

Rotorua Air Quality Control Bylaw

Administration and Enforcement Strategy



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Bay of Plenty Regional Council
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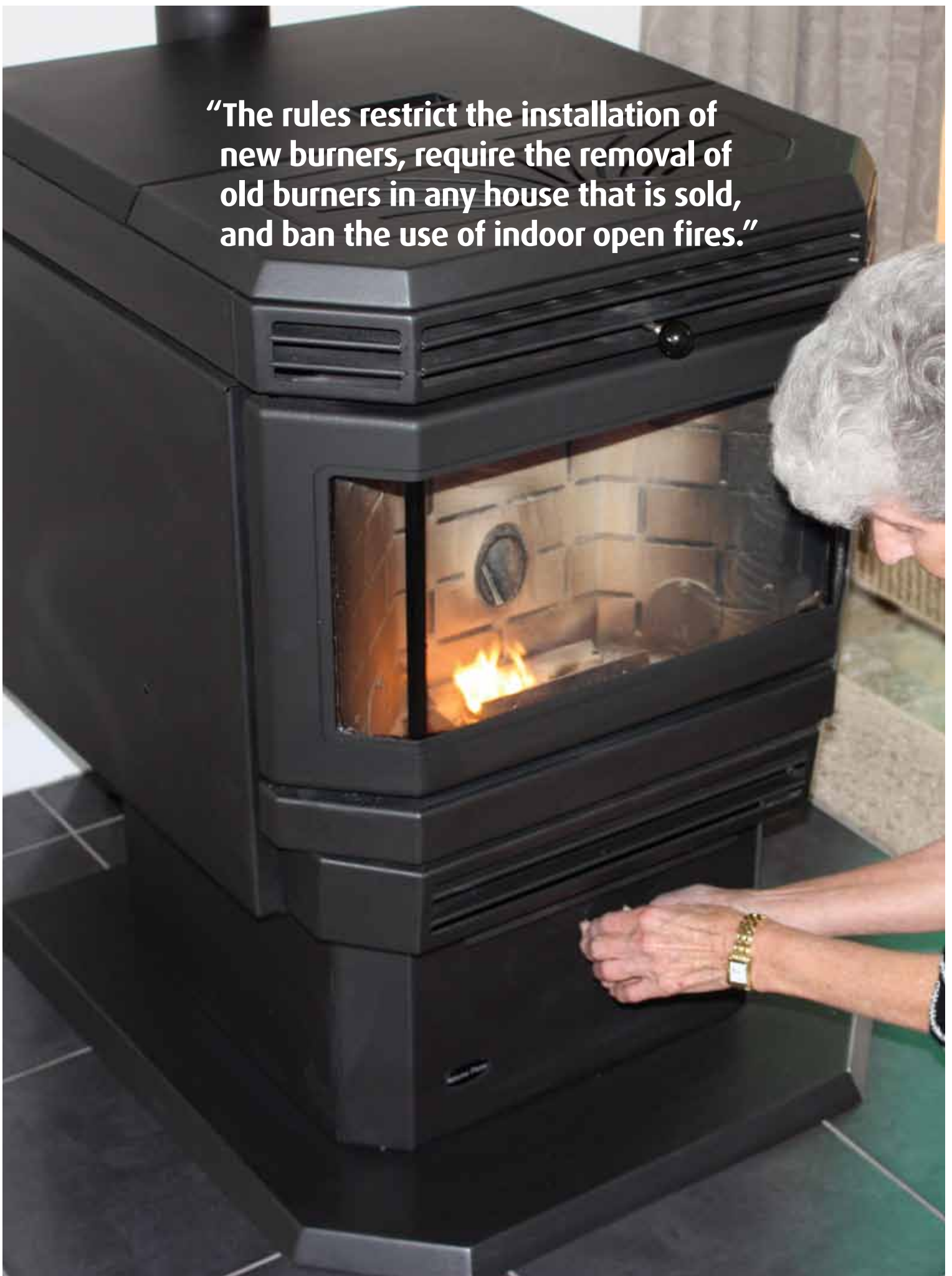
A scenic view of a valley with a town and a forested hillside under a clear blue sky. The foreground shows a grassy slope with some trees and a road. The middle ground features a town with houses and trees, partially obscured by a light mist or fog. The background is a large, forested hillside that rises towards the top of the frame. The sky is a clear, pale blue.

“For those who are willing to do the right thing our compliance approach is to educate, influence, and motivate.”

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“The rules restrict the installation of new burners, require the removal of old burners in any house that is sold, and ban the use of indoor open fires.”



Overview

The Rotorua District Council adopted the Rotorua Air Quality Control Bylaw (the Bylaw) in August 2010. The purpose of the Bylaw is to restrict and reduce emissions of fine particulates from old and inefficient solid-fuel burners used for home heating in the Rotorua Urban Airshed.

There are three rules in the Bylaw which come into effect over five years. The rules restrict the installation of new burners, require the removal of old burners in any house that is sold, and ban the use of indoor open fires.

The Rotorua District Council has delegated the powers to administer and enforce the Bylaw to the Bay of Plenty Regional Council (the Regional Council).

The Administration and Enforcement Strategy (the Strategy) outlines the Regional Council's compliance and enforcement approach to the Bylaw. It outlines the enforcement tools that may be used in the case of non-compliance. The approach is based on Braithwaite's compliance/enforcement model.

For those who are willing to do the right thing and make an effort to comply with the Bylaw the compliance approach is to educate, influence, and motivate by providing information to the community via fact sheets, website, meetings, and media. These initial methods will be followed up by information campaigns. The information campaigns will focus on each rule of the Bylaw as it comes into effect, and remind the public of the overall requirements of the Bylaw.

Our enforcement role begins when we have reasonable grounds to believe that non-compliance with the Bylaw has occurred, or continues to occur.

