



# Reserves Bylaw 2015



## Part I - Citation and Interpretation

1 Title .....	3
2 Commencement and Application .....	3
3 Repeals .....	3
4 Enabling Enactments .....	3
5 Definitions and Interpretations .....	3

## Part II - General

6 Public Safety and Nuisances .....	5
7 Damage .....	6
8 Fires on Reserves .....	6
9 Litter .....	7
10 Water .....	7
11 Obstructions .....	7
12 Erection of Booths and Tents .....	7
13 Exposing Articles for Trade .....	8
14 Animals in Reserves .....	8
15 Access to Beach .....	8
16 Assembly .....	9
17 Sport and Games .....	9
18 Riding and Driving .....	10
19 Dangerous and Inconsiderate Driving .....	10
20 Bathing .....	10
21 Restriction on the use of Playground Equipment .....	10
22 Destruction of Wildlife .....	10
23 Entrances and Exits only to be used .....	11
24 Times of Opening and Charges .....	11
25 Closing in Special Circumstances .....	11
26 Charges on Special Occasions .....	11

## Part III - Miscellaneous

# Contents

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<b>27 Ordering Off</b> .....	<b>12</b>
<b>28 Offenders required to Give Names</b> .....	<b>12</b>
<b>29 Offences and Breaches</b> .....	<b>12</b>
<b>30 Penalties for Breach of the Bylaw</b> .....	<b>13</b>
<b>31 Removal of Encroachment</b> .....	<b>13</b>
<b>32 Removal of Works</b> .....	<b>14</b>
<b>33 Transfer of Approval or Permit</b> .....	<b>14</b>
<b>34 Suspension and Revocation of Permit or Approval</b> .....	<b>14</b>
<b>35 Serving of Orders or Notices</b> .....	<b>15</b>
<b>36 Officers to Continue in Office</b> .....	<b>15</b>
<b>37 Delegation and Appeal</b> .....	<b>15</b>
<b>38 Dispensing Power</b> .....	<b>16</b>
<b>39 Fees and Charges</b> .....	<b>16</b>

# 1. Title

This bylaw may be cited as the "Gisborne District Reserves Bylaw 2008".

# 2. Commencement and Application

This bylaw shall come into force on the 22 May 2015 and shall apply to the whole of the Gisborne District.

# 3. Repeals

The Gisborne District Council Reserves Bylaw 2008 is hereby repealed.

# 4. Enabling Enactments

This Bylaw is made pursuant and subject to the Reserves Act 1977, the Local Government Act 2002, the Litter Act 1979, the Transport Act 1962, the Land Transport Act 1998 and the Regulations and Rules made pursuant to these Acts.

# 5. Definitions and Interpretations

5.1 The Interpretation Act 1999 shall apply to this Bylaw.

5.2 In this bylaw, unless the context otherwise requires:

Act	Means the Local Government Act 2002.
Animal	Means stock, poultry and any other vertebrate animal of any age or sex that is kept in a state of captivity or is dependent upon human beings for its care and sustenance.
Approval	Means approval by Council or any authorised officer so authorised on behalf of the Council and any approval may include conditions.
Authorised Officer	Means any person delegated, appointed or authorised in writing by the Council to act on its behalf and with its authority.
Beach	Means that part of the foreshore landwards from the mean high water mark that is under the control of the Council.
Council	Means the Gisborne District Council or any Committee of the Council or officer delegated to exercise the authority of Council.
Council facilities	Include grandstands, changing rooms, ablution facilities, playground equipment and playing fields.
Cycle, Cycle path and Cycle lanes	Mean the same as in the Land Transport (Road User) Rules 2004.
District	Means the territory of Council.
Drive	Means to operate or direct the course of a vehicle or animal and includes riding.
Enactment	Means the same as in Section 29 of the Interpretation Act 1999.
Household Refuse	Means refuse originating from residential premises.

