

4 Deliberations

4.1 Deliberations on the proposed Fires in the Open Bylaw

TO Judicial Committee
FROM Emma Wright - Senior Strategic Planner and Policy Analyst
DATE 15 June 2016
SUBJECT **Deliberations on the proposed Fires in the Open Bylaw**

1 Purpose of Report

To present a summary and analysis of submissions received to the proposed Fires in the Open Bylaw; and to seek the Committee's recommendations to Council in order to adopt a revised bylaw.

2 Background

The Judicial Committee has delegation for development and review of Council's regulatory policies and district bylaws but cannot adopt a bylaw. This must be by Council resolution.

The Council's proposed Fires in the Open Bylaw were open for public feedback from 11 April to 11 May 2016, and 18 submissions were received. A hearing was held with the Judicial Committee on 2 June 2016 and five submitters spoke to their submissions and answered questions from the Committee.

Council will consider the Judicial Committee's recommendations at their meeting scheduled for 17 August 2016.

3 Issue

The Judicial Committee is required to deliberate on submissions received to the proposed Fires in the Open Bylaw. Matters for deliberation and decision-making are set out in the 'Discussion' section of this report.

4 Discussion

This report summarises the key points related to submissions received and provides staff analysis and recommendations. For ease of decision making these submissions have been sorted by theme or topic. The following themes and topics are discussed in this report:

- A. Fire services reform
- B. Roles in fire regulation
- C. Compliant fire devices
- D. Fire seasons
- E. Fireworks
- F. Fires in the open in urban fire districts in general
- G. Other matters
- H. Out of scope submissions

Where any changes to the bylaw are recommended, these changes are demonstrated in mark-up both within this report and in **Attachment A**.

A. Fire services reform

Summary of submission points

- Three submitters noted the upcoming restructure of the fire sector will affect many of the organisations involved in the bylaw and that most of them will no longer exist after the restructure (for example the NZ Fire Service, the Thames Valley Rural Fire Authority)
- One submitter did not support the bylaw, noting the current legislative framework (Fire Service Act, Forest and Rural Fire Acts) will be replaced with a new Act and suggested instead that Council's current bylaw be rolled over until the outcome of the legislative changes are known
- One submitter supported the bylaw as a way to regulate fires in the open in urban areas as an interim measure until the new Fire and Emergency New Zealand organisation provides regulation of fires in the open in the Thames-Coromandel District
- The Thames Valley Rural Fire Committee expressed their support of the consistent fire seasons in the bylaw and noted that the Committee will work towards implementation of a Memorandum of understanding (MOU) to ensure this consistency across fire district boundaries within the Thames-Coromandel District Council until the alternative regulatory arrangements are in place (also mentioned above)

Staff analysis

In a speech to the United Fire Brigades Association Conference on 13 November 2015, Hon Peter Dunne announced significant reform of the fire services sector including the amalgamation of rural and urban fire services. Mr Dunne further announced in a press release on 17 March 2016 that the Board of the New Zealand Fire Service Commission will lead the new organisation responsible for the reform. It is anticipated that legislation will be introduced into the House in 2016 with a new organisation to be set up in mid-2017.

Staff have received advice the Department of Internal Affairs that while there is no detailed plan for implementation and transition of this reform it may take some time after the new organisation is established before any new regulatory regime is fully implemented nationally. It is unclear at this point what the reform may mean for council bylaws.

Council's intention in developing this bylaw was to address the gap of regulation of fires in the open within gazetted urban fire districts, left when the previous 2008 bylaw was revoked in 2015, and to maintain regulation until the new fire services regulation framework is known.

Presently, a council bylaw is the only mechanism available to regulate fires in the open in gazetted urban fire districts. This does not derogate or replace the work done by the New Zealand Fire Service and the urban volunteer fire brigades, but rather enables councils to join the fire sector in being proactive in addressing fire hazards by setting fire seasons and controlling certain factors which may increase the risk of fire.

To help ensure the bylaw is future proofed against possible changes to names and functions of organisations within the fire sector, it is recommended that references to specific organisations are removed.

Recommendations

Recommendation 1.

