



# Part 1

## *INTRODUCTION*

[www.whakatane.govt.nz](http://www.whakatane.govt.nz)



# PART 1

## INTRODUCTION

*Date made: 30 June 2008  
Commencement: 1 July 2008*

### **Explanatory Note**

Part 1 – Introduction outlines the serving of orders and notices, powers of delegation and entry, suspension and revocation of licences, removal of works executed contrary to any Part of the Bylaw, fees and charges, offences and penalties for breach of the Whakatane District Council Consolidated Bylaw 2007 (the Bylaw).

The purpose of Part 1 – Introduction is also to identify and clearly interpret the terms that are used throughout the Bylaw.

For ease of interpretation, some definitions that are applicable to specific Parts of the Bylaw are included under the heading “Interpretation” of that Part of the Bylaw as well as or instead of in Part 1 - Introduction.

This Bylaw is made pursuant to the provisions of the following enactments:

- Local Government Act 2002
- Local Government Act 1974
- Bylaws Act 1910
- Transport Act 1962
- Land Transport Act 1998
- Health Act 1956
- Food Act 1981
- Burial and Cremation Act 1964
- Dog Control Act 1996

This Bylaw has been made taking into account the Principles of the Treaty of Waitangi and in particular the consultation requirements established by the Treaty principles and the Local Government Act 2002.

### **CONTENTS**

- 1.1 Title**
- 1.2 Commencement**
- 1.3 Bylaws Revoked**
- 1.4 Serving of Notices and Documents**
- 1.5 Powers of Entry for the Purposes of this Bylaw**

- 1.6 Licences**
- 1.7 Suspension and Revocation of Licences**
- 1.8 Dispensing Powers**
- 1.9 Forms**
- 1.10 Fees and Charges**
- 1.11 Offences and Breaches**
- 1.12 Continuing Offences**
- 1.13 Removal of Works**
- 1.14 Penalties for Breach of the Bylaw**
- 1.15 Interpretation**

# PART 1

## INTRODUCTION

### 1.1 TITLE

- 1.1.1 The title of this Bylaw is the “Whakatane District Council Consolidated Bylaw 2007”.

### 1.2 COMMENCEMENT

- 1.2.1 The Bylaw shall come into force throughout the Whakatane District on 1<sup>st</sup> July 2008 or as otherwise stated on any Part of the Bylaw.
- 1.2.2 Any resolution made under the Whakatane District Council Consolidated Bylaw 1997 before this Bylaw comes into force shall continue in force until altered or revoked by further resolution.

### 1.3 BYLAWS REVOKED

- 1.3.1 All Bylaws in force in the District at the time of this Bylaw coming into force are revoked, except for the Whakatane District Council Trade Waste Bylaws 1996 which remains in force until Part 2 – Trade Waste commences and Part 12 – Parking and Roads, which remains in force until Part 12 – Traffic and Speed commences, Part 18 – Food Administration and Part 20 – Fire Prevention Involving Vegetation in Urban Areas which remain in force until they expire or are revoked and replaced.
- 1.3.2 The revocation of existing bylaws does not extinguish any existing cause of action.
- 1.3.3 All bylaws revoked shall remain in force and effect so far as they relate to anything done or any offence committed, penalty incurred, prosecution or proceeding commenced, right or liability accrued, licence issued, notice given, or order made, under or against any of the provisions of that Bylaw before the coming into force of this Bylaw.
- 1.3.4 All licences issued under any revoked Bylaw shall, after the coming into force of this Bylaw, be deemed to have been issued under this Bylaw and be subject to the provisions of this Bylaw.
- 1.3.5 All officers appointed by the Council at the time this Bylaw comes into effect are deemed to have been appointed under this Bylaw.
- 1.3.6 All fees and charges fixed by resolution of the Council in regard to any goods, services, inspections or licences provided for in any revoked Bylaw shall apply under the corresponding provisions of this Bylaw until further altered by further resolution of the Council.

### 1.4 SERVING OF NOTICES AND DOCUMENTS

- 1.4.1 Except as otherwise expressly provided for in any other enactment or in any Part of the Bylaw, 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.

1.4.2 If that 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 clause 1.4.1.

1.4.3 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 the 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.

1.4.4 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 order or notice is required to be served.

1.4.5 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.

## **1.5 POWERS OF ENTRY FOR THE PURPOSES OF THIS BYLAW**

1.5.1 Except where provided for under any other enactment, sections 171, 172, 173 and 182 of the Local Government Act 2002 apply in relation to any power of entry under this Bylaw.

## **1.6 LICENCES**

1.6.1 Any person doing or proposing to do anything 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.

1.6.2 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.

1.6.3 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.

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

1.6.5 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.

- 1.6.6 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 and conditions.
- 1.6.7 If following a request for payment, any licence fee due remains unpaid for a period of ten working days, the licence shall immediately cease to have effect.
- 1.6.8 The granting of any licence or the giving or the imposing of any directions or conditions in respect of any licence by the Council or any officer of the Council shall not render the Council or such officer liable in respect of any damage caused by or arising out of any act done or omitted in pursuance of or in connection with such licence.

## **1.7 SUSPENSION AND REVOCATION OF LICENCES**

- 1.7.1 Unless the Bylaw provides otherwise, should the licence holder be convicted of any offence relating to the holder's suitability as a license, the Council may immediately revoke or suspend the licence for any specified time.
- 1.7.2 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 attention 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
- (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.

- 1.7.3 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.
- 1.7.4 A person whose licence had 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.

