

# TE TURE-Ā-ROHE TŌPŪTANGA O TE KAUNIHERA-Ā-ROHE O TE WAIROA WĀHANGA 1 – TE TURE-Ā-ROHE WHAKAUPOKO 2019

## WAIROA DISTRICT COUNCIL CONSOLIDATED BYLAW PART 1 – INTRODUCTORY BYLAW ~~2007~~2019

The objective of this document is to provide clear and definitive definitions of words and phrases, an authoritative source for determination of the powers and functions of officers appointed to administer bylaws, for penalties and breaches of bylaws and for related administrative matters.

Local Authorities are empowered under a variety of Acts, including the Local Government Act 2002, to make bylaws. The objective of this document is to ensure consistency in the administration and enforcement of the Council’s bylaws by providing -

- clear definitions of key terms and expressions that apply to all parts of the Council’s bylaws;
- an authoritative standard for determining the powers and functions of officers appointed to administer and enforce bylaws;
- transparency in identifying breaches of bylaws and establishing associated penalties; and
- general administrative guidelines.

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# 1. INTRODUCTION

## 1.1 SCOPE

1.1.1 The Local Government Act 2002 (“the Act”) gives authority to the Wairoa District

Council to adopt bylaws to:

- a) protect the public from nuisance;
- b) protect, promote, and maintain public health and safety; and
- c) minimise the potential for offensive behaviour in public spaces.

1.1.2 Specific bylaw-making powers are referred to in the individual bylaw to which they

are applicable. In all other cases the bylaw is made under the general powers as

set out above.

~~1.1.1~~1.1.3 The purpose of this Bylaw-bylaw, made under the provisions of the Act, is to

identify and clearly interpret those terms and expressions that are used

throughout all Wairoa District Council bylaws.is to:

- ~~a) Identify and clearly interpret those terms and expressions that are used throughout this Bylaw of the Council.~~
- ~~b) Outline the serving of orders and notices, powers of delegation and entry, suspension and revocation of licence, permit, consent or approval, removal of works executed contrary to this Bylaw, fees and charges, offences and breaches and penalties for breach of this Bylaw.~~

1.1.4 This bylaw outlines serving of orders and notices, powers of delegation and entry, suspension and evocation of licences, removal of works executed contrary to a bylaw, fees and charges, offences, breaches, and penalties for breach of bylaws.

1.1.5 The provisions if the Wairoa District Council Introductory Bylaw 2019 are incorporated into, and form part of, all Wairoa District Council bylaws, so far as they are applicable, and are not contrary to the provisions of that bylaw.

1.1.6 Definitions not included within this bylaw are contained within the particular bylaw to which they apply.

~~1.1.2~~1.1.7 This Bylaw-bylaw shall be known and cited as the Wairoa District Council Introductory Bylaw 2007-2019 and shall come into operation on the date specified by public notice after the Wairoa District Council makes this Bylaw-bylaw. For expediency this Bylaw-bylaw may be referred to in this or other Bylaws-bylaws as the Introductory Bylaw.

1.1.31.1.8 This ~~Bylaw~~ bylaw is made pursuant to the provisions of the Local Government Act 2002.

## 1.2 DEFINITIONS AND INTERPRETATION

1.2.1 For the purposes of this ~~Bylaw~~ bylaw the following definitions shall apply:

TERM	DEFINITION
<b>ACT</b>	Local Government Act 2002 and its amendments.
<b>AGENT</b>	A person or business authorised to act on another's behalf.
<b>ANIMAL</b>	<del>Any member of the animal kingdom, including any mammal, bird finfish, shellfish, reptile, amphibian, insect or invertebrate, and includes the carcass of constituent parts thereof, but does not include human beings. Stock, poultry and any other vertebrate animal of any age or sex that is kept in a state of captivity or is dependent upon human beings for its care and sustenance.</del>
<b>APPROVED/ APPROVAL</b>	<del>Approved by the Council or by any Authorised Officer or Authorised Agent on behalf of the Council in writing. Approved by the Council or by any officer so authorised on behalf of the Council.</del>
<b>AUTHORISED AGENT</b>	Any person who is not an employee of the Council but is authorised in writing by the Chief Executive or by the Council to act on its behalf <del>and with its authority and can include a member of the police.</del>
<b>AUTHORISED OFFICER or OFFICER</b>	<del>Any person who is an employee of the Council appointed or authorised in writing by the Chief Executive or by the Council to act on its behalf and with its authority. Any person delegated, appointed or authorised in writing by the Council to act on its behalf and with its authority including a Police Constable.</del>
<b>BERM</b>	Any part of a road between the carriageway seal edge and the road boundary and may include any contiguous kerbing, formed footpath, formed vehicle crossing, and grassed area.
<b>BYLAW</b>	A Bylaw or parts thereof of the Council, for the time being in force and made under the provisions of any Act or authority enabling the Council to make Bylaws.
<b>CHIEF EXECUTIVE</b>	<del>The principal administrative officer of the Council, irrespective of the designation given to the officer, and includes any person for the time being appointed by Council to perform the duties or a particular duty of the Chief Executive. The chief executive officer appointed pursuant to section 42 of the Local Government Act 2002.</del>
<b>COUNCIL</b>	The Wairoa District Council or any <del>Authorised Officer</del> <u>officer authorised to exercise the authority of the Council.</u>

