



# **Hauraki District Council Consolidated Bylaw**

## **PART 1 (INTRODUCTION)**

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## **PART 1 (INTRODUCTION)**

### **Purpose**

The purpose of the Part 1 (Introduction) 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.

The definitions contained in this part are an integral requirement of any bylaw that Council may consider. These definitions may either be contained in each individual bylaw or dealt with in a separate part of the bylaw. When individual bylaws are passed each contains only that part of the definitions and administrative provisions relevant to it. The Introduction provides a single source for the definitions and the administrative provisions. Inclusion of the provisions ensures enforcement thereof within the legal system and provides authoritative assistance in the interpretation of the bylaw.

## **1.0 INTRODUCTION**

### **1.1. SCOPE**

#### **1.1.1**

The purpose of Part 1 (Introduction) 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.

#### **1.1.2**

This Part shall be known and cited as the Part 1 (Introduction) of the Hauraki District Council Consolidated Bylaw 2007 and shall come into operation on the date specified by public notice after the Hauraki District Council makes this Bylaw. For expediency this Part of this Bylaw may be referred to in this or other Parts of this Bylaw as Part 1 (Introduction).

#### **1.1.3**

This Part 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 the following definitions shall 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 the Council or by any officer so authorised on behalf of the Council pursuant to this Bylaw or any enactment.

AUTHORISED AGENT means 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.

AUTHORISED OFFICER or OFFICER means any person delegated, appointed or authorised in writing by the Council to act on its behalf and with its authority including a Police Constable.

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, grassed area.

BYLAW means the consolidated bylaw, or any Part 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.

CHIEF EXECUTIVE means the chief executive appointed pursuant to section 42 of the Local Government Act 2002.

COUNCIL means the Hauraki District Council or any officer authorised to exercise the authority of the 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, building, or premises belonging to or under the jurisdiction of the 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 Hauraki District Council.

DISTRICT PLAN has the same meaning as in the Resource Management Act 1991.

DWELLING OR DWELLINGHOUSE 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.

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.

ENGINEER means District Engineer of the Hauraki District Council and includes his or her representative.

FOOTPATH has the same meaning as in the Land Transport (User Rules) 2004.

INFRINGEMENT means an offence as specified by any Part of this 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.

LONG TERM COUNCIL COMMUNITY PLAN means a long term council community plan adopted under section 93 of the Local Government Act 2002.

LICENSED means holding a licence under this Bylaw or under any enactment.

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, person or entity acts.

MOTOR VEHICLE has the same meaning as in the Land Transport Act 1998.

NUISANCE shall have the meaning assigned to it by 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 or any part thereof for which any person can be punished either on indictment or by summary process.

ORNAMENTAL VERGE or PLOT includes every flower bed, grass verge or plot, shrubbery or planted area which has been constructed as such.

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 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.

PARKING and PARK has the same meaning as in the Land Transport Act 1998.

PARKING PLACE has the same meaning as in section 591(6) of the Local Government Act 1974.

PERSON includes a corporation sole and also a body of persons, whether corporate or unincorporated.

PORTICO is a large porch at the main entrance or side entrance to a building with columns supporting a roof.

POULTRY means any bird including, but not limited to domestic fowl, ducks, geese, turkeys, guinea-fowl, pheasants, peacocks and pigeons.

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 shall be deemed to be the same premises.

PUBLIC NOTICE has the same meaning as assigned to it in the Local Government Act 2002, as amended.

PUBLIC PLACE as defined under section 147 of the Local Government Act 2002 means a place that:

- a) is under the control of the Council and
- b) is open to, or being used by the public, whether or not there is an admission charge,

and includes:

- (i) any road within the district, whether or not the road is under the control of the Council; and
- (ii) any part of a public place.

PUBLIC WORK has the same meaning as in the Public Works Act 1996.

RESERVE means any land set aside for any public purpose and shall have the same meaning as in the Reserves Act, 1977.

RESERVED PARKING PLACE means 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.

ROAD has the same meaning as in section 315 of the Local Government Act 1974.

RURAL means land zoned rural in the Hauraki District Council District Plan.

RURAL RESIDENTIAL means land zoned rural residential in the Hauraki District Council District Plan.

