

SELWYN DISTRICT COUNCIL GENERAL BYLAW 2009

1. TITLE

- 1.1 A Bylaw of the Selwyn District Council by way of Special Order pursuant to the provisions of the Local Government Act 2002 powers and authorities enabling it in that behalf to make a Bylaw to be known as the Selwyn District Council General Bylaw 2008.

2. DATE OF COMMENCEMENT

- 2.1 This Bylaw comes into force on 1 January 2009.

3. APPLICATION OF BYLAW

- 3.1 This Bylaw is to make provisions which are common to and form part of all other Bylaws of the Council.

4. DEFINITIONS

References to a repealed enactment include its replacement.

For the purpose of this bylaw, unless the context otherwise requires;

“**Act**” means the Local Government Act 2002.

“**Agent**” means a person or business authorised to act on another’s behalf.

“**Agreement**” means a written agreement between the landowner and the Council giving permission to do something.

“**Approved**” means approved in writing by the Council, either by resolution of the Council or by any officer of the Council authorised for that purpose.

“**Authorised Officer**” means an officer or other person appointed by the Council to perform duties required under this Bylaw.

“**Bylaw**” means this Bylaw as altered, varied or amended from time to time

“**Chief Executive**” means the Chief Executive, as defined in the Local Government Act 2002 of the Council

“**Consent**” means permission granted from the Council in written form.

“**Council**” means the Selwyn District Council or any officer authorised to exercise the authority of the Council.

“**District**” means the Selwyn District and whereby agreement Christchurch City Council.

“Enforcement Officer” means a person appointed by the Council to exercise the power of an enforcement officer in relation to offences against, and offences under, the Local Government Act 2002 and any Bylaw.

“Licence” means a licence, permit, consent, agreement, or approval issued under any Bylaw.

“Offence” means any act or omission in relation to a particular Bylaw for which any person can be punished either on indictment or by summary process.

“Premises” means:

- (a) A property or allotment which is held under a separate certificate of title or for which a separate certificate of title may be issued and in respect to which a building consent has been or may be issued; or
- (b) A building or part of a building that has been defined as an individual unit by a cross-lease, unit title or company lease and for which a certificate of title is available; or
- (c) Land held in public ownership (e.g. reserve) for a particular purpose

“Permit” means permission granted from the Council in written form.

“Person” means a natural person, corporation or a body of persons whether corporate or otherwise

“Owner or Occupier” means the owner or occupier of land recorded as such in the valuation roll of the District

5. INTERPRETATION

5.1 In any Bylaw, unless the context otherwise requires:

- (a) In all Bylaws one gender includes all genders, the singular includes the plural, and the plural includes the singular.
- (b) Words referring to any district, locality, place, person, office. Officer, functionary, party or thing means each district, locality, place, person, office, officer, functionary, party, thing, to whom or to which the provision applies.
- (c) The word “shall” identifies a mandatory requirement for compliance with the Bylaws. The word “should” refers to practices which are advised or recommended.

6. OFFICERS TO CONTINUE IN OFFICE

6.1 All Enforcement Officers appointed by the Council under or for the purpose of any repealed Bylaw(s), and holding office at the time the Bylaws take effect, are deemed to have been appointed under the Bylaws.

7. APPOINT OF ENFORCEMENT OFFICERS

7.1 The Council may from time to time appoint Enforcement Officers to ensure that the provisions of any Bylaws are observed.

- 7.2 Every Enforcement Officer will be issued with a warrant of appointment which will state the statutory authority empowering them to enter upon any land, building or premise in order to carry out their duties.

8. SERVING OF ORDERS AND NOTICES

- 8.1 Except as otherwise expressly provided for in any other enactment or Bylaw, where any notice, order, or other document is required to be served on any person for the purposes of a Bylaw, service may be effected by either:

- (a) Delivering it personally to the person; or
- (b) Sending it by courier; or
- (c) By sending it by registered post to that person's last known residential or business address.

- 8.2 If the person is absent from New Zealand the order, notice or other document may be served on the person's agent in the manner referred to in Clause 8.1.

- 8.3 If the order, notice, or other document relates to land or buildings, then the order, notice or other document should be served on the person who owns that land or buildings. If that person is not known, or is absent from New Zealand, or has no known agent in New Zealand, the order, notice or other document 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 shall not be necessary in that order, notice or other document to name the occupier or the owner of that land or buildings.