Footpath	Means the same as in the Land Transport (User Rules) 2004.
Foreshore	Means the same as in Section 2 of the Resource Management Act 1977
Litter	Means the same as in Section 2 of the Litter Act 1979.
Motor Vehicle	Means the same as in Section 2(1) of the Land Transport Act 1998.
Permit	Means a permit issued by Council granting approval to operate in terms of this Bylaw.
Permit Holder	Means the holder or holders of a permit issued in terms of this Bylaw.
Person	Includes a corporation and also a body of persons whether corporate or unincorporated.
Playground equipment	Means any playground equipment, including a skateboard ramp and a paddling pool, provided or maintained by the Council for public use.
Public Notice	Means the same as in the Local Government Act 2002 and 'published' and 'publicly notified' have corresponding meanings. A public notice setting forth the object, purport, or general effect of a document shall in any case be sufficient notice of that document.
Recycling material	Includes cardboard, paper, plastics, glass and any other material collected for reprocessing for reuse.
Refuse	Includes any litter, refuse, rubbish, animal remains, glass, metal, garbage, debris, dirt, filth, rubble, ballast, stones, earth, waste matter or any other thing of like nature.
Reserve	Means the same as in Section 2 of the Reserves Act 1977.
Road	Means the same as in Section 315 of the Local Government Act 1974.
Sale or Sell	Means the same as in Section 4 of the Food Act 1981 and also includes the extended meaning given in Regulation 2(5) of the Food Hygiene Regulations 1974.
Sign	Means every advertising device or advertising matter of whatever kind, whether consisting of a specially constructed device, structure, erection or apparatus, or painted, printed, written, carved, inscribed, endorsed, projected onto, placed, or otherwise fixed to or upon any premises, wall, fence, rock, stone, structure, stationary vehicle or erection of any kind whatsoever.
Trade refuse	Means refuse originating from a commercial or industrial premises or business.
Vegetation	Means the same as in Section 2 of the Forest and Rural Fires Act 1977.
Vehicle	Means the same as it has in Section 2(1) of the Land Transport Act 1998.
Watercourse	Means the same as in Section 2 of the Land Drainage Act 1908.
Wildlife	Means the same as in Section 2 of the Wildlife Act 1953.
Work	Includes any excavation or disturbance.

- 5.3** Words importing the singular number include the plural number, and words importing the plural number include the singular number.
- 5.4** For the purposes of this Bylaw the word "shall" refers to practices that are mandatory for compliance with the Bylaw, while the word "may" refers to practices which are discretionary.
- 5.5** The headings to the clauses of this Bylaw shall not affect the construction thereof.
- 5.6** Every Schedule to this Bylaw shall be deemed to form part of the Bylaw provided that any such schedule may be altered from time to time by Council resolution.

## **6. Public Safety and Nuisances**

- 6.1** No person shall, without the prior written approval of the Council:
- a. Undertake any work in a reserve;
  - a. Take off or land any aircraft, hot air balloon, hang glider, parachute or similar aircraft in a reserve except in an emergency;
  - b. Set off fireworks or explosive material in or on a reserve, or so near thereto in a way that does or is likely to create a nuisance;
  - c. Bring onto any reserve a firearm, firework, explosive air gun, catapult, bow and arrows, cross bow or axe or similar weapon or tool;
  - d. Solicit any subscription, collection or donation;
  - e. Sing, play any musical instrument, preach, read aloud, lecture, perform, use a loud speaker, amplifier or similar device on any reserve in a way that does or is likely to create a nuisance;
  - f. Distribute any printed or written material advertising any product, service or entertainment on any reserve.
- 6.2** Any person distributing printed or written advertising material in a reserve shall be responsible for the removal of any litter attributable to the distribution of the advertising material.
- 6.3** No person shall in a reserve:
- a. Play any game or use any object including skating devices, bicycles or motorised scooters, recklessly or in a manner which may intimidate, cause annoyance or inconvenience, be dangerous or injurious or cause a obstruction or nuisance to persons in the reserve, or damage the reserve;
  - a. Drive any vehicle in a manner that is dangerous or inconsiderate to pedestrians or other vehicles;
  - b. Loiter or remain in that reserve after being directed to move on by an authorised officer or a police officer;
  - c. Leave any work, hole or excavation in a reserve in a manner that could be a danger to anyone entering or using that reserve;