The purpose of enforcement is to improve the compliance of those who do not comply with the Bylaw, and shift their behaviour to where they are more likely to comply in the future. Enforcement action also reassures those who make an effort to comply that we will detect non-compliant behaviour and take appropriate action.

Our enforcement approach may not be the immediate use of enforcement tools. Instead, we may opt to work with the householder to help them become compliant, particularly if the offence is minor or easy to remedy. In more serious cases of non-compliance, the Regional Council will be more likely to move to stronger enforcement options.

At all times Bay of Plenty Regional Council staff will perform their delegated enforcement role with professionalism, integrity, consistency and impartiality.

The Bay of Plenty Regional Council may, upon written request, issue a dispensation to the Bylaw. The Regional Council must be satisfied that the granting of a dispensation will not significantly affect the purpose of the Bylaw, to reduce and restrict fine particulate emissions in the Rotorua Urban Airshed.

Implementation of the Strategy will require resource allocation. This will be included and consulted on during the Ten Year Plan 2012-2022 process.

“The purpose of the Bylaw is to restrict and reduce emissions of fine particulates from old and inefficient solid-fuel burners...”



**Bay of Plenty
REGIONAL COUNCIL**

Air Monitoring Trailer

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THIS AIR MONITORING STATION IS OPERATED
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CARBON MONOXIDE LEVELS IN ROTORUA
ENVIRONMENT B.O.P & PAK'N'SAVE
WORKING TOWARDS A CLEANER ENVIRONMENT

About this Strategy

The Rotorua Air Quality Control Bylaw

The urban area of Rotorua currently exceeds the standard for fine particulates as set out in the Resource Management (National Environment Standards for Air Quality) Regulations 2004 (the air standards). The main source of fine particulates is old and inefficient solid-fuel burners used for home heating.

On 26 August 2010 the Rotorua District Council adopted the Rotorua Air Quality Control Bylaw (the Bylaw). The purpose of the Bylaw is to restrict and reduce emissions of fine particulates from old and inefficient solid-fuel burners being used for home heating in the Rotorua Urban Airshed. The Bylaw applies to all homes within the Rotorua Urban Airshed (the airshed).

The Bylaw is made up of three rules which come into effect over five years.

- **New Burner Rule** – From 1 December 2010 there is a restriction on the installation of new burners. No solid-fuel burner can be installed in any house unless it is on the Ministry for the Environment's current National List of Authorised Wood Burners or Pellet Burner List or meets the design standard and thermal efficiency standard of the air standard
- **Point of Sale Rule** – From 1 May 2012 any solid-fuel burner that was: installed prior to 1 September 2005 or; is not on the Ministry for the Environment's current List of Authorised Wood Burners or Pellet Burner List or; does not meet the design standard and thermal efficiency standard of the air standard must be removed or replaced by the vendor before a transfer of ownership of the house can take place (except for Heritage Buildings)
- **Ban on Indoor Open Fires** – From 1 May 2015 no discharges from any indoor open fires are permitted, except for Heritage Buildings.

A full copy of the Bylaw is included as Appendix 1.

The Bay of Plenty Regional Council's role

The Regional Council is responsible for maintaining and enhancing the region's air quality. This includes developing high level policies, implementing National Environmental Standards, issuing resource consents, and developing and implementing rules to control emissions to air. Further detail of the statutory and policy framework for air quality is included in Appendix 2.

The Air Quality Control Bylaw was a joint effort between the Bay of Plenty Regional Council and the Rotorua District Council. The Rotorua District Council has delegated the powers to administer and enforce the Bylaw to the Regional Council.

Key roles for the Regional Council in its compliance and enforcement role are:

- Provide information to the Rotorua community on what the Bylaw includes and who is affected by it
- Identify incidents of non-compliance
- Carry out enforcement action when non-compliance is occurring.

Purpose of this Strategy

The purpose of this strategy is to set out the Regional Council's intended approach to compliance and enforcement of the Rotorua Air Quality Control Bylaw.

The Strategy sets out the intended compliance and enforcement approach and provides examples of what compliance and non-compliance with the Bylaw looks like. It outlines the enforcement tools that may be used in the case of non-compliance.

It identifies key action areas of the approach and the timing of when each action will occur. It estimates the resources required to carry out compliance and enforcement actions.



“Most people are willing to do the right thing and will actively comply with the Bylaw with little Regional Council intervention.”

Compliance/Enforcement Approach

Compliance approach

Everyone who owns property and/or lives in the Rotorua Urban Airshed is potentially affected by this Bylaw and must comply with its requirements. The primary responsibility for ensuring compliance with the Bylaw lies with homeowners, landlords, and tenants in the Rotorua Urban Airshed. In particular, those who are:

- Installing a new solid-fuel burner
- Selling (or intending to sell) a house that has an indoor open fire and/or a non-complying solid-fuel burner
- Currently using an indoor open fire.

Compliance is when:

- Homeowners select and install new burners from the National List of Authorised Wood Burners or the List of Pellet Burners
- Homeowners intending to sell their properties remove or block off any non-complying burners or indoor open fires before the property is transferred
- Homeowners and tenants stop using their indoor open fires after 1 May 2015.

Most people are willing to do the right thing and will actively comply with the Bylaw with little Regional Council intervention. Our compliance approach is to educate, influence, and motivate.

Information has already been provided to the community. This includes fact sheets, website, meetings and presentations to stakeholders, media releases and responses to public enquiries. This information will continue and be followed up by targeted information campaigns for each rule as it comes into effect.

To encourage compliance and assist with the cost of conversion, the Regional Council has developed the Hot Swap Loan. This is a \$4000 interest free loan available to households affected by the Bylaw, to upgrade their old woodburner or open fire to a clean heat appliance.



Enforcement approach

The primary responsibility for enforcement of the Rotorua Air Quality Control Bylaw lies with the Bay of Plenty Regional Council. Our enforcement role begins when we have reasonable grounds to believe that non-compliance with the Bylaw has occurred, or continues to occur. We will target those who do not make an effort to comply and who actively resist complying.

