

ROTORUA
LAKES COUNCIL

AIR QUALITY CONTROL BYLAW 2017

adopted 24 August 2017

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PART ONE: INTRODUCTION

1.1 SCOPE AND GENERAL

PURSUANT to the powers contained in the Local Government Act 2002, and any other authority enabling it in that behalf, the Rotorua District Council **HEREBY RESOLVES** to make the following Bylaw:

1.2 TITLE OF BYLAW

This Bylaw shall be known as the **“Rotorua District Council Air Quality Control Bylaw 2017”**.

This Bylaw applies within the area defined as the "Rotorua Airshed" gazetted by the Ministry for the Environment.

Pursuant to section 239 Local Government Act 2002 it is an offence for a person to breach the provisions of this Bylaw.

Compliance with this Bylaw does not replace the need to comply with other legislation, such as the Resource Management Act 1991 or the Building Act 2004.

1.3 COMMENCEMENT

The provisions of this Bylaw shall come into force on 24 August 2017.

1.4 PURPOSE

The purpose of this Bylaw is to protect, promote and improve public health and safety by regulating solid fuel burners and indoor open fires.

PART TWO: INTERPRETATION

In this Bylaw, unless the context otherwise requires:

“Authorised Officer” means any person appointed or authorised by either the Rotorua District Council or the Bay of Plenty Regional Council to act on their respective behalf's and with their authority.

“Contaminant” includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat:

- (a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water, or

- (b) when discharges on to or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air on to or into which it is discharged.

“Coal burner:” means a solid fuel burner designed to burn coal, which has the following design features:

- (a) under fuel combustion air supplies with separate controls
- (b) grate in the base of the firebox
- (c) ash pan under the grate.

“Council” means the Rotorua District Council or the Bay of Plenty Regional Council and any authorised officer.

“Discharge” includes emit, deposit, and allow to escape.

“Dwelling house” means any building, whether permanent or temporary, that is occupied, or is intended to be occupied, in whole or in part, as a residence; and includes any structure or outdoor living area that is accessory to, and used wholly or principally for the purposes of, the residence, but does not include the land upon which the residence is sited.

“Emission rate” means the amount of particles (in grams) discharged from a solid fuel burner for each kilogram of dry wood burnt. The discharge must be measured in accordance with:

- (a) the method specified in Australian/New Zealand Standard AS/NZS 4013:2014, Domestic solid fuel burning appliances – Method for determination of flue gas emission; or
- (b) for a woodburner excluded from that method, another method that is functionally equivalent.

“Heritage List” means the New Zealand Heritage List/Rarangi Korero

“Heritage NZ” means Heritage New Zealand Pouhere Taonga

“Indoor open fire” means an appliance or a structure in a dwelling house or building that can burn solid fuel but cannot effectively control the rate of air supply to the combustion zone. It includes a fireplace that has a cover or doors that cannot effectively control the rate of air supply to the combustion chamber, but excludes any solid fuel burner where the firebox is enclosed with a regulated supply of air to the fire.

“Inoperable” in relation to an indoor open fire means an indoor open fire where at least one of the following actions has rendered the indoor open fire permanently incapable of use:

- (a) the firebricks and masonry have been removed,
- (b) the chimney has been permanently blocked off,
- (c) the indoor open fire has been permanently boarded over,
- (d) an alternative heating appliance (not including solid fuel burners) has been permanently installed into the fireplace

“Multifuel burner” means a solid fuel burner designed to burn wood and/or coal, which has the following design features:

- (a) fuel combustion air supplies with separate controls
- (b) grate in the base of the firebox
- (c) ash pan under the grate.

“Non-complying solid fuel burner” means:

- (a) any woodburner installed before 1 September 2005 OR
- (b) any coal burner, or multifuel burner, OR
- (c) any solid fuel burner with an emission rate greater than 1.5g/kg and a thermal efficiency less than 65%.

“Pellet burner” means any solid fuel burning appliance that burns manufactured pellets of compressed wood sawdust, and where the pellets and air are mechanically delivered to an enclosed combustion chamber at a controlled rate. Excludes woodburners, coal burners and multifuel burners.

“Replace or Replaced” in relation to solid fuel burners means the complete physical removal (taking out, taking away or cause to be no longer present) of the solid fuel burner from the dwelling house or building and installation of a new solid fuel burner that complies with this Bylaw.

“Remove or Removed” in relation to the removal of solid fuel burners means the complete physical removal (taking out, taking away or cause to be no longer present) of the solid fuel burner from the dwelling house or building.

“Rotorua Airshed” means the area of Rotorua specified by the Minister for the Environment as a separate airshed, by notice in the *New Zealand Gazette*

“Solid Fuel” means a solid substance that releases useable energy when burnt and includes wood, coal and its derivatives, and manufactured fuel pellets.

