

Statement of Proposal

Review of the Rotorua District Council Air Quality Control Bylaw

1 Introduction

The Rotorua District Council Air Quality Control Bylaw 2010 (the Bylaw) was adopted by the Rotorua Lakes Council (the Council) and came into effect in December 2010.

In accordance with Section 158 of the Local Government Act 2002 (LGA), bylaws need to be reviewed after five years using the special consultative procedure set out in the LGA.

The special consultative procedure must prepare and adopt a statement of proposal. The statement of proposal must meet the requirements of the LGA by:

- providing a draft of the bylaw
- setting out reasons for the proposal
- determining the appropriateness of the bylaw
- summarising the review process including the submission period
- providing information on how submissions can be made and where further information can be obtained.

This Statement of Proposal (the Proposal) addresses each of these requirements. The Council adopted this Statement of Proposal, on 11 May 2017.

2 Consultation Process - How can I have my say?

Submissions are welcomed on the proposed Rotorua District Council Air Quality Control Bylaw 2017.

The Council must use the special consultative procedure when replacing a Bylaw. Section 83(1) (a) of Local Government Act 2002 ('LGA 2002') requires the Council to prepare a Statement of Proposal.

The Statement of Proposal is available from our website: <http://letstalk.rotorualakescouncil.nz/> or in hard copy from the Rotorua District Library or Rotorua Lakes Council Customer Services Centre, Haupapa Street.

You can submit your opinions online via an electronic submission form on the Council's online engagement hub <http://letstalkrotorualakescouncil.nz/>

You may also post or fax submissions to the Council.

You will need to indicate whether you wish to appear in person before the Council to speak in support of your submission.

Email to: submissions@rotorualc.nz

Fax: 07 346 3143

Visit our website: <http://letstalk.rotorualakescouncil.nz/>

Post to: Rotorua Lakes Council, Private Bag 3029, Rotorua Mail Centre, Rotorua 3046

The submission period runs from 26 May to 30 June 2017 and will be followed by hearings.

Submissions must be received by Council no later than 5pm on 30 June 2017.

Submissions on the proposed Bylaw are available to the public and the media. This includes your personal information. All submissions will be acknowledged. Submitters who wish to speak to their submission will be advised of the Council meeting date following the closure of submissions.

For further information on the Bylaw, please phone the Council on 07 348 4199 or email us at info@rotorualc.nz

3 Reasons for Proposal

This Statement of Proposal has been prepared to fulfil Council's obligations under the LGA and to provide sufficient information to the community for well-informed discussion on the amended Bylaw.

3.1 Problem definition

The National Environmental Standards for Air Quality (NESAQ) set a limit of 50µg/m³ for fine particulates (or PM₁₀). This limit is not a "safe" concentration for fine particulates, but provides an acceptable level of protection for human health while still allowing for normal activities. The current deadline for compliance is no more than three exceedances per year by September 2016, and one per year by 2020.

Currently, the Rotorua Airshed (the airshed) regularly exceeds this standard. During the 2015 calendar year, the airshed exceeded the standard 13 times (Figure 1).

