

Administration of Bylaws BYLAW

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Approval authority:	Council
Consultation required:	Special Consultative Procedure (LGA sec 156)
ECM number:	402896
Associated documents:	

1. Introduction

- 1.1 This bylaw applies to all of Council's bylaws adopted after 1 February 2011, subject to clause 4 of this bylaw.
- 1.2 *This bylaw includes: service of notices and the powers of entry that apply to other Council bylaws (adopted after February 2011). This bylaw allows Council to suspend and revoke licences issued under other bylaws and deals with offences against Council bylaws. Provisions within this bylaw allow the removal of works or structures constructed in breach of Council's bylaws. The bylaw includes the procedure for applying for a dispensation from any of Council's bylaws. Some definitions that are common to a number of bylaws are included in this bylaw.*

Treaty of Waitangi as per Section 4 of the Local Government Act 2002

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.

2. Authority

This bylaw is made under the Local Government Act 2002 and all other enactments enabling the South Waikato District Council to make this Bylaw.

3. Title and Commencement

- 3.1 This bylaw is called the South Waikato District Council Bylaws Administration Bylaw 2017.
- 3.2 This bylaw shall come into force after Council resolves to adopt the bylaw and the date of commencement of the bylaw shall be identified in Council's resolution.

4. Application

Unless the context otherwise requires, or where otherwise expressly excluded, the provisions of this bylaw apply to the whole of the South Waikato District and apply to all other bylaws adopted by Council after 1 February 2011.

5. Interpretation

Notes in italics are not part of this bylaw, but are intended to explain the contents of the bylaw or give further information on matters within the bylaw.

6. Scope

- 6.1 The objective of this Bylaw is to promote good rule and government within the South Waikato District.
- 6.2 Works and activities regulated by the Resource Management Act 1991, or any other enactment, must be authorised pursuant to the provisions of those enactments before works and activities can be carried out notwithstanding any approval given by Council under the Local Government Act 1974, the Local Government Act 2002, or any other Act or this or any other bylaw.
- 6.3 The fee for any licence issued under any provision of any Council bylaw shall be as set out in a Schedule to Council's then current adopted Annual Plan. The fee payable shall be paid before the licence is issued.
- 6.4 The Bylaws Administration Bylaw 2017 does not currently apply to the following Bylaws:
- Land Transport Bylaw 2017
 - Solid Waste Management and Minimisation Bylaw 2017
 - Trade Waste Bylaw 2017

7. Definitions

- 7.1 Every Schedule to any part of this Bylaw forms part of this Bylaw.
- 7.2 Minor amendments to prescribed Bylaw forms are allowed where the meaning and content of the forms remain unchanged.
- 7.3 Words importing the singular number include the plural number and words importing the masculine gender include the feminine gender.
- 7.4 Reference in this Bylaw to any statute, regulation, or Bylaw, unless the context requires, includes references to all subsequent statutes, regulations, or Bylaws, made in amendment or in substitution and for the time being in force.
- 7.5 Nothing in this Bylaw derogates from any provision of, or the necessity for, compliance with any relevant Act of Parliament or any regulations or rules made under any Act of Parliament.
- 7.6 Words or expressions that are used generically throughout the Bylaws that are specifically covered by this Bylaw have the definitions shown below. All other definitions specifically related to an individual Bylaw are defined in each Bylaw.
- 7.7 For the purposes of this Bylaw and other Bylaws the word '**shall**' refers to practices that are mandatory for compliance with this bylaw while the word '**should**' refers to practices which are advised or recommended.

7.8 For the purposes of this bylaw and other bylaws, unless the context otherwise requires or where otherwise expressly provided:

Act means Local Government Act 2002 and any parts of the Local Government Act 1974 still in force and their amendments that are applicable.

Approved means approved by Council or by any officer authorised in that capacity by Council.

Authorised Agent means any person who is not an employee of Council but is authorised by Council to act on its behalf.

Authorised Officer means any person appointed by Council as an enforcement officer under the Act and any person authorised by Council to administer or enforce any bylaw of the Council and includes any sworn member of the New Zealand Police acting in the course of his or her duty.

Bylaw means a bylaw of Council for the time being in force including this Bylaw, made under the provisions of any Act or authority enabling Council to make bylaws.

