

Part 1 Introductory

Contents

- 100 Scope 2
- 101 Definitions..... 2
- 102 Interpretation 6
- 103 Officers to continue in office 6
- 104 Service of orders and notices 7
- 105 Powers of entry for purpose of a Bylaw 8
- 106 Licences 8
- 107 Suspension and revocation of licences 9
- 108 Dispensing power 10
- 109 Forms 10
- 110 Fees and charges..... 10
- 111 Offences and Breaches 10
- 112 Removal of works..... 11
- 113 Penalties for breach of bylaws..... 12

100 Scope

The purpose of the Central Otago District Council General Bylaw: Part 1 is to identify and clearly interpret those terms and expressions that are used throughout this bylaw and all other bylaws promulgated by the Central Otago District Council. Except where otherwise indicated, this bylaw applies to all bylaws promulgated by the Central Otago District Council.

This Part outlines:

- service of orders and notices,
- powers of delegation and entry,
- suspension and revocation of licences,
- removal of works executed contrary to the Bylaw dispensing powers,
- fees and charges,
- offences and breaches and penalties for breach of Bylaws.

Other definitions not included within this bylaw are contained within the bylaw in question.

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

101 Definitions

Unless the context requires otherwise, the following definitions apply:

Act	Local Government Act 2002
Agent	A person or business authorised to act on another's behalf
Animal	Any member of the animal kingdom, including any mammal, bird, finfish, shellfish, reptile, amphibian, insect or invertebrate, and includes the carcass of constituent parts thereof, but does not include human beings or dogs
Approved	Approved by the Council or by any officer so authorised on behalf of the Council

Authorised Agent	Any person who is not an employee of the Council but is authorised in writing by the Chief Executive or by the Council to act on the Council's behalf
Authorised Officer	Any person appointed or authorised in writing by the Chief Executive or by the Council to act on the Council's behalf and with its authority, and includes a member of the police
Bylaw	A bylaw of the Council for the time being in force, made under the provisions of any enactment or authority enabling the Council to make bylaws
Chief Executive	The principal administrative officer of the Council, irrespective of the designation given to the officer, and includes any person for the time being appointed by the Council to perform the duties or a particular duty of the Chief Executive
Council	The Central Otago District Council or any officer authorised to exercise the authority of the Council
Custodian	Any person for the time being appointed by the Council to control or manage, or to assist in the control and management of, any land, or premises belonging to or under the jurisdiction of the Council
District	This has the meaning assigned to that term in section 5(1) of the Act
Dwelling, Dwellinghouse	Any house, tent, vehicle or other structure, whether permanent or temporary, and whether attached to the soil or not, used in whole or in part for human habitation, and includes the land on which the dwelling is situated
Enforcement Officer	This has the meaning assigned to that term in section 5(1) of the Act

Footpath	This has the meaning assigned to that term in section 315(1) of the Local Government Act 1974
Infringement Offence	An offence for which any person can be proceeded against using the infringement process set out in the Act
Licence	A licence or approval issued under a Bylaw
Local Authority	This has the meaning assigned to that term in section 5(1) of the Act
Motor Vehicle	This has the meaning assigned to that term in section 2(1) of the Land Transport Act 1998
Nuisance	This has the meaning assigned to that term in section 29 of the Health Act 1956
Occupier	The inhabitant occupier of any premises and, in any case where any building, dwellinghouse, tenement, dwelling or other premises is or are unoccupied, includes the owner
Offence	Any act or omission in relation to a Bylaw for which any person can be punished either on indictment or by summary process or infringement process
Owner	As applied to any land, building, or premises, means any person for the time being entitled to receive the rent for such property, or who would be so entitled if it were let to a tenant at a rack rent, and where any such person is absent from New Zealand, includes their attorney or agent
Person	A natural person and also a body of persons, whether corporate or unincorporated
Poultry	Any live domesticated or farmed bird including but not limited to: fowl, goose, duck, pigeon, turkey, parrot,