- d. Use obscene language, be intoxicated or under the influence of drugs or be noisy, riotous or misbehave;
- e. Obstruct, disturb, annoy or interfere with any other person in the use of a reserve.

**6.4** Any person undertaking construction or maintenance adjacent to a reserve place shall ensure that the public is protected from any damage or falling material or equipment.

## 7. Damage

**7.1** No person shall in a reserve, without the prior written approval of the Council:

- a. Damage, interfere with, destroy or remove any grass plot, flower bed, tree, shrub or plant or any inscription or label relating to it;
- b. Damage, interfere with, destroy or remove any notice board, sign, label or tablet used to indicate or exhibit any notice, name, regulation or bylaw;
- c. Pollute, damage, deface or disfigure, apply graffiti, posters or advertising devices to, or interfere with any ornament, statue, building structure, or facilities. (Nothing in this sub-clause shall prevent the Council from supplying or approving the installation of display boards in any reserve for the purpose of allowing posters to be displayed announcing forthcoming functions or events.);
- d. Damage or interfere with any natural feature, animal or plant;
- e. Remove any sand, soil or other naturally occurring material found in a reserve;
- f. Open any drain or sewer on, or disturb or remove the surface of, any reserve;
- g. Uproot or injure any tree, shrub or other vegetation or take any cuttings, pluck or pick any flowers or ferns or greenery;
- h. Plant or cultivate any plant or release any animal under circumstances that its retrieval by that person is unlikely or may be construed as abandonment of that animal;
- i. Enter any enclosures set aside for the cultivation of plants nor walk, drive, ride, trample on or damage any plant, flowerbed or border of a cultivated area;
- j. Remove, disturb, deface, damage or destroy any post, barrier, railing, seat, gate, bridge, building, structure, playground equipment, object of art or natural object, fence or hedge or any fitting or implement of any kind;
- k. Cause or permit to be done any act whatsoever by which damage is caused to any reserve, or any work or thing in, on, over or under the reserve.

**7.2** Any person carrying out authorised works in a reserve shall provide reinstatement of the reserve to a standard approved by the Council.

## 8. Fires on Reserves

No person shall in any reserve light any fire on any reserve except at fireplaces specially provided, or in an appliance designed for outdoor cooking, subject to any restriction imposed by Council on the lighting of fires.

## 9. Litter

9.1 No person shall in any reserve:

- a. Place, throw or leave litter or any material or thing or substance which is likely to be hazardous or injurious to any person, or likely to be offensive or create a nuisance on any reserve; Litter may be deposited in public litter receptacles where these are provided;
- b. Interfere with any refuse or recycling material which is awaiting collection by an authorised collector;
- c. Deposit in or around a public litter receptacle on any reserve any household refuse or trade refuse.

9.2 No person shall cause, permit or suffer any litter or other material whatever to escape from any receptacle or vehicle onto any reserve.

## 10. Water

10.1 No person shall:

- a. Place any obstruction or allow any such obstruction to remain in or upon any watercourse, stream, dam, pond or fountain on any reserve which does or is likely to obstruct the free flow of water therein;
- b. Place, throw or leave any material or thing or substance which is likely to be offensive or create a nuisance in any watercourse, stream, dam, pond or fountain on any reserve;
- c. Pollute or otherwise render unfit for human or animal consumption any water supply on any reserve;
- d. Permit or cause the wastage of water on any reserve or permit any water tap to flow for longer periods than may be reasonably required for the filling of utensils for drinking, cooking or washing purposes.