To assist in future proofing the bylaw in the event of fire sector reform, that references to organisations are removed from the bylaw as follows:

6. DEFINITIONS

Gazetted Rural Fire District means land constituted under the Forest and Rural Fires Act 1977 as a rural fire district ~~under either the Department of Conservation or the Thames Valley Rural Fire Authority~~

Gazetted Urban Fire District means those areas in the Thames-Coromandel District that have been gazetted ~~by the New Zealand Fire Service~~ under the Fire Service Act 1975 as urban fire districts and as mapped in Schedule Two of this bylaw.

B. Roles in fire regulation

Summary of submission points

a) Regional Council

- Two submitters recommended that the bylaw explicitly references the rules in the Waikato Regional Plan, which refer to open burning and incineration, to ensure there is no conflict between the bylaw and the Waikato Regional Plan.

b) Thames-Coromandel District Council staff

- Two submitters supported that the bylaw enable warranted council officers to direct fires be extinguished or extinguish fires themselves
- Three submitters expressed concern with council staff extinguishing a fire themselves due to the risks involved with fire fighting for the extinguisher and for others, especially for personnel who may not have the knowledge or equipment.
- One submitter noted that currently council staff do not respond to any fires in the district and that the NZ Fire Service is the first response

c) NZ Fire Service

- Two submitters noted that under current legislation, regardless of what is written in a bylaw, a fire service officer has the ability to extinguish a fire (permitted under the bylaw or not) if, in their opinion, it represents a hazard
- One submitter suggested that Chief Fire Officers be able to grant permits under the bylaw as they have a better understanding of the fire risks in their area and to allow brigades to have a better understanding of what is happening in their areas

Staff analysis

a) Regional Council

The Waikato Regional Council has a rule in the Waikato Regional Plan (rule 6.1.13.1) which provides detailed information on what is allowed or prohibited from being burnt in the region, and ensures burning materials do not have a high environmental impact.

The following materials are prohibited from being burnt anywhere in the Waikato Region (see the full rule for all conditions):

1. Halogenated organic chemicals
2. Materials containing heavy metals

3. Pitch, paint and paint residues and surface coatings
4. Asbestos
5. Pathological waste (excluding animal carcasses on production land)
6. Agrichemicals and agrichemical containers containing residues
7. Polyvinylchloride (PVC) plastic and plastics containing halogenated material
8. Copper-chrome-arsenic (CCA) treated timber or timber treated with organochlorine (PCP)
9. Rubber and tyres
10. Waste oil and other waste petroleum products including sludge
11. Sludge from industrial processes
12. Hazardous materials from contaminated sites and buildings
13. Materials associated with the recovery of metals from cables
14. Components of motor vehicles
15. Tar and bitumen
16. Any material within a landfill or a refuse transfer station

The burning of the following materials is permitted, with conditions (see the full rule for all conditions):

1. Untreated wood and vegetative matter
2. Paper and cardboard
3. Food waste
4. Non halogenated plastics
5. Animal carcasses on production land

These materials must be sourced from the property where the burning occurs. Alternatives to burning these materials must be considered first, for example recycling or composting. Burning of these materials is subject to other provisions in the Waikato Regional Plan and will also be subject to TCDC's bylaw, for example in relation to fire seasons.

The bylaw includes a clause (clause 3.1) which states that the bylaw does not derogate from any other rules, regulation or legislation relating to fires in the open; and the Waikato Regional Plan is included in this by default. Therefore it is recommended that instead of including specific reference to the rule in the Waikato Regional Plan in the bylaw, educational and promotional material for the new bylaw includes guidance of what the Waikato Regional Plan rule for open air burning is, and to work with the Regional Council to develop this material.

A letter from the Mayor could be written detailing the expectations of the Thames-Coromandel District Council and community for the Regional Council to enforce this provision of the Regional Plan, and an invitation to collaborate with TCDC on the promotion and communication of rules for fires in the open throughout the district.

b) TCDC staff extinguishing fires

The clause in the proposed bylaw which enables council staff to extinguish fires which are lit in breach of the bylaw ensures that council staff are able to extinguish small fires which breach the bylaw but do not necessarily warrant a fire service call out (for example fireworks, candles, campfires, or small braziers).

TCDC compliance staff have an operations manual which provides guidelines for when to take action and when to call in emergency services (for example fire and police). This manual is updated with each new bylaw to reflect any changes brought about by the new

bylaw, to ensure that council staff are not endangering themselves or others. For example, compliance staff will not respond to bylaw issues at night, (with particular reference to 'beach fires' due to the increased risk of embers remaining under the sand and causing a larger fire risk). Instead, the TCDC after-hours service recommends the complainant be referred to the fire service and or police. This manual is due for review in July 2016 where the matter of council staff extinguishing small fires during daylight hours will be addressed.