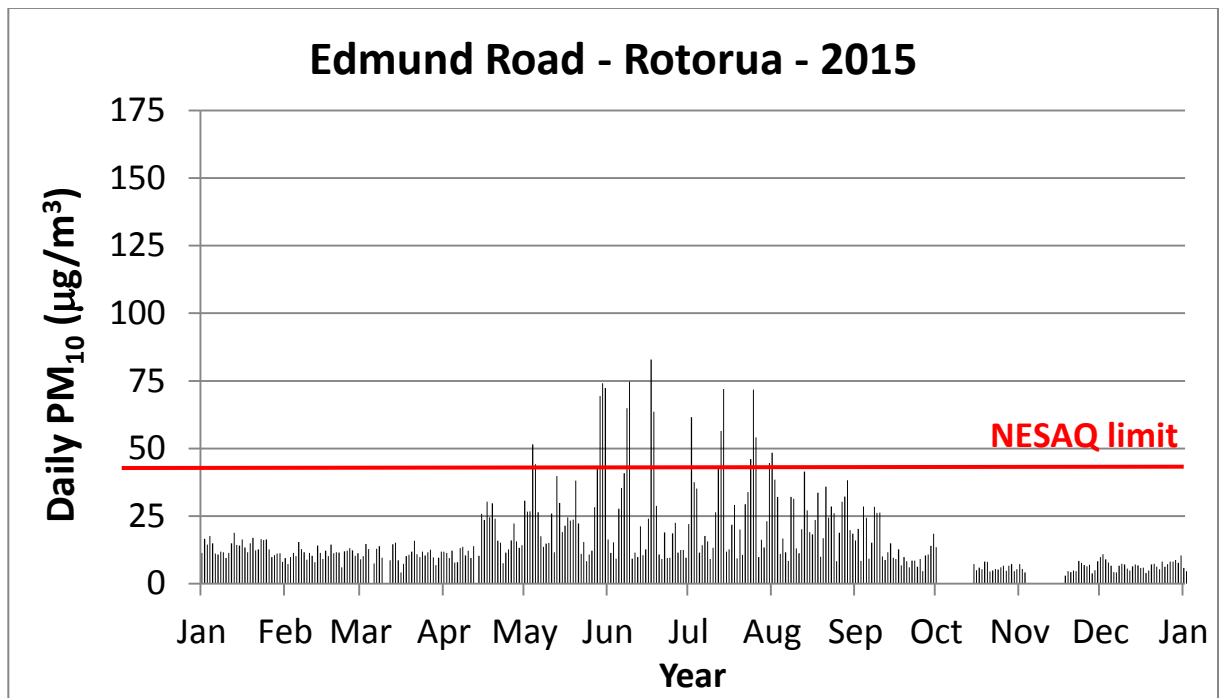


Figure 1: PM10 (24 hour) values measured at Edmund Road, Rotorua 2015

The people who are most likely to suffer harm or ill health as a result of poor air quality are the very young, elderly and those with respiratory problems such as asthma and other chronic illnesses such as heart disease. A summary of adverse consequences which result from compromised air pollution include:

- Poor health
- Reduced amenity value where the city looks unpleasant (see Figure 2)
- Restricted economic development
- Poor public perception (if Rotorua air quality is not improved, it will rise in the ranks of cities with poor air quality, discouraging visitors and economic development).



Figure 2: Rotorua Airshed in 2008

An emissions inventory prepared in 2006 determined the contribution of PM₁₀ emissions from specific sources or groups of sources. Monitoring and research carried out (including a home heating survey¹, an emissions inventory² and airshed modelling³) shows that although industry

¹ Environment Bay of Plenty (2006). *Rotorua Domestic Heating Survey*. Environmental Publication 2006/14. September 2006, Whakatāne.

contributes to poor air quality, the main source of fine particulates in the airshed in winter, is domestic burners (Figure 2). At the time the inventory was prepared, most of the burners were older, inefficient burners that discharged more particulates.

The modelling showed that emissions from domestic sources needed to be reduced by 60 tonnes per year to meet the standard. That is, around 7,650 (of a total 8,550) domestic burners must be converted to cleaner heating. Cleaner heating includes modern burners.

