

Ture-ā-rohe Tiaki Kararehe 2015

Animal Management Bylaw 2015

Options Report
February 2020

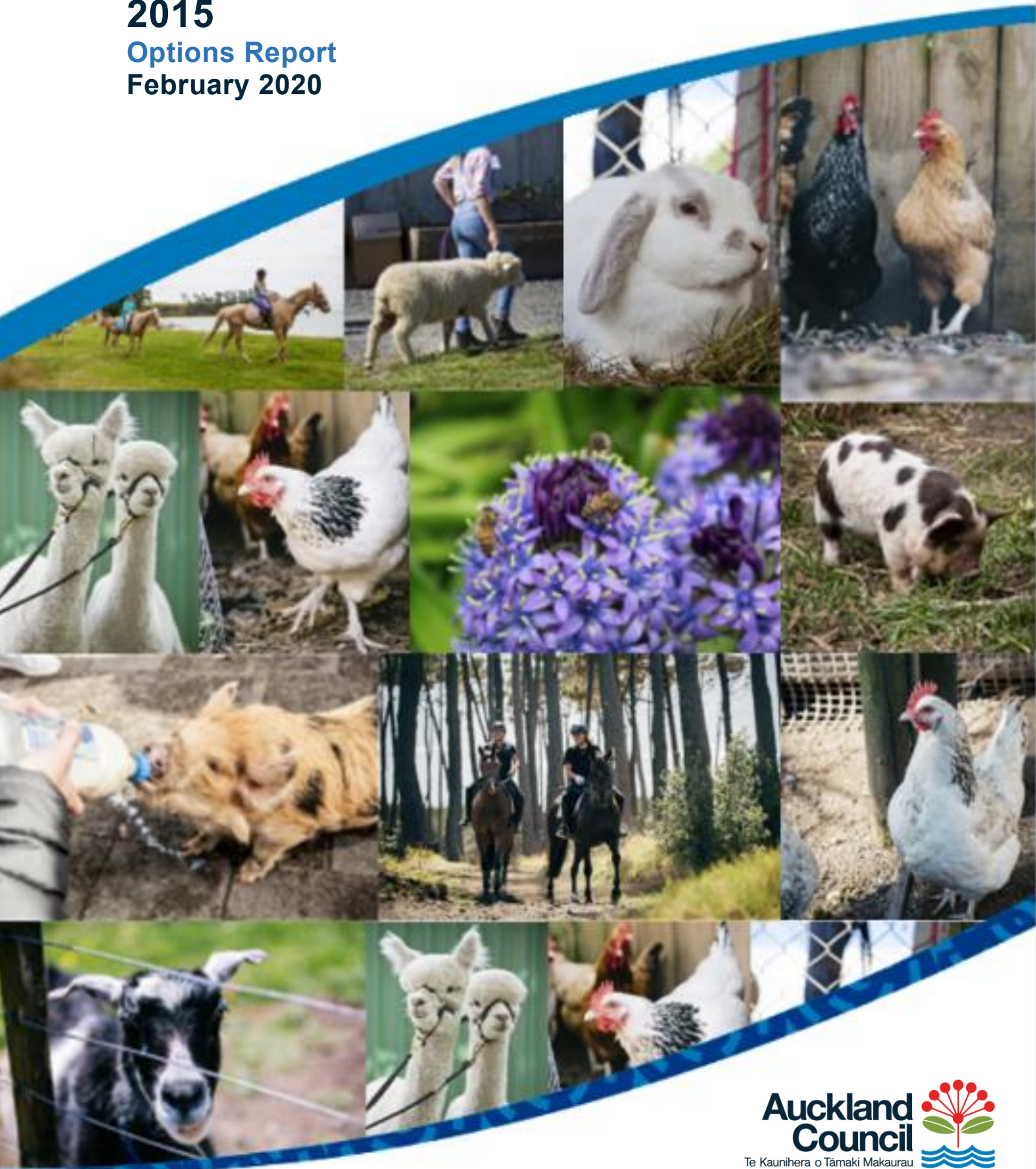


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Animal Management Bylaw 2015 Review

Options report 2020

1. Introduction

This report provides advice on options available to Auckland Council in response to the review of the **Te Kaunihera o Tāmaki Makaurau Ture-ā-rohe Tiaki Kararehe / Auckland Council Animal Management Bylaw 2015**.

