

Introductory Bylaw 2008

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1. SCOPE

1.1

The purpose of the Matamata-Piako District Council Introductory Bylaw is to identify and clearly interpret those terms and expressions that are used throughout all the Bylaws adopted by the Council.

1.2

This Bylaw outlines serving of orders and notices, powers of delegation and entry, suspension and revocation of Licences, removal of works executed contrary to the Bylaws, Fees and Charges, Offences and breaches and penalties for breach of Bylaws.

1.3

This Bylaw shall be known and cited as the Matamata-Piako District Council Introductory Bylaw 2008 and shall come into operation on 1 July 2008. For expediency this Bylaw may be referred to in this or other Bylaws as the Introductory Bylaw.

1.4

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

2. DEFINITIONS AND INTERPRETATION

2.1

For the purposes of this Bylaw and any other Bylaw adopted by the Council, the following definitions shall apply:

Act means Local Government Act, 2002 and its amendments.

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

Animal means any member of the Animal kingdom including any mammal, bird, finfish, shellfish, reptile, amphibian, insect, or invertebrate and includes the carcass of constituent parts but does not include dogs and human beings.

Approved/Approval means Approved in Writing by resolution of the Council or by any Authorised Officer so authorised on behalf of the Council, pursuant to this Bylaw or any Enactment.

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

Authorised Officer or Officer means any Person appointed or authorised by the Council to act on its behalf and with its authority, including a member of the Police.

Bylaw means a Bylaw adopted by the Council, made under the provisions of any Enactment or authority enabling the Council to make Bylaws.

Chief Executive means the Chief Executive appointed pursuant to section 42 of the Local Government Act 2002.

Council means the Matamata-Piako District Council or any committee of the Council or any Officer Authorised to exercise the authority of the Council.

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

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

District means the District within the jurisdiction and under the control of the Matamata-Piako District Council.

District Plan means the District Plan adopted by the Council pursuant to the Resource Management Act 1991.

Dwelling or Dwelling House includes any house, tent, Vehicle or other structure, whether permanent or Temporary, and whether attached to the soil or not, used in whole or in part for human habitation, and includes the land appurtenant to a Dwelling.

Emergency Vehicle means the same as in the Land Transport (User Rules) 2004.

Enactment means the same as in section 29 of the Interpretation Act 1999.

Enforcement Officer means a Person appointed by the Council to exercise the powers of an Enforcement Officer in relation to Offences against, and Infringement Offences under the Local Government Act 2002, including enforcement of the Bylaws of the Council.

Footpath means the same as in the Land Transport (User Rules) 2004.

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

Licence means a Licence, permit, consent or Approval under any Bylaw or Enactment.

Long Term Plan means the Long Term Plan adopted by the Council pursuant to section 93 of Act.

Motor Vehicle has the same meaning as in section 2(1) of the Land Transport Act 1998.

Nuisance has the same meaning as in section 29 of the Health Act 1956 and includes a Person, thing, or circumstance causing distress or annoyance or unreasonable interference. In the context of this Bylaw the term Nuisance includes but is not limited to:

- a) danger to life; or
- b) danger to public health; or
- c) flooding of any building floor or sub-floor, or public roadway; or
- d) damage to property; or
- e) an effect on the efficient operation of a stormwater system; or
- f) damage to any facet of a stormwater system; or
- g) erosion or subsidence of land; or
- h) long or short term adverse effects on the environment; or
- i) adverse loss of riparian vegetation; or
- j) wastewater overflow to land or water; or
- k) anything that causes a breach of any stormwater discharge consent condition binding the Council.

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

Offence includes any act or omission in relation to these Bylaws 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 land, building, or 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 at a rack rent, and where any such Person is absent from New Zealand, shall include their attorney or Agent.

Parking and Park have the same meaning as in the Land Transport Act 1998.

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

Person includes a corporation sole and a body of Persons, whether corporate or unincorporated.

Portico includes every awning, porch, Veranda, shed, shade, or covering upon, across, or over any public footway or part of a road, street, private street, or access-way for the purpose of shade or shelter, together with any supports thereof, other than the building against which it shall be.

