

CLUTHA DISTRICT COUNCIL REGULATORY BYLAWS

PART 1

INTRODUCTORY

100 SCOPE

100.1

The purpose of the introductory section is to identify and clearly interpret those terms and expressions that are used throughout the Bylaw.

100.2

This Part outlines serving of orders and notices, powers of delegation and entry, suspension and revocation of licences, removal of works executed contrary to the Bylaw, dispensing powers, fees and charges, offences and breaches and penalties for breach of bylaws.

100.3

It should be noted that other definitions are contained within the specific Parts of the Bylaws.

100.4

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

101 DEFINITIONS AND INTERPRETATION

101.1

For the purposes of this Bylaw, unless the context requires otherwise, the following definitions apply:

Act	Local Government Act 2002
Agent	A person or business authorised to act on another's behalf
Animal	Any member of the animal kingdom, including any mammal, bird, finfish, shellfish, reptile, amphibian, insect or invertebrate, and includes the carcass or constituent parts thereof, but does not include human beings or dogs.
Approved	Approved by the Council or a Committee of Council or by any officer authorised on behalf of the Council.
Authorised agent	Any person who is not an employee of the Council but is authorised by the Council to act on its behalf.

Authorised officer	Any person appointed or authorised by the Council to act on its behalf and with its authority including a member of the police.
Bylaw	A Bylaw of the Council for the time being in force, made under the provisions of any enactment or authority enabling the Council to make bylaws.
Council	The Clutha District Council or any committee, subcommittee, or person to whom the Council's powers, duties, and discretions under the Act have lawfully been delegated.
Custodian	Any person for the time being appointed or contracted by the Council to control or manage or to assist in the control and management of any land or premises belonging to or under the jurisdiction of the Council.
District	The Clutha District.
Dwelling or dwellinghouse	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 occupied by the dwelling.
Footpath, Private Road, Private Way	Have the respective meanings assigned to them under section 315 of the Local Government Act 1974 [still in force under the Local Government Act 2002].
Licence	A licence or approval issued under this Bylaw.
Local authority	The meaning assigned to that term in section 5(1) of the Act.
Motor vehicle	The meaning assigned to that term in section 2(1) of the Land Transport Act 1998.
Nuisance	The meaning assigned to that term in section 29 of the Health Act 1956.
Occupier	The inhabitant occupier of any property and in any case where any building, house, tenement, or premises is or are unoccupied includes the owner.
Offence	Any act or omission in relation to this Bylaw for which any person can be punished either on indictment or by summary process.

Owner	As applied to any land, building, or premises, means any person for the time being entitled to receive the rent for such property, or who would be so entitled if it 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.
Person	A natural person and also a body of persons, whether corporate or unincorporated.
Portico	Every awning, porch, verandah, 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.
Premises	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 are deemed to be the same premises.
Principal administrative officer	The principal administrative officer of Council, irrespective of the designation given to that officer and includes any person for the time being appointed by the Council to perform the duties or a particular duty of the principal administrative officer.
Public notice	The meaning assigned to that term in section 5(1) of the Act.
Public place	The meaning assigned to that term in section 147(1) of the Act. It includes, without being limited to, every road, reserve, park, domain, beach, foreshore and recreational grounds under the control of the Council.
Reserve	The meaning assigned to that term in section 2(1) of the Reserves Act 1977.
Road	The meaning assigned to that term in section 2(1) of the Land Transport Act 1998.
Stock	Cattle, sheep, horses, deer, donkeys, mules, goats, pigs alpacas, llamas, ostriches, or other animal (excluding dogs) including their young, kept in captivity, or farmed, and dependent on humans for their care and sustenance.

Territorial authority	The meaning assigned to that term in section 5(1) of the Act.
Urban area	Residential, business, rural village and coastal village zones as defined in the District Plan.
Vehicle	The meaning assigned to that term in section 2(1) of the Land Transport Act 1998.
Waterworks	The meaning assigned to that term in section 5(1) of the Act.
Writing, written or similar term	Words written, printed, painted, engraved, lithographed, or otherwise traced or copied.

