

Bylaw

EXPLANATORY BYLAW

TITLE:	Ashburton District Council Explanatory Bylaw 2016
TEAM:	Strategy and Policy
RESPONSIBILITY:	Strategy and Policy Manager
DATE ADOPTED:	05 April 2023
COMMENCEMENT:	06 April 2023
NEXT REVIEW DUE:	06 April 2033

1. Title

The title of this bylaw is Ashburton District Council Explanatory Bylaw 2016.

2. Purpose

The purpose of this bylaw is to have in one place a set of provisions which are common to, and form part of, all Ashburton District Council Bylaws.

3. Related documents

- Animal Welfare Act 1999
- Building Act 2004
- Dog Control Act 1996
- Health Act 1956
- Health & Safety at Work Act 2015
- Impounding Act 1955
- Land Transport Act 1998
- Local Government Act 2002
- Reserves Act 1977
- Resource Management Act 1991

4. Definitions

4.1. In this bylaw, unless the context otherwise requires:

Agent means a person or business authorised to act on another's behalf.

Animal means stock, poultry and any other animal that is kept in a state of captivity or is dependent upon human beings for its care or sustenance.

Approved means approved by Council or by any officer of the Council authorised in that behalf.

Authorised Officer means any person appointed by the Council to act on its behalf in a limited capacity and with its authority.

Bylaw means a bylaw of Council for the time being in force, made under the provisions of any Act or authority enabling Council to make bylaws.

Council means Ashburton District Council.

Council Officer or Officer means the Ashburton District Council or any officer of the Ashburton District Council to whom authority is delegated by Council to take action in relation to any particular bylaw or to undertake the duties of a Council Officer under the bylaw.

Delegated Authority is the means by which the Council sets out its policy on what functions, duties and powers that it must, or wishes to, retain responsibility for and those that it wishes to delegate.

District means Ashburton District.

Dwelling means and includes 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 appurtenant to a dwelling.

Enforcement Officer means an individual as defined in the Local Government Act 2002 Section 5(1) and generally means any person appointed by Council to exercise the power of an Enforcement Officer in relation to offences against, and infringements offences under, the Local Government Act 2002 or any bylaw.

Licensed means holding a licence under this bylaw or under any statute.

Local Authority as defined in the Local Government Act 2002 Section 5(1) and generally means a regional Council or territorial authority.

Motor Vehicle shall have the meaning assigned to it from time to time by the Transport Act 1998 and its amendments and re-enactments.

Nuisance shall include but not be limited to the meaning assigned to it by the Health Act 1956 Section 29 its amendments and/or re-enactments.

Occupier means the inhabitant or occupier of any property, and in any case where any building, house, tenement, or premises is or are unoccupied shall be deemed to include the owner as hereinafter defined.

Offence includes any act or omission in relation to any bylaw or any part thereof for which any person can be punished either on indictment or by summary process.

Owner of 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 the same were let to a tenant at a rack market; and where any such person is absent from New Zealand, shall include their attorney or agent.

Person includes any individual, company, or other commercial body.

Poultry means any live domesticated bird including but not limited to, domestic fowls, ducks, geese, turkeys, guinea-fowl, pheasants and pigeons.

Premises means any of the following:

- (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.

Property means a separately rateable property.

Public Notice has the meaning as defined in the Local Government Act 2002 Section 5(1) and generally means a notice published in 1 or more local newspapers, or any other publication that Council thinks is appropriate.

Public Place has the meaning as defined in section 147(1) of the Local Government Act 2002.

Reserve As defined in section 2(1) of the Reserves Act 1977.

Road shall have the meaning assigned to it in the Land Transport Act 1998 and its amendments and re-enactments.

Rural Area means properties within rural A, B and C zones of the Ashburton District Plan.

Should refers to practices that are mandatory for compliance with this bylaw, or other Ashburton District Council bylaws.

Shall refers to practices that are optional for compliance with this bylaw, or other Ashburton District Council bylaws.