## 11. Obstructions

11.1 No person shall, without the prior written approval of the Council:

- a. Obstruct the entrances to or exits from any reserve;
- b. Place or leave any material or thing, including signage, in any reserve that could obstruct the public right of passage to or on that reserve.

11.2 Where the entrances to a reserve are closed for admission to the public, no member of the public may enter that reserve.

## 12. Erection of Booths and Tents

No person shall, without the prior written approval of the Council put up or erect any stall, tent, camp, booth, swing, amusement device, sign or other structure of any kind on any reserve.



## 13. Exposing Articles for Trade

No person shall, without the prior written approval of the Council conduct trade, provide a service to the public, or expose for sale any article or service on any reserve.

## 14. Animals in Reserves

- 14.1** Except as may be otherwise provided in the Gisborne District Council Dog Control Bylaw 1990, no person shall without the prior written approval of the Council take or allow any animal under that person's care or control onto any reserve.
- 14.2** The Council may from time to time specify by resolution publicly notified reserves where access by all or certain species of animals are at all or certain times allowed. The Council shall erect such signs on any reserve as necessary to give effect to any resolution made pursuant to this clause.
- 14.3** A person in control of an animal on any reserve shall ensure that the animal is kept under proper control so as not to create a danger or a nuisance for other persons using the reserve.
- 14.4** A person in control of an animal on any reserve shall ensure that the animal is kept under proper control to ensure that no damage is caused to the reserve, any part thereof or to any object or other animal thereon.
- 14.5** A person in control of an animal on any reserve in any area designated "urban" or "township" in the Combined Regional Land and District Plan shall immediately remove any faeces deposited by that animal and dispose thereof in a sanitary manner.
- 14.6** No person shall
- a. Break in, train, clean, shoe, bleed, dress or expose for show, hire or sale any animal on any reserve without the prior written approval of the Council;
  - b. Allow any vicious biting animal to stand on any reserve, unless properly and securely muzzled.
- 14.7** No person shall, without the prior written approval of the Council tether or otherwise put or place any animal for the purpose of depasturing or grazing the same, on any reserve.
- 14.8** If any animal is found on any reserve:
- a. In breach of this Bylaw, or
  - b. On any land not separated from any reserve by a fence considered by the Council to be sufficient to prevent that animal from accessing or damaging such a reserve, without any person having charge thereof;

THEN the owner shall be guilty of an offence against this Bylaw, and the animal may be impounded in accordance with the provisions of the Impounding Act 1955.

## 15. Access to Beach

- 15.1** The Council may from time to time by resolution publicly notified, determine periods or times during which access by vehicles to particular beaches shall be restricted in accordance with this clause of this Bylaw.
- 15.2** During the periods or times determined by the Council no person shall ride, drive, stop, stand, or park any vehicle on any specified beach except:

- a. With the prior written permission of the Council; or
- b. An emergency vehicle used at the time to save or protect life or health, or prevent injury or serious damage to property; or
- c. A vehicle used in an official capacity at the time by an authorised officer;
- d. When launching or retrieving a boat from the sea, or estuary or river, provided that such vehicular access shall be restricted to:
  - i. A route to the designated launching and retrieval point approved by the Council;
  - ii. Removal of the vehicle from the beach immediately upon completion of the launching or retrieval.

**15.3** No person shall drive any vehicle or ride any cycle or any horse on any beach in a manner as to:

- a. Endanger the safety of persons; or
- b. Be an annoyance or inconvenience to persons;

on the beach or the foreshore.

**15.4** Any person wishing to gain access from a reserve to a beach shall use a designated access where this is available.

## **16. Assembly**

**16.1** No person shall, without the prior written approval of the Council:

- a. Participate in any assembly or associate with other persons on a reserve in such a way as to pose a threat to the safety of any person, impede pedestrian or vehicular traffic;
- b. Organise, hold or conduct any meeting, gathering, demonstration, parade, procession or competition in a reserve so as to pose a threat to the safety of any person, impede traffic or cause an obstruction to, or impede, annoy or inconvenience any person.

