



# General Bylaw 2008

## Chapter 1

### Introduction

#### Explanatory Note

The purpose of this Part of this *Bylaw* is to provide consistency in interpretation of terms used in the *Bylaw* and deals with some matters which are general to all Parts of the *Bylaw*. These include licences, services of notices, powers of *Officers*, delegation, dispensing powers, *Offences* and penalties.



# Western Bay of Plenty District Council

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#### Introduction

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## Introduction

**1. Definitions**

- |      |  |                                    |
|------|--|------------------------------------|
| 1.1  | Throughout the text of all chapters of this <i>Bylaw</i> certain words are printed in italics and this indicates that those words are included in the definitions set out below.   | Definitions                        |
| 1.2. | The headings to the clauses under this <i>Bylaw</i> and the introductions to the several Parts of this <i>Bylaw</i> , and the explanatory notes or marginal notes to any Clauses are not part of this <i>Bylaw</i> .   | Interpretation<br>General          |
| 1.3  | Every Schedule to any part of this <i>Bylaw</i> forms part of this <i>Bylaw</i> .  | <i>Schedules</i>                   |
| 1.4  | Minor amendments to prescribed <i>Bylaw</i> forms are allowed where the meaning and content of the forms remains unchanged.  | Forms prescribed                   |
| 1.5  | Words importing the singular number include the plural number and words importing the plural number include the singular number; and words importing the masculine gender include the feminine gender.   | Plural and singular                |
| 1.6  | A reference in this <i>Bylaw</i> to any statute, regulation, or <i>Bylaw</i> , unless the context requires, includes reference to all subsequent statutes, regulations, or <i>Bylaws</i> , made in amendment or in substitution and for the time being in force. | References to<br>legislation       |
| 1.7  | Nothing in this <i>Bylaw</i> derogates from any provision of, or the necessity for, compliance with any relevant Act of Parliament or any regulations or rules made under that Act of Parliament.  | Other legislation still<br>applies |
| 1.8  | Words or expressions not expressly set out in other Chapters of this <i>Bylaw</i> have the definitions shown below:  |                                    |
| 1.9  | In this <i>Bylaw</i> , unless the context otherwise requires:  |                                    |

**Act** means The Local Government Act 2002.

**Advertising Device** means every sign or advertising matter of whatever kind located upon or visible from any *Public Place* and includes any board, hoarding, or similar structure which supports the device.



**Allotment** means any parcel of land held under a separate certificate of title or that is a continuous area and whose boundaries are shown separately on a survey plan that has been allowed, or subdivision approval has been granted under the Land Transfer Act 1952.

**Animal** means any living stage of any member of the animal kingdom except human beings and in the case of any mammal, bird, fish, or reptile includes the carcase.

**Appeal** – See *Right of Appeal*.

**Approved** means *approved* by the *Council* or by an *Officer* of the Council authorised in that behalf, and "approval" has a corresponding meaning.

**Authorised Officer** means an officer or other person appointed by the Council to perform duties required under this Bylaw, irrespective of the designation given to that officer or person and includes any Police officer.

**Berm** – see *Grass Verge*

**Berm Cemetery** means a cemetery in which the surface is laid down as a grass lawn only with the headstones or memorials confined to the concrete berm/beam provided and which is declared to be such by the *Council*.

**Building** has the meaning given to that term by the Building Act 2004.

**Bylaw** means a *Bylaw* of the *Council* for the time being in force, made under the provisions of any enactment enabling the *Council* to make *Bylaws*.

**Cattle** means any bull, cow, ox, heifer, steer or calf.

**Cemetery** means any land for the time being vested in the *Council* or under its control and dedicated and opened as a cemetery.

**Chief Executive** means the person appointed as the chief executive of the Council under the Act.

**Chimney** includes any flue, vent or stove pipe installed or provided to allow the escape of smoke, fumes, heat or other products of combustion.

**Commercial Waste** means any solid waste resulting from the carrying on of any business, manufacture, process, trade, market, or other undertakings.

**Consent** means the *Consent* in writing given by the *Council* under this *Bylaw* authorising the person to whom the *Consent* is given to carry out any action or activity which is controlled by the provisions of this *Bylaw* or of any statutory enactment.

**Containers** means bins used for collection of litter and/or waste, fruit or vegetables used for promotional purposes, delivery of products or removal of household effects.