<b>CUSTODIAN</b>	Any person for the time being appointed by Council to control or manage or to assist in the control and management of any land, building, or premises belonging to or under the jurisdiction of the Council.
<b>CYCLE, CYCLE PATH and CYCLE LANES</b>	<del>Have the same meanings as in the Land Transport (Road User) Rules 2004.</del>
<b>DISTRICT</b>	<del>Has the meaning assigned to that term in section 5(1) of the Act. The district of the Wairoa District Council.</del>
<b>DISTRICT PLAN</b>	<del>as defined in sections 72 to 77 of the Resource Management Act 1991. Has the same meaning as in the Resource Management Act 1991.</del>
<b>DWELLING or DWELLINGHOUSE</b>	Includes any house, tent, vehicle or other structure, whether permanent or temporary, and whether attached to the soil or not, used in whole or in part for human habitation, and includes the land appurtenant to a dwelling.
<b>EMERGENCY VEHICLE</b>	<del>as defined in section 1.6 of the Land Transport (Road User) Rule 2004. Has the same meaning as in the Land Transport (User Rules) 2004.</del>
<b>ENACTMENT</b>	<del>Has the same meaning as in section 29 of the Interpretation Act 1999. Has the same meaning as in section 29 of the Interpretation Act 1999.</del>
<b>ENFORCEMENT OFFICER</b>	A person appointed by the Council to exercise the powers of an enforcement officer in relation to offences against, and infringement offences under, the <del>Local Government Act 2002</del> Act, including enforcement of <del>this Bylaw</del> the bylaws of the Council <del>and a member of the Police.</del>
<b>ENGINEER</b>	<del>Engineering Manager</del> Group Manager Community Assets and Services of the Wairoa District Council and includes his or her representative.
<b>FOOTPATH</b>	<del>As defined in section 1.6 of the Land Transport (Road User) Rule 2004. Has the same meaning as in the Land Transport (User Rules) 2004.</del>
<b>FOOTPATH, PRIVATE ROAD and PRIVATE WAY</b>	<del>Have the same meaning assigned to them in section 315(1) of the Local Government Act 1974.</del>
<b>INFRINGEMENT</b>	An offence as specified by a <del>Bylaw</del> bylaw under sections 243 and 259(a) of the Local Government Act 2002.
<b>INFRINGEMENT OFFENCE</b>	An offence for which any person can be punished on indictment, by summary process, or by infringement process.
<b>LONG TERM COUNCIL COMMUNITY PLAN</b>	<del>The Council's long-term plan as required under section 93 of the Local Government Act 2002. A long term council community plan adopted under section 93 of the Local Government Act 2002.</del>