101.2

For the purpose of this Bylaw, the singular includes the plural, and the plural includes the singular.

101.3

Words referring to any district, locality, place, person, office, officer, functionary, party or thing mean each district, locality, place, person, office, officer, functionary, party or thing, to whom or to which the provision applies.

101.4

The headings to the clauses of this Bylaw shall not affect the interpretation of any clause.

101.5

Every Schedule to this Bylaw forms part of this Bylaw and if provided for in the Bylaw text, any such schedule or policy note may be altered from time to time by Council resolution and in accordance with the Act.

101.6

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

102 OFFICERS TO CONTINUE IN OFFICE

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

103 SERVING OF ORDERS AND NOTICES

103.1

Except as otherwise provided for in any other enactment, where any notice, order, or other document is required to be served on any person for the purposes of this Bylaw, service may be effected by delivering it personally to the person or by sending it by post to that person's last known residential or business address.

103.2

If the person is absent from New Zealand the order, notice or other document may be served on the person's agent in the manner referred to in 103.1.

103.3

If the order, notice or other document relates to land or buildings, then the order, notice, or other document should be served on the person who owns that land or buildings. However, if that person is not known, or is absent from New Zealand, or has no known agent in New Zealand, the order or notice may be:

- served on the person who is occupying the land or buildings; or
- if there is no person in occupation, put up on some conspicuous part of the land or buildings.

It is not necessary in that notice to name the occupier or the owner of that land or buildings.

103.4

Where an order or notice is sent by registered post, it shall be sent so as to arrive no later than the latest time on which such an order or notice is required to be served.

103.5

Any order or notice issued shall state the time within which the remedial action is to be carried out, which may be extended from time to time by written authority of Council or an authorised officer of Council.

104 POWERS OF DELEGATION

104.1

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 it is issued by any officer of the Council authorised by the Council for that purpose.

104.2

Where this Bylaw imposes any powers or duties on a Principal Administrative Officer or any authorised officer of Council that officer may, with the consent of Council, delegate any of those powers or duties, either generally or particularly, to any other officer of the Council.

105 POWERS OF ENTRY FOR PURPOSES OF THIS 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 this Bylaw.

106 LICENCES

106.1

Any person doing or proposing to do any thing or causing or proposing to cause any condition to exist for which a licence from the Council is required under this Bylaw, shall first obtain a licence from the Council or any authorised officer.

106.2

Every application for a licence shall be accompanied by the relevant fee. If the application for the licence is declined, the fee shall be refunded less any reasonable processing costs.

106.3

No application of 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.

106.4

Any licence is deemed to be issued in compliance with this Bylaw if it is issued by an authorised officer, and every licence is subject to such conditions as may be imposed.

106.5

Unless this Bylaw or the licence 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.

106.6

Unless this 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.

106.7

If, following a request for payment by a reasonable date, any licence fee due remains unpaid, the licence shall cease to have effect from that date.

107 SUSPENSION AND REVOCATION OF LICENCES

107.1

Unless this Bylaw provides otherwise, if a licence holder is 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.

107.2

The Council may by notice in writing call upon a 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 –

- has acted or is acting in a manner contrary to the true intent and meaning of this Bylaw; or
- has failed to comply with any of the conditions of the licence; or
- is in any way unfit to hold 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 the Bylaw is not being properly observed.

107.3

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

107.4

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

108 ENCROACHMENT TO BE REMOVED UPON NOTICE

108.1

If any building or structure, or any part of a building or structure, has been erected, constructed or placed upon, under, over or across any public place without Council's permission, Council may, by notice in writing, require the owner to remove such building or structure, or part of building or structure, as specified in the notice.