## **17. Sport and Games**

**17.1** No person may play any game or use any object including skateboards, roller blades, roller skates, cycles or motorised scooters, recklessly or in a manner which may intimidate, be dangerous or injurious or cause a nuisance to persons on the reserve, or damage the reserve.

**17.2** The Council may take steps to prevent any game being played on any reserve which in its opinion may intimidate, be dangerous or injurious or cause a nuisance to persons on the reserve, or damage the reserve.

**17.3** Any person who does not abide with any measures taken in pursuance of clause 17.2 of this Bylaw, including complying with a request by the Council to desist, will be committing an offence against this Bylaw.

**17.4** No person shall play at or engage in or practice activities or sport on any playing ground or part thereof on any reserve after being requested by the Council to leave such playing ground or reserve or any part thereof.

- 17.5** No person shall play at or engage in or practice activities or sport on any playing ground or part thereof on any reserve when the Council has erected a notice at the main entrance to the reserve or on the playing ground or part thereof closing the reserve or playing grounds.
- 17.6** No person shall play or practice golf except on a reserve or part thereof that the Council has set aside for that purpose.

## **18. Riding and Driving**

- 18.1** Vehicles and cycles shall only be driven on reserves on formed roads which are open to vehicular traffic and park only in designated parking areas.
- 18.2** Any person driving a vehicle or riding a cycle on any reserve shall obey all signs or notices concerning traffic movement and parking displayed in that reserve.
- 18.3** No vehicle shall be driven and no cycle or horse shall be ridden at a greater speed than indicated on any road within any reserve, and in any other direction other than indicated by traffic notices.
- 18.4** In the absence of speed limit signs, no vehicle shall be driven or no cycle or horse shall be ridden at a speed greater than 20 kilometres an hour in any reserve.
- 18.5** These provisions will not apply to an emergency vehicle used at the time to save or protect life or health, or prevent injury or serious damage to property.

## **19. Dangerous and Inconsiderate Driving**

- 19.1** No person shall be in control of any vehicle, cycle or horse on a reserve without due care and attention and in a manner so as to endanger the safety of persons or to be an annoyance or inconvenience to persons.
- 19.2** No damage shall be caused to the surface or any other part or object on any reserve by the manner of driving of any vehicle or the riding of any cycle or any horse.

## **20. Bathing**

No person shall swim, bathe or wade in any water on any reserve where swimming, bathing or wading has been forbidden by the Council.

## **21. Restriction on the use of Playground Equipment**

- 21.1** The Council may from time to time by resolution determine a restriction on the age of persons allowed to use or occupy playground equipment owned or controlled by the Council in any reserve.
- 21.2** The Council shall erect such signs on any playground equipment as necessary to give effect to any resolution made pursuant to clause 21.1.

## **22. Destruction of Wildlife**

Subject to the provisions of the Wildlife Act 1953, no person shall by any means destroy, shoot, snare, injure, interfere with or take any wildlife on any reserve without the prior written permission of the Council.

## 23. Entrances and Exits only to be used

No person shall enter or leave any reserve except through the entrances and exits that are provided for this purpose.

## 24. Times of Opening and Charges

- 24.1 The Council may from time to time by resolution publicly notified, determine the period or periods during which a particular reserve shall be open to the public.
- 24.2 It shall be an offence against this Bylaw to access or be on any reserve at any time when it is closed to public entry.
- 24.3 The Council may fix charges for the entry to any reserve in accordance with the Reserves Act 1977 and it shall be an offence against this Bylaw to enter a reserve without having paid the proper charge for entry, if a charge is payable.

