

# S U B M I S S I O N S

To: Local Authority Submissions, Senior Policy Officer,

From: Mr Craig DUNN, Paw Justice

Reference PJ-201803

Date: 28 March 2018 (Prior to the deadline of 28 March 2018)

Subject: **SUBMISSIONS ON THE CAT MANAGEMENT PROGRAM**

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## **POSITION STATEMENT**

1. This submission is provided by Craig Dunn of Paw Justice to Auckland Council regarding the Proposed Regional Pest Management Plan 2018.<sup>1</sup>
2. Paw Justice opposes the cat management plan proposed by local authorities and associates (“the local authority proposal”), as it has been presented. Paw Justice acknowledges and supports elements of the local authority proposal in so far as it promotes responsible animal care, however, the opposition to the local authority proposal (as it has been presented) is recorded on the grounds that the proposal:
  - 2.1. Fails to provide credible, verifiable and appropriately applicable evidence to satisfy statutory requirements relevant to standards of responsible governance;
  - 2.2. Fails to apply principles of modern whole-of-system ecomanagement; and as a consequence the local authority proposal
  - 2.3. Fails to adequately or appropriately protect wildlife (e.g. birds) and other sentient animals (e.g. cats); and
  - 2.4. Incurs unnecessary costs to the taxpayer, ratepayer, and people who provide responsible care of animals (e.g. cats) and other animals.

## **ABOUT PAW JUSTICE**

3. Paw Justice Charitable Trust (“Paw Justice”) is a non-profit organisation that is committed to responsible care of all animals and the reduction of instances of animal abuse. Paw Justice run animal welfare campaigns, youth education programmes, and provide a food bank and emergency veterinary fund.
4. More information can be found at [www.pawjustice.co.nz](http://www.pawjustice.co.nz)
5. Paw Justice records that it seeks the opportunity to appear before the Council to speak to these submissions.
6. Queries about this submission should be directed to:

Paw Justice Charitable Trust  
PO Box 74415  
Market Rd, Remuera  
Auckland, 1052  
Attention: Craig DUNN

Phone: +64 (0)9 6341286

Email: [craig@pawjustice.co.nz](mailto:craig@pawjustice.co.nz)

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<sup>1</sup> This submission was written by Paw Justice with assistance from GUARDIANZ Lawyers and Consultants, [www.guardianz.co.nz](http://www.guardianz.co.nz)

## SUMMARY: STATEMENTS AND RECOMMENDATIONS

### Statements

7. Credible evidence-based decision-making is a cornerstone of lawful governance and a key consideration of any subsequent judicial review proceedings.
8. The well-being of sentient animals, including domesticated animals (e.g. cats) and wildlife (e.g. birds), people, and wider communities, relies upon decision-makers complying with statutory responsibilities<sup>2</sup> to ensure that decision-making meets required standards of lawfulness, procedural correctness, and reasonableness<sup>3</sup>.
9. The local authority submissions fail to meet required standards of credibility which are a prerequisite justification to decision-makers implementing the proposal as it has been presented. The local authority submissions do not demonstrate sufficient understanding, interpretation, and/or application of the referenced law<sup>4</sup>, science and/or contemporary principles of successful ecosystem management.
10. Modern whole-of-system eco-management programs have a proven higher success rate and a greater financial cost-effectiveness than the outdated species-targeted (cat) approach set out in the submissions of the local authorities.

### Four (4) recommendations to assist decision-makers:

11. In order to demonstrate a commitment to responsibly caring for the well-being of cats, birds, and other animal species who share the environment with people, Paw Justice submits that an evidenced-based decision-making process would implement the following recommendations:
12. Recommendation 1: Apply principles of due diligence and critique to the assumptions, interpretations, and speculations that underpin the local authority proposal.
13. Recommendation 2: Obtain and publish an informed and independent legal opinion that sets out the alternative legal interpretations to those submitted by local authorities seeking to justify their proposed plan.
14. Recommendation 3: Obtain and publish expert scientific input identifying the unintended consequences of the local authority proposal on the targeted animals and owners, the community, and the wider ecosystem;
15. Recommendation 4: Obtain and publish an independent review that considers the success/failure outcomes and costs associated with contemporary ecosystem management versus outdated, costly, and largely unsuccessful species-targeting forms of biological controls.

### PRESENTATION OF THESE SUBMISSIONS IS IN THREE PARTS (A, B, C):

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<sup>2</sup> Principles of judicial review affirmed in *Watson v Chief Executive of the Department of Corrections* [2015] NZHC 1227

<sup>3</sup> *Watson v Chief Executive of the Department of Corrections* [2015] NZHC 1227 set out that the "unreasonableness test" requires that decision-makers should check whether, in practice, a decision will achieve its stated aims, that the impact upon those involved is proportionate to the interests it is trying to protect, and that the reasons are clearly stated. <https://duncancotterill.com/publications/judicial-review-cases-update-key-points>

<sup>4</sup> Animal Welfare Act 1999, Biosecurity Act 1993 and Animal Welfare (Companion Cats) Code of Welfare 2007.

16. PART A: Part A sets out the applicable powers, responsibilities and accountabilities of lawful governance applicable to the proposed cat management strategy in order to provide a benchmark that can be used to assess the local authority submissions as they have been presented;
17. PART B: Part B illustrates, by way of providing a limited number of examples, that although the local authority submissions contain a number of recommendations that foster responsible care of animals and communities, the potential benefits of those recommendations are undermined by the factual inaccuracies, misunderstandings, and misinterpretations demonstrated throughout the local authority submissions. The evidential gaps and misleading representations of the law, science, and enforcement currently contained within the local authority submissions, perhaps unsurprisingly culminate in a proposal that is environmentally outdated, inappropriately costed, and predictably doomed to create more problems than it will theoretically solve. Part B, therefore, illustrates why the local submissions (as presented) fail to meet the statutory requirements referred to in Part A.
18. PART C: In the event that (a) the evidential gaps referred to Part B are resolved and (b) decision-makers take the view that the costs and risks of extended biological interventions involving cats/birds are warranted, then Part C demonstrates that modern eco-management techniques are demonstrably much more successful and significantly more cost-effective in the long term than species (i.e. cat) targeted biological interventions. Implementation of modern eco-management techniques would demonstrate (a) application of best practice standards, (b) a balanced and proportionate consideration regarding the welfare of animals and the interests of ratepayers, and (c) a commitment to governing in a way that practices credible evidence to-based decision-making.
19. **Note:** Paw Justice acknowledges that the current Auckland Council Proposed Regional Pest Management Plan (“ACPRPMP”) is not the same as the New Zealand National Cat Management Strategy (“NZNCMS”) Discussion Paper. However, these submissions are provided by Paw Justice with the intent of bringing relevant issues and considerations to the attention of decision-makers given that there appear to be similarities between the ACPRPMP and NZNCMS which are very similar, and consequently could be addressed simultaneously.

