



Statement of Proposal:

Fire Prevention Bylaw - review 2015

Summary of information

This statement of proposal relates to a review of Part 3: Fire Prevention of the Wellington City Consolidated Bylaw 2008 (referred to as the fire bylaw).

Bylaws must be reviewed every 10 years under the terms of the Local Government Act 2002 (LGA) and the fire bylaw must be reviewed by December 2015. The LGA sets out the process and consideration necessary for reviewing bylaws.

The purpose of the fire bylaw is to minimise the potential fire risk arising from uncontrolled fires and to address public safety concerns and nuisance concerns. The fire bylaw is empowered under LGA provisions for the purpose of maintaining public safety and preventing public nuisance.

The main components of the current fire bylaw are:

- outdoor fires that are not in a 'properly constructed fireplace' require a fire permit from the Council
- the Council can impose a complete fire ban in times of fire risk

- general prohibitions in the interests of safety (for example, no lighting of fires within 3 metres of a building, or putting ashes in a flammable container).

Council officers have reviewed the fire bylaw and are of the view that a bylaw remains necessary to address fire safety and fire prevention on public and private land in the city and to protect the public from nuisance caused by fires. Without a fire bylaw, the Council has no powers to protect residents from nuisance (eg: smoke and ash), or ensure safety of people and property (eg: uncontrolled fires can cause fires on private property or get into the Town Belt and pose a grave threat to people and property).

As part of the review, Council officers, in consultation with the Fire Service, have identified several problem areas in the operation of the fire bylaw that could be improved. These are:

- there is uncertainty about which fires require a permit

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- many cooking and heating fires in purpose-built containers require permits, but cause very few nuisance complaints or safety risks
 - burning rubbish is allowed with a fire permit - these fires can be dangerous, cause conflict between neighbours, and lead to many public calls about flames and smoke that the Fire Service must respond to - this can affect Fire Service availability to respond to emergency calls
 - the Fire Service can only legally extinguish the fire if it is threatening people or property, or looks like it is getting out of control.
 - limit the circumstances in which a fire can be used to burn rubbish (to circumstances where there are no suitable alternatives and/or special circumstances)
 - include information on how to safely manage a fire
 - include more information about application forms and fees
 - provide the Council with powers to extinguish an outdoor fire that does not comply with the bylaw (which can then be delegated to the Fire Service if desired)
 - make general clarifications and remove a clause on fire danger that is now covered by the Fire Safety and Building Evacuation Regulations 2006.
- In order to address these problems, officers propose amendments to the fire bylaw to:

- allow for more types of cooking and heating fires to be lit outdoors, on private land, without a permit
- make it clear which fires require a permit
- make it clear that all fires in public places require a permit

The review findings are summarised in this statement of proposal document and a proposed amended fire bylaw is attached (Appendix B - Proposed Amended Fire Bylaw). While most content is carried across from the current fire bylaw (Appendix C - Fire Bylaw 2003) it has been clearer to create a new version of the bylaw.

Have your say

The Council is keen to know what residents, ratepayers and stakeholders think about the proposed amended fire bylaw.

Please make a submission online at wellington.govt.nz, email your submission to policy.submission@wellington.govt.nz or complete the attached submission form and send it to Fire Prevention Bylaw Review, Freepost, Wellington City Council, PO Box 2199, Wellington.

You can get more copies online at wellington.govt.nz, the Service Centre at 101 Wakefield Street, libraries, by emailing policy.submission@wellington.govt.nz or phoning 04 499 4444.

If you wish to make an oral submission to Councillors, please indicate this on the submission form and make sure you have included your contact details. We will contact you to arrange a time for you to speak. Submissions will be heard by the Community, Sport and Recreation Committee on 14 October 2015.

Written submissions open on 28 August and close at 5pm on 30 September 2015.

1. Introduction and reason for the proposal

This section describes the fire bylaw and review requirements under the LGA. A list of other legislation that applies to fires is also provided (Appendix A).

Fire bylaw

The fire bylaw provides the Council with powers to control outdoor fires in public places and on private land, and manage the risks associated with outdoor fires. The main components of the fire bylaw are:

- outdoor fires that are not in a ‘properly constructed fireplace’ require a fire permit from the Council, this generally means any open fire that is not contained in a fireplace that has a building consent, requires a permit (except for gas or charcoal barbeques)
- the Council can impose a complete fire ban in times of fire risk
- precautions against fire danger (about safe storage of flammable material)
- prohibitions in the interests of safety (for example, no lighting of fires within 3 metres of a building, or putting ashes in a flammable container).

The fire bylaw dates back to 1880 when the Council introduced regulations governing the lighting of fires in the ‘open air’. The responsibility for the regulation of outdoor fires in the urban fire district remains with the Council. The current fire bylaw was adopted in 2003 and has not been amended since then.

The fire bylaw is part of the Wellington City Consolidated Bylaw 2008 (the consolidated bylaw) so the general provisions of the consolidated bylaw apply, for example, Part 1: Introduction includes general processes like applying to Council for permission (ie: written permits), provisions for the Council to waive fees in certain circumstances, powers for the Council to prescribe application forms and fees and the power to issue notices.

Local Government Act 2002 (LGA) - empowering the fire bylaw

The Council is authorised under the LGA to make bylaws for protecting the public from nuisance and protecting, promoting, and maintaining public health and safety (Section 145(a) and (b)).