budgerigar, pheasant, canary, ostrich, guinea fowl or emu

Premises	Any land, dwelling, storehouse, warehouse, shop, cellar, yard, building, or part of the same, or enclosed space separately occupied. All lands, buildings, and places adjoining each other and occupied together are deemed to be the same premises
Private Road	This has the meaning assigned to that term in section 315(1) of the Local Government Act 1974
Privateway	This has the meaning assigned to that term in section 315(1) of the Local Government Act 1974
Public Notice	This has the meaning assigned to that term in section 5(1) of the Act
Public Place	This has the meaning assigned to that term in section 147(1) of the Act
Reserve	This has the meaning assigned to that term in section 2(1) of the Reserves Act 1977
Road	This has the meaning assigned to that term in section 2(1) of the Land Transport Act 1998
Stock	Cattle, sheep, horses, deer, donkeys, mules, goats, pigs, alpacas, llamas, or other animal (excluding dogs), including their young, kept in captivity or farmed and dependent on humans for their care and sustenance
Territorial Authority	This has the meaning assigned to that term in section 5(1) of the Act
Vehicle	This has the meaning assigned to that term in section 2(1) of the Land Transport Act 1998

Verandah	A portico, porch, shed, shade, awning, blind, covering, or like structure, and its supports, projecting into or over any part of a public place
Waterworks	This has the meaning assigned to that term in section 5(1) of the Act
Writing, written or similar term	Words, letters or symbols, written, printed, painted, engraved, lithographed, or otherwise traced or copied.

102 Interpretation

In a Bylaw, the singular includes the plural and the plural includes the singular.

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

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

A reference to a repealed or amended enactment or Bylaw shall be read as a reference to its replacement.

For the purposes of a Bylaw, the word 'shall' refers to practices that are mandatory for compliance with the Bylaw, while the word 'should' refers to practices which are advised or recommended.

103 Officers to continue in office

All authorised officers appointed by the Council at the time a Bylaw takes effect are deemed to have been appointed under the Bylaw.

104 Service of orders and notices

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

- (a) delivering it personally to the person;
- (b) sending it by registered post to that person's last known residential or business address;
- (c) sending it by e-mail to that person's last known e-mail address; or
- (d) sending it by facsimile to that person's last known facsimile number.

104.2 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 104.1. Where the person to be served has no known agent in New Zealand, service may be effected out of New Zealand in the same manner as that set out in clause 104.1.

104.3 If the order, notice, or other document relates to land or buildings, then the order, notice, or other document should be served on the person who owns that land or buildings. However, if that person is not known, or is absent from New Zealand, or has no known agent in New Zealand, the order or notice may be:

- (a) Served on the person who is occupying the land or buildings; or
- (b) If there is no person in occupation, put up on some conspicuous part of the land or buildings.

It is not necessary in that notice to name the occupier or the owner of that land or buildings.

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

104.5 Where an order or notice is sent by e-mail or facsimile, it is deemed to be served on the day on which it was transmitted, unless the document was transmitted after 5 pm. If the order or notice was transmitted after 5 pm, it is deemed to be received on the next working day. The facsimile or e-mail is deemed to be

received in full and legible condition unless the recipient notifies the Council as soon as practicable after transmission that this was not the case.

104.6 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.

105 Powers of entry for purpose of a Bylaw

Except where provided for under any other enactment, sections 171, 172, 173, 174 and 182 of the Act apply in relation to any power of entry under a Bylaw.

106 Licences

106.1 Any person doing or proposing to do any thing or to cause any condition to exist for which a licence from the Council is required under a Bylaw, shall first obtain a licence from the Council or any authorised officer.

106.2 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.

106.3 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.

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

106.5 Unless a 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.

106.6 Any licences granted pursuant to a Bylaw shall be for a period as determined by the Council.

106.7 Unless a Bylaw provides otherwise, a licence is not transferable, and a licence authorises only the licence holder to act in any way under its terms or conditions.

106.8 If, following a written demand to the prospective licensee for payment, any licence fee due remains unpaid, the licence shall be deemed not to have commenced.

107 Suspension and revocation of licences

107.1 Unless a Bylaw provides otherwise, should the licence holder be convicted of any offence relating to the holder's suitability as a licensee, the Council may immediately revoke or suspend the licence for any specified time.

107.2 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 matters are brought to the notice of the Council:

- (a) That the licence holder –
 - (i) acted or is acting in a manner contrary to the true intent and meaning of the relevant Bylaw;
 - (ii) 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 relevant Bylaw has not been complied with.

107.3 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 time that it chooses to specify, or is specified in the relevant Bylaw.