## **1.8 DISPENSING POWERS**

- 1.8.1 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 such person so affected or on the recommendation of any Council officer, by

resolution dispense with the full compliance or relax the full compliance of any clause or Part of the Bylaw, or otherwise modify the same with or without added conditions.

## **1.9 FORMS**

- 1.9.1 Whenever forms are prescribed in the Bylaw, slight deviations, but to the same effect and not calculated to mislead, shall not invalidate those forms.

## **1.10 FEES AND CHARGES**

- 1.10.1 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 Local Government Act 2002 or any other enactment where that enactment contains no provision for authorising the Council to charge a fee.
- 1.10.2 The setting of fees or charges shall be in accordance with section 150 of the Local Government Act 2002.
- 1.10.3 Where a fee has been paid under clause 1.10.1 for a service which has not been given, the Council may provide a refund, a remission, or waiver of such fee, or portion of it as the Council may determine.

## **1.11 OFFENCES AND BREACHES**

- 1.11.1 Every person commits a breach of this Bylaw who:
- (a) Does or permits anything contrary to this Bylaw;
  - (b) Omits, or neglects to do, or knowingly permits or suffers to remain undone, anything which ought to be done at the time and in the manner provide by this Bylaw; or
  - (c) Does not refrain from doing anything which under this Bylaw they are required to refrain from doing; or
  - (d) Knowingly permits or allows any condition of or things to exist or continue to exist contrary to any provision contained in this Bylaw; or
  - (e) Refuses or neglects to comply with any notice given under this Bylaw; or
  - (f) Obstructs or hinders any authorised officer of the Council in the performance of any duty or power conferred by this Bylaw; or
  - (f) Fails to comply with any notice or direction given under this Bylaw; or
  - (g) Damages, destroys or defaces (or has in his or her possession without authority from the Council) any property, article, or thing belonging to the Council or under its control.
- 1.11.2 Where is it suspected that any person has committed a breach of this Bylaw, that person shall, at the direction of an authorised officer, provide their full name, address and date of birth.

## **1.12 CONTINUING OFFENCES**

- 1.12.1 The continued existence of any work, or building, land or premises or thing in such a state or form as to be in contravention of any Part, clause or provision of this Bylaw shall be deemed to be a continuing offence under this Bylaw.
- 1.12.2 Where any person is required by a notice under clause 1.4 to do anything, or refrain from doing anything, then they shall commit a separate or continuing offence on each day that person fails to comply with the notice.
- 1.12.3 The Council may, after a conviction for the continuing breach of this Bylaw, apply to any Court of competent jurisdiction for an injunction to restrain the further continuance of the breach by the person so convicted.

## **1.13 REMOVAL OF WORKS**

- 1.13.1 Where a notice served under clause 1.4 has not been complied with, the Council or any authorised officer or agent of the Council, may pull down, remove or alter, or cause to be pulled down, remove or alter any work, material or thing erected or being in contravention of this Bylaw.
- 1.13.2 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.
- 1.13.3 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.
- 1.13.4 If however the breach is such that public health, or safety considerations, or risk of consequential damage to Council assets is such that would create unacceptable results, the Council may take immediate action to rectify the defect and recover all reasonable costs.
- 1.13.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under clause 1.13.1.
- 1.13.6 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.

## **1.14 PENALTIES FOR BREACH OF BYLAWS**

- 1.14.1 Every person who commits an offence against this Bylaw is subject to:
- (a) The penalties set out in section 242 of the Local Government Act 2002; or
  - (b) Where another enactments specifies the penalty for a breach of the Bylaw, that other penalty (for example, Schedule 4 of the Land Transport Act 1998).
- 1.14.2 In accordance with section 162 of the Local Government Act 2002, the Council may apply to the District Court for an injunction to restrain a person from committing a breach of the Bylaw.





## 1.15 INTERPRETATION

- 1.15.1 The purpose of this section is to identify and define those terms and expressions that are used throughout the Bylaw.
- 1.15.2 In this Bylaw, the singular includes the plural and the plural includes the singular.
- 1.15.3 Words referring to any district, locality, place, person, officer, office, functionary party or thing mean each district, locality, place, person, officer, office, functionary party, thing, to whom or to which the provision applies.
- 1.15.4 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 Local Government Act 2002.
- 1.15.5 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.

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

<b>“Act”</b>	Local Government Act 2002
<b>"Adult"</b>	Any person of twelve years of age or over.
<b>“Agent”</b>	A person or business authorised to act on another’s behalf.
<b>"Air Gap Separation"</b>	A minimum vertical air gap between the outlet of the water supply fitting which fills a storage tank, and the highest overflow water level of that storage tank.
<b>"Animal"</b>	Any member of the animal kingdom, including any mammal, bird, finfish, shellfish, reptile, amphibian, insect or invertebrate, and includes the carcasses of constituent parts thereof, but does not include human beings.
<b>"Appliance"</b>	Includes the whole or any part of any utensil, machinery, instrument, apparatus, article (including any bench, shelf, table, or other item of equipment or furniture), container or receptacle used for or in connection with the manufacture, preparation, packing, storage, keeping, carriage, or delivery of food for sale, or for the sale of food.
<b>"Approval" or "Approved"</b>	Approved in writing by the Council, either by resolution of the Council or by an authorised officer of the Council.
<b>“Approved Site”</b>	A site on a public place approved by Council at which mobile shops and itinerant traders may conduct their business.

