

New Zealand Standard

Model General Bylaws

Part 1 – Introductory

Superseding NZS 9201:Part 1:1999

NZS 9201:Part 1:2007

NZS 9201:Part 1:2007

COMMITTEE REPRESENTATION

This Standard was prepared under the supervision of the Model General Bylaws Committee (P 9201.1) for the Standards Council established under the Standards Act 1988.

The committee consisted of representatives of the following:

Nominating Organisations

Local Government New Zealand
Manukau City Council
Napier City Council
Palmerston North City Council
Porirua City Council

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Referenced Documents

Reference is made in this document to the following:

New Zealand Legislation

Building Act 2004
Dog Control Act 1996
Health Act 1956
Land Transport Act 1998
Local Government Act 1974
Local Government Act 2002
Reserves Act 1977
Reserves and Domains Act 1953
Resource Management Act 1991.

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Foreword

The NZS 9201 series are model bylaws covering various matters under local authority jurisdiction. Local authorities are empowered under a variety of Acts including the Local Government Act 2002 to make Bylaws. Under the 2002 Act, a current bylaw made before 1 July 2003 under a now repealed provision of the Local Government Act 1974, was to have been automatically revoked on 1 July 2008. A current bylaw made before 1 July 2003 under a provision of the Local Government Act 1974 that is still in force shall be reviewed by 1 July 2008. If it is not reviewed, the bylaw will be automatically revoked on 1 July 2010. Bylaws made by a local authority under the Local Government Act 2002 or the Local Government Act 1974 after 1 July 2003 shall be reviewed no later than 5 years after the bylaw was made, and then every 10 years after that.

There are new policy analysis, decision-making, and consultation requirements for the development of new bylaws (and the review of existing ones).

This Standard supersedes NZS 9201 Part 1 1999. The revision of the 1999 Bylaw has been necessary to reflect legislative changes, particularly in the Local Government Act 2002, the Building Act 2004, the Resource Management Act 1991 and the Dog Control Act 1996.

This Model Bylaw covers the use of existing practices from throughout New Zealand. It has been drafted to provide a general model so that by means of specific modification each local authority may meet its individual requirements. Small territorial authorities should be able to use the document with minimal modification without undertaking substantial investigations.

This Part contains definitions and provisions of a general nature which apply to all parts of the Model General Bylaws. References to Statutes have been updated and some definitions have been revised or added.

Tailoring this Model Bylaw

This Bylaw has been standardised as much as possible given the range of practices within New Zealand. Each territorial authority will need to tailor the text to suit its individual requirements. As a minimum, this will include:

- (a) Filling gaps provided in the text with appropriate wording;
- (b) Altering clause numbering (and any cross references) to match the territorial authority's own bylaw system.

General legal and technical advice has contributed to the development of this Model Bylaw. However, it is recommended that any territorial authority proposing to introduce an Introductory Bylaw also:

- (c) Refers to the Local Government Act 2002 (particularly Part 8, Subpart 1); and
- (d) Obtains specific legal and technical advice appropriate to its own particular requirements.

Bylaw process

As already noted, the Local Government Act 2002 has significantly altered the administrative process relating to the introduction and review of bylaws. For example, the need for a bylaw is to be substantiated by appropriate policy analysis under section 155, there are decision-making processes to be followed, and a bylaw can only be introduced, amended (in any significant way) or revoked through the use of the 'special consultative procedure'.

Before making changes to this Model Bylaw, consultation with interested parties is recommended. Consultation will assist in making appropriate modifications that will produce documents that are relevant and suitable for the specific circumstances of the individual Council.

Bylaw fees and charges

Fees and charges set under a Bylaw shall not provide for the territorial authority to recover any more than the reasonable costs incurred by the territorial authority for the matter for which the fee is charged. Also, fees and charges can only be amended by following the 'special consultative procedure'. This could be by way of the schedule of fees and charges being included in the Annual Plan or Long Term Council Community Plan.

Review of Standards

Suggestions for improvement of this Standard will be welcomed. They should be sent to the Chief Executive, Standards New Zealand, Private Bag 2439, Wellington 6140.

NEW ZEALAND STANDARD

MODEL GENERAL BYLAWS

Part 1 – INTRODUCTORY

1 General

1.1 Scope

The purpose of the NZS 9201 Part 1 is to identify and clearly interpret those terms and expressions that are used throughout the Bylaw.

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.

Other definitions not included within this Bylaw are contained within various Parts of the Bylaws.

