

Council Briefing Agenda

Date: 10 August, 2021

Time: 10:30 am

Location: Council Chamber
Forum North, Rust Avenue
Whangarei

Elected Members: Her Worship the Mayor Sheryl Mai
(Chairperson)
Cr Gavin Benney
Cr Vince Cocurullo
Cr Nicholas Connop
Cr Ken Couper
Cr Tricia Cutforth
Cr Shelley Deeming
Cr Jayne Golightly
Cr Phil Halse
Cr Greg Innes
Cr Greg Martin
Cr Anna Murphy
Cr Carol Peters
Cr Simon Reid

For any queries regarding this meeting please contact
the Whangarei District Council on (09) 430-4200.

1. Apologies

2. Reports

2.1. Review of the Animals Bylaw – section 155 LGA assessment 1

3. Closure of Meeting

2.1 Review of the Animals Bylaw – Section 155 LGA assessment

Meeting: Council Briefing
Date of meeting: 10 August 2021
Reporting officer: Vita Strohush (Strategic Planner – Bylaws)

1 Purpose

- To carry out statutory determinations for bylaw review under Section 155 of the Local Government Act 2002
- To seek direction on the preferred option for developing a draft Statement of Proposal for public consultation.

2 Background

A report presented to the Council Briefing on 26 May 2021 concluded the implementation of the Animals Bylaw since 2017 has overall been successful, with low complaints numbers. Despite limited numbers of formal complaints regarding cats, cat management is frequently brought to the attention of Council and is a relatively high profile community issue.

The Elected Members requested further details around options for the management of cats. This report discusses the options for managing cats with the assessment of these options against the requirements of the Local Government Act.

3 Discussion

Since 2017 the Bylaw has performed well, with low complaints numbers. The Bylaw provides adequate regulation and has specific provisions in relation to bee-keeping and poultry - both being areas that have tended to generate complaints in the past.

There is a high level of community interest in relation to the keeping of cats. Through the 2021 LTP consultation process Whangarei District Council received 1019 submissions in relation to nuisance caused by cats, public health issues and cat welfare concerns.

Furthermore, Northland Regional Council expressed support for increased regulation of cats. NRC advised a critical component of pest management is biosecurity pathway management. In the case of cats the pathway is pet to stray, stray to feral. On NRC advice, microchipping could be helpful to reduce the pathway of cats becoming feral or stray by making the process of identification of owned cats simpler and less time consuming. Microchipping could also give greater confidence to vets dealing with cats to establish whether a cat is indeed feral or stray. Other means of cat identification, such as collars, are believed unlikely to provide sufficient certainty in terms of meeting the legislative requirements of identification, as collars can come off or become lost. The Ministry of Primary Industry's Companion Cats Code of Welfare already includes micro-chipping as recommended best

practice. SPCA is also supportive of microchipping to assist with its obligations under the Animal Welfare Act 1999.

Acknowledging the above are legitimate concerns, Council's bylaw-making powers in relation to animals (excluding dogs) are limited by the provisions in the Local Government Act. These powers relate mainly to nuisance and public health. Addressing problems with stray and feral cats, assisting in pest management, protecting wildlife and birds, and generally providing for animal welfare sit outside the lawful purposes of the Council's bylaw-making power in sections 145 and 146 of the LGA because they are not problems associated with the keeping of animals. This report discusses the options Council has for regulating cats.

3.1 Section 155 LGA analysis

In accordance with Section 155 of the Local Government Act 2002, when reviewing a bylaw Council must determine whether a bylaw is the most appropriate way to address the identified problem, whether the bylaw is in the most appropriate form, and whether the bylaw options are likely to give rise to any implications for the New Zealand Bill of Rights Act 1990.

Attachment 1 provides detailed s.155 analysis with a particular focus on the options for managing cats. Attachment 1 identifies the following main options, but some options could be combined:

- Option 1: No specific cat clauses in the bylaw. Regulation under the general rule (clause 6)
- Option 2: Limit the number of cats allowed per property
- Option 3: Mandatory microchipping and registration
- Option 4: Mandatory desexing of cats.
- Option 5: Non-regulatory measures in addition to retaining clause 6

Staff recommend **Option 5** as the most appropriate option. It is considered the provision of funding for organisations that specialise in cat welfare would deliver the most impact in terms of numbers of new/additional cats microchipped.

3.2 Non-regulatory approach

The National Cat Management Strategy Group, which includes the SPCA, the New Zealand Veterinary Association and LGNZ, prepared a comprehensive report on approaches to addressing cat management. The report recommends enforcement of regulations to be secondary to educational and support roles Councils pursue in relation to cat management.

In the 2020-2021 funding year, Whangarei District Council granted \$4,635 through community funding to the Whangarei Cat Rescue Trust towards the Community Cats Desexing Program. This grant was used to desex 80 community owned cats during the funding timeframe. The programme was advertised on social media and secured an agreement with a local vet providing cat desexing procedures at affordable rates. The programme was prioritised to communities with the greatest need. The majority of cats assisted through the desexing programme were resident in Otangarei, Tikipunga, Raumanga and Ruakaka. With the grant, Whangarei Cat Rescue helped 62 cat owners in the community who otherwise would not have been able to afford the surgery. In addition, assistance was provided to 18 property owners who had abandoned cats show up on their property and were willing to look after the cats but not able to afford desexing them.