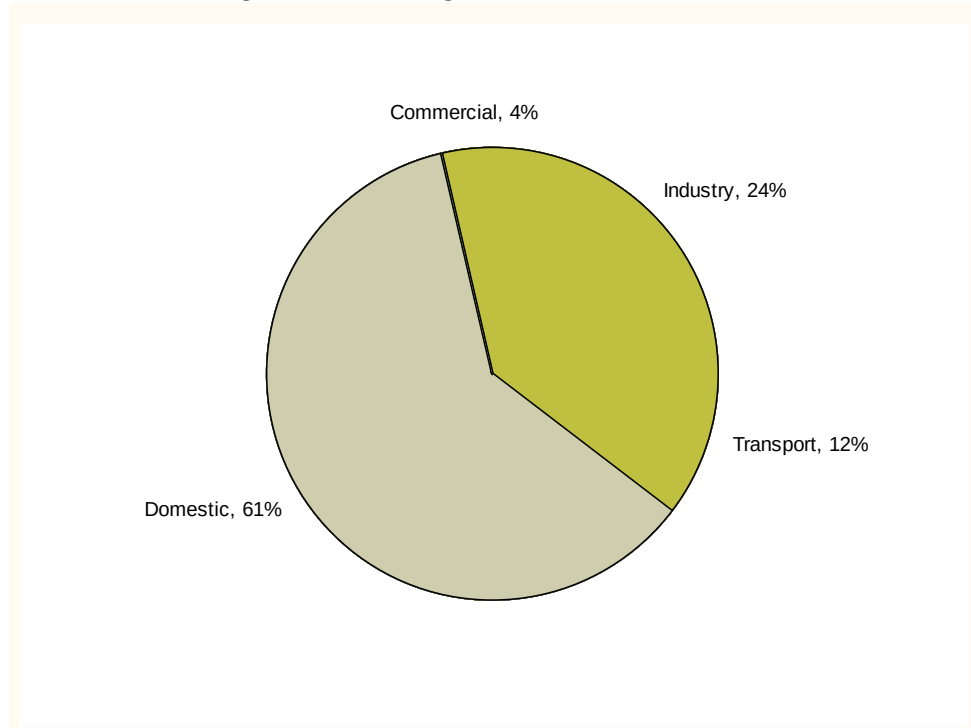


Figure 2: PM₁₀ winter percentage by source

The Bay of Plenty Regional Council (Regional Council) is responsible for ensuring the region's air quality meets the standards by 2020. The Regional Council prepared the Rotorua Air Quality Action Plan (the action plan) in December 2008. Actions include education, research, rules and incentives⁴.

The Rotorua Lakes Council collaborated with the Regional Council to introduce the 2010 Bylaw. The Bylaw's purpose was to assist the Regional Council by restricting burners where possible.

The Bylaw contains three rules which have successfully reduced emissions in the Rotorua Airshed:

1. New Burner Rule – From December 2010, new burners installed in houses must be modern burners that complied with emissions standard of 1.5 grams per kilogram (g/kg) in the NESAQ. This essentially banned the installation of new coal burners, multifuel burners and indoor open fires. These three types of burners have the highest emissions. Although this does not reduce emissions, it prevents new sources from being introduced and making the problem worse

² Environment Bay of Plenty (2007). *Rotorua Air Emissions Inventory 2005*. Environmental Publication 2007/02.

³ Fisher. G., Thornton. D., Godfrey. J. (2007) *Rotorua Airshed Modelling Investigation Final Report*. Prepared by Endpoint Consulting Partners. September 2007

⁴ Environment Bay of Plenty (2008) *Rotorua Air Quality Action Plan*. Adopted by Regional Council committee on 16 December 2008

2. Point of Sale Rule – From May 2012, burners that are non-complying must be removed or replaced by the vendor before a house is sold. This has resulted in the conversion of 500 old burners.
3. Indoor Open Fire Rule – From May 2015, indoor open fires cannot be used. This phased out 850 indoor open fires.

Later in 2017 the Regional Council will introduce regional rules that will place further restrictions on both new burners and existing burners in the Rotorua Airshed. Some aspects of these rules are in conflict with the current Bylaw, and will create a situation where a burner may be permitted under the Bylaw, but not under the regional rules.

3.2 Outcome sought

The proposal seeks to retain the Bylaw to ensure it continues to successfully convert burners, reduce emissions, and improve air quality. Improving air quality leads to better health and a better quality of life for people in the community.

The review is an opportunity to ensure the Bylaw is consistent with the upcoming regional rules, and to resolve any issues identified during implementation.

