



Statement of Proposal – Draft Explanatory Bylaw 2022

Public feedback invited 14 July – 15 Aug 2022

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1 Introduction

- 1.1 Manawatū District Council's (Council's) Explanatory Bylaw identifies and defines terms that are common to and used across Council's Bylaws. It also addresses processes and powers for bylaws, including the service of orders and notices, suspension and revocation of licences, appeals to officer decisions, powers to remove or alter works of things constructed contrary to a bylaw, and dispensing powers. This is an administrative bylaw that assists in the interpretation and implementation of Council's other bylaws.

The 2014 Explanatory Bylaw has been reviewed and forms the basis for Council's draft Explanatory Bylaw 2022 (the "draft Bylaw") that Council is now consulting on. This Statement of Proposal outlines the:

- Main changes Council is proposing to make to the 2014 version of the Explanatory Bylaw and the reasons for these changes
- Minor amendments to the Animal Bylaw 2019 and the Public Places Bylaw 2020 to resolve conflicts that arise through amendments to the definition of "Animal" in the Explanatory Bylaw.

- 1.2 Included with this Statement of Proposal are the following documents:

- Council's Draft Explanatory Bylaw 2022
- A table that explains the differences between the 2014 Bylaw and the draft Bylaw and the reasons for the differences (Table 1, Appendix 1)
- Minor consequential changes to Council's Bylaws resulting from the review of definitions in the Explanatory Bylaw 2022 (Table 2, Appendix 1)
- Minor amendments to clauses within to the Public Places Bylaw 2020 that are required as a consequence of proposed changes to the definition of Animal in the Explanatory Bylaw 2022 (Table 3, Appendix 3)
- Submission form

- 1.3 Council welcomes feedback on the draft Explanatory Bylaw 2022. The closing date for feedback is **5pm on 15 August 2022**. See section 9 for more information on the consultation process.

- 1.4 Supporting documents can be found on Council's "Have Your Say" webpage, including a copy of the s155(1) assessment that evaluates whether a bylaw is the most appropriate way to address the perceived problems identified in relation to the explanatory bylaw.

2 Why is a review of the Explanatory Bylaw 2014 required?

- 2.1 Council is required by section 158 of the Local Government Act 2002 (“the Act”) to review a bylaw no later than five years after it is made. Council’s 2014 Explanatory Bylaw came into force on 1 November 2014 and was amended by Council resolution on 21 May 2015. Due to resourcing constraints the review of this bylaw was delayed.
- 2.2 The 2014 Bylaw has been automatically revoked under section 160A of the Act as it was not reviewed within the required time period. This review involves replacing the revoked bylaw with a new, streamlined bylaw.

3 Main Differences between the draft 2022 Bylaw and the 2014 Bylaw

- 3.1 The draft Explanatory Bylaw 2022 (the “draft Bylaw”) is largely a continuation of the 2014 Explanatory Bylaw (the “2014 Bylaw”). However, the draft Bylaw has been streamlined by deleting clauses of the Bylaw that duplicate legislation, and to remove definitions that are now redundant. Only those definitions that are common to two or more bylaws have been retained in the draft Bylaw.
- 3.2 The key differences between the draft Bylaw and the 2014 Bylaw are as follows:

1. Amendment to the definition of “Animal” to include dogs.

The definition of “Animal” in the 2014 Bylaw specifically excluded dogs and humans. The 2022 draft Bylaw removes this exclusion. This means that any reference to “animal” in any of Council’s bylaws will include dogs, unless the clause specifically excludes them.

The term “Animal” is used in the following Council Bylaws:

- Animal Bylaw 2019
- Dog Control Bylaw 2019
- Freedom Camping Bylaw 2020
- Public Places Bylaw 2020
- Solid Waste Bylaw 2019
- Traffic Safety and Road Use Bylaw 2015 (currently under review)
- Water Supply Bylaw 2019.

Council has evaluated the impact of the change to the definition to these operative Bylaws. In all cases, the effects of the change are considered to be inconsequential or even beneficial. For example, there are clauses relating to the control of animals within the Dog Control, Freedom Camping, Solid Waste and Water Supply Bylaws that appear to have anticipated dogs being included. Including dogs in the definition of animals will enable Council to simplify these clauses.

However, the amendment to the definition causes duplication between the Public Places Bylaw 2020 and the Dog Control Bylaw 2019 in relation to wandering dogs, and dogs causing a nuisance in public places.

Minor amendments are recommended to clauses 5.2(f) and (g) in the Public Places Bylaw 2020 to remove potential duplications and inconsistencies, by ensuring that

those provisions that have not previously applied in relation to dogs, continue to have the same effect. These amendments are detailed in table 3 in Appendix 3.

As the amendments to the Public Places Bylaw 2020 are minor changes that are captured by section 156(2) of the Act, Council is not obliged to consult on these changes. Copies of the proposed bylaw amendments have been included in this Statement of Proposal for completeness.

2. *Deletion of Clause 3 “Powers to make Bylaws”, Clause 8 “Powers of Entry,” and Clause 14 “Penalties for Breach of a Bylaw.”*

These clauses all duplicate powers that Council has under legislation. Removing these clauses from the Bylaw does not limit Council’s powers to act in relation to these matters and helps to streamline the bylaw. In addition, by removing these clauses from the bylaw this removes the potential for any clauses in the Bylaw to be inconsistent with the Act.

