
ASHBURTON DISTRICT COUNCIL BYLAW

CHAPTER 7 - FIRES IN THE OPEN AIR

SCOPE

700 The purpose of this Part of the Bylaw is:

- (a) To allow Council to exercise control over burning in the open air within the District and prevent smoke from fires in the open causing a nuisance.
- (b) To meet the requirements of the Local Government Act 2002 Section 146 for territorial authorities to have a Bylaw to prevent the spread of fires involving vegetation.

700.1 Council has a further avenue of control over smoke nuisance in the Nuisances provisions of the Health Act and persons responsible for causing a smoke nuisance may be prosecuted under the provisions of either the Health Act or the Bylaw.

700.2 Regional Councils have responsibility for discharges into air. Consents and approvals may be required from Regional Councils for discharges into air from fires in the open air.

NEW ZEALAND LEGISLATION

701 The following enactments are referred to in this Bylaw:

- (a) Forest and Rural Fires Act 1977
- (b) Forest and Rural Fires Regulations 2005
- (c) Health Act 1956
- (d) Local Government Act 2002

701.1 The Bylaw must be used in conjunction with the provisions of the Forest and Rural Fires Act 1977 where a Restricted or Prohibited Fire Season is declared. Separate declarations must be made under the Forest and Rural Fires Act 1977 for rural areas and under this Bylaw for urban areas. For declarations for both rural and urban areas both the Forest and Rural Fires Act 1977 and this Bylaw should be used.

701.2 Nothing in this Part of this Bylaw shall be regarded as derogating from the provisions of the Forest and Rural Fires Act 1977 and Forest and Rural Fires Regulations 1979.

INTERPRETATION

702 For the purposes of this Bylaw the following definitions shall apply:

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 case by an authorized officer.

AGRICULTURAL CROP RESIDUE means (but is not limited to) plant material remaining after harvesting of crops such as cereals, pulses, brassicas, grasses, clovers and other small specialist seed crops and may include leaves, stalks and roots, and also includes plant material that has been desiccated as a result of chemical application. It does not include any material that may be considered anything other than fine fuel.

AUTHORITY means a blanket approval to light fires in the open air subject to a prescribed set of standard conditions

AUTHORIZED OFFICER means an officer appointed under Section 177 of the Local Government Act 2002 or Section 13 of the Forest and Rural Fires Act 1977

BARBECUE means any fixed or portable gas fuel burning equipment or device designed or intended for the cooking of food in the open air.

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.

FINE FUELS means fuels such as straw, grass, leaves and dropped pine needles that ignite easily and are consumed rapidly by fire when dry.

FIRE PERMIT means a permit to light a fire in the open air granted in accordance with 704.4 of this Part of this Bylaw or Section 23 of the Forest and Rural Fires Act 1977

INCINERATOR means a fully enclosed container used for burning of waste material, which is made of non-combustible materials and which has a grate and a lid or spark arrester.

INCINERATOR FIRE means a fire within an incinerator.

OPEN AIR means in the open whether in, on or above ground level.

OPEN FIRE SEASON means a period of time, whether fixed or indefinite during which the lighting of fires in the open air is allowed without permits or authorities.

PRINCIPAL FIRE OFFICER means a Principal Rural Fire Officer appointed pursuant to the Forest and Rural Fires Act 1977.

PROHIBITED FIRE SEASON means the period of time, whether fixed or indefinite during which the lighting of fires in the open air is prohibited in accordance with 705 of this Part of this Bylaw or Section 22 of the Forest and Rural Fires Act 1977.

RESTRICTED FIRE SEASON means a period of time whether of fixed or indefinite duration during which period permits or authorities are required for the lighting of fires in the open air in accordance with 1104.1 of this Part of this Bylaw or Section 22 of the Forest and Rural Fires Act 1977

URBAN AREA means any area defined in the operative or proposed District Plan of the Council, as being zoned "Residential" or "Township".

URBAN FIRE DISTRICT means an Urban Fire District gazetted under Section 26 of the Fire Services Act 1975

FIRES IN THE OPEN

703 No person shall light any fire in the open air within an urban area at any time with the exception of burning of fuels in ethnic cooking fires or barbecues for food cooking purposes.

703.1 No person shall light any fire in the open air including a barbecue, brazier, ethnic cooking fire, or an incinerator fire under the following conditions:

- (a) Where the location, wind, or other conditions cause or are likely to cause the fire to become:
 - (i) A danger to any person or property; or
 - (ii) Out of control or spread beyond the limits of the premises on which it is lit; or
 - (iii) A smoke or ash nuisance to any person; or
 - (iv) A hazard to traffic
- (b) Within three metres of any part of a building, tree, hedge, fence or other combustible material; or
- (c) Without continuous supervision being maintained at all times.

RESTRICTED FIRE SEASON

704 The Principal Fire Officer or their designated Deputy 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.

704.1 During a Restricted Fire Season no person shall light any fire in the open air without authority or permit.

704.2 Any person wishing to obtain a fire permit during a restricted fire season shall apply to an authorized officer.

704.3 An authorized officer may from time to time prescribe a form of application for the purposes of Clause 704.2.

704.4 Upon receiving an application under 704.2 an authorized officer may issue a fire permit and may impose such conditions and restrictions in respect of the permit as the authorized officer considers reasonably necessary having regard to:

- (a) Any cultural requirements or practices;
- (b) The location, terrain, natural vegetation, and the existence of buildings or other structures and any other fuels; and
- (c) Protection of the safety, health and convenience, of persons on the premises in respect of which the permit is issued and adjoining lands and premises.