Carriageway in relation to any road means that part of the road between the berms or kerbs thereof available for the use of vehicular traffic.

Chief Executive means the Chief Executive of South Waikato District Council or a person acting under a delegated authority on behalf of the Chief Executive.

Clause means any numbered provision in this or any other bylaw of the Council.

Council Facility includes any public library, swimming pool, aquatic centre, recreational, cultural or community centre, under the ownership or control of Council.

Council means South Waikato District Council and where the context allows, includes any officer or agent authorised to exercise the authority of Council.

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

Designated means specified by Council resolution.

District means the district within the jurisdiction and under the control of Council.

District Plan means the South Waikato District Council Operative District Plan and any Proposed District Plan in force from time to time or its equivalent.

Dwelling House means any building, whether permanent or temporary, that is occupied, in whole or in part, as a residence; and includes any structure that is necessary to, and used wholly or principally for the purposes of, the residence; but does not include the land upon which the residence is sited

Environment means an area identified as having a certain scale of development and level of effects which establish the area's particular character and amenity, distinguishing it from other identified environments. Environments within the district include Residential, Rural, Industrial and Business.

Licence, Permit or Approval means a licence or permit issued or approval granted under this or any other bylaw or Act by the Council.

Licensed means holding a licence under this bylaw or any other bylaw of the Council or under any Act.

Licensed Premises means premises licensed for the sale or consumption of alcohol under the Sale and Supply of Alcohol Act 2012 or the equivalent legislation.

Licensee means a person to whom a licence is issued.

Local Authority means the Council, person, or group of persons authorised by any Act to make bylaws, and which has made this bylaw, and includes the body corporate on behalf of which any such Council, person, or group acts.

Offence includes any act or omission in relation to this or any other bylaw of the Council or any part thereof for which any person can be punished either on indictment or by summary process.

Owner of any property, or as applied to any premises, means any person for the time being entitled to receive the rent of such property, or who would be so entitled if the same were let to a tenant; and where any such person is absent from New Zealand shall include their solicitor or agent.

Permit means a written permit issued by Council and signed by an authorised officer and 'permitted' and 'permission' shall have corresponding meanings.

Person means an individual person, and where the context allows may include a corporation sole, and a body of persons, whether corporate or unincorporated.

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.

Private Road and Private Way shall have the respective meanings assigned to them in section 315(1) of the Local Government Act 1974 and shall, where the context requires, include a road.

Public Notice shall have the meaning assigned to it from time to time by the Local Government Act 2002, or any other relevant Act.

Public place means any place that, at any material time, is under the control of Council and is open to or being used by the public, whether free or on payment of a charge, and includes any road whether or not it is under the control of Council. It also includes every reserve, park, domain, beach and recreational ground under the control of Council.

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

Resolution means resolution by Council or any Committee of Council with delegated authority in that regard.

Road has the same meaning as in section 315(1) of the Local Government Act 1974, including all land lying within the boundaries of a road including footpaths, berms, bridges, culverts, drains, fords, gates, buildings or other things belonging thereto or lying upon the line or within the limits thereof.

Rural Area means rural, rural-residential and village countryside living zones as defined in the District Plan.

Schedule means any schedule included as part of this bylaw.

Site Attendant means any person authorised by Council or appointed by Council to act on its behalf in this capacity and includes a person authorised by Council to assist in the control and management of a Council Facility.

Trading means the act of selling or trading or offering to sell or trade goods or services, with or without a vehicle.

Vehicle Crossing means the area of land used by vehicles for access between the carriage way of any road and the adjacent property boundary. It includes kerbs, culverts, bases, surfaces and pavings of all types and footpath sections.

Vehicle has the meaning as in the Land Transport (Road User) Rule 2004 and in section 2 (1) of the Land Transport Act 1998.

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

8. Authorised officers and enforcement officers to continue in office

All authorised officers and enforcement officers appointed by Council under or for the purposes of any current or repealed Bylaw, and holding office at the time of the coming into operation of a Bylaw, shall be deemed to have been appointed under that bylaw.

9. Serving of orders and notices

Except as otherwise expressly provided for in any Act, where any notice, order or other document is required to be served on any person for the purposes of a bylaw, service may be effected by:

- (a) delivering it personally; or
- (b) sending it by courier.