Despite having the ability to extinguish fires under the 2008 bylaw, Council staff very rarely used it as the occupier of the land or the person who lit the fire usually complied with a warranted officer's instruction to extinguish their fire when it was in breach of the bylaw. This section is a commonly found in fires in the open bylaws across other territorial authorities, and ensures that if appropriate, a warranted council staff member is able to promptly and safely enforce the council's bylaw. It is recommended that the bylaw be amended so this intent for the clause to be a 'last resort' is better reflected in the final bylaw.

c) NZ Fire Service

Council staff are committed to continue working with the NZ Fire Service and discussions between staff and the NZ Fire Service Eastern Waikato Area Manager will continue past the development of the bylaw to ensure that the implementation of any new bylaw can assist as much as it can in enabling NZ Fire Service staff and volunteers in undertaking their functions. It is the advice given to staff from the NZ Fire Service Eastern Waikato Area Manager that nothing within any bylaw that Council implement will stop the NZ Fire Service from attending call outs and extinguishing fires that, in the opinion of the fire service officer, represents a hazard, although knowledge of when and where permitted fires are to be lit would be an advantage to brigades across the peninsula to help them be more effective in the community.

It is therefore recommended that staff coordinate and implement a system for recording where and when permitted fires will be lit throughout the district and for this information to be shared with rural fire authorities and with the NZ Fire Service. Other operational matters such as arranging a coordinated multi-agency educational campaign over summer can be overseen by Council's regulatory manager in direct communication with NZ Fire Service Eastern Waikato Area Manager, as well as with other key stakeholders.

Recommendations

Recommendation 2.

That a letter from the TCDC Mayor is written detailing the expectations of the Thames-Coromandel District Council and community for the Regional Council to enforce this provision of the Regional Plan, and an invitation to collaborate with TCDC on the promotion and communication of rules for fires in the open throughout the district.

Recommendation 3.

Edit the clause allowing authorised council officers the ability to extinguish fires in the open that breach the bylaw to reflect that extinguishing the fire is only undertaken if appropriate, and that other action (for example calling the NZ Fire Service) may be undertaken instead.

16. COUNCIL MAY EXTINGUISH FIRES

16.1. Where a fire has been lit or allowed to burn in breach of any part or parts of this bylaw, ~~the councilian authorised officer~~ may direct the occupier of the land where the fire is located and/or the person(s) who lit the fire, to immediately extinguish the fire.

16.2. If a direction given under clause 16.1 is not complied with to the satisfaction of ~~the council~~an authorised officer, an authorised officer may extinguish the fire ~~and or~~ take other steps as considered ~~reasonably necessary~~appropriate, to prevent the spread of fire.

Recommendation 4.

That staff be instructed to coordinate and implement a system for recording where and when permitted fires will be lit throughout the district and for this information to be shared with the NZ Fire Service, the Department of Conservation and with the Thames Valley Rural Fire Authority.

Recommendation 5.

That staff be instructed to continue to engage with the NZ Fire Service throughout the implementation of the bylaw in order to foster a multi-agency approach to permits, education and other implementation matters.

C. Compliant fire devices

Summary of submission points

- Eight submitters supported the inclusion of compliant fire devices and incinerators in the bylaw and their use without permit in the restricted and total fire ban seasons
- The Thames Valley Rural Fire Authority noted that the authority will work towards including a parallel policy in the rural fire districts for consistency across the district
- One submitter commented that compliant fire devices are more contained and controlled than fireworks, which pose a greater threat
- Two submitters supported the definition of the compliant fire device with recommended changes, specifically:
 - The replacement of spark arrester with spark reducer as this term is better known in the industry
 - Reduction of the height requirement for the grille or barrier to 80mm from 100mm
 - Clarity around what the hearth or base is
 - Suggestion that a pizza oven does not need the larger base and that c) could be combined into one point to include all types of compliant fire device
 - Changes in the ordering of the measurements contained in the description for clarity
- One submitter stated that the definition of compliant fire devices was confusing and that they did not know what a spark arrester was

Staff analysis

Positive feedback was received on the inclusion of compliant fire devices, which aims to make it easier for those people throughout the district who wish to light fires in the open in a low risk way, using their permanent, fixed, outdoor fire structures. This is a more flexible approach to lighting fires in the open than was available in the past.