This report draws on findings in the “Animal Management Bylaw 2015: Findings Report 2019” endorsed by the Regulatory Committee on 11 April 2020 (REG/2020/17).

2. Executive summary

To enable Auckland Council to decide how to respond to the findings report on the review of the **Ture-ā-rohe Tiaki Kararehe/Animal Management Bylaw 2015**, staff assessed the following options using Local Government Act 2002 criteria.

- **Option one:** confirm the existing Bylaw
- **Option two:** amend the Bylaw
- **Option three:** replace the Bylaw with a new bylaw
- **Options four:** revoke the Bylaw and have no bylaw on animal management

Staff recommend **option two** (amend Bylaw) as the preferred option because:

- it balances the need to be effective at minimising the problems relating to animals, while still making it simple for Aucklanders to own and interact with animals in public places
- the existing Bylaw approach has support and in most cases is viewed as reasonable
- it achieves many of the same outcomes as option three (replace the Bylaw), while being more efficient for staff and animal owners
- it impacts a comparatively small number of Aucklanders while minimising some of the largest potential risks to safety and nuisance, or difficulties in enforcement.

Option three (replace Bylaw) is not recommended because there is insufficient evidence to suggest the approach of the existing Bylaw needs to fundamentally change.

Option one (confirm Bylaw) is less effective than options two and three and **Option four** (revoke bylaw) is the least effective of all options. Option four creates a regulatory gap that would result in greater risk of problems occurring.

3. Status quo (existing Bylaw)

The Bylaw is made under the Local Government Act 2002¹ and Health Act 1956². It was

¹ <http://www.legislation.govt.nz/act/public/2002/0084/167.0/DLM170873.html> ; Part 8: Regulatory, enforcement, and coercive powers of local authorities

² <http://www.legislation.govt.nz/act/public/1956/0065/latest/whole.html> ; Section 29

adopted by Auckland Council's Governing Body on 30 April 2015³.

The Bylaw's purpose is to provide for the ownership of animals, excluding dogs, in a way that:

- protects the public from nuisance
- maintains and promotes public health and safety
- minimises the potential for offensive behaviour in council controlled public places
- manages animals in council controlled public places.

The Bylaw sets out obligations of animal owners, both in general and in council controlled public places. These include:

- restrictions on the keeping of bees, stock and poultry, particularly in urban areas,
- restrictions on the slaughter, hunting, removal and release of animals and animal remains
- rules for the riding of horses in council controlled public places.

More detailed controls can be made by:

- the Regulatory Committee about the keeping of bees and stock in an urban area and conditions for horse riding in regional parks and associated beaches
- Local Boards about conditions for horse riding in local parks and associated beaches.

Management of animal welfare or wildlife is covered by other legislation and is not a part of this bylaw.

The bylaw is administered using a graduated approach to compliance, with education being the first step and prosecution the last.

4. Problem definition

4.1 Current and future problem

The substantive problems have not changed since 2015, for example:

- owners who are negligent, have inappropriate animals for their properties or are unable to control them may cause other people nuisance, result in offensive animal related behaviour or create risk to public health and safety
- the feeding of wild animals can still cause a nuisance, offensive behaviour and public health risks
- the release or hunting of animals on council controlled public places may still cause problems related to public safety, offensive behaviour, nuisance and misuse of public places.

4.2 Scale and magnitude of the problem

³ The Auckland Council Animal Management Bylaw 2015, Ture-ā-rohe Tiaki Kararehe 2015 was adopted by the Governing Body on 30 April 2015 (GB/2015/22). The Bylaw was amended in 2019 to include matters related to animals previously included in the Auckland Council Public Safety and Nuisance Bylaw 2013 (GB/2019/22).

The findings report revealed⁴



The number of animal complaints to council (excluding dogs) from 2010-2013 to 2015-2019 increased 26 per cent (10,016 to 13,599).



Wandering and noisy animals, especially crowing roosters, were the top complaints from 2010 to 2013 and continued to be so from 2015 to 2019.