<b>"Authorised Officer"</b>	Any person delegated, 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. For the purposes of Part 12 – Traffic and Speed, "authorised officer" includes a parking warden appointed by the Council pursuant to the provisions of the Transport Act 1962 and an enforcement officer appointed pursuant to the provisions of the Land Transport Act 1998, or any Police Officer.
<b>"Authorised Access Way"</b>	An official access way authorised by the Council, which is identified by official Council signage.
<b>"Backflow"</b>	A flow of water or other liquid through any service pipe or supply pipe in a reverse direction to the normal supply flow.
<b>"Barbecue"</b>	Any fixed solid fuel equipment, or fixed or portable gas equipment, for the cooking of food.
<b>"Bathing"</b>	Includes water bathing and sunbathing.
<b>"Beach"</b>	Any land adjacent to any sea coast or lakeside capable of being used for recreational purposes which is vested in or under the control of the Council.
<b>"Berth"</b>	To fasten to any wharf or to fasten to anything fastened to any wharf.
<b>"Burial"</b>	Includes the process whereby the ground is disturbed for the purpose of interment of any body or ashes thereof.
<b>"Buried Services"</b>	All public sewers, rising mains, trunk sewers and other underground utilities under the responsibility of the Council.
<b>"Business Refuse"</b>	Includes floor sweepings, waste paper and refuse of a similar type as defined for 'household refuse', 'business refuse' shall also include 'trade refuse' such as scrap or waste materials resulting from the carrying on of any business, manufacture, process, trade, market or other undertaking of similar nature and will include such items as packing boxes and cartons.
<b>"Business Sign"</b>	Any sign displayed on a premises, the sole purpose of which is to indicate the business name of the occupier and the type of business undertaken.
<b>"Bylaw"</b>	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. Unless the context indicates otherwise, means all

parts of the Whakatane District Council Consolidated Bylaw 2007.

<b>"Camp"</b>	To set up a structure or caravan for the purpose of household living.
<b>"Cattle"</b>	Refer "Stock".
<b>"Cellar"</b>	A storey, or portion of a storey, below the ground level, the ceiling of which is less than 1.5 metres above the adjoining ground.
<b>"Cemetery"</b>	Any cemetery now or hereafter established by or being under the control of Council.
<b>"Characteristic"</b>	Any of the physical or chemical characteristics of a trade waste referred to in Schedules 1A and 1B of Part 2 – Trade Waste of this Bylaw.
<b>"Chief Executive"</b>	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.
<b>"Cleansing"</b>	Used with reference to a building, includes lime washing, papering, painting, disinfecting and the destruction of vermin.
<b>"Commercial Vessel"</b>	Any vessel available for charter or plying for hire or reward for the carriage of goods or persons but does not include a rental vessel.
<b>"Communicable Disease"</b>	Any communicable disease as defined in the Health Act 1956 and includes any disease for the time being specified as an 'infectious disease' in Section A of Part I and Part II of the First Schedule of that Act.
<b>"Condensing Water" or "Cooling Water"</b>	Any water used in any trade, industry, or commercial process or operation in such a manner that it does not take up matter into solution or suspension.
<b>"Consumer"</b>	Includes any person entitled to use or consume water supplied from any waterworks belonging to or vested in the Council.
<b>"Controlled Catchment Area"</b>	An area under the control of the Council, to which the public and domestic animals are prohibited from entry and from which waters are drawn for a public water supply.
<b>"Council"</b>	The Whakatane District Council or any officer authorised to exercise the authority of the Council.

<b>“Council Officer”</b>	Any officer of the Whakatane District Council authorised by the Council to take action in relation to this Bylaw or to undertake the duties of a Council Officer under this bylaw and any Person appointed especially or generally by the Council to enforce the provisions of this Bylaw.
<b>"Custodian or Ranger"</b>	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.
<b>"Customer"</b>	Means <ul style="list-style-type: none"> <li>(a) a person who uses, or has obtained the right to use or direct the manner of use of water supplied by the Water Supply Authority to any premises;</li> <li>(b) a person who either discharges, or has obtained a consent to discharge or direct the manner of discharge of wastewater from any premises to the Council's public sewer.</li> </ul>
<b>“Dairy Cattle”</b>	Cattle in use for milk production.
<b>"Detector Check Valve"</b>	A check (non-return) valve which has a positive closing pressure and a metered bypass to measure flows typically associated with leakage or unauthorised use on a dedicated fire supply.
<b>"Direct Connection"</b>	Includes any underwater outlet or any arrangement of pipes, hoses, or fittings temporary or otherwise which renders possible back flow into the Council's waterworks system.
<b>"Disconnection"</b>	In relation to Part 7 of this Bylaw means the physical cutting and sealing of the drain from a premises.
<b>"Distribution Pipe"</b>	Any pipe conveying water supplied by the Council from a storage tank or from a hot-water apparatus supplied from such tank and under pressure there from.
<b>“District”</b>	Has the meaning assigned to that term in section 5(1) of the Act.
<b>"Document"</b>	Includes any book, as herein defined, map, chart, plan, picture, engraving, etching, print, photograph, photographic or negative film, photocopy, piece of music, including a gramophone record or sound recording tape, broadsheet, card, cutting, record, cassette, tape recording, micro-film or other article of

a similar nature or anything upon which there is writing in any form or intelligible language.

**"Domestic Wastewater"**

means either that wastewater which is discharged from premises used solely for residential activities or wastes of the same character discharged from other premises, provided that the characteristics of the wastewater are an acceptable discharge.

**"Drain"**

Includes:

- (a) a foul water drain
- (b) a stormwater drain
- (c) 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 customer (or group of customers).

but does not include any declared public drain under the control of the Council.