The work done by Whangarei Cat Rescue provides an example of effectiveness of a non-regulatory approach. The entire sum of funding provided by Council went towards desexing of local cats, and action was taken immediately, without the lead-in time needed for bylaw or policy implementation. In Wellington and Palmerston North similar work is done by The Outpawed Rescue Trust who rescue cats and kittens, provide vaccination, desexing microchipping and registration and arrange adoption.

Palmerston North City Council advised they noticed a significant decrease in cat related complaints as a result of educational activities and work with the Outpawed Rescue Trust.

The financial contribution to subsidized de-sexing, microchipping and registering programmes was considered through the deliberations process of the LTP with Council committing to provide \$15,000 per annum for the first 3 years.

3.3 Resources needed for a regulatory approach

Should Council wish to pursue options for a regulatory approach to cat management, estimated costs were provided at the briefing on 26 May 2021. For ease of use, this information is included again in **Attachment 2**.

Detailed costing has not been undertaken on this matter. There may be further associated expenses that we are unable to define at the moment. The level of funding required for regulatory measures would also depend on the desired level of enforcement, whether pro-active or complaints-based.

Palmerston North City Council advised they have no direct costs for enforcement of cat bylaw clauses, as they have adopted an educational approach to enforcement. Likewise, Wellington City Council did not provide funding for increased enforcement of cat bylaw clauses and focused on promoting voluntary compliance. However, subsidised microchipping was funded for 18 months during transition to new microchipping requirements in its bylaw.

3.4 Costs to cat owners

There are ongoing costs of owning a cat. In 2015, the New Zealand Companion Animal Council estimated basic for a cat costs around \$670 a year, with would include food, veterinary care, flea and worming treatments. Pet insurance is an additional cost. The median yearly veterinary expenditure by cat owners was estimated around \$100–199.¹

Requirements for mandatory microchipping and desexing would place additional cost burdens on pet owners. Approximate private vet costs in Whangarei are as follows:

- Microchipping \$75
- Registration on the Companion animal register \$30
- Desexing a female cat \$155
- Desexing a male cat \$90

It is recommended that educational activities would be beneficial to increase understanding in the community of the responsibilities and costs associated with owning a cat.

4 Reasonably practicable options

After completing the review, Council must decide on any amendments to the Bylaw. Section 77 of the LGA requires Council to identify reasonably practicable options in the course of decision-making. This analysis is provided in the table below:

¹ Gates, M. C., Walker, J., Zito, S., & Dale, A. (2019). Cross-sectional survey of pet ownership, veterinary service utilisation, and pet-related expenditures in New Zealand. *New Zealand Veterinary Journal*, 67(6), 306-314.

| Reasonably practicable options | | | |
|--|--|--|---|
| Option | Description | Advantages | Disadvantages |
| Option A – Retain the bylaw in its current form and continue without amendment | Council may find the current bylaw is appropriate to address the issues which it covers. Council still required to consult with the public on the proposal to continue the bylaw without any amendments. | Simple and streamlined process. | The definition of the urban area does reflect the current version of the District Plan and needs to be amended. If any major issues are identified through consultation, the process may need to be restarted. |
| Option B – Consultation on the full bylaw | Council may consult on the bylaw in its entirety and invite feedback specifically on the regulation of cats and the definition of the urban area. | Allows the full consideration of the bylaw. Any issues identified during consultation can be taken into account in deliberations and the development of the final bylaw. | Process may be delayed depending on outcomes of the public consultation. Regulation of cats is a relatively contentious issue. |
| Option C – Allow the bylaw to expire | In the absence of a bylaw Council would have to rely on a policy or the district plan to regulate the keeping of animals. | Nil | No enforcement mechanism. No mechanism to respond to nuisance and public health complaints arising from the keeping of animals. |

Staff recommendation is Option B – prepare consultation on the full bylaw.

Staff require direction on the approach to take in developing the Statement of Proposal for public consultation. Direction is needed from the Elected Members as to the preferred option to develop in regard to the issue of cats.

5 Next steps

Depending on the direction received at this meeting, the next step would be a briefing to discuss a draft Statement of Proposal for the amendment of the bylaw.