## 25. Closing in Special Circumstances

- 25.1 The Council may close or restrict entry to, or any portion of, a reserve for such periods as are considered necessary to prevent damage to, or allow maintenance of that reserve. The periods of closure or restriction in this clause shall be advertised by signs at the entrances to the reserve.
- 25.2 The Council may close or restrict entry to, or any portion of, a reserve for such periods as are considered necessary when it is to be used for or is likely to be used for a purpose that may result in riotous behaviour or civil disorder. The closure of the reserve in pursuance of this clause shall be advertised by notice in a newspaper circulating in the district or by signs at the main entrance to that reserve.

## 26. Charges on Special Occasions

- 26.1 The Council may from time to time, for such periods and under such conditions as it deems appropriate, set aside portions of any reserve for the exclusive use of particular groups or particular recreational activities.
- 26.2 The Council may charge for the right to have exclusive use of any reserve or of a portion thereof.
- 26.3 The Council may by resolution publicly notified determine Rules of Use governing the use of any reserve or portion thereof that has been set aside, including the use of Council facilities.
- 26.4 The Council may close Council facilities on reserves for the use thereof by the public and only allow access thereto for the exclusive use of particular groups or particular recreational activities. Closure of the Council's facilities pursuant to this subclause shall be advertised by notices placed at the entrances of or on such Council facilities.
- 26.5 Every portion of a reserve that is set aside shall only be used for the purpose for which it has been set aside and no person may enter it for that purpose unless they have paid the required fee, where a fee is payable. Where a person has entered any reserve, or a portion thereof set aside for a particular purpose, before the commencement of an event for which an entrance fee will be charged, they must either leave the reserve or that portion or pay the entrance fee.

## 27. Ordering Off

- 27.1** In accordance with the provisions of the Reserves Act 1977 a person committing a breach of this Bylaw shall, upon request by the Council, immediately leave the reserve and shall be prohibited from appearing on the reserve for such period as the Council deems fit.
- 27.2** A person ordered to leave a reserve as provided for by this clause of this Bylaw shall remain liable for the breach of this Bylaw.

## 28. Offenders required to Give Names

Any person who commits a breach of this Bylaw shall, if so requested by the Council, supply his full name and address.

## 29. Offences and Breaches

- 29.1** No person shall do anything or cause any condition to exist for which prior written approval from the Council is required under this Bylaw without first obtaining that approval and the failure to do so shall constitute a breach of this Bylaw.
- 29.2** No application for a prior written approval from the Council, and no payment of or receipt for any fee paid in connection with such application or approval shall confer any right, authority, or immunity on the person making such application or payment.
- 29.3** Any person commits a breach of this Bylaw who:
- a. Does, or causes to be done, or knowingly permits or suffers to be done anything whatsoever contrary to or otherwise than as provided by this Bylaw; or
  - 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 them at the time and in the manner therein provided; or
  - c. Does not refrain from doing anything which under this Bylaw they are required to abstain from doing; or
  - d. Knowingly permits or suffers any condition of or things to exist contrary to any provision contained in this Bylaw; or
  - e. Refuses or neglects to comply with any notice duly given to them under the Bylaw; or
  - 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 them by this Bylaw; or
  - g. Fails to comply with any notice or direction given under this Bylaw.
- 29.4** Any person commits a breach of this Bylaw who:
- a. Having constructed, affixed or provided, or caused to be constructed, affixed, or provided, any building or any part of a building, or any work, appliance, or material of any description whatsoever, contrary to, or otherwise than in accordance with the provision of this Bylaw; or
  - b. Having omitted to construct, affix, or provide any work, appliance or materials as required thereby, and who does not within a reasonable time after notice in writing has been given to them by the Council, fails to carry out the remedial action specified in that notice.