3. *Deletion of Clause 4 “Delegation” and Clause 5 “Council Officers to Continue in Office.”*

The powers to delegate functions under Bylaws are found in clauses 32 and 32B and Schedule 7 of the Local Government Act 2002. The appointment of enforcement officers is covered by section 177 of the Act. Delegations and the appointment of enforcement officers made under the Act in relation to Council’s Bylaws are recorded in Council’s Delegations Manual. As the powers to delegate functions under Bylaws and to appoint enforcement officers is already provided for in the Act there is no need to manage these things through a Bylaw.

4. *Deletion of clauses 10.1, 10.2, 10.3, 10.5, 10.6 and 10.7 from the “Licenses, Permits, Consents and Approvals” clause of the Bylaw*

These clauses are proposed to be deleted from the Bylaw as they duplicate equivalent clauses within Council’s individual operative Bylaws. Clause 10.4 (draft clause 6.1) is proposed to be retained as there is no equivalent clause in the operative bylaws.

5. *Amendments to clause 15 (draft clause 10) “Repair and Removal of Works”*

Recommended changes include:

- the replacement of the heading with “Removal or alteration of Works or Things”
- the removal of references to “repair” from clause 15.1 (draft clause 10.1)
- the insertion of references from the Local Government Act 2002 where applicable

These proposed changes are to ensure that these clauses are consistent with clauses 163 to 168 of the Act.

3.3 Table 1 in Appendix 1 lists the differences between the 2014 Bylaw and the draft Bylaw and the reasons for those differences.

- 3.4 As the Explanatory Bylaw includes definitions that are common to other operative Council Bylaws, any changes have flow on effects that need to be considered. Table 2 in Appendix 1 details recommended minor amendments to Council’s operative bylaws that are as a consequence of the review of the Explanatory Bylaw.
- 3.5 Changes to the definition of “animal” necessitate minor amendments to the Public Places Bylaw 2020 to ensure that provisions that have not previously applied to dogs continue to have the same effect. These amendments are detailed in Appendix 3 (Table 3) of this Statement of Proposal.

4 Statutory Requirements

Council’s authority to make a bylaw

- 4.1 Section 145 of the Act gives council the power to make bylaws for one or more of the following purposes:
- a) protecting the public from nuisance;
 - b) protecting, promoting, and maintaining public health and safety;
 - c) minimising the potential for offensive behaviour in public places.
- 4.2 While the Explanatory Bylaw is administrative in nature, it supports Council’s other bylaws to achieve their purposes under s145 of the Act.
- 4.3 The Explanatory Bylaw came into force on 1 November 2014 and in accordance with section 158 of the Act, was due for review within five years of being made. Amendments to the bylaw were adopted on 21 May 2015 but did not alter the expiry date of the bylaw. Given that more than two years has now passed since the last date on which the bylaw should have been reviewed, the 2014 Bylaw has been automatically revoked under section 160A of the Act.
- 4.4 The Act sets out the required procedure for making bylaws, including consultation requirements.
- 4.5 Section 156(1) of the Act requires that Council follows the special consultative procedure when making amendments to a bylaw if the matters is identified as being significant under our Significance and Engagement Policy or if Council considers that there is, or is likely to be, a significant impact on the public due to the proposed amendments.
- 4.6 Section 156(2) of the Act states that:
- Despite subsection (1), a local authority may, by resolution publicly notified, -*
- (a) Make minor changes to, or correct errors in, a bylaw, but only if the changes or corrections do not affect –*
 - (i) An existing right, interest, title, immunity, or duty of any person to whom the bylaw applies; or*
 - (ii) An existing status or capacity of any person to whom the bylaw applies*
- 4.7 The amendments in Table 2 in Appendix 1 and in Table 3 in Appendix 3 are considered to be minor changes and corrections in accordance with section 156(2). To satisfy the

requirements of the Act, Council will notify these minor changes and corrections in conjunction with the new Explanatory Bylaw.

5 Determining the need for a Bylaw

Section 155(1)

- 5.1 According to s155(1) of the Act, Council must, before commencing the process for making or amending a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problems.

S155(1) assessment for the Draft Explanatory Bylaw 2022

- 5.2 At the Council meeting on 7 July 2022, Council passed resolutions determining that a bylaws is the most appropriate way of addressing the following perceived problems:
1. Some terms and expressions are common to, and used in all, Bylaws. Replication of definitions across all bylaws unnecessarily adds to their length.
 2. As bylaws may not all be reviewed at the same time, there is potential for inconsistencies in the same terms or expressions across bylaws and potential for legal challenge.
 3. Where a bylaw relies on a definition or expression included in the Explanatory Bylaw care needs to be taken that the definition covers everything that it needs to.
 4. The meaning of terms or expressions may change over time or new terms or expressions may need to be introduced to bylaws as a result of changes in legislation, case law or common usage.
 5. Readers may not read the Explanatory Bylaw in conjunction with the other bylaws, resulting in potential confusion and reduced understanding.
- 5.3 As all of the problems identified above relate to bylaws (inconsistencies and interpretation challenges) an explanatory bylaw is considered to be the best way to address them. While some definitions exist in legislation or other Council documents, they can differ depending on the context and application. Having a single definition for each term together in an explanatory bylaw means less repetition and less risk of inconsistency between bylaws. Referencing the Explanatory Bylaw in Council's operative bylaws is preferred to non-statutory reference material that may be more easily overlooked.
- 5.4 The report to Council and the minutes from the 7 July 2022 Council meeting are available on Council's website (<https://www.mdc.govt.nz/about-council/meetings-agendas-and-minutes/council-and-committee-agendas-and-minutes/manawatu-district-council>). Paper copies can also be provided from Council on request.
- 5.5 The consequential amendments to Council's operative bylaws, including amendments to the Public Places Bylaw 2020 are considered to be "minor changes" under section 156(2) of the Act. Council is therefore not required to consult on the proposed amendments or to complete a section 155 assessment for these amendments.

