



Explanatory Bylaw 2022

Adopted: 15 September 2022

Commences: 22 September 2022

Review Date: 15 September 2027

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1 Preliminary Provisions

- 1.1 This Bylaw is the **Explanatory Bylaw 2022**.
- 1.2 This Bylaw is made under the Local Government Act 2002 and all other powers and authorities in any other Act that the Council has relied on to make any of the Council's other Bylaws.
- 1.3 A key purpose of this Bylaw is to define those terms and expressions common to more than one of the Council's Bylaws.
- 1.4 Another purpose of this Bylaw is to address certain matters common to more than one of the Council's Bylaws, including:
- the serving of orders and notices;
 - suspension and revocation of Licences;
 - appeals to decisions made by Council Officers;
 - breaches of Bylaws;
 - removal, alteration and seizure of works or things in breach of a bylaw; and
 - dispensing powers.
- 1.5 This Bylaw comes into force on 22 September 2022.
- 1.6 This Bylaw applies to all other Council Bylaws, whether they were made before or after the commencement of this Bylaw.

2 Interpretation of Bylaws

- 2.1 Capitalisation is used in the Council's Bylaws to denote defined terms.
- 2.2 For the purposes of all Bylaws, unless the context requires otherwise:

10 Year Plan means a long term plan adopted under section 93 of the Local Government Act 2002.

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

Animal means any species of the animal kingdom, including any mammal, bird, fish, shellfish, reptile, amphibian, insect or invertebrate which is kept in a state of captivity or domestication, and includes the carcass or constituent parts thereof, but does not include human beings.

Approved means approved in writing by the Council or by any Council Officer authorised for that purpose.

Approval includes all permits, consents, certificates or authorities granted under Bylaws.

Authorised Agent means any person who is not an employee of the Council (including a sworn member of the New Zealand Police) and has been authorised, in writing, by the Council or the Chief Executive to act the Council's behalf.

Beach means any land adjacent to the sea that is used in connection with the sea and includes the foredunes.

Bylaw means any operative Bylaw of the Council.

Chief Executive means the person appointed by Council under section 42(1) of the Local Government Act 2002, and includes any person who is currently acting in the role while the appointed person is unavailable.

Council means the Manawātū District Council, and includes any person acting under authority duly delegated by the Manawātū District Council.

Council Officer means any person who is appointed or authorised, in writing, by the Chief Executive or by the Council to act on the Council's behalf, and includes a Custodian.

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

Disability Assist Dog has the same meaning assigned to that term in section 2 of the Dog Control Act 1996.

District means the district of the Manawātū District Council.

District Plan -

- (a) means an operative plan approved by the Council under Schedule 1; and
- (b) includes all operative changes to the plan (whether arising from a review or otherwise)

Dwelling includes any house, tent, vehicle or other structure, whether permanent or temporary, and whether attached to the ground or not, used wholly or partly for human habitation, and includes the land accessory to a Dwelling.

Enforcement Officer means any person appointed under section 177 of the Local Government Act 2002 to exercise the power of an enforcement officer in relation to offences against, and Infringement Offences under, the Local Government Act 2002 or any Bylaw.

Footpath means the part of any Road or Public Place that is laid out or constructed by the authority of the Council for pedestrian use.

Grass Verge means that area of a formed road, which is owned or controlled by the Council, that goes from the edge of a formed carriageway to the legal boundary of that road.

Hours of Darkness means the time between one half hour after sunset on any day and one half hour before sunrise on the next day.

Infringement Offence means an offence specified as such in regulations made under section 259(a) of the Local Government Act 2002 (regulations prescribing breaches of Bylaws that are infringement offences under that Act) or under any other empowering Act.

Licence and Licensed means any Licence issued or granted under a Bylaw.

Network Utility Operator has the same meaning assigned to that term in section 166 of the Resource Management Act 1991.

Nuisance means any person, Animal, thing or circumstance causing distress or annoyance to, or unreasonable interference with, the peace, comfort or convenience of a person or a statutory nuisance as defined in section 29 of the Health Act 1956 or any other statutory enactment.

Occupier means the person entitled to occupy or use any Premises and, in any case where any Premises are unoccupied, includes the Owner.

Owner as applied to any Premises, means any person for the time being entitled to receive the rent for such Premises, 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.