The fire bylaw is empowered under Section 145 of the LGA, mainly, to protect the public from nuisance (for example, ash and smoke), and public safety (threat to life and property from fire). Section 146(c) of the LGA empowers the Council to make a bylaw to prevent the spread of vegetation fires.

Fires in the city’s rural setting are generally managed through provisions of the Forest and Rural Fires Act 1977 and by the Wellington Rural Fire Authority of which Wellington City Council is a stakeholder.

LGA - review requirements

The LGA sets out procedural requirements for making or amending a bylaw. Provisions were added to the LGA in 2006 to require bylaws to be reviewed every 10 years. The government’s intent in creating the new provisions was to ensure a regular cycle of review for bylaws.

Bylaws that are not reviewed within two years of a review becoming due are automatically revoked (Sections 158-160A). The fire bylaw became eligible for review on 18 December 2013 and the review must be completed by 17 December 2015.

The LGA procedural requirements for reviewing a bylaw are the same as those for creating a bylaw (Section 155). At review, the Council must consider whether a bylaw is the most appropriate way of addressing a perceived problem and whether the proposed form of the bylaw is the most appropriate form of bylaw. The Council must also consider whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA).

The Council must consult the community through the special consultative procedure when making, amending or reviewing a bylaw (Section 156) if the bylaw concerns a matter identified in the Council’s Significance and Engagement Policy (developed under Section 76AA) or if the Council considers there is, or is

likely to be, a significant impact on the public due to the proposed bylaw or changes.

After deciding to adopt any amendments to the bylaw, the local authority must give public notice of when the bylaw or amendments come into operation.

2. The process and timeframe for review

The process for review that meets the consultation requirements of the LGA is as follows:

The review proposals and bylaw amendments have been developed by Council officers from the Policy and Research and Transport and Waste Operations teams in consultation with the Fire Service.

The Council considers there is a potential significant impact on the public due to the fact that the fire bylaw is a regulatory document that creates constraints on what

people can do (for example; potential costs, requirements for fire permits, and potential offences with fines up to \$20,000). Therefore, it is appropriate to allow the public to be fully involved in the bylaw-making process through using the special consultative procedure required under the LGA.

The timeline for the consultation and development process is:

Dates	Activity
12 August 2015	Community, Sport and Recreation Committee considers this statement of proposal and decides whether to send this proposal out for external consultation.
28 August to 30 September	Consultation period.
14 October 2015	Community, Sport and Recreation Committee hears oral submissions.
25 November 2015	Community, Sport and Recreation Committee considers the report on all written and oral submissions and decides whether to adopt the proposed bylaw.
16 December 2015	Council considers whether to adopt the proposed bylaw.
17 December 2015	Bylaw (as amended) comes into force.

3. Review discussion and proposals

3.1 Is the fire prevention bylaw still appropriate under the LGA?

The perceived problem the fire bylaw addresses

The LGA requires that a bylaw be the most appropriate way to address a perceived problem. As the fire bylaw has existed for a long time and is only being reviewed, officers have posed the question:

What if there were no fire bylaw?

Although the lighting of fires in public places is partly covered by the Forest and Rural Fires Act 1977, there are no controls on the lighting of fires on private land in the city and on any land in the city that is not designated as part of the rural fire district.

Without the fire bylaw there would be a problem because the Council may not be able to:

- institute fire bans in times of extreme fire risk, potentially leading to fires getting into dry vegetation in the Town Belt and spreading rapidly, posing a grave threat to people and property
- control fires on private land in residential areas to protect residents from fire risks and from nuisance.

The fire bylaw is a unique instrument and does not create overlap with any of the other laws that apply to fire safety (Appendix A).

Therefore, Council officers do not recommend repeal of the fire bylaw, which largely remains an appropriate bylaw under the LGA to address the problem of fire risks and nuisance to residents that could arise without the powers to control fires that exist in the fire bylaw. However, there are some problems with the existing fire bylaw that should be addressed as part of this review (including clarity of its application, providing for powers to extinguish unauthorised fires, imposing stricter controls on burning of rubbish and allowing for more outdoor fires, if contained in appropriate devices). These problems are discussed in the next section.

Is the proposed bylaw the most appropriate form of the bylaw?

The LGA requires that a bylaw be the most appropriate form of the bylaw. The fire bylaw is part of the consolidated bylaw and there are no reported issues to warrant changing it to a stand-alone bylaw. Subject to the proposed amendments addressed below, the Council considers that the form of the bylaw as proposed is the most appropriate form of bylaw.

Does the fire bylaw require amendment (ie: are there additional problems that need addressing)?

As part of the review, Council officers have identified several problem areas in the operation of the fire bylaw that could be improved. These are:

- there is uncertainty about which fires require a permit.
- many cooking and heating fires in purpose-built containers require permits, but cause very few nuisance complaints or safety risks.
- burning rubbish is allowed with a fire permit - these fires can be dangerous, cause conflict between neighbours, and lead to many public calls about flames and smoke that the Fire Service must respond to - this can affect Fire Service availability to respond to emergency calls
- the Fire Service can only legally extinguish the fire if it is threatening people or property, or looks like it is getting out of control.

