

Kaipara District Council

Consolidated

General Bylaw

2020

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Kaipara te Oranganui

**KAIPARA
DISTRICT**

Two Oceans Two Harbours

Consolidated General Bylaw 2020

Part 1 - Introduction

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1. Purpose

- 1.1 The purpose of this Part is to set out general provisions which may be relevant to more than one Part of the Consolidated General Bylaw. As well as defining some terms and expressions that are used throughout the General Bylaw, this Part also covers the following matters:
- a. serving of orders and notices
 - b. powers of delegation
 - c. powers of entry onto land
 - d. licences, suspension of licences (approvals) and revocation of licences
 - e. removal of works executed contrary to the Bylaw
 - f. fees and charges
 - g. offences and breaches and penalties for breach of the Bylaw.
- 1.2 This Part should be read in conjunction with all other Parts of the Consolidated General Bylaw (the Bylaw). If there is a discrepancy with another Part of the Bylaw, the other Part will take precedence. This includes where the other Part of the Bylaw contains more specific provisions dealing with the same subject matter e.g. a licensing regime.

2. Interpretation

- 2.1 In this Bylaw, unless the context otherwise requires:

<i>Agent of Council</i>	means a person who is not a Council employee who has been delegated or appointed to act on Council's behalf and with its authority.
<i>Animal</i>	Animal means any member of the animal kingdom but does not include humans or dogs.
<i>Approval or approved</i>	means written approval by Council or by any Authorised Officer.
<i>Authorised Officer</i>	means any Officer or other person appointed or authorised by Council to perform duties required under this Bylaw, irrespective of the designation given to that officer and person; and includes a Police Constable; or a person appointed as an enforcement officer under section 177 of the Local Government Act 2002.
<i>Bylaw</i>	means a bylaw of Council in force, made under the provisions of any Act or authority enabling Council to make bylaws.
<i>Berm</i>	means a raised strip of ground that runs along the side of a road and usually contains a path or/and a strip of grass.
<i>Chief Executive</i>	means the Chief Executive of the Kaipara District Council or a person acting in their capacity.
<i>Council</i>	means the Kaipara District Council or any Committee, Community Board, elected member of Council or Officer to which Council has delegated authority to act.
<i>District</i>	means the Kaipara District.

<i>Dwelling or dwelling house</i>	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 any adjacent land associated with the dwelling.
<i>Electronic means</i>	means any means of digital communication including email, text and any other such electronic messaging but does not include social media platforms such as Facebook or Twitter.
<i>Licence</i>	means any written approval, permission or licence from Council or an Authorised Officer.
<i>Licensed</i>	means holding a licence under this Bylaw or under any Act.
<i>Material or thing</i>	means any material or thing of whatever kind and includes but is not limited to jumbo bins and other containers for waste material but excludes vehicles.
<i>Motor vehicle</i>	has the meaning in section 2(1) of the Land Transport Act 1998.
<i>Nuisance</i>	includes but is not limited to the meaning assigned to it by the Health Act 1956 and includes a person, animal, thing or circumstance causing unreasonable interference with the peace, comfort or convenience of another person. <i>Explanatory note:</i> <i>Circumstances that may be deemed a nuisance can include noises and odour associated with the keeping of animals.</i>
<i>Occupier</i>	means a person who inhabits, leases, uses or controls any property or premises, whether as an owner, tenant, licensee or otherwise.
<i>Owner</i>	means, in relation to real property, a registered proprietor, trustee and any person for the time being entitled to receive the rent of the property, land, building, or premises or who would be entitled to the rent if the property were let to a tenant. Where any such person is absent from New Zealand or mentally incapable as defined in section 94 of the Protection of Personal and Property Rights Act 1988, 'owner' includes his or her attorney or agent. means, in relation to personal property, the person lawfully in charge of the management of the property, whether or not that person possesses or occupies the property.
<i>Offence</i>	includes any act or omission in relation to this Bylaw or any part of it for which any person can be penalised either by prosecution or by issuing an infringement notice.
<i>Person</i>	includes an individual, a corporation sole, a body corporate, and an unincorporated body.
<i>Poultry</i>	means any bird (including domestic fowls, ducks, geese, turkeys, guinea-fowl, pheasants, peacocks, swans and pigeons) that is kept or raised to produce eggs, hatching eggs or poultry products for human consumption, or for the purpose of rearing on behalf of another person.

