


Thames-Coromandel District Council
Consolidated Bylaw 2004
Part 1 Preliminary and General 2004

 Bylaw	Title	Thames-Coromandel District Council Consolidated Bylaw 2004 Part 1 Preliminary and General 2004
	Date Made	Operative Date
	25 August 2004	8 September 2004
	Review Date	Next Review Date
	9 September 2009	Within 10 years of review

101 SCOPE

101.1

The purpose of the Preliminary and General part is to identify and clearly interpret those terms and expressions that are used throughout the consolidated bylaw. All matters included in this part apply across all other parts unless expressly excluded or modified in such other part.

101.2

This Part outlines serving orders and notices, powers of delegation and entry, suspension and revocation of licences, removal of works executed contrary to the bylaw, fees and charges, offences and breaches and penalties for breach of bylaws.

101.3

Other definitions are contained within various Parts of the bylaws.

102 DEFINITIONS AND INTERPRETATION

102.1

For the purposes of this bylaw the following definitions shall apply:

ACT means Local Government Act 2002 and its amendments.

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.

APPROVED means approved by the Council or by any officer authorised on that behalf by the Council.

AUTHORISED AGENT means any person who is not an employee of the Council but is authorised by the Council to act on its behalf.

AUTHORISED OFFICER means any person appointed or authorised by the Council to act on its behalf and with its authority, including a Police Constable.

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




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CHIEF EXECUTIVE means the Chief Executive of Council, appointed pursuant to S442 of Local Government Act 2002, irrespective of the designation given to that 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 means the Thames-Coromandel District Council or any officer authorised to exercise the authority of the Council.

CUSTODIAN means any person for the time being appointed by Council to control or manage or to assist in the control and management of any land, building, or premises belonging to or under the jurisdiction of the Council.

DISTRICT means the district within the jurisdiction and under the control of the Council.

DWELLING OR DWELLINGHOUSE 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.

LICENSED means holding a licence under this bylaw or under any statute

LOCAL AUTHORITY means the Council.

MOTOR VEHICLE shall have the meaning assigned to it from time to time by the Land Transport Act 1998.

NUISANCE shall have the meaning assigned to it by section 29 of the Health Act 1956 and its amendments.

Note

The definition of nuisance from section 29 of the Health Act 1956 is:

29. Nuisances defined for purposes of this Act

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:

(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:


(b) 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:

(c) 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:

(d) Where any premises are so situated, or ... are in such a state, as to be offensive or likely to be injurious to health:

(e) Repealed by s 92(1) Building Act 1991 (1991 No 150).

(f) 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:



- (g) *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:*
- (h) *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 inoffensive manner any fumes, gases, vapours, dust, or impurities generated therein:*
- (i) *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:*
- (j) *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:*
- (k) *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:*
- [(ka) 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.*

OCCUPIER means the inhabitant 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 this 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 rent, and where any such person is absent from New Zealand, shall include their attorney or agent.

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PERSON includes a corporation sole and also a body of persons, whether corporate or unincorporated.

PORTICO includes every awning, porch, verandah, shed, shade, or covering upon, across, or over any public footway or part of a road, street, private street, or accessway for the purpose of shade or shelter, together with any supports thereof, other than the building against which it shall be.

POULTRY means any bird including domestic fowls, ducks, geese, turkeys, guinea-fowl, pheasants and pigeons.

PREMISES means any land, dwelling, storehouse, warehouse, shop, cellar, yard, building, or part of the same, or enclosed space separately occupied, and all lands, buildings, and places adjoining each other and occupied together shall be deemed to be the same premises.

PUBLIC NOTICE shall have the meaning assigned to it from time to time by the Local Government Act 2002.

PUBLIC PLACE means any place that, at any material time, is under the control of the Council and is open to or being used by the public, whether free or on payment of a charge; including every reserve, park, domain, beach, foreshore and recreational grounds and includes any road whether or not it is under the control of the Council.

RESERVE means any land set aside for any public purpose and shall have the same meaning as in the Reserves Act 1977.

ROAD shall have the same meaning as in the Local Government Act 1974 and shall where the context requires include a street.