The purpose of enforcement is to improve compliance of those who do not comply with the Bylaw and shift their behaviour to where they are more likely to comply in the future. We may also use enforcement to make an example of non-compliant behaviour in order to influence others.

Enforcement also reassures those who make an effort to comply that we will detect non-compliant behaviour and take appropriate action.

At all times Bay of Plenty Regional Council staff will perform their delegated enforcement role with professionalism, integrity, consistency and impartiality.

Examples of non-compliance:

- Deliberate altering of new burner after installation and final Rotorua District Council sign off (includes connecting existing wetbacks that are not part of the new burner)
- Refusing to remove burner before sale of house (and/or deliberately neglecting to tell purchaser)
- Continuing to light fires in indoor open fireplace
- Installation of non-complying burner.

Enforcement criteria

Our initial response to non-compliance may not be the immediate use of an enforcement tool. We will consider each incident of non-compliance on a case by case basis and select the appropriate enforcement response.

For example, if non-compliance is of a minor nature we would prefer to work with the householder to help them become compliant without having to resort to using enforcement.

Where non-compliance is more serious, such as deliberate flouting of the Bylaw and repeated or ongoing behaviour, we are more likely to move quickly to stronger enforcement options.

A summary of the compliance/enforcement approach is in Figure 1 over the page.

Penalties

A breach of the Bylaw is an offence under Section 239 of the Local Government Act 2002.

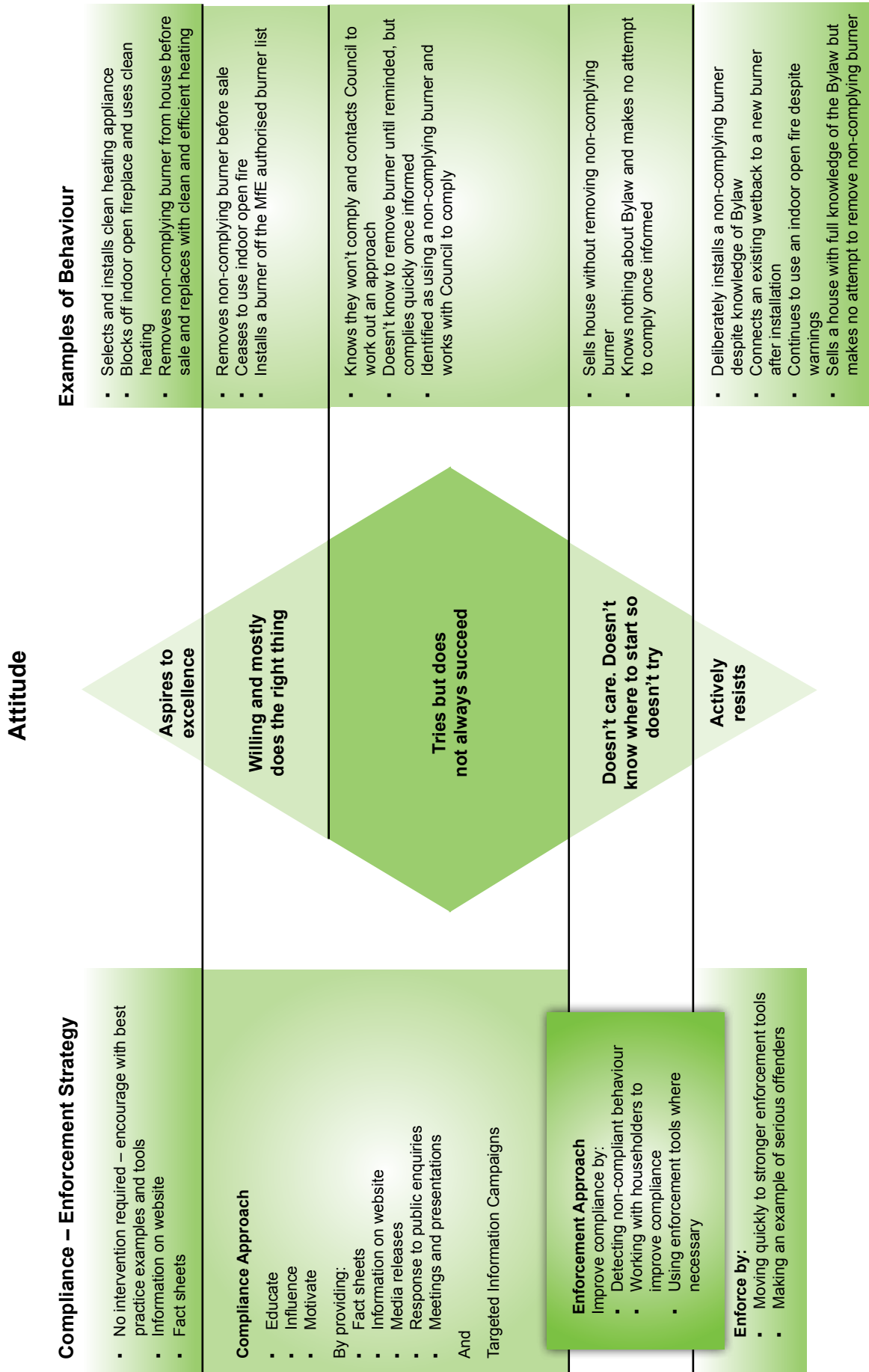
Under Section 162 of the Local Government Act the Council may apply to the District Court for an injunction to restrain a person from committing a breach of the Bylaw.

Under Section 242 of the Local Government Act any person who breaches this Bylaw is liable on summary conviction to a fine up to \$20,000.

Under Section 245 of the Local Government Act the Council may issue an infringement notice to any person who commits an offence against this Bylaw, when Regulations permit.

The Bay of Plenty Regional Council has a number of enforcement tools for ensuring compliance with the Bylaw. The statutory functions, powers, and duties, are outlined in Appendix 3.