**PART A: LAW MANDATES THAT EVIDENCE RELIED UPON BY DECISION MAKERS EXERCISING STATUTORY AUTHORITY MUST BE CREDIBLE, VERIFIABLE, AND APPROPRIATELY INDEPENDENT**

20. The law establishes expected standards of what is broadly referred to as standards of “good governance”.<sup>5</sup>
21. The New Zealand system of governance operates on the basis of separation of, and delegation of, central government powers.
  - 21.1. Any exercise of delegated power by a decision-maker (e.g. Local Authority) must comply with the law<sup>6</sup>, be procedurally correct, and reasonable.<sup>7</sup>

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<sup>5</sup> The points covered in this section are provided in summary form (only) in order to provide a benchmark understanding of expectations, standards, and available legal recourse as it pertains to the governance decisions.

<sup>6</sup> *Entick v Carrington* (1765) 19 St Tr 1029.

- 21.2. It follows that governance decisions must demonstrably act for a proper purpose that is consistent with the purpose and objects of relevant legislation<sup>8</sup>.
- 21.3. All decision-making must be cognisant of the principles of “natural justice” as affirmed in New Zealand’s Bill of Rights Act, and obligations which require a decision maker to “*act in good faith and fairly listen to both sides*”.<sup>9</sup>
- 21.4. Every exercise of statutory power is open to judicial review.<sup>10</sup>
22. That obligation to “*act in good faith and fairly listen to both sides*”<sup>11</sup> mandates that the exercise of statutory power must also be free of bias, transparent in identifying and disclosing real-or-perceived conflicts of interest, and demonstrate that decisions are not simply a token exercise of listening as a result of a closed-minded predetermination.<sup>12</sup>
23. Each rule implemented by Local Authorities must demonstrably assist in the achieving the objectives of relevant plans, and be clear enough to be readily understood.<sup>13</sup>
- 23.1. Simultaneously, rules considered for implementation must demonstrate due consideration for other relevant law that Councils are responsible for administering.
- 23.2. This includes, for example, upholding responsible standards of care for law’s sentient animals<sup>14</sup>, protection of public interests, and appropriately caring for the environment.
24. These legal requirements all apply to the proposed cat management proposal. This means, for example, that authorities are obligated to provide *extensive* details prior to classifying a subject organism/animal as a pest under a proposed pest management plan.<sup>15</sup>

## **PART B: THE LOCAL AUTHORITY SUBMISSIONS (AS PRESENTED) FAIL TO MEET STATUTORY REQUIREMENTS**

### **B1. Paw Justice supports initiatives promoting responsible care of animals**

25. The local authority submissions contain a number of recommendations that Paw Justice supports as a means of promoting responsible care of animals.
- 25.1. In particular, Paw Justice supports “*voluntary*” microchipping, registration and desexing of cats.
- 25.2. However, Paw Justice opposes “*mandatory*” microchipping, registration and desexing as a method of compliance and enforcement for pest control.

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<sup>7</sup> *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410.

<sup>8</sup> *Padfield v Minister of Agriculture, Fisheries & Food* [1968] AC 997 (HL) at 1030.

<sup>9</sup> *Board of Education v Rice* [1911] AC 179 (HL) at 182.

<sup>10</sup> Judicial Review Procedure Act 2016, ss 4–5.

<sup>11</sup> *Board of Education v Rice* [1911] AC 179 (HL) at 182.

<sup>12</sup> The Government’s goal of New Zealand as predator-free by 2050, means the outcome of removing all predators, including cats, may be viewed as indicative of the local authority being pre-determined. The law requires that the Auckland Council must be genuinely open to persuasion; they cannot simply go through the motions. *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 at 194.

<sup>13</sup> Biosecurity Act 1993, s 71(h), (j).

<sup>14</sup> Animal Welfare Act 1999

<sup>15</sup> Biosecurity Act 1993, s 70.

25.3. Paw Justice submits that mandating these identified procedures is inconsistent with the purposes of each procedure, and lawful interpretation of relevant legislation.

MICROCHIPPING: Responsible governance recognises that micro-chipping is for the purpose of assisting in identifying an animal in order to return it (to its owner), and not as a primary tool to be relied upon in order to justify killing an animal

26. As established in the Animal Welfare (Companion Cats) Code of Welfare 2007, microchipping is a useful tool to identify and return cats.<sup>16</sup> Paw Justice supports the promotion of a microchip as a recommended practice consistent with principles of animal identification, and responsible animal care.

26.1. Paw Justice points out that the Animal Welfare (Companion Cats) Code of Welfare 2007 states that microchipping is just one of a range of methodologies deemed acceptable under law for the purposes of identifying cats.<sup>17</sup>

27. Paw Justice opposes mandatory microchipping and associated reliance on microchipping as a method of compliance and enforcement for pest control (as proposed by Auckland Council) and mandatory microchipping (as suggested by the NCMSG) on the basis that such reliance is a misinterpretation of the law, and creates substantive and unnecessary risks to the well-being of animals/cats and their owners.

28. Paw Justice respectfully submits that statutory governance requirements mandate taking into account the fact that microchips are not fail-proof. This is particularly important because assessments of reliability are critical to the local authority proposal advocating microchips as the basis for life-and-death decisions.

28.1. Obviously, decision-makers have a governance responsibility, and thereby a potential legal liability, and ensuring that life-and-death decisions minimise the risks associated with foreseeable detrimental consequences to the cat and its owner.

28.2. Although microchips are very useful tool in identifying animals, microchipping is not without its problems. Microchips have been shown to be faulty, migrate underneath the animal's skin (making detection problematic), or human error in database upkeep has resulted in the provision of information that is out of date or inaccurate.