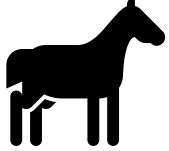
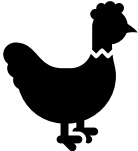
Just under half (45 per cent) of all People's Panel respondents experienced animal nuisance in the past year. Most of the nuisance was from unhygienic behaviour (such as animal excrement), animal wandering, and noise.

4.3 Stakeholder views of the existing Bylaw

Stakeholders have mixed views of the existing Bylaw.

	• Compliance officers who enforce the bylaw have found limitations, particularly around numbers of animals allowed in the bylaw. • Greater clarity on how the Bylaw is worded and definitions would better support enforcement • They believe that changes to numbers of animals allowed for in the bylaw (particularly bees and stock animals) would make it simpler to enforce.
	• Out of 15 beekeepers surveyed, most found the existing bee controls reasonable, fair, and in the interests of the beekeepers. • Beekeepers' suggestions on changes to the controls included a better definition on what it means to maintain colonies with "calm temperament" and fewer restrictions on swarming as this is natural behaviour for bees. • 65 per cent of respondents felt controls for bees were appropriate

⁴ This included a People's Panel Survey in April 2019 with 4,269 respondents across Auckland to understand animal ownership rates, animal nuisances and views on the existing bylaw rules.

	• Out of nine horse riders surveyed, most found the existing horse controls fair to both riders and the public. • 91 per cent of those surveyed felt the controls to be fair • However, those survey suggested the controls could include a better description for removing manure requirements and how horses are expected to cross coastal dunes without causing any damage. • Horse riders did not want to see further restrictions put on horses as they feel bridleways are already underprovided and do not know where the council expects people to ride horses.
	• Noise and odour related to chick coops was identified by some survey respondents • 65 per cent of those surveyed felt the current regulations were about right • Those who wanted more regulations suggested controls on location of chicken coops and better fencing • More enforcement of current regulations was recommended
	• Cats have the highest rate of ownership at 42 per cent • Of the 45 per cent of People's Panel survey respondents who have experienced animal nuisance, 22 per cent experienced cat-related nuisance • Cat-related nuisance made up just one per cent of council complaints data, with this low level of reported nuisance being attributed to self-management of the nuisance, tolerating the nuisance, and difficulty identifying an owner • Of the 26 per cent of survey respondents who wanted more animal controls, 57 per cent wanted new controls introduced for cats, such as mandatory registration and microchipping • Survey respondents and engagement with compliance officers revealed that there is confusion around rules around cats, particularly those who are 'unowned'.

5. Objectives

The objectives of a regulatory response to the problem are to:

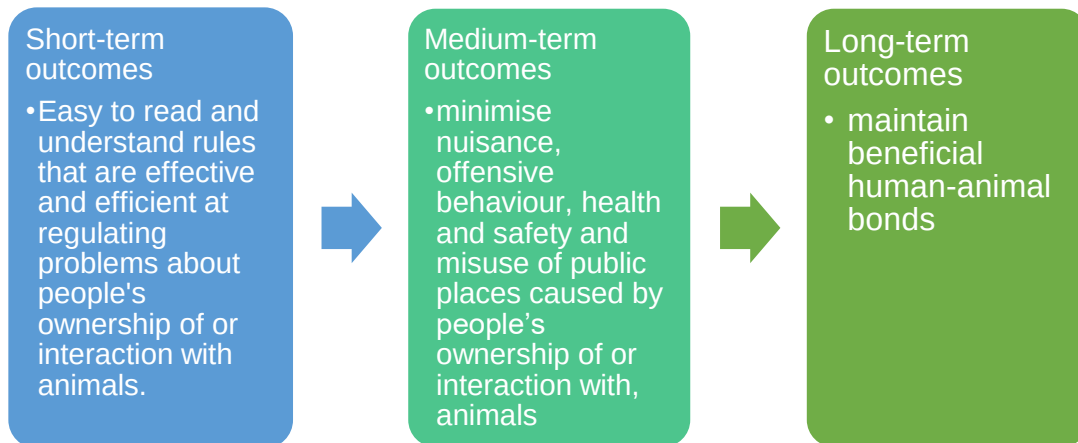
- minimise nuisance, offensive behaviour, health and safety and misuse of public places caused by people's ownership of or interaction with, animals
- meet legislative requirements under the Local Government Act 2002 including:
 - (i) giving effect to its identified priorities and desired outcomes in an efficient and effective manner (section 14)
 - (ii) ensuring any bylaw is valid, including that it is authorised by statute, and is not repugnant or unreasonable
 - (iii) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (sections 155).