“Solid Fuel Burner” means a small-scale solid fuel burning appliance, where combustion of the solid fuel occurs within a firebox, and where there may be a regulated supply of air to the fire. It includes (but is not limited to) indoor open fires, freestanding or built in woodburners, pellet burners, potbelly stoves coal ranges, coal burners, chip heaters, water heaters or central heating units, multifuel burners, and similar appliances. It excludes small-scale domestic devices for smoking food, any portable unflued heaters fueled by gas, alcohol or other liquid fuels, gas hobs or gas ranges used for cooking, and any fuel burning appliance installed in a boat, caravan or motor home.

“Space Heater” means a domestic appliance designed for use within a building to generate warmth for human comfort. It includes solid fuel burners with water heating capabilities as a secondary purpose and appliances designed to heat water for space heating (for example via radiators). It excludes cooking fires, ranges, and chip heaters where the primary purpose of the fire is to cook or heat water.

“Thermal efficiency” means the ratio of useable heat energy output to energy input. The thermal efficiency must be calculated in accordance with:

- (a) the method specified in Australian/New Zealand Standard AS/NZS 4012:2014, Domestic solid fuel burning appliances – Method for determination of power output and efficiency; or
- (b) for a woodburner excluded from that method, another method that is functionally equivalent.

“Transfer of ownership” does not include:

- (a) a transaction in which a person who was a registered proprietor of the dwelling house at the date this Bylaw comes into force who remains or becomes a registered proprietor (whether or not the only registered proprietor) of that dwelling house after the transfer; or
- (b) a transaction in which the transferee is a trustee of a trust and one or more of the transferors is a beneficiary of that same trust.

“Woodburner” means a type of domestic solid fuel burner that burns wood, where combustion of wood occurs within a firebox, and where there is a regulated supply of air to the fire. It excludes indoor open fires, pellet burners, coal burners, multifuel burners, and also excludes cooking fires, ranges, and chip heaters where the primary purpose of the fire is to cook or heat water

PART THREE: RESTRICTIONS ON SOLID FUEL BURNERS

3.1 SOLID FUEL BURNER CHANGE REQUIRED AT POINT OF SALE

3.1.1 Any indoor open fire not permitted under 4.1.1 must be rendered inoperable and any other non-complying solid fuel burner situated in a dwelling house or building must be replaced or removed by the vendor, before a registered transfer of ownership of the dwelling house in which the non-complying solid fuel burner is located takes place.

3.1.2 Vendors affected by 3.1.1 must provide the Council with written/photographic evidence of compliance with 3.1.1, within 3 days following the registered transfer of ownership of the dwelling house or building in which the non-complying solid fuel burner was located.

3.2 RESTRICTION ON INSTALLATION OF SOLID FUEL BURNERS

3.2.1 The installation of any:

- (a) solid fuel burner, or
- (b) multi-fuel burner, or
- (c) coal burner

is not permitted in any dwelling house or building after the date of commencement of this Bylaw except where the installation is of a pellet burner or woodburner with an emission rate equal to or less than 0.6g/kg and a thermal efficiency of no less than 65%, or where 3.2.2 applies.

3.2.2 Where the installation is of a woodburner that replaced a coal burner, multifuel burner, or a woodburner used primarily as a space heater, in a dwelling house or building, the woodburner must have an emission rate equal to or less than 0.6 g/kg and a thermal efficiency of no less than 65%.

PART FOUR: BAN ON DISCHARGES FROM INDOOR OPEN FIRES

4.1 INDOOR OPEN FIRES

4.1.1 No person shall discharge contaminants into the air from any indoor open fire except:

- (a) from industrial or trade premises where the open fire is used exclusively for the smoking and cooking of food for wholesale or retail sale, or
- (b) where the indoor open fire is located within a building which has been entered onto the Heritage List by Heritage NZ.

PART FIVE: DISPENSATIONS, FEES AND CHARGES

5.1 DISPENSATIONS

- 5.1.1 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 bring loss or inconvenience to, any person without any corresponding benefit to the community, the Council may, on the special application of such person so affected or on the recommendation of any authorised officer, by delegated authority, provide written approval to dispense with the full compliance or relax the full compliance of any clause of the Bylaw, or otherwise modify the same with or without added conditions.
- 5.1.2 A general dispensation is provided for the installation of solid fuel burners having an emission rate greater than 0.6g/kg (clauses 3.2.1 and 3.2.2) until 31 October 2017.