<b>LICENSED</b>	Holding a licence <u>or approval issued</u> under <del>this a Bylaw</del> <u>bylaw</u> or under any enactment.
<b>LOCAL AUTHORITY</b>	The Council or person or entity authorised by any enactment to make <del>Bylaws</del> <u>bylaws</u> and includes the body corporate on whose behalf the Council, person or entity acts.
<b>MOTOR VEHICLE</b>	<del>Has the same meaning as in section 2(1) of the Land Transport Act 1998.</del> <u>Has the same meaning as in the Land Transport Act 1998.</u>
<b>NUISANCE</b>	Shall have the meaning assigned to it by section 29 of the Health Act 1956 and its amendments.
<b>OCCUPIER</b>	The inhabitant occupier of any property, and in any case where any building, house, tenement, or premises is or are unoccupied, <del>includes the owner shall be deemed to include the owner as hereinafter defined.</del>
<b>OFFENCE</b>	Includes any act or omission in relation to <del>this Bylaw</del> <u>a bylaw</u> or <del>any part thereof</del> for which any person can be punished either on indictment or by summary process.
<b>ORNAMENTAL VERGE or PLOT</b>	<del>Includes every flower bed, grass verge or plot, shrubbery or planted area which has been constructed as such.</del>
<b>OWNER</b>	<del>As applied to any land, building, or premises, means any person for the time being entitled to receive the rent for such property, or who would be so entitled if it were let to a tenant at a rack rent, and where any such person is absent from New Zealand, include their attorney or agent. Of any property, or as applied to any land, building, or premises, means any person for the time being entitled to receive the rent for such property, or who would be so entitled if the same were let to a tenant at a rack rent, and where any such person is absent from New Zealand, shall include their agent.</del>
<b>PARKING and PARK</b>	Has the same meaning as in the Land Transport Act 1998.
<b>PARKING PLACE</b>	Has the same meaning as in section 591(6) of the Local Government Act 1974.
<b>PERSON</b>	<del>A natural person and also a body of persons, whether corporate or unincorporated. Includes a corporation sole and also a body of persons, whether corporate or unincorporated.</del>
<b>PORTICO</b>	<del>Is a large porch at the main entrance or side entrance to a building with columns supporting a roof.</del>
<b>POULTRY</b>	Any <u>live domesticated or farmed</u> bird including, but not limited to <u>budgerigars, canaries,</u> domestic fowl, ducks, geese, turkeys, guinea-fowl, <u>parrots,</u> pheasants, peacocks, <u>emu and or</u> pigeons.
<b>PREMISES</b>	Any land, dwelling, storehouse, warehouse, shop, cellar, yard, building, or part of the same, or enclosed space separately occupied, <del>and a</del> <u>All</u> lands, buildings, and places adjoining each

	other and occupied together shall be deemed to be the same premises.
<b>PUBLIC NOTICE</b>	Has the same meaning as assigned to it in the <del>Local Government Act 2002</del> Act, as amended.
<b>PUBLIC PLACE</b>	<p><del>Has the meaning as assigned to that term in section 147 (1) of the Act:</del></p> <p><del>(a) a place that is open to, or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but</del></p> <p><del>(b) does not include licensed premises.</del></p> <p><del>as defined under section 147 of the Local Government Act 2002 means a place that:</del></p> <p><del>———— (a) ——— is under the control of the Council; and</del></p> <p><del>———— (b) ——— is open to, or being used by the public, whether or not there is an admission charge, and includes:</del></p> <p><del>———— (i) ——— any road within the district, whether or not the road is under the control of the Council; and</del></p> <p><del>———— (ii) ——— any part of a public place.</del></p>
<b>PUBLIC WORK</b>	Has the same meaning as in the Public Works Act 1996.
<b>RESERVE</b>	Has the same meaning as assigned to that term in section 2(1) of the Reserves Act 1977. Any land set aside for any public purpose and shall have the same meaning as in the Reserves Act 1977.
<b>RESERVED PARKING PLACE</b>	Any parking place which has been reserved by the Council for letting or allocation to any person or category of persons for reserved parking and which is clearly marked by a sign, notice or number or otherwise as being not available for public parking.
<b>ROAD</b>	Has the same meaning as in section <del>315-2(1)</del> of the <del>Local Government Act 1974</del> and Transport Act 1998.
<b>RURAL</b>	Land zoned rural in the Wairoa District Council District Plan.
<b>SETTLEMENT</b>	Land zoned settlement in the Wairoa District Council District Plan.
<b>STOCK</b>	<del>Means cattle, sheep, horses, donkeys, mules, pigs, goats, deer, alpacas, llamas, or other animal (excluding dogs), including their young, kept in captivity, or farmed, and dependent on</del>

	<del>humans for their care and sustenance. Cattle, sheep, horses, pigs, goats, deer, ostrich, alpaca and llama of any age or sex.</del>
<b>URBAN</b>	Land zoned residential, town centre and industrial in the Wairoa District Council District Plan.
<b>VEHICLE</b>	<del>Has the same meaning as assigned to that term in section 2(1) of the Land Transport Act 1998. Has the same meaning as in the Land Transport Act 1998.</del>
<b>VERANDA</b>	<del>Includes every portico, porch, shed, shade, awning, blind, covering, or like structure, and their supports, projecting into or over any part of a public place.</del>
<b>WATERWORKS</b>	<del>Has the same meaning assigned to that term in section 5(1) of the Act. Has the same meaning as in the Local Government Act 2002.</del>
<b>WORKING DAY</b>	<del>Has the meaning assigned to that term in section 5(1) of the Act. Has the same meaning as in the Local Government Act 2002.</del>
<b>WRITING or WRITTEN</b>	Or any term of like import means and includes words printed, painted, engraved, lithographed, or otherwise traced or copied.

