

14.2 Cat Curfew Further Report - Notice of Motion 120 - Cat Curfew (Further Information)

SUMMARY: Coordinator Community Laws, Paul Anastasi

This report responds to Notice of Motion No. 120 - Cat Curfew (Further Information) adopted by Council at its 26 July 2021 Council Meeting:

PART A

Noting that Council has made a decision to introduce a 24 hour cat curfew commencing 1 October 2021, that Council receive a report at its August Council Meeting that provides advice:

- 1. Pertaining to Council's ability to delay the introduction of the 24 hour cat curfew until the Domestic Animal Management Plan (DAMP) has been adopted by Council (provisionally 28 February 2022) to better understand the guidance and support needed from Council for residents to prepare for the curfew and any relevant implications that require consideration.**
- 2. Regarding the best means to seek data verification of broad community sentiment regarding the introduction of a 24 hour cat curfew in a timely and cost efficient manner including but not limited to conducting a statistically significant random (unbiased) sample survey of Knox residents.**
- 3. Regarding the development and communication of an enforcement protocol specifically pertaining to the cat curfew reiterating Council's approach as prioritising education before enforcement, including a warning system for first time offences.**

PART B

Noting that Council has made a decision to introduce a 24 hour cat curfew commencing 1 October 2021, that Council receive a report at its August Council Meeting that provides advice regarding the feasibility, legality and operability of an alternate option for a cat curfew which would entail a dual curfew consisting of:

- a) A 7pm – 7am night time curfew for all existing registered cats within Knox; and**
- b) A 24 hour curfew for all newly registered cats within Knox at a specified date in the future (no later than 28 February 2022).**

In addition to providing information to Council in response to Notice of Motion 120, this report seeks Council's direction on the implementation of the Council decision of the Council meeting on 28 June 2021. As Council's preferred direction is uncertain, the recommendations below provide flexibility for Council to articulate its preferred way forward.

RECOMMENDATION

That Council resolve:

- 1. To receive and note the Officers' report in response to Notice of Motion 120, as adopted at the Council meeting on 26 July 2021 and in particular:**
 - **That the current operational approach to enforcement in the animal management service includes discretion for officers to take an educative approach, and issue warnings where appropriate and this can be communicated during implementation;**
 - **That a prescriptive approach to enforcement is not recommended, on the basis that it would inhibit Authorised Officers' exercising discretion to determine the most appropriate response to non-compliance on a case-by-case basis; and**
 - **That imposing different curfews upon different cats is considered operationally impractical, and also likely to be unlawful and vulnerable to legal challenge.**

OPTION A

- 2. Note the options to verify broad community sentiment regarding the introduction of a 24 hour cat curfew as set out in the report and resolve not to pursue further community consultation on the decision to introduce a 24 hour cat curfew.**
- 3. Reaffirm the decision made at the Council meeting on 28 June 2021 to make an Order under section 25 of the Domestic Animals Act 1994 (the Act) to make it an offence if a cat is found at large outside of the premises and:**

OPTION A1 – note the decision of 28 June 2021 will be implemented with a commencement date of 1 October 2021.

OR

OPTION A2 - note the decision of 28 June 2021 will be implemented with an amended commencement date of 10 April 2022 in accordance with Attachment A to the Minutes.

OPTION B

- 2. Note the options to verify broad community sentiment regarding the introduction of a 24 hour cat curfew as set out in the report and resolve to:**
 - a) Defer implementation of the Council decision of 28 June 2021 to make an Order under section 25 of the Domestic Animals Act 1994 (the Act) to make it an offence if a cat is found at large outside of the premises until 1 July 2022;**
 - b) Authorise the Chief Executive Officer to engage external consultants to verify broad community sentiment regarding the introduction of a 24 hour cat curfew;**
 - c) Allocate a budget of \$60,000 for the purposes of resolution b) above, and note this unbudgeted expenditure will be funded from any budget surplus achieved in 2021/22; and**

- d) Receive a further report no later than February 2022 regarding the research proposal and Cat Curfew.**

1. INTRODUCTION

Council at its meeting of 28 June 2021 resolved to make an Order under section 25 of the *Domestic Animals Act 1994* (the Act) to make it an offence if a cat is found at large outside of the premises of the owner from 1 October 2021. This Order is commonly referred to as a 24 hour cat curfew.