**"Drainage District"**

The district or part thereof of the territorial authority for which the Council may provide a drainage system, including, with the consent of the territorial authority, any area within that district.

**"Drive"**

To direct or guide the movement of stock and excludes horses which are being led or ridden.

**"Driver"**

The meaning assigned to that term in section 2 of the Transport Act 1962.

**"Dual Pathway"**

A formed thoroughfare for both pedestrian and cycle traffic resolved for dual purpose for special reasons by Council.

**"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 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 Local Government Act 2002.

**"Footpath", "Private Road", Private Way"** The meaning assigned to that term in section 315(1) of the Local Government Act 1974.

**"Foul water drain"**

Any drain carrying sewage, foul water, obnoxious, toxic or trade waste to an approved public sewer system arising from or in connection with any use of any building or premises other than a waste or soil pipe or other work herein defined as sanitary plumbing.

<b>"Family"</b>	Includes one person living alone; and also includes two or more persons whether related or not, living together but independently of other persons living in the same building.
<b>"Food"</b>	The meaning assigned to that term in section 2 of the Food Act 1981.
<b>"Food Premises"</b>	Any premises on or at which food is manufactured, prepared, packed, stored, or handled, or on or from which food is sold or provided together with accommodation or a service, or any stall or mobile shop but excluding any part of a private dwelling house in which food is manufactured, prepared, packed, stored or handled for the purpose of consumption by its residents or their guests and not for the purpose of resale to members of the public.
<b>"Food Stall"</b>	Includes any movable stand, mobile shop or similar structure on or at or from which food is sold.
<b>"Footway Or Footpath"</b>	As much of any road or public place that is laid out or constructed by the authority of the Council for pedestrian use.
<b>"Goods"</b>	All types of movable personal property including (by way of example and not by way of limitation) animals, mail, farm and forestry produce which are carried as cargo on a heavy motor vehicle but does not include the personal effects of the driver of a heavy motor vehicle nor of any other person directly associated with the operation of a heavy motor vehicle.
<b>"Grassplot"</b>	Includes grass verges, reserves or any other grassed areas under the control of the Council.
<b>"Harbours Superintendent"</b>	The person appointed to that office by the Council and includes his or her deputy.
<b>"Hawker"</b>	Any person who carries or takes about any goods or wares for sale not in pursuance to any invitation to call with such goods and includes a pedlar and any person who exposes for sale any goods, but does not include a mobile shop.
<b>"Heavy Motor Vehicle"</b>	A motor vehicle, inclusive of any trailer and designed to carry any goods or animals, but excluding all passenger vehicles, the gross laden weight of which exceeds 3500 kg.
<b>"Hoarding"</b>	Any erection or structure or part thereof constructed for the display of advertising material and situated on or visible from any public place.
<b>"Horse"</b>	Refer "Stock".

<b>"Hours of Darkness"</b>	<p>Means:</p> <ul style="list-style-type: none"> <li>i. Any period of time between half an hour after sunset on any one day and half an hour before sunrise on the next day; or</li> <li>ii. Any other time when there is insufficient daylight to render clearly visible any stock, person, vehicle, or animal at a distance of 100 metres.</li> </ul>
<b>"Household Refuse"</b>	<p>Cold ashes, sweepings, dust, paper, bottles, wrapped bones and waste food, cans, cartons, or other food containers, or any refuse of any kind resulting from domestic housekeeping operations.</p>
<b>"Impound"</b>	<p>To impound in a public pound or any vehicle used to transport dogs to a public pound, or in the custody of any dog control officer or other persons so authorised by the Council.</p>
<b>"Infiltration"</b>	<p>Water entering a public sewer or private drain from groundwater through defects such as poor joins, and cracks in pipes or manholes. It does not include inflow.</p>
<b>"Inflow"</b>	<p>Water discharged into a private drain from non-complying connections or other drainlaying faults. It includes stormwater entering through illegal downpipe connections or from low gully traps.</p>
<b>"Infringement Offence"</b>	<p>An offence for which any person can be punished on indictment, by summary process, or by infringement process.</p>
<b>"Lawn Cemetery"</b>	<p>Any cemetery or portion thereof set aside or established by the Council in which memorials are restricted to plaques or tablets set flush with ground level.</p>
<b>"Level of Service"</b>	<p>Means:</p> <ul style="list-style-type: none"> <li>(a) the measurable performance standards on which the Water Supply Authority undertakes to supply water to its customers;</li> <li>(b) the measurable performance standards on which the Council undertakes to receive wastewater from its customers.</li> </ul>
<b>"Licence"</b>	<p>A licence or approval issued under this Bylaw or other authority by the Council.</p>
<b>"Licensee"</b>	<p>Includes the holder of such permit or authority.</p>
<b>"Litter"</b>	<p>The meaning assigned to that term in section 2 of the Litter Act 1979 and includes any refuse, rubbish,</p>



animal remains, glass, metal, garbage, debris, dirt, filth, rubble, ballast, stones, earth, or waste matter, or any other thing of a like nature.