Definitions not included within this Bylaw are contained within various parts of the bylaws.

### **INTERPRETATION**

- 1.2.2 Every Schedule to a Bylaw-bylaw shall be deemed to form part of the Bylaw-bylaw provided that such Schedule or policy note may be altered from time to time by Council resolution.
- 1.2.3 Every Schedule to a Bylaw-bylaw shall come into force on the date specified in the Schedule.
- 1.2.4 References in sections of a Bylaw-bylaw to other sections shall be to sections within the same Bylaw-bylaw while references to sections in other Bylaws-bylaws or other enactments shall be explicitly stated.
- 1.2.5 Words importing the singular number include the plural number, and words importing the plural number include the singular number.
- 1.2.6 Words referring to any district, locality, place, person, office, officer, functionary, party or object shall be construed distributively as referring to each district, locality, place, person, office, officer, functionary, party, or object, to whom or to which the provision is applicable.
- 1.2.7 The headings to the sections of a Bylaw-bylaw and the footnotes contained at the bottom of the pages of a Bylaw-bylaw shall not affect the construction thereof.

- 1.2.8 For the purposes of a ~~Bylaw~~ bylaw the word “shall” and “will” refer to practices that are mandatory for compliance with that Bylaw, while the word “should” refers to practices which are advised or recommended.

## 2. OFFICERS TO CONTINUE IN OFFICE

All officers appointed by the Council under or for the purpose of any repealed ~~Bylaw~~ bylaw, and holding office at the time of the coming into operation of this ~~Bylaw~~ bylaw, shall be deemed to have been appointed under this ~~Bylaw~~ bylaw.

## 3. SERVING OF ORDERS AND NOTICES

- 3.1 Except where otherwise provided for in any enactment, ~~where any notice, order, or other document is required to be served on any person for the purpose of this bylaw, service may be effected by delivering it personally to the person or by sending it by registered post courier, fax or electronic means, to that person’s last known residential or business address.~~ in any case in which it is provided by a Bylaw, that an order may be made upon or notice be given to any person requiring them to do or abstain from doing anything, or any notice is required by that Bylaw to be given or sent to any person, such order or notice shall be delivered to such person and may be delivered to them either personally or by sending the same, by courier, post, fax or electronic means, to them at their last known place of abode or business.
- 3.2 If such person is absent from New Zealand the order ~~or notice may be sent to their agent instead of to such person, in the manner mentioned in section 3.1., notice or other document may be served on the person’s agent in the manner mentioned in section 3.1.~~
- 3.3 ~~If such a person is not known, or is absent from New Zealand, and has no known agent in New Zealand, and the order or notice relates to any land or building, the order or notice addressed to the owner or occupier of such building or land, as the case may require, may be served on the person in occupation thereof, or left with some other resident of the abode; or, if there is no person in occupation, may be put up on some conspicuous part of such building or land. It shall not be necessary in such notice to name the occupier or the owner of such land or building.~~

If the order, notice, or other document relates to land or buildings, then the order, notice, or other document should be served on the person who owns that land or buildings. However, if that person is not known, or is absent from New Zealand, or has no known agent in New Zealand, the order or notice may be:

- a) served on the person who is occupying the land or buildings; or
- b) if there is no person in occupation, put up on some conspicuous part of the land or buildings.

It is not necessary in that notice to name the occupier or the owner of that land or buildings.

3.4 Where an order or notice is sent by registered post, the order or notice ~~it~~ shall be sent so as to arrive no later than the latest time on which such an order or notice is required to be served, on or before the latest time on which such order or notice is required to be served.

3.5—~~Unless evidence indicates the contrary where an order or notice is sent by:~~

~~Post it will be deemed received on the first day (excluding weekends and public holidays) after posting.~~

~~Facsimile or email and the sender's facsimile or email machine produces a transmission report indicating that the facsimile or email was sent to the addressee, the report will be prima facie evidence that the facsimile or email was received by the addressee in a legible form at the time indicated on that report.~~

~~Courier and the courier obtains a receipt or records delivery on a courier run sheet, the receipt or record of delivery on a courier run sheet will be prima facie evidence that the communication was received by the addressee at the time indicated on the receipt or courier run sheet.~~

3.5 Any order or notice issued shall state the time within which the remedial action is to be carried out, and may be extended from time to time by written authority of an authorised officer.