**Controlling Authority** means the authority, body, or person or *Persons* having control of the *Road* (and includes any person acting under and within the terms of any delegation or authorisation given by a *Controlling Authority*).

**Council** means the Western Bay of Plenty District Council.



**Custodian** means any person for the time being appointed by the *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 and includes a ranger appointed to control or supervise any *Reserve*.

**Cycle** or **bicycle** means a vehicle having at least 2 wheels and designed to be propelled solely by the muscular energy of the rider. Children's cycles having wheels less than 355 mm (14") diameter are excluded.

**Cycle track** or **cycle-way** means any portion of a *Road* which has been designated by the *Council* under *Section 332* of the Local Government Act 1974 or this *Bylaw* for the use of cyclists.

**Disposal** means final deposit of waste on land set apart for the purpose.

**District** means the Western Bay of Plenty district.

**District Plan** means the Western Bay of Plenty Operative *District Plan*.

**Driver** in relation to any motor vehicle, means any person who uses or drives the motor vehicle on any *Road*, or causes or *Permits* it to be on any *Road* or to be driven on any *Road*, whether or not the person is present with the motor vehicle and includes any person apparently in charge of the motor vehicle.

**Dwelling** or **dwellinghouse** 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.

**Enforcement Officer** means any person appointed by the *Council* as an enforcement officer under the Act.

**Engineer** means the Director of *Engineering Services* ( by whatever title designated) of the Western Bay of Plenty *District Council* and includes any person appointed specifically or generally by the *Council* to perform the duties of that *Engineer* for the time being.

**Fire Sprinkler System** means the system of pipes fitted with sprinkler nozzles which open by extraordinary rise in temperature to automatically drench an area for the purpose of extinguishing fire and is maintained with a superimposed pressure so that an alarm is actuated when a nozzle opens allowing the pressure to fall to mains pressure.

**Footpath** has the meaning assigned to that term in section 315(1) of the Local Government Act 1974.

**Foreshore** means any land covered and uncovered by the flow and ebb of the tide at mean spring tides but, where such land forms part of the bed of a river, it does not include any land that is outside the coastal marine area.

**Fowl house** or **Fowl run** means a confined area for the keeping of poultry or any other bird.

**Goods** means any articles, materials, or merchandise and includes any waste, debris, empty or partly empty crates and other packages, shavings, hay, straw, oily rags or waste and other flammable or combustible materials and substances.

**Grass Verge (or Berm)** means any grassed area on a *Road Reserve* separated from the carriageway by channelling or kerbing, but does not include a grassed area immediately adjoining the carriageway.



**Heavy Motor Vehicle** has the meaning given to that term in the Land Transport (Road User) Rule 2004.

**Horses** means any horse, mare, gelding, rig, colt, filly, ass, or mule.

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

**Household Hazardous Waste** means waste arising from or resulting from domestic house-keeping operations that is potentially flammable, corrosive, chemically reactive, toxic, ecotoxic or radioactive.

**Household Waste** means wrapped cold ashes, sweepings, dust, paper, bottles, wrapped bone and waste food, cans, cartons, or other food *Containers*, disposable nappies, or any other waste arising or resulting from domestic house-keeping operations.

**Indemnity** means an undertaking given by a person for payment of burial and interment fees.

**Interment Fees** means all fees charged by the *Council* for an interment and includes any out of District fee.

**Justice** means a Justice of the Peace.

**Licence** includes a certificate of registration and any other written authority, approval, or permission of the Council and "**licensed**" has a corresponding meaning.

**Load** means and includes anything capable of being carried on any motor vehicle or any vehicle towed by a motor vehicle that is intended to be deposited within the waste disposal area and includes waste and unwanted articles or things.

**Medical Officer of Health** means the Medical Officer of Health appointed under the provisions of the Health Act 1956 for the health district, which includes the *District* under the jurisdiction of the *Local Authority*.

**Meter** includes any device or apparatus for measuring flow.

**Motor Vehicle** has the meaning assigned to that term in section 2(1) of the Land Transport Act 1998.

**Multi-unit Property** means a property comprising two or more separately occupied residential units or business occupancies, whether in the same building or in separate buildings, and held either in common ownership or in separate ownership.

**Name Plate** means any plate fixed to the wall surface or in a sign case near the entrance to *Premises* to denote the name, business, designation, and agencies of an occupier of such *Premises*.

**Nuisance** means nuisance as defined by the Health Act 1956, and includes anything obnoxious, offensive or injurious to the community or any member of it.