Following the Council decision there has been a great deal of community interest in the Order and its 24 Hour Cat Curfew, as well community feedback both for and against the new requirements.

This report provides further information as requested by Council as part of its adoption of Notice of Motion 120 (NoM) on 26 July 2021.

2. DISCUSSION

PART A

- 1. Council's ability to delay the introduction of the cat curfew until the Domestic Animal Management Plan (DAMP) has been adopted by Council (provisionally 28 February 2022) to better understand the guidance and support needed from Council for residents to prepare for the curfew and any relevant implications that require consideration.**

Council, if it wished to do so, can choose to delay the introduction of the curfew to commence after 1 October 2021, however this will need to be enacted via a Council resolution.

The original cat curfew as it stands is to commence 1 October 2021, however the Order has not yet been gazetted to confirm the introduction of the curfew. Operationally, it has been proposed that a 6 month amnesty period is implemented whereby only warnings for curfew breaches will be issued. This amnesty essentially pushes back the enforcement of the curfew to April 2022. This enables Council to adequately communicate the new curfew requirements to cat owners and residents, and allow for further messaging to go out in the pet registration renewal letters due to be sent in February/March 2022 (for payment April 2022).

To delay the introduction would be a reasonable outcome given that Council is yet to adequately communicate the new requirements to all registered cat owners and provide them with sufficient time to prepare for the cat curfew. There was an initial flyer distributed to households in July advising of the new cat curfew and its 1 October commencement date, however, a letter that was also to be sent to all registered cat owners has yet to be distributed. This letter was delayed due to Notice of Motion 120 and Council wanting to further information pursuant to the curfew. It is proposed that once there is clear direction on the cat curfew and its commencement that the message will be communicated to all registered cat owners.

In addition, there may not be adequate time now to effectively communicate to cat owners and residents the 1 October curfew commencement date, so a delay would better assist Council in the roll out of its communications to further inform and educate the community. Any additional time provided to cat owners would also assist them in preparing for the curfew.

Council has recently conducted an online survey as part of its DAMP consultation process and received 3,258 online submissions. As part of this survey comments were sought on what support Council could offer to assist with the introduction of the cat curfew. With such a high number of responses, additional time will assist Council in reviewing these responses and to gain a better understanding of the support that the community have identified. A review of responses highlight three main areas where Council can provide guidance and support with the cat curfew:

- Clear communication with cat owners and the community
- The need for guidance or help with sourcing, installation and building of cat enclosures and fencing
- The provision of free or subsidised cat enclosures or fencing.

The Cat Curfew order has yet to be gazetted in the Victorian Government Gazette. If a new commencement date is resolved by Council, a new resolution will need to be made to update the section 25 order and the new order will then need to be gazetted. If the curfew was to be delayed, a suggested commencement date would be 10 April 2022, as it would coincide with the new animal registration process timelines.

2. The best means to seek data verification of broad community sentiment regarding the introduction of a 24-hour cat curfew in a timely and cost efficient manner including but not limited to conducting a statistically significant random (unbiased) sample survey of Knox residents.

Council officers have sought expert advice from two external providers on suggested methodology to seek data verification of broad community sentiment regarding the introduction of a 24-hour cat curfew. Provider A is a specialist researcher and Provider B is a leading university; a summary of both proposals follow:

Provider A - Specialist Research Consultancy

Provider A recommends computer assisted telephone interviews (CATI) of Knox's resident adult population. The CATI will consist of random sampling of both mobile and landline numbers and will also be supplemented by an online survey to registered cat owners.