In order to address these problems, officers propose amendments to the fire bylaw to:

- allow for more types of cooking and heating fires to be lit outdoors, on private land, without a permit
- make it clear that all fires in public places require a permit
- make it clear which fires on private land require a permit

- limit the circumstances in which a fire can be used to burn rubbish (to circumstances where there are no suitable alternatives and/or special circumstances)
- include information on how to safely manage a fire
- include more information on the need for applications to include all the information requested by the Council and for it to be on the prescribed application form and accompanied by any prescribed fee
- provide the Council with powers to extinguish an outdoor fire that does not comply with the bylaw (which can then be delegated to the Fire Service if desired)
- make general clarifications and remove a clause on fire danger that is now covered by the Fire Safety and Building Evacuation Regulations 2006.

The problems and proposed amendments are discussed below (Section 3.2). The amendments proposed will reduce the nuisance effect of outdoor fire activities on the community and reduce the number of Fire Service callouts responding to permitted and non-permitted outdoor fire activities. The fire bylaw will also be much clearer for the public and this may improve compliance.

3.2 Bylaw issues and proposed amendments

3.2.1 Proposal to allow a greater range of cooking and heating fires without a permit and provide for the safe management of fires

Under the current fire bylaw, Council permission (commonly referred to as a fire permit) is required before “lighting any fire that is not contained in a properly constructed fireplace, gas or charcoal barbeque or an area specifically designated by the Council”.

The fires that are allowed are bounded by the definitions of:

- “properly constructed fireplace” which states, built in accordance with the requirements of the Building Act 1991, or the relevant building standard applicable at the time of the fireplace construction, and maintained in proper repair, and
- “barbecue” defined as gas, charcoal or wood-fuelled barbecue (but excluding incinerators, hangi, umu, braziers and chimeneas).¹

Neither of these definitions allow for cooking fires, braziers or chimenea even if they are well-designed outdoor fireplaces or fire pits. So, in effect, very few fires are allowed without a permit, whether on public or on private land.

There is little evidence of heating and cooking fires, in purpose-built containers, causing any problems. In the past few years only 25 Fire Service callouts (Table 1) have been about wood-fuelled cooking fires, of a total of 612 callouts. Most complaints are about controlled burns and rubbish fires (discussed below, 3.2.2).

Table 1: Fire Service callouts 2012 to 2015²

Fire activity	Count
Authorized controlled burn	56
Unauthorised controlled burn	20
Barbeque (gas)	11
Barbeque (wood or charcoal)	25
Bonfire	104
Campfire	14
Gas cooking fire	2
Outside rubbish fire	314
Hangi/umu/cultural cooking fire	31
Miscellaneous (unclassified)	35
Total	612

¹ Chimenea or chimenea (Spanish for chimney) are terracotta ovens with an open mouth/fire compartment and chimney. Traditionally, a chimenea was made of clay and designed in a wide-bottom vase form, with a narrow, vertical chimney through which to direct smoke and a wide mouth on its side for the fire pit. The chimenea’s design allows it to be used in the rain without the water extinguishing its flame.

²Data has been supplied by the Fire Service.

Of note, very few fire permits are applied for and issued (Table 2), only 373 from 2012 to 2015, indicating that it is probably not very well understood that most fires currently do require a permit.

Table 2: Fire Permits Issued by Council 2012-2015

Fire activity	Count
Fire activity	Count
Open fire	134
Incinerator	84
Chimenea/brazier	49
Hangi/umu	41
BBQ	21
Wood-fired pizza oven	16
Fixed outdoor fireplace	11
Fire pit/dish/box	7
Open pottery fire pit	3
Other	2
Campfire	2
Fire for religious purpose	2
Forge	1
Total	373

As there is little risk associated with cooking and heating fires, and few callouts raised, officers recommend that the fire bylaw is amended to create a new category of fire that may be lit, on private land, without a fire permit. This new category should provide for the lighting of cooking fires and heating braziers and include built barbecues, pizza ovens and chimeneas.

Proposal to allow more types of fire without a permit and present the information more clearly

The following amendments are proposed to give effect to the recommendations to allow more types of fire without a permit and to make it clear which fires do and do not require a permit:

- amend the interpretation section to provide for an “outdoor fire device” that applies to contained fires including purpose-built, enclosed, barbecues, braziers, pizza ovens, and chimenea (Appendix B, clause 1)

- add a new clause “Fires allowed without Council permission” to apply to fires in an “outdoor fire device” (Appendix B, clause 2).

Proposal to improve clarity of the fire bylaw about which fires require permission

At present all fires in public places require a fire permit, but the fire bylaw does not explicitly state this. In addition, all open fires on private land require Council permission, including hangi and umu fires. Officers recommend that the bylaw is restructured to make it clearer that open fires on private land require Council permission, and all fires on public land (except for gas barbecues) require Council permission.

The proposed amendments to achieve more clarity about which fires require a fire permit are:

- replace the current clause 4 “Activities that require Council permission” with a new clause “Fires that require Council permission” (Appendix B, clause 3)
- clarify in new clause 3 that all fires on public land require Council permission (except for gas barbecues), and open fires on private land (including those used for hangi and umu) and rubbish fires (enclosed or not) on private land require Council permission (Appendix B, clause 3.1 and 3.2).