## 4. POWERS OF DELEGATION

4.1 Where pursuant to a ~~Bylaw~~ bylaw any powers or duties are imposed on a Chief Executive or any authorised officer of the Council that officer may, with the consent of the Council, delegate any of those powers or duties delegated to him, generally or particularly to any other officer of the Council.

4.2 In all cases where a ~~Bylaw~~ bylaw provides for the issue of any order, notice or licence, permit, consent or approval, such order notice or licence, permit, consent or approval shall be deemed to be issued in compliance with that ~~Bylaw~~ bylaw if the same is issued by any officer of the Council authorised by the Council for that purpose.

4.3 There shall be a right of appeal by an affected party from any decision by a delegated authority to original holder of the power and duty; ~~Provided~~ provided that the original holder of the power and duty may, after consultation with the Chief Executive, refer the appeal to the Council when in ~~his~~ their opinion this is justified.

4.4 Where the original holder of the delegated power and duty is the Council the right of appeal may be to a committee of the Council appointed for this purpose, who shall be the final arbitrator of the merits of the matter.

## 5. SUSPENSION AND REVOCATION OF LICENCE, PERMIT, CONSENT OR APPROVAL

5.1 Unless this bylaw provides otherwise, should the licence holder be convicted of any offence relating to the holder's suitability as a licensee, the Council may immediately revoke or suspend the licence for any specified time.

5.2 The Council may, by notice in writing, call upon the licence holder to appear before the Council and give reasons why the licence should not be revoked or suspended, if any of the following are brought to the notice of the Council:

- a) That the licence holder –
  - i. has acted or is acting in a manner contrary to the true intent and meaning of this bylaw; or
  - ii. has failed to comply with any of the conditions of the licence; or
  - iii. is in any way unfit to hold the licence;
- b) that the premises for which the licence was issued is being used for any purpose other than that stated in the licence, or is in a state of disrepair contrary to the terms of the licence; or
- c) Then the bylaw is not being properly observed.

5.3 Council may, if it considers the allegations correct or if there is no appearance by the licence holder, revoke, or suspend the licence for any specified time..

5.4 A person whose licence has been suspended under this section and any premises for which that licence has been so suspended is, during the period of that suspension, be deemed to be unlicensed.

5.1 ~~Except as may be otherwise provided in any enactment or elsewhere in a Bylaw:~~

- a) ~~If the holder of a licence, permit, consent or approval is convicted of an offence constituting a breach of the terms of, or conditions included in that licence, permit, consent or approval, or of an offence touching his character as a licensee or permit holders, the Council may revoke that licence, permit, consent or approval or suspend it for as long as the Council thinks fit.~~
- b) ~~If the holder of a licence permit, consent or approval:~~
  - i. ~~Acts in a manner contrary to the true intent and meaning of that Bylaw; or~~
  - ii. ~~Fails to observe or comply with the terms of or any conditions included in a licence, permit, consent or approval; or~~

iii. — Acts in a way which in the opinion of the Council renders the holder unfit to hold a licence, permit, consent or approval;

OR

e) — If any premises under a Bylaw:

i. — Are no longer being used for the purpose stated in the licence, permit, consent or approval; or

ii. — Have fallen into a state of disrepair or are not being kept or maintained in accordance with the licence, permit, consent or approval; or

iii. — That in any other manner the provisions of that Bylaw or any Regulations applicable in respect of those premises are not being observed in accordance with their true intent and meaning;

THEN

d) — The Council may, by notice served upon the holder of a licence, permit, consent or approval or the occupier or owner of the licensed premises, as the case may be, require that person to appear before the Council or its nominated Committee at a time and place specified in that notice, to show cause that licence, permit, consent or approval should not be revoked or suspended.

5.2 — If the Council or the Committee considers the acts or failures of the holder of a licence, permit, consent or approval, or the circumstances of the premises to which the licence, permit, consent or approval applies so warrant, or if there is no response by the licensee, permit holder, owner or occupier, then the Council or that Committee may revoke the licence, permit, consent or approval or suspend it or impose further or amended conditions on it for as long as the Council or that Committee thinks fit.

5.3 — A person whose licence, permit, consent or approval has been suspended under section 5.2 and any premises in respect of which that licence, permit, consent or approval has been so suspended shall, during the period of that suspension, be deemed to be unlicensed or without a permit.

## 6. APPLICATION FOR AND TRANSFER OF LICENCE, PERMIT, CONSENT OR APPROVAL

6.1 The Council may from time to time specify by resolution in Schedule 1 of this Bylaw determine a procedure to obtain prior written permission to engage in any activity that is controlled or restricted by a ~~Bylaw~~ bylaw.