CATI has been proposed as the methodology said to be the most robust method to obtain sufficient and reliable sample sets for community surveys as it allows for random sampling, is more time efficient than other random sampling methods, and allows call backs to verify responses.

The provider recommends that there be a CATI sample size of either 800 or 1200 residents from across the municipality. These sample sizes will provide accuracy rates of $\pm 3.46\%$ for 800 residents and $\pm 2.28\%$ for 1200 residents. The sample will be stratified by suburb, age, and gender to reflect the adult population of the municipality, with minimum quotas set for each strata.

In addition to the CATI all registered cat owners will be engaged through an SMS/email invite to take part in an online survey. This survey will also allow for cat owner data to be compared with general resident sentiment. It needs to be understood that any directed survey of registered cat owners would not be unbiased.

A timeline more than 10 weeks has been provided to conduct this project, which includes project planning, stakeholder engagement, design and execution of the survey, analysis of the data, and reporting back to Council.

Cost estimates to undertake the project are \$38,200 for a sample size of 800 and \$55,500 for a sample size of 1200.

Provider B - Leading University

Provider B suggests that a sample size of up to 800 responses would be required to achieve an error margin of $\pm 5\%$ and has provided two options.

1. A household survey where surveyors visit homes that have been randomly selected. If no one is home, a web link and/or a replied paid envelope can be left at the property. In this process streets will be selected at random and then houses within the streets.

This process has been identified as being labour-intensive and more expensive than other types of surveys but can reduce bias. Further, door to door interactions are also currently prohibited as part of government lockdown restrictions.

2. A phone-based online survey by texting a URL to mobile phones for two separate groups.
 - i) Registered cat owners
 - ii) Those that have contacted Council previously (i.e. for a waste issue) and are not registered cat owners.

This method was identified as being cheaper, however, following issues exist:

- a) It would exclude those without a smart phone or those that are uncomfortable in using the required technology.
- b) Both contact lists would need to be used.
- c) Requires the respondent to take the further initiative to respond to the invitation, potentially reducing the response rate.
- d) It makes a strong assumption that those that have contacted Council previously are no different overall in their views on cat curfews from those that did not contact Council.

Both options would benefit from stratification such as geographical areas, as it would lead to greater statistical precision.

No timelines or costings have been supplied by this provider. It is also worth noting that the household survey (option 1) would currently not be practicable due to the restrictions related to the COVID19 pandemic. Costings indicated have been provided based on an hourly rate which would not allow an accurate budgeting for the project.

If Council was to proceed with measuring community sentiment through such means then the submission provided by Provider A is the preferable option as it is more appropriate and thorough and could be undertaken within a COVID-19 environment. Provider A clearly outlines what is required to achieve a statistically significant, random, and unbiased sample survey of Knox residents, as well as indicative costs and timelines. To provide a more accurate survey result officers recommend the 1,200 sample size detailed in the proposal.

Due to the costs to undertake such a project there may be further procurement requirements to address as part of selecting an appropriate provider, as well the need to allocate budget for such a task as no budget have been allocated to undertake this project.

3. Council's approach as prioritising education before enforcement, including a warning system for first time offences.

Council's current compliance approach already employs an education and warning stage prior to issuing of infringements. This approach is guided by what is legally possible under the Act. The 28 June 2021 Council report proposed that a 6-month amnesty period would apply from 1 October, as part of Council adopting a 24-hour cat curfew. During this period, it was proposed that no infringements would apply for a breach of the cat curfew order, and instead warnings would be issued.

Once the 6-month amnesty period is over, officers will revert to the current process for all animals that are not secured to their owners' premises (i.e. dogs). This provides registered animals with a 'free trip home' for a first offence. The first trip home is a service that Council currently provides as part of the animal registration service, for those that have registered their cat or dogs and attempts to avoid the impounding of an animal where practicable by returning animals back to their owner. In these instances, the owner will be issued a warning instead of an infringement.