9.1 Service on persons absent from New Zealand

If the person being served is absent from New Zealand, the notice may be served on his or her solicitor or agent instead of on that person.

9.2 Service on persons not known

If the person being served has no known name or address, or is absent from New Zealand and has no known solicitor or agent in New Zealand, and the notice relates to any premises, then the notice may be served on the occupier of the premises, or, if there is no occupier, may be put up on some conspicuous part of the premises. It shall not be necessary in any such notice to name the occupier or the owner of the premises.

9.3 Service on deceased persons

If the person being served is deceased, the notice may be served on that person's personal or legal representative or executor.

10. Powers of delegation

10.1 In all cases where this bylaw provides for the issue of any order, notice, permit or licence, such order, notice, permit or licence shall be deemed to be issued in compliance with this bylaw if it is issued by an authorised officer or authorised agent.

10.2 Where, pursuant to this bylaw, any powers or duties are imposed on the Chief Executive or any authorised officer or authorised agent, they may, unless expressly prohibited from so doing, delegate any of those powers or duties either generally or particularly to any other officer of Council or an authorised agent.

11. Powers of entry for purposes of a bylaw

11.1 Authorised officers

For the purposes of doing anything that a warranted authorised officer is empowered to do under a bylaw, and subject to compliance with sections 171 and 173 of the Local Government Act 2002, he/she may enter any land or building other than a dwelling house.

11.2 Enforcement officers

Subject to compliance with sections 172 and/or 182 of the Local Government Act 2002, as the case may be, a warranted enforcement officer may enter any land for the purpose of detecting a breach of a bylaw or the commission of an offence or to check Council utility services.

12. Issue of licence, permit or approval

12.1 Any person doing or proposing to do anything or to cause any condition to exist for which a licence, permit or approval from Council is required under a bylaw or any part thereof or by any Act, shall first obtain a licence, permit or approval from Council.

12.2 Council may attach to any licence, permit or approval such special terms or conditions as it deems fit.

12.3 No application or request for a licence, permit or approval from Council, and no payment of or receipt for any fee paid in connection with such licence, permit or approval, shall confer any right, authority or immunity on the person making such application or payment.

12.4 Unless the issue of any licence, permit or approval is required to be made without any fee, Council may require the payment of a fee for such licence, permit or approval.

13. Suspension and revocation of licences

13.1 Except as may be otherwise provided in any enactment or in a bylaw:

If a Licensee:

- i. acts in a manner contrary to a bylaw
- ii. fails to comply with any of the terms or conditions of a licence or permit
- iii. acts in a manner which, in the opinion of Council, renders the Licensee unfit to hold such licence or permit

then the appropriate authorised officer may, by notice inform the Licensee that their licence or permit has been suspended or revoked whereupon the Licensee shall immediately cease the activity authorised by such licence or permit.

14. Removal by Council of works or things in breach of bylaw under Section 163 or Section 215 of the Local Government Act 2002

14.1 Council may authorise any officer or agent to remove or alter a work or thing that is, or has been constructed in breach of this bylaw or any other bylaw, pursuant to Section 163 or Section 215 of the Act unless such work or thing is regulated by the Building Act 2004.

14.2 Council may recover the costs of such removal or alteration from the person who committed the breach of this or any other bylaw in accordance with section 163 of the Act.

14.3 The removal or alteration of any work or thing under this clause does not relieve any person from liability for any penalty for erecting or permitting the continued existence of any work or thing contrary to this Bylaw.

15. Offences and breaches

15.1 Every person commits a breach of this or any other 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 any bylaw.

- (b) Omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of a bylaw, ought to be done by them at the time and in the manner therein provided.
- (c) Does not refrain from doing anything which under a bylaw they are required to refrain from doing.
- (d) Knowingly permits or suffers any condition of or things to exist contrary to any provision contained in a Bylaw
- (e) Does anything, or causes anything to exist, for which a licence, permit or approval is required under a Bylaw without first obtaining that licence, permit or approval
- (f) Refuses or neglects to comply with any notice duly given to that person under a bylaw
- (g) Obstructs or hinders any authorised officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon that officer by a bylaw; or
- (h) Fails to comply with any notice or direction given under a bylaw.