6.2 Unless otherwise provided elsewhere in a ~~Bylaw~~ bylaw, no licence, permit, consent or approval issued to a person named in that licence, permit, consent or

approval shall be transferable to any other person and no such licence, permit, consent or approval shall authorise any person other than the person named therein to act in any way under its terms or conditions.

## 7. ENCROACHMENT TO BE REMOVED UPON NOTICE

7.1 If any building, structure or object or any part thereof shall have been erected, constructed or placed upon, under, over or across any public place; or

If any vegetation is permitted or allow to encroach on to or over any public place to obstruct or interfere with the free movement of persons using that public place without the permission of the Council, the Council may by notice in writing require the owner of such building, structure, object or vegetation to remove the same or such part thereof as specified in the notice.

7.2 Any notice issued under section 7.1 may require such precautions to be taken as Council thinks necessary for the safety of the public and for the proper securing of such building, structure, object or vegetation after such removal.

## 8. REMOVAL BY COUNCIL OF WORKS EXECUTED CONTRARY TO THE BYLAW, OR SECTION 357 OF THE LOCAL GOVERNMENT ACT 1974 OR SECTION 163 OF THE LOCAL GOVERNMENT ACT 2002

8.1 The Council may pull down, remove or alter or cause to be pulled down, removed or altered any work, material or thing erected or being in contravention of a ~~Bylaw~~ bylaw of the Council, section 357 of the Local Government Act 1974 or sections 163, 164, 165, 167 and 168 of the Act~~section 163 of the Local Government Act 2002~~.

8.2 The Council may recover from any person responsible for the erection or from any person permitting the continued existence of any such work material or object all costs incurred by it, in connection with such pulling down, removal or alteration. This includes the cost of debt collecting and legal fees.

8.3 The exercise of this authority shall not relieve any such person from responsibility for any penalty for erecting or permitting the continued existence of any such work, material or object.

8.4 If however the breach is such that public health, or safety considerations, or risk of consequential damage to Council assets is such that delay would create unacceptable results, Council may take immediate action to rectify the defect, and recover all reasonable costs (as set out in Section 8.2).

8.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under Section 8.1.

8.6 If not claimed within a reasonable time Council may dispose of any object, material or thing as it sees fit and apply the proceeds to meet any outstanding costs. The lawful owner shall be entitled to claim any residual sum.

## 9. DISPENSING POWER

- 9.1 Where in the opinion of the Council full compliance with any of the provisions of a ~~Bylaw~~ bylaw would needlessly or injuriously affect any person, or the course or operation of the business of, or be attended with loss or inconvenience to any person without any corresponding benefit to the community, the Council may, on the special application of that person, dispense with the full compliance with the provisions of that ~~Bylaw~~ bylaw; provided that any other terms or conditions (if any) that Council may deem fit to impose shall be complied with by that person.
- 9.2 The Council may, after consideration of any representation by affected persons and if in its opinion it is justified, extend, withdraw or amend the dispensation granted in terms of section 9.1.
- 9.3 Except if expressly granted otherwise, the dispensation by the Council in terms of section 9.1 shall only be applicable to the person it is granted to and shall be restricted to the particular issue considered by the Council and such dispensation will not constitute a justification for the breach of the provisions of that ~~Bylaw~~ bylaw outside the expressed terms of the dispensation.

## 10. FORMS

Wherever forms are prescribed in bylaws, slight deviations to the same effect and not calculated to mislead will not invalidate those forms.

~~Wherever throughout a Bylaw forms are prescribed, slight deviations there from, but to the same effect and not calculated to mislead, shall not invalidate them.~~

## 11. FEES AND CHARGES

- 11.1 The Council ~~may prescribe fees to be charged for any certificate, authority, approval, permit, or consent from, or inspection by, the Council under the provisions of the Act or any other enactment where that enactment contains no provision for authorising the Council to charge a fee. The setting of any fee or charges shall be in accordance with section 150 of the Act.~~ may by resolution pursuant to section 150 of the Act prescribe fees that may be charged in respect of any certificate, authority, approval, permit or consent form given, or, inspection by the Council.
- 11.2 Where a fee has been paid under section 11.1 for a service that has not been given, the Council may provide a refund, a remission or waiver of any such fee or portion ~~thereof as it of it as the Council~~ may determine.