These objectives align with the Auckland Plan 2050 Belonging and Participation (Focus area 1), Homes and Places (Direction 1, Focus Area 5) and Environmental and Cultural Heritage (Direction 1, Focus Area 1).

6. Outcomes

The key desired outcome is to help maintain beneficial human-animal bonds.

Desired short, medium, and long-term outcomes of animal management regulation



7. Options

Staff identified the following options to achieve the outcomes in section 6:

7.1 Summary of options

Option	Description
Option one (confirm Bylaw): keep the existing bylaw as it is	This option would involve confirming the existing Bylaw as it is and not making changes.
Option two (amend Bylaw): make changes to improve the existing Bylaw	This option would involves making amendments to the bylaw to reflect changes and learnings since 2015 (outlined in Appendix A). Including: • Clarifying the definition of 'nuisance' • Clarifying what animal-related issues are and which are not addressed in the Bylaw • Considering limits on urban beehives • Amendments to reflect current best practice drafting standards • Moving rules about the feeding of wild or feral animals on private property to the Bylaw.
Option three (replace Bylaw): new bylaw approach to managing animals	This option would involve making a new bylaw that would replace the existing bylaw. The new bylaw would take a different approach to managing animals.

	Note, a different approach to the existing bylaw has not been able to be identified to a level of detail that enables a comparable assessment and is included for completeness to cover the full range of statutory options contained in the Local Government Act 2002.
Option four (revoke Bylaw): repeal the Bylaw and rely on other existing regulations	This option would revoke the existing Bylaw and rely instead on council's Property Maintenance and Nuisance Bylaw, Public Safety and Nuisance Bylaw, Health Act, Impounding Act and Animal Products Act.

8. Analysis and recommendations

Staff considered the general pros and cons of each of the options, along with their associated risks in Appendix One and carried out a preliminary legal assessment in Appendix Two.

Staff then completed a comparative assessment against criteria that reflect the objectives of a regulatory response in section 5 in the Table below. The "✓" and "x" reflect the impact of the option against each criterion relative to other options. The more "✓" the better the option.

8.1 Summary of assessment of options against stated objectives

	Effectiveness*	Efficiency*	Valid and not inconsistent with legislation
Option one: confirm Bylaw	✓	✓	✓
Option two: amend Bylaw	✓✓	✓✓	✓
Option three: replace Bylaw	✓	xx	✓
Option four: revoke Bylaw	x	x	✓

* refers to effectiveness and efficiency at minimising nuisance, offensive behaviour, health and safety and misuse of public places caused by people's ownership of or interaction with, animals.

Based on analysis against assessment criteria and the pros and cons of each option, staff recommend **option two** (amend Bylaw) as the most favourable option because:

- The existing Bylaw has support from the public, operators, animal owners and in most cases is viewed as a reasonable approach. There is no evidence to support a change the overall purpose or scope of the bylaw.
- Option two achieves many of the same outcomes as option one and three, while being more efficient for staff and animal owners.
- It balances the need to be effective at minimising the nuisance caused by animals, while still making it simple for Aucklanders to own and interact with animals.
- Proposed changes will target the areas that will impact a comparatively small number of Aucklanders, while minimising some of the largest potential risks to safety and nuisance, or difficulties in enforcement.
- Allows staff to include the feeding of animals on private property in the Animal Management Bylaw, to reflect where Aucklanders would expect to see restrictions relating to animals.

Option one (confirm Bylaw) is not recommended. There are clear issues with the existing Bylaw that can be addressed by amending the bylaw.

Option three (replace Bylaw) is not recommended. There is insufficient evidence to suggest the approach of the existing Bylaw needs to fundamentally change.

Option four (revoke Bylaw) is the least effective option. It would create a regulatory gap that would result in greater risk of problems occurring.