<i>Prescribed fee</i>	means the fee or fees that may be set by Council from time to time for a certificate, approval, permit, consent, inspection or other matter, including a fee set pursuant to clause 9 of this Bylaw.
<i>Premises</i>	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.
<i>Public litterbin</i>	means a refuse container made available by the Council for the placement of litter by members of the public.
<i>Public notice</i>	has the meaning in section 5(1) of the Local Government Act 2002.
<i>Publicly notified</i>	means notified by way of a public notice.
<i>Public place</i>	means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place, and includes but is not limited to every reserve, park, domain, beach, and recreational ground under the control of Council.
<i>Reserve</i>	has the meaning in the Reserves Act 1977.
<i>Residential activity</i>	means the use of land and buildings by people for the primary purpose of living accommodation.
<i>Road</i>	shall have the same meaning as in section 315 of the Local Government Act 1974 whereby the term street is considered a road and includes all land lying within the boundaries of a road including footpaths and berms.
<i>Rural area</i>	means any land that has been zoned Rural in the Operative Kaipara District Plan.
<i>Sign</i>	means a visual message or notice conveyed to the public and visible from a public place displayed to advertise or identify a product, business, or service, inform or warn the public and includes any frame, supporting device and associated ancillary equipment. It includes but is not limited to any mural, message or notice painted on, affixed to, or otherwise incorporated with a building, structure, site, banner, flag, poster, billboard, sandwich board, wind sock, vehicle, blimp or projection of light to create an advertising image. A bunting that has symbols or messages on it shall also be considered a sign for the purposes of this part of the Bylaw.
<i>Stock</i>	means any cattle, deer, alpaca, llama, sheep, goat, donkey, mule, horse and any other animal kept in captivity, or farmed, and dependent on humans for their care and sustenance, but does not include poultry.
<i>Private road, footpath and private way</i>	have the respective meanings in section 315 of the Local Government Act 1974.

- Urban area* means any area that has been zoned Residential, Commercial or Industrial in the Operative Kaipara District Plan.
- Vehicle* has the meaning in section 2(1) of the Land Transport Act 1998.
- Writing, written* or any similar term means and includes words printed, painted, engraved, lithographed, or otherwise traced or copied, including by electronic means.

Explanatory note: *In this Bylaw, in some instances the meaning of a word has been determined to have the same meaning as provided for that word or term in a stated piece of Legislation or other Regulatory tool. For completeness, In the event of the meaning of a word or term changing in the relevant legislation or regulatory tool, then the meaning of the word or term changes for the purposes of this Bylaw as well.*

- 2.2 Words implying the singular include the plural and vice versa.
- 2.3 The Interpretation Act 1999 applies to this Bylaw.
- 2.4 Any explanatory notes and attachments are for information purposes, and do not form part of this Bylaw, and may be inserted, amended or revoked without formality.
- 2.5 All Council resolutions made under this Bylaw will be publicly notified in accordance with section 5(3) of the Local Government Act 2002.

Explanatory Note: *For the purposes of clause 2.5, every resolution is still required to consider and follow sections 76-81 of the Local Government Act prior to making a resolution.*

3. Powers of delegation

- 3.1 In all cases where this Bylaw provides for the issue of any order, notice or licence, such order notice or licence shall be deemed to be issued in compliance with this Bylaw if the same is issued by an Authorised Officer.
- 3.2 The powers or duties imposed on any Authorised Officer under this Bylaw may be delegated to any other Officer of Council, either generally or particularly and with or without conditions.
- 3.3 All Authorised Officers appointed by Council under or for the purpose of any repealed or expired Bylaw, and holding office at the time of the coming into operation of this Bylaw, shall be deemed to have been appointed under this Bylaw in relation to any provision of this Bylaw that with or without modification, replaces or that corresponds to a provision of the repealed or expired Bylaw.
- 3.4 In this bylaw, where any written permission or approval of the Council is required, that approval may be given by the Chief Executive, and the Chief Executive may delegate all or part of that function to any other officer of Council

4. Powers of entry for purposes of this Bylaw

- 4.1 In administering and enforcing the Bylaw, the Council may utilise the applicable powers of entry in the Local Government Act 2002 and any other relevant legislation.
- 4.2 Every person who obstructs or hinders any such Officer or agent in the exercise of their power of entry under this Bylaw, shall be liable to prosecution for an offence against this Bylaw.

Explanatory note: *Specific powers of entry are provided to Council under a range of legislation, including under the Local Government Act 2002. Any person exercising a power of entry onto private land is required to provide a written warrant under seal of the Council as evidence of authority to do so.*

5. Licences

- 5.1 Any person doing or proposing to do anything or cause any condition to exist for which a licence from the Council is required under a Bylaw, shall first obtain such a licence.
- 5.2 A written consent issued by an Authorised Officer in accordance with any enactment to allow a person to do anything or to cause any condition to exist for which a licence of Council is required under this Bylaw, shall be deemed to be a licence under this Bylaw.
- 5.3 Every application for a licence or permission shall be accompanied by the relevant prescribed fee.
- 5.4 No application for a licence, payment or receipt for any fee paid in connection with such application, provides any right, authority or immunity on the person making that application or payment.
- 5.5 Any licence is deemed to be issued under this Bylaw if it is issued by an Authorised Officer and will be subject to such conditions as may be imposed.
- 5.6 Unless a Bylaw provides otherwise, every licence or permission and every application for a licence shall be in such a form as may be prescribed by Council.
- 5.7 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 and conditions.
- 5.8 If, following a request for payment, any licence fee due remains unpaid, the licence shall immediately cease to be valid.