## 12. OFFENCES AND BREACHES

- 12.1 No person shall do anything or cause any condition to exist for which a licence, permit, consent or approval from the Council is required under a ~~Bylaw~~bylaw without first obtaining that licence or permit or consent or approval, and the failure to do so shall constitute a breach of that ~~Bylaw~~bylaw.
- 12.2 No application for a licence, permit, consent or approval from the Council, and no payment of or receipt for any fee paid in connection with such application, licence, permit, consent or approval, shall confer any right, authority, or immunity on the person making such application or payment.
- 12.3 Any person commits a breach of a ~~Bylaw~~bylaw who:
- a) Does, or causes to be done, or knowingly permits or suffers to be done anything whatsoever contrary to or otherwise than as provided by that ~~Bylaw~~bylaw; or
  - b) Omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of that ~~Bylaw~~bylaw, ought to be done by them at the time and in the manner therein provided; or
  - c) Does not refrain from doing anything which under that ~~Bylaw~~bylaw they are required to abstain from doing; or
  - d) Knowingly permits or suffers any condition of or things to exist contrary to any provision contained in that ~~Bylaw~~bylaw; or
  - e) Refuses or neglects to comply with any notice duly given to ~~him/her~~them under that ~~Bylaw~~bylaw; or
  - f) Obstructs or hinders any authorised officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon them by that ~~Bylaw~~bylaw; or
  - g) Fails to comply with any notice or direction given under that ~~Bylaw~~bylaw.
- 12.4 Any person commits a breach of a ~~Bylaw~~bylaw who:
- a) Having constructed, affixed or provided, or caused to be constructed, affixed, or provided, any building or any part of a building, or any work, appliance, or material of any description whatsoever, contrary to, or otherwise than in accordance with the provision of that ~~Bylaw~~bylaw; or
  - b) Having omitted to construct, affix, or provide any work, appliance or materials as required thereby, and who does not within a reasonable time after notice in writing has been given to them by the Council or any authorised officer of the Council, fails to carry out the remedial action specified in that notice.

12.5 The notice issued under sections 12.3 or 12.4 shall state the time within which the remedial action is to be carried out, and may be extended from time to time by written authority of an authorised officer.

12.6 The provisions of section 12.4 shall also apply to any building, part of a building, work, appliance, or material that has, before the coming into force of this Bylaw, been constructed, affixed, or provided or omitted contrary to otherwise than as provided by any provision of any ~~Bylaw~~bylaw hereby repealed, but re-enacted, in substance in this ~~Bylaw~~bylaw. Notice as aforesaid may be given and renewed in respect of any such building, part of a building, work, appliance or material.

12.7 Where it is suspected that any person has committed a breach of this Bylaw, that person shall, on the direction of an authorised officer, provide their full name and address.

### 13. PENALTIES FOR BREACH OF BYLAWS

13.1 Every person who fails to comply with any part of a ~~Bylaw~~bylaw commits an offence and shall be subject to the penalty provisions outlined in the offences, penalties, infringement offences, and legal proceedings provisions of the Local Government Act 2002 and the enabling enactment.

13.2 The continued existence of any work or object in a state contrary to a ~~Bylaw~~bylaw shall be deemed a continuing offence within the meaning of this section.

In compliance with the provisions of the Local Government Act 2002 and the Bylaws Act 1910, this Part of the Bylaw is passed by the Wairoa District Council on ~~13 November 2007~~ [Date reviewed bylaw adopted].

**THE COMMON SEAL of THE WAIROA DISTRICT COUNCIL**

was affixed this [date] day of [month, year] in the presence of:

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**MAYOR**

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**CHIEF EXECUTIVE OFFICER**

# SCHEDULE 1 OF THE INTRODUCTORY BYLAW: APPLICATIONS FOR COUNCIL'S PERMISSION

## 1. SCOPE

The purpose of this Schedule 1 of this Bylaw is to provide an application procedure to enable applicants to obtain the Council's prior written permission for activities that are controlled or restricted by any ~~Bylaw~~ bylaw and to regulate the administration of licences, permits, consents or approvals issued in terms thereof.

## 2. LICENCES, PERMITS, CONSENTS OR APPROVALS FOR RESTRICTED ACTIVITIES

Where an activity is controlled or restricted by a ~~Bylaw~~ bylaw subject to the prior written permission of the Council, no person may engage in the activity without being the holder of a licence, permit, consent or approval issued by the Council in accordance with this Schedule.

## 3. ISSUE OF LICENCE, PERMIT, CONSENT OR APPROVAL

Upon timely application by a person, the Council may issue a licence, permit, consent or approval specifically allowing the activities controlled or restricted by a ~~Bylaw~~ bylaw, subject to such conditions as it may determine.