6 Determining the appropriate form of the Bylaw

- 6.1 Section 155(2)(a) of the Act requires that before adopting a bylaw, Council determines whether the proposed bylaw is *“the most appropriate form of the bylaw”*.
- 6.2 Council will make a formal determination on whether Council’s proposed Explanatory Bylaw 2022 is the most appropriate form of the bylaw after considering submissions on the draft Bylaw. However, it is also worthwhile to consider the form of the bylaw at the drafting stage of the process.
- 6.3 The draft Bylaw (Appendix 2) is considered to be an appropriate form of the bylaw. The draft has been developed with technical input from those Council Officers that use the bylaws most frequently. The draft has also been reviewed by external advisors, who are satisfied that the draft is consistent with applicable legislation. The draft bylaw is considered to be sufficiently clear and certain so that those who refer to it will understand its effect.

7 Preliminary Assessment against the Bill of Rights Act 1990

- 7.1 Section 155(2)(b) of the Act requires that before adopting a bylaw, Council determine whether the proposed bylaw will give rise to any implications under the New Zealand Bill of Rights Act 1990.
- 7.2 An assessment of whether the proposed Explanatory Bylaw 2022 gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA) cannot be fully considered until after Council has deliberated on submissions on the draft Bylaw and the proposed Bylaw has been finalised for consideration by Council. However, a preliminary assessment can be made as to whether the draft bylaw may give rise to any implications under the NZBORA.
- 7.3 The NZBORA sets out specific rights and freedoms which are protected by legislation. The NZBORA states that the rights and freedoms covered by the Act *“may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”*
- 7.4 It is not expected that an explanatory bylaw to address the perceived problems identified in paragraph 5.2 would give rise to any implications against the NZBORA.
- 7.5 As the proposed bylaw and bylaw amendments do not infringe on any rights in the New Zealand Bill of Rights Act 1990, there is no inconsistency. However, a further assessment against the NZBORA will be undertaken prior to Council passing a resolution to adopt Council’s Explanatory Bylaw 2022

8 Consultation Process

- 8.1 Anyone can make a submission about Council’s draft Explanatory Bylaw 2022 as described in this Statement of Proposal. Submissions can be made electronically through the Council’s “Have Your Say” webpage (<https://www.mdc.govt.nz/Contact-Us/Have-Your-Say>). Alternatively, a submission form can be downloaded from Council’s “Have Your Say” webpage or detached from the back of this document and emailed to submissions@mdc.govt.nz (subject heading “Draft Explanatory Bylaw”), hand delivered to the Council office at 135 Manchester Street, Feilding, or posted to:

Attn: Strategy Team
Manawatū District Council
Private Bag 10001
Feilding 4743
New Zealand

- 8.2 Submissions close at **5pm on 15 August 2022.**
- 8.3 Any written form of submission will be received and considered.
- 8.4 Submitters should note that their submission will be copied and made available to the public after the submission period closes. You may opt to have your personal contact details kept confidential.
- 8.5 Please state in your submission whether or not you wish to present your submission in person at a hearing.

9 Proposed Timeline

9.1 **1 September 2022 – Hearings**

A hearing will be held for those who wish to present their submission to council in person. Each submitter who wishes to speak at the hearing will be contacted after 15 August 2022 and assigned a speaking time.

9.2 **15 September 2022 – Deliberations**

Council will deliberate on all written and oral submissions.

9.3 **6 October 2022 - Adoption**

Following the consideration of submissions on the draft Bylaw, the proposed Manawatū District Council Explanatory Bylaw 2022 and minor consequential amendments to Council’s other Bylaws will be considered for adoption by Council.

Appendix 1 – Differences between the 2014 Bylaw and the draft Bylaw 2022

Table 1:

Difference between the 2014 Bylaw and the draft Bylaw	Reasons for differences
<p>The 2014 Bylaw came into force on 1 November 2014 and applied to all bylaws that came into force on or after that date (except as may be expressly provided otherwise).</p> <p>Clause 1.6 of the draft Bylaw makes the new Bylaw apply to all other Council bylaws, whether made before or after the commencement of this Bylaw.</p>	<p>The 2014 Bylaw was adopted at the start of the Bylaw review, whereas the draft Bylaw is being adopted at the end of the review. It is therefore necessary for the wording in the draft Bylaw to reflect this.</p> <p>All bylaws have the same status as secondary legislation. There is no reason why one bylaw cannot include a regime that ties in or supplements other bylaws, regardless of whether they are made before or after the Explanatory Bylaw.</p>
<p>References to the “Long Term Plan” have been replaced with references to the “10 Year Plan.”</p>	<p>To avoid confusion as we refer to our document as the 10 Year Plan now not the Long Term Plan.</p>
<p>The definition of “Agent” in the draft Bylaw does not include reference to a business, only a “person”</p>	<p>Reference to a business is not needed within this definition as the definition of “person” already includes any body corporate.</p>
<p>There is no definition of “Alcohol” in the draft Bylaw.</p>	<p>This term is only used in the Public Places Bylaw so is not necessary to include in the Explanatory Bylaw.</p>
<p>The definition of “Animal” in the draft Bylaw includes dogs whereas they were specifically excluded in the 2014 Bylaw definition of this term.</p>	<p>The 2014 Bylaw definition of “animal” specifically excluded dogs. It is not clear why dogs were specifically excluded from this definition in the 2014 Bylaw and in some bylaws it appears that the original intention was to have them included. The impact of this change is further detailed in paragraph 3.2 of this Statement of Proposal (key difference 1).</p>
<p>The definition of “Approved and Approval” from the 2014 Bylaw has been split in the draft bylaw so that the definition of “Approval” includes reference to all “permits, consents, certificates or authorities granted under Bylaws.”</p>	<p>This change means that the term “Approval” can be used in place of these other terms in later sections of the draft Bylaw (clauses 5, 7, 8 and 9). This simplifies the draft bylaw.</p>

Difference between the 2014 Bylaw and the draft Bylaw	Reasons for differences
References to “Certificate of Title” have been replaced by “Record of Title” in the draft Bylaw.	The Land Transfer Act 1952 has been revoked and replaced by the 2017 Act. The 2017 Act uses the term “Record of Title” so this definition has been amended so as to be consistent with the new legislation.
The definition of Disability Assist Dog is not included in the draft Bylaw. It is recommended that it be inserted into the Dog Control Bylaw 2019 instead.	This is not a commonly used term. It is better that the definition sits only in the bylaw that relies on this term.
There is no definition of “document” in the draft Bylaw.	This is a commonly understood term and therefore does not need to be defined in a bylaw.
The draft bylaw does not include a definition of “dwellinghouse” but does include a definition of “dwelling”	As both terms have the same meaning in the 2014 Bylaw, it is a minor change to switch “Dwellinghouse” with “Dwelling” in bylaws. The term “Dwellinghouse” is outdated and not commonly used.
The draft Bylaw does not include a definition of “goods.”	This term is only used within the Solid Waste Bylaw within the defined term of “Donated Goods Container” and within the definition of “Goods Service Vehicle” within the 2015 Traffic Safety and Road Use Bylaw. As this term is not used independently in any bylaw it is unnecessary for it to be defined in the Explanatory Bylaw.
The draft Bylaw does not include a definition of “Library.”	Since the Public Facilities (Swimming Pools and Library) Bylaw 2014 expired and was not replaced, this term is only used in Schedule 1 of the Public Places Bylaw (prohibited UAV flying zones). The common meaning of this term can be relied on for the Public Places Bylaw and there is no need to define this term in the Explanatory Bylaw 2022.
<p>The definition of “stock” that was in the 2014 Bylaw has been simplified and replaced in the draft Bylaw by a new definition, as follows:</p> <p>Stock means any farmed animal, including, but not limited to, any cattle, horse, deer, sheep, goat or pig.</p> <p>All references to “livestock” in 2014 Bylaw clauses that have been carried over to the draft Bylaw have been replaced by “Stock.”</p>	<p>The 2014 bylaw included a definition of “Stock” as well as “Livestock and Stock.” This was an unnecessary double-up. The 2014 bylaw definition of stock was considered to be unnecessarily complicated.</p> <p>Livestock is an outdated term so has been deleted.</p>

Difference between the 2014 Bylaw and the draft Bylaw	Reasons for differences
The definition of “Road Controlling Authority” that was in the 2014 Bylaw has been replaced in the draft Bylaw by reference to the definition for this term in section 2(1) of the Land Transport Act 1998.	For consistency with relevant legislation.
The draft Bylaw does not include a definition of “Territorial Authority.”	The Public Places Bylaw 2020 is the only bylaw that uses this term. As noted in Table 3, we are proposing to replace “Territorial Authority” with “Council” in the Public Places Bylaw for consistency with Council’s other bylaws. If this is approved, the term “Territorial Authority” will be redundant.
The draft Bylaw does not include a definition of “Trailer.”	Can rely on the common meaning of this term, no need to define.
The definition of “Working Day” in the draft Bylaw references the Local Government Act 2022.	For consistency. There is potential for confusion as the definition of this term in the 2014 Bylaw is inconsistent with the Act (e.g. the 2014 Bylaw definition excludes the period from 25 Dec to 2 January, rather than the period from 20 Dec to 10 Jan that is in the Act).
The draft Bylaw does not include a definition of “Writing and Written”	This is already provided for in the definition of “writing” in section 13 of the Legislation Act 2019. It therefore does not need to be defined in the draft Bylaw.
<p>Clause 2.7 of the 2014 Bylaw included matters that are relevant to the interpretation of Bylaws, namely that:</p> <ul style="list-style-type: none"> <i>(a) reference to the singular includes the plural, and the plural includes the singular;</i> <i>(b) headings shall not affect the meaning of Bylaws; and</i> <i>(c) any notes included in Bylaws shall not affect their operative provisions.</i> <p>The draft Bylaw does not include this clause. However, a new clause has been included that relates to guidance notes, as follows:</p>	<p>These changes are to ensure consistency with section 10 of the Legislation Act 2019 which provides that the meaning of legislation (including secondary legislation like bylaws) should be ascertained from its text, and that text includes indications like headings, explanatory material etc. So, headings and explanatory notes should be used to help interpret the draft Bylaw – that is what the Legislation Act requires.</p> <p>Guidance notes are proposed to be addressed separately by new clause 2.5.</p>