APPENDIX ONE: Detailed Options Description and Analysis

Option One: Confirm Bylaw Description	Option Two: Amend Bylaw (recommended) Description	Option Three: Replace Bylaw Description	Option Four: Revoke Bylaw Description
This option would involve confirming the existing Bylaw as it is and not making changes.	This option would involves making amendments to the bylaw to reflect changes and learnings since 2015 (outlined in Appendix Three). Including: • Clarifying the definition of ‘nuisance’ • Clarifying what animal-related issues are and which are not addressed in the Bylaw • Considering limits on urban beehives • Amendments to reflect current best practice drafting standards • Moving rules about the feeding of wild or feral animals on private property to the Bylaw.	This option would involve making a new bylaw that would replace the existing bylaw. The new bylaw would take a different approach to managing animals. Note, a different approach to the existing bylaw has not been able to be identified to a level of detail that enables a comparable assessment and is included for completeness to cover the full range of statutory options contained in the Local Government Act 2002.	This option would revoke the existing Bylaw and rely instead on the Property Maintenance and Nuisance Bylaw, Public Safety and Nuisance Bylaw, the Health Act 1956, the Impounding Act 1955 and the Animal Products Act 1999.
Implementation Council would confirm the Bylaw using the Local Government Act 2002 special consultative procedure. The Bylaw would continue to be implemented as it is currently using a graduated approach to compliance.	Implementation Council would amend the Bylaw using the Local Government Act 2002 special consultative procedure. The amended Bylaw would continue to be implemented as it is currently using a graduated approach to compliance.	Implementation Council would make a new bylaw using the Local Government Act 2002 special consultative procedure. The amended Bylaw would continue to be implemented as it is currently using a graduated approach to compliance.	Implementation Council would revoke the Bylaw using the Local Government Act 2002 special consultative procedure. Other regulatory tools or levers would be used to address problems where possible, or no action would be taken where there is a regulatory gap.
Pros • Although improvements have been identified, the bylaw is generally effective. • Compliments existing legislation (Property Maintenance and Nuisance Bylaw, Public Safety and Nuisance Bylaw, the Health Act 1956, the Impounding Act 1955 and the Animal Products Act 1999). • No change in compliance costs to public or council implementation.	Pros • Would continue to address the problems and incorporate the improvements identified in Appendix Three. • Compliments existing legislation (Property Maintenance and Nuisance Bylaw, Public Safety and Nuisance Bylaw, the Health Act 1956, the Impounding Act 1955 and the Animal Products Act 1999).	Pros • Theoretically would continue to address the problems and incorporate the improvements identified in Appendix Three. • Theoretically would complement existing legislation (Property Maintenance and Nuisance Bylaw, Public Safety and Nuisance Bylaw, the Health Act 1956, the Impounding Act 1955 and the Animal Products Act 1999).	Pros • More freedom (less regulations) for people in how they own and interact with animals .
Cons • Would not make improvements identified in Appendix Three.	Cons • Cost of public communication of changes (following adoption of bylaw amendments) and updating compliance practice documentation	Cons • There is no evidence to support a different approach to the existing Bylaw. • Unknown what different approach is, and if identified would need further time to investigate implications both to the public and council in terms of implementation.	Cons • There would be a regulatory gap. • Would not enable a compliance response relating to wandering animals (for example stock) or noisy animals (for example roosters). • Increased risk to public health and safety, with potentially more ACC or insurance claims, shifting the burden to Aucklanders. • Would not support improved animal management. • Is unlikely to mitigate conflict between neighbours.

