

Part 1:2018

CENTRAL HAWKE'S BAY DISTRICT COUNCIL BYLAWS



Part 1 – Introductory

Superseding CHBDC: Part 1:2008

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Foreword

The CHBDC Bylaws series covers various matters under local authority jurisdiction. Local authorities are empowered under a variety of Acts including the Local Government Act 2002 to make Bylaws. Under the 2002 Act, a current bylaw made before 1 July 2003 under a now repealed provision of the Local Government Act 1974, was to have been automatically revoked on 1 July 2008. A current bylaw made before 1 July 2003 under a provision of the Local Government Act 1974 that is still in force shall be reviewed by 1 July 2008. If it is not reviewed, the bylaw will be automatically revoked on 1 July 2010. Bylaws made by a local authority under the Local Government Act 2002 or the Local Government Act 1974 after 1 July 2003 shall be reviewed no later than 5 years after the bylaw was made, and then every 10 years after that.

There are new policy analysis, decision-making, and consultation requirements for the development of new bylaws (and the review of existing ones).

This Bylaw supersedes Central Hawke's Bay District Council Part 1:2008 Introductory Bylaw. This CHBDC Bylaw covers the use of existing practices from throughout New Zealand.

This Part contains definitions and provisions of a general nature which apply to all parts of the CHBDC Bylaws. References to Statutes have been updated and some definitions have been revised or added.

1 - INTRODUCTION

100 GENERAL

100.1 Scope

The purpose of this Bylaw is to:

(a) Identify and clearly interpret those terms and expressions that are used throughout this Bylaw.

(b) Outline 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, dispensing powers, fees and charges, offences and breaches and penalties for breach of Bylaws.

This Bylaw shall be known and cited as the Central Hawke's Bay District Council Introductory Bylaw 2014 (superseding CHBDC PART 1 Introductory Bylaw: 2008. For expediency this Bylaw may be referred to in this or other Bylaws as the Introductory Bylaw.

This Bylaw is made under the provisions of the Local Government Act 2002.

100.2 Definitions

For the purposes of this Bylaw, unless the context requires otherwise, the following definitions apply:

Act means Local Government Act 2002 and its amendments

Agent means a person or business authorised to act on another's behalf

Animal means 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.

Approved means approved by Council or by any officer so authorised on behalf of Council

Authorised Agent means any person who is not an employee of Council but is authorised in writing by the Chief Executive or by Council to act on its behalf

Authorised Officer means any person appointed or authorised in writing by the Chief Executive or by Council to act on its behalf and with its authority and includes a member of the Police

Berm means 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.

Bylaw means a Bylaw of Council for the time being in force, made under the provisions of any enactment or authority enabling Council to make Bylaws

Chief Executive means the chief executive appointed pursuant to section 42 of the Local Government Act 2002 and includes any person for the time being appointed by Council to perform the duties or a particular duty of the Chief Executive

Council means the Central Hawke's Bay District Council or any officer authorised to exercise the authority of Council

Custodian means any person for the time being appointed by Council to control or manage or to assist in the control and management of any land, or premises belonging to or under the jurisdiction of Council

Cycle, Cycle Path and Cycle Lanes have the same meanings as in the Land Transport (Road User) Rules 2004

District means the district of the Central Hawke's Bay District Council

Dwelling or Dwelling house - 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 of the dwelling

Emergency Vehicle has the same meaning as in the Land Transport (User Rules) 2004

Enactment has the same meaning as in section 29 of the Interpretation Act 1999

Enforcement Officer means a person appointed by the Council to exercise the powers of an enforcement officer in relation to offences against, and infringement offences under the Local Government Act 2002, including enforcement of this Bylaw of the Council and a member of the Police

Footpath, Private Road and Private way has the same meaning assigned to them in section 315(1) of the Local Government Act 1974

Infringement means an offence as specified by a Bylaw under sections 243 and 259 of the Local Government Act 2002

Infringement Offence means an offence for which any person can be punished on indictment, by summary process, or by infringement process

Licence means a licence or approval issued under this Bylaw

Local Authority means the Council or person or entity authorised by any enactment to make Bylaws and includes the body corporate on whose behalf the Council

Motor Vehicle has the same meaning as assigned to that term in section 2(1) of the Land Transport Act 1998

