



New Plymouth District Council Bylaw 2008

(as amended and re-adopted, September 2014)

Introductory

The purpose of this part of the 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.



Te Kaunihera-ā-Rohe o Ngāmotu

NEW PLYMOUTH DISTRICT COUNCIL

newplymouthnz.com

1. Authority

- 1.1** This part is made under the Local Government Act 2002 and all other enactments enabling the New Plymouth District Council in that behalf to make this bylaw.

2. Title

- 2.1** This bylaw is called the New Plymouth District Council Bylaw 2008 and comprises the following parts:

- Part 1 Introductory
- Part 2 Animals
- Part 3 Cemeteries and Crematoria
- Part 4 Fire Prevention and Smoke Nuisance
- Part 5 Public Places (as amended 2014)
- Part 6 Recreation and Cultural Facilities
- Part 7 Signs (as amended 2014)
- Part 8 Skateboards
- Part 9 Solid Waste (as amended 2013)
- Part 10 Stock Control (as amended 2013)
- Part 11 Trade Waste (as amended 2013)
- Part 12 Trading in Public Places (Licensing of Street Traders) (as amended 2014)
- Part 13 Traffic (as amended 2013)
- Part 14 Water, Wastewater and Stormwater Services (as amended 2014)

3. Commencement

- 3.1** This bylaw comes into force on 1 July 2008.

4. Repeal

- 4.1** The following parts of the New Plymouth District Council Consolidated Bylaws 2000 are repealed on 1 July 2008:

- Part 1 Introductory
- Part 2 Animals
- Part 4 Cemeteries and Crematoria
- Part 6 Fire Prevention
- Part 8 Nuisances
- Part 9 Public Places
- Part 10 Recreation and Cultural Facilities
- Part 11 Skateboards
- Part 12 Stock Control
- Part 13 Trade Waste
- Part 14 Trading in Public Places and Itinerant Traders
- Part 15 Wastewater Drainage

- Part 16 Water Supply
- Part 17 Solid Waste
- Part 18 Traffic

4.2 On and from 29 September 2014, Parts 14 and 15 of the New Plymouth District Council Bylaw 2008 are revoked and replaced by the new Part 14 as set out in clause 1.4 of the new Part 14.

5. Consolidation

5.1 New Plymouth City Consolidated Bylaw XXXVI Airport and amendments continues in force according to its tenor.

6. Application of this bylaw

6.1 This bylaw applies to the New Plymouth District.

7. Application of Part 1

7.1 Unless the context otherwise requires, this part applies to all:

- a) Other parts of this bylaw; and
- b) Those parts listed in clause 5 instead of Part 1 Introductory of the New Plymouth District Council Consolidated Bylaws 2000.

8. Interpretation

8.1 In this bylaw, unless the context otherwise requires:

Definitions

Act means the Local Government Act 2002.

Animal means any member of the animal kingdom, including any mammal, finfish, shellfish, reptile, amphibian, insect or invertebrate which is kept in a state of captivity or domesticated and includes the carcass or constituent parts of that animal but it does not include human beings or dogs.

Approval or Approved means a written approval from the Council.

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 (if so appointed).

Beach means any beach above mean low water springs, including any adjoining park or reserve that is situated in the district.

Berm means any grassed area on or beside a road which may or may not be separated from the carriageway by channelling and kerbing.

Building has the meaning given to it by sections 8 and 9 of the Building Act 2004.

Bylaw means a bylaw of the Council made under the provisions of any enactment enabling the Council to make bylaws.

Busker means any person who plays, acts, sings or otherwise performs or entertains in a public place and who may solicit or invite or accept any donation, contribution or monetary reward

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

Computer register means a computer register recording the ownership of land available to any owner or owners under any applicable enactment.

Council means the New Plymouth District Council as named in Part 2 of Schedule 2 of the Act.

Customer means any person or organisation receiving services from the Council.

Disconnection means the physical cutting and sealing of any of the Council's wastewater services, utilities, drains or sewers for use by any person.

District means the New Plymouth District

District Plan means the New Plymouth District Plan prepared or constituted under the provisions of the Resource Management Act 1991.

Drain means that section of private drain between the occupier's premises and the point of discharge through which wastewater is conveyed from the premises. This section of drain is owned and maintained by the occupier.

Dwelling or Dwellinghouse includes any building, 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 a person appointed by the Council as an enforcement officer under the Act.

Footpath means as much of any street or public place that is laid out or constructed by authority of the Council for pedestrian use.