The tentative timeframe for public consultation in December 2021 as per the review timeline below.

| Animals Bylaw | |
|----------------------|---|
| Apr-2021 | scoping / sign off |
| May-2021 | Council briefing - scope |
| Jun-2021 | research |
| Jul-2021 | legal advice |
| Aug-2021 | Council briefing - issues and options / direction |
| Sep-2021 | SOP development |
| Oct-2021 | Council briefing - draft SOP |
| Nov-2021 | Council Meeting - adopt SOP |
| Dec-2021 | formal consultation |
| Jan-2022 | analysis/legal advice |
| Feb-2022 | Hearing/ deliberations |
| Mar-2022 | final drafting/ legal advice |
| Apr-2022 | adoption |

6 Attachments

Attachment 1 – s.155 LGA analysis of options for the review of the Animals Bylaw

Attachment 2 – Resources needed for a regulatory approach

Attachment 1 - Section 155 LGA analysis

2021 Review of the Animals Bylaw

When reviewing a bylaw, section 155 of the Local Government Act 2002 (LGA) requires Council to determine whether the bylaw is the most appropriate way of addressing the perceived problem, whether it is the most appropriate form of bylaw and whether the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990. These considerations will also be revisited before the final Statement of Proposal is developed for consultation on the reviewed bylaw, if any new issues may come to light.

Step 1: Defining the perceived problem

Under section 145 the LGA Council may make bylaws for the purpose of:

- protecting the public from nuisance
- protecting, promoting, and maintaining public health and safety
- minimising the potential for offensive behaviour in public places.

Council may also make bylaws in order to regulate the keeping of animals, bees and poultry under section 146(1)(v) LGA. Due to small lot sizes in urban areas, unrestricted numbers of animals could cause nuisances such as noise, odours and infestations of flies and vermin. Bees are extremely beneficial for biodiversity, however, challenges in densely populated urban environments arise in relation to hive poisoning, excrement on windows or washing and allergic reactions to stings.

There is a high level of community interest in relation to the keeping of cats. Through the 2021 LTP consultation process Whangarei District Council received 1019 submissions in relation to nuisance caused by cats, public health issues and cat welfare concerns. The submitters requested intervention by Council through funding and through introduction of specific cat management provisions into Council's Animals Bylaw. So far, Council allocated \$15,000 in Year 1 of the LTP to support microchipping initiatives.

The perceived problems with cats are:

- nuisance behaviours, such as fighting, running across roads, entering other houses and stealing other pets' food, and uncontrolled breeding resulting in unwanted kittens;
- public health concerns, such as toileting in neighbours' gardens, getting into rubbish, and spreading toxoplasmosis;
- cat hoarding by some individuals;
- difficulty distinguishing owned and unowned cats when carrying out pest control on Council-controlled reserves as required by the Northland Regional Pest Plan. Without reliable means of identification (such as microchipping), the pest control process is costly and time consuming;
- predation of wildlife by cats;
- financial and emotional impacts on persons who find and try to rehome the unwanted kittens;

- unwanted kittens that stray are unlikely to be microchipped or de-sexed, further contributing to stray and feral populations, including on Council-controlled reserves where Council is responsible for pest management;
- increased burden on the SPCA to deal with abandoned and mistreated kittens and cats when owners cannot be identified.

Some of the listed problems relate to nuisance and fall comfortably within Council's bylaw-making power under the LGA. However, pest control, protection of wildlife, and animal welfare concerns require separate analysis as to whether these are lawful purposes of bylaw-making powers of Council under the LGA.

Sections 145 and 146 of the LGA contain separate and stand-alone bylaw-making powers. Section 146 is not automatically restricted to the purposes in section 145, e.g. protection of the public from nuisance, protecting public health and safety etc. However, all bylaw-making powers must be exercised for the relevant statutory purpose, and all bylaws must be reasonable. Section 145 provides relevant context in deciding what the proper limits of the section 146 power are. Therefore, the bylaw-making power in section 146(a)(v) is restricted to addressing matters which properly arise out of the "keeping" of the cats, and not the mere existence or presence of cats in the district.

The National Cat Management Strategy Group, which includes SPCA and New Zealand Veterinary Association and LGNZ, prepared a comprehensive report on approaches to addressing cat management. The Report explains that most cat 'nuisance behaviours' are normal behaviours and care should be taken to avoid "in any way, allowing or encouraging cruelty towards cats" ⁽¹⁾. Acknowledging that natural cat behaviour can be considered nuisance behaviour by some people, the Report stressed the importance of education and awareness:

"Education is a key component of making people aware and accepting of normal cat behaviour, but also a key component of ensuring that cat owners limit the nuisance their cat causes to others (even if the nuisance comes from normal cat behaviour)."

When cats become stray or feral, they become pests and no longer fall under the scope of an Animals Bylaw under the LGA. Pest control is primarily the responsibility of NRC, but WDC is responsible for managing pests on land it controls according to the Reserves Act 1977 and the Northland Pest and Marine Pathway Management Plan. NRC provides support with trapping for mustelids and feral cats through the following programmes:

- High Value Areas (Tutukaka, Whangarei Heads and Brynderwyn area), and
- Community Pest Control Areas (CPCA) programme.

Community Pest Control Areas are established and run by communities with NRC support and funding. Land included in a CPCA can be privately owned, Department of Conservation (DOC) reserves, local council recreation areas, Māori land held in Trust, commercial pine forests, or other land tenures. Over the past decade 75 CPCAs have been established covering more than 130,000ha in parts of Northland. Current programmes include areas such as the Glenbervie forest and Mount Tiger area, and the Kiwi Link CPCA between Whangarei Heads and Tutukaka.

