



# THE OPOTIKI DISTRICT COUNCIL FIRE PREVENTION BYLAW 2008

## EXPLANATORY NOTE

The Opotiki District Council Fire Prevention Bylaw 2008 was made in accordance with the Local Government Act 2002. The purpose of the Opotiki District Council Fire Prevention Bylaw 2008 is to prevent the spread of fires involving vegetation.

This Bylaw is used in conjunction with the provisions of the Forest and Rural Fires Act 1977 and Forest and Rural Fires Regulations 2005.

The Bay of Plenty Regional Council has responsibility for discharges into the air. Fires in the open air must comply with the Bay of Plenty Regional Council's Regional Air Plan Rules. Consents or approvals may be required from the Bay of Plenty Regional Council for discharges into the air from fires in the open air.

Nothing in this Bylaw shall be regarded as derogating from the provisions of the Forest and Rural Fires Act 1977, the Forest and Rural Fires Regulations 2005 or requirements of the Bay of Plenty Regional Council under its "Regional Air Plan" rules.

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# The Opotiki District Council

## Fire Prevention Bylaw 2008

### 1. Title

This Bylaw shall be known as "The Opotiki District Council Fire Prevention Bylaw 2008".

### 2. Commencement

This Bylaw shall come into force on the 1<sup>st</sup> day of July 2008.

### 3. Repeals

As from the date that this Bylaw comes into force the Fire Prevention Bylaw Involving Vegetation shall be repealed.

### 4. Interpretations

#### 4.1 For the purposes of this Bylaw the following interpretations 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 the authorised officer.

**Authorised Officer** means any person appointed or authorised in writing by the Chief Executive or by the Council to act on its behalf and with its authority to enforce this Bylaw.

**Barbeque** 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.

**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 6. 4 of this Bylaw.

**Incinerator** means a 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 fire within an incinerator.

**Open air** means in the open whether 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 permitted.

**Premises** means any land or buildings or part of the same and any adjoining land and or buildings occupied together shall be deemed to be the same premises

**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 7. 2 of this Bylaw.

**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 6. 2 of this Bylaw.

#### 4.2 For the purposes of this Bylaw the word "shall" refers to practices that are mandatory for compliance with this Bylaw, while the word "should" refers to practices which are advised or recommended.

## 5. Fires in the Open

No person shall in any open fire season light any fire in the open air including a barbecue, 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
- (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; or
- (d) Without an acceptable means of fire suppression being available where the fire is located on residential premises, or land adjoining such premises.

## 6. Restricted Fire Season

6.1 An authorised officer 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.

6.2 Any person wishing to obtain a fire permit during a restricted fire season shall apply to the authorised officer.

6.3 The authorised officer may from time to time prescribe a form of application for the purposes of 6.2.

6.4 Upon receiving an application under 6.2 an authorised officer may issue a fire permit and may impose such conditions and restrictions in respect of the permit as the authorised 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.

6.5 Nothing in Section 6 shall apply to an ethnic cooking fire, an incinerator or a barbecue. Provided that Council may in certain circumstances include the above where it considers it necessary to do so.

## 7. Prohibited Fire Season

7.1 An authorised 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.

7.2 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.

7.3 Nothing in 7.2 applies to the use of gas fire barbecues. The authorised officer may in certain circumstances prohibit the use of gas barbecues.

## 8. Public Notice of Restricted or Prohibited Fire Season

- 8.1 Public notice of the prescription of a restricted or a prohibited fire season made under 6.1 or 7.1 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.

## 9. Revocation or Suspension of Permits

- 9.1 Subject to 9.2 every fire permit issued in accordance with 6.4 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.
- 9.2 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.

## 10. Fees for Permits

- 10.1 The Council may from time to time, by resolution set fees in accordance with the Local Government Act 2002 for issue of any permit under this Bylaw. Any fee prescribed shall be paid upon uplifting the permit.

## 11. Council May Extinguish Fires

- 11.1 Where a fire has been lit or allowed to burn in:
- (a) An open fire season in breach of section 5, or
  - (b) A restricted fire season in breach of the conditions of a fire permit issued in accordance with 6.4 or
  - (c) A prohibited fire season, in breach of 7.2
- 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.
- 11.2 Where an authorized officer or agent of the Council has extinguished a fire pursuant to 11.1, 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.
- 11.3 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 11.1 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.
- 11.4 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 11.3

## 12. Live Ashes

- 12.1 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;
  - (b) In a pit or upon any fire-resistant substance in manner which will prevent the spreading of fire or heat by the action of wind or otherwise; or
  - (c) As part of an ethic cooking process including hangi and umu.

### 13. Removal of Gorse and other Growth

- 13.1 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.
- 13.2 An authorised officer of the Council may, by written notice, require an occupier or person having control of any land to remove any dangerous growth.
- 13.3 The Council may cut down or otherwise eradicate and remove any broom, gorse, bushes, scrub, dry grass or similar growth to which 13.1 applies, after giving verbal 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 owner of the land.
- 13.4 Should the owner/ 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.