There are occasions where it is not possible to return a registered animal directly back to its owner (i.e. if the owner is uncontactable, if the animal is found out of hours or the animal is not wearing its Council tag for identification), and in these instances the animal will be taken to the pound for collection. In addition to being registered, cat owners must also ensure that their pet is wearing its Council tag. If the cat is not wearing a tag or it cannot be identified and its registration confirmed, it will be taken to the pound. Currently the fee to reclaim a cat from the pound is \$163 for an unregistered cat and \$122 if the cat was registered at the time it was impounded.

For a registered cat's second offence, an officer will still attempt to return it back to its owner and avoid the pound, however an infringement will apply. For all subsequent offences, the cat will be taken to the pound and infringements issued.

For an unregistered cat, it will be taken to the pound and not released until the requirements of the *Domestic Animals Act 1994* have been complied with. These requirements include registration, desexing and payment of the impound release fee. Infringements are normally issued for all of these types of offences, however, during the amnesty period it was envisaged that an infringement would only be issued for the cat not being registered, and a warning will be received for the section 25 cat curfew offence.

It is worth noting that even with the cat curfew in place, Section 23 of the Act would also apply (Dogs and cats on private property without permission). This process provides a warning to the cat owner by way for a 'Notice of Objection' and attempts to return the cat home on the first occasion, with infringements applying for subsequent offences.

Further to the above, legal advice also advises that it would be appropriate for authorised officers to consider whether a warning is an appropriate and proportionate enforcement action in relation to first time offences. However, it very clearly advises that it would probably go too far to expressly mandate that all first-time offences be treated this way, as this would require authorised

officers to effectively ignore other considerations that may be relevant. An example of this could include investigating a dog attack matter, in this instance Council will issue infringements or charges for the dog at large offence and not warnings, even though it may be a first offence. It is appropriate to therefore not mandate this approach to enforcement as discretion needs to be maintained for authorised officers to make appropriate assessments pursuant to the Act and in reflection of the specific circumstances.

PART B

Noting that Council has made a decision to introduce a 24 hour cat curfew commencing 1 October 2021, that Council receive a report at its August Council Meeting that provides advice regarding the feasibility, legality and operability of an alternate option for a cat curfew which would entail a dual curfew consisting of:

- a) A 7pm – 7am night-time curfew for all existing registered cats within Knox; and**
- b) A 24-hour curfew for all newly registered cats within Knox at a specified date in the future (no later than 28 February 2022).**

Council may, by resolution, modify or delay the implementation of the section 25 cat curfew order made at its 28 June 2021 meeting. However, any such order must be made in line with the legislative requirements of the Act.

Legal advice from Maddocks Lawyers has been obtained in relation to this question of the Notice of Motion. This was to further explore the legal complexities of this proposition and whether the legislation allows for an Order that would create a two-class curfew, one for cats registered before a specific date, and one for cats registered after.

The legal advice concludes that although there is no express provision in the Act that would prohibit Council from discriminating against cats based on their registration date, on balance, Council cannot subject cats to different restrictions based solely on the date on which they are registered. This advice is based on the purpose of the Act and the wording of the provision relating to Cats found at large (s 25). The advice also provided that if such an order were introduced there would be a risk that Council would be acting *ultra vires* and the Order could be vulnerable to challenge.

In addition to the legal advice, there would also be several operational impediments for enforcing a dual curfew as it would treat cats differently depending on the date they are registered, resulting in an inequitable application of the law. Given that the average life span for a domestic cat is between 15 and 20 years, it would essentially mean that Council would not have a municipal wide 24-hour cat curfew applying to all cats for more than 20 years.