6. Suspension and revocation of licences or permissions

- 6.1 Unless otherwise expressly provided for in this Bylaw, should the holder of any licence granted under this Bylaw be subsequently convicted of any offence that the Council considers has an effect on the holder's suitability as a licensee, Council may immediately revoke or suspend the licence for any specified time.
- 6.2 Council may by notice in writing call upon the licence holder to appear before Council and give reasons why the licence should not be revoked or suspended, if any of the following are brought to the notice of Council:
 - a. That the licence holder:
 - i. has acted or is acting in a manner contrary to the purpose and meaning of any bylaw
 - ii. has failed to comply with any of the conditions of the licence
 - 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
 - c. That the Bylaw or the conditions of the licence are not being properly observed.

- 6.3 Council may, if it considers that any of the circumstances described in clause 6.2 apply, or if there is no appearance by the licence holder:
- a. revoke the licence
 - b. suspend the licence for any specified time
 - c. amend the terms and conditions of the licence.

6.4 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.

7. Compliance waiver

- 7.1 An application may be made to Council to waive full compliance with any provision of this Bylaw on the basis that it would needlessly cause harm, loss or inconvenience to any person, or the operation of any business, without any corresponding benefit to the community.
- 7.2 On receipt of an application under clause 7.1 Council may:
- a. waive the strict observance or performance of any provision of this Bylaw
 - b. impose such other terms or conditions consistent with the intention and purpose of the Bylaw as Council may think fit.
- 7.3 Except to the extent expressly stated, any waiver granted by Council under clause 7.2 shall only be applicable to the person it is granted to and shall be restricted to the particular issue considered by Council and such waiver shall not constitute a justification for the breach of the provisions of a Bylaw for anything other than the expressed terms of the waiver.

8. Documents

- 8.1 Council may prescribe the form of any application, certificate, licence, permit or other document, which is required under this Bylaw. These forms may be altered or amended at any time.
- 8.2 Variation from the exact form prescribed under CLAUSE 8.1 shall not render any application, certificate, licence, permit, or other document void. However, Council may reject any document where it considers the non-compliance is of significance and substantially detracts from the required spirit and effect of the document.

9. Fees and charges

- 9.1 Council may, by resolution, publicly notified:
- a. charge a fee for receiving and processing an application and issuing a permit under this Bylaw
 - b. prescribe any charges to be paid for the use of a permit issued under this Bylaw
 - c. determine situations when permit fees under this Bylaw may be remitted, refunded or waived.
- 9.2 Council may, by resolution, vary any fee in respect of any matter provided for in this Bylaw.

- 9.3 Council may require either full or a part payment of any fee or charge payable in respect of this Bylaw before issuing any licence, approval or consent or performing any other action to which the fee or charge relates.
- 9.4 Where any inspection or service for which a fee has been paid under the provisions of clause 9.1 has not been given or made, Council may refund any such fee or portion thereof as it may determine.
- 9.5 The Chief Executive may waive any fee charged for a license, approval or consent under this Bylaw on a case by case basis.

10. Orders, notices and service

- 10.1 Where any notice, order, or other document is required to be served on any person for the purposes of this Bylaw, service may be made by delivering it personally to the person or by sending it by courier or post or fax or by electronic means, to that person's last known residential or business address, or last known contact details.
- 10.2 If such person is absent from New Zealand the order or notice may be served on that person's agent instead of to such person, in any manner referred to in clause 10.1.
- 10.3 If the order, notice, or other document relates to land or buildings, and the owner is not known or is absent from New Zealand, or has no known agent in New Zealand, the order or notice may be:
- a. served on the occupier of the land or buildings
 - b. if there is no occupier, put up on some noticeable part of the land or buildings
 - c. it is not necessary to name the occupier or the owner of the land or buildings in that notice.
- 10.4 An Authorised Officer 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.
- 10.5 Any order or notice shall state the time within or date before which any remedial action must be carried out and may be extended by written authority from an Authorised Officer.

11. Offences and breaches

- 11.1 Any person commits a breach of this Bylaw who:
- a. does, or causes to be done, or knowingly permits or suffers to be done anything contrary to the provisions of this Bylaw
 - b. omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the purpose and meaning of this Bylaw, ought to be done by that person at the time and in the manner provided for by this Bylaw
 - c. does something which under this Bylaw they are required not to do
 - d. knowingly permits or suffers any condition or thing/s to exist contrary to any provision/s in this Bylaw
 - e. fails to comply with any notice or direction given to that person under this Bylaw

- f. obstructs or hinders any Authorised Officer in the performance of any duty to be discharged by that Officer under or in the exercise of any power conferred upon them by this Bylaw.

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

12. Penalties for breach of the Bylaw

12.1 Every person who commits an offence against this Bylaw is liable to:

- a. the penalty set out in section 242 of the Local Government Act 2002
- b. where another enactment specifies the penalty for a breach of the Bylaw, that other penalty.

12.2 In accordance with section 162 of the Local Government Act 2002, Council may apply to the District Court for an injunction to restrain a person from committing a breach of this Bylaw.

***Explanatory Note:** Pursuant to section 242(4) of the Local Government Act, the penalty upon conviction for an offence under this Bylaw is a fine of up to \$20,000.*

13. Savings

13.1 Any permissions, approvals or other authorisations issued under the General Bylaws 2008 continue to be in force in accordance with their terms, unless re-negotiated, renewed, or cancelled by Council.