

Cats and local government

There's been recent media commentary that cats have suddenly become a problem for Councils. This paper looks at what the issues are and what should be done about them.

What's the alleged problem?

Cats are alleged to be causing a range of problems in New Zealand. These include native bird and wildlife predation, spreading toxoplasmosis, and causing nuisance to some members of some communities. The problems are allegedly so severe that the Wellington City Council has introduced new animal bylaw provisions, and the Dunedin City Council is lobbying to have LGNZ approach the government for national legislation.

In addition, there has been extensive lobbying across the country for cat control from the Morgan Foundation, sometimes via local self-styled environmental groups. All these voices claim that cats are a growing menace that needs to be addressed, and there have been some attempts to link the elimination of domestic cats with the government's Predator Free NZ strategy.

When we talk about cats, what do we mean?

There's been a great deal of effort to conflate feral cats (a genuine pest) with stray cats and companion cats. However, they are defined quite differently in the law. Feral cats are solitary, don't depend on human support and already have legislative provisions aimed at controlling them. These are administered by DOC and regional councils.

Stray and companion cats are not feral. Both depend on human support to survive, and intentionally killing a stray or companion cat is an offence. The ownership of cats is protected under common law.

According to the NZ Companion Animal Council, there were around 1.1 million companion cats in New Zealand in 2015, down from 1.4 million in 2011. There are no accurate estimates for stray or feral cats.

What's the current legal state for local councils?

According to Mai Chen from Chen Palmer, one of New Zealand's leading public law firms:

Councils have the power to make bylaws under the Local Government Act 2002 and the Health Act 1956 for the promotion and protection of public health and to protect the public from nuisance. It does not have the power to make bylaws for protection of wildlife, this being the role of the Governor-General, acting on the recommendation of the Minister of Conservation, under the Wildlife Act 1953.

In other words, no matter how passionately Councillors or ratepayers may feel on the subject of protecting native birds from the alleged harms caused by cats, Councils have no legal powers to act on this.

Isn't toxoplasmosis a problem, though?

For a minority of people, toxoplasmosis is a genuinely serious disease. However, it is not tracked as a notifiable disease in New Zealand – or, indeed, in any other OECD country that we have been able to find. The Ministry of Health does not have a current or planned work programme aimed at toxoplasmosis. There is no evidence that inflection levels per capita are increasing in New Zealand.

While cats are able to spread the disease, the infectious period is short – around two weeks for most animals, generally early in life. And according to the academic medical literature, the majority of infections of people come from the food chain rather than as a result of contact with cats.

Aren't there problems with nuisance cats?

Undoubtedly some people are irritated by the behaviour of some cats. However, if Councils were to want to act on this, they would need sufficient probative evidence to demonstrate that the harm was genuine, widespread, and warranted the kinds of interventions being proposed. To date, the evidence acquired by Councils has been largely anecdotal and unsupported by the robust approaches that would stand up to legal challenge.

In addition, any intervention to reduce nuisance would have to meet the standards in the LGA – it would need to be effective at reducing the harm, proportionate to the level of harm, and cost-effective. Universal microchipping comprehensively fails all three of these tests.

Wouldn't keeping cats indoors at night meet the test and protect wildlife?

According to Consultant Ecologist Mark Bellingham, quoted in the NZ Herald:

“The thing is, you're talking about cat curfews, well the size of the evidence is actually not very good on that, because it seems that at night cats are actually really good at getting rid of rats and mice. That's the bulk of what they take. They tend to hunt birds more during the daytime.”

So imposing cat curfews might reduce a minor amount of nuisance – although no evidence has yet been presented to support the theory – but it's unlikely to have much of an environmental benefit. In fact, rodent populations may well increase if all cats were confined indoors at night.

So cats do have positive impacts?

The preferred prey of cats is rodents and small mammals. As grain plants and livestock became domesticated 9,000 years ago in the Fertile Crescent, wild cats adapted to living with humans, hunting rodents in grain stores and “abandoning their aggressive wild-born behaviours”, which led to today's house cats. In effect, cats are self-domesticated.

If cats were removed entirely from the New Zealand ecosystem, there would likely be an explosion in rodent numbers, with adverse effects on both ecosystems and human health. This factor is typically ignored by anti-cat activists.

The effect of the selective removal of one species was vividly illustrated in Chairman Mao's China, when a campaign was run to rid the country of sparrows, which were accused of eating a large portion of the country's grain crop. Uncounted numbers of sparrows were killed, but the result was an explosion of locust numbers, which were the preferred prey of sparrows. Millions of people died of starvation in the resulting famine.