Note

The definition from section 315 Local Government Act 1974 is:

Road means the whole of any land which is within a district, and which—

- (a) Immediately before the commencement of this Part of this Act was a road or street or public highway; or*
- (b) Immediately before the inclusion of any area in the district was a public highway within that area; or*
- (c) Is laid out by the council as a road or street after the commencement of this Part of this Act; or*
- (d) Is vested in the council for the purpose of a road as shown on a deposited survey plan; or*
- (e) Is vested in the council as a road or street pursuant to any other enactment and includes—*
- (f) Except where elsewhere provided in this Part of this Act, any access way or service lane which before the commencement of this Part of this Act was under the control of any council [[or is laid out or constructed by or vested in any council as an access way or service lane]] or is declared ... by the Minister of Works and Development as an access way or service lane after the commencement of this Part of this Act [[or is declared by the Minister of Lands as an access way or service lane on or after the 1st day of April 1988]]:*

*(g) Every square or place intended for use of the public generally, and every bridge, culvert, drain, ford, gate, building, or other thing belonging thereto or lying upon the line or within the limits thereof;—
but, except as provided in [[the Public Works Act 1981]] or in any regulations under that Act, does not include a motorway within the meaning of that Act:*

STOCK means cattle, sheep, goat, pig, horse, deer, alpaca and llama or any other farmed animal of any age or sex.

STREET, PRIVATE ROAD, FOOTPATH AND PRIVATEWAY shall have the respective meanings assigned to them in the Local Government Act 1974 and shall, where the context requires, include a road.

VEHICLE means a contrivance equipped with wheels, tracks, or revolving runners upon which it moves or is moved and includes a hovercraft, skateboards, in-line skates, roller skates or similar recreational devices, but does not include:

- (a) A perambulator or pushchair;
- (b) A shopping or sporting trundler not propelled by mechanical power;
- (c) A wheelbarrow or hand-trolley;
- (d) A child's toy, including a tricycle and a bicycle, provided, in either case, no road wheel (including any tyre) has a diameter exceeding 335mm;
- (e) A pedestrian-controlled lawnmower;
- (f) Any pedestrian-controlled agricultural machinery not propelled by mechanical power;
- (g) Any article of furniture;
- (h) Any other contrivance specified by the Council.

WATERWORKS includes all waterworks as defined in section 5 of the Local Government Act 2002.

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

102.2

Words importing the singular number include the plural number, and words importing the plural number include the singular number.

102.3

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.

102.4

The headings to the clauses of this bylaw shall not affect the construction thereof.

102.5

Every Schedule or policy note to this bylaw shall be deemed to form part of this bylaw provided that any such schedule or policy note may be altered from time to time by Council resolution.

102.6

For the purposes of this Bylaw the word "shall" refers to practices that are mandatory for compliance with this Bylaw.

103 OFFICERS TO CONTINUE IN OFFICE

All officers appointed by the 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.

104 SERVING OF ORDERS AND NOTICES

104.1

Except where otherwise expressly provided for in any Act, 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 messenger, post, fax or e-mail, to them at their last-known place of abode or business.

104.2

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 the last preceding subclause.

104.3

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, or left with some inmate of his/her 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.

104.4

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.

105 SUSPENSION AND REVOCATION OF LICENCES

Save and except as may be otherwise expressly provided for in any particular case in this bylaw:

- (a) Should the holder of any licence, granted pursuant to this bylaw be convicted of any offence thereunder as a licensee the Council may immediately thereupon revoke such licence or suspend the same for as long as it may think fit.
- (b) Should it be brought to the notice of Council either by a report from an authorised officer or otherwise that the holder of any licence granted hereunder has acted or is acting in a manner contrary to the true intent and meaning of this bylaw or that in any way they are deemed to be unfit to hold such licence, then and in any of such cases the Council may cause to be served upon such holder a notice calling upon him/her to appear before Council or a committee thereof and show cause why their licence should not be revoked or suspended. The Council may, if it considers the matter proved or if there be no appearance by the holder of such licence revoke such licence or suspend the same for as long as it may think fit.
- (c) Should it be brought to the notice of the Council either by a report from an authorised officer or otherwise that any premises licensed under this bylaw or any part of such premises:
 - (i) Have been or are being used for any other purpose than that stated in such licence; or
 - (ii) Have fallen into a state of disrepair or are not being kept and maintained in the condition required by such licence; or
 - (iii) That in any other manner the bylaw in respect to such premises is not being observed in accordance with its true intent and meaning.

