



KAWERAU DISTRICT COUNCIL
General Bylaw 2009: Part 1- Introductory

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Explanatory Statement

The General Bylaw 2009: Part 1 - Introductory is the first in a series of parts that makes up the Kawerau District Council General Bylaw 2009. This part of the Bylaw replaces Chapter 1 of the General Bylaw 1997. The General Bylaw 2009 replaces the General Bylaw 1997.

General bylaws, by their nature, address a diverse range of matters. Kawerau District's 1997 general bylaw contained all those matters in a single document of 12 chapters and almost 100 pages. To improve functionality, Council has made each chapter into a discrete part that can be read and used on its own. Taken together, the parts make up the General Bylaw 2009.

This Part of the Bylaw, as the first in the series, defines the language used throughout the General Bylaw 2009 and sets out the powers and functions required for Council to administer and enforce the provisions of the Bylaw.

The Bylaw is made pursuant to Part 8 of the Local Government Act 2002.

Contents	Page No.
1 Title	1
2 Commencement	1
3 Repeal	1
4 Application of Bylaw	1
5 Scope	1
6 Definitions and interpretation	1
7 Officers to continue in office	4
8 Serving of orders and notices	4
9 Powers of entry for purpose of this Bylaw	5
10 Licences	5
11 Suspension and revocation of licences	6
12 Dispensing power	6
13 Forms	7
14 Fees and charges	7
15 Offences and breaches	7
16 Removal of works	7
17 Penalties for breach of bylaws	8
Revocations	

**Kawerau District Council
General Bylaw (Introductory) 2009**

1 Title

This part of the Kawerau District Council General Bylaw 2009 shall be known as the Kawerau District Council General Bylaw 2009: Part 1 – Introductory.

2 Commencement

This part of the Bylaw shall come into force on the 1st day of December 2009.

3 Repeal

As from the day this part of the Bylaw comes into force, Chapter 1 of the General Bylaw 1997 and any amendments in force in the Kawerau District shall be repealed.

4 Application of Bylaw

This part of the Bylaw shall apply to the Kawerau District.

5 Scope

The purpose of this part of the General Bylaw 2009 is to identify and clearly interpret those terms and expressions that are used throughout the Kawerau District Council General Bylaw 2009.

Additional definitions not included within this part are contained in the particular part(s) of the Bylaw in which they are used.

This part also outlines the 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 general bylaws.

6 Definitions and interpretation

For the purposes of the 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 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 Officer or the Council to act on its behalf.
AUTHORISED OFFICER	An authorised officer for the purposes of this bylaw shall include: <ol style="list-style-type: none"> 1. A person who has been appointed or authorised in writing by the Chief Executive Officer or the Council to act on its behalf and with its authority; and 2. A member of the NZ Police; and 3. Any other person whose authorisation by another statutory authority accords that person the status of an officer with powers under this Bylaw.
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 Kawerau District 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 DWELLING HOUSE	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 premise(s) 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 premise(s), 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 his/her 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 animals (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 its 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.

6.1 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 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.

7 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.

8 Serving of orders and notices

- 8.1 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 or other recorded delivery to that person's last known residential or business address.

- 8.2 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 8.1.
- 8.3 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.

- 8.4 Where an order or notice is sent by registered post or other recorded delivery, 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.
- 8.5 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.

9 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.

10 Licences

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 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.

- 10.6 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.
- 10.7 If, following a request for payment, any licence fee due remains unpaid, the licence shall immediately cease to have effect.

11 Suspension and revocation of licences

- 11.1 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, unless this Bylaw provides otherwise.
- 11.2 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 premise 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.
- 11.3 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.
- 11.4 A person whose licence has been suspended under this clause and any premise for which that licence has been so suspended is, during the period of that suspension, deemed to be unlicensed.

12 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 requirement to comply fully 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.

13 Forms

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

14 Fees and charges

- 14.1 The Council may prescribe fees to be charged for any certificate, authority, approval, permit, or consent form, 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.
- 14.2 Where a fee has been paid under 10.1 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.

15 Offences and breaches

- 15.1 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, he or she is 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.
- 15.2 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 his/her full name and address.

16 Removal of works

- 16.1 Where the notice served under section 8 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.
- 16.2 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.
- 16.3 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.

- 16.4 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 16.2).
- 16.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under 16.1.
- 16.6 If not claimed within a reasonable time, the Council may dispose of 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.

17 Penalties for breach of bylaws

- 17.1 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).
- 17.2 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.

Revocations

Chapter 1 of the General Bylaw 1997 is hereby revoked.

The Kawerau District Council General Bylaw 2009: Part 1- Introductory was duly made by a resolution passed at a meeting of the Kawerau District Council held on 24 November 2009 following a special consultative procedure.

The Common Seal of the
Kawerau District Council
 was affixed hereto in the presence of:

.....
 Mayor

.....
 Chief Executive Officer

.....
 Date