28.3. NCMSG have clearly recognised these shortcomings in their simplistic counterproposal that the recognised failings of microchips can be overcome by creating further regulation mandating that cats must also wear a collar and tag.

28.4. In addition to stating the obvious that cats have a reputation for their ability to remove their collars, there is the additional consideration that real-world practicalities which create inconvenient barriers are not solved by overregulation, but by the application of common sense to practical realities.

29. Paw Justice submits that policies authorising local authority enforcement personnel to make a "life or death" decision regarding a cat by relying primarily upon whether or not the cat has a detectable and/or working microchip, does not constitute responsible governance.

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<sup>16</sup> Animal Welfare (Companion Cats) Code of Welfare 2007

<sup>17</sup> Animal Welfare (Companion Cats) Code of Welfare 2007

- 29.1. The council is largely unfettered in its ability to designate new parks as Significant Ecological Areas (“SEA”) at any time.
  - 29.2. The Council’s current rule is that all owners must ensure their cat does not enter a site that is “being actively managed as part of a national population management for a threatened species vulnerable to cat predation.”<sup>18</sup> A failure to comply with the rules in the Council’s plan is an offence,<sup>19</sup> and owners can be fined up to \$5000.<sup>20</sup> If owners do not microchip and register their cats then it can be killed. If owners do microchip and register their cat, they can be fined if their cat enters one of the actively managed sites.
  - 29.3. The Auckland Council’s seeks to extend the SEA area by proposing that any non-microchipped and registered cats found within 200 metres of the Hauraki Gulf or Significant Ecological Areas will be killed.<sup>21</sup> Notably, the proposed plan lists numerous SEAs, many of which are located in urban areas where it’s predictable that companion and stray cats will reside and range.
  - 29.4. Paw Justice submits that in light of the fact that microchips have inherent and recognised failures, then it is irresponsible to rely on the presence (or not) of a detectable microchip on a cat to determine whether a cat is a pest or not which, in turn, is the primary practical judgement determining whether the cat lives or dies.
  - 29.5. Paw Justice further submits that an overreliance on a potentially faulty product fails to demonstrate appropriate levels of governance responsibility regarding the animal’s/cat’s welfare and/or the interests of at least 44% of voting ratepayers who either own, or have owned, a cat.
30. The Auckland Council argues that their proposed plan does not include mandatory microchipping.
- 30.1. However, Paw Justice submits that defining cats (that are not microchipped and registered) as pests essentially means that legal interpretation would view microchipping as mandatory “in practice”.<sup>22</sup>

*There are species differences between cats and dogs*

31. Mandatory microchipping and registration understandably seeks to apply compliance and enforcement principles to cats in a similar way as it has been to dogs.
- 31.1. It is acknowledged that there are first-blush similarities between cats and dogs which make this approach attractive.
  - 31.2. However, further consideration identifies that there are key differences about cats which are fatal to simplistic suggestions of applying a dog control program to a cat.
  - 31.3. As those who have had experience involving dogs, cats, and enforcement, clearly recognise, due to inherent species behavioural differences, accompanied by societal

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<sup>18</sup> Auckland Council Proposed Regional Pest Management Plan Cost Benefit Analyses At 2161

<sup>19</sup> Biosecurity Act 1993, s 154N(19).

<sup>20</sup> Biosecurity Act 1993, s 157(5)(a).

<sup>21</sup> Auckland Council Proposed Regional Pest Management Plan (November 2017) at 75, 77.

<sup>22</sup> *Watson v Chief Executive of the Department of Corrections* [2015] NZHC 1227 set out that the “unreasonableness test” requires that decision-makers should check whether, in practice, a decision will achieve its stated aims, that the impact upon those involved is proportionate to the interests it is trying to protect, and that the reasons are clearly stated. <https://duncancotterill.com/publications/judicial-review-cases-update-key-points>

norms and expectations regarding cat ownership, cats are not capable of being controlled in the same way as dogs. This reality has long been recognised and underpins platitudes in our language that describe trying to achieve the impossible as “herding cats”.

32. The differences between cats and dogs require that any cat management program demonstrate awareness of the fact that cats behave differently to dogs.
  - 32.1. For example, because cats behave differently to dogs, few cats can be trained to respond to commands like their canine counterparts.
  - 32.2. Furthermore, while one of the key purposes for implementing dog control management programs was to reduce the risk of attacks to people, the reality is that human lives are not put at risk by cat attacks in the same way as dog attacks.
33. Paw Justice, therefore, recommends that responsible governance consciously avoids decisions that fail to appropriately take account of unique characteristics of cats in efforts to implement any responsible cat management program.

*Killing the cat is a disproportionate compliance and enforcement response*

34. In addition to unreliability associated with the performance of microchips, there is the additional fact that microchipping will not result in all owned cats being microchipped.
  - 34.1. Despite the law, there will always be people who will not microchip their pets. For example, only 71 percent of dogs are microchipped despite compulsory microchipping.<sup>23</sup>
35. While microchipping promotes responsible pet ownership, and consequently there is an argument for continued education fostering compliance, Paw Justice submits that it is a step too far to kill an animal on the basis “in practice” that it does not have a detectable microchip.

*Authorising the killing of cats that are not microchipped is irresponsible governance*

36. Paw Justice submits that responsible governance requires decision-makers to clarify, and reliably research/estimate (prior to implementation) how many cats might risk being killed on the basis that they are not microchipped.
37. The concerns of Paw Justice are elevated given that the NCMSG appears to provide conflicting commentary on the subject of anticipated deaths, and provide inadequate consideration regarding reliable monitoring systems and accountabilities to minimise avoidable cat deaths.
  - 37.1. In their strategy, NCMSG acknowledge that mandatory microchipping does mean more cats are likely to be killed, as killed cats would include stray and owned cats whose owners have not complied with the law.<sup>24</sup>
  - 37.2. However, in contrast, in its response to consultation feedback, the NCMSG state that the number of cats killed each year will not increase because they will not kill all microchipped cats once unsocialised stray and feral cats have been killed.<sup>25</sup>

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<sup>23</sup> New Zealand Companion Animal Council “Companion Animals in New Zealand 2016” at 44.

<sup>24</sup> NZNCMSDP, at 79.

<sup>25</sup> NZNCMSDP, at 202.