Foreshore means the land edging the sea, estuaries and rivers that is regularly submerged and exposed by the seas tidal ebb and flow that is the area between the line of mean high water springs level and the line of the mean low water springs level.

Hazardous substance has the meaning given to that term in section 2(1) of the Hazardous Substances and New Organisms Act 1996.

Hazardous waste means waste that:

- a) Contains hazardous substances at sufficient concentrations to exceed the minimum degrees of hazard specified by Hazardous Substances (Minimum Degrees of Hazard) Regulations 2000 under the Hazardous Substances and New Organism Act 1996; or
- b) Meets the definition for infectious substances included in the Land Transport Rule: Dangerous Goods 1999 and NZ Standard 5433: 1999 – Transport of Dangerous Goods on Land; or
- c) Meets the definition for radioactive material included in the Radiation Protection Act 1965 and Regulations 1982.

It does not include domestic waste, commercial-domestic waste, inorganic material, construction and demolition waste or commercial waste.

Hours of Darkness means the period commencing 30 minutes after sunset and ending 30 minutes before sunrise.

Inorganic material means a material which is composed of minerals, or made from minerals; not animal or vegetable in origin.

(Mineral means a naturally occurring inorganic substance beneath or at the surface of the earth, whether or not under water; and includes all metallic minerals, non-metallic minerals, fuel minerals, precious stones, industrial rocks and building stones, and a prescribed substance within the meaning of the Atomic Energy Act 1945.

Licensed means holding a licence under the bylaws of the Council or under any statute.

Livestock or stock includes any age or sex of cattle, sheep, deer, horse, donkey, hinny, mule, goat, thar, alpaca, llama, bison, ostrich, pigs or any other herd animal.

Memorandum of encumbrance means an agreement for the payment by any person or persons by yearly or periodical payments or otherwise of any annuity, rent charge, or sum of money other than a debt where land owned by the person or persons is legally defined and used as security should failure to pay occur.

Mobility device has the meaning given to that term in rule 1.6 of Part 1 of the Land Transport (Road User) Rule 2004.

Month means a calendar month.

Motor vehicle has the meaning given to that term in section 2(1) of the Land Transport Act 1998.

Nuisance has the meaning of any unreasonable interference with the peace, comfort or convenience of another person and includes a statutory nuisance as defined in Section 29 of the Health Act 1956 or any statutory enactment.

Occupier means the inhabitant of any premises, and in any case where any premises are unoccupied includes the owner of those

premises.

Offence means any offence against a bylaw currently in force in the district.

Owner (of any property) means any person who would be entitled to receive the rack rent of the property, if the property was let to a tenant at a rack rent, and where any person is absent from New Zealand, includes that person's attorney or agent, or any other person acting on their behalf.

Park refer to the definition of reserve.

Parking or park (in relation to a vehicle) has the meaning given to that term in rule 1.6 of Part 1 of the Land Transport (Road User) Rule 2004.

Person includes a corporation sole, a body corporate, and an unincorporated body.

Point of discharge is the boundary between the public sewer and a private drain but for the purposes of monitoring, sampling and testing.

Point of supply is in relation to the supply of water and means the point on the service pipe which denotes the boundary of responsibility between the customer and the Council. It is generally the tail piece of the water meter, backflow preventer or service valve (toby) regardless of the property boundary.

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

Premises means:

- a) A property or allotment which is held under a separate computer register or for which a separate computer register may be issued and in respect to which a building consent has been or may be issued; or
- b) A building that has been defined as an individual unit by a cross-lease, unit title or company lease and for which a computer register is available; or
- c) Land held in public ownership (reserve) for a particular purpose; or
- d) Individual units in buildings which are separately leased.

Public notice has the meaning given to that term by section 5(1) of the Act and publicly notified has a corresponding meaning.

Public place:

- a) Means a place that is under the control of the Council and open to or being used by the public, whether admission is free or on payment of a charge; and
- b) Includes:
 - i) A road under the control of the Council; and

- ii) One or more parts of a public place.

Prohibited waste means waste containing any-

- a) material capable of causing injury to any person or animal unless the material is sufficiently contained to prevent injury.
- b) material capable of causing damage to the approved container or likely to shatter in the course of collection material unless the material is sufficiently contained to prevent damage to the approved container or to prevent injury.
- c) material that may endanger any person, animal or vehicle which may come in to contact with it prior to, during or following collection, transportation or disposal.
- d) liquid or any viscous fluid.
- e) radioactive wastes, but excluding domestic smoke detectors.
- f) used oil and lead-acid batteries.
- g) hazardous waste.
- h) medical waste.
- i) material prohibited by the Council.

