number are readily ascertainable.
9. Whether the applicant is a suitable person to hold the approval.
10. Whether the grant of the approval for the prescribed activity on the premises is likely to:
11. Cause nuisance, inconvenience or annoyance to occupiers of adjoining land; or
12. Affect the amenity of the surrounding area; or
13. Have a deleterious effect on the local environment or cause pollution or other environmental damage.
14. If the application relates to the keeping of an animal or animals on multi-residential premises:
15. Whether the applicant is entitled to make use of a common area; and
16. Whether the applicant has exclusive possession and control of the whole or a part of the common area for the purpose of keeping the animal/s; and
17. Whether the applicant has the written permission of the person or body which manages or controls the common area to use the common area, or a part of the common area, for the purpose of keeping the animal/s.
18. Where the animals are to be kept on premises other than multi-residential premises and the applicant is not the owner of the premises — whether the applicant has the written permission of the owner of the premises to keep the animal or animals on the premises.
19. That minimum standard for the keeping of particular species or breed is met. Eg: Schedule 5 of Subordinate Local Law No. 2 (Animal Management) 2011.
20. History of any related and substantiated complaints.
21. Change in status in the animal/s. Including but not limited to animals being sold, given away, relocated or deceased. That Council has been advised. That animals approved in previous applications are not being replaced with another animal without approval. I.e: Applications are not transferable to any other animals, properties or any other person.
22. That the term of any approval is appropriate.
23. Whether the applicant has been refused a similar type of approval by other authorities.
24. If the application relates to the keeping of dogs:
25. Whether the animals identified in the application are registered with Council.
26. If the application relates to the keeping of cats:
27. Whether the cats have been desexed; and
28. Whether the cats have been fitted with an approved microchip.