

This Model Freedom Camping Bylaw has been developed in consultation with the Department of Internal Affairs, the Department of Conservation and Local Government New Zealand, who are all generally supportive of the Model Bylaw.

## MODEL FREEDOM CAMPING BYLAW

### 1. EXPLANATORY NOTE

This clause contains an explanatory note to the Model Bylaw. It gives the section of the Freedom Camping Act 2011 (“the Act”) that authorises the Bylaw and states that the Bylaw should be read alongside the Act.

It also, importantly, suggests that readers should refer to any other rules/plans/etc that govern freedom camping in the district or region. This is so that potential visitors to the region or district are aware that there are other means to restrict or prohibit freedom camping. For more information, see the notes to clause 6 of the Model Bylaw, which describe the other legal means a local authority can use to regulate freedom camping.

The [*relevant local authority*] makes this Bylaw under section 11 of the Freedom Camping Act 2011. This Bylaw should therefore be read alongside the Freedom Camping Act.

This Bylaw should also be read in conjunction with [*any other bylaws, rules or plans that govern freedom camping in the district or region*].

### 2. TITLE

This Bylaw is the [*Relevant Local Council*] Freedom Camping Bylaw [*year*].

### 3. PROCEDURE AND COMMENCEMENT

(1) The initial resolution adopting a statement of proposal for this Bylaw was passed by the [*relevant local authority*] at an ordinary meeting of the Council held on [*date*] and , following consideration of submissions received during the special consultative procedure, this Bylaw was made by a resolution at a subsequent meeting of the Council on [*date*].

(2) The Bylaw comes into force on [*date*].

### 4. DEFINITIONS

This clause defines key terms used in the Model Bylaw. Words that are already defined in the Freedom Camping Act are defined in the Model Bylaw by reference to the Act.

Local authorities should note that “freedom camp” has a defined meaning under the Act. We set out the definition here to remind local authorities of what constitutes freedom camping according to section 5(1) of the Act:

“In this Act, freedom camp means to camp (other than at a camping ground) within 200 m of a motor vehicle accessible area or the mean low-water springs line of any sea or harbour, or on or within 200 m of a formed road or a Great Walks Track, using 1 or more of the following:

- (a) a tent or other temporary structure:
- (b) a caravan:
- (c) a car, campervan, housetruck, or other motor vehicle.”

The Act is clear (in section 5(2)) that freedom camping does not include: temporary and short-term parking of a motor vehicle; recreational activities commonly known as day-trip excursions; and resting or sleeping at the roadside in a caravan or motor vehicle to avoid driver fatigue.

If local authorities restrict freedom camping at a particular site to self-contained camping only, the following definition of self-contained vehicle may be useful:

“**Self-contained vehicle** means a vehicle designed and built for the purpose of camping which has the capability of meeting the ablutionary and sanitary needs of occupants of that vehicle for a minimum of three days without requiring any external services or discharging any waste and complies with New Zealand Standard 5465:2001: Self Containment of Motor Caravans and Caravans, as evidenced by the display of a current self-containment warrant issued under NZS 5465:2001.”

Note that “self-contained vehicle” is not defined in the Freedom Camping Act and that this is only an example as to how it may be defined.

Be aware that any amendments made to NZS 5465:2001 after a local authority adopts its bylaw will not automatically apply to the “self-contained vehicle” definition in that bylaw. For instance, NZS 5465:2001 was amended in May 2017 to refine the minimum requirements of a toilet: this amendment will apply to bylaws made after to May 2017, but will not automatically apply to those bylaws made before this date.

If a local authority decides that it wants amendments to NZS 5465:2001 to apply to its bylaw, it must amend the bylaw to make clear that the amendment has been incorporated. For instance, if a local authority wanted to incorporate the May 2017 amendment to NZS 5465:2001, it could amend the bylaw to insert “(including the May 2017 amendment)” after the first reference to the Standard in the “self-contained vehicle” definition.

Bylaws made under section 11 of the Act should also use the phrase “local authority areas” (as defined in the Act) to describe the sites that are subject to restrictions or prohibitions regarding freedom camping. Other names – such as “public place” – should not be used, as they do not reflect the terminology used in the Act and may lead to the inclusion of areas not governed by the Act.

In this Bylaw, unless the context requires otherwise:

**Act** means the Freedom Camping Act 2011.

**Camping ground** has the meaning given in section 5(3) of the Act.

**Council** means [*the relevant local authority*].

**[District or Region]** means the [district or region] of the Council.

**Freedom camp** has the meaning in section 5(1) and (2) of the Act.

**Local authority area** has the meaning in section 6 of the Act.

**Prohibited area** means an area identified in Schedule 1: Prohibited Areas for Freedom Camping in which freedom camping is prohibited.