- 37.3. The apparent approach appears confused, non-specific, and lacks demonstrated consideration to monitoring systems, accountabilities, and associated unintended consequences e.g. potential increased dumping of cats.
38. Paw Justice submits that responsible governance demands inclusion of this area of concern (i.e. estimates of cat deaths) as part of a total review by decision-makers, prior to any implementation or authorisation of the local authority proposal as it has been submitted.

REGISTRATION: Duplication of microchipping administration?

39. The process of microchipping inherently encompasses the recording of owner details.
40. Paw Justice recommends that decision-makers consider whether the cost of a separate registration process for cats is financially justifiable given that it appears to duplicate many of the functions of microchipping.

DESEXING is a constructive voluntary initiative, but a questionable mandatory initiative

41. Paw Justice agrees that promotion of responsible desexing of animals, including domesticated cats, is warranted as part and parcel of responsible animal care.
42. However, the reality is that “mandatory” desexing may do little to increase the occurrence of desexing when the proposal is considered in light of actual facts. Those facts include, for example:
- 42.1. Mandatory desexing reportedly had no positive impact in the Australian Capital Territory (Australia).<sup>26</sup>
  - 42.2. Of the cats owned in New Zealand, 93 percent are desexed.
  - 42.3. The most common reason given for not desexing cats was cost.<sup>27</sup>
  - 42.4. Providing accessible desexing is usually supported by the public and is successful without mandatory legislation.<sup>28</sup>
  - 42.5. Paw Justice therefore submits that the cost and resources of making desexing mandatory are unwarranted, although the practice should be promoted as part of responsible pet ownership.
43. The law in relation to stray cats is notably problematic in that mandatory desexing of cats foreseeably creates additional disincentives for people and organisations currently engaged in voluntarily providing management services within the community.
- 43.1. Community feedback and public consultation has already identified that people are likely to be discouraged from desexing stray cats if, in doing so, they are classified by the law as the ‘person in charge’ with its accompanying legal obligations, accountabilities, and liabilities.
  - 43.2. Although legal liability, of necessity, takes account of the species, the environment, and all the circumstances<sup>29</sup>, paw Justice submits that it is important for decision-makers to

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<sup>26</sup> NZNCMSDP, at 81.

<sup>27</sup> New Zealand Companion Animal Council “Companion Animals in New Zealand 2016”

<sup>28</sup> NZNCMSDP, at 84, 85.

<sup>29</sup> Animal Welfare (Companion Cats) Code of Welfare 2007.

recognise that by mandating desexing, the unintended consequences<sup>30</sup> may, in fact, result in the initiative being counter-productive to reducing the cat population, and thereby escalating (rather than reducing) the problem.

44. With respect to the local authority proposal and the intentions of its drafters, while it may appear to be an attractive option simply to implement further rules and regulations, Paw Justice submits that responsible governance requires (a) due consideration of alternatives, (b) being cognisant of lessons learnt in parallel programs both nationally and internationally, and thereby (c) unnecessarily adding to the burden of regulations requiring administration, financing, and enforcement.
45. Paw Justice, therefore, recommends that there be continued education regarding desexing of animals, but that it would be inappropriate to make desexing mandatory.

**B2. The local authority proposal demonstrates incomplete information, misunderstandings and misrepresentations resulting in significant portions of the proposal (as it has been presented) misleading and therefore unfit for the purposes of evidence-based decision-making**

46. The local authority submissions demonstrate an array of misunderstandings and misinterpretations that have been applied to the science, law, and wider reference material.
  - 46.1. While it is impractical to expand on each of the points set out below warranting consideration as part of responsible governance, Paw Justice formally references the selected examples in order to illustrate why the local authority proposal (as presented) requires significantly more attention prior to implementation, either in whole or in part.
  - 46.2. The evidential gaps and misleading representations of the law, science, and enforcement currently contained within the local authority means that the local submissions (as presented) fail to meet statutory requirements.

*Understanding the epidemiology of Toxoplasmosis removes the alarmist references contained in the local authority submissions*

47. The local authority proposal is grossly alarmist to the point of either demonstrating an equally gross misunderstanding of the facts, or desperately seeking to compile a grab-bag of half-truths in order to support its position. This approach is demonstrated by the exaggerated risks of cats spreading toxoplasmosis, causing diseases and dolphins, and abortions in people.
48. The strategy cites the Roe et al study as authority for their contention that toxoplasmosis has caused the death of Hector's dolphins.<sup>31</sup>
  - 48.1. The study examined tissue samples of dolphins, but notably, it did not involve any investigation of the source of infection. The study stated that “the source of infection for Hector’s dolphins remains to be clarified.”<sup>32</sup>

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<sup>30</sup> Section 4, Animal Welfare Act 1999

<sup>31</sup> NZNCMSDP, at 38.

<sup>32</sup> W.D Roe et al “An atypical genotype of *Toxoplasma gondii* as a cause of mortality in Hector's dolphins (*Cephalorhynchus hectori*)” (2013) 192 *Veterinary Parasitology* 67 at 72.

- 48.2. The Roe et al study speculates that the “most likely” source of *T. gondii* in the water land-based run off of cat faeces.<sup>33</sup> The Roe et al study goes on to cite three additional studies as authority for its speculation. Conrad et al is amongst those three cited studies of those studies, and actual reading of the Conrad research reveals that Conrad et al also acknowledges that the source of *T. gondii* is “not yet clear” and that “... the source of infection... is unknown”.<sup>34</sup>
- 48.3. The take-home message for decision-makers is that careful reading of the references relied upon by local authority submissions primarily speculate. With reference to what qualifies as credible evidence-based decision-making, Paw Justice submits that speculation is insufficient “evidence” to justify incurring the costs and risks of the local authority cat management proposal.
49. The epidemiological facts verify that most people have been exposed to toxoplasmosis and have developed immunity to it.
- 49.1. Furthermore, the intermediate life-cycle stage of toxoplasmosis is excreted by young cats/kittens and not mature cats – this fact underpins the advice commonly given by veterinarian is too young couples to avoid killing the cat for fear of toxoplasmosis.
- 49.2. The reality is that toxoplasmosis is usually asymptomatic, and it is the minority of women who are in early gestation that are at potential risk. Actual abortions attributed to toxoplasmosis infections are “rare”, and preventative measures involve basic hygiene such as wearing gloves while gardening<sup>35</sup> (due to kittens defecating in household gardens) and while handling meat<sup>36</sup>.
- 49.3. This is hardly information warranting alarmist concerns, but the inclusion and presentation style referencing toxoplasmosis in the local authority submissions, inferring that toxoplasmosis is a factor of enormous concern, justifiably raises concerns not about toxoplasmosis, but about the credibility and reliability of the local authority submissions themselves.
50. The local authority proposal contains further misinformation in its apparent bid to unnecessarily incite fear of the risk of cats spreading diseases.
- 50.1. For example, the suggestion that in some cases roundworm infection transmitted to people by a cat can cause blindness, is equally alarmist and fails to give complete information regarding basic hygiene and animal (cat) husbandry that prevents what veterinarians know to be an extremely rare condition – globally.
- 50.2. The local authority proposal fails to provide complete information regarding what is clearly yet another alarmist reference. The local authority submissions do not provide any citation for their claim, and there is no information that provides a reality check