¹ LGNZ, SPCA and others. National Cat Management Strategy Group Report, August 2020. https://static1.squarespace.com/static/5d1bf13a3f8e880001289eeb/t/5f6d986d7bea696c449fa5a7/1601017986875/NCMSG_Report_August+2020.pdf

NRC does not have a cat trapping programme in the Whangarei urban area. However, live capture traps are available for loan if the person is able to euthanise the cat humanly. NRC has two agreements with vets that assist in loaning cat traps and euthanizing cats at a subsidized rate, however no such scheme is available for urban Whangarei.

One of the main difficulties with trapping of cats is around distinguishing owned and unowned cats. Legislation requires reasonable steps to be taken to identify owners of captured animals. This is particularly challenging when local authorities trap cats as part of pest control activities, as there is no public facility available to hold cats while identification is carried out. Likewise, there are challenges for vets when asked to euthanise an unidentified cat. The perceived problem is a lack of a reliable and widely adopted means of cat identification.

Step 2: Is a bylaw the most appropriate way of addressing perceived problems?

Most local Councils have bylaws covering the keeping of domestic animals. Whangarei District Council's Animals Bylaw was made in 2017. Council established at the time that non-regulatory measures would be insufficient to address the problem. The difficulty with any voluntary compliance regime is that individuals may not have an adequate incentive to comply.

Council's bylaws may only address problems within Council's bylaw-making power. Powers in connection with animals all arise under specific legislation, and not the LGA. The only reference to animals, in the LGA is the bylaw-making power in section 146. The intention of the Bylaw is to supplement existing legislation in relation to animals rather than duplicate it.

Specific legislation in relation to animals includes:

- *Animal Welfare Act 1999 and related codes of welfare*
Animal owners are required to provide for the physical, health and behavioural needs of their animals, including food, water, shelter and exercise. The act is enforced by the Ministry for Primary Industries (MPI) and the Royal New Zealand Society for the Prevention of Cruelty to Animals (SPCA). Under section 141, approved organisations may take animals into their custody, following which they must take reasonable steps to locate or contact the owner. One possibility, if the owner cannot be identified, is to destroy or otherwise dispose of the animal. Currently, the only "approved organisation" under the Act is the SPCA. Councils have no role or functions under this Act.
- *Health Act 1956*
The Act gives powers for Council to address general health nuisances. The abatement of these nuisances can be done by Council Environmental Health officers without creation of additional bylaws. Officers with the ability, if necessary, to enter a premise without notice to the occupier and abate the nuisance.
- *Biosecurity Act 1993*
Administered by the MPI and requires regional councils to adopt a pest management plan. Northland Regional Council (NRC) works with the Department of Conservation, Iwi, and community pest control groups. If land is occupied by WDC, Council is required to control pests in accordance with the Northland Regional Pest and Marine Pathway Management

Plan 2017 – 2027. The Council has the statutory power and obligation to control stray and feral cats on land which it controls, but not pest control more widely.

- *Impounding Act 1955*
An occupier of land may impound stock found wandering on their property or road. Council must establish a pound for wandering stock.
- *Land Transport Act 1998*
Provides for regulating the movement of livestock across or along public roads under the control of the Council. The Parking and Traffic Bylaw sets out the provisions for controlling the movement of livestock on roads.
- *Reserves Act 1977*
If a reserve is vested in WDC, Council has responsibilities for animal and pest control. Trespassing animals may be seized, and sold or destroyed.
- see Northland Reserves bylaw
- *Wildlife Act*
Provides for the protection and control of wild animals and birds and the management of game. The Act is administered by Department of Conservation and Fish and Game Councils. Schedule 5 lists Cats (Felis) as wildlife not protected in New Zealand. Territorial authorities have no role under the Wildlife Act.
- *The District Plan and the Resource Management Act*
The District Plan contains rules around noise and can set rules where kennels and catteries can be established. Some new subdivisions have covenants under the RMA prohibiting the keeping of animals such as cats, dogs and mustelids. This is outside the scope of the Animals Bylaw. The RMA provides a separate enforcement mechanism for compliance with consent notice conditions.
- *The Dog Control Act 1996*
Matters relating to the control of dogs are addressed in the Dog Management Bylaw 2013 and the Dog Management Policy.

A bylaw is not the most appropriate way for dealing with the problem if it is outside of the bylaw-making power. Council's ability to use the bylaw-making powers in relation to cats is limited to sections 145 and 146 of the LGA. Outside of the LGA, Council has no powers under any specific legislation applicable to cats. Problems arising from stray or feral cats, except on Council's own land, are not within Council's jurisdiction to address, but are dealt with by other organisations.

The language of the bylaw-making power in section 146 LGA indicates a restricted role for territorial authorities, limited to regulating matters that properly arise out of the "keeping" of cats. Animals are "kept" when they are owned and living at a particular location, and not when they are stray or feral. Any perceived problems potentially requiring a bylaw response must arise in that context e.g. having cats in proximity to other households and properties.