<b>"Liquor"</b>	The meaning assigned to that term in section 2 of the Sale of Liquor Act 1989.
<b>"Local Authority"</b>	The meaning assigned to that term in section 5(1) of the Local Government Act 2002.
<b>"Map"</b>	Includes a chart or plan or other article of a similar nature.
<b>"Mass Limit"</b>	The total mass of any characteristic that may be discharged to the Council wastewater system over any 24-hour period from any single point of discharge or collectively from several points of discharge.
<b>"Master"</b>	The person for the time being in charge of any vessel, whether or not he or she is certified.
<b>"Maximum Concentration"</b>	The instantaneous peak concentration that may be discharged at any instant in time.
<b>"Mechanical Sprinkler or Sprinkler"</b>	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.
<b>"Mobile or Travelling Shop"</b>	A vehicle, whether self-propelled or not, from which goods, wares or merchandise are offered or exposed for sale in the road, or from which goods, wares, or merchandise may be ordered in the road (whether or not in pursuance of any invitation to call with the goods, wares or merchandise) or from which services are offered for sale in the road; but does not include any vehicle on or from which food is sold for consumption in or at the vehicle, or any vehicle used for the purpose of transporting and delivering goods, wares, or merchandise pursuant to a prior order placed for the delivery of the goods, wares or merchandise.
<b>"Mobile Trading"</b>	Includes:  (a) Hawking, peddling or itinerant trading;  (b) Trading from a mobile or travelling shop.
<b>"Motor Vehicle"</b>	Has the meaning assigned to that term in section 2(1) of the Land Transport Act 1998.
<b>"Network Utility Operator"</b>	A network utility operator as defined in the Resource Management Act 1991.

<b>"Neutered Dog"</b>	A dog that has been spayed or castrated; and does not include a dog that has been vasectomised.
<b>"Nuisance"</b>	Has the same meaning given to it by Section 29 of the Health Act 1956.
<b>"Occupier"</b>	Means: <ul style="list-style-type: none"> <li>(a) The inhabitant occupier of any property, and in any case where any building, house, tenement, or premises is or are unoccupied includes the owner;</li> <li>(b) In relation to registered premises, the person whose name appears in the record of registration kept by the local authority as the holder of the certificate of registration issued in respect of those premises;</li> <li>(c) In relation to food premises (other than a movable stall or part of a ship or aircraft) that are licensed under any enactment, the person in whose name the premises are so licensed;</li> <li>(d) In relation to any movable stall that is not for the time being situated within other food premises, the person in charge of the stall;</li> <li>(e) In relation to food premises of the Crown, to which none of paragraphs (a) to (c) of this definition apply, the manager or other person in charge of these premises.</li> </ul>
<b>"Offence"</b>	Any act or omission in relation to this Bylaw for which any person can be punished either on indictment or by summary process.
<b>"Offensive Matter"</b>	Includes any night-soil, offal, putrid meat or fish, entrails of fish, carrion, dead animals, blood, dung, manure, shellfish shells, bones, rags, refuse of vegetables or fruits, waste paper, impure water, also waste chemicals or gases and other matter giving off an offensive odour or being in any way likely to be injurious to health, offensive or give rise to a nuisance.
<b>"Offensive Refuse"</b>	Waste paper, sweepings, waste food, cans, cartons or other food containers, or other rubbish or refuse from commercial or professional offices or from banks, shops, or other business establishments, but excluding any article hereafter defined as trade refuse.
<b>"Open Air"</b>	Means in relation to fires otherwise than within:

	<ul style="list-style-type: none"> <li>(a) an incinerator constructed to the New Zealand Standard 5202; or</li> <li>(b) any barbecue or brazier; or</li> <li>(c) traditional cooking fire.</li> </ul>
<b>"Operation Mobility Carpark"</b>	A carpark set apart under Part 12 – Traffic and Speed Limits of this Bylaw.
<b>"Operation Mobility Permit"</b>	A permit issued by the New Zealand Crippled Children Society (CCS) Incorporated to persons with physical disabilities for the purposes of its Operation Mobility programme.
<b>"Owner"</b>	Means <ul style="list-style-type: none"> <li>(a) In relation to any property, or as applied to any land, building, or premises, means any person for the time being entitled to receive the rent of such property, or who would be so entitled if it were let to a tenant at rack rent, and where any such person is absent from New Zealand, includes their attorney or agent;</li> <li>(b) For the purpose of clause 19.10 of Part 19 - Public Health and Nuisances (which relates to Commercial Spa and Swimming Pool provisions) means the owner or occupier of a property at which a pool is located.</li> <li>(c) In relation to any dog has the same meaning as defined in Section 2 of the Dog Control Act 1996.</li> <li>(d) In relation to any vehicle means the person lawfully entitled to the possession thereof.</li> </ul>
<b>"Parking"</b>	The meaning assigned to that term in section 2 of the Transport Act 1962.
<b>"Park"</b>	The meaning assigned to that term in section 2 of the Transport Act 1962.
<b>"Parking Place"</b>	The meaning assigned to that term in section 591(6) of the Local Government Act 1974.
<b>"Parking Warden"</b>	Any person appointed by the Council to hold the position, and carry out the duties of a Parking Warden for the purposes of this Bylaw and the Transport Act 1962.
<b>"Parks"</b>	Refer "Reserves".

<b>"Passenger"</b>	In respect of any taxicab or passenger service vehicle means a person carried in or on such vehicle other than the driver.
<b>"Passenger Service Vehicle"</b>	The meaning assigned to that term in section 2 of the Land Transport Act 1998 and includes a taxicab and a bus.
<b>"Perishable Food"</b>	Food that is of such a type or is in such a condition that it may spoil.
<b>"Person"</b>	A natural person and also a body of persons, whether corporate or uncorporate.
<b>"Person driving or in charge of any heavy motor vehicle"</b>	The driver or operator of that heavy motor vehicle.
<b>"Plot"</b>	An area of land which is set aside for a grave in any cemetery, shown in respect of such cemetery on the plan held in the office of the Council, as a separate grave site.
<b>"Point of Discharge"</b>	The boundary between the public sewer and a private drain.
<b>"Pool"</b>	For the purposes of the Commercial Spa and Swimming Pool provisions set out in Part 19 – Nuisances and Public Health means any swimming pool or spa which is used or made available for use by persons paying to use the same or to use the premises in which they are situated, whether or not the primary purpose of the premises is the operation of a pool, and whether or not such premises are primarily designed to provide some form of transient accommodation, but does not include any pool serving a single private household unit.
<b>"Port"</b>	See "Wharf".
<b>"Poster"</b>	A sign consisting of a placard posted or displayed in a public place as an announcement of a function or event.
<b>"Poultry"</b>	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.
<b>"Premises"</b>	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.