Figure 1: Summary of the Compliance/Enforcement Approach



Source: Braithwaite

Compliance and enforcement according to rule

As each rule of the Bylaw has a specific focus and purpose, the exact approach and tools will differ depending on which rule applies in each individual situation. A summary of this approach is shown in Figure 2 over the page.

Rule 1 – New Burner Rule

From 1 December 2010 any new burner must comply with the Bylaw.

All new solid-fuel burners that are installed within the airshed must have a building permit. This includes burners that are a replacement for existing burners, any burner installed in a new house, and any burner that is part of a new building.

Building permits are assessed and granted by the Rotorua District Council under the Building Act 1991. The Regional Council has no control over this process. The Rotorua District Council assess every application to install a solid-fuel burner for compliance with the Bylaw. Non-complying burners will not be given a building permit by the Rotorua District Council unless a written dispensation has been granted by the Regional Council.

In the event that a non-compliance with this rule is discovered (e.g. the installation of a burner without a building permit) the Rotorua District Council may pursue enforcement action under the Building Act. This action is outside the scope of this Strategy. However, the Regional Council may take enforcement action under the Local Government Act for non-compliance with the Bylaw if appropriate.

Rule 2 – Point of Sale Rule

Compliance with the Point of Sale Rule requires the vendor of any property to ensure that any non-complying solid-fuel burner has been blocked off or removed before selling the property (after 1 May 2012).

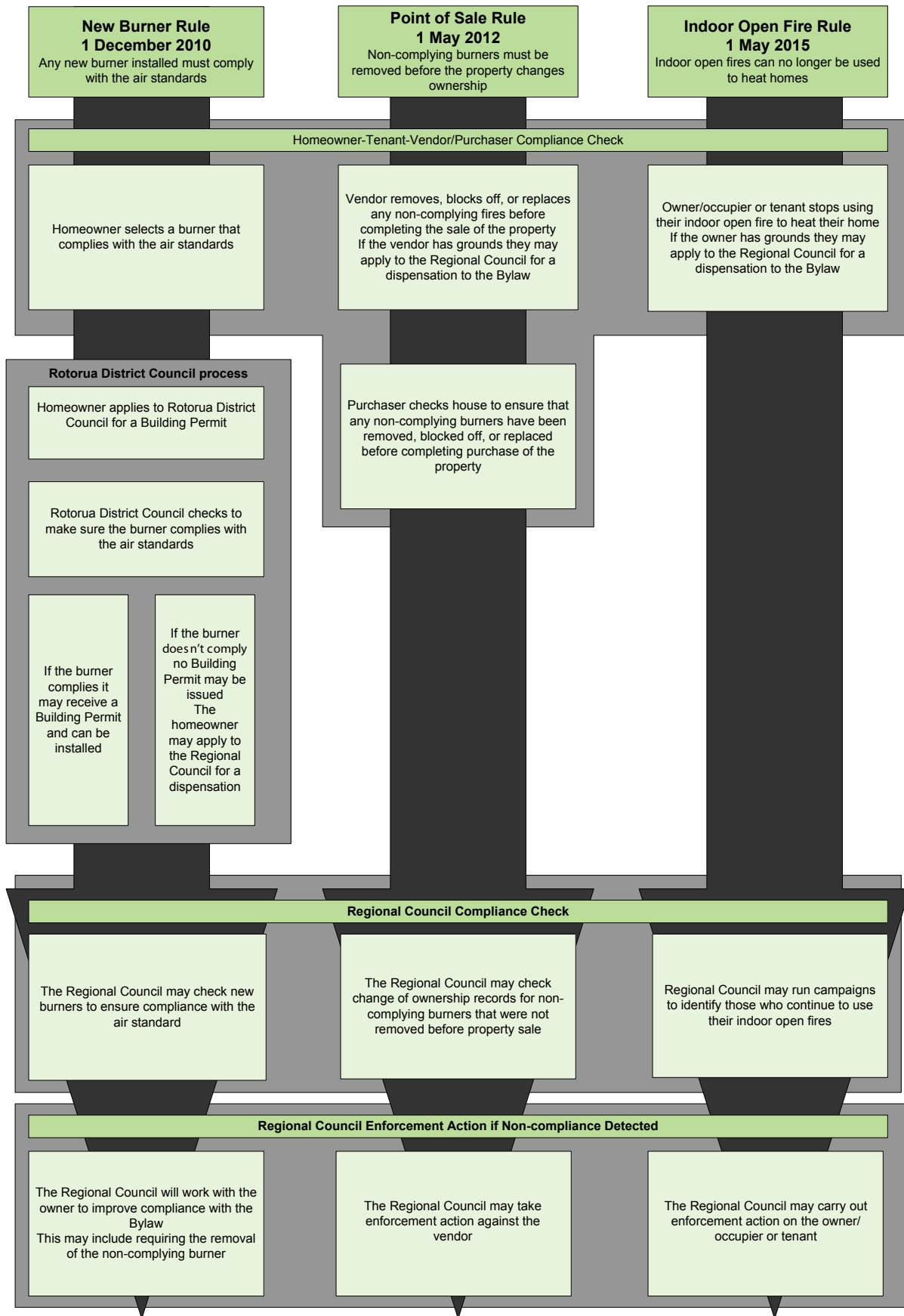
There is potential for unscrupulous vendors to sell the property without carrying out the necessary alterations to comply with the Bylaw. This leaves the new owners with the task of bringing the property up to standard. To attempt to prevent this, the Regional Council has liaised with the real estate industry in Rotorua, and with property conveyancing lawyers. There is an expectation that these professionals will pass the information on to both vendors and purchasers, to protect all parties from possible enforcement action.