- 29.5** The Council may require any person who breaches or fails to comply with the provisions of this Bylaw or the conditions of a permit issued pursuant to it, to remedy the breach or comply with the same by giving such person notice in writing.
- 29.6** The notice issued under clauses 29.3, 29.4 or 29.5 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 Council.
- 29.7** The Council may pursuant to Section 175 of the Local Government Act 2002 recover the amount of the destruction or damage, the cost incurred by the Council in removing the stoppage or obstruction or any loss or expenses incurred by the Council by the stoppage or obstruction or interference by any person who wilfully or negligently destroys, damages, stops, obstructs, or otherwise interferes with any works or property owned, constructed, acquired, or used by the Council.

## **30. Penalties for Breach of the Bylaw**

- 30.1** Every person who fails to comply with any part of this Bylaw commits an offence and shall be subject to the penalty provisions outlined in the offences, penalties, infringement offences, and legal proceedings provisions of the Local Government Act 2002 and the enabling enactment.
- 30.2** Where any person is alleged to have committed an infringement offence, that person may either:
- a. Be proceeded against summarily for the offence; or
  - b. Be served with an infringement notice as provided in the Act or the enabling enactment.
- 30.3** The Council may in accordance with Section 162 of the Local Government Act 2002 apply for an injunction restraining a person from committing a breach of this Bylaw or an offence against the Act.
- 30.4** The Council may in accordance with Section 176 of the Local Government Act 2002 recover the costs of remedying any damage caused in the course of committing an offence against this Bylaw.
- 30.5** The continued existence of any work or object in a state contrary to this Bylaw shall be deemed a continuing offence within the meaning of this clause.

## **31. Removal of Encroachment**

- 31.1** -
- a. If any building, structure or object or any part thereof shall have been erected, constructed or placed upon, under, over or across any reserve; or
  - b. If any vegetation is permitted or allow to encroach on to or over any reserve to obstruct or interfere with the free movement of persons using that reserve place without the approval of the Council;

THEN the Council may by notice in writing require the owner of such building, structure, object or vegetation to remove the same or such part thereof as specified in the notice.

- 31.2** Any notice issued under clause 31.1 may require such precautions to be taken as Council thinks necessary for the safety of the public and for the proper securing of such building, structure, object or vegetation after such removal.



## 32. Removal of Works

- 32.1** The Council may pull down, remove or alter or cause to be pulled down, removed or altered any work, material or thing erected or being in contravention of this Bylaw, Section 357 of the Local Government Act 1974 or Section 163 of the Local Government Act 2002.
- 32.2** The Council may recover from any person responsible for the erection or from any person permitting the continued existence of any such work material or object all costs incurred by it, in connection with such pulling down, removal or alteration.
- 32.3** The exercise of this authority shall not relieve any such person from responsibility for any penalty for erecting or permitting the continued existence of any such work, material or object.

## 33. Transfer of Approval or Permit

The permit or approval given by the Council to a person named in that permit or approval shall not be transferable to any other person and no permit or approval shall authorise any person other than the person named therein to act in any way under its terms or conditions.

## 34. Suspension and Revocation of Permit or Approval

- 34.1** Except as may be otherwise provided in any empowering enactment referred to in clause 4 of this Bylaw:
- a. If the holder of a permit or approval is convicted of an offence constituting a breach of the terms of, or conditions included in that permit or approval, or of an offence touching his character as a permit holder or person who has been approved to undertake an activity restricted by this Bylaw, the Council may revoke that permit or approval or suspend it for as long as the Council thinks fit.
  - b. If the holder of a permit or approval:
    - i. Acts in a manner contrary to the true intent and meaning of this Bylaw; or
    - ii. Fails to observe or comply with the terms of or any conditions included in a permit or approval; or
    - iii. Acts in a way which in the opinion of the Council renders the holder unfit to hold a permit or approval;

THEN the Council may, by notice served upon the holder of a permit or approval require that person to appear before the Council or its nominated Committee at a time and place specified in that notice, to show cause that permit or approval should not be revoked or suspended.