Poultry means any live domesticated or farmed bird including but not limited to fowl, duck, goose, turkey, guinea fowl, pheasant, budgerigar, parrot, ostrich, emu and pigeon.

Premises means either:

- a) a property or allotment which is held under a separate Certificate of Title or for which a separate Certificate of Title may be issued and in respect to which a building consent has been or may be issued; or
- b) a building that has been identified as an individual unit by a cross-lease, unit title or company lease and for which a Certificate of Title is available; or
- c) land held in public ownership (e.g. Reserve) for a particular purpose; or
- d) individual units in buildings, which are separately leased or separately Occupied; or
- e) buildings and Dwelling Houses to which a separate supply of water is provided.

Public Notice means the same as in section 5(1) of the Act and 'published' and 'publicly notified' have corresponding meanings.

Public Place means the same as in section 147 of the Act.

Reserve means the same as in section 2(1) of the Reserves Act 1977.

Road means the same as in section 315 of the Local Government Act 1974 and shall where the context requires include street.

Rural means land zoned Rural in the District Plan, unless otherwise defined in this Bylaw as urban.

Residential means land zoned Residential in the District Plan.

Stock includes cattle, sheep, horses (except horses that are ridden, led by reins or harnessed to a Vehicle), deer, donkeys, mules, goats, pigs, alpacas, llamas or any other Animal (except dogs and cats) including their young, kept in captivity, or farmed and depending on humans for their care and sustenance.

Temporary means for a limited time, not permanently and in relation to camping in Public Places means for no longer than five calendar days.

Urban Area includes all Residential, business and industrial zones in accordance with the District Plan as well as the settlements of Waitoa, Waihou, Waharoa, Tahuna, Hinuera, Te Poi, Mangateparu, Motumaoho, Rukumoana, and Te Aroha West; and any area where five or more Dwellings are constructed within a 250 metre radius.

Vehicle means the same as in section 2(1) of the Land Transport Act 1998.

Veranda includes every Portico, porch, shed, shade, awning, blind, covering, or like structure, and their supports, projecting into or over any part of a Public Place.

Waterworks means the same as in section 2(1) of the Act.

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

Working day means any day of the week other than:

- a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day; and
- b) a day in the period commencing with the 25th day of December in a year and ending with the 2nd day of January in the following year.

2.2

Every schedule to a Bylaw shall be deemed to form part of the Bylaw provided that such schedule may be altered from time to time by Council resolution.

2.3

Every schedule to a Bylaw shall come into force on the date specified in the schedule.

2.4

References in clauses of a Bylaw to other clauses shall be to clauses within the same Bylaw while references to clauses in other Bylaws or other Enactments shall be explicitly stated.

2.5

Words importing the singular number include the plural number, and words importing the plural number include the singular number.

2.6

Words referring to any District, locality, place, Person, office, officer, functionary, party or object shall be construed distributively as referring to each District, locality, place, Person, office, officer, functionary, party, or object, to whom or to which the provision is applicable.

2.7

The headings to the clauses of a Bylaw and the footnotes contained at the bottom of the pages of a Bylaw shall not affect the construction thereof.

2.8

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

3. OFFICERS TO CONTINUE IN OFFICE

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

4. SERVING OF ORDERS AND NOTICES

4.1

Except where otherwise expressly provided for in any Enactment, where any notice, order or other document is required to be served on any Person for the purpose of a Bylaw, service may be effected by delivering it personally to the Person or by sending it by courier or by post to them at their last known place of residence or business or by fax or email to them at their last known fax number or email address.

4.2

If such Person is absent from New Zealand the notice, order or other document may be sent to their Agent instead of to such Person, in any manner mentioned in clause 4.1.

4.3

If such Person is not known, or is absent from New Zealand, and has no known Agent in New Zealand, and the notice, order or other document relates to any land or building the notice, order or other document, addressed to the Owner or Occupier of such building or land, as the case may require, may be served on the Person in Occupation thereof, or left with some inmate of his/her abode; or, if there is no Person in Occupation, may be put up on some conspicuous part of such building or land. It shall not be necessary in such notice to name the Occupier or the Owner of such land or building.

4.4

Where a notice, order or other document is served it shall be sent so as to arrive no later than the latest time on which such notice, order or other document is required to be served.