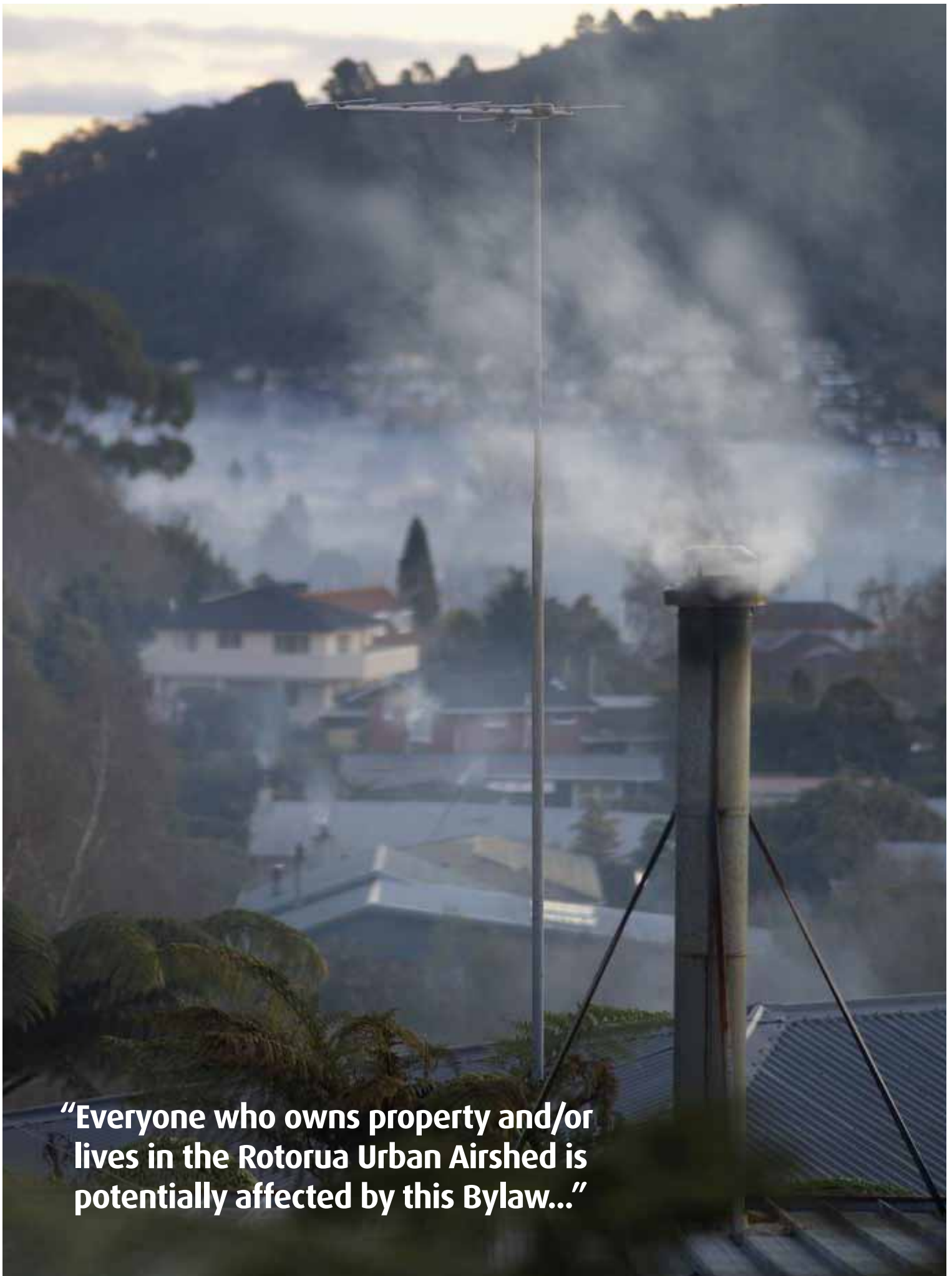
Rule 3 – Indoor Open Fire Ban

This rule requires the occupant of any house that uses an indoor open fire to stop using the fire after 1 May 2015. This includes owner/occupiers, and tenants. When enforcing this rule, it is the person currently using the fire who will be targeted, regardless of whether they own the house.

This rule has the potential to affect tenants that have no alternative form of heating other than the open fire. The Regional Council recognises this and is targeting landlords (including those who live outside the airshed) with information about the Bylaw and the Hot Swap Loan to increase awareness and encourage conversions to cleaner, more efficient appliances.

Figure 2: Compliance and Enforcement According to Rule





“Everyone who owns property and/or lives in the Rotorua Urban Airshed is potentially affected by this Bylaw...”

Dispensations

The Bay of Plenty Regional Council may, upon the written request of a homeowner, tenant, or landlord, issue a dispensation to the Bylaw.

Dispensations are not discharge permits, resource consents, or “rights”. The applicant is effectively asking to continue to pollute the air of Rotorua while everyone else in the airshed must comply. The Regional Council will therefore take a conservative approach to issuing dispensations.

Dispensations will be granted according to three basic principles:

1. Dispensations cannot be issued for any activity that does not comply with the Resource Management Act, any National Environmental Standards or the Bay of Plenty Regional Air Plan
2. Dispensations will not be granted before the relevant rule of the Bylaw has come into effect
3. Dispensations will only be granted to those directly affected by the Bylaw at the time of the application.

The Regional Council may charge an administration fee for applications for dispensations.

It is the applicant’s responsibility to provide evidence to support their case for a dispensation. If sufficient evidence is not supplied, either at the time of application or on request, the dispensation may be refused.

Before granting a dispensation we will be satisfied that:

1. The Bylaw has been substantially complied with and that further compliance is unnecessary; or
2. The action taken or provision made is as effective or more effective than actual compliance with the requirement; or
3. The Bylaw is clearly unreasonable or inappropriate in the particular case; or
4. Events have occurred that make the Bylaw unnecessary or inappropriate in the particular case.