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<sup>33</sup>Roe et al, at 72.

<sup>34</sup> Conrad et al “Transmission of Toxoplasma: Clues from the study of sea otters as sentinels of Toxoplasma gondii flow into the marine environment” (2005) 35 International Journal for Parasitology 1155 at 1155, 1164.

<sup>35</sup> NZNCMSDP, at 34.

<sup>36</sup> NZNCMSDP, at 35.

regarding the condition's incidence, and whether it has ever occurred in New Zealand at all.<sup>37</sup>

- 50.3. The fact is that there are very few diseases in New Zealand that can be transferred to humans from cats.<sup>38</sup> If cats are provided with recommended routine animal husbandry such as worming and flea treatment, then even the incidence of those diseases is very low.<sup>39</sup>

*There is insufficient evidence of the effect of cats' predation on native species.*

51. It is accepted that cats do prey on birds including native species, but the size and effect of that predation remain unclear.
52. The fact is that there are no reliable figures available about the level of predation by cats (which, for the purposes of the local authority proposal, would be expected to distinguish between domestic cats, stray cats, as well as feral cats) on New Zealand's wildlife and native birds.
- 52.1. Careful reading demonstrates that a comparatively few animals were involved in the study, and then the numbers extrapolated to what could realistically be described as a best guess speculation.
- 52.2. Again, this simply does not qualify as credible evidence for statutory purposes, or sufficient to justify considerable investment of taxpayer dollars without considerable further research.
53. The proposal makes the assertion that cats have a significant negative impact on rare and threatened native bat and birds.
- 53.1. The studies cited for this authority simply do not provide adequate support for the assertion. Again, even a casual reading of the references relied upon by the local authority proposal, raises questions about how the drafters of the local authority proposal could reasonably seek to justify expenses, and create risks associated with targeting cats as a theoretical primary predator of native birdlife, on little more than speculation.
- 53.2. For example, one citation (the Gilles et al study) involved 80 owners recording the prey brought in by their cats. In one year the 80 cats brought in 1674 prey items. More than 500 of the prey items were rodents. The most common birds that were caught were sparrows. Of the 226 birds caught only about 10 were native. The Gilles et al study concludes that it is impossible to quantify the effects of cat predation given the lack of information about the mortality and breeding of prey populations.<sup>40</sup>
54. Nonetheless, the local authority proposal makes assertions despite the fact that the studies it relies on raise common-sense questions about the credibility, and application, about the studies themselves.

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<sup>37</sup> NZNCMSDP, at 34.

<sup>38</sup> NZNCMSDP, at 33.

<sup>39</sup> NZNCMSDP, at 34.

<sup>40</sup> C Gillies and M Clout "The prey of domestic cats (*Felis catus*) in two suburbs of Auckland City, New Zealand" (2003) 259 *Journal of Zoology* 309.

55. Paw Justice submits that the local authority proposal has either misinterpreted, misunderstood, or exaggerated the contents and credibility of the study to suit its own purposes.
56. For the purposes of clarity, Paw Justice is one of those stakeholders who are committed to responsible care of animals, irrespective of the species.
57. Indeed, Paw Justice would be among those looking for an appropriate eco-management solution in the event that real issues were credibly identified. However, mere speculation that fails to provide credible evidence warranting the measures proposed in the local authority proposal means that Paw Justice respectfully submits that the evidence to justify extended biological interventions is unconvincing.

*The effect of the selective removal of one species is not adequately considered.*

58. The stated objective of the NCMSG is to remove all feral and stray cats in New Zealand.<sup>41</sup>
59. It is relevant that there is a substantial history of good science which recognises that removing one predator creates a biological vacuum subsequently filled by another predator. Put another way, systems of eco-management that rely on targeting one species are frequently enormously expensive, fail in terms of achieving their objectives, and the unintended consequences create wider detrimental problems.
60. This long recognised and understood principle appears to have been overlooked in the local authority proposal.
  - 60.1. Even those who are not trained in eco-management systems understand that cats are predators that prey on a wide range of species, and not just birds.
  - 60.2. It follows that reducing the number of cats will, in turn, result in an increase in the number of non-native species, some of which will themselves prey on native species.<sup>42</sup>
  - 60.3. The traditional failure of species targeted systems was demonstrated on Hauturu, where the killing of all cats resulted in an increase in the number of kiore and a corresponding negative impact on Cook's petrel that were theoretically the purpose of instigating the cataract creation program on Hauturu in the first place.<sup>43</sup>
61. For New Zealanders, the possum eradication program is an obvious example of the exorbitant costs in terms of time and money, public criticism (regarding methodologies) in spite of public interests, and overall frustrating futility, of relying upon species targeted eradication programs.
62. Vast amounts of time and wider resources have been invested into a largely unsuccessful possum control operation in New Zealand.
  - 62.1. In the 1980s, the possum population was at an all-time high of 50-70 million possums.
  - 62.2. Even after three decades, and despite using a variety of lethal methods which included trapping, poisoning and shooting, the number of possums still exceeds half of what it was in the 1980s i.e. currently estimated at approximately 30 million possums.
  - 62.3. The Government continues to spend \$110 million of taxpayer's money per year on possum control.

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<sup>41</sup> NZNCMSDP, Table 1: New Zealand national cat management strategic goals and outcomes, at 6.

<sup>42</sup> NZNCMSDP, at 28.

<sup>43</sup> NZNCMSDP, at 30.