**Restricted area** means an area identified in Schedule 2: Restricted Areas for Freedom Camping in which freedom camping is permitted subject to restrictions.

## 5. PURPOSE

This clause is intended to state clearly the purpose of a bylaw under the Act. It sets out – following the wording of section 11(2) of the Act – the reasons for regulating freedom camping by way of restriction or prohibition in a district or region.

The purpose of this Bylaw is to control freedom camping in the [Region or District] in order to:

- (a) protect local authority areas;
- (b) protect the health and safety of people who may visit local authority areas; or
- (c) protect access to local authority areas.

## 6. LOCAL AUTHORITY AREAS WHERE FREEDOM CAMPING PERMITTED

This clause reflects section 10 of the Act. It is intended to be a reminder to local authorities that unless restricted or prohibited under a bylaw made in accordance with section 11 of the Act, freedom camping is allowed in any local authority area (unless it is prohibited by another enactment).

Other means of regulating freedom camping in local authority areas, apart from a bylaw made under section 11 of the Act, include:

- section 44 of the Reserves Act 1977;
- rules in a district or regional plan made under the Resource Management Act 1991;
- bylaws made under sections 145 or 146 of the Local Government Act 2002.

The difference between these means to prohibit or restrict freedom camping and a bylaw made under section 11 of the Act is that the infringement regime for illegal freedom camping in the Act can only be used by a local authority if there has been contravention of a section 11 bylaw.

Local authorities therefore have a number of tools at their disposal to regulate freedom camping in their district or region. However, a local authority needs to be careful, if it uses two or more of the methods available to regulate freedom camping, that it does not create confusion as to how the different rules/bylaws/etc interact together. A local authority may wish to review these other means of regulating freedom camping, to make sure they work consistently together, when creating a bylaw under the Act.

Consequently, when drafting a bylaw under section 11 of the Act, a local authority may wish to include reference to other means the authority is using to regulate freedom camping. This is in order to clarify for the public the extent of prohibitions or restrictions in relation to freedom camping in the district or region.

If this course of action is undertaken, careful drafting is necessary to ensure that the bylaw clearly delineates what restrictions or prohibitions have been created under section 11 of the Act and what is merely descriptive reference within the bylaw to restrictions or prohibitions that are the result of other statutory powers.

The footnote at the end of this clause is an optional feature. It is intended to provide a mechanism by which the local authority can inform the public of other restrictions or prohibitions on freedom camping in an area.

Freedom camping is permitted in any local authority area within the [District or Region] unless it is restricted or prohibited in an area:

- (a) in accordance with this Bylaw; or
- (b) under any other enactment.<sup>1</sup>

## 7. PROHIBITED AREAS AS OUTLINED IN SCHEDULE 1

The purpose of this clause is to state clearly that freedom camping is prohibited in the local authority areas set out in Schedule 1.

Local authorities should note that under section 12 of the Act, they are not allowed to make a bylaw under section 11 with the effect of prohibiting freedom camping in all local authority areas in its district. A bylaw will be illegal under section 12 if it has the practical effect of prohibiting freedom camping in virtually all local authority areas in the district or region, even if it does not literally say that: see, for example, *Schubert v Wanganui District Council* [2011] NZAR 233 (HC) at [41]–[53].

Note also that section 11(1) of the Act only provides for a local authority to prohibit freedom camping in local authority areas, as defined in section 6 of the Act. Furthermore, a local authority can only prohibit freedom camping in a local authority area if (in accordance with section 11(2)) it is satisfied that:

- the bylaw is necessary for one or more of the following purposes: to protect the area, to protect the health and safety of people who may visit the area, or to protect access to the area; and
- the bylaw is the most appropriate and proportionate way of addressing the perceived problem in relation to that area; and
- the bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.

Local authorities can also prohibit freedom camping in only part of a local authority area, as the definition of such an area within the Act includes any part of a local authority area: see section 6(1)(b).

- (1) A person must not freedom camp in any prohibited area identified in Schedule 1: Prohibited Areas for Freedom Camping.
- (2) Despite subclause (1), a person may freedom camp in any prohibited area if he or she has obtained the prior written consent of the Council, granted under clause 9(1), and complies with any conditions on the consent.