While hangi and umu are cooking fires that raise few complaints (Table 1), it is still appropriate to issue fire permits as these require long-burning open fires (at least three hours is recommended for the safe cooking of food).

Proposal to include conditions for lighting a fire in the fire bylaw

At the moment Council fire permits include information about the safe conduct of a fire. If more fires are allowed without Council fire permits, that information needs to be publicly available and compliance should be compulsory. Officers propose amendments to add new content to the fire bylaw:

- provide “general conditions for lighting outdoor fires in all areas at all times” (Appendix B, clause 4)

- provide specifications for the location and size of fires in an “outdoor fire device” (Appendix B, clause 2.2)
- provide specifications on the location and size of fires with a permit (and not in an “outdoor fire device”) (Appendix B, clause 3.5).

3.2.2 The burning of waste in incinerators and open fires

Under the existing fire bylaw, the burning of rubbish and vegetation is allowed when Council permission (ie: a fire permit) has been obtained, including in incinerators and open fires. The Council fire permit has general conditions intended to reduce nuisance impacts on neighbours and the risk of a fire spreading to any building or structure or vegetation.

From 2012 to 2015, 84 incinerator permits were issued (many would generally be for the burning of waste), and some 134 for open fires (most of which would be for burning rubbish). During the same time period, the Fire Service responded to 314 calls (or callouts) about the burning of outside rubbish. This reflects more than half of the total of 612 callouts about outdoor burning during that time period.

The Fire Service has provided the following information about these types of fires:

- reported fires can be hard to locate, as it can be hard to identify which address smoke is coming from, especially on hillside properties
- with hilly terrain, smoke and flames can be spotted from far away, so multiple calls can be made to the Fire Service about the same fire
- when the Fire Service arrives to a fire there will often be a dispute in progress about nuisance smoke and ash
- fires are often left burning after dark causing more calls by worried residents
- fires can only be extinguished by the Fire Service if they are threatening life or property or getting out of control.

There is obviously a cost associated with these callouts, but the impacts extend beyond the financial and into

public safety, as the attendance at rubbish fires can mean the Fire Service is slower to get to more threatening fires.

Rubbish burning can remove the need for some garden waste, tree trimmings and general refuse to be transported to a landfill or recycling facility, but for most people is not essential. The Fire Service has asked the Council to consider banning the burning of rubbish, as has been done in Lower Hutt.

Council officers agree that prohibiting the use of incinerators and outdoor rubbish and/or vegetation fires would reduce public nuisance (from smoke and ash), reduce neighbourhood disputes, and would assist in ensuring the Fire Service is available when it is needed most. However, the costs of burning rubbish to the community are not clear enough to warrant a complete ban of all burning of rubbish in all circumstances.

Proposal to limit the burning of rubbish

All rubbish fires already require a fire permit. Instead of a proposed ban, Council officers recommend that, in future, fire permits for burning rubbish only be granted by the Council in circumstances where residents have no reasonable alternative to removing the rubbish, or special circumstances exist. This will lead to a reduction in the number of permitted rubbish fires, and an associated reduction to the risks and nuisance associated with rubbish fires.

The following amendment is proposed to give effect to the recommendation:

- add a sub-clause to new clause 3 “Activities that require Council permission” that permits for burning rubbish will only be issued when there are no suitable alternative ways to dispose of the rubbish or special circumstances exist (Appendix B, clause 3.3b(i) and 3.3b(ii)).

Alongside the bylaw amendment, the Council may amend the conditions of fire permits to require the permit holders to notify the Fire Service when a fire that has a permit will be lit. This will mean that if an authorised rubbish fire raises complaints, the Fire Service will be able to identify where it is more promptly.

3.2.3 Power to extinguish fires

It is generally assumed the Fire Service has the legal mandate or authority to extinguish any fire. This is not the case. The Fire Service can only extinguish a fire that threatens people or property or looks like it is getting out of control. Sometimes the Fire Service will need to keep returning to a fire to monitor safety and compliance and prevent the fire from becoming dangerous. Fires that are likely to become dangerous, or that do not have an appropriate permit, cannot be extinguished.

Officers recommend that the fire bylaw provides the Council with the powers to extinguish a fire that is

not allowed or permitted under the fire bylaw (Appendix B, clause 8). This will enhance the public safety protections of the fire bylaw. The Council can then choose to delegate this power to the Fire Service, if it wishes.

3.2.4 Other amendments and changes to the structure of the bylaw

For the purposes of clarity, a complete revised proposed fire bylaw has been developed (Appendix B). The existing fire bylaw is attached for comparison (Appendix C). Some further technical amendments, not discussed above, are noted in the table below.

Table 2: Description of proposed revised fire bylaw including minor changes

Proposed Bylaw Ref.	Proposed revised bylaw, clause names	Key differences between proposed revised bylaw and existing Part 3: Fire Prevention.
-	Introduction	Carried over from existing bylaw with minor amendment.
1	Interpretation	<p>Refer 3.2.1 above, the following terms are newly defined in the bylaw to make the overall intent and scope of the fire bylaw clearer:</p> <ul style="list-style-type: none"> - combustible - non-combustible material - occupier - outdoor fire device (as discussed at 3.2.1, fires defined as an "outdoor fire advice" are generally enclosed cooking and heating fires, and may be lit without a fire permit). - Council permission incinerator - nuisance - outdoor fire - public place - rural fire district - urban area - urban fire district - total fire ban - vegetation <p>The definition of "barbeque" is retained and amended.</p> <p>The terms, "goods", "properly constructed fireplace" and "chimney" have been deleted.</p>
2	Fires allowed without Council permission	Refer 3.2.1 above. More clearly sets out what fires are allowed without a permit and compliance requirements.