Then and in any such case the Council may cause to be served upon the owner or the occupier of such premises, being the holder of such licence, a notice similar to that provided for in item (b) hereof and may hear and determine the matter as provided in the said item (b).

- (d) Any person whose licence has been suspended as aforesaid and any premises in respect of which the licence has been suspended as aforesaid shall, during the period of such suspension, be deemed to be unlicensed.
- (e) No part of any fee paid in respect to such licence shall be waived or refunded to any person and suspension of a licence does not absolve the person to whom it was issued from responsibility for payment of such fee.

106 ENCROACHMENT TO BE REMOVED UPON NOTICE

106.1

If any building or other structure or any part thereof shall have been erected, constructed or placed upon, under, over or across any public place without the permission of the Council, Council may by notice in writing require the owner of such building or structure to remove the same or such part thereof as specified in the notice.

106.2

Any notice issued under 106.1 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 or structure as is to remain after such removal.

107 REMOVAL BY COUNCIL OF WORKS EXECUTED CONTRARY TO THE BYLAW OR SECTION 357 OF THE LOCAL GOVERNMENT ACT 1974

107.1

The Council may authorise any officer thereof to 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 any bylaw of the Council or section 357 of the Local Government Act 1974.

107.2

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.

107.3

The officer authorised to pull down, remove, or alter or cause to be pulled down, removed or altered any material, object or thing, erected or placed so as to encroach on a road may, following giving public notice of the intention to do so, offer for sale any material, object, or thing, by way of public tender and the successful tenderer thereby becomes the lawful owner of that material, object or thing.

107.4

If at any time prior to the sale by tender, the owner of any material, object or thing, requests the return of the property to his or her custody, then subject to first payment of Council's costs in removing the material, object, or thing from the road or place as defined in this bylaw and storage, the property shall be returned to its owner.

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 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 such person, as aforesaid.

109 FORMS

Wherever throughout this bylaw forms are prescribed, slight deviations therefrom, but to the same effect and not calculated to mislead, shall not vitiate them.

110 FEES AND CHARGES

110.1

The Council may at any time by ordinary resolution, which is subsequently publicly notified, 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 or any other enactment where that enactment contains no provision for authorising the Council to charge a fee.

110.2

Where any inspection or service for which a fee has been paid (under the provisions of 110.1) has not been given or made, the Council may refund any such fee or portion thereof as it may determine.

111 OFFENCE AND BREACHES

111.1

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

111.2

No application for a licence or authority from the Council and no payment of or receipt for any fee paid in connection with such application, licence, or authority, shall confer any right, authority, or immunity on the person making such application or payment except as is provided in such licence or authority for which a fee has been paid.

111.3

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 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 him/her under this bylaw; or

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- (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 him/her by this bylaw; or
- (g) Fails to comply with any notice or direction given under this bylaw.

111.4

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 provisions 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 or any authorised officer of the Council, carry out the remedial action specified in that notice.

111.5

The notice 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.

111.6

The provisions of this clause shall also apply to any building, part of a building, work, appliance, or material that has, before the coming into force of this bylaw, been constructed, affixed, or provided or omitted contrary to or otherwise than as provided by any provision of any bylaw hereby repealed, but re-enacted, in substance in this bylaw. Notice as aforesaid may be given and renewed in respect of any such building, part of a building, work appliance or material.

111.7

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

112 PENALTIES FOR BREACH OF BYLAWS

112.1

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 section 242 of the Local Government Act 2002.

Note

Section 164 and 165 of the Local Government Act 2002 provides authority for an enforcement officer to seize and impound property that is materially involved in the commission of an offence against a bylaw.

Table of Amendments

This table does not form part of the Bylaw

Number	Description of Amendment	Date of Council Resolution	Effective Date