STOCK means cattle, sheep, horses, pigs, goats, deer, ostrich, alpaca and llama of any age or sex.

URBAN means land zoned residential, town centre and industrial in the Hauraki District Council District Plan.

VEHICLE has the same meaning as in the Land Transport Act 1998.

VERANDA 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.

WATERWORKS has the same meaning as in the Local Government Act 2002.

WORKING DAY has the same meaning as in the Local Government Act 2002.

WRITING, WRITTEN or any term of like import means and includes words printed, painted, engraved, lithographed, or otherwise traced or copied.

### **1.2.2**

Every Schedule to this Bylaw shall be deemed to form part of this bylaw provided that such Schedule or policy note may be altered from time to time by Council resolution.

### **1.2.3**

Every Schedule to this Bylaw shall come into force on the date specified in the Schedule.

### **1.2.4**

References in clauses of this Bylaw to other clauses shall be to clauses within the same Part of this Bylaw while references to clauses in other Parts of this Bylaw 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 clauses of this Bylaw and the footnotes contained at the bottom of the pages of this Bylaw shall not affect the construction thereof.

### **1.2.8**

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

### **1.2.9**

For the purposes of this Bylaw, the issuing of any licence, permit, consent or approval by an appropriate authority pursuant to any enactment shall be deemed to be an approval under this Bylaw.

## **2.0 OFFICERS TO CONTINUE IN OFFICE**

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

## **3.0 SERVING OF ORDERS AND NOTICES**

### **3.1**

Except where otherwise provided for in any enactment, in any case in which it is provided by this 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 this 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 clause 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.

### **3.4**

Where an order or notice is sent by registered post it shall be sent so as to arrive 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:

- a) post it will be deemed received on the first day (excluding weekends and public holidays) after posting.
- b) 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.
- c) 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.

## **4.0 POWERS OF DELEGATION**

### **4.1**

Where pursuant to this 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 this 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 this Bylaw if the same is issued by any officer of the Council authorised by the Council for that purpose.

### 4.3

- a) 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 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 opinion this is justified.
- b) 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.

## 5.0 **SUSPENSION AND REVOCATION OF LICENCE, PERMIT, CONSENT OR APPROVAL**

### 5.1

Except as may be otherwise provided in any enactment or elsewhere in this 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 this 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

- c) If any premises under this 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 this 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 clause 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.

## **6.0 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 Part of this Bylaw determine a procedure to obtain prior written permission to engage in any activity that is controlled or restricted by this Bylaw.

### **6.2**

Unless otherwise provided elsewhere in this 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.

## **7.0 ENCROACHMENT TO BE REMOVED UPON NOTICE**

### **7.1**

- a) 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
- b) 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 clause 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.

## **8.0 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 this Bylaw of the Council, section 357 of the Local Government Act 1974 or 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.

### **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.

## **9.0 DISPENSING POWER**

### **9.1**

Where in the opinion of the 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 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 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.

## **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 clause 9.1

## **9.3**

Except if expressly granted otherwise, the dispensation by the Council in terms of clause 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 this Bylaw outside the expressed terms of the dispensation.

## **10.0 FORMS**

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

## **11.0 FEES AND CHARGES**

### **11.1**

The Council 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 clause 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 may determine.

## **12.0 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 this Bylaw without first obtaining that licence or permit or consent or approval, and the failure to do so shall constitute a breach of this 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 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: 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 this 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 this 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 this Bylaw; or
- e) refuses or neglects to comply with any notice duly given to him/her under the 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 this Bylaw; or

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

#### **12.4**

Any person commits a breach of this 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 this 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 clauses 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 clause 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 hereby repealed, but re-enacted, in substance in this Bylaw. Notice as aforesaid may be given and renewed in respect of any such building, part of a building, work, appliance or material.

## **13.0 PENALTIES FOR BREACH OF BYLAWS**

### **13.1**

Every person who fails to comply with any part of this 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 this Bylaw shall be deemed a continuing offence within the meaning of this clause.

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 Hauraki District Council on 12 July, 2007.

THE COMMON SEAL of the HAURAKI DISTRICT COUNCIL was affixed on this 30<sup>th</sup> day of July, 2007 in the presence of

\_\_\_\_\_ Mayor

\_\_\_\_\_ Chief Executive