4.5

Unless evidence indicates the contrary where a notice, order or other document is sent by:

- a) post it will be deemed received on the first day (excluding weekends and public holidays) after posting; or
- b) facsimile or email and the sender's facsimile or email machine produces a transmission report indicating that the facsimile or email was sent to the addressee, the report will be prima facie evidence that the facsimile or email was received by the addressee in a legible form at the time indicated on that report; or
- c) courier and the courier obtains a receipt or records delivery on a courier run sheet, the receipt or record of delivery on a courier run sheet will be prima facie evidence that the communication was received by the addressee at the time indicated on the receipt or courier run sheet.

4.6

The Council may require any Person who breaches or fails to comply with the provisions of any Bylaw or the conditions of a Licence issued pursuant to it, to remedy the breach or comply with the same by giving such Person notice in Writing.

4.7

Any order or notice issued shall state the time within or date before which the remedial action is to be carried out and may be extended from time to time by Written authority of the Council.

5. POWERS OF DELEGATION AND APPEAL

5.1

In all cases where a Bylaw provides for the issue of any order, notice or Licence, permit, consent or Approval, such order notice or Licence, permit, consent or Approval shall be deemed to be issued in compliance with that Bylaw if the same is issued by any Authorised Officer for that purpose.

5.2

- a) There shall be a right of appeal by an affected party from any decision by an Authorised Officer to the original holder of the power and duty. Provided that the original holder of the power and duty may, after consultation with the Chief Executive refer the appeal to the Council when in the opinion of the original holder of the power this is justified.
- b) Where the original holder of the delegated power and duty is the Council the right of appeal may be to a committee of the Council or Authorised Officer appointed for this purpose, who shall be the final arbitrator of the merits of the matter.

6. POWERS OF ENTRY FOR PURPOSE OF A BYLAW

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

7. LICENCES

7.1

Any Person doing or proposing to do anything or cause any condition to exist for which a Licence of the Council is required under a Bylaw, shall first obtain such a Licence.

7.2

The issuing of a consent by an Authorised Officer pursuant to any Enactment to allow a Person to do anything or to cause any condition to exist for which a Licence of the Council is required under any Bylaw, shall be deemed to be a Licence under that Bylaw.

7.3

Every application for a Licence shall be accompanied by the relevant prescribed fee.

7.4

No application for a Licence, and no payment of or receipt for any fee paid in connection with such application, confers any right, authority or immunity on the Person making that application or payment.

7.5

Any Licence is deemed to be issued in compliance with the Bylaw if it is issued by an Authorised Officer and every Licence is subject to such conditions as may be imposed.

7.6

Unless a Bylaw provides otherwise, every Licence and every application for a Licence shall be in such form as may be prescribed from time to time by the Council.

7.7

Unless a Bylaw provides otherwise, a Licence is not transferable and no such Licence authorises any Person other than the Licence holder to act in any way under its terms or conditions.

7.8

If, following a request for payment, any Licence fee due remains unpaid, the Licence shall immediately cease to have effect.

8. SUSPENSION AND REVOCATION OF LICENCES

8.1

Unless a Bylaw provides otherwise, should the Licence holder be convicted of any Offence relating to the holder's suitability as a licensee, the Council may immediately revoke or suspend the Licence for any specified time.

8.2

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, if any of the following are brought to the notice of the Council:

- a) that the Licence holder:
 - i. has acted or is acting in a manner contrary to the true intent and meaning of any Bylaw; or
 - ii. has failed to comply with any of the conditions of the Licence; or
 - iii. is in any way unfit to hold the Licence;
- b) that the Premises for which the Licence was issued is being used for any purpose other than that stated in the Licence, or is in a state of disrepair contrary to the terms of the Licence; or
- c) that the Bylaw or the empowering Enactments are not being properly observed.

8.3

The Council may, if it considers the allegations correct or if there is no appearance by the Licence holder:

- a) revoke the Licence; or
- b) suspend the Licence for any specified time; or
- c) amend the terms and conditions of the Licence.

A Person whose Licence has been suspended under this clause and any Premises for which that Licence has been suspended shall, during the period of such suspension, be deemed to be unlicensed.