Option One: Confirm Bylaw	Option Two: Amend Bylaw (recommended)	Option Three: Replace Bylaw	Option Four: Revoke Bylaw
			Issues associated with animal management are likely to increase.
Risks and Mitigation Council is viewed as unresponsive to identified improvements. Low risk , as the majority of the Bylaw is considered acceptable, and awareness of the Bylaw is relatively low. Mitigation through communication on the internet and with key stakeholders.	Risks and Mitigation There is a risk that animal owners could be unhappy with proposed amendments. This risk is considered low to medium as changes would not impact all animal owners. Mitigation will occur through engagement with animal owners during the consultation on amendments. Council is perceived to be wasting resource and residents time in consulting on minor changes to the bylaw. Low risk as the findings report provided evidence that changes to the Bylaw would provide benefit to residents. Risk would need to be accepted; a new bylaw must follow the defined regulatory process.	Risks and Mitigation Council is perceived to be wasting resource and residents time in consulting on creating a new bylaw without evidence a different approach is required. This risk is considered medium . Risk would need to be accepted as new bylaw must follow the define regulatory process.	Risks and Mitigation People experience increase nuisance or risk to health and safety as a result of the bylaw. This risk is considered medium to high . The risk would need to be accepted as there would be a regulatory gap.
Effectiveness* ✓ Somewhat effective, as identified in the Animal Management Findings Report. ✗ Would not make improvements identified in Appendix Three.	Effectiveness* ✓ Would improve the existing Bylaw to better address the problems. ✓ Streamline council bylaws by consolidating all council's animal related rules in a single bylaw. ✓ Council Bylaw easier to read and understand.	Effectiveness* ✗ Unknown what the different approach is, meaning a comparable determination of effectiveness is not possible. ✓ Would theoretically improve the existing Bylaw to better address the problems. ✓ Would theoretically streamline council bylaws by consolidating all council's animal related rules in a single bylaw. ✓ Would theoretically make council bylaws easier to read and understand.	Effectiveness* ✗ Unlikely to be effective as it relies primarily on non-regulatory tools (like signage) and bylaws not related to animals. ✗ Could result in increased problems relating to animals.
Efficiency* ✓ No change to compliance costs to public or to council implementation.	Efficiency* ✓ Would improve the existing Bylaw to better address the problems. ✓ Similar compliance costs to public or to council implementation as existing bylaw.	Efficiency* ✗ Increased time and resource for council to identify, investigate the implications of, and to make a new bylaw, especially when there is no evidence to support a different approach.	Efficiency* ✓ Reduced compliance costs for people which currently require council approval to keep certain animals. ✗ There would be no mechanism to address problems where there is a regulatory gap.

* refers to effectiveness and efficiency at minimising nuisance, offensive behaviour, health and safety and misuse of public places caused by people's ownership of or interaction with, animals.

APPENDIX TWO: Preliminary legal assessment

Bylaws must comply with certain legal requirements to be valid, including that they be authorised by statute, and not be repugnant or unreasonable.

Option one, two and three are likely to meet these requirements.

Option four does not require a legal assessment as it does not require the preparation of a bylaw. However, it would not be repugnant or unreasonable.

New Zealand Bill of Rights Act 1990 assessment

Under the Local Government Act 2002, a bylaw review must consider whether a bylaw has any implications under the New Zealand Bill of Rights Act 1990. Legally, a bylaw cannot be inconsistent with this Act.

The existing Bylaw could potentially limit the right of manifestation of religion and belief under the New Zealand Bill of Rights Act 1990 (section 15). This section refers to the right “to manifest that person’s religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private”.

For example, the Bylaw prohibits releasing or abandoning animals in a council controlled public place unless the council has given prior written approval. This may restrict the Buddhism practice of “life release” which is the practice of saving the lives of beings that were destined for slaughter by releasing them back into the environment.

Releasing animals can lead to negative environmental impacts, including introducing invasive species into non-native environments. This can cause nuisance by reducing the enjoyment other people can experience in a space. This rule in the Bylaw justified as it does not prohibit the release of animals but requires permission from the council first. It is also already an offence under the Animal Welfare Act 1999 to release an animal in captivity that is likely to suffer unreasonable or unnecessary pain or distress, which releasing into the wild may do.

Options two and three are likely to impede the Bill of Rights Act 1990 in the same way as the existing bylaw, and therefore justified.

Option four does not require the preparation of a bylaw and therefore a New Zealand Bill of Rights Act assessment is not required.

APPENDIX THREE: Detailed assessment of improvements to existing Bylaw

The following table assesses the suggested improvements identified in the findings agenda report to the Regulatory Committee on 17 March 2020 (REG/2020/17) against assessment criteria that reflect the core objective.