3	Fires that require Council permission	Refer 3.2.1 and 3.2.2 above. More clearly sets out which fires require a permit, and limits the circumstances in which a permit may be obtained for burning rubbish. Sets conditions for lighting permitted outdoor fires.
4	General conditions for lighting outdoor fires in all areas at all times	Refer 3.2.1 above. Fire permits under the existing system have information about the safe management and ways to reduce the nuisance effects of a fire. As more fires will now be allowed without a fire permit the information needs to be publicly available in the bylaw. The inclusion of these details allows for activities that do result in nuisance type effects to be enforced through the LGA.
-	-	"Clause 5 - Precautions against fire danger" is deleted as it replicates requirements that are now in the Fire Safety and Building Evacuation Regulations 2006.
5	Total fire ban during periods of extreme fire risk	Copy and replacement of "Clause 3 - Fire Prohibition". Core content of the fire bylaw, this clause has been expanded to include circumstances where the Council can approve an outdoor fire, and to make it clear gas barbecues and contained fires are allowed.
6	Live ash or smouldering substances	Copy and replacement of "Clause 6 - Prohibited Activities" of the current bylaw states that live ash should not be placed in certain types of container. The incorrect disposal or handling of hot ashes is a leading cause of fires in New Zealand. This clause is intended to allow the Council to take action to prevent high-risk practices where required and reduce the risk of fire spread to structures, Town Belt areas and neighbouring properties.
7	Process for obtaining Council's written permission	This is a proposed new clause to include more information on the need for applications to include all the information requested by the Council and for it to be on the prescribed application form and accompanied by any prescribed fee.
8	Council powers to extinguish	Refer 3.2.3 above. This is the proposed new clause to enable the Council to extinguish a fire that is in breach of the bylaw. The Council can delegate this power to the Fire Service.
9.	Enforcement, Offences and Penalties	Direct copy of "Clause 7 - Offences" of the current bylaw.

4. New Zealand Bill of Rights Act 1990 (NZBORA) implications

Under section 155(3) of the LGA, the Council is obliged to consider whether the proposed bylaw creates any implications under the NZBORA. The LGA expressly requires that bylaws are consistent with the NZBORA.

The only right or freedom recognised under the NZBORA that the Council considers could potentially be impinged by the bylaw is the right to manifest religion or belief in worship, observance, practice or teaching if there are religious reasons for requiring a fire (on public or private land). However, considering the safety and nuisance issues involved, officers consider the

requirement to seek Council permission for such a fire would be a reasonable restriction of this right.

The Council considers that the proposed bylaw is not inconsistent with NZBORA and does not give rise to any implications under the NZBORA.

The bylaw amendments do not go beyond what is required to achieve the objectives discussed in this paper and adheres to LGA requirements of amending a bylaw.

Appendix A: Legislation that applies to fire prevention and fire safety

Legislation	Purpose
Forest and Rural Fires Act 1977	Provides measures to safeguard life and property through the prevention, detection, control, restriction, suppression and extinction of fire in forest and rural and other areas of vegetation. The Act specifically defines and covers the Rural Fire District and enables a fire ban to be imposed on the rural fire district during time of extreme fire risk.
Local Government Act 2002	Empowers councils to make a fire prevention bylaw (sections 146(b) and (c)) and to require occupiers or landowners to reduce, eradicate or remove any growth or matter on the land if it is likely to become a source of risk from fire (section 183) and a right of appeal (section 184). It also allows the Council to recover costs from the occupier or land owner for any growth management undertaken on the owner's behalf (section 186).
New Zealand Fire Service Act 1975	Establishes the New Zealand Fire Service statutory powers and responsibilities in undertaking fire safety, management and suppression activities.
Fire Safety and Building Evacuation Regulations 2006	Provides for fire safety and in the context of the fire bylaw the storage of flammable materials outside buildings, the control of open flames and the packing and unpacking of goods. As this is now covered in the regulations, clause 5 of the fire bylaw 2003 can be deleted.
Reserves Act 1977	Covers the acquisition, control, development and use of reserves and prohibits the lighting of fires in reserves without a permit.
Resource Management Act 1991	Promotes the sustainable management of natural and physical resources. The Regional Plan also controls discharges to air from burning activities.

Appendix B - proposed revised Fire Bylaw

Introduction

This part of the bylaw controls activities that may become a fire hazard. The purpose of the bylaw is to minimise the potential fire risk arising from uncontrolled fires and to address public safety concerns and nuisance concerns. The bylaw does not address fire safety requirements for building construction, as these are covered by the Building Act 2004.

The bylaw is specifically limited to those areas that are not part of a rural fire district pursuant to the Forest and Rural Fires Act 1977. This bylaw therefore regulates activities in predominantly urban areas. A map showing the rural fire district is available from the Council. A permit for a fire in the rural fire district must be sought from the Wellington Rural Fire Authority (www.wrfa.org.nz).