108.2

A notice issued under 108.1 may require such precautions to be taken as Council thinks necessary for the safety of the public and for the proper securing of a building or structure, or part of a building or structure, as is to remain after a removal.

109 REMOVAL OF WORKS

109.1

Where a notice served under section 108 has not been complied with, the Council, or any authorised officer or agent of the Council, may pull down, remove or alter any work, material or thing erected or being in contravention of any part of this Bylaw. Refer to section 163, and for seizure of property sections 164, 165, 167, and 168, of the Act.

109.2

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

109.3

The exercise of this authority does not relieve any person from liability for any penalty for erecting or permitting the continued existence of any such work, material or thing.

109.4

If a breach is such that public health, or safety considerations, or risk of consequential damage to Council assets is such that delay would create unacceptable results, the Council may take immediate action to rectify the defect, and recover all reasonable costs (as set out in 109.2).

109.5

On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under 109.1.

109.6

If not claimed within 6 months after it was seized and impounded, following giving public notice of the intention to do so, the Council may dispose of (by way of sale or otherwise),

any object material or thing as it sees fit and apply the proceeds to meet any outstanding costs. The lawful owner shall be entitled to claim any residual sum.

110 DISPENSING POWER

Where, in the opinion of the Council, full compliance with any of the provisions of this Bylaw would:

- needlessly or injuriously affect any person, or the course or operation of the business of any person; or
- bring 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 requirement for full compliance with the provisions of this Bylaw; provided that any other terms or conditions (if any) that Council may deem fit to impose shall be complied with by that person.

111 FORMS

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

112 FEES AND CHARGES

112.1

The Council may:

- through the annual plan process, or;
- at any time by ordinary resolution, publicly notified,

prescribe fees to be charged for any certificate, authority, approval, permit, or consent from, or inspection or service, by the Council under the provisions of the Act or any other enactment where that enactment contains no provision for authorising the Council to charge a fee.

The setting of any fees or charges shall be in accordance with section 150 of the Act.

112.2

Where a fee has been paid under 112.1 for a service or inspection that has not been given, the Council may provide a refund, a remission, or waiver of any such fee, or portion of it as the Council may determine.

113 OFFENCES AND BREACHES

113.1

No person shall do anything, or cause any condition to exist, for which a licence or approval from the Council is required under this Bylaw, without first obtaining that licence or approval. The failure to obtain required licences or approvals shall constitute a breach of this Bylaw.

113.2

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

113.3

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 whatsoever contrary to or otherwise than as provided by this Bylaw;
- (b) Omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of this Bylaw, ought to be done by the person at the time and in the manner provided by this Bylaw;
- (c) Does not refrain from doing anything which under this Bylaw they are required to abstain from doing;
- (d) Knowingly permits or suffers any condition of things to exist contrary to any provision contained in this Bylaw;
- (e) Refuses or neglects to comply with any notice given to that person under this Bylaw;
- (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 this Bylaw; or
- (g) Fails to comply with any notice or direction given under this Bylaw.

113.4

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 –

and who does not, within a reasonable time after notice in writing has been given to them by the Council or any authorised officer of the Council, carry out the remedial action specified in that notice.

113.5

The provisions of clause 113.4 shall also apply to any building, part of a building, work, appliance, or material that has, before the coming into force of this Bylaw, been constructed, affixed, or provided or omitted contrary to or otherwise than as provided by any provision of any repealed Bylaw but re-enacted in substance in this Bylaw. Notice may be given and renewed in respect of any such building, part of a building, work, appliance or material.

113.6

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.

114 PENALTIES FOR BREACH OF BYLAWS**114.1**

Every person who fails to comply with any part of this Bylaw commits an offence and is liable to:

- (a) The penalty set out in section 242 of the Act; or
- (b) Where another enactment specifies the penalty for a breach of the Bylaw, that other penalty (for example Schedule 4 of the Land Transport Act 1998).

114.2

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 this Bylaw.