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

1.2 Definitions

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 of constituent parts thereof, but does not include human beings or dogs
Approved	Approved by the Council or by any officer so authorised on behalf of the Council
Authorised agent	Any person who is not an employee of the Council but is authorised in writing by the Chief Executive or by the Council to act on its behalf
Authorised officer	Any person appointed or authorised in writing by the Chief Executive or by the Council to act on its behalf and with its authority and includes 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

Chief Executive	The principal administrative officer of the Council, irrespective of the designation given to the officer, and includes any person for the time being appointed by the Council to perform the duties or a particular duty of the Chief Executive
Council	The Council or any officer authorised to exercise the authority of the Council
Custodian	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, or premises belonging to or under the jurisdiction of the Council
District	The meaning assigned to that term in section 5(1) of the Act
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 of the dwelling
Enforcement officer	The meaning assigned to that term in section 5(1) of the Act
Footpath, private road and private way	The meaning assigned to them in section 315(1) of the Local Government Act 1974
Infringement offence	An offence for which any person can be punished on indictment, by summary process, or by infringement process
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, includes their attorney or agent

Person	A natural person and also a body of persons, whether corporate or unincorporated
Poultry	Any live domesticated or farmed bird including but not limited to: fowl, goose, duck, pigeon, turkey, parrot, budgerigar, pheasant, canary, ostrich, guinea fowl, or emu
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
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
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, 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
Vehicle	The meaning assigned to that term in section 2(1) of the Land Transport Act 1998
Veranda	A portico, porch, shed, shade, awning, blind, covering, or like structure, and their supports, projecting into or over any part of a public place
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.

1.3 Interpretation

In this Bylaw the singular includes the plural and the plural includes the singular.

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

Every Schedule to this Bylaw forms part of this Bylaw and if provided for in the Bylaw text, may be altered from time to time in accordance with the Act.

For the purposes of the 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.

2 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.

3 Serving of orders and notices

- 3.1 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 registered post to that person's last known residential or business address.
- 3.2 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 3.1.
- 3.3 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:
- (a) Served on the person who is occupying the land or buildings; or
 - (b) 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.
- 3.4 Where an order or notice is sent by registered post, the order or notice shall be sent so as to arrive no later than the latest time on which such order or notice is required to be served.
- 3.5 Any order or notice issued shall 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 authorised officer.

4 Powers of entry for purpose 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.

5 Licences

- 5.1 Any person doing or proposing to do any thing or 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.
- 5.2 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. Where a fee has been paid for which no service has been given the Council may provide a refund or waiver of all or part of the fee as it may determine.
- 5.3 No application for a licence, and no payment of or receipt for any fee paid in connection with such application, confers any right, authority or immunity on the person making that application or payment.
- 5.4 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.
- 5.5 Unless this Bylaw provides otherwise, every licence and every application for a licence shall be in such form as may be prescribed from time to time by the Council.
- 5.6 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.
- 5.7 If, following a request for payment, any licence fee due remains unpaid, the licence shall immediately cease to have effect.

6 Suspension and revocation of licences

- 6.1 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 or suspend the licence for any specified time.
- 6.2 The Council may by notice in writing call upon the licence holder to appear before the Council and give reasons why the licence should not be revoked or suspended, if any of the following are brought to the notice of the Council:
- (a) That the licence holder –
 - (i) Has acted or is acting in a manner contrary to the true intent and meaning of this 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; or
 - (c) That the Bylaw is not being properly observed.
- 6.3 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.
- 6.4 A person whose licence has been suspended under this clause and any premises for which that licence has been so suspended is, during the period of that suspension, deemed to be unlicensed.

7 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, 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 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.

8 Forms

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

9 Fees and charges

- 9.1 The Council may prescribe fees to be charged for any certificate, authority, approval, permit, or consent from, or inspection 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.
- 9.2 Where a fee has been paid under 9.1 for a service that has not been given, the Council may provide a refund, a remission, or waiver of any such fee, or portion of it as the Council may determine.

10 Offences and breaches

- 10.1 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 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 that 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 or 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.
- 10.2 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.

11 Removal of works

- 11.1 Where the notice served under section 3 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.
- 11.2 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.
- 11.3 The exercise of this authority does not relieve any such person from liability for any penalty for erecting or permitting the continued existence of any such work, material or thing.
- 11.4 If however the 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 11.2).
- 11.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under 11.1.
- 11.6 If not claimed within a reasonable time the Council may dispose of any object, material or thing it as it sees fit and apply the proceeds to meet any outstanding costs. The lawful owner shall be entitled to claim any residual sum.

12 Penalties for breach of bylaws

- 12.1 Every person who commits an offence against this Bylaw is liable to:
- (a) The penalty set out in section 238 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).
- 12.2 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.

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