- 34.2** If the Council considers the acts or failures of the holder of a permit or approval so warrant, or if there is no response by the holder of a permit or approval, then the Council may revoke the permit or approval or suspend it or impose further or amended conditions on it for as long as the Council thinks fit.
- 34.3** A person whose permit or approval has been suspended under clauses 34.1 or 34.2 shall, during the period of that suspension, be deemed to be unlicensed or without approval for that activity.

## 35. Serving of Orders or Notices

- 35.1** Except where otherwise provided for in any enactment, in any case in which it is provided by this Bylaw, that an order may be made upon or notice be given to any person requiring them to do or abstain from doing anything, or any notice is required by this Bylaw to be given or sent to any person, such order or notice shall be delivered to such person and may be delivered to them either personally or by sending the same, by courier, post, fax or electronic means, to them at their last-known place of abode or business.
- 35.2** If such person is absent from New Zealand the order or notice may be sent to their agent instead of to such person, in the manner mentioned in clause 35.1.
- 35.3** If such a person is not known, or is absent from New Zealand, and has no known agent in New Zealand, and the order or notice relates to any land or building, the order or notice addressed to the owner or occupier of such building or land, as the case may require, may be served on the person in occupation thereof, or left with some other resident of the abode; or, if there is no person in occupation, may be put up on some conspicuous part of such building or land. It shall not be necessary in such notice to name the occupier or the owner of such land or building.
- 35.4** Where an order or notice is sent by post it shall be sent so as to arrive on or before the latest time on which such order or notice is required to be served.
- 35.5** Unless evidence indicates the contrary where an order or notice is sent by:
- a. Post it will be deemed received on the first day (excluding weekends and public holidays) after posting;
  - b. Facsimile or email and the sender's facsimile or email machine produces a transmission report indicating that the facsimile or email was sent to the addressee, the report will be prima facie evidence that the facsimile or email was received by the addressee in a legible form at the time indicated on that report;
  - c. Courier and the courier obtains a receipt or records delivery on a courier run sheet, the receipt or record of delivery on a courier run sheet will be prima facie evidence that the communication was received by the addressee at the time indicated on the receipt or courier run sheet.

## 36. Officers to Continue in Office

- 36.1** All officers appointed by the Council under or for the purpose of the repealed Gisborne District Council Public Places Bylaw 1995, and holding office at the time of the coming into operation of this Bylaw, shall be deemed to have been appointed under this Bylaw.
- 36.2** Any police officer may exercise the powers of an enforcement officer in relation to offences against, and infringement offences under this Bylaw pursuant to the Act.

## 37. Delegation and Appeal

- 37.1** In all cases where this Bylaw provides for the issue of any order, notice or permit or approval, such order, notice or permit or approval shall be deemed to be issued in compliance with this Bylaw if the same is issued by any officer of the Council authorised by the Council for that purpose.
- 37.2** -

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- a. There shall be a right of appeal by an affected party from any decision by a delegated authority to original holder of the power and duty. Provided that the original holder of the power and duty may, after consultation with the Chief Executive refer the appeal to the Council when in his opinion this is justified.
  - b. Where the original holder of the delegated power and duty is the Council the right of appeal may be to a committee of the Council or Council appointed for this purpose, who shall be the final arbitrator of the merits of the matter.

## **38. Dispensing Power**

- 38.1** 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 be attended with 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.
- 38.2** The Council may, after consideration of any representation by affected persons and if in its opinion it is justified, extend, withdraw or amend the dispensation granted in terms of clause 38.1.
- 38.3** Except if expressly granted otherwise, the dispensation by the Council in terms of clause 38.1 shall only be applicable to the person it is granted to and shall be restricted to the particular issue considered by the Council and such dispensation will not constitute a justification for the breach of the provisions of this Bylaw outside the expressed terms of the dispensation.

## **39. Fees and Charges**

The Council may from time to time determine and recover fees in accordance with Sections 150 and 151 of the Act.