Refuse or waste means any solid material or thing that is discarded or selected for disposal. It does not include diverted material but it includes any component or element of diverted material, if the component or element is disposed of or discarded.

Reserve means any land which is vested in or under the control of the Council and which is set aside for public enjoyment as a reserve, park, garden, or greenspace, whether or not that land has been vested as a reserve under the Reserves Act 1977.

Road has the meaning given to that term in section 315 of the Local Government Act 1974.

Roading Authority means either the Council or the New Zealand Transport Agency.

Rural area means that area of the district that is predominantly rural in character including (without limitation) the following characteristics:

- a) Spacious areas of pasture.
- b) Low density and widely spaced built form.
- c) Infrequent intensively developed industrial sites.
- d) Areas of vegetation or rural noise and smell.

Schedule of fees and charges means the list of items, terms

and prices for services associated with any activity in which the Council is engaged and for which the Council is authorised to fix rates and charges.

Sewer means the main public sewer and lateral connections that carry away wastewater from the point of discharge. The public sewer is owned and maintained by the Council.

Sign means any poster, placard, hoarding, handbill, banner, writing, picture, image, logo or device (including but not limited to blimps, balloons, flags, sandwich boards and banners).

Site means:

- a) An area of land which is:
 - i) Comprised in a single allotment, or other legally defined parcel of land and held in a single computer register; or
 - ii) Comprised in a single allotment or legally defined parcel of land for which a separate computer register could be issued without the further consent of the Council; or
- b) An area of land which is comprised of two or more legally defined parcels of land held together in one computer register in such a way that the lots cannot be dealt with separately without prior consent of the Council; or
- c) An area of land which is comprised of two or more adjoining computer registers where such titles are:
 - i) Subject to a condition imposed under section 75(2) of the Building Act 2004; or
 - ii) Held together in such a way that they cannot be dealt with separately without the prior consent of the Council; or
- d) In the case of land subdivided under the cross lease or company lease systems (other than strata titles), an area of land containing:
 - i) A building or buildings for residential or business purposes with any accessory building, plus any land exclusively restricted to the users of that building; or
 - ii) A remaining share or shares in the fee simply creating a vacant part of the whole for future cross lease or company lease purposes; or
- e) In the case of land subdivided under the Unit Titles Act 2010 (other than strata titles) an area of land containing a principal unit or proposed unit on a unit plan together with its accessory units; or
- f) In the case of strata titles, the underlying computer registers, immediately prior to subdivision; or
- g) Land partitioned under the Te Ture Whenua – Maori Land Act 1993.

Special waste means any waste as defined in the Centre for

Advanced Engineering document, "Landfill Guidelines" dated April 2000, Section 4 Waste Classification for Landfill Disposal (Section B) Wastes possibly suitable for municipal landfill disposal subject to specific conditions of preparation, notification, placement, covering and record keeping.

Stormwater means all surface water run-offs resulting from precipitation.

Structure includes (without limitation): parking structures (for example garages, car pads, car decks, car ports, boat sheds); access structures (for example drive ways, stairs, retaining walls, cable cars, gates, covered access ways); house (for example any part of a primary or secondary building, eaves, porches, decks, balconies, conservatories), and accessory buildings.

Trade waste means any liquid, with or without matter in suspension or solution that is or may be discharged from a trade premises in the course of any trade or industrial process or operation, or in the course of any activity or operation of a like nature, but does not include condensing or cooling water, stormwater, or domestic sewage. Condensing or cooling waters and stormwater which cannot practically be separated from wastewater may be included subject to specific approval.

Trailer means a vehicle without motive power that is capable of being drawn or propelled by a vehicle from which it is readily detachable, but does not include:

- a) A sidecar attached to a motorcycle; or
- b) A vehicle normally propelled by mechanical power while it is being temporarily towed without the use of its own power.

Urban area means any land contained within New Plymouth, Bell Block, Waitara, Inglewood, Oakura, Okato, and Urenui, and identified in the relevant District Plan as being zoned for Residential, Business, Industrial, Rural or Open Space activities, that is or is capable of reticulation for water supply, sewage, and stormwater disposal.

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

Water Supply Authority means the Council.

Wastewater means water or other liquid, including waste matter in solution or suspension, discharged from a premise to a sewer.

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.

Writing, written or any similar term means and includes words printed, painted, engraved, lithographed, or otherwise traced or

copied, and where anything is required to be written it may be partly in writing and partly in printing.