**Occupier** means in relation to any *Premises*, the owner and includes any tenant, agent, *Manager*, foreperson or other person apparently acting in the general management or control of the *Premises*.

**Offence** includes any act or omission in relation to this *Bylaw* or any part of this Bylaw for which any person can be punished either on indictment or by summary process.



**Offensive Matter/Liquid** means any waste, organic material, animal remains, waste chemicals or gases, or any other obnoxious material which is ill-smelling, annoying or in any way likely to be injurious to health, or will give rise to a nuisance to the community or any member of it; but does not include any matter or material authorised for discharge under a current discharge *Consent* granted in terms of the Resource Management Act 1991 or under any Bylaw.

**Owner** in relation to any land or *Premises*, means the person for the time being entitled to receive the rent of the land or *Premises*, whether on his or her own account or as the agent of or trustee for any other person, or who would be so entitled if the land or *Premises* were let at a rent.

**Owner** in relation to a motor vehicle, means the person lawfully entitled to possession of that vehicle except where –

- (a) the motor vehicle is subject to a bailment for a period not exceeding 28 days; or
- (b) the motor vehicle is let on hire under the terms of a rental-service licence; in which case "owner" means the person who, but for the bailment or letting on hire, would be lawfully entitled to possession of the motor vehicle; and "owned" and "ownership" have corresponding meanings.

**Parking** has the meaning assigned to that term in the Land Transport (Road User) Rule 2004 or subsequent amendments, and "park" has a corresponding meaning.

**Person** includes a corporation sole and also a body of *Persons*, whether corporate or non-corporate.

**Plot** means a grave plot in a cemetery laid off and shown upon the plan and, unless otherwise expressly stated, having the dimensions of 2.4m in length by 1.2m in width.

**Poultry** includes geese, ducks, pigeons, turkeys, emus, ostriches and all types of domestic fowls.

**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*.

**Public Holiday** includes Sundays, Christmas Day, New Years Day, Good Friday, and any day declared by any Act to be a *Public Holiday*, or proclaimed by the Governor-General as set apart for a *Public Holiday*.

**Public Notice** has the meaning assigned to that term in section 5(1) of the Act, and **publicly notified** has a corresponding meaning.

**Public Place** includes every *Road*, *Street*, public highway, footpath, *Footway*, court, alley, lane, accessway, and thoroughfare of a public nature or open to or used by the public as of right; and every place of public resort or place to which the public have access, so open or used; and every reserve, park, domain, beach, foreshore and recreational ground under the control of Council, whether admission is free or on payment of a charge.

**Ramp** means any structure made for the purpose of launching vessels into or hauling vessels out of the sea.

**Reserved Area** means any area that is declared to be an area for a specified purpose under this *Bylaw*.

**Resident** means any person who has a permanent address within the Western Bay of Plenty *District* or who has lived in the *District* for a period of one month or more and includes any person who owns property within the *District*.



**Recyclable Material** means any waste material that no longer has any immediate value to the person wishing to dispose of it and which can potentially be re-used, recycled or reprocessed to produce new products.

**Ride a Skateboard** means having either one or both feet or any other part of the body of any person on the skateboard when it is moving.

**Right of Appeal** means a right of *Appeal* to *Council* against any decision, order, or direction given under any provision of this *Bylaw*.

**Road** has the meaning assigned to that term in section 315(1) of the Local Government Act 1974.

**Section** means a property contained on one Certificate of Title and includes a cross-lease property.

**Sewer** means any Sewer of the *Council* for the reception and discharge of domestic sewage or Trade Wastes and includes any sewer under the control of the *Local Authority*.

**Sexton** means the person appointed by the *Council* as Sexton of the Cemetery.

**Skateboard** means a wheeled device controlled or propelled by gravity, or by the muscular energy of the rider, (or by any other means of propulsion), and also includes roller-skates, in-line skates, scooters or any similar device, but does not include any bicycle, tricycle, wheelchair, baby or invalid carriage.

**Solid Waste** means any waste generated as a solid or converted to a solid for disposal.

**Sprinkler** means a revolving spray, sprinkler pipe, or contrivance to distribute water for garden or lawn watering, but does not include a hand-held hose, or a contrivance installed exclusively for the purpose of extinguishing fire.

**Temporary Sign** means an advertising device to announce or advertise an event, function, or sale of product, erected or displayed only for such a limited period of time as is stipulated on the granting of a *Permit*.