63. Paw Justice submits that there are important lessons from the possum eradication program which apply to the local authority program to eradicate cats.
64. The most important lesson is that targeting one species is expensive and ineffective.
- 64.1. The failures of the possum eradication program demonstrate that even with significant investment and the use of lethal methods; it is questionable whether eradication of feral and stray cats will be any more successful than eradicating possums.
- 64.2. The local authority proposal effectively expects taxpayers, ratepayers, and cat owners to repeat the failures of the possum eradication program.
65. The public controversy surrounding eradication programs and the methodologies utilised, highlights additional important lessons which the local authority proposal seemingly overlooks.
- 65.1. A variety of lethal methods have been utilised in efforts to eradicate possums, including trapping, poisoning and shooting. Poisoning remains the primary methodology relied upon.
- 65.2. Although the use of sodium monofluoroacetate (1080) continues to be lawful, its use has attracted significant criticism on the basis that it is viewed as inhumane. Possums who have ingested 1080 suffer a slow and painful death, eventually due to respiratory failure within 6-18 hours<sup>44</sup>. The local authority proposal is seeking decision-makers ratification and public approval to apply a similar approach to feral cats.
- 65.3. There is a lack of public support for lethal cat control. In an online survey cited by the NZNCMSDP, respondents felt that poisoning was an unacceptable method of controlling feral cats. In relation to trap and kill, DOC recommends a blow to the head with a solid object. The killing of stray cats by hitting them over the head with a hammer by Taranaki Regional Council officers created media controversy and the practice was condemned by the Auckland SPCA.
66. The local authority proposal argues there is a need for cat management in order to protect native species and ecosystems.<sup>45</sup>
- 66.1. To be fair, the strategy actually acknowledges that there is a need to consider the effect of removing cats on the populations of non-native species.
- 66.2. Somewhat alarmingly, the local authority proposal to address this foreseeable problem is to simply add another species to the non-native kill roster.<sup>46</sup>
- 66.3. Although the local authority proposal makes a brief reference to the impact of cats on native species, the local authority proposal completely fails to give consideration to the impact on ecosystems.

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<sup>44</sup> The Animal Welfare Act 1999 declares all animals as sentient. It is an offence under the Act to kill any animal in a way that the animal suffers unreasonable or unnecessary pain or distress. In the case of *R v Large*, Judge Zorab found that wild animals (seals) killed by being hit with a metal pole suffered unreasonable pain and distress. The defendants believed the seals were pests. A person has a potential defence if the methodology of killing is a “generally accepted practice in New Zealand for the hunting or killing of wild animals of that type or animals in a wild state of that type.”

<sup>45</sup> NZNCMSDP, at 28.

<sup>46</sup> NZNCMSDP, at 28, 29.

67. Paw Justice submits that the failure to apply due diligence in respect of effects on the ecosystem is a serious gap warranting setting aside the local authority proposal as it has been presented.

67.1. The failure to address the ecosystem impacts raises questions of law, which is particularly egregious given local authority responsibilities regarding the environment.

68. Paw Justice further submits that a holistic long-term approach using contemporary ecosystem management systems, is needed to effectively protect native species and ecosystems.

*Legal issues arise out of the proposals of the Auckland Council and NCMSG*

69. Unsurprisingly, given that the local authority proposals deal with a range of subject areas including animal welfare, conservation, ecosystems, the environment, and a considerable list of other subjects under the heading of “public interest, then there is equally a considerable list of legal issues - and potential liabilities - associated with the local authority proposal as it has been presented.

70. These submissions do not constitute a legal opinion. However, the submissions of Paw Justice have been provided in order to illustrate that in addition to questions about credible science and financial responsibility, there are a range of legal issues arising out of the local authority’s proposals that warrant clarity as part of the lawful governance process.

71. Just a token sample of the more easily identifiable legal issues warranting absolute clarity prior to any implementation of the local authority proposals includes:

71.1. Balancing tensions between the purposes of relevant pieces of legislation (e.g. Biosecurity Act 1993, Animal Welfare Act 1999), and

71.2. The reasonableness (if any) of defining cats as “pests” under the Biosecurity Act 1993, in the face of legal inconsistencies e.g. the classifications of cats as set out in the Companion Cats - Code of Welfare 2007; and

71.3. Responsibilities and liabilities for governance decisions that failed to apply required standards of performance regarding lawfulness, procedure correctness, and reasonable (“judicial review”).

72. These token examples are provided simply to illustrate the need for an in-depth legal opinion in order to assist local authorities in avoiding a situation where they are promoting a program that unnecessarily risks legal challenge for a variety of reasons including that the program is counterintuitive to its purposes, and disproportionately detrimental to members of the voting public and organisations currently involved in cat management activities within the community.

*The local authority proposal overlooks wider societal benefits of pet/cat ownership*

73. Former Minister of Agriculture Jim Anderton said, “In New Zealand, we have always had a close connection, in both a social and an economic sense, with our animals.”<sup>47</sup>

73.1. That relationship is not limited simply to agricultural animals, as evidenced by the fact that approximately 44 percent of New Zealand households own a cat.<sup>48</sup>

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<sup>47</sup> (18 Feb 2010) 660 NZPD 9073.

<sup>48</sup> New Zealand Companion Animal Council 2016.