This can result in two neighbouring cat owners that purchased a cat on the same day being subject to a different set of rules should one register the day before the dual curfew cut-off date and the other the day after. As a result of this registration timing, for the life of the cats, one cat owner must confine their animal 24/7 or risk an infringement or possible further enforcement action whilst their neighbour will be free to allow their cat to roam during the day, and must only bring their cat in at night. To further complicate matters, the same owner could have both cats and one would be subject to a 24-hour curfew and the other only a night-time curfew.

The proposal also remains silent on a number of other issues that will also need to be considered such as what is to occur with unregistered cats, cats that are found in the municipality but are registered to another Council, older cats that are adopted and registered for the first time, or those moving into Knox with an existing cat. All the above must also be considered in any alternative curfew arrangement.

Of further note is that some cat owners may have already undertaken works to their property or have made purchases in preparation for the 24-hour cat curfew. If the current impending 24 hour curfew adopted by Council were to change, these cat owners may not be able to return or refund their purchases and could seek compensation from Council.

There are also further complexities with enforcement as the authorised officer would need to ascertain the date on which a cat was registered prior to being able to determine what action they are able to take or even if a cat is permitted to be out during the day or not. It would be unclear to both Council officers and residents if a cat is permitted to be out without first catching the cat, checking it for any identification, and then checking Council's registration database for the animals first date of registration. These complexities add further resource burden in enforcing such a dual curfew.

There would remain limited enforcement of the night-time cat curfew due to the points of proof required to issue a warning or infringement. The responsibility to provide adequate evidence of an offence will be with the resident effected by the cat; namely that they ensure any cat they trap was during the curfew hours and sign a written statement for Council to be able to pursue any compliance action. They must also be prepared to attend the Magistrates' Court on behalf of Council as a witness should the infringement be contested or not be paid by the cat owner. Some residents may also not wish to provide the statement leaving Council unable to enforce the curfew and it being relied on more as an educational tool.

From an operational perspective, a dual curfew will be at best be particularly challenging for Officers to effectively enforce. It is envisaged that there could be little or no enforcement of the night-time curfew, and limited enforcement of the 24-hour curfew for several years as the majority of cats would be subject to the night-time curfew requirements only.

In addition to any section 25 offences, section 23 of the Act will continue to apply (Dogs and cats on private property without permission) regardless of the type of curfew in place.

3. CONSULTATION

This report provides further information to Council in response to their Notice of Motion. No further consultation has occurred due to the pressing timeframes required for this report to be returned to Council.

4. ENVIRONMENTAL/AMENITY ISSUES

Council's 2017-2021 Domestic Animal Management Plan acknowledges that many cat owners recognise the health and wellbeing associated with confining their cat. In addition, an increasing number of cat owners are taking it upon themselves to confine cats to their property or indoors 24/7 without any requirements via legislation.

Providing their basic needs are met, cats can enjoy longer and healthier lives when safely contained to the property. Serious problems can occur if cats are allowed to roam outdoors, particularly at night (around 80% of accidents involving cats happen at night). Roaming cats can get hit by cars, injured in fights, catch fatal diseases (e.g. Feline AIDS) or become lost. Roaming cats can also kill native wildlife – even well-fed cats will hunt. Roaming cats can annoy neighbours by spraying, fighting, yowling and digging in gardens. A cat curfew is expected to provide improved protection for both Knox’s native wildlife and the cats themselves, as well as reducing cat nuisances.

The curfew aligns with one of the purposes of the *Domestic Animals Act 1994* which is to:

- *promote animal welfare, the responsible ownership of dogs and cats and the protection of the environment by providing for:*
 - a) *a scheme to protect the community and the environment from feral and nuisance dogs and cats...*

5. FINANCIAL & ECONOMIC IMPLICATIONS

Additional funding would be required from Council’s budget to undertake any further community survey and data analysis if determined by Council.

It is anticipated the introduction of a cat curfew will result in an increased demand for Council’s free cat-trap loan service, managed by Council’s Community Laws Officers. It is also to be expected that there will be an increase in the number cats being impounded by Council and transported to the pound.