This amended bylaw replaces the previous Wellington City Consolidated Bylaw 2008: Part 3 (Fire Prevention) and is introduced pursuant to section 145 of the Local Government Act 2002. It does not replace the statutory provisions relating to fire prevention, which should be read in conjunction with this bylaw. Further details on those statutory provisions are provided at the end of this part of the bylaw.

1. Interpretation

In this part of the bylaw, unless inconsistent with the context, or where otherwise expressly provided:

“**Barbecue**” means any fixed or portable device (electric, gas, wood or charcoal fired burning equipment) designed and/or intended for the cooking of food outside.

“**Combustible material**” means a substance or material that is able to catch fire and burn. It may include overgrown vegetation, hay, timber and sawdust.

“**Council permission**” means written permission obtained from the Council as set out in clause 7, prior to undertaking the fire activity.

“**Incinerator**” means any non-flammable container, receptacle or apparatus designed and/or intended for the disposal of combustible materials by burning.

“**Non-combustible material**” means any substance of a fire-resistant nature able to contain combustion or the burning of fuel.

“**Nuisance**” means, in relation to an “outdoor fire device”, smoke or ash that may be offensive or objectionable beyond the property boundary where the “outdoor fire device” is being operated.

“**Occupier**” means, in relation to any land, the owner and includes any tenant, agent, manager, foreperson or other person apparently acting in the general management or control of the land.

“**Outdoor fire**” is any fire lit within the urban fire district, other than in a dwelling or other enclosed building that has a building consent.

“**Outdoor fire device**” means any non-combustible receptacle, appliance or device designed or intended to be used in the outdoors for cooking, heating or amenity that contains combustion or the burning of fuel and may include barbecues, smokers, braziers, chimenias³, pizza ovens and other like devices but excludes “incinerators”.

“**Public place**” means any place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether an owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and includes any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle carrying or available to carry passengers for reward.

“**Rural fire district**” means land constituted under the Forest and Rural Fires Act 1977 as a rural fire district.

“**Total fire ban**” means a fixed or indefinite period of time, fixed by the Council under clause 5 of this bylaw, when the lighting of outdoor fires is prohibited.

“**Urban area**” means any land, public or private, within the urban fire district.

³A terracotta oven with an open-mouth fire compartment and chimney.

“**Urban fire district**” means land constituted under the Fire Service Act 1975 as an urban fire district.

“**Vegetation**” means:

- a) all plants and the produce thereof, live or dead, standing, fallen, windblown, cut, broken, pulverised, sawn or harvested, natural or disturbed in use or as waste, debris, stump, stubble or otherwise
- b) fossil fuel exposed on, or lying within 20 metres of, the surface of any land
- c) peat in any form
- d) but does not include wood forming part of a structure or otherwise in processed form.

Any explanatory note is for information purposes only and does not form part of this bylaw. They may be made, amended or removed without formal process. The Interpretation Act 1999 applies to this bylaw.

2. Fires allowed without Council permission

- 2.1.** Subject to any total fire ban in place under clause 5 of this bylaw, an outdoor fire may be lit on private land, provided the fire is contained in an outdoor fire device.
- 2.2.** Any such fire in an outdoor fire device must at all times comply with the requirements in clause 4 of this bylaw, and
 - a. be no closer than 1 metre to any boundary, fence, road or structure, and,
 - b. have flames no taller than 1.5 metres, and
 - c. be located or positioned on non-combustible material.

3. Fires that require Council permission

- 3.1.** Subject to clause 3.2 of this bylaw, the following fires will require the Council’s prior written permission:
 - a. All outdoor fires in public places (excluding Council gas barbecues).
 - b. All outdoor fires on private land that are not in an outdoor fire device, including those used for cooking (such as hangi and umu)

and fires for special events (for example, cultural and community events). Where the outdoor fire is for the purpose of burning rubbish and/or vegetation or disposing of combustible materials, it will only be given Council permission where:

- i. there are special circumstances which make such permission necessary and/or
- ii. there are no other suitable, reasonably practicable, alternative ways to dispose of the material.

- 3.2.** In addition to any conditions imposed in a Council permission, any outdoor fire authorised by a Council permission must at all times comply with the requirements in clause 4, and
 - a. be no closer than 1 metre to any boundary, fence, road or structure, and,
 - b. have a diameter not exceeding 3 metres
 - c. have no active burning after the hours of sunset or before the hours of sunrise.

4. General conditions for lighting outdoor fires in all areas at all times

- 4.1.** A person must not light, or allow to remain alight, any outdoor fire in any of the following circumstances:
- a. Where the location, wind, or other conditions cause, or are likely to cause, the outdoor fire to become:
 - i. a danger to any person or property; or
 - ii. out of control or to spread beyond the limits of the property on which the fire is lit; or
 - iii. a smoke or ash nuisance to any person or property; or
 - iv. a hazard to road traffic.
 - b. Within the proximity of any combustible materials such as a building, structure, fence or vegetation that may cause or be likely to cause a fire hazard, unless the fire is contained within an outdoor fire device that:
 - i. is fuelled by gas
 - ii. or contains all embers and sparks.
 - c. Without adequate supervision being maintained at all times
 - d. Without an appropriate means of fire suppression being available.
- 4.2.** Every person who lights an outdoor fire must ensure the outdoor fire is totally extinguished on completion of the activity.