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<sup>1</sup> A list can be obtained from the Council website of all areas where freedom camping is restricted or prohibited under any other statutory powers.

## 8. RESTRICTED AREAS AS OUTLINED IN SCHEDULE 2

The purpose of this clause is to state clearly that people can freedom camp in the local authority areas set out in Schedule 2, but that they must obey the restrictions in place in relation to those areas.

The bylaw can have general restrictions applicable to all restricted areas, which are listed in clause 8, and can also – in Schedule 2 – outline the additional restrictions that apply to a particular restricted area. (Further notes on this are provided in the notes accompanying Schedule 2 of this Model Bylaw.)

Examples of restrictions include:

- That freedom camping is restricted to self-contained vehicles.
- That freedom camping is restricted to a maximum of three consecutive nights in any four week period.
- That freedom camping is restricted to designated carparks within a particular area only.
- That freedom camping in a non-self-contained vehicle or a tent must occur within 100 m of a public toilet.

Note too that the same criteria in section 11(2) of the Act that apply to prohibiting freedom camping in a local authority area also apply to restricting freedom camping in an area (see the notes accompanying clause 7 as to what these criteria are).

Local authorities can also restrict freedom camping in only part of a local authority area, as the definition of such an area within the Act includes any part of a local authority area: see section 6(1)(b).

- (1) A person may freedom camp in any restricted area identified in Schedule 2: Restricted Areas for Freedom Camping, but must comply with the restrictions listed below and any additional restrictions listed for that area in Schedule 2:
  - (a) [insert restriction 1];
  - (b) [insert restriction 2]; and
  - (c) [insert restriction 3 etc.].
- (2) Despite subclause (1), a person may freedom camp in any restricted area if he or she has obtained the prior written consent of the Council, granted under clause 9(1), and complies with any conditions on the consent.

## 9. PRIOR CONSENT FROM COUNCIL

The objective of this clause is to allow some flexibility in the operation of the bylaw. For example, a special event or occasion may occur in a local authority area that only allows restricted freedom camping or where freedom camping is prohibited under the bylaw. Clause 9 allows the local authority to exempt people from some or all of those restrictions and/or prohibition for the duration of the special event. There may be other reasons too that emerge for allowing consent for camping in a restricted area, but discretion as to whether these are granted remains with the local authority. Conditions on consents can be used to impose obligations and requirements on applicants, including, for instance, certain restrictions that the Council does not wish to waive.

- (1) The Council may grant consent to a person to freedom camp in a prohibited area or a restricted area, with or without conditions.

- (2) Consent must be applied for in writing to the Chief Executive Officer of the Council at least *[insert timeframe]* in advance of the date planned for freedom camping in the prohibited area or restricted area.

## 10. OFFENCES

Section 20 of the Act sets out several offences relating to freedom camping. This clause repeats the offences in section 20(1)(a) and (c) of the Act, which are dependent upon a Bylaw to exist. Both of these offences are known in the Act as “infringement offences” (see the definition of this term in section 4(1)).

- (1) As specified by section 20(1) of the Act, every person commits an offence who –
- (a) freedom camps in a local authority area in breach of any prohibition or restriction in this Bylaw that applies to the area; or
  - (b) makes preparations to freedom camp in a local authority area in breach of any prohibition or restriction in this Bylaw that applies to the area.
- (2) Any person who has obtained the prior written consent of the Council, granted under clause 9(1), and who complies with any conditions on the consent, is not acting in breach of any prohibition or restriction in this Bylaw.

## 11. PENALTIES

This clause reflects section 23(1) of the Act, which sets out the penalty for infringement offences. According to section 23(1), a person who commits an infringement offence is liable to either a fee prescribed by regulations made under section 43 of the Act or, if no fee is prescribed by regulations, \$200.

As specified by section 23(1) of the Act, every person who commits an offence pursuant to section 20(1)(a) and (c) of the Act is liable to [the amount prescribed by regulations made under section 43 of the Act or \$200].

## 12. RELATIONSHIP OF BYLAW WITH *[RELEVANT SETTLEMENT LEGISLATION]*

This clause should be included if there is legislation effecting a Treaty of Waitangi settlement – such as the Ngāi Tahu Claims Settlement Act 1998 – that affects the district or region and the local authority wishes to clarify how it will interact with a bylaw made under section 11.

This Bylaw does not limit or affect the rights in relation to *[nohoanga/iwi/etc]* entitlements under the *[relevant settlement legislation]*.

