

Fires in the Open Air Bylaw

2015

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1 Introduction

- 1.1 This bylaw is made in accordance with the Local Government Act 2002 and the Rural Fires Act 1977.
- 1.2 This bylaw shall come into force on 17 December 2015.
- 1.3 This bylaw should be read in conjunction with Council's Rural Fire Plan.
- 1.4 This bylaw should be read in conjunction with the Regional Air Quality Plan produced by the Northland Regional Council, which requires that resource consent be sought for most burning activities within the Whangarei airshed.

2 Purpose

The purpose of this bylaw is to protect public health and safety from the start or spread of fire by regulating the use of fires in the open air and other fire hazards.

Explanatory Note: While the bylaw applies to both the urban and rural areas of the Whangarei District, the Forest and Rural Fires Act 1977 and its regulations also apply in rural areas.

3 Definitions and interpretation

In this bylaw, unless the context otherwise requires:

Acceptable means of fire suppression means a hose connected to a reticulated water supply or an alternative means of fire suppression approved in writing in a particular area by the CE or delegate.

Barbecue means any fixed or portable gas or solid fuel burning equipment or device designed or intended for the cooking of food in the open air that is not certified to the standards specified in NZS/AS 3645:2010 Part 2

CE or delegate means the person appointed as the Chief Executive of the Whangarei District Council and includes the Principal Rural Fire Officer and any other officer acting under the delegated authority of the Chief Executive.

Ethnic cooking fire means any hangi, umu or similar fire in the open air and used for the preparation of food using ethnic cooking methods.

Fire permit means a permit to light a fire in the open air granted in accordance with clauses 5.2 and 6.2 of this bylaw.

Open air, in relation to fires, means in the open air whether on or above ground level, excluding:

- commercially constructed barbecues or incinerators that comply with NZS 5262, 5435 and/or 5442.
- fireplaces (including any enclosed fireproof place or incinerator for combustion by fire) constructed and maintained in a dwelling or other structure or in any other place to the approval of the public or local authority having jurisdiction to issue the relevant permit to build such dwelling or structure or to authorise the construction or installation of the fireplace.
- domestic gas barbecues that are certified to the standards specified in NZS/AS 3645:2010 Part 2.

Open fire season means a period of time, whether fixed or indefinite during which the lighting of fires in the open air is permitted.

Prohibited fire season means a period of time, whether fixed or indefinite during which the lighting of fires in the open air is prohibited in accordance with clause 6 of this bylaw.

Restricted fire season means a period of time whether of fixed or indefinite duration during which period permits of authorities are required for the lighting of fires in the open air in accordance with clause 5 of this bylaw.

4 Fires in the open

No person shall in any open fire season light any fire in the open air where the location, wind or other conditions cause or are likely to cause the fire to become:

- a. A danger to any person or property; or
- b. out of control or spread beyond the limits of the premises on which it is lit; or
- c. a smoke or ash nuisance to any person.

5 Restricted fire season

- 5.1 The CE or delegate may at any time prescribe a restricted fire season or seasons within the District or in any specified part or parts thereof, and may at any time cancel or vary such a prescription.
- 5.2 Any person wishing to obtain a fire permit during a restricted fire season shall apply to the CE or delegate.
- 5.3 The CE or delegate may from time to time prescribe a form of application for the purposes of clause 5.2
- 5.4 On written application under clause 5.2 the CE or delegate may issue a fire permit and may impose such conditions and restrictions in respect of the permit as the CE or delegate considers reasonably necessary having regard to:
 - a. Any cultural requirements or practices;
 - b. the location, terrain, natural vegetation, and the existence of buildings, infrastructure assets including transmission line or substation assets, or other structures and any other fuels; and
 - c. protection of the health, safety and convenience, of persons on the premises in respect of which the permit is used and adjoining lands and premises;
 - d. weather and any other fire danger.
- 5.5 Ethnic cooking fires, barbecues and incinerators are exempt from clause 5.2 providing they are undertaken in compliance with any conditions set out in the public notice announcing the relevant restricted fire season.
- 5.6 Notwithstanding Clause 5.5, in periods of elevated fire danger the CE or delegate may temporarily ban ethnic cooking fires, incinerators and barbecues.
- 5.7 Unless permitted by the CE or delegate, no person shall, in a restricted fire season light any fire in the open air and no person, being the occupier of any premises shall cause, permit or suffer any fire to be lit or continue to burn in the open air on those premises.