<b>"Private Road"</b>	Refer "Road".
<b>"Private Way"</b>	Refer "Road"
<b>"Prohibited Fire Season"</b>	A period of time, whether of fixed or indefinite duration, specified pursuant to this Bylaw during which period the lighting of fires in the open air is prohibited.
<b>"Public Notice"</b>	The meaning assigned to that term in section 5(1) of the Local Government Act 2002.
<b>"Public Place"</b>	<p>(a) Means a place –</p> <ul style="list-style-type: none"> <li>(i) that is under the control of the Council; and</li> <li>(ii) that is open to, or being used by the public, whether or not there is a charge for admission; and</li> <li>(iii) includes a road, whether or not the road is under the control of the Council; and</li> <li>(iv) any part of a public place.</li> </ul> <p>(b) In relation to any dog, has the same meaning as “public place” in section 2 of the Dog Control Act 1996;</p> <p>(c) In relation to liquor control purposes, has the same meaning as Section 147(1) of the Local Government Act 2002.</p>
<b>“Public Stand”</b>	Any area set aside pursuant to Part 12 of the Bylaw, for use by a passenger service vehicle for the loading or unloading of passengers.
<b>"Publicly Notify"</b>	Or words of a similar meaning means published on at least one occasion in a newspaper circulating in the Whakatane District or under emergency conditions by the most practical means available at that time.
<b>"Push Through Water Heater"</b>	A water heater with a stoptap on the cold water inlet so designed that the hot water is discharged through an open outlet.
<b>“Ramp”</b>	Any area of land used for the launching and recovery of any vessel.
<b>"Ranger"</b>	Refer "Custodian".
<b>"Readily Perishable Food"</b>	Perishable food that consists wholly or partly of milk, milk products, eggs, meat, poultry, fish or shellfish, or ingredients that are capable of supporting the

progressive growth of microbiological organisms that can cause food poisoning or other food-borne illness, but excluding bakery products such as cakes.

**“Recyclables”**

Any materials that can be converted into other products by further processing. This includes, but is not limited to the following: paper, cardboard, glass, aluminium cans, steel cans, ferrous and non - ferrous metals, clothing, textiles, wood, or any other material the Council or its agent may notify as recyclable.

**“Refuse”**

Rubbish or waste of any kind resulting from domestic housekeeping operations or from the carrying on of any business, manufacture, process, trade, market or other undertaking but does not include trade waste.

**"Reserve"**

Includes any open space, plantation, park, garden or ground set apart for public recreation or enjoyment which is now or hereafter may be under the management or control of the Council.

**"Restricted Fire Season"**

A period of time, whether of fixed or indefinite duration, specified pursuant to this Bylaw, during which period permits are required by this Bylaw for the lighting of fires in the open air.

**"Restrictor"**

A control device fitted to the service pipe to regulate the flow of water to a customer's premises.

**"Rising Main"**

For the purposes of Part 7 of the Bylaw, means a sewer through which wastewater is pumped.

**“Road”**

Has the same meaning as in the in the Land Transport Rule: Setting of Speed Limits 2003 and includes a 'street', 'private street', 'service lane', 'Right of Way or R.O.W.' or any land owned or administered by Council which is used or intended to be used for vehicular access to any other land or for the parking of vehicles.

“Road” is defined in the Land Transport Rule: Setting of Speed Limits 2003 as:

- (a) includes:
  - (i) a street; and
  - (ii) a motorway; and
  - (iii) a beach; and
  - (iv) a place to which the public have access, whether as a right or not; and
  - (v) all bridges, culverts, ferries and fords, forming part of a road or street or

motorway, or a place referred to in (iv);  
and

- (vi) all sites at which vehicles may be weighed for the purposes of the Land Transport Act 1998 or any other enactment; and

(b) includes a section of the road.

For the purposes of Part 12 and Part 16 of this Bylaw “Road” has the same meaning as in the Land Transport Rule: Setting of Speed Limits 2003, but does not include any State Highways within the Whakatane District which are not under the Council’s control.

**"Roadway"**

That portion of the road used or intended for use by vehicular traffic in general.

**"Sale or Sell"**

Includes barter, and also includes offering or attempting to sell or receiving for sale, or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or allowing to be sold, offered, or exposed for sale, and refers only to sale within the District for human consumption or use. Food shall be deemed to be for sale which, having been ordered, purchased, or sold, is held for delivery to the purchaser, or is in process of delivery to the purchaser, by the vendor or his servant or agent.

**"Service Lane"**

Refer "Road"

**"Service Opening"**

A manhole, or similar means for gaining access for inspection, cleaning or maintenance of a public sewer.

**"Service Pipe"**

That section of the pipe conveying water from the street main to that consumer's premises, which lies between the main and a point 250mm distant from the consumer's property and includes:

- (a) The ferrule or stoptap at the junction of the service pipe with the main; and
- (b) Any stoptap fitted at the end of the service pipe; and
- (c) Any stoptap fitted on the service pipe between the end thereof and the main.