5.2 FEES AND CHARGES

- 5.2.1 The Council may prescribe fees to be charged for any dispensation, certificate, authority, approval, permit, or consent from, or inspection by, the Council in respect of matters provided for in this Bylaw.
- 5.2.2 The setting of fees or charges shall be in accordance with section 150 of the Local Government Act 2002.
- 5.2.3 Where a fee has been paid under clause 5.2.1 for a service which has not been given, the Council may provide a refund of such fee or portion of it as the Council may determine.

PART SIX: ENFORCEMENT MECHANISMS

6.1 OFFENCES AND BREACHES

- 6.1.1 Every person commits a breach of this Bylaw who:
- (a) Does or permits anything contrary to this Bylaw;
 - (b) Omits, or neglects to do, or knowingly permits or suffers to remain undone, anything which ought to be done at the time and in the manner provided by this Bylaw; or
 - (c) Does not refrain from doing anything which under this Bylaw they are required to refrain from doing; or
 - (d) Knowingly permits or allows any condition of or things to exist or continue to exist contrary to any provision contained in this Bylaw; or
 - (e) Refuses or neglects to comply with any notice given under this Bylaw; or
 - (f) Obstructs or hinders any authorised officer of the Council in the performance of any duty or power conferred by this Bylaw; or

(g) Fails to comply with any notice or direction given under this Bylaw.

6.1.2 Where an Authorised Officer believes on reasonable grounds that any person is committing or has committed a breach of this Bylaw, that person shall, at the direction of an authorised officer, provide their full name, and address.

6.2 CONTINUING OFFENCES

6.2.1 The continued existence of any work or building, land or premises or thing in such a state or form as to be in contravention of any clause of this Bylaw shall be deemed to be a continuing offence under this Bylaw.

6.2.2 Where any person is required by a notice or direction under clause 6.1.1(e) or (g) to do anything, or refrain from doing anything, then they shall commit a separate or continuing offence on each day that person fails to comply with the notice or direction.

6.2.3 The Council may, after a conviction for the continuing breach of this Bylaw, apply to any court of competent jurisdiction for an injunction to restrain the further continuance of the breach by the person so convicted.

6.3 REMOVAL OF WORKS

6.3.1 Where a notice served under clause 6.1.1(e) has not been complied with, the Council or any authorised officer or agent of the Council, may pull down, remove or alter, or cause to be pulled down, remove or alter any work, material or thing erected or being in contravention of this Bylaw.

6.3.2 The Council may recover from any person responsible for the breach of any part of this Bylaw, all expenses incurred by it in connection with such pulling down, removal or alteration. This includes the cost of debt collecting and legal fees.

6.3.3 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.

6.3.4 If however the breach is such that public health, or safety considerations, or risk of consequential damage to Council assets is such that would create unacceptable results, the Council may take immediate action to rectify the defect and recover all reasonable costs.

6.3.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under clause 6.3.1.

6.3.6 If not claimed within a reasonable time the Council may dispose of any 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.

6.4 POWER OF ENTRY FOR ENFORCEMENT PURPOSES

6.4.1 A warranted enforcement officer may enter land or a dwelling house, for the purpose of detecting any breach of this Bylaw if the officer has reasonable grounds for suspecting that a breach of the Bylaw has occurred or is occurring on the land.

- 6.4.2 Before exercising the power in clause 6.4.1 the officer must, if practicable, give reasonable notice to the occupier of the land of the intention to exercise the power, unless the giving of notice would defeat the purpose of entry.
- 6.4.3 The power in clause 6.4.1 to enter a dwelling house must not be exercised unless:
- (a) the entry is authorised by a warrant given by a District Court Judge on written application on oath; and
 - (b) when exercising the power, the enforcement officer is accompanied by a constable.
- 6.4.4 Before exercising the power in clause 6.4.1 the officer must produce evidence of his or her identity and authority to exercise the power:
- (a) if practicable, before entering the land or premises; and
 - (b) whenever subsequently reasonably requested to do so.

6.5 PENALTIES FOR BREACH OF BYLAWS

- 6.5.1 Any person who breaches this Bylaw commits an offence under section 239 of the Local Government Act 2002, and is liable on summary conviction to a fine under section 242(4) of the Act not exceeding \$20,000.00:
- 6.5.2 In accordance with section 162 of the Local Government Act 2002, the Council may apply to the District Court for an injunction to restrain a person from committing a breach of this Bylaw.
- 6.5.3 In accordance with section 245 of the Local Government Act 2002, the Council may issue an infringement notice to any person who commits an offence against this Bylaw.

THIS BYLAW was duly made by the Rotorua District Council by a resolution passed on the 24th day of August 2017.

The Common Seal of the
ROTORUA DISTRICT COUNCIL
was hereunto affixed in the
presence of:





Mayor



Chief Executive