Difference between the 2014 Bylaw and the draft Bylaw	Reasons for differences
<i>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.</i>	
Clause 3 in the 2014 Bylaw (“Powers to make Bylaws”) has not been carried over to the draft 2022 Bylaw	This clause refers to powers that exist in the LGA 2002. No need to repeat these within the Bylaw.
Clause 4 in the 2014 Bylaw (“Delegations”) is proposed to be replaced by guidance notes under clause 4.2 in the draft Bylaw.	These powers are already covered by the general powers of delegation in clauses 32 and 32B, Schedule 7 of the Act, which are generally used to make the delegations set out in Council’s Delegations Manual. Rather than deleting this clause entirely, the addition of guidance notes is recommended to assist bylaw users. These guidance notes have been drafted in such a way as to be consistent with terminology used in Act (e.g. “Council powers, duties and responsibilities” under clause 32(1), Schedule 7 of the Act).
Clause 5 in the 2014 Bylaw (“Council Officers to Continue in Office”) has not been carried over to the draft 2022 Bylaw	This clause refers to appointment of Council Officers by Council. The appointment of enforcement officers is already covered by section 177 of the Act. It is therefore unnecessary to include these clauses within a bylaw.
Changes to the clauses that relate to the service of orders and notices and proof that notice has been served (clauses 6.1 and 6.2 in the 2014 Bylaw, clauses 3.1 and 3.2 in the draft Bylaw) to remove all references to “registered post” and “facsimile” as methods of communication.	These changes are recommended as these are not current methods that Council uses to communicate.
Clauses relating to the signing of notices (clause 7 in the 2014 Bylaw, clause 4 in the draft Bylaw) have been amended to refer to “any other person who holds delegated authority to act” instead of “any other person authorised by the Council to act on its behalf in that respect.”	This change is recommended as the previous wording might not have been broad enough to capture sub-delegations made by the Chief Executive. The new wording allows for this.

Difference between the 2014 Bylaw and the draft Bylaw	Reasons for differences
Clause 8 (“Powers of Entry”) from the 2014 Bylaw has not been carried over to the draft Bylaw	Council relies on the powers of entry that exist in the Act. These powers do not need to be duplicated in the Bylaw.
Clause 9.1 (“Fees and Charges”) from the 2014 Bylaw has not been carried over to the draft 2022 Bylaw	This refers to Council’s ability to prescribe fees under section 150 of the LGA 02. These powers are already provided for in legislation so do not need to be included in the Bylaw.
Clause 9.4 (fees and charges) from the 2014 Bylaw has been replaced with a guidance note in the draft Bylaw	While it is not necessary for the Bylaw to contain a clause about Council’s Schedule of Fees and Charges, it is useful for the Bylaw to include information on how to access this information.
Clauses 10.1, 10.2, 10.3, 10.5, 10.6 and 10.7 from the “Licences, Permits, Consents and Approvals” clause (draft Clause 6) in the 2014 Bylaw have not been carried over into the draft Bylaw	These clauses are not necessary as they duplicate clauses within relevant bylaws. Only clause 10.4 is proposed to be retained (clause 6.1 in the draft Bylaw) as this relates to rights, authorities and immunity on licence applicants in the period between lodging an application and having it granted. This is not covered in any of the other bylaws.
<p>The 2014 Bylaw included a clause (Clause 12) on objections to decisions made by officers. This clause has been carried over to the draft Bylaw, with the following modifications:</p> <ul style="list-style-type: none"> • “Objection” replaced with “Appeal” • “Council” replaced with “Hearings Committee” • Replacement of “Such evidence may be solely in writing” with “Such evidence will be in writing only, unless the Hearings Committee agrees to hear evidence in person” (clause 8.3 in the draft Bylaw). 	<p>The Council has delegated authority to the Hearings Committee to decide appeals from Council’s bylaws. The change in terminology from “objections” to “appeals” is to align the Bylaw clauses with the terminology used in the Hearing Committee’s terms of reference.</p> <p>This clause included some references to “Council” in relation to the considering objections. As this authority has been delegated to the Hearings Committee, all references to “Council” in this clause have been replaced with “Hearings Committee.”</p> <p>The new wording in clause 8.3 (12.3 in the 2014 Bylaw) is to clarify the intent of this clause as the wording was unclear.</p>
Clause 9 in the draft Bylaw (clause 13 in the 2014 Bylaw) refers to breaches of a bylaw. The clauses in the draft Bylaw differ from the equivalent clauses in the 2014 Bylaw in that:	The reference to section 239 in clause 9.1 is to help make it clear that this section is not trying to supplant or alter the effect of section 239 of the Act (which provides that any breach of a bylaw