**"Services"**

Activities associated with business provided within the District by servicepersons, including (by way of example and not by way of limitation) plumbing, drainage, building,

landscaping, electrical, gas, mechanical works, painting, panelbeating and similar such trades.

<b>"Sewage Sludge"</b>	The solid material settled out from wastewater during the treatment process.
<b>"Sexton"</b>	Any person appointed from time to time by the Council as sexton of any cemetery.
<b>"Sheep"</b>	Includes any ram, ewe, wether or lamb.
<b>"Ship"</b>	Any vessel whatsoever not propelled exclusively by oars.
<b>"Shore"</b>	Includes, in relation to a river, any bank of the river.
<b>"Sign"</b>	Any display or other advertising device intended to attract attention which is visible from some public place, together with any frame or support therefor.
<b>"Sign Case"</b>	Any case, panel, board, or other device attached to any premises to which name-plates are affixed, or for the display of the names, business designations, agencies, and addresses of the occupiers of the premises to which it is attached.
<b>"Smoke"</b>	Includes any fumes, gases, soot, dust, grit or other matters produced in the process of combustion.
<b>"Speed Limit"</b>	Has the same meaning as in the Land Transport Rule: Setting of Speed Limits 2003 and means: <ol style="list-style-type: none"><li>a. the maximum speed at which a vehicle may legally be operated on a particular road, but does not mean the maximum permitted operating speed for classes or types of vehicle specified in any Act, regulation or rule;</li><li>b. for a minimum speed limit, the minimum speed at which a vehicle may be operated in a specified lane of a road;</li><li>c. an urban, rural, permanent, holiday, temporary, variable or minimum speed limit.</li></ol>
<b>"Stall"</b>	Includes a movable stand, mobile shop, road vehicle, fishing vehicle or similar structure vehicle or vessel that is being used for the sale of goods in any public place.

**"Standard Methods for the Examination**



<b>of Water and Wastewater"</b>	The 18th edition (including the Supplement) as published by the American Water Works Association (AWWA) American Public Health Association, or the most current subsequent edition of this publication.
<b>"State Highway"</b>	A state highway declared under section 60 of the Transit New Zealand Act 1989.
<b>"Stock"</b>	Any animal normally kept for their meat, wool, skin or milk and includes any cattle, horse, deer, sheep, goat, pig or other such animal.
<b>"Stopping Place"</b>	That portion of a roadway which is indicated as a stopping place for passenger service vehicles and includes any terminus, taxi stand or other similarly designated space.
<b>"Stoptap"</b>	Includes stopcock, stopvalve, and any other device for stopping at will the flow of water in a line of pipes.
<b>"Storage Tank"</b>	Any tank having a free water surface under atmospheric pressure to which water is supplied across an air gap separation.
<b>"Stormwater"</b>	All surface water run-off resulting from precipitation.
<b>"Stormwater Drain"</b>	Any drain conveying water from roof areas, sealed areas, sub-soil seepage in an approved manner.
<b>"Street"</b>	See "Road".
<b>"Structure"</b>	Any building, equipment, device or other man made facility fixed to or forming part of land and includes slipways, jetties, wharves, boat ramps, and reclamations providing loading and unloading facilities whether or not these are above or below Mean High Water Springs.
<b>"Supply Pipe"</b>	That section of pipe between the point of supply and the customer's premises through which water is conveyed to the premises. This section of pipe is owned and maintained by the customer.
<b>"Surfboard"</b>	Any object of wood, metal, fibreglass, plastic, or any other material of any kind whatsoever used for the purpose of surfing or surf riding.
<b>"Surfboard Area"</b>	An area as defined and reserved under Part 13 – Beaches of the Bylaw.
<b>"Tankered Waste"</b>	Is water or other liquid, including waste matter in solution or suspension, which is conveyed by vehicle for disposal, excluding domestic sewerage discharged directly from house buses, caravans, buses and similar vehicles.

<b>"Taxi Stand"</b>	Any area set aside by Council pursuant to Part 12 of this Bylaw for use by taxis to park while awaiting passengers.
<b>"Temporary Sign"</b>	A sign of a temporary nature erected or displayed to announce or advertise an event, function or sale in progress or to take place shortly within the building or on the premises to which such sign is affixed, but shall not include any matter displayed on a licensed hoarding or signboard.
<b>"Termination"</b>	In Part 8 of this Bylaw means the physical cutting off of the supply to a premises.
<b>"Territorial Authority"</b>	The meaning assigned to that term in section 5(1) of the Local Government Act 2002.
<b>"To drive"</b>	Includes to lead or to ride.
<b>"Trade Premises"</b>	Includes: <ul style="list-style-type: none"> <li>(a) Any Premises used or intended to be used for any industrial or trade purpose; or</li> <li>(b) Any Premises used or intended to be used for the storage, transfer, treatment, or disposal of waste materials or for other waste management purposes, or used for composting organic materials; or</li> <li>(c) Any other Premises from which a Contaminant is discharged in connection with any industrial or trade process;</li> <li>(d) Any other Premises discharging other than Domestic Sewage;</li> </ul> <p>and includes any land or Premises wholly or mainly used for agricultural or horticultural purposes (see Schedule 1C (of Part 2 – Trade Waste) for examples).</p>
<b>"Trade Refuse"</b>	Refuse of any kind resulting from the carrying on of any business, manufacture, process, trade, market, or other undertaking but does not include trade waste.
<b>"Trade Waste"</b>	Any liquid, with or without matter in suspension or solution, that is or may be discharged from a Trade Premises to the Council's Sewerage System in the course of any trade or industrial process or operation, or in the course of any activity or operation of a like nature; and may include Condensing or Cooling waters; Stormwater which cannot be practically separated, or Domestic Sewage.