The power in section 146(a)(v) LGA **cannot** be used to:

- assist other entities, such as the SPCA, in their activities relating to the management of cats, including identification and disposal of strays and feral cats or treatment of injured cats;
- assist with pest control which, by definition, does not relate to “kept” cats (which are not pests);
- assist in dealing with the risk posed by cats to wildlife, such as native birds. That is a problem caused by cats generally, rather than the “keeping” of cats);
- assisting cat owners, for example, to locate their lost pets – unless that assistance is connected to a problem associated with keeping the cat.

Of the concerns listed above, it is suggested non-regulatory measures have the potential to deliver more targeted results in shorter time frames compared to a bylaw, for example through educational activities or community funding. The National Cat Management Strategy Group Report⁽²⁾ recommends enforcement of regulations to be secondary to educational and support roles Councils pursue in relation to cat management.

The gap which the existing Bylaw addresses is around managing the keeping of domestic animals in urban areas, and potential nuisance and health concerns it may create. These are still problems. There is nothing that would indicate an Animals Bylaw is no longer appropriate. It is recommended that the Animals Bylaw is retained as the most appropriate way to address the perceived problems within Council’s bylaw-making purposes.

Step 3: Is the Bylaw in the most appropriate form?

Since 2017 the Bylaw has performed well, with low complaint numbers. The Bylaw provides overall adequate regulation and has specific provisions in relation to bee-keeping and poultry - both being areas that have tended to generate complaints in the past.

Two sections of the Bylaw require discussion as to the most appropriate form of bylaw:

- whether specific provisions in relation to cats are required;
- definition of the urban area

In the absence of national level legislation, like that for dogs, Council must be careful to ensure any measures to regulate the keeping of cats are within the Council’s bylaw-making powers, and are not disproportionate to the extent of the perceived nuisance. In this context a requirement for mandatory de-sexing of cats would be seen as more onerous than microchipping or limiting the number of cats per property.

² LGNZ, SPCA and others. National Cat Management Strategy Group Report, August 2020.
https://static1.squarespace.com/static/5d1bf13a3f8e880001289eeb/t/5f6d986d7bea696c449fa5a7/1601017986875/NCMSG_Report_August+2020.pdf

Cat management

The current Bylaw provides for the management of cat behavior through the general provisions in clause 6:

6.1 The owner or person in charge of any animal must always:

- a. ensure that animal does not cause a nuisance to any other person*
- b. ensure that animal does not cause a risk to public health and safety*
- c. ensure that animal does not damage any property belonging to any other person.*

These provisions are broad enough to cover a variety of situations that arise in relation to cats as well as other animals. Enforcement officers have authority to require that owners comply with these obligations including, if directed, to remove the animals from the property within a specified period.

The National Cat Management Strategy Group Report⁽³⁾ identifies a range of cat behaviours that, although perceived by some people as nuisances, are considered normal animal behaviours. The Parliament has not at this time considered many of these cat behaviours to be sufficiently problematic, as evidenced by a lack of progress on any cat management legislation.

If Council wishes to pursue specific and additional bylaw provisions for regulation of cats, any such provisions must be within the bylaw-making powers and proportionate to the scale of the perceived problem, as discussed in Steps 1 and 2 above. Based on this, Council may consider whether bylaw regulation is necessary to address the following perceived problems related to the keeping of cats that fall within Council's bylaw-making powers under the LGA:

- Nuisance caused by cats to the public (as opposed to other cats), e.g:
 - entering other houses
 - spraying on carpets, furniture, fences, and walls by cats competing for territory
 - noisy fighting between cats and calls at night disrupting resident's sleep
- Public health concerns, e.g:
 - toileting in neighbours' gardens
 - getting into rubbish
 - spreading fleas and toxoplasmosis
- Related problems arising out of the keeping of cats, e.g:
 - uncontrolled breeding of unwanted kittens in sheds and garages on neighbouring properties
 - cat hoarding by individuals – nuisance, odour and public health effects arising from cat overpopulation in a given area
 - stealing other pets' food from neighbouring properties

The current bylaw is still considered to be appropriate to address the issues which it covers, with the possible exception of problems with cat ownership and behaviour. The following options analysis is therefore limited to consideration of that issue. Table 1 provides analysis of main options, but some could be combined.

³ LGNZ, SPCA and others. National Cat Management Strategy Group Report, August 2020.
https://static1.squarespace.com/static/5d1bf13a3f8e880001289eeb/t/5f6d986d7bea696c449fa5a7/1601017986875/NCMSG_Report_August+2020.pdf