107.4 A person whose licence has been suspended under this clause, and any premises for which that licence has been so suspended, is, during the period of that suspension, deemed to be unlicensed.

108 Dispensing power

Where, in the opinion of the Council, full compliance with any of the provisions of this Bylaw would needlessly or injuriously affect any person, or the course or operation of a business, or bring loss or inconvenience to any person or business without any corresponding benefit to the community, the Council may, on the special application of that person or business, dispense with full compliance with the provisions of this Bylaw; provided that dispensation shall continue only while terms or conditions (if any) that Council may deem fit to impose are complied with by that person or business

109 Forms

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

110 Fees and charges

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

110.2 Where a fee has been paid under clause 110.1 for a service that has not been given, the Council may in its discretion provide a refund, a remission, or waiver of any such fee, or portion of it as the Council may determine.

111 Offences and Breaches

111.1 Any person commits a breach of a 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 a 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 a Bylaw, ought to be done by that person at the time and in the manner provided by this a Bylaw;
- (c) Does not refrain from doing anything which under a 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 a Bylaw;
- (e) Refuses or neglects to comply with any notice duly given to that person under this bylaw;
- (f) Obstructs or hinders any authorised officer of Council in the performance of any duty to be discharged by that officer under, or in the exercise of any power conferred upon that officer, by a Bylaw;
- (g) Fails to comply with any notice or direction given under a Bylaw.

111.2 Where it is suspected that any person has committed a breach of a Bylaw, that person shall, on the direction of an authorised officer, provide their full name and address.

111.3 Clause 111.1 applies even if the relevant Bylaw does not state that breach of the terms of that bylaw is an offence.

112 Removal of works

112.1 Where a notice served under clause 104 relating to a work material or thing has not been complied with, the Council, or any authorised officer or agent of the Council, may pull down, alter, remove or seize any work, material or thing erected or being in contravention of any Bylaw The Council shall act in accordance with sections 163, 164, 165, 166 and 168 of the Act.

112.2 The Council may recover from any person responsible for the breach of any part of a Bylaw all expenses incurred by it in connection with such pulling down, removal or alteration. This includes but is not limited to the Council's internal costs and the cost of debt collection and legal fees.

112.3 If however the breach is such that public health, 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 clause 112.2).

- 112.4 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.
- 112.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under clause 112.1.
- 112.6 If any object, material or thing removed by the Council is not claimed within a reasonable time, the Council may dispose of the 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.

113 Penalties for breach of bylaws

- 113.1 Every person who commits an offence against a Bylaw is liable to:
- (a) The penalty set out in section 238 of the Act; or
 - (b) Where another enactment specifies the penalty for a breach of the Bylaw, that other penalty (for example Schedule 4 of the Land Transport Act 1998).
- 113.2 In accordance with section 162 of the Act, the Council may apply to the District Court for an injunction to restrain a person from committing a breach of a Bylaw.

Schedule 1 Supplementary Definitions

This schedule does not form part of the bylaw[s].

The definitions contained within this schedule are current as at 24 May 2008. The legislative definitions may change, and any reference to a repealed, replaced or amended enactment or bylaw shall be read as a reference to its replacement. This schedule is to be read subject to any such amendment, replacement or repeal.