Difference between the 2014 Bylaw and the draft Bylaw	Reasons for differences
<ul style="list-style-type: none"> • clause 9.1 (was clause 13.1) makes reference to not limiting “section 239 of the Local Government Act 2002 or any other similar legislative provision;” and • all references to a “permit, consent, certificate or authority” have been removed. 	<p>made under the Act is an offence) and other provisions like it.</p> <p>Reference to permits, consents, certificates and authorities in clause 9.1 is unnecessary as the new definition of “Approval” covers all of these. Including these terms as well as an “Approval” would be a duplication.</p>
<p>Clause 14 (“Penalties for Breach of a Bylaw”) from the 2014 Bylaw has not been carried over into the draft Bylaw</p>	<p>Penalties are already covered by legislation and this clause duplicates equivalent clauses in the individual bylaws.</p>
<p>The heading of clause 15 “Repair and Removal of Works” from the 2014 Bylaw (Clause 10 in the draft Bylaw) has been retained but reference to “repair” has been replaced with “alteration.”</p>	<p>Works or things that are done in contravention of a Bylaw would be removed or altered, not “repaired.” The heading has therefore been replaced with “Removal or Alteration of Works or Things” to better reflect the contents of this clause.</p>
<p>Clause 15.1 (draft clause 10.1) from the 2014 Bylaw has been carried over to the draft Bylaw but amended as follows:</p> <ul style="list-style-type: none"> • reference is only made to section 163 of the Local Government Act and not sections 164, 165, 167 and 168; • removal of references to “repair” and to “cause to be repaired, removed or altered”; and • the explanation of what costs can include has been relocated from brackets to a guidance note. 	<p>The power to remove or alter a work constructed in breach of a bylaw is in section 163 of the Act only. The power in section 163 can only be used if a bylaw authorises its use - hence providing for it in this clause. The other powers in sections 164-168 can be used regardless of whether a bylaw provides for them, so they do not need to be specifically included in this Bylaw.</p> <p>Section 163 only provides for the removal or alternation of a work that has been done in contravention with a bylaw. Wording changes are to ensure these clauses are consistent with the Act.</p> <p>As the information about applicable costs is guidance or explanation it is more appropriate to include as a guidance note than in brackets.</p>
<p>The draft Bylaw does not include clauses that deal with the return or disposal of property seized by Council in breach of a Bylaw. These were clause 15.5 and 15.6 in the 2014 Bylaw.</p>	<p>Sections 167 and 168 of the Act deals with seizures made under section 164. If property is seized under sections 165-166, then it is the Search and Surveillance Act 2012 that deals with the return</p>

Difference between the 2014 Bylaw and the draft Bylaw	Reasons for differences
	and disposal of property. It is not necessary to duplicate legislation in the Bylaw.
The clauses relating to dispensing powers in the draft Bylaw (clause 11) provide for a dispensation from full or partial compliance with any provision of a bylaw. The 2014 Bylaw only provided for a dispensation from full compliance with any provision of a bylaw.	This change is for the benefit of bylaw users who may want to apply for a dispensation from partial compliance.
The draft Bylaw does not include clauses relating to schedules and forms (was Clause 17 in the 2014 Bylaw)	<p>Clause 17.1 provides for schedules to be altered from “time to time by Council resolution publicly notified.” This is inconsistent with section 156 of the Act (and Council practice), which requires consultation prior to amending a Bylaw. It is therefore appropriate that this clause be excluded from the draft Bylaw.</p> <p>The individual bylaws do not include prescribed forms (on purpose), so clause 17.2 in the 2014 Bylaw is not necessary for inclusion in the draft Bylaw.</p>
Clause 18 (“Amendments included”) from the 2014 Bylaw has not been included in the draft Bylaw	It is not necessary to include this clause within the Bylaw as this is now dealt with by section 38 of the Legislation Act 2019.
The draft Bylaw does not include a clause about repeals and savings (clause 19 in the 2014 Bylaw)	This is already addressed in sections 33 and 34 of the Legislation Act 2019 so does not need to be included in the Bylaw.
Formatting updates throughout the Bylaw (no change to meaning or intent of clauses)	For clarity, consistency and to make the bylaw easier to understand.

Table 2: Minor Changes and Corrections to Operative Council Bylaws

Bylaw	Change	Reason for Change
Animal	<p>Replace reference to the Explanatory Bylaw 2014 with the Explanatory Bylaw 2022 in the following clauses:</p> <ul style="list-style-type: none"> • 5.1 • 5.2 within the definition of Nuisance • 5.2 within the definition of Animal • 5.3 	<p>The Explanatory Bylaw 2014 has expired and is being replaced by the Explanatory Bylaw 2022. These updates are necessary to ensure that the correct definitions are being referred to.</p>
Animal	<p>Amend the explanatory note below clause 17.1 as follows:</p> <p><i>This section clause should be read in conjunction with clauses <u>9 and 10</u>13, 14 and 15 of the Manawatū Explanatory Bylaw 2014<u>2022</u>.</i></p>	<p>To update the clause reference to the corresponding new clauses within the 2022 version of the Explanatory Bylaw 2022.</p>
Cemeteries	<p>Replace reference to the Explanatory Bylaw 2014 with the Explanatory Bylaw 2022 in the following clauses:</p> <ul style="list-style-type: none"> • 4.1 • 4.3 	<p>The Explanatory Bylaw 2014 has expired and is being replaced by the Explanatory Bylaw 2022. These updates are necessary to ensure that the correct definitions are being referred to.</p>
Cemeteries	<p>Update the explanatory note below clause 15.1 as follows:</p> <p><i>This clause should be read in conjunction with clause <u>95</u> of the Manawatū District Explanatory Bylaw 2022<u>2014</u>. All fees and charges for Cemetery Activities are contained in Council's Schedule of Fees</i></p>	<p>To update the clause reference to the corresponding new clauses within the 2022 version of the Explanatory Bylaw 2022.</p>