Many property owners within the district have constructed outdoor fire devices either for cooking or amenity purposes which are permanent structures and are safely maintained and operated. Staff have worked with fire risk professionals within the national Rural Fire Authority to develop a definition of a compliant fire device is, and as long as those using a device which meets the requirements of the bylaw are not in breach of any other part of the

bylaw (for example causing a smoke or ash nuisance to a neighbour) a permit is not needed to operate these devices for a restricted season or a total fire ban.

The definition has enough detail to enable new permanent fire devices to be constructed to specification, as well as enabling those with existing permanent fire devices to understand what modification if any would be needed to achieve compliance (for example an extension of a hearth, the fitting of a grille or addition of a spark arrester).

The suggestions for making this definition easier to understand from submitters have been checked with fire risk professionals, and most of the changes requested are appropriate and will ensure the definition is easier to understand whilst ensuring the fires lit in these devices are safe. It is recommended that the majority of these changes be made.

In the operational space, positive steps have been made with the other organisations which regulate fires in the open within the district - the Thames Valley Rural Fire Authority and the Department of Conservation - around the inclusion of the compliant fire device definition in their policies. Council staff are continuing this dialogue to enable this approach to be applied in rural and urban fire districts across the peninsula. The NZ Fire Service Eastern Waikato Area Manager has also expressed his support of the definition.

To assist with public understanding of what would be covered by the definition so they can make their own assessment of whether they need to apply for a permit or not, an educational campaign is proposed to be run using annotated pictures of common outdoor fires to show what a compliant fire device would look like. This pictorial guide will show what the different elements are and will be accessible for those without knowledge of some of the more technical terms. A draft example of how this could be presented is attached as **Attachment B**.

Recommendations

Recommendation 6.

That the compliant fire device definition is amended to reflect the feedback from submissions while keeping the definition appropriate to manage fire risk as follows:

A compliant outdoor fire device must have the following characteristics -

- a) is a permanent fixed structure; and
- b) is constructed of non-combustible materials; and
- c) has a chimney with a spark arrester fitted; and ~~either~~ has:
 - a. a non-combustible hearth or base (which can include the ground surrounding the fixed structure) that extends no less than 750mm forward from the front edge of the fire box and no less than 500mm from the outside edge of the fire box to both sides; and
 - b. a door to contain burning materials, or a protective grille or barrier across the front of the fire box, with a minimum height of ~~100mm~~80mm, to contain burning materials

~~;~~or

~~has a non-combustible hearth or base that extends a minimum of 750mm from the outside edge of the fire box opening and 900mm forward from the front edge~~

~~of the fire box; and a door that can be put in place when use is complete, so no burning material can escape such as in a pizza oven.~~

Recommendation 7.

That staff undertake an educational campaign where pictorial guidelines are developed to assist in the public's understanding of what a compliant fire device is, in conjunction with the Thames Valley Rural Fire Authority and the Department of Conservation where possible.

D. Fire seasons

Summary of submission points

- One submitter supported the fire seasons set out in bylaw as they are consistent with existing fire seasons in the Thames-Coromandel District, within the rural fire districts and that these fire seasons allow for a coordinated approach in setting the seasons by the regulators (the Thames Valley Rural Fire Authority Committee, the Department of Conservation and Council) and will make it easier for the public and the NZ Fire Service to understand and operate within (one regime instead of two).
- The Thames Valley Rural Fire Authority Committee noted their intent to draw up a MOU (memorandum of understanding) with Council to ensure a consistent approach is undertaken across the district
- One submitter specifically supported clause 10 (total fire ban) as it is important for TCDC to be able to respond to weather and other conditions which increase the fire risk
- One submitter did not support the fire seasons in the bylaw as there are too many in the bylaw and this will be confusing for the public. The submitter suggested two fire seasons - open and closed

Staff analysis

Across the Thames-Coromandel district, there are three organisations which provide regulation for fires in the open across rural and urban fire districts; Thames-Coromandel District Council for urban fire districts; and the Thames Valley Rural Fire Authority and Department of Conservation in the rural fire districts. The NZ Fire Service leads the extinguishment of all fires (not just fires in the open) across urban fire districts and promotes fire safety awareness and education in our communities.