<b>"Traditional Cooking Fires"</b>	Any hangi or similar fire in the open air used for the preparation of food using traditional cooking methods.
<b>"Trailer"</b>	The meaning assigned to that term by the Transport Act 1962.
<b>"Trunk Sewer"</b>	A sewer generally greater than 150 mm in diameter, which forms a part of the principal drainage network of the Whakatane District Council's wastewater drainage system.
<b>"Uncontrolled Catchment Area"</b>	An area to which the public and domestic animals are not prohibited from entry and from which waters are drawn or likely to be drawn for public consumption.
<b>"Unit"</b>	In Part 8 of this Bylaw is the basis of measurement for a restricted flow supply. One unit equals a volume of 1.0 m <sup>3</sup> /day.
<b>"Urban Area"</b>	Has the same meaning as in the Whakatane District Plan.
<b>"Urban Road"</b>	Any road within the urban area as defined by the Whakatane District Plan.
<b>"Urban Street"</b>	A road or a portion of a road, which is within an area controlled by a 70km per hour speed restriction or less.
<b>"Urban Traffic Area"</b>	Has the same meaning as in the Land Transport Rule: Setting of Speed Limits 2003 and means an area designated under this rule that consists of one or more specified roads or a specified geographical area, to which the urban speed limit generally applies.
<b>"Vegetation"</b>	includes - <ul style="list-style-type: none"> <li>(a) all plants and the product thereof, live or dead, standing, fallen, windblown, cut, broken, pulverised, sawn, or harvested, natural or disturbed in use or as waste, rubbish, refuse or debris, stump, stubble or otherwise; and</li> <li>(b) fossil fuel exposed at or lying within 20 metres of the surface of any land; and</li> <li>(c) peat in any form - but does not include wood forming part of a structure or otherwise in processed form.</li> </ul>

<b>"Vehicle"</b>	<p>Has the same meaning as in the Land Transport Act 1998 and:</p> <p>(a) Means a contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and</p> <p>(b) Includes a hovercraft, a skateboard, in-line skates, and roller skates; but</p> <p>(c) Does not include—</p> <ul style="list-style-type: none"> <li>(i) A perambulator or pushchair:</li> <li>(ii) A shopping or sporting trundler not propelled by mechanical power:</li> <li>(iii) A wheelbarrow or hand-trolley:</li> <li>(iv) A pedestrian-controlled lawnmower:</li> <li>(v) A pedestrian-controlled agricultural machine not propelled by mechanical power:</li> <li>(vi) An article of furniture:</li> <li>(vii)[a] wheel-chair not propelled by mechanical power:</li> <li>(viii) Any other contrivance specified by the rules set out in the Land Transport Act not to be a vehicle for the purposes of this definition:</li> <li>(ix) any rail vehicle.</li> </ul>
<b>"Vehicular Crossing"</b>	A formed access for vehicles to enter or leave private land from or to a road.
<b>"Verandah"</b>	A portico, porch, shed, shade, awning, blind, covering, or like structure, and their supports, projecting into or over any part of a public place.
<b>"Verge"</b>	That portion of a road reserve between the edge of any formed vehicular carriageway and the nearest property boundaries.
<b>"Vessel"</b>	Any ship or boat and includes a motor vessel such as a standardised motorised private launch boat, any yacht, inflatable rubber boat, kayak, jet ski and any fishing boat.
<b>"Wastewater"</b>	Water or other liquid, including waste matter in solution or suspension, discharged from a premises to a sewer.
<b>"Water Supply Authority (WSA)"</b>	Is the operational unit of the Council responsible for the supply of water, including its authorised agents.
<b>"Waterworks"</b>	The meaning assigned to that term in section 5(1) of the Local Government Act 2002.
<b>"Wet Riser Main"</b>	A vertical water main installed in a multi-storey building with outlets on each floor to which the fire

brigade can connect hoses for fire fighting purposes, and connected to a water supply.

**“Wharf/Port”**

Includes all wharves, quays, jetties, piers, land and premises owned by or under the control of the Council in, on, or from which passengers or goods may be taken on board of or loaded from vessels. For clarity, these are generally located within the Whakatane Port Zone, Rangitaiki River mouth, and the Ohiwa Harbour. Part 14 – Ports and Wharves applies to every Council owned port structure or wharf situated in the Whakatane District.

**“Window Sign”**

Any sign displayed in or painted, printed, written, carved, inscribed, endorsed or otherwise fixed to or upon, or projected into or upon any window or in the doorway within the building line of any premises.

**“Words”**

Referring to any district, locality, place, person, office, officer, functionary, party, or thing shall be construed distributively as referring to each district, locality, place person, office, officer, functionary, party or thing to whom or to which the provision is applicable.

**“Working Day”**

The meaning assigned to that term in section 5 (1) of the Local Government Act 2002.

**“Writing, Written or similar term”**

Words printed, painted, engraved, lithographed, or otherwise traced or copied.

**“Zone”**

A zone applied to land by the Council's District Plan.

'Commercial or Related Zone' means a zone defined as such in the Council's District Plan.

'Industrial or Related Zone' means a zone defined as such in the Council's District Plan.

'Residential or Related Zone' means a zone defined as such in the Council's District Plan.

'Rural or Related Zone' means a zone defined as such in the Council's District Plan.