4 Determination of appropriateness

Several assessments are required to determine whether the Bylaw is appropriate. The Bylaw:

- must be the most appropriate way of addressing the problem
- must be the most appropriate form of bylaw
- must not give rise to any implications under the Bill of Rights Act 1990

4.1 Appropriate way

The following options have been considered to achieve the outcome sought and address the problem:

1. Revoke the Bylaw – rely on regional rules and incentives
2. Retain the current Bylaw
3. Amend the Bylaw – enhance implementation and ensure consistent with regional rules

4.1.1 Revoke the Bylaw

There is an option to revoke the Bylaw and rely on the regional rules to reduce discharges.

The Bylaw has been successful at both preventing the problem from getting worse (New burner rule) and reducing emissions (Point of Sale rule, Indoor open fire rule).

Although the intention of the regional rules is to eventually target these same burners, the process of introducing the rules could take some time. Without the Bylaw in place throughout this process, there would be a legislative gap where any type of burner could be installed in the Rotorua Airshed, and no requirement to remove any of the old, inefficient burners.

Under this option, the air quality problem would not be addressed and the adverse impacts from air pollution will continue to cause harmful effects and reduce enjoyment of our environment. This option is not considered appropriate.

4.1.2 Retain the current Bylaw

Under this option the current Bylaw would be retained with no changes.

The main advantage of this option is that the rules in the Bylaw are already accepted by the community and no changes would be needed in implementation.

However the current Bylaw makes no distinction between new burners (burners installed in new houses or houses without an existing burner) and replacement burners (where burners replace an existing burner). At the time the Bylaw was developed, no such distinction was necessary and the new burner rule in the Bylaw allowed both new and replacement burners with a design standard of 1.5g/kg.

The regional rules will manage new burners differently to replacement burners. New burners are limited to pellet burners only, and replacement burners must have a design standard of 0.5g/kg. The Regional Council incentives package also uses the criteria of 0.5g/kg, only providing financial support for burners that comply with this design standard.

The current Bylaw will be in direct conflict with the likely direction of the regional rules, with homeowners able to install burners, but not legally able to use them. Therefore this option is not recommended as it will be in conflict with the regional rules and not address the problem.

4.1.3 Amend the Bylaw

This option would amend the Bylaw to enhance consistency and improve implementation.

The main advantage of this option is that it will ensure consistency with the soon to be proposed regional rules. It will also assist with implementation of both the Bylaw and regional rules (once introduced) as compliance of new and replacement burners can be checked at the building permit stage, rather than when discharges are occurring (after installation).

This option will address the problem and achieve the outcome sought.

4.2 Community views

Section 78 of the LGA 2002 requires the Council to consider community views in the course of making its bylaws. Community views are therefore relevant to the preparation of bylaws and the consideration of whether a bylaw is the most appropriate way of addressing a problem.

The Rotorua Air Quality Working Party (the Working Party) is a group made up of representatives from Rotorua Lakes Council, Bay of Plenty Regional Council (Regional Council), Toi te Ora Public Health, Ministry for the Environment and Housing New Zealand. The Working Party considered options for amendments to the Bylaw and endorsed the draft on 19 April 2017.

The draft regional rules targeting Rotorua burners are included in the draft Regional Air Plan (the draft air plan) prepared by Regional Council. The draft air plan was released for public comment in April 2016. This was followed up with a sub-regional hui with iwi and hapū in the Rotorua sub-region.

The intended regional rules contain the same restrictions on indoor open fires and new burners as the draft Bylaw. There was very little feedback on these restrictions. Although this does not mean that there are no issues with these requirements, it indicates a lower level of concern.

There was considerable concern over an additional rule in the draft air plan that targets all pre-2005 burners (about 4,000). This restriction has not been included in the Bylaw.

Public views on the draft Bylaw will be sought further through the special consultative procedure.

4.3 **Appropriate form**

It is considered that the proposed draft bylaw is the most appropriate form of bylaw for the purposes of public consultation.

Matters considered when assessing appropriate form include clarity, reasonableness, use of plain English, consistency with the general law of New Zealand, consistency with the Council's strategic and policy directions.