6 Prohibited fire season

- 6.1 The CE or delegate may at any time prescribe a prohibited fire season or seasons within the district or in any specified part or parts thereof, and may at any time cancel or vary such a prescription.
- 6.2 Unless permitted by the CE or delegate, no person shall, in a prohibited season, light any fire in the open air and no person, being the occupier of any premises shall cause, permit or suffer any fire to be lit or continue to burn in the open air on those premises.
- 6.3 On written application the CE or delegate may issue a fire permit to prevent, reduce, or overcome any hazard to life or health or in other serious emergency or where weather or other conditions have so temporarily reduced the fire hazard so as to make it apparently safe to light a fire and may impose such conditions and restrictions in respect of the permit as the CE or delegate considers reasonably necessary having regard to:
 - a. Any cultural requirements or practices;
 - b. the location, terrain, natural vegetation, and the existence of buildings, infrastructure assets including transmission line or substation assets, or other structures and any other fuels; and
 - c. protection of the health, safety and convenience, of persons on the premises in respect of which the permit is used and adjoining lands and premises;
 - d. weather and any other fire danger.
- 6.4 Ethnic cooking fires, barbecues and incinerators are exempt from clause 6.2 providing they are undertaken in compliance with any conditions set out in the public notice announcing the relevant prohibited fire season.
- 6.5 Notwithstanding Clause 6.4, in periods of elevated fire danger the CE or delegate may temporarily ban ethnic cooking fires, incinerators and barbecues.

7 Public notice of restricted or prohibited fire season

- 7.1 Public notice of the prescription of a restricted or a prohibited fire season made under clause 5 or clause 6 or the cancellation of such a prescription shall be made by:
- Broadcast or other similar means within the district; or
 - by a notice inserted in a daily or community newspaper circulating within the district; or
 - by any effective means.

8 Revocation or suspension of permits

- 8.1 Subject to clause 8.2 every fire permit issued in accordance with clause 5 shall remain in force from the date of issue until the date of expiry of the period, date or time specified in the permit, unless a prohibited fire season is declared.
- 8.2 Notwithstanding any other provisions in this bylaw, any permit issued under this part of the bylaw may be revoked or suspended by the CE or delegate at any time, or suspended for such periods of time on such terms and conditions, as the CE or delegate may consider reasonable in the circumstances.

9 Fees for permits

- 9.1 Council may, from time to time, by resolution publicly notified, specify the fee or fees payable in respect of the issue of any permit under this bylaw. Any fee prescribed shall be paid upon uplifting the permit.

10 Council may extinguish fires

- 10.1 Where a fire has been lit or allowed to burn in:
- An open fire season in breach of clause 4; or
 - a restricted fire season in breach of the conditions or a fire permit issued in accordance with clause 5; or
 - a prohibited fire season in breach of clause 6; or
 - a contravention of the Regional Air Quality Plan.

Any officer or agent of Council (including the New Zealand Fire Service) may extinguish any such fire or direct the occupier of the premises on which the fire is located, or the person who lit the fire, to extinguish such fire.

- 10.2 Where the CE or delegate has extinguished a fire pursuant to clause 10.1 Council may recover the costs incurred in extinguishing the fire from the occupier of premises on which the fire was located, or the person who lit the fire.
- 10.3 Where any occupier of premises upon which a fire in the open air is located, or a person who lit such fire, disregards a Council direction under clause 10.1 to extinguish the fire, the CE or delegate may authorise an agent of the Council (including the New Zealand Fire Service) to extinguish the fire and to take such other steps as may be necessary to ensure the safety of any person or to protect the premises, or any other property.
- 10.4 Council may recover from the occupier of the premises, or the person who lit the fire, any costs incurred by it as a result of its officer or agents taking any action authorised by the CE or delegate under clause 10.3.

11 Live ashes

- 11.1 No person shall place any live cinders, embers or ashes in or upon any premises other than:
- In a container made and constructed of concrete or other similarly fire resistant material to prevent the transmission of heat to any combustible material; or
 - in a pit or upon a fire resistant substance in a manner which will prevent the spreading of fire or heat by the action of wind or otherwise.
 - as part of an ethnic cooking process including hangi or umu.

12 Storage of combustible materials

- 12.1 Except as provided in clause 12.2 and clause 12.3, no occupier of any premises shall permit the storage or stacking in the open of any combustible material, unless the distance of the stack from any boundary other than a street boundary is at least equal to the height of the stack, but in any case not less than 1.4 metres.
- 12.2 A stack may be placed closer to the boundary than the distance specified in clause 12.1 if a brick, stone or concrete wall extending not less than 450 millimetres beyond the length of the stack, is situated between the stack and the boundary.
- 12.3 A stack may, with the written approval of the owner and of the CE or delegate, be placed closer to the boundary than the distance specified in clause 12.1 where any of the following conditions continue to exist:
- a. Where there is a brick, stone or concrete wall as defined in clause 12.2 without openings situated on the adjoining property and within 1.4 metres of the common boundary; or
 - b. Where there are no buildings on the adjoining land; or
 - c. Where there is no danger of a stack adjacent to a boundary increasing the risk of the spread of fire.

13 Offences

- 13.1 Every person who breaches this bylaw commits an offence.