5. Total fire ban during periods of extreme fire risk

- 5.1.** The Council or Chief Executive Officer may make, amend or revoke a total fire ban in any specified part or parts of Wellington to minimise the risk of the start or spread of fire, during periods of extreme fire risk. The ban may be in place for a fixed or indefinite period.

- 5.2.** A person must not light, or allow to be lit, any outdoor fire when a total fire ban is in place, unless that fire is on private land and contained within an outdoor fire device that:

- a. is fuelled by gas; or
- b. contains all embers and sparks.

- 5.3.** A person may apply to the Council for a permit to light an outdoor fire during a total fire ban if the outdoor fire (on private or public land) is required as part of a significant community or cultural event; or is the most effective means to reduce a fire hazard; or the most effective means to reduce any other hazard to life, health, property or the environment, or special circumstances exist.

- 5.4.** The Council shall notify any total fire ban by public notice in a newspaper circulated in the location to which the ban relates. The Council may also erect signage.

6. Live ash or smouldering substances

- 6.1.** A person must not place or dispose of any live ash, cinders, embers or any other smouldering substance on any land except when:
- a. contained in a non-combustible receptacle so as to prevent the transmission of fire or heat to any combustible material; or
 - b. in a pit on private land, which will prevent the spread of fire or heat by the action of wind or otherwise.

7. Process for obtaining the Council's written permission

- 7.1.** The process for obtaining the Council's prior written permission is set out in Part 1: Introduction of the Wellington City Consolidated Bylaw 2008.
- 7.2.** Any application made to the Council must include all information required by the Council, be on any form prescribed by the Council and be accompanied by any fee prescribed by the Council.

7.3. On receiving and reviewing an application the Council may grant or decline written permission at its sole discretion. If it grants written permission, it may do so subject to any conditions it sees fit (including, but not limited to, the duration of the written permission, the power to suspend or revoke a written permission and the power to review the written permission and its conditions).

7.4. Any written permission from the Council is personal to the holder and the property. It is not transferrable.

8. Council powers to extinguish fire

8.1. Where an outdoor fire has been lit or allowed to burn in breach of any part or parts of this bylaw, the Council may direct the occupier of the land where the outdoor fire is located and/or the person(s) who lit the outdoor fire, to immediately extinguish the fire.

8.2. Where a property owner or occupant has received an instruction under clause 8.1 of this bylaw and refuses to immediately follow that instruction, or there is no-one present in the vicinity of the fire, the Council may extinguish the fire.

8.3. Where an outdoor fire has been extinguished pursuant to clause 9.2, the Council may recover any costs it incurred in attending, containing and/or extinguishing the fire from the owner of the property on which the outdoor fire was located and/or from any person who lit, fuelled or allowed the fire to remain alight.

9. Offences

9.1. Everyone commits an offence who:

- a. carries out any activity before obtaining written permission as required by this part of the bylaw
- b. carries out any activity in breach of any condition or requirement of the written permission issued under this part of the bylaw
- c. fails to comply with any notice or instruction issued under this part of the bylaw.
- d. carries out any activity that is prohibited by clause 6.1.

In addition to statutory provisions relating to fire safety and prevention in the Forest and Rural Fires Act 1977, the Building Act 2004 and the Fire Service Act 1975, the following provisions of the Local Government Act 2002 should be read together with this bylaw:

- section 183 enables the Council to give notice to require an owner or occupier to remove any growth or matter that could become the source of danger in a fire. 'Growth' and 'matter' are defined in this section
- section 184 provides a right of District Court appeal of a section 183 notice
- section 186 enables the Council to execute the work in default of the owner or occupier and to recover the costs.

Related links

wellington.govt.nz/about-wellington/emergency-management/wildfire

Appendix C – Fire Bylaw 2003

This part of the bylaw controls activities that may become a fire hazard. The purpose of the bylaw is to minimise the potential fire risk arising from certain use of land and buildings and to address public safety concerns. The bylaw does not address fire safety requirements for building construction, as these are covered by the Building Act 1991.

The bylaw is specifically limited to those areas that are not part of a rural fire district pursuant to the Forest and Rural Fires Act 1977. This bylaw therefore regulates activities in predominately urban areas. A map showing the rural fire district areas is available from the Council.

This amended bylaw replaces the previous Wellington Consolidated Bylaw 1991 Part 10 (Fire Prevention) and is introduced pursuant to sections 145 and 146 of the Local Government Act 2002. It does not replace the existing statutory provisions relating to fire prevention, which should be read in conjunction with this bylaw. Further details on those statutory provisions are provided at the end of this part of the bylaw.

Adopted 17 December 2003.

1. Interpretation

1.1 Barbeque means a gas, charcoal or wood fuelled barbecue but excludes incinerators, hangi, umu, braziers and chiminerias.

Chimney includes any flue, smoke vent or stove pipe.

Goods means any article, material, or merchandise and includes any rubbish, debris, crates, pallets, containers or other packages, shavings, hay, straw, oily rags or waste, or other flammable or combustible materials or substances.