Rural fire districts are currently required to follow the Forest and Rural Fires Act 1977 which dictates the fire seasons available to the rural fire authorities, and these seasons are mirrored in the proposed bylaw. Changes to these fire seasons may as a result of the fire services sector reform, but at this stage the rural fire authorities are bound to follow this legislation.

Mirroring the rural fire seasons in the urban bylaw allows for consistent messaging and application of regulation across the entire district, as the demarcation between urban and rural fire districts is not obvious and there are crossovers between the two. For example, there are settlements throughout the district which despite being urban in nature, fall under a rural fire district. This includes Matarangi, Kuaotunu, Hot Water Beach, Waiomu, Whangapoua and Opoutere.

Historically, of the seasons available in the proposed bylaw and through the Forest and Rural Fires Act 1977, only two seasons have been used - Restricted throughout the year, and Total Fire Ban from 20 December until at least 8 February. Under the proposed bylaw, permits are required in Restricted fire season, and no permits are granted in the Total Fire Ban season unless there are extenuating circumstances, such as the fire is required as part of a significant community, family or cultural event; or the fire is the most effective means to reduce a fire hazard; or the fire is the most effective means to reduce any other hazard to life, health, property or the environment.

The other fire seasons available under the Forest and Rural Fires Act 1977 are included in the proposed bylaw (Prohibited and Open) should it be appropriate for them to be utilised. Including these seasons in the bylaw ensures that a consistent and simple approach is undertaken across the whole district.

Council staff have a close working relationship with staff from the rural fire authorities (the Department of Conservation and with the Thames Valley Rural Fire Authority) and it is proposed that on adoption of the bylaw that a procedure is put in place to ensure a consistent approach is taken to setting and advertising fire seasons throughout the district, to ensure simplicity and consistency in messages to the community. This is reflected in the submission from the Thames Valley Rural Fire Committee with reference to a MOU. This work is undertaken with consultation with the NZ Fire Service representative on the Thames Valley Rural Fire Committee, currently the NZ Fire Service Eastern Waikato Area Manager.

Recommendations

Recommendation 8.

That on adoption of the Fires in the Open Bylaw council staff work the other regulators of fires in the open (the Department of Conservation and with the Thames Valley Rural Fire Authority) in the Thames-Coromandel District to put a procedure in place to ensure consistent fire seasons are maintained between rural and urban fire districts.

Recommendation 9.

That the heading of the provision 'PERMITTED FIRES' be amended to read 'PERMITS' to better reflect the intention of the provision:

13 ~~PERMITTED FIRES~~ PERMITS

E. Fireworks

Summary of submission points

- Seven submitters stated the high risk that fireworks pose to our communities. Hahei, Cooks Beach and Matarangi were specifically noted.
- Five submitters recommended that fireworks other than those professionally managed displays or at organised events should be banned, and that these events should need a permit
- Five submitters stated that the noise impact of fireworks, especially in the evenings over the summer months, has a large negative impact on animals and people and that the bylaw does not adequately address this
- Three submitters recommended that the fireworks exclusion be removed from total fire ban seasons, so no fireworks are to be lit throughout the summer period which is

the most dangerous time due to the risk and disturbance to people and the environment, especially wetland and forest habitats in the summer months

- Three submitters suggested that all fireworks should require a permit and that not requiring a permit is contradictory to the purpose of the bylaw
- Two submitters are opposed the bylaw allowing fireworks to be lit in the district in restricted and total fire ban seasons
- Two submitters stated that visitors who bring large amounts of fireworks to the area for summer compounds the fire risk. These fireworks are stockpiled and used on New Year's Eve
- Two submitters were opposed to the bylaw allowing for fireworks to be lit at night (clause 7.3) as this will increase out of hours noise complaints and that it increases the fire risk.
- Two submitters stated that the use of fireworks outside early November should not be encouraged and specifically restricted in restricted or total fire ban seasons
- Two submitters commented that there should be national regulations to regulate fireworks or that the decision of banning fireworks is a national one
- One submitter stated that other countries, for example Australia, recognise the hazards associated with fireworks and has stronger regulation for amateur use
- One submitter supported 'good neighbour' regulation of fireworks (section 7) in urban and rural areas
- Two submitters stated that the bylaw is not clear and has ambiguity in relation to fireworks, and will be open to the subjectivity of people, and that with the increasingly warm weather it is a backward step to leave it to people to be sensible with fireworks
- One submitter stated that any fireworks should be lit well away from farm areas
- One submitter recommended that when referencing fireworks the bylaw should reference activities covered by the 'Code of Practice for Outdoor Pyrotechnic Displays HSNOCOP 30' (New Zealand Environmental Protection Agency, October 2012)
- One submitter noted that large organised events which use fireworks should require a permit
- One submitter stated fireworks should be banned all together
- One submitter suggested that the bylaw should include provision for minimum age to use fireworks
- One submitter did not support fireworks being allowed in some seasons and not others and noted a need for consistency
- The Thames Valley Rural Fire Committee commented that while they understand the political position TCDC is in regarding regulating fireworks due to the little or no control set by national legislation on them, permits will continue to be required for lighting fireworks in the rural fire district