The bylaw making process has identified that the Bylaw is consistent with Council's Long-term Plan.⁵ The draft bylaw has not been identified as being inconsistent with any other plans or policies of the Council.

It is considered that the *Draft Air Quality Control Bylaw 2017* which is set out in Appendix 1 is the most appropriate form of bylaw.

This is because:

1. The bylaw contains clear rules which are enforceable
2. The proposed bylaw is binding on all persons within the Rotorua Airshed
3. Without clear rules, which are enforceable, there is little incentive for people to take action to replace or remove inefficient methods of heating.

4.4 **New Zealand Bill of Rights Act 1990**

In addition to the requirements considered above, the proposed bylaw must be consistent with New Zealand Bill of Rights Act 1990. No inconsistencies with the New Zealand Bill of Rights Act 1990 have been identified. The controls imposed are considered reasonable and justifiable in the circumstances as allowed for in section 5 of the New Zealand Bill of Rights Act 1990. On this basis, it is considered the proposed bylaw is consistent with New Zealand Bill of Rights Act 1990, including freedom of peaceful assembly, freedom of association, freedom of movement and freedom of expression.

5 **Community Support**

Council understands that there are many community members who may be adversely affected by the Bylaw and require additional support.

In 2009 the Regional Council introduced financial incentives to encourage the conversion of older burners to modern heating methods. These include:

⁵ As required by section 80, LGA 2002.

- Hot Swap Scheme – interest free or low interest loan to upgrade heating and insulation paid back over ten years
- Rates Rebate – households that qualify for rates rebate have their loan repayments under the Hot Swap Scheme waived
- Low-income Heating Grant – grants for low income homes for heating and insulation.

The Council may grant a dispensation to allow the use of non-complying solid fuel burners or indoor open fires in exceptional cases.

6 Key changes to the Bylaw

The full draft Bylaw is included as Appendix 1. The regulations within the Bylaw apply to the Rotorua Airshed which is shown in Appendix 2.

The Bylaw contains a number of changes to its regulations that differ from the original 2010 Bylaw. Many of these changes are minor, included for additional clarity, and to ensure consistency with the regional rules.

However, some changes will affect what types of burners can be installed in houses within the Rotorua Airshed.

6.1 Interpretation

The interpretation section contains a number of definitions of terms that are used in the Bylaw. The biggest change to these definitions is the inclusion of definitions for each different type of solid fuel burner (coal burner, indoor open fire, multifuel burner, pellet burner, woodburner). There is also some clarification of the definitions for “replace or replaced”, “remove or removed”, and “operable” (changed to “inoperable”).

Other minor changes have been made to assist interpretation.

6.2 Point of Sale Rule

The core requirement of the Point of Sale has been retained. This rule previously required any non-complying solid fuel burner to be removed or replaced from a dwelling house before it was sold. There are two key changes to this.

1. Indoor open fires must now be rendered inoperable and may no longer be replaced with another type of solid fuel burner. Indoor open fires were phased out in May 2015 by the 2010 Bylaw. Discharges of particulates from this source are now considered to have been removed. Replacement of an indoor open fire with another type of solid fuel burner is therefore introducing a new source of discharges to the Rotorua Airshed, which will not achieve the outcome sought. It has been two years since the phase-out, sufficient time for homeowners to have installed a replacement solid fuel burner.
2. The rule now applies to all buildings in the Rotorua Airshed. Previously the rule applied only to dwelling houses. Dwelling houses have a specific definition (taken directly from the RMA) that made it unclear whether it applied to buildings used for other purposes, such as businesses and accommodation.

A new clause has been added that requires written/photographic evidence of the removal or replacement to be provided to Council. While this was usually provided by those affected by this rule, this clause makes the requirement explicit, and it is clear to the public what is required.

6.3 **New Burner Rule**

The “Restriction on Installation of Solid Fuel Burners in New and Existing Houses” rule, known as the new burner rule, has changed.