Stock has the same meaning as the Dog Control Act 1996 and includes but is not limited to:

- (a) Any live horse, cattle, sheep, swine, alpaca, llama, bison, donkey, hinny, mule, or water buffalo that is not in a wild state:
- (b) Any deer, goat, thar, rabbit, possum, or other animal that is kept within a fence or enclosure for domestic or farming purposes.

Street, Private Road, Footpath and Private Way shall have the meanings assigned to them in the Local Government Act 1974 and shall where the context requires include a road.

Urban Area means properties not within rural A, B and C zones of the Ashburton District Plan.

Vehicle has the same meaning as in the Land Transport Act 1998 and generally means a man-made device for land transport, including, but not limited to, cars, trucks, heavy machinery, motorbikes, and bicycles and any other machine with wheels, tracks, rollers, or skids; but does not include prams, strollers, wheelchairs or other mobility scooters.”

Writing, Written or any term of like import means and includes words printed, painted, engraved, lithographed, or otherwise traced or copied.

- 4.2. Words importing the singular number include the plural number, and words importing the plural number include the singular number; for the purposes of this 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.
- 4.3. 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.
- 4.4. The headings to the clauses of this bylaw shall not affect the construction thereof.
- 4.5. Where in any bylaw there is a reference to New Zealand statute or regulation, that reference shall include in all instances any amendments or re-enactments of such statute or regulation.

5. Application

- 5.1. This bylaw applies to all other Ashburton District Council Bylaws which are in force on or after the date of commencement of this bylaw, except for where those other bylaws or any Act may expressly provide otherwise.

6. Schedules and advisory notes

- 6.1. Every Schedule and Advisory Note to a bylaw is deemed to be part of that bylaw.

7. Officers to continue in office

- 7.1. All officers appointed by Council under or for the purpose of any repealed bylaw and holding office at the time of the coming into operation of this bylaw, shall be deemed to have been appointed under this bylaw.

8. Serving of orders and notices

- 8.1. Except where otherwise expressly provided for in any Act, in any case where it is provided by this bylaw, an order may be made, or notice may be given to any person requiring them to do or abstain from doing anything. Such order or notice shall be delivered to such person and may be delivered to them either personally or by sending the same by post to them at their last-known residence or business.
- 8.2. If such person is absent from New Zealand the order or notice may be sent to their agent instead of to such person, in any manner mentioned in 8.1.
- 8.3. If such 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, 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.
- 8.4. Where an order or notice is sent by registered post it shall be sent so as to arrive in the due course of post on or before the latest time on which such order or notice is required to be served.
- 8.5. Any order or notice issued shall state the time within which the remedial action is to be carried out, this may be extended from time to time by the written authority or an authorised officer.
- 8.6. Every order, notice, or other document 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.

9. Powers of delegation

- 9.1. In all cases where Ashburton District Council bylaws provide for the issue of any order, notice or licence, such order notice or licence shall be deemed to be issued in compliance with this bylaw if the same be issued by any officer of Council authorised by Council for that purpose.
- 9.2. Where pursuant to this bylaw any powers or duties are imposed on a Council Officer that officer may with the consent of Council delegate any of those powers or duties either generally or particularly to any other officer of Council.

10. Powers of entry for purposes of this bylaw

- 10.1. Except where provided for under any enactment, sections 171,172,173 and 182 of the Local Government Act 2002 apply to power of entry under this bylaw.

11. Licences and permits

- 11.1. A licence or permit must be obtained from Council before any activity is conducted whereby a licence or permit may be required under a bylaw.
- 11.2. An application for a licence or permit must:
- 11.1.1 be made in writing on the appropriate form provided by Council (if such a form exists);
 - 11.1.2 contain all the required information; and
 - 11.1.3 be lodged with the appropriate application fee (if such a fee is required).
- 11.3. A licence or a permit may contain such terms and conditions as Council sees fit.