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

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

9. SIGNING OF NOTICES

- 9.1 Every order, notice or other document required to be sent by the Council will except as otherwise provided by any Act or Bylaw, be signed by the Chief Executive or any other person who has delegated authority by the Council to act on its behalf in that respect, and need not be under seal.

10. POWERS OF ENTRY

- 10.2 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 the Bylaws.

Comment [h1]: Not sure if I should list the sections or just say the LGA 2002?

- 10.2 Every person who obstructs or hinders an Enforcement Officer in the execution of his or her duties under a particular Bylaw will be deemed to have committed an offence against that Bylaw.

11. SCHEDULES AND PRESCRIBED FORMS

- 11.1 Each schedule to a Bylaw forms part of the Bylaw and if provided for in the Bylaw, may be altered from time to time by Council resolution.

12. GRANTING OF A LICENCE

- 12.1 Any person doing or proposing to do anything or to cause any condition to exist for which a licence from the Council is required shall first obtain a licence from the Council or any authorised officer.
- 12.1 An application for a licence must be made in writing using the standard application form (if any), contain all the required information and must be accompanied by the prescribed fee (if any).
- 12.2 The granting of a licence will not render the Council or any authorised officer of the Council any right, authority or immunity on the person making that application or payment.
- 12.3 Any licence is deemed to be issued in compliance with the prescribed Bylaw if it is issued by an authorised officer and may contain terms and conditions as the Council sees fit.
- 12.4 If declined or deferred, the Council will give the reasons for its decision.
- 12.5 Unless the prescribed 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.
- 12.6 Unless the prescribed Bylaw provides otherwise, if following a request for payment, any licence fee due remains unpaid, the licence immediately ceases to have effect.

13. SUSPECTION AND REVOCATION OF LICENCES

- 13.1 Unless otherwise provided in any particular Act or prescribed Bylaw, should the licence holder be convicted of any offence relating to the holder's suitability as a licence holder, the Council may immediately revoke or suspend the licence for any specified time.
- 13.2 The Council may by notice in writing call upon the licence holder to appear before the Council and give reasons why the licence should not be revoked or suspended, if any of the following are brought to the notice of the Council.
- (a) That the licence holder –
- (i) Has acted or is acting in a manner contrary to the true intent and meaning of the prescribed Bylaw; or
 - (ii) Has failed to comply with any of the conditions of the licence; or

- (iii) Acts in a manner which in the opinion of the Council, renders the holder unfit to hold such a licence; or
- (b) If 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 permit, consent or agreement; or
- (c) That the prescribed Bylaw is not being properly observed;

Then 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.

- 13.3 A person whose licence has been suspended under Clause 13.1 and 13.2 and any premises for which that licence has been suspended is, during that period of that suspension, deemed to be unlicensed.

14. FEES AND CHARGES

- 14.1 The Council may prescribe fees to be charged for any certificate, authority, approval, permit, or consent form, or inspection by, the Council under the provisions of the Local Government Act 2002 or any other enactment where that enactment contains no provision for authorising the Council to charge a fee. The setting of any fees or charges shall be in accordance with Section 150 of the Act.

- 14.2 Where a fee has been paid under 14.1 for a service that has not been given, the Council may provide a refund, a remission, or waiver of such a fee, or portion of it as the Council may determine.

Comment [h2]: Note: We do provide refunds within the WS Bylaw.

15. OFFENCES AND BREACHES

- 15.1 No person shall do anything or cause any condition to exist for which a licence from the Council is required under any Bylaw without first obtaining that licence and the failure to do so shall constitute a breach of that particular Bylaw.

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

- (f) Obstructs or hinders any authorised officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon that officer of that particular Bylaw; or
- (g) Fails to comply with any notice or direction given under that particular Bylaw.
- (h) Fails to provide his or her name and address where requested by any authorised officer of the Council.

15.3 Any person commits a breach of a particular Bylaw who:

- (a) Having constructed, erected, affixed, provided, or removed, or caused to be constructed, erected, affixed, provided or removed, 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 that particular Bylaw; or
- (b) Having omitted to construct, erect, affix, provide or remove any work, appliance or materials as required thereby, -

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

15.4 Every notice must state the time within which the remedial action is to be carried out, and may be extended from time to time.