As far as we can tell, there has been no modeling of the impacts of removing cats from New Zealand, so the actual effects are completely unknown.



Doesn't community wellbeing come into this?

Leaving aside their usefulness as a rodent control mechanism, the primary function of cats in urban settings is as companion animals. For many people, cats are an essential part of their support network – particularly for those who are geographically or socially isolated from family members.

Despite their solitary reputation, most domestic cats are friendly and are very good at providing companionship for people, including the disabled, the elderly and those for whom dog or other pet ownership is not feasible. The wellbeing of these people also needs to be taken account of when cat control measures are being proposed, not just the wellbeing of those who claim to be annoyed by nuisance behaviours.

Isn't restricting cats just a sensible idea anyway?

No policy comes without direct and indirect costs, and cat control is no exception. There are significant financial impacts from some of the proposed interventions, such as mandatory microchipping.

The Taxpayers' Union has calculated that microchipping half of the current cat population – a conservative estimate of the number of animals that would fall under a mandatory regime – would cost around \$56 million, plus a further \$9 million per annum for the replacement population. It's not all clear what benefits would be achieved from this additional economic burden being placed on ratepayers, particularly given that it excludes any compliance or enforcement costs.

Doesn't the SPCA support restrictions on cats?

The SPCA have published guidance for Councils on managing stray cats, using the proven trap/neuter/return approach. Their preferred way of managing unwanted cats is to trap and desex the animals, then return them to their colonies, which will gradually dwindle in size as the animals die of old age. It's a proven, effective and humane way of addressing stray cat numbers.

The SPCA are also concerned about animal dumping and maltreatment. All cat advocates are in favour of desexing, and of ensuring owners act responsibly and don't breed or dump unwanted kittens.

However, the proposed interventions such as microchipping and curfews will not address either of these issues. It is more likely that responsible owners will be imposed with unnecessary and ineffective restrictions, while irresponsible owners will continue to act as they do today. The consensus is that education and desexing subsidies will be more effective than every other intervention.

Why are cats being demonized?

Much of the impetus for restrictions on cats seems to have been driven by a small coterie of self-styled environmental groups proposing that New Zealand become cat-free, in a mistaken belief that it will be a panacea for declining native bird numbers.

While we respect these people's right to say what they think, we can only note that these groups do not appear to fund any primary ecological research, and that their efforts seem to be directed towards lobbying rather than evidence-based policy development.

However, debates about cats are nothing if not headline-grabbing, and so can be useful for those looking to create a political profile in a busy media environment.

Case study: the Wellington City Council bylaw

In 2016, the Wellington City Council updated its Animal Bylaw to impose novel and unique restrictions on cats. This included mandatory microchipping.

Action on the bylaw was driven by its impending expiry under the provisions of the LGA, so it needed to be renewed to avoid it lapsing. However, this pre-dated any development of a matching Animal Policy – which at the time of writing is still progressing through the policy formulation and consultation process. To state the obvious, good practice requires that policy development precedes bylaw formulation, not the other way round, and it is concerning that the Wellington City Council has not managed its bylaw renewal process more responsibly.

LGOIMA requests demonstrate that the Council did not formulate the bylaw using an evidence-based approach. Rather, the then-chair of the Environment Committee asked officers to look into how cat microchipping could be made mandatory. Subsequent investigations by officers appeared to focus on how this outcome could be rationalised, rather than on assessing what harms were evident and how they could best be addressed.

During public consultation, the Council was warned by external legal advice that attempting to protect wildlife was likely to be *ultra vires* – that is, illegal. This is because the Council has no power to protect wildlife, as Parliament has conferred this role on the Department of Conservation. However, the vast majority of research conducted by officers was aimed at wildlife protection, meaning that the bylaw may well have been formulated for an improper purpose.

The WCC's legal advice indicated that there would also be issues with the chosen interventions. Their legal counsel, DLA Piper, stated that:

Council also needs to be careful that the proposed restriction actually addresses the identified problem. For example, if the problem is cats killing wildlife, a Bylaw requirement to microchip cats is unlikely to address the identified problem.

It is not clear what the problem is that the WCC bylaw is addressing, nor that the interventions will work to reduce the unstated harms being caused. Further, it seems likely that the bylaw is *ultra vires* and would not survive a judicial review. Other Councils should be cautious about using it as a template for managing cats.