Table 1: District Council options for managing problems with cats

| Option 1: No specific cat clauses in the bylaw. Regulation under the general rule (clause 6) | | | |
|---|---|--|---|
| Description | Advantages | Disadvantages | Appropriateness |
| <p>The owner of any animal must ensure that animal does not cause nuisance to any person, doesn't damage property and doesn't cause a risk to public health and safety.</p> <p>The current Bylaw under the LGA serves as a last resort to address animal issues by providing a legal basis to potentially taking the matter to the District Court. Whenever possible, more direct enforcement provisions are used in the first instance under the District Plan and the Health Act.</p> | <p>This is considered to be a cost-effective approach within the available legislative framework.</p> <p>The general clause is broad enough to allow enforcement of serious nuisance issues such as cat hoarding.</p> | <p>Perception that Council is not acting to address concerns of cat welfare.</p> <p>No direct way to address cat hoarding through the Bylaw, relying instead on assessment by enforcement officers.</p> | <p>This option is consistent with the empowering provisions of the LGA and Health Act.</p> <p>Outside of the bylaw, Council is free to work with the SPCA and NRC on educational campaigns and provide funding for cat management outside the bylaw.</p> <p>Environmental issues related to stray cats sit outside the scope of a bylaw under the LGA. Therefore, concerns about effects on native birds cannot be addressed through a bylaw.</p> |
| Option 2: Limit the number of cats allowed per property | | | |
| Description | Advantages | Disadvantages | Appropriateness |
| <p>Many councils have limits on cat numbers. The Health Act and the LGA provide the ability to introduce such a rule in the bylaw, so long as the limit is reasonable.</p> | <p>A limit on the number of cats can serve an educational purpose and could assist in encouraging an overall reduction in the number of cats in the District over a longer term.</p> <p>The existing bylaw deals with the behaviour of individual animals (cats). It does not address the cumulative effects of numerous cats. A specific clause limiting cat numbers would give a more readily enforceable option to address cat hoarding then having to</p> | <p>Cost. Issuing permits to persons who wish to hold more than the stipulated number of cats would require an operational budget, which has not been planned for in the current LTP. The costs of holding seized animals needs to be considered.</p> <p>Enforcement. Council has no ability to impound cats as they are not covered by the Impounding Act. Another option would be to seize cats under s.164 LGA, however then Council is required to hold seized property for up to</p> | <p>Number limits already exist in the bylaw for other animals.</p> <p>Existing practice from other councils shows it has been impracticable for enforcement officers to prove that excessive numbers of cats on a property actually "belong" to a particular property owner. Commonly, individuals who feed cats on their properties claim that they do not own these cats.</p> <p>Without reliable means of cat identification (such as</p> |

| | | | |
|--|---|---|--|
| | <p>rely on clause 6 and nuisance</p> <p>The Council could prosecute for the breach or seek an injunction requiring the person to comply with the bylaw.</p> | <p>6 months. Council does not have a facility suitable for cats, and there no funds budgeted for it.</p> <p>Perception. Risks creating unintended false expectations in relation to Council's ability to control the number of cats at each property. To seize any cats the enforcement officers would still require a warrant under the Search and Surveillance Act, which is a costly and lengthy process.</p> | <p>mandatory microchipping) Council would lack sufficiently effective means of compelling compliance with cat number limits.</p> |
|--|---|---|--|

Option 3: Mandatory microchipping and registration

| Description | Advantages | Disadvantages | Appropriateness |
|--|---|--|--|
| <p>Owners would be required to microchip and register their cats. If cats were uplifted for any reason or lost and found, owners would be required to pay a microchipping and desexing fee before their pet is returned.</p> | <p>Microchipping could assist enforcement of any limits to the number of cats allowed per property. Microchipping would allow owners to be identified faster and more easily.</p> <p>Owners may be more motivated to behave responsibly if their cat can be traced back to them.</p> <p>Microchipping would provide easier means of cat identification which would simplify pest control on Council controlled reserves, as well as NRC's pest control and wildlife protection work. However, pest control is not one of Council's bylaw-making purposes under the LGA.</p> <p>Microchipping could assist to return lost, sick and injured cats to their owners. However, animal welfare is not one of Council's bylaw-making purposes under the LGA.</p> | <p>Substantial and unknown enforcement costs to council. Additional financial burden on owners and ratepayers.</p> <p>Creating an expectation that Council should provide assistance with microchipping and desexing measures.</p> <p>Risk of legal challenge. A bylaw requiring mandatory microchipping would not meet the requirement of reasonableness of bylaws, because problems related to pest control, wildlife protection and animal welfare are not part of Council's bylaw-making purposes under the LGA and therefore cannot be taken into consideration. There are difficulties with demonstrating that microchipping serves to protect the public from nuisance or protect public health as per section 145 LGA or to address a problem associated with</p> | <p>Mandatory microchipping is likely to be disproportionate to the extent of experienced problems able to be addressed under Council's bylaw-making powers. This is because most of the benefits of microchipping are in relation to matters which are outside the Council's bylaw-making purpose under the LGA.</p> <p>Council does not have clearly established means of compelling compliance with the proposed provisions. Council does not have facilities to keep any uplifted cats.</p> <p>Other councils have concluded that they may make a bylaw to require microchipping of cats, however such approach has not been tested in court yet.</p> |