16. REMOVAL OF WORKS

- 16.1 The Council may authorise any officer thereof to require the cessation of use or remove or alter or cause to be removed or altered any work, material, thing erected or being in contravention of any particular Bylaw of the Council.
- 16.2 The Council may recover from any person responsible for the breach of any part of that particular Bylaw, all expenses incurred by it in connection with such pulling down, removal or alteration. This includes the cost of debt collecting and legal fees.
- 16.3 The exercise of this authority shall not relieve any such person from responsibility for any penalty for erecting or permitting the continued existence of any such work, material, or thing.
- 16.4 If however the breach is such that public health, or safety considerations, or risk of consequential damage to Council assets is such that delay would create unacceptable results, the Council may take immediate action to rectify the defect, and recover all reasonable costs as set out in 16.2.
- 16.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under 16.1.
- 16.6 If not claimed within a reasonable time the Council may dispose of any object, material or thing as it sees fit and apply the proceeds to meet the outstanding costs. The lawful owner shall be entitled to claim any residual sum.

17. PENALTIES FOR BREACH OF BYLAWS

17.1 Every person who commits an offence against a Bylaw is liable to the penalties specified in the Act under which the Bylaw was made.

17.2 The Council may, after a conviction for the continuing breach of any Bylaw, apply to the District Court for an injunction to restrain a person from committing a breach of the particular Bylaw.

18. DISPENSING POWER

18.1 The Council may grant a dispensation to any person or business from full compliance with any provision of a Bylaw, in any case where the Council is of the opinion that full compliance would needlessly and injuriously affect that person or business, without a corresponding benefit to the public or any section of it.

19.2 Provided that any other terms or conditions (if any) that the Council may deem fit to impose shall be complied with by such person as aforesaid.

Comment [h3]: Under the stock Bylaw we have a process for this so do we need to state here at the request should be in writing etc?

19. REPEAL

19.1 The Ellesmere County Council General Bylaw 1969 NZSS 791 Introductory Amendment No.2, Malvern County Council General Bylaw 1987 Chapter 1 (1972) Introductory and the Paparua County Bylaw 1981 Section 1 Interpretations and General.

20. SAVINGS

20.1 All licences which originated under any of the Bylaws repealed by Section 19 and all applications, and other acts or parties and generally all documents, matters, acts and things which so originated and are continuing at the commencement of this Bylaw, continues for the purposes of the Bylaw to have full force and effect.

20.2 The repeal of any of the Bylaws under Section 19 does not prevent any legal proceedings, criminal or civil, being taken to enforce those Bylaws and such proceedings continue to be dealt with and completed as if the Bylaws has not been removed.

Comment [h4]: I obtained this statement from CCC – is this correct?

The **COMMON SEAL** of the)
SELWYN DISTRICT COUNCIL)
was hereunto affixed, in accordance)
with the Special Order made by the)
Council on _____)
in the presence of:)

Mayor

Chief Executive

SELWYN DISTRICT COUNCIL GENERAL BYLAW 2009

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- 13.2 The Council may by notice in writing call upon the licence holder to appear before the Council and give reasons why the licence should not be revoked or suspended, if any of the following are brought to the notice of the Council.
- (a) That the licence holder –
- (i) Has acted or is acting in a manner contrary to the true intent and meaning of the prescribed Bylaw; or
 - (ii) Has failed to comply with any of the conditions of the licence; or

- (iii) Acts in a manner which in the opinion of the Council, renders the holder unfit to hold such a licence; or
- (b) If 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 permit, consent or agreement; or
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Then 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.

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- (c) Does not refrain from doing anything which under that particular Bylaw they are required to abstain from doing;
- (d) Knowingly permits or suffers any condition of or things to exist contrary to any provision contained in that particular Bylaw;
- (e) Refuses or neglects to comply with any notice given that person under that particular Bylaw;

- (f) Obstructs or hinders any authorised officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon that officer of that particular Bylaw; or
- (g) Fails to comply with any notice or direction given under that particular Bylaw.
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And who does not within a reasonable time after notice in writing has been to him or her by the Council or any officer of the Council, carry out the remedial action specified in that notice.

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16. REMOVAL OF WORKS

- 16.1 The Council may authorise any officer thereof to require the cessation of use or remove or alter or cause to be removed or altered any work, material, thing erected or being in contravention of any particular Bylaw of the Council.
- 16.2 The Council may recover from any person responsible for the breach of any part of that particular 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.
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- 16.4 If however the breach is such that public health, or safety considerations, or risk of consequential damage to Council assets is such that delay would create unacceptable results, the Council may take immediate action to rectify the defect, and recover all reasonable costs as set out in 16.2.
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The **COMMON SEAL** of the)
SELWYN DISTRICT COUNCIL)
was hereunto affixed, in accordance)
with the Special Order made by the)
Council on _____)
in the presence of:)

Mayor

Chief Executive