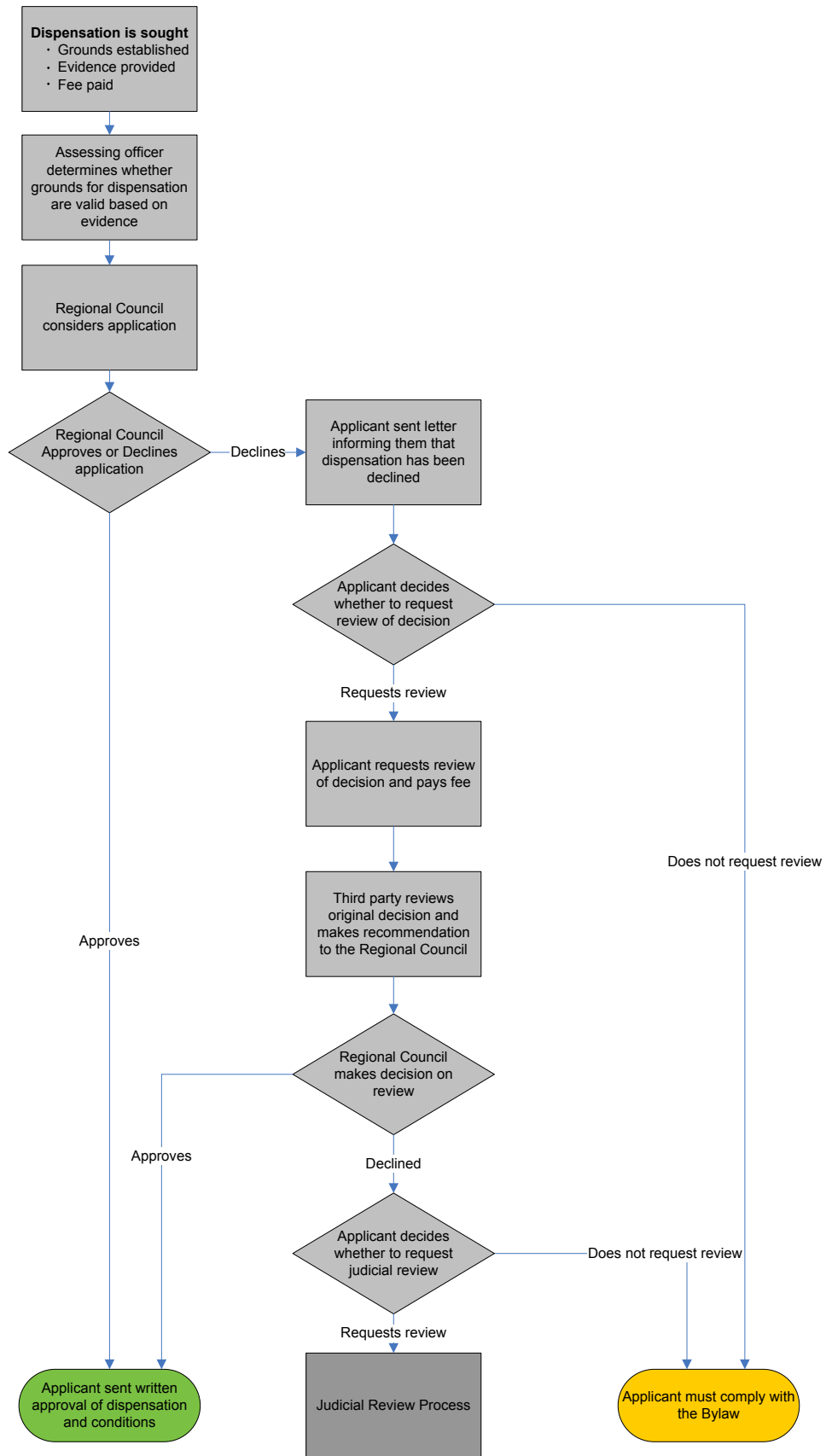
In all cases the Bay of Plenty Regional Council must be satisfied that the granting of a dispensation will not significantly affect the purpose of the Bylaw which is to reduce and restrict fine particulate emissions in the Rotorua Urban Airshed.

Conditions for the dispensation may be attached and the dispensation may only be for a limited time.

In the event that an applicant is dissatisfied with the outcome of the process, they may request that the Regional Council have the decision of the original officer reviewed by an appropriate third party. Further fees for this process may be charged.

Figure 3 on the following page shows a summary of the dispensation process.

Figure 3: Summary of the Dispensation Process







Appendices

Appendix 1: The Air Quality Control Bylaw 2010

Doc No RDC-109776

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File No: 45-03-015



AIR QUALITY CONTROL BYLAW 2010

Shaping
 Rotorua

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SCHEDULE 1 – MAP OF ROTORUA AIRSHED

PART ONE: INTRODUCTION

1.1 SCOPE AND GENERAL

PURSUANT to the powers contained in the Local Government Act 2002, and any other authority enabling it in that behalf, the Rotorua District Council **HEREBY RESOLVES** to make the following Bylaw:

1.2 SHORT TITLE

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

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

1.4 COMMENCEMENT

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

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

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

PART TWO: INTERPRETATION

In this Bylaw, unless the context otherwise requires:

“Authorised Officer” means any person appointed or authorised by either the Rotorua District Council or the Bay of Plenty Regional Council to act on their respective behalfs and with their authority.

“Contaminant” includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat:

- a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water, or
- b) when discharged on to or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air on to or into which it is discharged.

“Council” means either the Rotorua District Council or the Bay of Plenty Regional Council and any authorised officer.

“Discharge” includes emit, deposit, and allow to escape.

“Dwelling house” means any building, whether permanent or temporary, that is or is intended to be occupied, in whole or in part, as a residence; and includes any structure or outdoor living area that is accessory to, and used wholly or principally for the purposes of, the residence.

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

"Non-complying solid fuel burner" means:

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

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

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

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

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

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

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

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

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

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

"Solid Fuel" means a solid substance that releases useable energy when burnt and includes wood, coal and its derivatives, and manufactured fuel pellets.