| | | the keeping of cats under section 146. | |
|--|---|--|---|
| Option 4: Mandatory desexing of cats | | | |
| Description | Advantages | Disadvantages | Appropriateness |
| All cats over the age of 6 months would be required to be desexed, unless an exemption has been issued by Council where cats are used for breeding. | <p>Mandatory desexing would directly contribute to reducing stray and feral cat populations over time. However, pest control is not one of lawful bylaw-making purposes under the LGA.</p> <p>There could be some cost savings for cat owners with reduced fighting amongst de-sexed cats leading to reduced vet fees for treating injuries.</p> <p>Property owners might also experience fewer issues with unwanted litters, spraying, stealing food and fighting by cats competing for territory.</p> | <p>Substantial and unknown enforcement costs to council. Additional financial burden on owners and ratepayers.</p> <p>Unintended consequences - creating an expectation that Council should provide assistance with microchipping and desexing measures.</p> | <p>Mandatory desexing is likely to be too onerous and not in proportion to the extent of experienced problems able to be addressed under Council's bylaw-making powers.</p> <p>Nuisance provisions have so far been used successfully to address any issues arising from the keeping of excess cats by individuals. Bylaw provisions cannot be applied to stray and feral cats. Animal welfare issues are not part of Council's bylaw-making powers.</p> <p>Where owned cats produce unwanted litters, responsibility for their welfare falls on the owners under the Animal Welfare Act 1999. The SPCA has an enforcement role under that Act.</p> |
| Option 5: Non-regulatory measures in addition to retaining clause 6 | | | |
| Description | Advantages | Disadvantages | Appropriateness |
| <p>The following non-regulatory approaches could be supported in collaboration with the relevant agencies, NGOs and private vets:</p> <ul style="list-style-type: none"> Education and promotion of responsible cat ownership Targeted subsidized microchipping of cats in the most affected neighborhoods | <p>Targeted funding for cat control in affected neighbourhoods can deliver noticeable results within shorter time frames. No additional enforcement fees for council.</p> <p>Allows to focus on environmental impacts of cats instead of being constrained to nuisance and public health matters.</p> | <p>Some individuals may lack the incentive to comply. However, any nuisance effects are covered in clause 6 of the bylaw.</p> | <p>Staff recommend this as the most appropriate option. It is considered the provision of funding for organisations that specialise in cat welfare would deliver the most impact in terms of numbers of new/additional cats microchipped.</p> <p>Council's obligation under the LGA to protect the public from nuisance is</p> |

| | | | |
|---|--|--|--|
| <ul style="list-style-type: none"> • Advocating against no-pet clauses in tenancy agreements to reduce abandonment of cats • Funding for community-driven cat welfare initiatives | <p>The National Cat Management Strategy Group Report⁽⁴⁾ recommends enforcement of regulations to be secondary to educational and support roles Councils pursue in relation to cat management.</p> | | <p>met under the general provision in clause 6 of the bylaw.</p> |
|---|--|--|--|

Staff recommend developing a Statement of Proposal based on Option 5. Council has already committed \$15,000 per annum through the Long Term Plan towards community funding for de-sexing and microchipping of cats.

Definition of an urban area

Part 3 of the Animals Bylaw regulates the keeping of poultry, stock and bees in urban areas. Urban area is defined by reference to zoning in the District Plan. Since the adoption of the Bylaw in 2017 zoning has changed and the reference in the Bylaw needs to be updated.

Current Bylaw text:

5.1

“Urban area means all Environments of the Whangarei District Plan; except for the following Environments:

- a. Countryside Environment
- b. Coastal Countryside Environment
- c. Rural Living Environment (or any alternative final title for this Environment as an outcome of the Whangarei District Plan review)
- d. Rural Countryside Environment (or any alternative final title for this Environment as an outcome of the Whangarei District Plan review)
- e. Rural ‘Urban Expansion’ Environment – un-serviced sites only (or any alternative final title for this Environment as an outcome of the Whangarei District Plan review)

Explanatory note: The rolling review of the Whangarei District Plan intends to change the names of the primarily rural environments of the District as part of that review. This review has yet to be finalised and the titles provided are provisional. Any changes to the titles will be dealt with through an amendment pursuant to section 156(2) of the Local Government Act 2002 to formalise the final names of the environments.”

⁴ LGNZ, SPCA and others. National Cat Management Strategy Group Report, August 2020. https://static1.squarespace.com/static/5d1bf13a3f8e880001289eeb/t/5f6d986d7bea696c449fa5a7/1601017986875/NCMSG_Report_August+2020.pdf

The restrictions on keeping certain animals are set depending on lot sizes:

| Animals | Restrictions |
|---------|--|
| Poultry | <ul style="list-style-type: none"> • up to 6 heads of poultry on premises under 2000 square metres • up to 12 heads of poultry on premises of 2000 square metres or more • no roosters on any premises in an urban area |
| Stock | <ul style="list-style-type: none"> • no stock on premises under 4000 square metres • Council may issue permits to keep stock in an urban area on premises of 4000 square metres or more |
| Bees | <ul style="list-style-type: none"> • Up to 2 hives on properties 700 square metres or less • Up to 4 hives on properties 700-4000 square metres • Up to 6 hives on properties 4001 square metres or greater |

The following change to the Bylaw wording will need to be included to bring it in alignment with the Operative District Plan:

5.1

“Urban area means the following Zones of the Whangarei District Plan:

- a) Residential Zones*
- b) Commercial and Mixed Use Zones*
- c) Rural Village Zone*
- d) Rural (Urban Expansion) Zone*
- e) Special Purpose Zones*
- f) Precincts*
- g) Development Areas*

Explanatory note: Any further changes to the zone titles in the District Plan will be updated in the Bylaw through an amendment pursuant to section 156(2) of the Local Government Act 2002 to formalise the final names of the environments.”