74. Paw Justice submits that decision makers would responsibly turn their minds to the wider consequences of implementing programs that potentially vilifies the reputation of cats as household pets in the New Zealand community.
75. Growing up with a pet can bring social, emotional and educational benefit to children and adolescents according to a newly published study. Young people with pets tend to have greater self-esteem, less loneliness, and enhanced social skills. This research adds strength to claims that household pets can help support healthy child development.
76. A University of Liverpool Study published in the International Journal of Environmental Research and Public Health was funded by the WALTHAM Centre for Pet Nutrition, part of Mars Petcare and led by Dr Carri Westgarth, Institute of Infection and Global Health.
  - 76.1. Researchers carried out an in-depth review and quality evaluation of studies investigating the effects of pet ownership on emotional, educational or behavioural development in children and adolescents.
  - 76.2. Findings showed that critical ages for the impact of pet ownership on self-esteem, appear to be greatest for children under 6, and preadolescents and adolescents over 10. Generally dogs and cats are deemed to be the best providers of social support, perhaps due to a higher level of interaction and reciprocation in comparison to other pets.
  - 76.3. Conclusions of the study held that in both western and non-western cultures pets may act as a form of psychological support, helping youths feel good about themselves and enabling a positive self-image. The patterns among sub-populations and age groups suggest that companion animals have the potential to promote healthy child and adolescent development.
77. Further evidence-based studies have identified the health benefits and wider value of pets within society. For the benefit of decision makers, it is noted that the list of benefits is substantial, and are broadly identified as benefits for individuals (e.g. children, adults, and the elderly), as well as wider society. The benefits have been categorised as: Physical health benefits of pet ownership, mental health benefits, financial benefits, healthy child development, societal benefits, animal associated benefits in specialised settings (e.g. medical settings, therapeutic environments, classrooms, and the workplace), and animals with special populations (e.g. psychiatric service animals).
78. It is foreseeable that advocates of the local authority proposal might argue that eradication of “pest/feral” cats is irrelevant to the role of cats domestically.
  - 78.1. Paw Justice is of the alternative view and submits that vilification of cats in one sector would translate to broader negative societal perceptions regarding cats and consequently result in broader detrimental consequences.
79. Paw Justice therefore submits that it would be appropriate for decision-makers to obtain and assess relevant credible data to enable evidence-based decision-making prior to implementing any program that unnecessarily creates risks for cats, 44% of the New Zealand community, and the wider programs that provide significant benefits to the New Zealand community beyond simply cat ownership.

*Conflicts of interest among supporters of the program require in-depth consideration*

80. The local authority proposals, and accompanying media coverage regarding the cat management program, demonstrate that there are a number of organisations supporting the proposal as it has been presented.
- 80.1. However, it is also clear that amongst the supporting stakeholders there are potential conflicts of interest that range from competencies and enforcement powers, through to monetary gains which in some cases are so substantial that they might be termed a “financial windfall”.
  - 80.2. The statutory obligation demanding “procedural correctness” means that those relationships need to be appropriately declared, understood, and considered prior to implementing a poorly considered proposal that is consequently problematic in terms of administration, practice, and legal liability.
81. Conservative estimates, yet to be verified, have assessed the value of the implementation of the local authority proposal, to be in the tens of millions of dollars<sup>49</sup>. That clearly constitutes an attractive motivation for an organisation to give support to the local authority proposal
- 81.1. Full transparency would, for example, consider potential conflicts of members of the NCMSG who were involved in the initial consultation with the Auckland City Council which also included representatives from the Morgan Foundation, SPCA, New Zealand Companion Animal Council (NZCAC) and New Zealand Veterinary Association (NZVA).<sup>50</sup>
  - 81.2. Similarly, questions would also be raised about the weight given to the input of the Morgan Foundation in view of its or stated anti-feline agenda, where one of their projects is entitled “Cats to Go”.<sup>51</sup>
  - 81.3. Likewise, the NZVA has a potential financial interest in the proposed plan that warrants investigation, because they will receive profits/pecuniary benefits from any decision to mandate microchipping.
  - 81.4. Additionally, the NZCAC would foreseeably benefit financially from mandated registration.
82. Relevant figures for consideration by decision makers regarding the level of financial benefits associated with microchipping can be estimated using the following calculation:
- 82.1. 1.4 million cats in New Zealand<sup>52</sup>
  - 82.2. 50% of cats are already microchipped<sup>53</sup>
  - 82.3. Cost of microchipping approximately \$80...
  - 82.4. ...yields a one off compliance cost for cat owners of 56 million dollars (\$56,000,000).
  - 82.5. It is noted that this is a one-off calculation which does not include extended profits.

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<sup>49</sup> “Cats and Local Government” <[www.catcoalition.org.nz](http://www.catcoalition.org.nz)>

<sup>50</sup> Auckland Council Proposed Regional Pest Management Plan Consultation Summary, at 4.

<sup>51</sup> Morgan Foundation < [www.morganfoundation.org.nz](http://www.morganfoundation.org.nz)>

<sup>52</sup> Forest and Bird reports

<sup>53</sup> As assumption to illustrate potential earnings

83. SUMMARY: Paw Justice submits that the local authority proposals, as they have been submitted, do not demonstrate sufficient credibility in terms of law, science, or logic, to meet statutory standards relying upon credible evidence-based decision-making

**PART C: RESPONSIBLE GOVERNANCE IMPLEMENTS MODERN ECO-MANGEMENT PRACTICES THAT HAVE A PROVEN RECORD OF GREATER COST-EFFECTIVE SUCCESSES**

**C1.Paw Justice supports recognition of cats as sentient animals**

84. Paw Justice supports a central recommendation of the NCMSG that “any legislation and plans to manage feral and domestic cats must recognise and take into account that cats are sentient animals capable of experiencing positive and negative affective states, including pleasure, pain and distress, as acknowledged in New Zealand law.”<sup>54</sup>

85. it is noted that this recommendation of the NCMSG, and the position statement of Paw Justice, is consistent with the most recent amendment (August 2015) of the Animal Welfare Act 1999 which expressly recognised animals as sentient.

86. Paw Justice submits that it would be appropriate for the Auckland Council proposed plan to also endorse recognition of animals as sentient, and capable of experiencing positive and negative affective states.

**C2.Cost effective success through application of contemporary long-term eco-management principles**

87. The biggest threat to native animals (birds and other species) is not cat predation, but rather from the loss of habitat caused by people, and urban spread.

87.1. It is noted that there is a trend among local authorities both nationally and internationally, to establish and increase the number of ecologically sensitive areas.

87.2. Fenced sanctuaries have achieved the control of predators at zero density on mainland New Zealand.<sup>55</sup>

88. Paw Justice submits that in the event that credible research substantiates widening and extending existing cat management initiatives, then the preferred modern, proven, and more cost-efficient alternative (in comparison to outdated species-targeted biological programs), is the establishment of a sanctuary for native wildlife.

88.1. This extends the proven success formula of sanctuaries already established in New Zealand e.g. Orokonui Ecosanctuary, Karori Wildlife Sanctuary, Rotokare Scenic Reserve and Bushy Park Sanctuary.

88.2. The control of predators at zero densities has been successful on the 3,400 ha Maungatautari Ecosanctuary, the 500 ha Shakespear Sanctuary, and the 550 ha Tawharanui Sanctuary.<sup>56</sup>

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<sup>54</sup> NZNCMSDP, at 11.