Nuisance has the same meaning assigned to it in section 29 of the Health Act 1956 and its amendments

Occupier means the inhabitant occupier of any property and, in any case where any building, house, tenement, or premises is or are unoccupied, shall be deemed to include the owner as hereinafter defined

Offence includes any act or omission in relation to this Bylaw for which any person can be punished either on indictment or by summary process

Owner - 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 it were let to a tenant at a rack rent, and where any such person is absent from New Zealand, includes their attorney or agent

Person - includes a natural person and also a body of persons, whether corporate or unincorporated

Poultry - means any live domesticated or farmed bird including but not limited to: fowl, goose, duck, pigeon, turkey, parrot, budgerigar, pheasant, peacock or peahen, canary, ostrich, guinea fowl, or emu

Premises - means any land, dwelling, storehouse, warehouse, shop, cellar, yard, building, or part of the same, or enclosed space separately occupied, and all lands, buildings, and places adjoining each other and occupied together are deemed to be the same premises

Public Notice - has the same meaning as assigned to that term in section 5(1) of the Local Government Act 2002

Public Place - has the same meaning as assigned to that term in section 147(1) of the Local Government Act 2002

Reserve - has the same meaning as assigned to that term in section 2(1) of the Reserves Act 1977

Road - has the same meaning as assigned to that term in section 2(1) of the Land Transport Act 1998

Stock – means Cattle, sheep, horses, deer, donkeys, mules, goats, pigs, alpacas, llamas, or other animal (excluding dogs) including their young, kept in captivity, or farmed, and dependent on humans for their care and sustenance

Territorial Authority - has the same meaning as assigned to that term in section 5(1) of the Local Government Act 2002

Vehicle - has the same meaning as assigned to that term in section 2(1) of the Land Transport Act 1998

Veranda - means a portico, porch, shed, shade, awning, blind, covering, or like structure, and their supports, projecting into or over any part of a public place

Waterworks - has the same meaning as assigned to that term in section 5(1) of the Local Government Act 2002

Writing, Written or Similar Term - Words written, printed, painted, engraved, lithographed, or otherwise traced or copied.

Definitions not included within this Bylaw are contained within various Parts of the Bylaws.

100.3 Interpretation

In this Bylaw the singular includes the plural and the plural includes the singular.

Words referring to any district, locality, place, person, office, officer, functionary, party or thing mean each district, locality, place, person, office, officer, functionary, party, thing, to whom or to which the provision applies.

Every Schedule to this Bylaw forms part of this Bylaw and if provided for in the Bylaw text, may be altered from time to time in accordance with the Act.

For the purposes of the Bylaw the word 'shall' refers to practices that are mandatory for compliance with this Bylaw, while the word 'should' refers to practices which are advised or recommended.

101 OFFICERS TO CONTINUE IN OFFICE

All officers appointed by Council at the time this Bylaw takes effect, are deemed to have been appointed under this Bylaw.

102 SERVING OF ORDERS AND NOTICES

102.1 Except as otherwise provided for in any other enactment, where any notice, order, or other document is required to be served on any person for the purposes of this Bylaw, service may be effected by delivering it personally to the person or by sending it by courier, post, fax or electronic means, to that person at their last known residential or business address.

102.2 If the person is absent from New Zealand the order, notice, or other document may be served on the person's agent in the manner referred to in Section 102.1.

102.3 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.

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

102.5 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.

103 POWERS OF ENTRY FOR PURPOSE OF THIS BYLAW

Except where provided for under any other enactment, sections 171, 172, 173, and 182 of the Local Government Act 2002 apply in relation to any power of entry under this Bylaw.

104 LICENCES

- 104.1** Any person doing or proposing to do anything or to cause any condition to exist for which a licence from Council is required under this Bylaw, shall first obtain a licence from Council or any authorised officer.
- 104.2** Every application for a licence shall be accompanied by the relevant fee. If the application for the licence is declined, the fee shall be refunded less any reasonable processing costs. Where a fee has been paid for which no service has been given, Council may provide a refund or waiver of all or part of the fee as it may determine.
- 104.3** No application for a licence, and no payment of or receipt for any fee paid in connection with such application, confers any right, authority or immunity on the person making that application or payment.
- 104.4** Any licence is deemed to be issued in compliance with this Bylaw if it is issued by an authorised officer, and every licence is subject to such conditions as may be imposed.
- 104.5** Unless this Bylaw provides otherwise, every licence and every application for a licence shall be in such form as may be prescribed from time to time by Council.
- 104.6** Unless this Bylaw provides otherwise, a licence is not transferable, and no such licence authorises any person other than the licence holder to act in any way under its terms or conditions.
- 104.7** If, following a request for payment, any licence fee due remains unpaid, the licence shall immediately cease to have effect.