Staff analysis

Many submitters raised the issue of fireworks as a source of nuisance through prolonged use, or use late at night. They cited disturbance to both animals and people. The noise nuisance created by fireworks was not addressed by the proposed bylaw as Council deals with noise nuisance through the Resource Management Act 1991 (RMA). Under the RMA Council is able to infringe repeat noise offenders with a \$500 fine, which is a much more effective tool than prosecution of fireworks users for breaching the bylaw. The test for whether a noise is a nuisance under the Resource Management Act is that the noise would

unreasonably interfere with the peace, comfort or convenience of any person, and can include an explosion or vibration.

Submitters raised the issue of events using fireworks and that Council should take note of the additional requirements imposed by legislation for pyrotechnic displays. These additional requirements for professional fireworks used in events are for example display plans, safety requirements and consents. It is appropriate for the bylaw to be amended to reference these requirements and require those events which fall under this definition to also seek a permit along with other fires in the open.

In addressing the other points raised by submitters around permitting or prohibition, it is recommended that the Judicial Committee recommends one of the three following options with regards to how the bylaw regulates fireworks. Option three is staff's recommended option.

Option one: all fireworks to require a permit, year-round

Requiring permits before fireworks are lit would give staff an opportunity to directly communicate to permit holders the requirements for fires in the open, for example the need to have appropriate suppression, supervision, and distance away from combustible material, and to use fireworks sensibly. It would also give staff the ability to visit the firing site and provide either grant or decline the permit based on the proposed location of the fireworks. This approach would also be consistent with the approach taken in the rural fire districts.

However, this outcome of this approach is low levels of compliance with all amateur fireworks lit in the rural fire districts within Thames-Coromandel District. This low compliance of permits and high use of fireworks was also Council's experience under the 2008 bylaw, which also required permits for fireworks in urban fire districts. In effect, requiring permits for fireworks would not reduce the fire risk they pose.

It is not recommended that Council put in place rules in a bylaw which would cause all people lighting fireworks to be in breach of the bylaw just because they did not apply and be granted a permit. In addition, should compliance levels increase, Council does not have the current capacity to process permit applications for fireworks, and to increase staffing to the level required would involve a large investment from Council.

This option is not recommended.

Option two: that fireworks be prohibited

Prohibition of all fireworks in the Thames-Coromandel District would mean that no fireworks would be able to be lit without being in breach of the bylaw. In order to enforce this provision, Council would need to prosecute those who breach it (via taking those people to the District Court) as well as drastically increase enforcement efforts within the urban fire districts of the Thames-Coromandel district.

Data provided by the New Zealand Fire Service for the last five years (January 2011 - December 2015) show that out of 391 incidents in the Thames-Coromandel district, there were 13 incidents proved to have been caused by explosives and/or fireworks within gazetted urban fire districts (3.3% of all fires), the majority of which were vegetation fires. This compares to one incident within DOC's fire authority area and 5 incidents within the

gazetted rural fire district. The data indicates that while fireworks must be considered within the bylaw, they do not largely contribute to the total incidence of fire across the district.

If prohibition was lifted for certain parts of the year, it is suggested that this would result in an attitude of 'making the most of it' during these times and unsafe practices would be engaged by many of those releasing fireworks. Prohibition would be likely to increase non-compliance with the bylaw and it may result in increased and more irresponsible use of fireworks.

It is suggested that in order to realistically prohibit fireworks, national regulation is needed. Currently legislation provides rules for sale, purchase and storage of fireworks, limiting the sale but not the use to a certain time of year. For example, national regulation ceasing of the sale of amateur fireworks would be a measure which would drastically reduce the use of fireworks within the Thames-Coromandel District.