Previously the rule permitted the installation of a solid fuel burner provided they complied with the design standard (1.5 grams particulates discharges per kilogram of dry wood burnt) and thermal efficiency standard (the ratio of useable heat energy output to energy input not less than 65%) of the NESAQ.

There are three substantial changes to this rule:

1. The installation of new burners where there is currently no solid fuel burner installed is limited to pellet burners. Pellet burners are the only solid fuel burner proven to have low emissions in real-life and are not as significantly affected by operator errors (such as burning rubbish) that increase emissions.
2. Woodburners may be permitted provided that they replace a woodburner, coal burner, or multifuel burner. They may not replace indoor open fires nor any type of solid fuel burner that is designed for a purpose besides space heating (coal ranges, chip heaters).
3. Woodburners must meet a design standard of 0.5 grams particulates discharges per kilogram of dry wood burnt. This is stricter than the NESAQ requirement. Research shows that woodburners discharge significantly more particulates in real life, due to operator error. However, the better the design standard (the lower the discharge) the better the woodburners performs in real life. Ensuring that the best possible woodburners are installed will help achieve the outcome sought.

Once again this rule now applies to all buildings, not just dwelling houses.

The design standard and thermal efficiency regulations from the NESAQ have been included as additional clauses to this rule for clarity.

6.4 **Minor changes**

Other minor changes include amending or removing redundant dates throughout the document, and some grammatical corrections.

7 **Administration and Enforcement**

The Bay of Plenty Regional Council has carried out the responsibility for enforcement and administration of the current Bylaw since its adoption in 2010. This agreement will continue for the 2017 Bylaw. The Regional Council will therefore be carrying out such roles as monitoring compliance with the Bylaw, assessing dispensations, setting fees and reporting on the Bylaw’s achievements.

Appendix 1 – Draft Rotorua Air Quality Control Bylaw 2017



AIR QUALITY CONTROL BYLAW 2017

CONTENTS

PART ONE: INTRODUCTION

- 1.1 SCOPE AND GENERAL
- 1.2 TITLE OF BYLAW
- 1.3 COMMENCEMENT

PART TWO: INTERPRETATION

PART THREE: RESTRICTIONS ON SOLID FUEL BURNERS

- 3.1 SOLID FUEL BURNER UPGRADE REQUIRED AT POINT OF SALE
- 3.2 RESTRICTION ON INSTALLATION OF SOLID FUEL BURNERS IN NEW AND EXISTING HOMES

PART FOUR: BAN ON OPEN FIRES

- 4.1 INDOOR OPEN FIRES

PART FIVE: DISPENSATIONS, FEES AND CHARGES

- 5.1 DISPENSATIONS
- 5.2 FEES AND CHARGES

PART SIX: ENFORCEMENT MECHANISMS

- 6.1 OFFENCES AND BREACHES
- 6.2 CONTINUING OFFENCES
- 6.3 REMOVAL OF WORKS
- 6.4 POWER OF ENTRY FOR ENFORCEMENT PURPOSES
- 6.5 PENALTIES FOR BREACH OF BYLAWS

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 2017”**.

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

1.4 COMMENCEMENT

The provisions of this Bylaw shall come into force on [date of adoption].

1.5 PURPOSE

The purpose of this Bylaw is to protect, promote and maintain 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.

“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 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 and coal ranges, chip heaters, water heaters or central heating units, multi-fuel 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 are 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 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 except where an indoor open fire is located within a building which is classified by the Historic Places Trust as a Heritage building.
- 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 No person shall permit, allow or carry out the installation of any solid fuel burner in any dwelling house or building after the date of commencement of this Bylaw except:
 - (a) where the installation is of a pellet burner, or
 - (b) where the installation is of a woodburner that:
 - (i) replaced a woodburner, coal burner or multifuel burner that was used primarily as a space heater in the dwelling house or building, and
 - (ii) has an emission rate equal to or less than 0.5g/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 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 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 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 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 [insert resolution date].

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

_____ Mayor

_____ Chief Executive

Appendix 2 – Rotorua Airshed