15.2 Every person commits an offence against a bylaw who:

- a) Having constructed, erected, affixed, provided or removed, or caused to be constructed, erected, affixed, provided or removed any building, part of a building, work, structure, appliance, or material of any description whatsoever, contrary to, or otherwise than in accordance with, the provisions of a bylaw; or
- b) Having omitted to construct, erect, affix, provide or remove any building, part of a building, work, structure, appliance, or material as required by a bylaw;
and who does not within the time stated in a notice served on that person by Council or an authorised officer, or within such extension of that time as may be granted, carry out the remedial work specified in that notice.

15.3 Every notice referred to in clause 15.2 shall state the time within which the remedial action is to be carried out, and may be extended from time to time at the discretion of Council or any authorised officer.

15.4 The provisions of clause 17.2 shall apply to any building, part of a building, work, structure, appliance, or material that has, before the coming into force of a bylaw, been constructed, erected, affixed, provided or removed, or omitted contrary to or otherwise than as provided by any provision of a bylaw hereby repealed but re-enacted, or re-enacted in substance, in any other bylaw.

15.5 Except where it is expressly provided otherwise in any Act, any person (including a member of the Police) may provide information regarding an offence against a bylaw.

16. Penalties for breach of bylaws

16.1 Where Council suspects that any person has committed a breach of this or any other bylaw, that person shall, on the direction of an authorised officer, provide, his/her full name and address.

16.2 Subject to any provision to the contrary, any person convicted of an offence against a bylaw shall be liable to the penalties and fines as set out in section 242 of the Act.

16.3 The cost incurred in remedying a breach of a bylaw shall be recoverable by Council as follows:

- (a) in the case of a building, part of a building, work, structure, appliance or material that has been built or erected, placed or abandoned in circumstances where it contravenes a bylaw, as a debt against the owner of such building, work, structure, appliance or material.
- (b) in the case of any other breach of a bylaw by any person, as a debt against that person.

16.4 Council may apply to the District Court under Section 162 of the Act for an injunction restraining any person from committing a breach of a bylaw.

17. Dispensation

- 17.1 Council may grant a dispensation from full compliance with any provision in any bylaw where Council is of the opinion that full compliance would needlessly and injuriously affect any person or the course or operation of a business; or be attended with loss or inconvenience to any person without a corresponding benefit to the community or any part of it.
- 17.2 Any application for a dispensation must:
- (a) Be in writing
 - (b) Give full details of the relief sought and the reasons why the relief is sought; and
 - (c) Be lodged with Council.
- 17.3 The Council may either refuse the application for dispensation, or grant it subject to such conditions as it may consider appropriate.

18. Right of appeal

- 18.1 Any person who claims to be unfairly or adversely affected by a decision, order or direction, given by an authorised officer or authorised agent in administering any bylaw may appeal to Council for relief.
- 18.2 The Appeal must be in writing setting out the reasons for the Appeal and must be received by Council within fourteen (14) days after the date on which the decision, order or direction being appealed against was given.
- 18.3 The Council may appoint any standing committee of Council to consider the Appeal and to consider written submissions or submissions delivered in person from the appellant if the committee so decides within 25 working days of the closing date of the receipt of the appeal.
- 18.4 The committee, after considering such evidence and submissions as it thinks necessary, may revoke, confirm, or modify the decision, order, or direction that gave rise to the Appeal.

19. Adoption of bylaw

The foregoing bylaw was duly adopted by resolution of the South Waikato District Council following completion of the Special Consultative Procedure prescribed by Sections 83 & 86 of the Act.

I, Craig Hobbs, Chief Executive of South Waikato District Council, CERTIFY that this bylaw was made by Resolution No 17/317 on the 13th day of December 2017, to come into effect on the 20th day of December 2017.

Dated this 20th day of December 2017.

The COMMON SEAL of THE
SOUTH WAIKATO DISTRICT COUNCIL)
was hereto affixed in the presence of:)



JR Shattock - Mayor



C Hobbs - Chief Executive



Annotations

Res No	Date	Subject/Description
11/146	2 June 2011	Adopted by Council
17/317	13 December 2017	Adopted by Council