	<i>and Charges and are reviewed from time to time.</i>	
Cemeteries	Amend the explanatory note below clause 17.1 as follows: <i>This section clause should be read in conjunction with clauses <u>9 and 10</u>13, 14 and 15 of the Manawatū Explanatory Bylaw 2014<u>2022</u>.</i>	To update the clause reference to the corresponding new clauses within the 2022 version of the Explanatory Bylaw 2022.
Dog Control	Replace reference to the Explanatory Bylaw 2014 with the Explanatory Bylaw 2022 in the following clauses: <ul style="list-style-type: none"> • 4.1 • 4.3 • 25.2 	The Explanatory Bylaw 2014 has expired and is being replaced by the Explanatory Bylaw 2022. These updates are necessary to ensure that the correct definitions are being referred to.
Dog Control	Amend the explanatory note below clause 25.1 as follows: <i>This clauses section should be read in conjunction with clauses <u>9 and 10</u>13, 14 and 15 of the Manawatū Explanatory Bylaw 2014<u>2022</u>.</i>	To update the clause reference to the corresponding new clauses within the 2022 version of the Explanatory Bylaw 2022.
Freedom Camping	Replace reference to the Explanatory Bylaw 2014 with the Explanatory Bylaw 2022 in the following clauses: <ul style="list-style-type: none"> • 5.1 • 5.3 • 14.1 	The Explanatory Bylaw 2014 has expired and is being replaced by the Explanatory Bylaw 2022. These updates are necessary to ensure that the correct definitions are being referred to.
Public Places	Replace reference to the Explanatory Bylaw 2014 with the Explanatory Bylaw 2022 in the following clauses:	The Explanatory Bylaw 2014 has expired and is being replaced by the Explanatory Bylaw 2022. These updates are necessary to ensure that the correct definitions are being referred to.

	<ul style="list-style-type: none"> • 4.1 • 4.3 	
Public Places	<p>Update the explanatory note below clause 10.4 as follows:</p> <p><i>This clause should be read in conjunction with clause 95 of the Manawatū District Explanatory Bylaw 20222014.</i></p>	To update the clause reference to the corresponding new clauses within the 2022 version of the Explanatory Bylaw 2022.
Public Places	<p>Update the explanatory note below clause 26.2 as follows:</p> <p><i>This clause should be read in conjunction with clauses <u>9 and 10</u>13, 14 and 15 of the Manawatū Explanatory Bylaw 2014<u>2022</u>.</i></p>	To update the clause reference to the corresponding new clauses within the 2022 version of the Explanatory Bylaw 2022.
Solid Waste	<p>Replace reference to the Manawatu District Explanatory Bylaw 2014 with the Manawatū District Explanatory Bylaw 2022 in the following clauses:</p> <ul style="list-style-type: none"> • 4.1 • 4.3 	The Explanatory Bylaw 2014 has expired and is being replaced by the Explanatory Bylaw 2022. These updates are necessary to ensure that the correct definitions are being referred to.
Solid Waste	<p>Update the explanatory note below clause 22.1 as follows:</p> <p><i>This clause should be read in conjunction with clauses <u>9 and 10</u>13, 14 and 15 of the Manawatū Explanatory Bylaw 2014<u>2022</u>.</i></p>	To update the clause reference to the corresponding new clauses within the 2022 version of the Explanatory Bylaw 2022.
Water Supply	<p>Replace reference to the Manawatu District Explanatory Bylaw 2014 with the Manawatū District Explanatory</p>	The Explanatory Bylaw 2014 has expired and is being replaced by the Explanatory Bylaw 2022. These updates are necessary to ensure that the correct definitions are being referred to.

	<p>Bylaw 2022 in the following clauses:</p> <ul style="list-style-type: none"> • 4.1 • 4.3 	
Water Supply	<p>Update the explanatory note below clause 33.1 as follows:</p> <p><i>This clause should be read in conjunction with clauses <u>9 and 1013, 14 and 15</u> of the Manawatu Explanatory Bylaw <u>20142022</u>.</i></p>	To update the clause reference to the corresponding new clauses within the 2022 version of the Explanatory Bylaw 2022.
<p>Animal</p> <p>Dog Control</p> <p>Draft Drainage</p> <p>Freedom Camping</p> <p>Public Places</p> <p>Solid Waste</p> <p>Draft Trade Waste</p> <p>Water Supply</p>	<p>Capitalise all instances where “approval” is used in a way that is consistent with the definition of this term.</p>	This is to correct minor errors where the defined term is not denoted as such by the convention of capitalisation.
Dog Control	<p>Replace all references to “Dwellinghouse” with “Dwelling”</p>	This is the only Bylaw that uses this definition. As both terms share a common meaning, there is no effect in replacing one term with the other. This is preferred as the term “dwellinghouse” is not in common use anymore.
Water Supply Bylaw	<p>Delete definition of Publicly Notified so as to rely on the definition contained in the Explanatory Bylaw 2022</p>	The current definition in the Water Supply Bylaw is inconsistent with the definition contained in the Explanatory Bylaw. The Explanatory Bylaw definition of this term is consistent with the Act, and is therefore preferred. This change is inconsequential to the interpretation of this term in the Water Supply Bylaw and is therefore minor in terms of s156(2)(a) of the Act.