**Through the District** means entering the *District* at one point and leaving at another point.

**Trade Premises** means any *Premises* used or intended to be used for carrying on any trade or industry; and includes any land or *Premises* wholly or mainly used for agricultural or horticultural purposes.

**Use** has the meaning assigned to that term in the Land Transport (Road User) Rule 2004.

**Vegetation** includes –

- (a) All plants and the produce thereof, live or dead, standing, fallen, wind blown, cut, broken, pulverised, sawn or harvested, natural or disturbed in use or as waste, rubbish, refuse or debris, stump, stubble or otherwise; and
- (b) Fossil fuel exposed at or lying within 20 metres of the surface of any land; and
- (c) Peat in any form.

but does not include wood forming part of a structure or otherwise in processed form.

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





- (iv) Has allowed the *Premises* covered by the licence to be used for any purpose other than that stated in the licence, or has failed to maintain the *Premises* in the condition required by such licence.

2.5 The *Council* may, if it considers the allegations correct or if there is no appearance by the holder of a licence, revoke the licence or suspend the same for as long as it may think fit. Suspension and Revocation of Licence

2.6 Any person whose licence has been suspended, and any *Premises* in respect of which the licence has been suspended, is, during the period of such suspension, deemed to be unlicensed.

### 3. Dispensations

3.1 The *Council* may grant a dispensation from full compliance with any provision in this *Bylaw* or any other *Bylaw* enacted by it, in a case where the *Council* is of opinion that full compliance would needlessly and injuriously affect any person or business, without a corresponding benefit to the public or any part of it. Grounds for Dispensation

3.2 Any application for a dispensation must – Application for dispensation

- (i) Be in writing; and
- (ii) Give full details of the relief sought and the reasons why the relief is sought.

3.3 The *Council* may either refuse the application, or grant it subject to such conditions as it may consider appropriate. Determination of Dispensation Application

### 4. Offences and Breaches

4.1 Every person commits a breach of this *Bylaw* who: Offences and Breaches

- (i) Does, or causes to be done, or permits anything to be done that is contrary to this *Bylaw*; or
- (ii) Omits, or neglects to do, or permits to remain undone, anything which ought to be done by him or her at the time and in the manner provided in this bylaw; or
- (iii) Does not cease any action which the person is required to cease under this *Bylaw*; or
- (iv) Knowingly permits or allows any condition of things to exist or continue to exist contrary to this *Bylaw*; or
- (v) Fails, refuses or neglects to comply with any notice duly given to that person under this *Bylaw*; or



- |       |  |                               |
|-------|--|-------------------------------|
| (vi)  | Obstructs or hinders any <i>Officer</i> of the <i>Council</i> or other person appointed by the <i>Council</i> in the exercise of any power conferred on that officer or other person by this <i>Bylaw</i> ;  | Obstruction                   |
| (vii) | Fails to comply with any notice, or direction, or conditions contained in any licence granted by the <i>Council</i> .  |                               |
| 4.2   | If a person fails to comply with a lawful notice, request, or order, given by an <i>Authorised Officer</i> or <i>Enforcement Officer</i> under this <i>Bylaw</i> the failure, whether wilful or otherwise, to comply with that notice, request, or order is a separate <i>Offence</i> on each day that such person so fails to comply. | Failure to Comply with Notice |
| 4.3   | Clause 4.2 does not relieve any person from any penalty which he or she may have incurred before receiving that notice, request, or order.   |                               |
| 4.4   | Subject to any Act, any person (including a member of the Police) may lay any information for an <i>Offence</i> against this <i>Bylaw</i> .  | Right to lay information.     |

## 5. Serving of Notices, Documents Etc

- |     |   |                                |
|-----|---|--------------------------------|
| 5.1 | If under this <i>Bylaw</i> , any notice or other document is to be given or served on any person, that notice or document may be –  | Serving of Orders and Notices. |
|     | (i) Given to that person personally; or   |                                |
|     | (ii) Sent by post to the person at the person's last usual or last known place of business or abode; or   |                                |
|     | (iii) Given by facsimile, electronic mail, or other similar means of communication.   |                                |
| 5.2 | In the absence of proof to the contrary, notices and documents are taken to be given or served –  |                                |
|     | (i) In the case of notice or documents being sent by post, at the time when the notice or document would in the ordinary course of post be delivered, and in proving delivery, it is sufficient to prove that the notice or document was properly addressed and posted; and |                                |
|     | (ii) In the case of notices or documents sent by facsimile, at the time indicated on its record of transmission; and  |                                |
|     | (iii) In the case of notices or documents sent by electronic transmission or any other similar method of communication at the time the –  |                                |
|     | (a) Computer system used to transmit the notice –   |                                |
|     | (1) Has received an acknowledgement or receipt addressed to the electronic mail address of the person transmitting the notice; or   |                                |