### 14. Storage of Combustible Materials

- 14.1 Except as provided in 14.2 and 14.3, 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.
- 14.2 A stack may be placed closer to the boundary than the distance specified in 14.1 if a brick, stone, or Concrete wall extending not less than 450 millimetres above and not less than 1.4 metres beyond the length of the stack, is situated between the stack and the boundary.
- 14.3 A stack may, with the written approval of the adjoining owner and of the authorized officer, be placed closer to the boundary than the distance specified in 14.1 where any of the following conditions continue to exist:
- (a) Where there is a brick, stone or concrete wall as defined in 14.2 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.

### 15. Storage of Hay

- 15.1 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.

- 15.2 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 14.2.
- 15.3 The provisions of 15.2 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.

## 16 Notices

- 16.1 The Council may give notice to any person in breach of the provisions of this Bylaw to carry out any remedial action in order to comply with the Bylaw and every such notice shall state the time within which the remedial action is to be carried out, and maybe extended from time to time.

## 17 Dispensing Powers

- 17.1 Where in the opinion of the Council full compliance with any of the provisions in this Bylaw, would needlessly or injuriously affect any person, or the course or operation of the business of, or bring a loss or inconvenience to any person without any corresponding benefit to the community, the Council may, on the special application of that person, dispense with the full compliance with the provisions of this Bylaw; provide that any other terms or conditions (if any) that Council may deem fit to impose shall be complied with by that person.

## 18 Serving of Orders and Notices

- 18.1 Except as otherwise provided for in any other enactment, where any notice, order, or other document is required to be served on any person for the purposes of this Bylaw, service may be effected by delivering it personally to the person or by sending it by registered post to that person's last known residential or business address.
- 18.2 If the person is absent from New Zealand the order, notice, or other document may be served on the person's agent in the manner referred to in 18.1.
- 18.3 If the order, notice, or other document relates to land or buildings, then the order, notice, or other document should be served on the person who owns that land or buildings. However, if that person is not known or is absent from New Zealand, or has no known agent in New Zealand, the order or notice may be:
- (a) Served on the person who is occupying the land or buildings; or
  - (b) If there is no person in occupation, put up on some conspicuous part of the land or buildings.
- It is not necessary in that notice to name the occupier or the owner of that land or buildings.
- 18.4 Where an order or notice is sent by registered post, the order or notice shall be sent so as to arrive no later than the latest time on which such order or notice is required to be served.
- 18.5 Any order or notice issued shall state the time within which the remedial action is to be carried out, and may be extended from time to time by written authority of an authorised officer.

## 19. Offences And Breaches

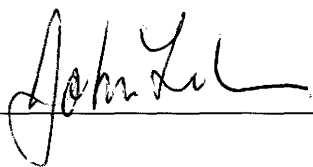
- 19.1 Any person commits a breach of this Bylaw who:
- (a) Does, or causes to be done, or knowingly permits or suffers to be done anything whatsoever contrary to or otherwise than as provided by this Bylaw;
  - (b) Omits or neglects to do, or knowingly permits or suffers to remain undone, anything which according to the true intent and meaning of this Bylaw, ought to be done by that person at the time and in the manner provided by this Bylaw;
  - (c) Does not refrain from doing anything which under this Bylaw they are required to abstain from doing;
  - (d) Knowingly permits or suffers any condition of or things to exist contrary to any provision contained in this Bylaw;
  - (e) Refuses or neglects to comply with any notice given to that person under this Bylaw;
  - (f) Obstructs or hinders any authorised officer of Council in the performance of any duty to be discharged by that officer under or in the exercise of any power conferred upon that officer under this Bylaw; or
  - (g) Fails to comply with any notice or direction given under this Bylaw.
- 19.2 Where it is suspected that any person has committed a breach of this Bylaw, that person shall, on the direction of an authorised officer, provide their full name and address.

## 20 Penalties for Breach of Bylaw

- 20.1 Every person who commits an offence against this Bylaw is liable to:
- (a) The penalty set out in the Local Government Act 2002.
  - (b) Where another enactment specifies the penalty for a breach of the Bylaw, that other penalty.
- 20.2 In accordance with 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.

This Bylaw was duly made by the Opotiki District Council by a resolution passed on the 11th day of March 2008 and was confirmed following consideration of community submissions received during a special consultative procedure by a resolution {No 461} passed on the 17th day of June 2008.

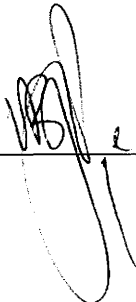
The common Seal of the Opotiki District Council was here to affixed in the presence of

  
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Mayor



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Chief Executive