Water Supply Bylaw	Replace “Certificate of Title” with “Record of Title” within the explanatory note under clause 11.3.	This is to reflect recent changes in legislation and to avoid potential confusion.
Cemeteries Water Supply	Delete the definition of “Council” so as to rely on the definition of this term within the draft Explanatory Bylaw 2022	The current definition of the term “Council” within these bylaws is inconsistent with the definition of this term in the rest of Council’s bylaws (i.e. do not refer to people acting under the authority delegated by MDC). This is not a material change and is recommended for consistency.
Freedom Camping	Capitalise the term “Footpath” within this Bylaw.	Capitalisation of this term is to correct a minor error and through reference to the definitions (in the Explanatory Bylaw), this will ensure common understanding of this term.
Public Places	Decapitalise the term “Offence” when used in this Bylaw.	The definition for this term is proposed to be removed from the Explanatory Bylaw. It is already clear what constitutes an offence from the statutory provisions, such as section 239 of the Act.
Animal Dog Control Freedom Camping Public Places Solid Waste	Update the Animal, Dog Control and Solid Waste Bylaws to capitalise the term “Road.” Replace “Roadway” with “Road” in the Solid Waste Bylaw the one time it is used this way.	Road is a defined term. It therefore needs to be capitalised in those Bylaws that rely on the definition of “Road” as contained in the Explanatory Bylaw. The replacement of “Roadway” with “Road” in the Solid Waste Bylaw is for consistency and to avoid potential confusion as to what is meant by this term.
Dog Control	Capitalise all references to “stock” to denote that this is a defined term	Capitalisation of this term is to correct a minor error and through reference to the definitions (in the Explanatory Bylaw), this will ensure common understanding of this term.
Cemeteries	Capitalise “structure”	Capitalisation of this term is to correct a minor error and through reference to the definitions (in the Explanatory Bylaw), this will ensure common understanding of this term.

Public Places	Replace “Territorial Authority” with “Council” in Clause 2.1(d)	This is the only bylaw that uses this term. As the bylaw only controls activities within the Manawatū District, changing this term to “Council” will have no material effect and is preferred for consistency.
Solid Waste	Capitalise “Working Day”	Capitalisation of this term is to correct a minor error and through reference to the definitions (in the Explanatory Bylaw), this will ensure common understanding of this term.
Freedom Camping Public Places	Replace all references to “Writing” and “Written” with lower case as the definition of this term is proposed to be deleted from the draft Bylaw	It is not necessary to define this term as it is already defined in section 13 of the Legislation Act 2019.
Solid Waste	Capitalise “Zone” within “commercial zoned areas”	Capitalisation of this term is to correct a minor error and through reference to the definitions (in the Explanatory Bylaw), this will ensure common understanding of this term.



Draft Explanatory Bylaw 2022

Adopted: DATE

Commences: DATE

Review Date: DATE

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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 [insert date].
- 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 Manawatū District Council, and includes any person acting under authority duly delegated by the Manawatū 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 Manawatū 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 Manawatū 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.

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.

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This Bylaw was made by the Manawatu District Council by resolution at a Council meeting on [insert date] and must be reviewed within 5 years.

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

Mayor

Chief Executive

DRAFT

Appendix 3 – Minor Amendments to the Public Places Bylaw 2020

Table 3

Proposed Change	Reason for Change
<p>Amendments to clause 5.2(f) as follows:</p> <p>5.2 A person must not, without prior consent from the Council, or as expressly allowed by this Bylaw:...</p> <p>(f) Allow any Animal, <u>excluding dogs</u>, in their custody to wander or be at large without proper control in any Public Place;</p> <p><i><u>Explanatory Note: Wandering dogs are managed under Council's Dog Control Policy 2019 and the Impounding Act 1955.</u></i></p>	<p>Wandering dogs are managed under the Dog Control Policy and Council already has the authority to impound wandering dogs under the Impounding Act 1955. There is therefore no need to control this issue through the Public Places Bylaw 2020.</p>
<p>Amendments to clause 5.2(g) as follows:</p> <p>(g) Allow any Animal, <u>excluding dogs</u>, in their custody to cause a Nuisance, inconvenience or danger;</p> <p><i><u>Explanatory Note: controls over dogs in public places are contained in the Dog Control Bylaw 2019.</u></i></p>	<p>Clause 5.1 of the Dog Control Bylaw 2019 requires that every owner of a dog must keep their dog Under Control in all Public Places and at all times. This amendment is required to ensure that this clause that previously did not apply to dogs continues to have the same effect.</p>