"Solid Fuel Burner" means a small-scale solid fuel burning appliance, where combustion of the solid fuel occurs within a firebox, and where there may be a regulated supply of air to the fire. It includes (but is not limited to) open fires, freestanding or built in wood burners, pellet fires, potbelly stoves, and coal ranges, water heaters or central heating units, multi-fuel (coal/wood and waste burning systems), and similar appliances. It excludes small-scale domestic devices for smoking food. A small-scale solid fuel-burning appliance also excludes any portable unflued heaters fuelled by gas, alcohol or other liquid fuels, and gas hobs or gas ranges used for cooking, and any fuel burning appliance installed in a boat, caravan or motor home.

"Transfer of ownership" does not include:

- (i) a transaction in which a person who was a registered proprietor of the dwelling house at the date this bylaw comes into force who remains or becomes a registered proprietor (whether or not the only registered proprietor) of that dwelling house after the transfer; or
- (ii) a transaction in which the transferee is a trustee of a trust and one or more of the transferors is a beneficiary of that same trust.

PART THREE: RESTRICTIONS ON SOLID FUEL BURNERS

3.1 SOLID FUEL BURNER UPGRADE REQUIRED AT POINT OF SALE

- 3.1.1 Any non-complying solid fuel burner situated in a dwelling house must be replaced or removed by the vendor before a registered transfer of ownership of the dwelling house in which the non-complying solid fuel burner is located takes place, except:
- (a) where an open fire is located within a building which is classified by the Historic Places Trust as a Heritage building.

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

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

PART FOUR: BAN ON DISCHARGES FROM INDOOR OPEN FIRES

4.1 OPEN FIRES (INDOORS)

- 4.1.1 No person shall discharge contaminants into the air from any indoor open fire after 1st May 2015 except:
- (a) from industrial or trade premises where the open fire is used exclusively for the smoking and cooking of food for wholesale or retail sale.
 - (b) where the open indoor fire is located within a building which is classified by the Historic Places Trust as a Heritage building.

PART FIVE: DISPENSATIONS, FEES AND CHARGES

5.1 DISPENSATIONS

5.1.1 Where, in the opinion of the Council, full compliance with any of the provisions of this bylaw would needlessly or injuriously affect any person, or the course or operation of the business of, or bring loss or inconvenience to any person without any corresponding benefit to the community, the Council may, on the special application of such person so affected or on the recommendation of any authorised officer, by delegated authority, dispense with the full compliance or relax the full compliance of any clause of the bylaw, or otherwise modify the same with or without added conditions.

5.2 FEES AND CHARGES

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

5.2.2 The setting of fees or charges shall be in accordance with section 150 of the Local Government Act 2002.

5.2.3 Where a fee has been paid under clause 5.2.1 for a service which has not been given, the Council may provide a refund of such fee or portion of it as the Council may determine.

5.2.4 No fees are payable from 1 December 2010 until 1 December 2011.

PART SIX: ENFORCEMENT MECHANISMS

6.1 OFFENCES AND BREACHES

6.1.1 Every person commits a breach of this Bylaw who:

- (a) Does or permits anything contrary to this Bylaw;
- (b) Omits, or neglects to do, or knowingly permits or suffers to remain undone, anything which ought to be done at the time and in the manner provided by this Bylaw; or
- (c) Does not refrain from doing anything which under this Bylaw they are required to refrain from doing; or
- (d) Knowingly permits or allows any condition of or things to exist or continue to exist contrary to any provision contained in this Bylaw; or
- (e) Refuses or neglects to comply with any notice given under this Bylaw; or
- (f) Obstructs or hinders any authorised officer of the Council in the performance of any duty or power conferred by this Bylaw; or
- (g) Fails to comply with any notice or direction given under this Bylaw.

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

6.2 CONTINUING OFFENCES

- 6.2.1 The continued existence of any work or building, land or premises or thing in such a state or form as to be in contravention of any clause of this bylaw shall be deemed to be a continuing offence under this bylaw.
- 6.2.2 Where any person is required by a notice under clause 6.1.1(e) to do anything, or refrain from doing anything, then they shall commit a separate or continuing offence on each day that person fails to comply with the notice.
- 6.2.3 The Council may, after a conviction for the continuing breach of this bylaw, apply to any court of competent jurisdiction for an injunction to restrain the further continuance of the breach by the person so convicted.

6.3 REMOVAL OF WORKS

- 6.3.1 Where a notice served under clause 6.1.1(e) has not been complied with, the Council or any authorised officer or agent of the Council, may pull down, remove or alter, or cause to be pulled down, remove or alter any work, material or thing erected or being in contravention of this bylaw.
- 6.3.2 The Council may recover from any person responsible for the breach of any part of this bylaw, all expenses incurred by it in connection with such pulling down, removal or alteration. This includes the cost of debt collecting and legal fees.
- 6.3.3 The exercise of this authority does not relieve any such person from liability for any penalty for erecting or permitting the continued existence of any such work, material or thing.
- 6.3.4 If however the breach is such that public health, or safety considerations, or risk of consequential damage to Council assets is such that would create unacceptable results, the Council may take immediate action to rectify the defect and recover all reasonable costs.
- 6.3.5 On payment of all Council's costs, including storage where applicable, the lawful owner may claim any object, material or thing removed under clause 6.3.1.
- 6.3.6 If not claimed within a reasonable time the Council may dispose of any object, material or thing as it sees fit and apply the proceeds to meet any outstanding costs. The lawful owner shall be entitled to claim any residual sum.