12. Suspension and revocation of licences and permits

- 12.1. Council may immediately revoke or suspend any licence or permit for any specified time, if the licence holder is convicted of any offence relating to their suitability to hold the licence.
- 12.2. Should it be brought to the notice of Council that:
- 12.1.1 the holder of any licence or permit has acted or is acting in a manner contrary to the true intent and meaning of the bylaw;
 - 12.1.2 the holder of any licence has failed to comply with any of the conditions of the licence or permit;
 - 12.1.3 the holder of any licence or permit is in any way unfit to hold the licence;
 - 12.1.4 the premises for which any licence was issued are being used for any purpose other than that stated in the licence;
 - 12.1.5 a bylaw under which any licence is issued is not being properly observed; then:
- Council may by notice in writing call upon the licence or permit holder to appear before Council and give reasons why the licence or permit should not be revoked or suspended.
- 12.3. Council may revoke or suspend the licence or permit if it considers that allegations are correct in relation to clause 12.2, or if there is no appearance by the holder of the licence or permit.

13. Breaches of bylaws

- 13.1 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 that is contrary to any provisions of a bylaw;

- (b) fails to do, or knowingly permits or suffers to remain undone, anything which that person was required to do under a bylaw;
- (c) refuses or neglects to comply with any notice or direction duly given to that person under a Bylaw within the time period specified in that notice or direction;
- (d) obstructs or hinders any Council Officer in the performance of his or her duties under a bylaw;
- (e) omits, neglects or fails to obtain a current licence or permit where required under a Bylaw;
- (f) omits, neglects or fails to pay a licence or permit fee fixed by Council in respect of a licence or permit granted to such person;
- (g) fails to comply with any conditions contained in a licence or permit granted by Council.

13.1. Any person commits a breach of a 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 given to them by Council or any enforcement officer, carry out the remedial action specified in that notice.

13.2 If it appears that any person has committed a breach of a bylaw, that person must, on the request of a Council Officer, supply their full name and address to the Council Officer.

13.3 Clause 13.1 applies even if the relevant bylaw does not state that breach of the terms of the bylaw is an offence.

14. Penalties for breach of a bylaw

14.1. Every person who breaches a bylaw commits an offence and is liable:

- 14.1.1 to pay a fine or for any other penalty as specified in the Local Government Act 2002; and/or
- 14.1.2 for any other penalty specified in another Act for the breach of that bylaw.

14.2. In accordance with section 162 of the Local Government Act 2002, Council may apply to the District Court for an injunction to restrain a person from committing a breach of continuing to breach a bylaw.

14.3. Breaches of bylaws shall be considered Infringement Offences as may be prescribed under section 259 of the Local Government Act 2002 or in the Act under which the bylaw was made.

15. Repair and removal of works

- 15.1. Council may, under sections 163, 164, 165, 167 and 168 of the Local Government Act 2002, repair, remove, or later, or cause to be repaired, removed, or altered, any work, material, or thing erected or done in contravention of any bylaw.
- 15.2. Council may, under section 163 of the Local Government Act 2002, recover the costs of such removal or alteration from the person who committed the breach.
- 15.3. The exercise of this authority under this clause 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. Dispensing power

- 16.1. Council may grant a dispensation from full compliance with any provision in a bylaw where, in the opinion of Council or any Council Officer, any provision would needlessly or injuriously affect any person or business or needlessly result in inconvenience or loss to any person or business without any corresponding benefit to the public.
- 16.2. Any application for dispensation shall be made in writing. It must provide full details of the relief sought and the reasons for the application and include supporting information as requested by Council.
- 16.3. Council, or any Council Officer, may either refuse or grant the application for dispensation, subject to such conditions as are considered appropriate by Council.

17. Fees and charges

- 17.1. Council may at any time by ordinary resolution prescribe fees that may be charged in respect of any certificate, authority, approval, consent given, inspection made, or service given 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.
- 17.2. Where any inspection or service for which a fee has been paid (under the provisions of clause 17.1) has not been given or made, the Council may refund any such fee or portion thereof as it may determine.