



AIR QUALITY CONTROL BYLAW 2010



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SCHEDULE 1 – MAP OF ROTORUA AIRSHED

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 SHORT TITLE

This Bylaw shall be known as the “**Rotorua District Council Air Quality Control Bylaw 2010**”.

1.3 This Bylaw applies within the area defined as the "Rotorua Airshed". The Rotorua airshed is a local air management area, which was gazetted by the Ministry for the Environment on 1st September 2005. The boundaries of the Rotorua Airshed are detailed in the map attached as Schedule 1 of this Bylaw.

1.4 COMMENCEMENT

The provisions of Parts 2, 3.2, 5 and 6 of this Bylaw shall come into force on the 1st day of December 2010.

The provisions of Part 3.1 of this Bylaw shall come into force on the 1st day of May 2012.

The provisions of Part 4 of this Bylaw shall come into force on the 1st day of May 2015.

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 behalfs 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 discharged 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.

“Council” means either 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 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.

“National Environmental Standards for air quality” means the Resource Management (National Environmental Standards Relating to Certain Air Pollutants, Dioxins, and Other Toxics) Regulations 2004 (SR 2004/309) including any subsequent amendments.

"Non-complying solid fuel burner" means:

- Any solid fuel burner installed before 1 September 2005 (unless compliance with the design standard and thermal efficiency standard for wood burners as set out in the National Environment Standards for air quality is proven to the council by the property owner) OR
- any solid fuel burner that is not listed on the Ministry for the Environment's current National List of Authorised Wood Burners or Pellet Burner List OR
- Any solid fuel burner that does not comply with the design standard and thermal efficiency standard for wood burners as set out in the National Environment Standards for air quality.

Note – For any solid fuel burner not included on the Ministry for the Environment's current National List of Authorised Wood Burners or Pellet Burner List, and/or any burner installed before 2005, the onus is on the property owner to prove that the appliance complies with the design standard and thermal efficiency standard for wood burners as set out in the National Environment Standards for air quality.

"Open fire" includes any small-scale fuel burning device or construction installed in or attached to any building that is capable of burning solid fuel, but excludes:

- (a) any enclosed burner, and
- (b) any equipment capable of burning solid fuel with a net heat output of more than 40 kilowatts (kW).

Examples of open fires include (but are not limited to) fireplaces, open hearths, visors, 'Jetmaster' type insert fireplaces and similar devices.

"Operable" in relation to an open fire means a fireplace and chimney in a condition, and with the features necessary, to safely support a fire. It excludes, among other things, any fireplace where at or since the date on which this bylaw comes into force, the chimney has been removed or blocked, or the firebricks have been removed, or the fireplace has been boarded up, or where another appliance has been installed into the fireplace, so that the open fire is incapable of use.

"Replace or Replaced" in relation to the replacement of solid fuel burners (the appliance) means:

- (a) the complete physical removal of an appliance from the dwelling house and its replacement with a new appliance authorised by this Bylaw, or
- (b) in the case of an open fire, the removal of the firebricks and other masonry or construction from the fireplace, rendering the open fire inoperable, and the insertion of an authorised appliance into the space created, or
- (c) the placement of a new authorised appliance in the same room as an open fire, provided that open fire is rendered inoperable.

"Remove or Removed" in relation to the removal of solid fuel burners (the appliance) means the complete physical removal (taking out, taking away or cause to be no longer present) of an appliance from the dwelling house. In the case of an open fire, means the removal of the firebricks and other masonry or construction from the fireplace, rendering the open fire inoperable.

"Rotorua Airshed" means that area described as a local air management area, which was gazetted by the Ministry for the Environment on 1 September 2005, the boundaries of which are defined on the map attached as Schedule 1 to this Bylaw.

"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) open fires, freestanding or built in wood burners, pellet fires, potbelly stoves, and coal ranges, water heaters or central heating units, multi-fuel (coal/wood and waste burning systems), and similar appliances. It excludes small-scale domestic devices for smoking food. A small-scale solid fuel-burning appliance also excludes any portable unflued heaters fuelled by gas, alcohol or other liquid fuels, and gas hobs or gas ranges used for cooking, and any fuel burning appliance installed in a boat, caravan or motor home.

“Transfer of ownership” does not include:

- (i) 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
- (ii) 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.

PART THREE: RESTRICTIONS ON SOLID FUEL BURNERS

3.1 SOLID FUEL BURNER UPGRADE REQUIRED AT POINT OF SALE

- 3.1.1 Any non-complying solid fuel burner situated in a dwelling house 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, except:
- (a) where an open fire is located within a building which is classified by the Historic Places Trust as a Heritage building.

3.2 RESTRICTION ON INSTALLATION OF SOLID FUEL BURNERS IN NEW AND EXISTING HOUSES

- 3.2.1 No person shall permit, allow or carry out the installation of any non-complying solid fuel burner in any dwelling house after the date of commencement of this Bylaw.

PART FOUR: BAN ON DISCHARGES FROM INDOOR OPEN FIRES

4.1 OPEN FIRES (INDOORS)

- 4.1.1 No person shall discharge contaminants into the air from any indoor open fire after 1st May 2015 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.
 - (b) where the open indoor fire is located within a building which is classified by the Historic Places Trust as a Heritage building.

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, 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.

5.2 FEES AND CHARGES

- 5.2.1 The Council may prescribe fees to be charged for any certificate, authority, approval, permit, or consent from, or inspection by, the Council under the provisions of the Local Government Act 2002 or any other enactment where that enactment contains no provision for authorising the Council to charge a fee.
- 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.
- 5.2.4 No fees are payable from 1 December 2010 until 1 December 2011.

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 it is suspected that any person has committed a breach of this bylaw, that person shall, at the direction of an authorised officer, provide their full name, address and date of birth.

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 under clause 6.1.1(e) 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.
- 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

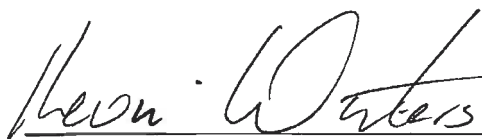
- 6.4.1 A warranted enforcement officer may enter land or a dwelling house, for the purpose of detecting any breach of this bylaw if the officer has reasonable grounds for suspecting that a breach of the bylaw has occurred or is occurring on the land.
- 6.4.2 Before exercising the power in clause 6.4.1 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 dwellinghouse 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, on first 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, when Regulations so permit.

THIS BYLAW was duly made by the Rotorua District Council by a resolution passed on the 26th day of August 2010.

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


_____ Mayor


_____ Chief Executive



MAP OF ROTORUA AIRSHED