6.4 POWER OF ENTRY FOR ENFORCEMENT PURPOSES

- 6.4.1 A warranted enforcement officer may enter land or a dwelling house, for the purpose of detecting any breach of this bylaw if the officer has reasonable grounds for suspecting that a breach of the bylaw has occurred or is occurring on the land.
- 6.4.2 Before exercising the power in clause 6.4.1 the officer must, if practicable, give reasonable notice to the occupier of the land of the intention to exercise the power, unless the giving of notice would defeat the purpose of entry.
- 6.4.3 The power in clause 6.4.1 to enter a dwellinghouse must not be exercised unless:
- (a) the entry is authorised by a warrant given by a District Court Judge on written application on oath; and
 - (b) when exercising the power, the enforcement officer is accompanied by a constable.
- 6.4.4 Before exercising the power in clause 6.4.1 the officer must produce evidence of his or her identity and authority to exercise the power:
- (a) if practicable, on first entering the land or premises; and
 - (b) whenever subsequently reasonably requested to do so.

6.5 PENALTIES FOR BREACH OF BYLAWS


- 6.5.1 Any person who breaches this Bylaw commits an offence under section 239 of the Local Government Act 2002, and is liable on summary conviction to a fine under section 242(4) of the Act not exceeding \$20,000.00.
- 6.5.2 In accordance with section 162 of the Local Government Act 2002, the Council may apply to the District Court for an injunction to restrain a person from committing a breach of this Bylaw.
- 6.5.3 In accordance with section 245 of the Local Government Act 2002, the Council may issue an infringement notice to any person who commits an offence against this Bylaw, when Regulations so permit.

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

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



Mayor



Chief Executive



Appendix 2: Statutory and Policy Framework

The Bylaw was introduced under the Local Government Act using a local bylaw. The Bylaw and its enforcement under the Strategy is consistent with the legislation, and gives effect to the Regional Policy Statement and the Rotorua Air Quality Action Plan. It is consistent with the air standards which state that a rule may be more restrictive than the standards but not less restrictive.

A summary of the legislations, policies and plans follow.

Resource Management Act 1991

The Resource Management Act is the overarching piece of legislation for promoting the sustainable management of natural and physical resources. This includes safeguarding the life-supporting capacity of air and avoiding, remedying, or mitigating any adverse effects of activities on air quality.

The Bay of Plenty Regional Council has specific functions and responsibilities for the purpose of giving effect to the Resource Management Act in the Bay of Plenty Region. This includes, if appropriate, the establishment of rules in a regional plan to allocate the capacity of air to assimilate a discharge of a contaminant.

Resource Management (National Environmental Standards for Air Quality) Regulations 2004

National Environmental Standards are prepared in accordance with the Resource Management Act. They have the force of regulation and are implemented by those with responsibilities under the RMA.

This document contains seven activity standards, five ambient air quality standards, and two design standards. Local authority rules may be more restrictive than the standards but not less restrictive.

Bay of Plenty Regional Policy Statement

The Regional Policy Statement is prepared under the Resource Management Act and provides high level policy and guidance document for sustainably managing natural resources in the region. Air quality is specifically addressed in the Regional Policy Statement.

Bay of Plenty Regional Air Plan

The Regional Air Plan provides for the sustainable management of our air resource in the Bay of Plenty region. It contains objectives, policies, and methods (including rules) to avoid, remedy and mitigate the effects of discharges to air.

The plan was prepared under the Resource Management Act and gives effect to the Regional Policy Statement. No rule in the plan may be less restrictive than a requirement in the Resource Management Act or the air standards.

The Regional Air Plan is consistent with the air standards. A plan change could be used to introduce specific rules to improve air quality in Rotorua. This option has not been selected at this stage.

The Local Government Act 2002

The Local Government Act provides for democratic and effective local government and provides a framework for local authorities to decide which activities they undertake and holds them accountable to their communities.

The Local Government Act also provides for local authorities to introduce bylaws where appropriate to protect the public from nuisance, and protect, promote, and maintain public health.

Allocation of resources to implement the Strategy will be publicly consulted on under Local Government Act using the Ten Year Plan process.

The Regional Council does not have the power to make a bylaw for air quality under this act. The Rotorua District Council progressed and adopted the Bylaw at the request of the Regional Council, and transferred the power to enforce the Bylaw to the Regional Council.

Bylaws Act 1910

The Bylaws Act provides legislation allowing councils to impose fines for breach of a bylaw and the recovery of fines and sets the level of fines where no other Act contains a provision imposing a fine for breach of a bylaw.

The Bylaws Act prevails over parts 8 and 9 of the Local Government Act, 2002.

The Building Act 1991

The Building Act provides controls relating to building work and the use of buildings to ensure that buildings are safe and sanitary. This includes protecting people from possible injury, illness, or loss of amenity while using any building.

Rotorua Air Quality Action Plan

The Rotorua Air Quality Action Plan was approved as a guidance document for the Regional Council's approach to improving air quality in Rotorua. It sets out a range of actions targeted at specific sources and using a variety of methods to improve air quality in Rotorua.

The introduction of rules and their enforcement is a key part of the Rotorua Air Quality Action Plan.

Appendix 3: Enforcement Powers and Tools

To achieve the purpose of the Bylaw the Bay of Plenty Regional Council will use the statutory functions, powers and duties available under the Bylaw and the Local Government Act and summarised below:

| Power | LGA reference | Bylaw reference |
|---|---------------|-----------------|
| Power to prescribe fees | Section 150 | Section 5.2 |
| Power to request name and address of people suspected to have committed an offence | Section 178 | Section 6.1.2 |
| Power to apply to the District Court for an injunction restraining a person from committing a breach of the Bylaw | Section 162 | Section 6.2.3 |
| Power to remove works in breach of the Bylaw | Section 163 | Section 6.3.1 |
| Power to recover costs of removal or alteration of works in breach of Bylaw | Section 163 | Section 6.3.2 |
| Power to dispose of any object removed to meet any outstanding costs | Section 168 | Section 6.3.6 |
| Power to enter land or dwelling house on reasonable grounds that a breach of the Bylaw is occurring or has occurred | Section 172 | Section 6.4.1 |



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