704.5 Nothing in section 704 shall apply to an ethnic cooking fire, an incinerator, a barbecue, or the burning of agricultural crop residue provided that Council may in certain circumstances include the above where it considers it necessary to do so, or it may prescribe conditions upon such fires by way of blanket authorities.

PROHIBITED FIRE SEASON

705 An authorized officer 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.

705.1 In a prohibited season no person shall light any fire in the open air including an ethnic cooking fire, an incinerator or a barbecue, 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.

705.2 Nothing in clause 705.1 applies to the use of gas fire barbecues. An authorized officer may in certain circumstances prohibit the use of gas barbecues.

PUBLIC NOTICE OF RESTRICTED OR PROHIBITED FIRE SEASON

706 Public notice of the prescription of a restricted or a prohibited fire season made under 704 or 705 or the cancellation or variation of such a prescription, shall be made by:

- (a) Broadcast or other similar means within the District; or
- (b) By a notice inserted in a daily or community newspaper circulating within the District.
- (c) By any effective means.

REVOCAION OR SUSPENSION OF PERMITS

707 Subject to 707.1 every fire permit issued in accordance with 704.4 shall remain in force from the date of issue until the expiry of the period, date or time specified in the permit, unless a prohibited fire season is declared.

707.1 Notwithstanding any other provisions in this Bylaw, any permit issued under this Part of this Bylaw may be revoked or suspended by an authorized officer at any time, or suspended for such periods of time on such terms and conditions, as the authorized officer may consider reasonable in the circumstances.

FEES FOR PERMITS

708 The 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 Part of this Bylaw or Section 23 of the Forest and Rural Fires Act 1977. Any fee prescribed shall be paid upon uplifting the permit.

COUNCIL MAY EXTINGUISH FIRES

709 Where a fire has been lit or allowed to burn in:

- (a) In breach of section 703; or
- (b) A restricted fire season in breach of the conditions of a fire permit issued in accordance with 704.4; or
- (c) A prohibited fire season, in breach of 705;

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

709.1 Where an authorized officer or agent of the Council has extinguished a fire pursuant to 709 the Council may recover any costs incurred in extinguishing the fire from the occupier of premises on which the fire was located, or the person who lit the fire.

709.2 Where any occupier of premises upon which a fire in the open air is located, or person who lit such a fire, disregards a Council direction under 709 to extinguish the fire, the authorized officer may authorize an agent of the Council (including the New Zealand Fire Service) to extinguish the fire and to take such other steps as may be reasonably necessary to ensure the safety of any person or to protect the premises, or any other property.

709.3 The 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 authorized by the authorized officer under 709.

LIVE ASHES

710 No person shall place any live cinders, embers or ashes in or upon any premises other than:

- (a) 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
- (b) In a pit or upon any fire-resistant substance in a manner which will prevent the spreading of fire or heat by the action of wind or otherwise.
- (c) As part of an ethnic cooking process including hangi and umu.

REMOVAL OF GORSE AND OTHER GROWTH

711 No occupier or any other person having the control of any land shall allow any broom, gorse, bushes, scrub, dry grass, or similar growth to exist within 6 metres of any building or adjoining premises, in such a condition or state that it is likely to become a source of risk from fire.

711.1 An authorized officer of the Council may, by written notice, require an occupier or person having control of any land to remove any dangerous growth to which 711 applies.

711.2 The Council may cut down or otherwise eradicate and remove any broom, gorse, bushes, scrub, dry grass or similar growth to which 711 applies, after giving oral notice to the occupier or where there is no occupier, to the owner of the land, if life, property or any road is in imminent danger. The cost of the work shall be a charge against the land.

711.3 Should the owner or occupier fail to comply with the written request of the Council to remove the dangerous growth then the Council may arrange the removal of such growth and recover the cost of removal from the owner or occupier.

711.4 Where, after all reasonable steps have been taken, the occupier or person having control of the land is unable to be located the Council may arrange the removal of such growth and recover the cost of the removal from the owner or occupier at such time that the owner or occupier may be located.

STORAGE OF COMBUSTIBLE MATERIALS

712 Except as provided in 712.1 and 712.2 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 2 metres.

712.1 A stack may be placed closer to the boundary than the distance specified in 712 if a brick, stone, or concrete wall extending not less than 500 millimetres above and not less than 2 metres beyond the length of the stack, is situated between the stack and the boundary.

712.2 A stack may, with the written approval of the adjoining owner and of an authorized officer, be placed closer to the boundary than the distance specified in 712 where any of the following conditions continue to exist:

- (a) Where there is a brick, stone or concrete wall as defined in 1112.2 without openings situated on the adjoining property and within 2 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.

STORAGE OF HAY

713 No occupier of any premises shall permit the storage or stacking in the open of more than 3 cubic metres of hay, or similar material unless the distance of the stack from any building, boundary, fence, private road, public place, or adjacent land is not less than 6 metres and the intervening space is at all times kept free from any rubbish or obstruction of any kind.

713.1 No occupier of any premises shall permit the storage of more than 1 cubic metre of hay or similar material in any building attached to, or at a distance of less than 6 metres from, any other building unless the first mentioned building has a roof of approved fire-resistant material and walls constructed wholly of brick, stone, or concrete or any combination of brick, stone and concrete and complying with the specifications mentioned in 713.

713.2 The provisions of 713.1 shall not apply in any case where agricultural produce required for the keeping of horses is kept or stored in any building used only for the purpose of or in connection with a stable.

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