## 4. CONSIDERATION OF APPLICATIONS

After consideration of:

- (a) the application, in prescribed format;
- (b) when applicable, a report by an authorised officer;
- (c) when applicable, any objections by persons with an interest in the application; and
- (d) when applicable, any report by a person with relevant expertise capable of providing an objective assessment of the issues.

The Council may approve, reject or conditionally approve the application.

In considering the application, the Council may consult with:

- (a) the applicant;
- (b) person in charge of the activity if this is not the applicant;
- (c) when applicable, an authorised officer;
- (d) when applicable, the objectors; and
- (e) when applicable, a person with relevant expertise capable of providing objective assessment of the issues.

In considering the application, the Council shall have regard to:

- (a) the nature and frequency of occurrence of the activity which is controlled or restricted by that ~~Bylaw~~ bylaw;
- (b) possible adverse effects if this activity is permitted;

- (c) the safety of the public if this activity is permitted;
- (d) other considerations provided for in that Bylaw that relate to the specific activity for which permission is sought;
- (e) any Council policy relating to this activity; and
- (f) other considerations that may be relevant in the circumstances.

## **5. RESPONSIBILITY FOR THE ACTIVITY**

Any activity for which the Council's prior written permission is required shall only take place in accordance with the conditions of the licence, permit, consent or approval and while during the prevailing circumstances, it is safe to do so.

## **6. POSSESSION OF LICENCE, PERMIT, CONSENT OR APPROVAL**

No activity for which the Council's prior written permission is required shall take place without the person in charge being in possession of a copy of the licence, permit, consent or approval.

Unless determined otherwise in the conditions applicable to the licence, permit, consent or approval or by the ~~Bylaw~~bylaw possession of the licence, permit, consent or approval does not require physical possession at the site of the activity but having ready access to it to enable the person in charge of the activity to produce it to an authorised officer within three working days from being requested to do so.

## **7 PERIOD OF VALIDITY OF THE LICENCE, PERMIT, CONSENT OR APPROVAL**

Depending on the nature and the regularity of occurrence of the activity, a licence, permit, consent or approval may be issued for either one or more specified events or for an ongoing activity.

When a licence, permit, consent or approval is issued for an ongoing activity, the licence, permit, consent or approval shall be issued for a period determined by the Council.

## **8 COSTS OF THE LICENCE, PERMIT, CONSENT OR APPROVAL**

A licence, permit, consent or approval may be issued at a fee determined by the Council.

## **9 SUBSEQUENT AMENDMENT OF LICENCE, PERMIT, CONSENT OR APPROVAL CONDITIONS**

The licence, permit, consent or approval and any condition thereof may be amended by the Council on:

- (a) expiry of its validity;
- (b) any changes in the conditions referred to in subclause 4.3; or
- (c) any changes in enabling enactments or the ~~Bylaw~~bylaw that affect the licence, permit, consent or approval and any condition thereof; or
- (d) application by the holder of the licence, permit, consent or approval or an authorised officer.

## **10. NON-COMPLIANCE WITH LICENCE, PERMIT, CONSENT OR APPROVAL CONDITIONS**

In the case of non-compliance with the conditions of the licence, permit, consent or approval and having followed due process, the Council may revoke the licence, permit, consent or approval or amend the conditions thereof.

## **11. EXPENSE OF COMPLIANCE WITH THE LICENCE, PERMIT, CONSENT OR APPROVAL**

The holder of the licence, permit, consent or approval shall be responsible for any expense that he or she may have to incur to be able to comply with the licence, permit, consent or approval and its conditions.

## **12. POWERS OF AUTHORISED OFFICERS AT AN ACTIVITY**

If an authorised officer who is present at an activity that is controlled or restricted by a ~~Bylaw~~bylaw, is satisfied that compliance with a requirement of a licence, permit, consent or approval creates or exacerbates unsafe conditions or are impractical or unreasonable in the circumstances, a temporary dispensation may be granted, with such conditions as are appropriate.

In exceptional circumstances, when the activity that is controlled or restricted by a ~~Bylaw~~bylaw creates or exacerbates conditions that threaten life or health or may cause injury or serious damage to property, an authorised officer who is present, may:

- (a) refuse to allow it to proceed in order to avert the risk; or
- (b) direct the person in charge of the activity to take the necessary steps to minimize the risk; or
- (c) take the necessary steps to minimize the risk.

An authorised officer who has acted in accordance with this clause shall report this to the Council in writing as soon as practicable, whereupon having following due process the Council may consider the possible revocation of the licence, permit, consent or approval or amendment of its conditions.

The Council or any authorised officer who acted in good faith shall not be liable for damages due to the exercise of the above powers.