- (2) Has not generated a record that the notice has failed to be transmitted; or
- (b) 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.
- 5.3 If the person is absent from New Zealand, the notice or other document may be given or served on that person's agent instead of that person in any manner mentioned in clause 5.1. Service on *Persons* Absent from New Zealand
- 5.4 If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, and notice or other document relates to any land or *Building*, the order or notice, addressed to the owner or occupier of the land or *Building*, as the case may require, may be – Service on *Persons* not Known
- (i) given or served on the occupier of that land or property ; or
- (ii) may be put up on some conspicuous part of the land or *Building*, if there is no occupier. It is not necessary in any such notice to name the occupier or the owner of the land or *Building*.
- 5.5 If that person is deceased the order or notice may be served in any manner mentioned in clause 5.1 on that person's personal or legal representative or executor. Service on Deceased *Persons*
- 5.6 This clause does not apply – Service by Post
- (i) If another enactment specifies the way in which notices and documents are to be given or served; or
- (ii) To the service or giving of notices or documents in any proceedings in any court in New Zealand.
- ## 6. Right of Appeal
- 6.1 Any person who claims to be unfairly or adversely affected by any decision, order, or direction, given by an *Authorised Officer* of *Council* has the right of *Appeal* to the *Council*.
- 6.2 The *Appeal* must be in writing setting out the reasons for the *Appeal* and must be lodged within fourteen (14) days of the date on which the decision, order, or direction was given.
- 6.3 The *Council* may appoint any standing committee of *Council* to consider the *Appeal* and to hear *Written* or personal submissions from the appellant if the committee so decides.



- 6.4 The committee, after considering such evidence as it thinks necessary, may revoke, confirm, or modify the decision, order, or direction giving rise to the *Appeal*.

## 7. Penalties

- 7.1 Every person who commits an offence against this bylaw is liable to – Penalties General
- (i) The penalty set out in section 242(4) or 242(5) of the Act, in relation to the provisions of the bylaw that are made under Part 8 of the Act; or
  - (ii) Where another enactment specifies the penalty for a breach of the Bylaw, that other penalty in relation to the provisions of this bylaw that are made under that other enactment.

## 8. Officers

- 8.1 All *Authorised officers* appointed by the *Council* under or for the purpose of any repealed *Bylaw* and holding office at the time of the coming into operation of this *Bylaw* are deemed to have been appointed under this *Bylaw*. Appointment of *Officers*
- 8.2 To avoid any doubt, all enforcement officers appointed by the Council under the Act, and holding office at the time this bylaw comes into force, are deemed to be appointed under or for the purposes of this *Bylaw*.
- 8.3 Every person commits an *Offence* against this *Bylaw* by impersonating any person who is charged with the administration of this *Bylaw* or of any aspect this Bylaw. Impersonation
- 8.4 No civil or criminal liability attaches to *Officers* as a result of proper performance of authorised duties. No liability on *Officers*

## 9. Removal of works in breach of bylaw

- 9.1 The *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*. Removal of works
- 9.2 The Council may recover the costs of such removal or alteration from the person who committed the breach in accordance with section 163 of the *Act*.
- 9.3 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*.



## 10. Fees

- 10.1 If this Bylaw provides for the Council to issue a certificate, permit, or consent or give its authority or approval for anything, or carry out an inspection, the Council may require the payment of a fee. Setting of fees
- 10.2 Any such fee must be prescribed by the Council under section 150 of the Act.
- 10.3 Fees may differ for any class of certificate, permit, consent, authority, approval or licence.
- 10.4 Nothing in this Bylaw limits the power of the Council to charge for goods, services and amenities in reliance on the general power in section 12 of the Act.

## 11. Delegation

- 11.1 The *Council* may at any time, by resolution, delegate any powers under this *Bylaw* to a committee of *Council* or an *Authorised Officer* in accordance with the provisions of the Act. Delegation

## 12. Amendments to Bylaws

- 12.1 The *Council* may amend this *Bylaw* using the procedures set out in the Act.