## SCHEDULE 1: PROHIBITED AREAS FOR FREEDOM CAMPING

Schedule 1 enables a local authority to fulfil its obligation under section 11(3) of the Act: that a bylaw made under section 11(1) must define a prohibited area by either a map, or a description of its locality (other than just its legal description), or both. Both methods are important means of identifying to the public where they are unable to freedom camp.

We suggest that Schedule 1 should define each prohibited area using both a written description of its locality and a map that clearly highlights where people cannot freedom camp.

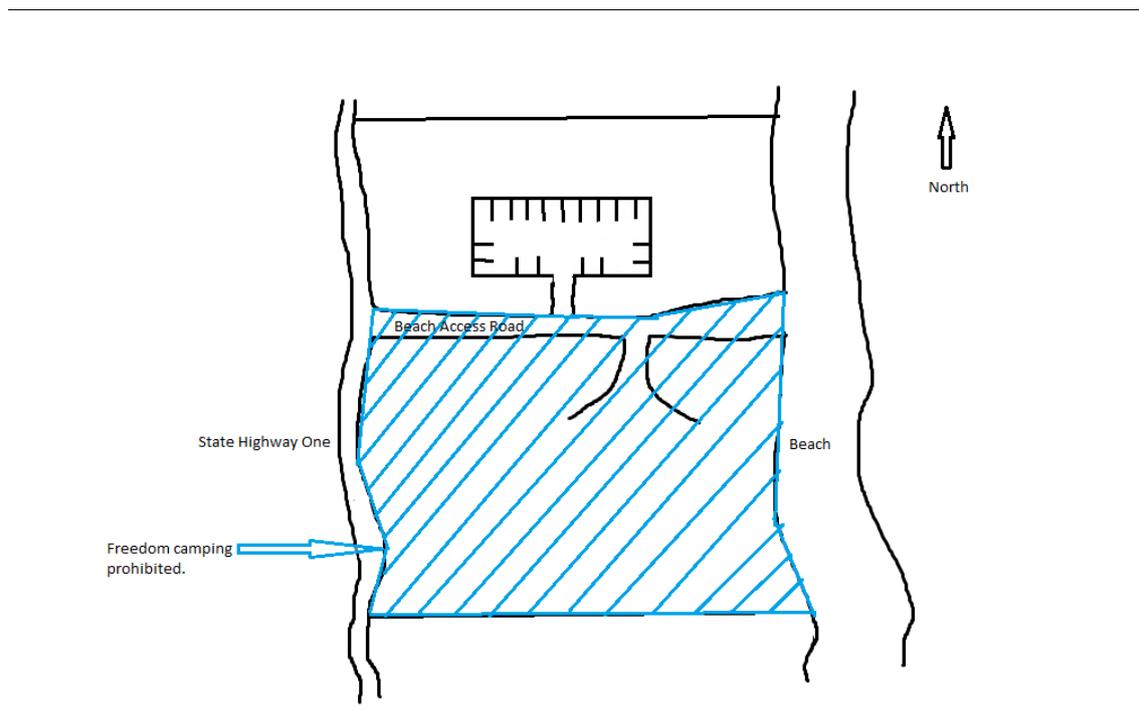
Local authorities should note that if they use both methods to identify a prohibited area, then – in the instance that there is an inconsistency between the two – the description prevails: section 11(4) of the Act.

An example of a prohibited local authority area (using the fictitious “Pohutukawa Park, Pleasantville”) is defined below using both methods.

### Southern half of Pohutukawa Park, Pleasantville

Pohutukawa Park is located approximately 5 km north of Pleasantville township, adjacent to and to the east of State Highway One.

Freedom camping is prohibited in all parts of Pohutukawa Park south of, and including, Beach Access Road.



## SCHEDULE 2: RESTRICTED AREAS FOR FREEDOM CAMPING

### ***Defining restricted areas***

The purpose of Schedule 2 is to enable a local authority to fulfil its obligation under section 11(3) of the Act: to define restricted areas by either a map, or a description of its locality (other than just its legal description), or both. Both methods are important means of identifying to the public where freedom camping is restricted.

We suggest that Schedule 2 should use both methods to define restricted local authority areas. Local authorities should also note that if they use both methods, then – in the instance of an inconsistency between the two – the description prevails: section 11(4) of the Act.

Two examples of a restricted area defined using both methods (one of them once again using the fictitious “Pohutukawa Park, Pleasantville”) are included below. The second of these, relating to fictitious “Nikau Park, Pleasantville”, relates to a restricted area that nevertheless allows freedom camping in a non-self-contained vehicle or in a tent due to the presence of a toilet block in the local authority area.