While there may be an expectation that the intervention may be absorbed with existing City Safety and Health staffing resources, experience from other councils in introducing a cat curfew, has found an initial increase in activity impacting upon staff resources early in the introduction period. It is expected that an additional resource may be required to administer and support a permanent curfew and a business case is being prepared. This also has the potential to flow onto Council’s prosecution service if enforcement or contested infringements escalate into the court process.

Introduction of a 24-hour cat curfew is likely to result in additional cost burdens on cat owners through the voluntary installation of fencing modifications or cat enclosures and runs. Some of these costs may have already been outlaid by cat owners since Council’s decision at their meeting on 28 June 2021.

6. SOCIAL IMPLICATIONS

Whilst councils generally introduce cat confinement requirements to address wider community concerns related to the protection of wildlife, nuisances and cat welfare; the community has an expectation that Council will actively enforce legislated requirements. The introduction of the cat curfew is expected to result in an increase in demand for this service, managed by Council’s City Safety and Health Department.

A 24-hour cat curfew will lessen the burden of proof required to be provided by residents to prove an offence for breach of curfew, and will allow the curfew to be effectively enforced by Council.

Council’s approach to managing and rolling-out a 24-hour cat curfew in Knox will be through a comprehensive education and information campaign, to promote the additional containment

requirements for cat owners and benefits of cat containment, as well as providing a 6-month amnesty period where only warnings will be issued. When the amnesty period is over, Authorised Officers will revert to their 'one trip home free' policy which is a benefit of dog and cat registration. This process attempts to reunite the animal with its owner and provides for a warning for a first offence. Unregistered animals are taken to Council's pound and infringements issued.

There may be some negative impact due to concerns regarding the containment of cats and effects on their health and behaviour. Some cat owners may not be able to easily comply with the requirements of a 24-hour curfew or a night time curfew. It is also possible that there may be an increase in owned cat surrender or abandonment due to the added responsibility to cat ownership. It is hoped that with the educational component this outcome is minimised.

7. RELEVANCE TO KNOX COMMUNITY AND COUNCIL PLAN 2017-2021

Goal 1 - We value our natural and built environment

Strategy 1.1 - Protect and enhance our natural environment

Strategy 1.2 - Create a greener city with more large trees, indigenous flora and fauna

Goal 4 - We are safe and secure

Strategy 4.4 - Protect and promote public health, safety and amenity

8. CONFLICT OF INTEREST

The officers contributing to and responsible for this report have no conflicts of interest requiring disclosure under Chapter 5 of the Governance Rules of Knox City Council.

9. CONCLUSION

Council can delay the commencement of the curfew but will need to make a new resolution to do so. This will allow cat owners to better prepare for a curfew and will also provide additional time for Council to educate the community on the new requirements.

If Council wishes to do so, a new survey can be undertaken to further gauge broad community sentiment of the 24-hour cat curfew. It is recommended that an external provider is engaged to undertake this process and that budget is allocated to undertake this activity.

Council Officers intend to apply a 6-month amnesty period at the commencement of the 24-hour curfew to allow for further education. Once the amnesty period is over, officers will revert to their current standard process of providing a 'first trip home free' for redigested animals. This is one of the many benefits having your cat or dog registered. Impounded cats that are not registered will be taken to Council's pound and infringements issued.

The dual curfew proposed in Part B would be challenging to enforce and manage operationally. The legal advice provided by Maddocks Lawyers stated that an order cannot subject cats to different restrictions based solely on the date on which they are registered. In addition, there would be a risk that if such an order were introduced Council would be acting *ultra vires* and the order could be vulnerable to challenge.

Unless Council makes a further resolution regarding the existing Order, the 1 October 2021 commencement date will remain and must be implemented by Council Officers.

10. CONFIDENTIALITY

There is no content in this report that meets the definition of confidential information from the Local Government Act 2020.

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Report Authorised By: Director, City Strategy and Integrity, Matt Kelleher

Attachments

Nil