105 SUSPENSION AND REVOCATION OF LICENCES

- 105.1** Unless this Bylaw provides otherwise, should the licence holder be convicted of any offence relating to the holder's suitability as a licensee, Council may immediately revoke or suspend the licence for any specified time.
- 105.2** Council may by notice in writing call upon the licence holder to appear before Council and give reasons why the licence should not be revoked or suspended, if any of the following are brought to the notice of 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
 - (ii) has failed to comply with any of the conditions of the licence
 - (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) that the Bylaw is not being properly observed.
- 105.3** 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.

105.4 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, deemed to be unlicensed.

106 DISPENSING POWER

Where in the opinion of Council full compliance with any of the provisions of this Bylaw would needlessly or injuriously affect any person, or the course or operation of the business of, or bring loss or inconvenience to any person without any corresponding benefit to the community, Council may, on the special application of that person, dispense with the full compliance with the provisions of this Bylaw; provided that any other terms or conditions (if any) that Council may deem fit to impose shall be complied with by that person.

107 FORMS

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

108 FEES AND CHARGES

108.1 Council may prescribe fees to be charged for any certificate, authority, approval, permit, or consent from, or inspection by, Council under the provisions of the Act or any other enactment where that enactment contains no provision for authorising Council to charge a fee. The setting of any fees or charges shall be in accordance with section 150 of the Local Government Act 2002.

108.2 Where a fee has been paid under 108.1 for a service that has not been given, Council may provide a refund, a remission, or waiver of any such fee, or portion of it as Council may determine.

109 OFFENCES AND BREACHES

109.1 Any person commits a breach of this 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 this Bylaw;
- (b) omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of this Bylaw, ought to be done by that person at the time and in the manner provided by this Bylaw;
- (c) does not refrain from doing anything which under this Bylaw they are required to abstain from doing;
- (d) knowingly permits or suffers any condition of or things to exist contrary to any provision contained in this Bylaw;
- (e) refuses or neglects to comply with any notice given to that person under this Bylaw;
- (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 that officer by this Bylaw; or

(g) fails to comply with any notice or direction given under this Bylaw.

109.2 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.

110 REMOVAL OF WORKS

110.1 Where the notice served under Section 102 has not been complied with, Council, or any authorised officer or agent of Council, may pull down, remove, or alter, any work, material or thing erected or being in contravention of any part of this Bylaw. Refer to section 163, and for seizure of property sections 164, 165, 167, and 168, of the Local Government Act 2002.

110.2 Council may recover from any person responsible for the breach of any part of this Bylaw, all expenses incurred by it in connection with such pulling down, removal or alteration. This includes the cost of debt collecting and legal fees.

110.3 The exercise of this authority does not relieve any such person from liability for any penalty for erecting or permitting the continued existence of any such work, material or thing.

110.4 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 110.2).

110.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under Section 110.1.

110.6 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.

111 PENALTIES FOR BREACH OF BYLAWS

111.1 Every person who commits an offence against this Bylaw is liable to:

- (a) the penalty set out in Section 238 of the Local Government Act 2002; or
- (b) where another enactment specifies the penalty for a breach of the Bylaw, that other penalty (for example Schedule 4 of the Land Transport Act 1998).

111.2 In accordance with section 162 of the Local Government Act 2002, Council may apply to the District Court for an injunction to restrain a person from committing a breach of this Bylaw.

112 BYLAW APPROVAL DATE

The Common Seal of the Central Hawke's Bay District Council was attached, under Resolution (*Reference - Part1:Introductory Bylaw2018*) passed at a meeting of the Central Hawke's Bay District Council held on (Day) (Month) (Year).

DATE CONFIRMED : ____/____/____