If the Committee decided to select this option, the consultation process for this bylaw would need to be repeated as the change is too significant to continue with the current process.

This option is not recommended.

Option three: proposed bylaw approach with the addition of pyrotechnic display provisions (recommended option)

Many submissions were received in opposition to fireworks either not requiring a permit under the proposal, or being allowed to be lit in the first place. In the areas covered by rural fire districts (the majority of the Thames-Coromandel district), a permit is required to be issued by rural fire authorities before the lighting of fireworks, and as advised by the Thames Valley Rural Fire Committee this approach will continue. However, despite this regulation the rural fire authorities experience very low levels of compliance and high use of fireworks throughout settlements in the rural fire district.

Council staff view these low levels of compliance as an opportunity to draft provisions which recognise and respond to the need to protect the district from fire hazards and nuisance while balancing the community's desire to light fireworks, through enabling the community to 'do the right thing' - a combination of education and regulation. This is coupled with the low rates of fires caused by fireworks throughout the district (fireworks and explosives responsible for 3.3% of all fires in the district over the last five years, as above).

A focus on education around how to be sensible with fireworks, aimed not only at residents and non-resident ratepayers but also at our visitors would have far more success in reducing the fire risk of fireworks than an all-out prohibition or requiring permits.

It is recommended that this approach to fireworks be extended to both the Restricted and Total Fire Ban seasons, as they are the two seasons which have historically been in operation throughout the Thames-Coromandel District.

Recommendations

Recommendation 10.

That no change be made to the bylaw regarding amateur fireworks in the urban fire district in that no permit is required for fireworks in Restricted and Total Fire Ban Seasons.

Recommendation 11.

That the following amendments be made to the bylaw to require a permit for the use of professional fireworks in the Thames-Coromandel District.

6 DEFINITIONS

Fireworks has the same meaning as in section 2 of the Hazardous Substances (Fireworks) Regulations 2001 but excludes pyrotechnic displays.

Pyrotechnic display means a firework display which use Class 1 hazardous substances as regulated by the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001.

7 FIRES IN THE OPEN

7.5 Notwithstanding any other provision in this bylaw, any pyrotechnic display requires a permit.

8 OPEN FIRE SEASON

8.1 Council may at any time prescribe an open fire season or seasons within the district or in any specified part or parts thereof, and may at any time cancel or vary such prescription.

8.2 Permits are not required for lighting fires in the open air during an open fire season, with the exception of pyrotechnic displays.

13 PERMITTED FIRESPERMITS

13.4 Where the permit is for a pyrotechnic display, the authorised officer may require proof that the requirements under 'Code of Practice for Outdoor Pyrotechnic Displays HSNOCOP 30' (New Zealand Environmental Protection Agency, October 2012) have been complied with before issuing a permit.

Recommendation 12.

That staff be instructed to include guidelines for the sensible use of fireworks throughout educational communications in the implementation of the bylaw.

F. Fires in the open in urban fire districts in general***Summary of submission points***

- Four submitters stated they supported the bylaw to manage and regulate smoke nuisance and fire hazard in urban areas
- Two submitters stated that Chinese lanterns should be banned due to their fire risk as no one can predict where they will land
- One submitter stated that open fires should not be allowed on properties that adjoin other buildings due to hazards from sparks and embers

- One submitter expressed frustration that Council was not able to do anything about fires in an urban area close to buildings on neighbouring properties in late 2015 due to the lack of a bylaw
- One submitter specifically supported clause 7 (conditions for lighting a fire in the open) as a way to raise awareness for factors which are important in managing the risks of open fire (i.e. location, wind direction, time of day, supervision and ability to extinguish the fire)
- One submitter stated that it was farmers who are responsible, and visitors are irresponsible
- One submitter stated that there was a lack of understanding in our visitors on what was appropriate and/or legal when lighting fires, for example on the beach
- One submitter suggested that no fire will comply with the bylaw as all fires cause smoke nuisance
- One submitter stated that fire is a tool used for burning rubbish and that the proposal is too constrictive on people like farmers, and that permits should not be required for a small rubbish burn
- One submitter (in reference to permits being required for restricted and total fire ban seasons) suggested that Council does not have the funds to be able to permit everything and that requiring permits at all times of the year is overkill
- One submitter commented that smoke is the biggest nuisance factor from fires
- One submitter expressed support for clause 7.3 (no fires to be lit between sunset and sunrise)
- One submitter opposed clause 7.3 and stated that the bylaw should allow those burning large rubbish piles to be able to burn these into the night

Staff analysis

General support for the bylaw was received from submissions and there was general agreement that regulation is needed for urban areas for urban activities in the form of a bylaw.