District	the district of a territorial authority
Enforcement Officer	a person appointed by a local authority to exercise the powers of an enforcement officer in relation to offences against, and infringement offences under, this Act, including enforcement of the bylaws of the local authority
Footpath	so much of any road as is laid out or constructed by authority of the council primarily for pedestrians; and includes the edging, kerbing, and channelling thereof:
Local Authority	a regional council or territorial authority
Motor Vehicle	<p>(a) means a vehicle drawn or propelled by mechanical power; and</p> <p>(b) includes a trailer; but</p> <p>(c) does not include --</p> <ul style="list-style-type: none"> i. a vehicle running on rails; or ii. Repealed iii. a trailer (other than a trailer designed solely for the carriage of goods) that is designed and used exclusively as part of the armament of the New Zealand Defence Force; or iv. a trailer running on 1 wheel and designed exclusively as a speed measuring device or for testing the wear of vehicle tyres; or v. a vehicle designed for amusement purposes and used exclusively within a place of recreation, amusement, or entertainment to which the public does not have access with motor vehicles; or vi. a pedestrian-controlled machine; or vii. a vehicle that the Director has declared under section 168A (Land Transport Act) is not a motor vehicle; or viii. a mobility device.
Nuisances	<p>Without limiting the meaning of the term nuisance, a nuisance shall be deemed to be created in any of the following cases, that is to say:</p> <p>a) Where any pool, ditch, gutter, watercourse, sanitary convenience, cesspool, drain, or vent pipe is in such a state or is so situated as to be offensive or likely to be injurious to health:</p> <p>(a) Where any accumulation or deposit is in such a state or is so situated as to be offensive or likely to be injurious to health:</p> <p>(b) Where any premises, including any accumulation or deposit thereon, are in such a state as to harbour or to be likely to harbour rats or other vermin:</p> <p>(c) Where any premises are so situated, or are in such a state, as to be offensive or likely to be injurious to health:</p> <p>(d) [Repealed]</p> <p>(e) Where any building or part of a building is so overcrowded as to be likely to be injurious to the health of the occupants, or does not, as regards air space, floor space, lighting, or ventilation, conform with the requirements of this or any other Act, or of any regulation or bylaw under this or any other Act:</p> <p>(f) Where any factory, workroom, shop, office, warehouse, or other place of trade or business is not kept in a clean state, and free from any smell or leakage from any drain or sanitary convenience:</p> <p>(g) Where any factory, workroom, shop, office, warehouse, or other place of trade or business is not provided with appliances so as to carry off in a harmless and</p>

	<p>inoffensive manner any fumes, gases, vapours, dust, or impurities generated therein:</p> <ul style="list-style-type: none"> (h) Where any factory, workroom, shop, office, warehouse, or other place of trade or business is so overcrowded while work is carried on therein, or is so badly lighted or ventilated, as to be likely to be injurious to the health of the persons employed therein: (i) Where any buildings or premises used for the keeping of animals are so constructed, situated, used, or kept, or are in such a condition, as to be offensive or likely to be injurious to health: (j) Where any animal, or any carcass or part of a carcass, is so kept or allowed to remain as to be offensive or likely to be injurious to health: (k) Where any noise or vibration occurs in or is emitted from any building, premises, or land to a degree that is likely to be injurious to health: (l) Where any trade, business, manufacture, or other undertaking is so carried on as to be unnecessarily offensive or likely to be injurious to health: (m) Where any chimney, including the funnel of any ship and the chimney of a private dwelling-house, sends out smoke in such quantity, or of such nature, or in such manner, as to be offensive or likely to be injurious to health, or in any manner contrary to any regulation or Act of Parliament: (n) Where the burning of any waste material, rubbish, or refuse in connection with any trade, business, manufacture, or other undertaking produces smoke in such quantity, or of such nature, or in such manner, as to be offensive or likely to be injurious to health: (o) Where any street, road, right of way, passage, yard, premises, or land is in such a state as to be offensive or likely to be injurious to health: (p) Where any well or other source of water supply, or any cistern or other receptacle for water which is used or is likely to be used for domestic purposes or in the preparation of food, is so placed or constructed, or is in such a condition, as to render the water therein offensive, or liable to contamination, or likely to be injurious to health: (q) Where there exists on any land or premises any condition giving rise or capable of giving rise to the breeding of flies or mosquitoes or suitable for the breeding of other insects, or of mites or ticks, which are capable of causing or transmitting disease.
Public Notice	<p>In relation to a notice given by a local authority means</p> <ul style="list-style-type: none"> (a) notice published in <ul style="list-style-type: none"> i. 1 or more daily newspapers circulating in the region or district of the local authority; or ii. 1 or more other newspapers that have at least an equivalent circulation in that region or district to the daily newspapers circulating in that region or district; and (b) includes any other public notice that the local authority thinks desirable in the circumstances
Private Road	<p>Any roadway, place, or arcade laid out [[or formed]] within a district on private land, whether before or after the commencement of this Part of this Act, by the owner thereof, but intended for the use of the public generally</p>
Private Way	<p>Any way or passage whatsoever over private land within a district, the right to use which is confined or intended to be confined to certain persons or classes of persons, and which is not thrown open or intended to be open to the use of the public generally; and includes any such way or passage as aforesaid which at the commencement of this Part of this Act exists within any district</p>