Step 4: Bill of Rights assessment

Under section 155(3) of the LGA, the Council is required to consider whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA).

The Bylaw in section 10 provides for seizure of stock, poultry and bees and seizure of property that is materially involved in the commission of an offence under the Bylaw. This provision may engage section 21 of the NZBORA that protects the right “to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise”.

The powers for seizure of property in the Bylaw arise out of sections 164 and 165 of the LGA. Any such seizure requires a warrant under the Search and Surveillance Act 2012. Therefore, it is considered the potential seizure of animals and property materially involved in the commission of an offence would be a reasonable restriction of the right under the NZBORA.

The Bylaw provides other restrictions on the number of animals that can be kept, restrictions on owning roosters and positioning of beehives. It is considered these restrictions in the Bylaw are reasonable and proportionate to address public health and nuisance issues. The Bylaw enables most residents to keep animals if they wish, within the parameters set by the Bylaw. NZBORA rights are not impacted.

Attachment 2 - Resources needed for a regulatory approach to managing the keeping of cats.

Potential costs of enforcing limits on cat numbers and/or mandatory microchipping or desexing of cats are difficult to estimate. The level of funding required for regulatory measures would also depend on the desired level of enforcement, whether pro-active or complaints-based.

The true size of cat population in the Whangarei District is unknown. Staff are awaiting information on the number of registered cats from the New Zealand Companion Animal Register.

A significant proportion of cat-related nuisance complaints would be caused by stray cats which are within the Northland Regional Council's pest control activity. While Whangarei District Council received only 9 cat-related complaints in the past 2 years, Northland Regional Council receives about 20 complaints per month.

The New Zealand Companion Animals Register currently has 8157 registered in Whangarei. Companions Animals New Zealand have estimated there would be around 23048 cats in Whangarei households, approximately 11293 of them microchipped.

It is difficult to provide an estimate of what cat management might cost. Looking at the costs of dog management does not provide a direct comparison, as there are some unique differences such as control of menacing and dangerous dogs. However, the cost of dog management is the only ballpark figure currently available.

In 2020 the total cost of dog control and enforcement for Council was \$832,000. This includes:

- \$689,000 – contractor's fee for enforcement
- \$82,000 – legal fees (legal opinions and prosecutions)
- \$11,000 – Ministry of Justice lodgement fees
- \$24,000 – animal shelter maintenance
- \$18,000 – debt management and collection costs

Some of the costs of dog control enforcement are recouped through dog registration fees under the Dog Control Act. In the absence of legislation to allow Council to charge a cat registration fee, any cat enforcement expenses would have to be funded through rates and would constitute non-budgeted spending.

Requirements for mandatory microchipping and desexing would place additional cost burdens on pet owners. Approximate private vet costs in Whangarei are as follows:

- Microchipping \$75
- Registration on the Companion animal register \$30
- Desexing a female cat \$155
- Desexing a male cat \$90

The following estimated costs of regulatory cat management are provided below as an indication only. Detailed costing has not been undertaken on this matter. There may be further associated expenses that we are unable to define at the moment.

| Options | Cost | Details |
|---|---|---|
| 1. Non-regulatory approach | From \$15,000 per annum | <ul style="list-style-type: none"> • \$15,000 per annum committed through the LTP to de-sexing and microchipping • In the 2019-20 year \$4,635 was granted to the Whangarei Cat Rescue to support a year-long desexing programme. • Consideration of any funding to support the SPCA • Targeted educational programmes to promote responsible pet ownership |
| 2. Complaints-based enforcement only for limits on cat numbers per property (e.g. maxim 5 cats over the age of 6 months per property) | Estimated approximately \$400,000 | <ul style="list-style-type: none"> • 2 cat enforcement officers and 1 administrator • No contribution for de-sexing or microchipping, these costs would fall directly to cat owners • No proactive work • Limited number of complaints |
| 3. Enforcement at a level similar to dog management | Indicative from \$1m, noting that the cost of dog management is not directly comparable | <ul style="list-style-type: none"> • 6 officers and 2 administrators • No contribution for de-sexing or microchipping, these costs would fall directly to cat owners |
| 4. Full-scale proactive enforcement | Upwards of \$3.5m | <ul style="list-style-type: none"> • 6 officers and 2 administrators • Cost of enforcement and complaint management from \$1m per year • Cat pound/shelter facility from \$2.5m • Any contribution to de-sexing or microchipping would incur additional cost |

Depending on the preferred direction Elected Members wish to take, further investigations of cost will be essential.