Properly constructed fireplace means built in accordance with the requirements of the Building Act 1991, or the relevant building standard applicable at the time of the fireplace

construction, and maintained in proper repair. This excludes incinerators, hangi, umu, braziers and chiminerias.

2. Application of this bylaw

2.1 This part of the bylaw applies to those areas of Wellington City that are not constituted within a rural fire district under the Forest and Rural Fires Act 1977.

3. Fire prohibition

3.1 The Council or Chief Executive Officer may impose a fire prohibition within stated time periods. The Council or Chief Executive Officer shall consider expert advice on the level of fire risk before imposing a fire prohibition. The fire prohibition shall not cover gas or charcoal barbeques.

3.2 The Council shall notify any fire prohibition by public notice in a newspaper circulated in the location to which the prohibition relates. The Council may also erect signage.

3.3 Notwithstanding clause 3.1 the Council may issue a special permit to light a fire in special circumstances.

4. Activities that require Council permission

4.1 The Council's written permission is required before lighting any fire that is not contained in a properly constructed fireplace, gas or charcoal barbeque or an area specifically designated by Council.

4.2 The process for obtaining the Council's permission is outlined in Part 1: Introduction of this bylaw.

5. Precautions against fire danger

5.1 It shall be the responsibility of every land or building owner and occupier to minimise the risk of fire danger by taking all reasonable precautions in the manufacture, storage or use of any goods or equipment.

5.2 If the Council considers that all reasonable precautions have not been taken, it may give written notice to the owner and occupier outlining the steps to be taken to minimise the risk of fire danger.

6. Prohibited activities

6.1 The following activities are prohibited:

- a. lighting any fire within 3 metres of any building, fence, road, public place or adjoining premises
- b. using a chimney for any industrial or commercial purpose when that chimney is not covered with a metal screen capable of preventing the escape of dangerous sparks
- c. retaining any live cinders or hot ashes, except in a non-combustible container.
- d. placing any hot ashes, explosives or any highly flammable material in any container intended for the Council's refuse collection.

7. Offences

7.1 Everyone commits an offence who:

1. carries out any activity before obtaining written permission as required by this part of the bylaw
2. carries out any activity in breach of any condition or requirement of the written permission issued under this part of the bylaw
3. fails to comply with any notice issued under this part of the bylaw.
4. carries out any activity that is prohibited by clause 6.1.

Note: In addition to statutory provisions relating to fire safety and prevention in the Forest and Rural Fires Act 1977, the Building Act 1991 and the Fire Service Act 1975, the following provisions of the Local Government Act 2002 should be read together with this bylaw:

- section 183 enables the Council to give notice to require an owner or occupier to remove any growth or matter that could become the source of danger in a fire. 'Growth' and 'matter' are defined in this section
- section 184 provides a right of District Court appeal of a section 183 notice
- section 186 enables the Council to execute the work in default of the owner or occupier and to recover the costs.

Related links

wellington.govt.nz/about-wellington/emergency-management/wildfire

TO BE REPLACED - REFER TO DRAFT

Fire Prevention Bylaw - 2015 review

Section one - details for the submission form

Enter your name and contact details

Mr Mrs Ms Miss Dr

First name*

Last name

Street address*

Phone/mobile

Email

* Mandatory fields

I am making a submission As an individual On behalf of an organisation I would like to make an oral submission

Name of organisation

We are keen to get your views on the Review and amendments to Part 3: Fire Prevention of the Wellington City Consolidated Bylaw 2008

You can have your say:

- submitting online at wellington.govt.nz,
- emailing a submission policy.submission@wcc.govt.nz
- complete this form, detach and post back to us (no postage required)
- phoning us on 04 499 4444
- requesting an opportunity to make an oral submission.

Submissions close at 5pm, 30 September 2015.

Disclaimer:

All submissions (including name and contact details) are published and made available to elected members of the Council and the public. Personal information supplied will be used for the administration and reporting back to elected members of the Council and the public as part of the consultation process. All information collected will be held by Wellington City Council, 101 Wakefield Street, Wellington. Submitters have the right to access and correct personal information.

Questions

1. Have you had a fire permit in the last three years? Yes No

If you have had a fire permit in the last three years, what type of fire was it for?

BBQ (not gas) Hangi Umu Incinerator Open burning Fixed outdoor fireplace Beach fire Rural/coastal

Other _____

2. Do you agree with the proposal to allow fires for cooking and heating to be lit without a fire permit from the Council on private land and in an "outdoor fire device"? Yes No If you disagree can you tell us why? Your comments:

3. Is the proposed definition of an "outdoor fire device" clear, and are the conditions for lighting outdoor fires, in Clause 2.2 and Clause 4, clear?

Yes No If you don't find these clear, can you tell us why? Your comments:

4. Do you agree with the proposal that people may only receive a permit to burn rubbish if they have no other ways to remove the rubbish, or if there are special circumstances? **Yes** **No** If you disagree, can you tell us why? Your comments:

5. Do you have any other comments?

1st fold here - fasten here once folded

**Please return this submission form
by 5pm on 30 September 2015.**

2nd fold here

Free Post Authority Number 2199

**Absolutely Positively
Wellington City Council**

Me Heke Ki Pōneke



Freepost Wellington City Council
Proposal: Fire Prevention Bylaw - 2015 review
Wellington City Council
PO Box 2199
Wellington 6140