Public Place	<p>(a) means a place---</p> <ul style="list-style-type: none"> i. that is under the control of the territorial authority; and ii. that is open to, or being used by, the public, whether or not there is a charge for admission; and <p>(b) includes</p> <ul style="list-style-type: none"> i. a road, whether or not the road is under the control of a territorial authority; ii. any part of a public place.
Reserve or Public Reserve	<p>Except as hereinafter provided in this definition, means any land set apart for any public purpose; and includes—</p> <ul style="list-style-type: none"> (a) Any land which immediately before the commencement of this Act was a public reserve within the meaning of the Reserves and Domains Act 1953: (b) Any land vested in the Crown which after the commencement of this Act is reserved or set apart under Part 12 of the Land Act 1948 or other lawful authority as a reserve, or alienated from the Crown for the purpose of a reserve: (c) Any land which after the commencement of this Act is vested in the Crown by or under the authority of any Act as a reserve: (d) Any land which after the commencement of this Act is taken, purchased, or otherwise acquired in any manner whatever by the Crown as a reserve or in trust for any particular purpose: (e) Any land acquired after the commencement of this Act in any manner by an administering body as a reserve within the meaning of this Act, and any land vested in any local authority which, not theretofore being a public reserve, is by resolution of the local authority pursuant to section 14 of this Act declared to be set apart as a reserve: (f) Any private land set apart as a reserve in accordance with the provisions of any Act: (g) Any land which immediately before the commencement of this Act was a domain or public domain within the meaning of the Reserves and Domains Act 1953: (h) Any land, other than a National Park within the meaning of the National Parks Act 1980, administered under the Tourist and Health Resorts Control Act 1908: (i) Any land taken or otherwise acquired or set apart by the Crown under the Public Works Act 1981 or any corresponding former Act, whether before or after the commencement of this Act, for the purposes of a reserve, a recreation ground, a pleasure ground, an agricultural showground, or a tourist and health resort: <ul style="list-style-type: none"> a. but does not include— (j) Any land taken or otherwise acquired or set apart under the Public Works Act 1981 or any corresponding former Act, whether before or after the commencement of this Act, for any purpose not specified in paragraph (i) of this definition: (k) Any land to which section 167(4) of the Land Act 1948 applies: (l) Any land taken, purchased, or otherwise in any manner acquired, whether before or after the commencement of this Act, by a local authority, unless the land is acquired subject to a trust or a condition that it shall be held by the local authority as a reserve: (m) Any Maori reservation:

Road	<p>a) a street; and</p> <p>(b) a motorway; and</p> <p>(c) a beach; and</p> <p>(d) a place to which the public have access, whether as of right or not; and</p> <p>(e) all bridges, culverts, ferries, and fords forming part of a road or street or motorway, or a place referred to in paragraph (d);</p> <p>(f) all sites at which vehicles may be weighed for the purposes of this Act or any other enactment</p>
Territorial Authority	A city council or a district council named in Part 2 of Schedule 2 (Central Otago District Council)
Vehicle	<p>A contrivance equipped with wheels, tracks, or revolving runners on which it moves or is moved; and</p> <p>(a) includes a hovercraft, a skateboard, in-line skates, and roller skates; but</p> <p>(b) does not include---</p> <ul style="list-style-type: none"> i. a perambulator or pushchair: ii. a shopping or sporting trundler not propelled by mechanical power: iii. a wheelbarrow or hand-trolley: iv. Repealed v. a pedestrian-controlled lawnmower: vi. a pedestrian-controlled agricultural machine not propelled by mechanical power: vii. an article of furniture: viii. a wheel-chair not propelled by mechanical power: ix. any other contrivance specified by the rules not to be a vehicle for the purposes of this definition: x. any rail vehicle
Waterworks,	<p>In relation to the provision of water supply within and outside the district of a territorial authority, includes</p> <ul style="list-style-type: none"> i. rivers, streams, lakes, waters, and underground waters, and rights relating to these; and ii. land, watershed, catchment, and water collection areas; and iii. if vested in a territorial authority, or acquired, constructed, or operated by, or under the control of, the territorial authority, (a) reservoirs, dams, bores, tanks, and pipes; and (b) buildings, machinery, and appliances; but (b) does not include the network assets of Watercare Services Limited