- 8.2** Words referring to the singular number include the plural number, and words referring to the masculine gender include the feminine gender and vice versa.
- 8.3** Every schedule to any part of this bylaw forms part of this bylaw. Appendices show details of any Council resolution made under a clause of this bylaw. Appendices are not part of this bylaw and are provided for information purposes.
- 8.4** Where forms are prescribed in this bylaw, slight deviations that are to the same effect, and not calculated to mislead, shall not invalidate them.

9. Officers to continue in office

- 9.1** All authorised officers appointed by the Council under or for the purpose of any repealed bylaw, and holding office at the time this bylaw comes into force, are deemed to be appointed under or for the purposes of any corresponding provision in this bylaw that with or without modification, replaces, or that corresponds to, the bylaw repealed.
- 9.2** To avoid any doubt, all enforcement officers appointed by the Council under, and holding office at the time this bylaw comes into force, are deemed to be appointed under or for the purposes of this bylaw.

10. Serving of orders and notice

- 10.1** If under this bylaw, any notice or other document is to be given or served on any person, that notice or document may be:
 - a) Given to that person personally; or
 - b) Sent by post to the person at the person's last usual or last known place of business or abode; or
 - c) Given by facsimile, electronic mail or other similar means of communication.
- 10.2** In the absence of proof to the contrary, notices and documents are taken to be given or served:
 - a) In the case of notices 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
 - b) In the case of notices or documents sent by facsimile, at the time indicated on its record of transmission; and
 - c) In the case of notices or documents sent by electronic transmission or any other similar method of communication, at the time the:
 - i) Computer system used to transmit the notice:

- Has received an acknowledgement or receipt addressed to the electronic mail address of the person transmitting the notice; or
- Has not generated a record that the notice has failed to be transmitted; or

ii) Person who gave the notice or document proves that the notice or document was transmitted by computer system to the electronic mail address provided by the person on whom the notice is served or given.

10.3 If the person is absent from New Zealand, the notice or other document may be given or sent to that person's agent in the same manner as mentioned in clause 10.1.

10.4 If the person is not known, or is absent from New Zealand, and has no known agent in New Zealand, and the notice or document relates to any premises, the notice or document, addressed to the owner or occupier of the premises, may be given or served by being put up on some conspicuous part of the premises.

10.5 This clause does not apply:

- a) If another enactment specifies the way in which notices and documents are to be given or served; or
- b) To the service or giving of notices or documents in any proceedings in any court in New Zealand.

11. Powers of delegation

11.1 Where this bylaw provides for the issue of any order, notice or licence, the order, notice or licence is deemed to be issued in compliance with this bylaw if it is issued by any authorised officer.

11.2 Where this bylaw requires the approval of the Council such approval may be given by the Chief Executive, and the Chief Executive may delegate that function either generally or particularly to any other officer of the Council.

12. Power of entry

12.1 Except where provided for under any other enactment, sections 172, 173, and 182 of the Act apply in relation to any power of entry under this bylaw.

13. Reduction of licence fees

13.1. Where an annual fee in excess of \$50 is payable in respect of a licence that fee must, where the licence is issued for less than one year, be reduced by one-twelfth for every complete month by which the term of the licence is less than one year, provided that the fee must not be less than \$50.

13.2. In any case where the issue of a licence under this bylaw has been refused, and where no other right of appeal exists, the applicant is entitled to appeal the decision to the Council as set out in this clause.

- a) The applicant:
 - i) May, within 14 days of receiving notice of the decision, appeal in writing to the Council in regard to the decision; and
 - ii) Has the right to be heard in support of the appeal.
- b) The Council in considering an appeal may uphold or rescind the decision.
- c) The Council must, as soon as practicable, give written notice to the appellant of:
 - i) Its determination of the appeal; and
 - b) The reasons for its determination.
- d) For the purposes of this clause "licence" includes a certificate of registration and any other written authority or permission of the Council.

14. Suspension and revocation of licences

14.1 Unless this 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 the licence or suspend the licence for any specified time.

14.2 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 it is 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 this bylaw; or
 - ii) Has failed to comply with any of the conditions of the licence; or
- 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 this bylaw is not being properly observed.

14.3 The Council may, if it considers the allegations correct or if there is no appearance by the licence holder, revoke or suspend the licence for any specified time.

14.4 A person whose licence has been suspended under this clause and any premises in respect of which that licence has been so suspended is, during the period of that suspension, deemed to be unlicensed.

- 14.5** For the purposes of this clause "licence" includes a certificate of registration and any other written authority or permission of the Council and "licensed" has a corresponding meaning.