Park and Parking mean:

- (a) in relation to any Road, the stopping, standing or parking of a Vehicle, whether attended or not, for any period exceeding five minutes on that Road;
- (b) in relation to any other portion of any land or building, the stopping, standing or parking of a Vehicle, whether attended or not, on that portion of land or building; and
- (c) includes the stopping, standing, or parking of a Vehicle on all necessary approaches and means of entrance to and egress from any such Road, land or building; but
- (d) does not include a Vehicle picking up or setting down passengers in a Loading Zone or Reserved Parking Space.

Premises means any land, building, or cellar, or part thereof, that is separately occupied, and includes all land that is accessory to the occupation of that land, building, or cellar.

Public Notice and **Publicly Notified** means to give notice:

- (e) in the event that any emergency conditions exist, by the most practical means available; but otherwise
- (f) in the manner prescribed in section 5 of the Local Government Act 2002.

Public Place includes every Road, Beach, Reserve, Footpath, accessway, or thoroughfare open to or used by the public; and every place to which the public has access, whether as of right or not.

Rateable Property is a property that is a rating unit as defined by the Rating Valuation Act 1998.

Record of Title has the meaning given to it in section 5 of the Land Transfer Act 2017.

Reserve includes any open space, plantation, park, garden, or ground set apart for public recreation or enjoyment that is under Council control.

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

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

Schedule of Fees and Charges means a schedule published by the Council from time to time that sets out the fees and charges applying to particular activities or services by Council and for which it is authorised to set fees and charges.

Stock means any farmed animal, including, but not limited to, any cattle, horse, deer, sheep, goat, pig or poultry.

Structure means any building, equipment, device or other facilities made by people and which is fixed (permanently or temporarily) to land.

Vehicle has the same meaning assigned to that term in section 2 of the Land Transport Act 1998.

Working Day has the same meaning assigned to that term in the Local Government Act 2002.

Zone and **Zoned** means the District Plan zoning applied to land in any operative or proposed District Plan.

- 2.3 Where any individual Bylaw contains a provision that is contrary to this Bylaw, the provision of the individual Bylaw will always prevail.
- 2.4 Any other words used in Bylaws shall have the meanings set out in relevant Acts of Parliament, including the Local Government Act 2002, the Public Works Act 1981, the Health Act 1956, the Dog Control Act 1996, Land Transport Act 1998, or any associated regulations, unless such meanings are inconsistent with the context in which such words occur.
- 2.5 Guidance notes are used in Bylaws to provide information only, but do not form part of the operative Bylaw. The Council may insert, change, or remove them at any time.
- 2.6 If any provision of a Bylaw, or the application of the same to any person or circumstance, is held invalid by a court, such invalidity does not affect other provisions or applications of that Bylaw that can be given effect without the invalid provision or application, and to this end any invalid provisions of a Bylaw are severable.
- 2.7 No statement in a Bylaw relating to dogs, Vehicles, or other mechanical devices shall apply to any Disability Assist Dog, or wheelchair (or similar apparatus) used to assist with the mobility of a disabled person.

3 Serving of Orders and Notices

- 3.1 Except as provided for in any Act or individual Bylaw, any notice, order or other document that is required to be served on any person for the purposes of a Bylaw may be served by:
 - a) delivering it personally to the person;
 - b) sending it by post to that person's last known residential or business address;
or
 - c) sending it by email to that person's last known email address.
- 3.2 In the absence of proof to the contrary, notices, orders and documents are taken to be given or served:
 - a) in the case of notices, orders or documents being sent by post, at the time when the notice, order or document would in the ordinary course of post be delivered, and in proving delivery, it is sufficient to prove that the notice, order or document was properly addressed and posted; and
 - b) in the case of notices, orders or documents sent by electronic transmission or any other similar method of communication, at the time the:

- (i) computer system used to transmit the notice:
 - a. has received an acknowledgement or receipt addressed to the electronic mail address of the person transmitting the notice; or
 - b. has not generated a record that the notice has failed to be transmitted; or
 - (ii) person who gave the notice or document proves that the notice or document was transmitted by computer system to the electronic mail address provided by the person on whom the notice is served or given.
- 3.3 Where the person to be served is absent from New Zealand, the notice, order or document may be sent to that person's Agent in any manner set out in clause 3.1. Where such person has no known Agent in New Zealand, service may be effected out of New Zealand in the same manner as set out in clause 3.1.
- 3.4 If the person being served is deceased, the notice, order or document may be served on that person's person or legal representative or executor.
- 3.5 If the notice, order or document relates to land or buildings, then the notice, order or 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 notice, order or document may:
 - a) be served on any person who is occupying the land or buildings; or
 - b) if the land or buildings are unoccupied, be affixed to the land or buildings in a manner than can be reasonably observed; andit is not necessary in that notice, order or document to name the occupier or the owner of that land or buildings.
- 3.6 Any notice, order or document issued under a Bylaw must state the time within which any remedial action must be carried out, and the Council may extend such timeframe in writing, where appropriate.
- 3.7 This clause does not apply:
 - a) if another Bylaw or other legislation specifies the way in which notices, orders and documents are to be given or served; or
 - b) to the service or giving of notices, orders or documents in any proceedings in any Court in New Zealand.

4 Signing of Notices

- 4.1 Every notice, order or document required to be signed by the Council will, except as otherwise provided by another Bylaw or other legislation, be signed by the Chief Executive or any other person who holds delegated authority to act , and need not be under seal.
- 4.2 Where this Bylaw provides for the issue of any notice, order, permit, exemption or Licence by the Council, such order, notice, permit, exemption or Licence will comply with this Bylaw if it is issued by a Council Officer.

Guidance Notes:

Council has the authority under legislation to make bylaws for its district. The making of a bylaw is a function that cannot be delegated but the powers provided in bylaws and the enforcement of bylaws can be.

Council has delegated all Council powers, duties and responsibilities in bylaws, and the responsibility for enforcement of the bylaws, to its Chief Executive. The Chief Executive sub-delegates to Council Officers, and appoints Enforcement Officers, to carry out these responsibilities, as required. A full list of the delegations of powers, duties, and responsibilities in Council's bylaws is contained in the Manawātū District Council's Delegations Manual. A copy of this manual is available from Council on request.

5 Fees and Charges

- 5.1 Where any due fee or charge remains unpaid after the due date for payment specified in a request for payment, the Approval or Licence for which the fee or charge was required shall cease to have effect from that due date.
- 5.2 Where a fee or charge has been paid under any provision of this Bylaw for a service that has not been given, the Council may, at its discretion, provide a refund, remission, or waiver of any such fee or charge, or a portion of it.

Guidance note: Any fees and charges prescribed by the Council are published in Council's Schedule of Fees and Charges and will be available at the Council's offices and on the Council's website.

6 Licences and Approvals

- 6.1 The action of making an application for a Licence or Approval does not confer any right, authority, or immunity on the applicant.

7 Suspension and Revocation of Licences

- 7.1 The Council may immediately revoke or suspend any Licence, for any specified time, if the Licence holder is convicted of any offence impacting their suitability to hold the Licence.
- 7.2 In the event that:
- a) the holder of any Licence has acted or is acting in a manner contrary to the purposes of the Bylaw concerned;
 - b) the holder of any Licence has failed to comply with one or more of the conditions of the Licence;
 - c) the holder of any Licence is in any way unfit to hold the Licence;
 - d) the Premises for which any Licence was issued are being used for any purpose other than that stated in the Licence;
 - e) the Premises for which any Licence was issued are in a state of disrepair contrary to the terms of the Licence; or
 - f) a Bylaw under which any Licence is issued is not being properly observed;

then 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.

- 7.3 The Council may, if it considers the allegations to be sustained after hearing from the Licence holder or if there is no appearance by the Licence holder, revoke or suspend the Licence for any specified time.
- 7.4 A person whose Licence has been suspended under this clause, and any Premises in respect of which that Licence has been so suspended, are deemed to be unlicensed during the period of the suspension.

8 Appeals to Decisions made by Officers

- 8.1 Where any Licence or Approval is refused, or notice is issued, by a Council Officer under a Bylaw, the person to whom it has been refused or issued, may make an appeal to the Council.
- 8.2 Every appeal must be in writing and be lodged within 10 working days of the issue or refusal being given. The Council's Hearings Committee shall hear and determine the appeal.
- 8.3 In considering the appeal, the Hearings Committee may receive and hear evidence from:
- a) the person concerned and/or their representative; and
 - b) the appropriate Council Officers and/or their representative.

Such evidence will be in writing only, unless the Hearings Committee agrees to hear evidence in person, or the appeal relates to an objection under the Dog Control Act 1996 and clause 17 of the Dog Control Bylaw 2019.