<sup>55</sup> Max Curnow and Geoffrey N. Kerr “Predator Free Banks Peninsula: Scoping Analysis” Land Environment and People Research Report No. 44 2017 at 3.

<sup>56</sup> Curnow and Kerr, at 4.

89. In addition to being cost-effective and have a greater chance of success, the whole-of-system eco-management programs create wider opportunities for income and community involvement.
- 89.1. This includes, for example, tourist opportunities. In the 2016/17 financial year, over 125,000 people reportedly visited Zealandia.<sup>57</sup>
- 89.2. The Tāwharanui Open Sanctuary has 160,000 visitors per year.<sup>58</sup>
90. Paw Justice acknowledges that society demonstrates a diverse, frequently polarised, range of attitudes regarding animals, and different species.
91. Paw Justice further submits that in conjunction with the trend toward establishing greater numbers of Sensitive Ecological Areas, investment in establishing fenced eco-sanctuaries is a holistic solution that accommodates the whole spectrum of societal attitudes.
92. For example, a fenced eco-sanctuary meets the aspirations of the Morgan Foundation prioritising the protection of native animals above the companionship of cats, while concurrently through to people prioritise the prevention of pain and suffering of all sentient animals over the protection of native animals.
93. The establishment of fenced eco-sanctuaries has a number of advantages over species targeted extermination programs. In summary, these advantages would notably include, for example:
- 93.1. The cost of a sanctuary is less than the cost of implementing pest control of cats. Predator control at zero density in New Zealand has only been achieved in sanctuaries and islands. Pest control in other areas is likely to continue indefinitely with limited, and costly, successes.
- 93.2. Lethal pest control is expensive and ineffective. The cost of site-led programmes for pest animals (including cats), for example, has been quantified at approximately \$7,197,000 per annum.<sup>59</sup>
94. Establishment of sanctuaries is a long-term program demonstrating commitment to protecting native species and implementing a holistic approach to the ecosystem. It is also a program that benefits from the combined input of stakeholders.
- 94.1. For example, Zealandia cost \$16 million to build. The Wellington City Council granted \$875,000 in 2016/17 to Zealandia.<sup>60</sup>
- 94.2. The 1.7 km fence at Shakespear Regional Park cost \$750,000.<sup>61</sup> The 4.8km Pest Proof Fence at Bushy Park Sanctuary cost \$830,000.<sup>62</sup>
- 94.3. The 2.5 km fence for the Tāwharanui Open Sanctuary cost \$700,000. The Auckland Council and New Zealand Lotteries each contributed \$200,000 and TOSSI the remaining amount.<sup>63</sup>

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<sup>57</sup> ZEALANDIA 2016/17 Annual Report at 40.

<sup>58</sup> Kate Guthrie "Tāwharanui success is model for open sanctuaries" (19 March 2017) Predator Free NZ <[www.predatorfree.nz](http://www.predatorfree.nz)>

<sup>59</sup> Auckland Council Proposed Regional Pest Management Plan Cost Allocation Analysis, at 63.

<sup>60</sup> ZEALANDIA 2016/17 Annual Report at 40.

<sup>61</sup> Shakespear Open Sanctuary Society Incorporated "The fence" <[www.sossi.org.nz](http://www.sossi.org.nz)>

<sup>62</sup> Bushy Park Sanctuary "Visit" <[www.bushyparksanctuary.org.nz](http://www.bushyparksanctuary.org.nz)>

<sup>63</sup> Margo White "Landlocked Islands" National Geographic <[www.nzgeo.com](http://www.nzgeo.com)>

95. Paw Justice submits that instead of putting taxpayer/ratepayer monies into a cat eradication program that is based on outdated eco-management principles, a better alternative would be to secure the financial support of organisations which are currently standing to benefit from the proposed cat eradication program.
- 95.1. The Auckland Council could lead the establishment of the eco-sanctuary.
- 95.2. Paw Justice submits that given the apparent commitment of the Morgan Foundation to the purported objectives of the local authority proposal, it be reasonable to approach the Morgan Foundation to contribute to the establishment of the Sanctuary.<sup>64</sup>
- 95.3. Similarly, those organisations who stand to benefit from the local authority proposal as it has been set out (e.g. The New Zealand Companion Animal Council (NZCAC) and New Zealand Veterinary Association (NZVA), and the Society For The Prevention of Cruelty to Animals<sup>65</sup>), would equally warrant approach on the presumption will that their stated commitment to the outcomes of the local authority proposal continue.
96. Paw Justice submits that taxpayers and ratepayers would similarly be more willing to support the cost of building a sanctuary rather the pest-plan as currently proposed which is largely being interpreted as authorising the killing of ‘pest’ cats which, in turn, creates risks for an estimated 1.4 million domestic cats and their owners.

## CONCLUSION

97. Former Minister of Agriculture, the Honourable David Carter, stated “it’s government’s role to listen to the will of the people and pass the law”. Paw Justice has provided the submissions in the belief and expectation that decision-makers will lawfully and fairly apply evidence-based decision-making to the suggestions local authority proposal, and concurrently take note of the recommendations submitted by Paw Justice.
98. In conclusion and summary of those recommendations, Paw Justice submits that:
- 98.1. There is insufficient evidence to implement the local authority proposal as it has been presented; and
- 98.2. In the event that credible evidence that justifies moving beyond implementation of voluntary microchipping, registration, and desexing programs; then
- 98.3. The establishment of an eco-sanctuary is a preferred option to implementing a species targeted biological control, reasons that include the establishment of an eco-sanctuary being more cost-effective in the long term, and implementation of a modern, successful eco-management systems demonstrates the evidence-based decision-making standards expected of government’s under the law, and from the public.

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<sup>64</sup> Gareth Morgan reportedly used \$50 million from the sale of Trademe to fund the Morgan Foundation. Duncan Greive “Screaming into the void with Gareth Morgan and TOP” (16 September 2017) The Spinoff <[www.thespinnoff.co.nz](http://www.thespinnoff.co.nz)>

<sup>65</sup> The Society for the Prevention of Cruelty to Animals generated an income of \$11.685 million in 2015/16. SPCA Annual Report 2015/16.

Signed

Date

Craig DUNN, for Paw Justice