15. Offences and breaches

- 15.1** No person shall do anything or cause any condition to exist for which a consent, licence, permit or approval from the Council is required under this bylaw without having a current and valid consent, licence, permit or approval and the failure to have such constitutes a breach of this bylaw.

- 15.2** No application for a licence or approval from the Council, and no payment of or receipt for any fee paid in connection with an application, licence, or approval, confers any right, authority, or immunity on the person making the application or payment until the application licence or approval has been granted.

- 15.3** A person commits a breach of this bylaw who:

- a) Does, or causes anything that is contrary to this bylaw; or
- b) Omits or neglects to do anything which ought to be done by them at the time and in the manner provided in this bylaw; or
- c) Does not refrain from doing anything which under this bylaw they are required to abstain from doing; or
- d) Knowingly permits any condition or thing to exist contrary to any provision contained in this bylaw; or
- e) Refuses or neglects to comply with any notice or direction given to them under this bylaw; or
- f) Obstructs or hinders any officer of the Council in the exercise of any power conferred upon them by this bylaw; or
- g) Fails to divulge their full name, address or other information when requested to do so by an enforcement officer.

- 15.4** Any person commits a breach of this bylaw who:

- a) Having constructed, affixed or provided, or caused to be constructed, affixed, or provided, any building or any part of a building, or any work, appliance, or material of any description whatsoever, contrary to, or otherwise than in accordance with the provision of this bylaw; or
- b) Having omitted to construct, affix, or provide any work, appliance or materials as required thereby;

and who does not within a reasonable time after notice in writing

has been given to them by the Council or any enforcement officer, carry out the remedial action specified in that notice.

15.5 The notice in clause 15.4 must state the time within which the remedial action is to be carried out, and may be extended from time to time by written authority of an enforcement officer.

15.6 This clause also applies where any building, part of a building, work, appliance, or material that was, before the coming into force of this bylaw, constructed, affixed, provided or omitted contrary to any bylaw that has been repealed, but re-enacted, in substance in this bylaw. Notice under clauses 15.4 and 15.5 may be given or extended in respect of any such building, part of a building, work, appliance or material.

16. Removal of works in breach of bylaw

16.1 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.

16.2 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.

16.3 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 anything contrary to this bylaw.

17. Penalties for breaches of bylaw

17.1 Every person who breaches this bylaw commits an offence and is liable on summary conviction to 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.

17.2 Where another enactment or this bylaw specifies the penalty for a breach of the bylaw, that other penalty shall apply.

18. Dispensing power

18.1 Where, in the opinion of an authorised officer, full compliance with any of the provisions of this bylaw, would cause loss or inconvenience to any person or the operation of any business without any corresponding benefit to the community, the Council may, on the special application of that person, dispense with full compliance with any of the provisions of this bylaw provided that any other terms or conditions (if any) that the Council may deem fit to impose are complied with by the person concerned.

19. Fees and charges

19.1 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.

19.2 Any such fee will be prescribed by the Council under section 150 of the Act.

19.3 Fees may differ for any class of certificate, permit, consent, authority, approval or licence.

Introductory

(Supplementary to Part 1 Introductory New Plymouth District Council Bylaw 2008)

The purpose of this part of the 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.

1. Authority

- 1.1** This part is made under the Local Government Act 2002 and all other enactments enabling the New Plymouth District Council in that behalf to make this bylaw.

2. Title

- 2.1** This Bylaw is called the New Plymouth District Council Bylaw 2010 and comprises the following parts:

Part 1: Introductory

Part 2: Dog Control

Part 3: Liquor Control

Part 4: Brothels (location and signage) and Commercial Sex Premises (signage)

Part 5: Speed Limits

3. Commencement

- 3.1** This Bylaw comes into force on 20 September 2010.

- 3.2** Part 3 of this bylaw comes into force on 6 October 2010.

4. Repeal

- 4.1** The following parts of the New Plymouth District Council Consolidated Bylaws 2000 are repealed on 20 September 2010:

Part 5: Dog Control

Part 20: Brothels (location and signage) and Commercial Sex Premises (signage)

Part 21: Speed Limits.

- 4.2** Clause 5.1 of the New Plymouth District Council Bylaw 2008 is consequentially repealed on 20 September 2010.

- 4.3** Part 19 of the New Plymouth District Council Consolidated Bylaw 2000 is consequentially repealed on 5 October 2010.

5. Application of Part 1 of New Plymouth District Council Bylaw 2008 to this Bylaw

- 5.1** Unless the context otherwise requires, Part 1 of the New Plymouth District Council Bylaw 2008 (for the time being in force) applies to the other parts of this Bylaw.