Explanatory Note: Clause 8 does not limit a person's rights to be heard in relation to objections made under the Dog Control Act 1996. The procedure for hearings of objections under the Dog Control Act 1996 is set out in clause 7 of the Manawātū District Council's Dog Control Policy 2019.

- 8.4 In considering any appeal the Hearings Committee must have regard to relevant matters. including:
- a) the provisions in the relevant Bylaw concerning the granting or refusal of such Licence, Approval, or notice;
 - b) the intent and purposes of the relevant Bylaw;
 - c) conserving public health, safety, and welfare; and
 - d) protecting community assets and systems under its guardianship.
- 8.5 The Hearings Committee may uphold or dismiss the appeal. In doing so it may:
- a) confirm the refusal of the Licence or Approval, or the issue of the notice;
 - b) issue the Licence or Approval, with such conditions as it thinks fit; or
 - c) amend or revoke the notice already issued.

- 8.6 In making any determination under this clause, the Hearings Committee may recover such reasonable costs as are incurred by the Council associated with the hearing from the appellant.

9 Breaches of Bylaws

- 9.1 Without limiting section 239 of the Local Government Act 2002 or any other similar legislative provision, every person commits a breach of a Bylaw who:
- a) does, or is involved in doing, causes to be done, knowingly permits or suffers to be done, anything that is contrary to any provisions of a Bylaw;
 - b) fails to do, or knowingly permits or suffers to remain undone, anything which that person was required to do under a Bylaw;
 - c) refuses or neglects to comply with any notice or direction duly given to that person under a Bylaw within the time period specified in that notice or direction;
 - d) obstructs or hinders any Council Officer in the performance of his or her duties under a Bylaw;
 - e) omits, neglects or fails to obtain a current and valid Licence or Approval or notice where required under a Bylaw;
 - f) omits, neglects or fails to pay any fee fixed by the Council in respect of a Licence or Approval granted to such person; or
 - g) fails to comply with any conditions contained in a Licence or Approval or notice granted by the Council.
- 9.2 The continued existence of any work or thing in a state, or the intermittent repetition of any action contrary to any Bylaw, shall be deemed to be a continuing breach.
- 9.3 If it appears that any person has committed a breach of a Bylaw, that person must, on the request of a Council Officer, supply their full name and address to the Council Officer.
- 9.4 Clause 9.1 applies even if the relevant Bylaw does not state that a breach of that Bylaw is an offence.

10 Removal or Alteration of Works or Things

- 10.1 In accordance with section 163 of the Local Government Act 2002, the Council may remove or alter a work or thing that is, or has been, constructed in breach of any of the Council's Bylaws, and recover the costs of removal or alteration from the person who committed the breach.

Guidance Note: Costs may include the cost of debt collection and legal fees incurred by the Council.

- 10.2 Before exercising the power in section 163 of the Local Government Act 2002, the Council must provide a written notice to the person who committed the breach, giving them an opportunity to remedy the situation. Any such notice must state the work required and the time within which such action is to be carried out. The relevant time period may be extended from time to time by a Council Officer.

- 10.3 Despite clause 10.2, the Council need not provide an opportunity to remedy the situation if the breach of the Bylaw is such that public health, safety considerations, or risk of consequential damage to Council assets is such that a delay would be unacceptable to the Council.

11 Dispensing Power

- 11.1 The Council may grant a dispensation from compliance (or partial compliance) with any provision in a Bylaw where, in the opinion of the Council or any Council Officer, the provision would needlessly or injuriously affect, or result in inconvenience or loss to, any person or business, without any corresponding benefit to the public.
- 11.2 Any application for dispensation must be in writing. It must provide full details of the relief sought and the reasons for the application, and include supporting information as the Council considers appropriate.
- 11.3 The Council or any Council Officer may either refuse or grant (in whole or in part) the application for dispensation, subject to such conditions as are considered appropriate by the Council.

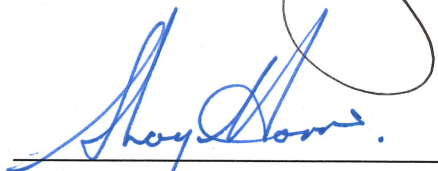
This Bylaw was made by the Manawatū District Council by resolution at a Council meeting on 15 September 2022 and must be reviewed within 5 years.

Sealed with the Common Seal
of the MANAWATŪ DISTRICT COUNCIL
in the presence of:





Mayor



Chief Executive