9. DISPENSING POWER

9.1

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

9.2

The Council may, after consideration of any representation by affected Persons and if in its opinion it is justified, extend, withdraw or amend the dispensation granted in terms of clause

9.3

Except if expressly granted otherwise, the dispensation by the Council pursuant to clause 9.1 shall only be applicable to the Person it is granted to and shall be restricted to the particular issue considered by the Council and such dispensation shall not constitute a justification for the breach of the provisions of a Bylaw outside the expressed terms of the dispensation.

10. FORMS

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

11. FEES AND CHARGES

11.1

The Council may pursuant to section 150 of the Act prescribe fees that may be charged in respect of any certificate, authority, Approval, permit or consent form given, or, inspection by the Council.

11.2

Where a fee has been paid under clause 11.1 for a service that has not been given, the Council may provide a refund, a remission or waiver of any such fee or portion thereof as it may determine.

12. OFFENCES AND BREACHES

12.1

Any Person commits a breach of a 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 the Bylaw; or
- b) omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of the Bylaw, ought to be done by them at the time and in the manner therein provided; or
- c) does not refrain from doing anything which under the Bylaw they are required to abstain from doing; or
- d) knowingly permits or suffers any condition of or things to exist contrary to any provision contained in the Bylaw; or
- e) refuses or neglects to comply with any notice duly given to that Person under the Bylaw; or
- f) obstructs or hinders any Authorised Officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon that officer by the Bylaw; or
- g) fails to comply with any notice or direction given under the Bylaw.

12.2

Where it is suspected that any Person has committed a breach of a Bylaw, that Person shall on the direction of an Authorised Officer provide their full name and address.

13. REMOVAL OR WORKS

13.1

Where the notice served under clause 4 has not been complied with, the Council or Agent of the Council, may pull down, remove or alter any work, material or object erected or being in contravention of any Bylaw, section 357 of the Local Government Act 1974 or section 163 of the Local Government Act 2002.

13.2

The Council may recover from any Person responsible for the breach of any Bylaw all expenses incurred by it in connection with such pulling down, removal or alteration. This includes the costs of any storage, debt collecting and legal fees.

13.3

The exercise of this authority shall not relieve any such Person from responsibility for any penalty for erecting or permitting the continued existence of any such work, material or object.

13.4

If the breach is such that public health, or safety considerations or the risk of consequential damages to Council assets is such that delay would create results that

are unacceptable to the Council, it may take immediate steps to rectify the defect and recover the costs referred in clause 13.2.

13.5

On payment of all the Council's costs referred to in clause 13.2, the Owner of any material or object seized by the Council, or the Person from whom the property was seized, may pursuant to section 167 of the Act claim such object or material.

13.6

If not claimed within six months the Council may dispose of any material or object as it deems fit and apply the proceeds to meet its costs in accordance with section 165 of the Act. The Owner or the Person from whom the property was seized shall be entitled to claim any residual amount.

14. PENALTIES FOR BREACH OF BYLAWS

14.1

Every Person who fails to comply with any Bylaw commits an Offence pursuant to section 239 of the Act and shall be subject to the penalty set out in section 242 of the Act and the enabling Enactment.

14.2

The continued existence of any work or object in a state contrary to this Bylaw shall be deemed a continuing Offence within the meaning of this clause.

14.3

In accordance with section 162 of the Act the Council may apply to the District Court for an injunction to restrain a Person from committing a breach of any Bylaw.

In compliance with the provisions of the Local Government Act 2002 and the Bylaws Act 1910, this Part of the Bylaw is passed by the Matamata-Piako District Council on 11th June 2008 and confirmed by the Council on 11th June 2008.

The common seal of the Matamata-Piako District Council was affixed on this 17th day of June in the presence of



Mayor



Chief Executive

In compliance with the provisions of the Local Government Act 2002 and the Bylaws Act 1910, this Part of the Bylaw is amended by the Matamata-Piako District Council on 23rd day of June 2010 and confirmed by the Council on 23rd day of June 2010.

The common seal of the Matamata-Piako District Council was affixed on this 23rd day of June 2010 in the presence of



Mayor



Chief Executive