Suggested amendment from findings	Recommended	Comment
Clarify the definition of 'nuisance'	Yes	Clarification of the definition of 'nuisance' is recommended to align with the definition in Te Ture ā-Rohe Marutau ā-lwi me te Whakapōrearea / Public Safety and Nuisance Bylaw 2013. This will improve consistency across council bylaws and better reflect the inclusion of animal-related matters from the Public Safety and Nuisance Bylaw in 2019 (GB/2019/22) and recommended inclusion of animal-related matters from the Property Maintenance Bylaw. This does not include more specific definitions suggested in findings because this is a matter better addressed by operational practice (for example implementation of the FIDOL (frequency, intensity, duration, offensiveness, location) approach to measuring nuisance.
Clarify the definition of 'owner'	No	The current definition of 'owner' accurately reflects the scope of the Bylaw for the rules to which it applies. Other recommended amendments address underlying concerns by this suggestion (for example the feeding of animals).
Clarify what animal-related issues are and which are not addressed in the Bylaw	Yes	Amendments either to clauses or to related information notes are recommended to clarify what the Bylaw does and does not address. For example, the amendments will clarify: • Which animals the council manages under the Bylaw, and which ones are managed by other organisations or legislation, policies or plans • The limitations of the Bylaw under the Local Government Act 2002 and the Health Act 1956, which do not give council the power to make a bylaw to protect animal welfare or wildlife • That the Bylaw covers all members of the animal kingdom except dogs and humans • Terminology around stock, poultry and companion animals • How stray, wild or feral animals, such as pests, are managed by the Auckland Regional Pest Management Plan 2019-2029, and unowned cats in significant ecological areas • The limitation of enforcement for unowned animals and removal of wild animals, such as roosters or chickens • Land that is covered by the Bylaw, such as how the rules apply to papakiānga, or that the Bylaw

Suggested amendment from findings	Recommended	Comment
		does not apply to land that is administered by the co-governance entity • Management of nuisance across the urban and rural boundary • Variations in regulations for stock in urban areas and rural areas, specially in relation to wandering stock.
Consider controls on cats to prevent nuisance including non-regulatory controls	No	Findings data suggests that cat nuisance is not so significant to warrant additional regulation above that for animals in general. Less than half (45 per cent) of Peoples Panel respondents had experienced animal nuisance. Less than half of those people (22 per cent) experienced cat-related nuisance. Cat complaints represented one per cent of complaints between Jan 2015 – Feb 2019. In addition, suggestions of a cat register, tagging or microchipping are best addressed by central government (in a similar way to dogs). New guidelines for cat ownership have been developed to help owners better manage their cats. This was co-created by SPCA, Auckland Zoo, New Zealand Companion Animal Council and Stray Cats New Zealand
Consider greater animal identification requirements	No	Tagging or microchipping are best addressed by central government (in a similar way to dogs).
Consider limits on urban beehives	Yes	A control to limit hive size in urban properties under 2000m ² would better address problem while still allowing for the keeping of bees in urban areas.
Consider specific location controls for chicken coops	No	Approximately six per cent of people own chickens and roosters. Only three per cent of residents in urban areas have chickens. Noise complaints are the most prevalent form of complaint related to poultry. They make up less than one per cent of complaints, and moving the coop is unlikely to mitigate this nuisance. Smell, from such things as chicken coops also made up less than one per cent of nuisance complaints. Implementing specific location controls could be confusing for residents and is unlikely to have significant impact on nuisance. The Bylaw provides guidelines for appropriate chicken coop management, which if followed, would mitigate nuisance.

Suggested amendment from findings	Recommended	Comment
		Evidence suggests more enforcement rather than more controls are preferable.
Clarify controls about the removal of horse manure and minimising damage to coastal dunes	No	The existing controls are considered adequate to address underlying concerns about manure and damage to dunes. 91 per cent of People Panel respondents felt the current controls to be fair. Descriptions or notes, however, could be improved.
Amendments to reflect current best practice drafting standards	Yes	This will make the Bylaw easier to read and understand. While this will change the appearance of the Bylaw in terms of both structure and wording, the intent and scope of the rules will remain unchanged or as required to implement the above recommended amendments.
Other suggested amendments		
Move rules about the feeding of wild or feral animals on private property to the Bylaw	Yes	Moving this clause to the Bylaw was suggested in the review findings to the Property Maintenance and Nuisance Bylaw (REG/2020/50). Moving this clause would streamline council bylaws by consolidating all animal-related rules into a single bylaw. Most noise complaint about birds involved people feeding and attracting noisy birds to neighbouring properties (362 complains between Jan 2015 – Feb 2019).