### ***Restrictions that apply***

A local authority can impose general restrictions that apply to all areas in Schedule 2 (see clause 8(1)) and can also choose to impose additional specific restrictions in relation to particular areas in Schedule 2.

General restrictions that apply to all restricted areas should be listed in clause 8(1). Such restrictions – as demonstrated by the notes accompanying clause 8 of this Model Bylaw – might relate to the type of vehicle that can be used for freedom camping, or how long a person is allowed to freedom camp for at a single location at any one time.

If the local authority chooses to impose additional specific restrictions, then the particular restrictions applicable to each local authority area where freedom camping is restricted need to be identified in Schedule 2, alongside the definition of each area. Both examples of a restricted area in Schedule 2 of the Model Bylaw (which are below) illustrate this.

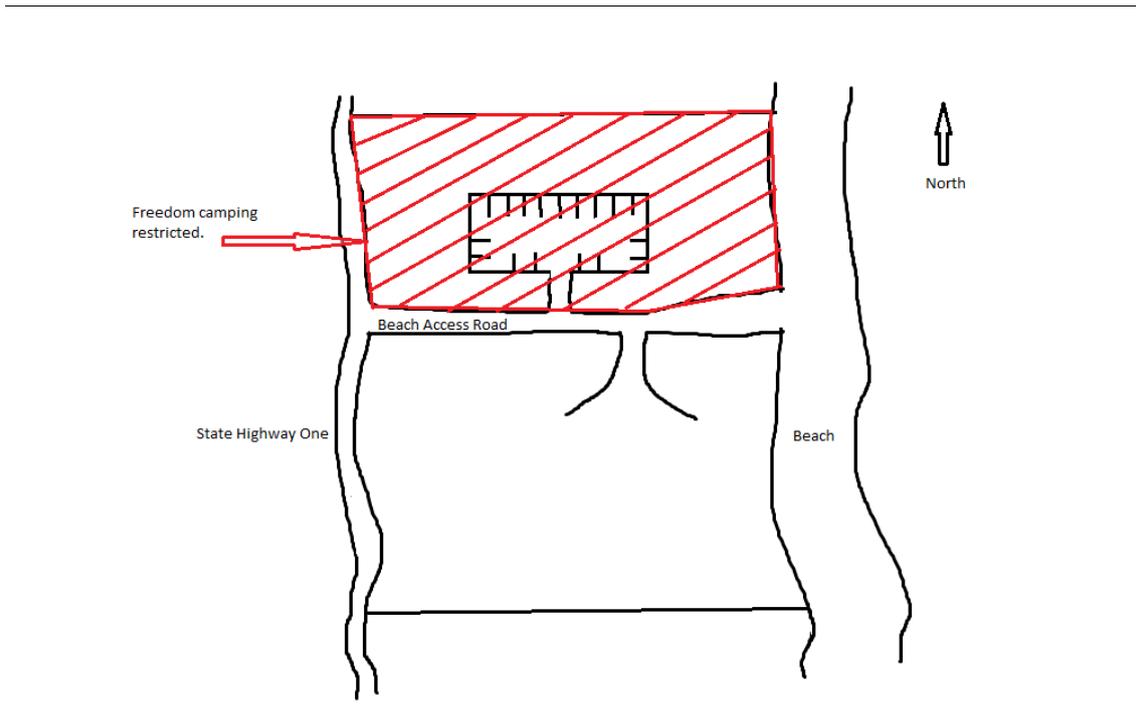
Whether or not the restrictions apply to particular areas, or are applicable to all restricted sites, the local authority must still ensure that the restrictions fulfil the test set out in section 11(2) of the Act in relation to each particular local authority area.

### Northern half of Pohutukawa Park, Pleasantville

Pohutukawa Park is located approximately 5 km north of Pleasantville township, adjacent to and to the east of State Highway One.

Freedom camping is restricted in all parts of Pohutukawa Park north of Beach Access Road.

Freedom camping in this area is restricted to self-contained vehicles parked in designated carparks only. The maximum period anyone can freedom camp in this area is three consecutive nights in any four week period.



### Nikau Park, Pleasantville

Nikau Park is located approximately 1 km south of Pleasantville township, adjacent to and to the east of State Highway One.

The maximum period anyone can freedom camp in this area (whether by motor vehicle or tent) is three consecutive nights in any four week period.

Freedom camping in a motor vehicle (including a car, campervan or housetruck) is restricted to designated carparks only.