Clause 7 of the bylaw provides rules in a broad sense for all fires in the open in urban areas, permitted or not. Because of these rules, urban fires must not negatively impact neighbours or road users, or pose any undue risk or hazard to people or property, in quite specific ways - these rules prescribe how far a fire must be away from combustible material like fences or trees.

Smoke, sparks and embers and their negative effects on neighbours are captured by this clause as proposed, and any fire which will affect neighbours in such a way, especially in the urban area is in breach of the bylaw. Information around how to reduce smoke nuisance from a fire, for example noting wind speed and direction or the use of appropriate fire material (for example not using wet wood) as well as the requirement for a spark arrester to stop sparks or embers, can be included in educational material to further promote compliance with the bylaw.

Regarding the burning of rubbish, the bylaw as proposed provides opportunity for those people within urban areas to burn waste material in a compliant incinerator. No permit would be required for this to occur and can be lit at any time of the year provided the fire is compliant with the other provisions of the bylaw, and with any other rule such as those rules in the Waikato Regional Plan.

Due to their unreliable nature, Chinese lanterns do not comply with the bylaw. This message will be explicitly communicated through implementation of the bylaw.

The rules around night time burning were included to ensure that fires are able to be properly supervised as required by the bylaw. The bylaw allows night time permits to be granted (for example a bonfire event) if the trained warranted fire officer is able to satisfy themselves that the lighter of the fire has plans in place to ensure the night time fire will not cause unnecessary risk to people or property, or the environment.

Recommendations

No recommendation for these submission points.

G. Other matters

Summary of submission points

a) Sensitivity of remote communities to fire danger

- Three submitters stated that Hahei does not have adequate fire fighting ability due to topography, proximity to bush and water supply. Coupled with population increase (and therefore water consumption increase) in summer there is at a high risk of fire from fireworks
- Two submitters noted there were instances where Hahei had been affected by fires due to fireworks, and the risk is much worse due to the remote nature of the community
- One submitter commented there was a lack of Council enforcement in remote areas of the Coromandel so it was up to residents to deal with things

b) Cultural matters

- One submitter made the following submission points:
 - The bylaw will impinge on everyday freedom to engage in cultural activities through requiring a permit
 - An introduction of a permitting authority would obstruct cultural practices and interferes with rangatiratanga (right to exercise authority over the land) agreed through the Te Tiriti o Waitangi
 - As kaitiakitanga (guardianship) is a part of Māoritanga (Māori culture) therefore the protection offered through permits is not needed. Advice from fire officers can be sought by Māori if it is required, but imposing regulation is not appropriate.

c) General

- Two submitters suggested that the bylaw should be made easier to understand
- One submitter recommended that the bylaw does not include a fees and charges section as permits should remain free of charge

Staff analysis

a) Sensitivity of settlements to fire danger

Many of the settlements which are within the urban fire districts and therefore within the scope of the bylaw do not have access to a system which provides the water pressure and

volume necessary for fire fighting purposes, as well as having a population swell over the summer months, so the issues raised by submitters on this point are relevant to many other settlements on the peninsula. These communities face an increased risk in that if a fire was to occur that the suppression of this fire may take longer than if an adequate supply of water was available.

The bylaw is one of the many instruments in place to help mitigate this risk through providing regulation of fires in the open. For example, there are existing requirements in the building code which state that all houses must allow for access for emergency vehicles. The fire service sector responds to incidents, even if it occurs outside their 'patch' (for example in either rural or urban). This means that even if the fire is remote, a rural brigade can and will respond to incidents.

A deeper understanding of how an individual's attitude toward fire safety can affect small settlements is required to reduce this risk to our settlements especially over the summer period when visitors stay to celebrate the summer holiday. It is recommended that this group of people be specifically targeted as an audience when delivering any educational fire safety campaigns through the implementation of the bylaw.

b) Cultural matters

Local Government is a creature of statute and it is enabled under the Local Government Act 2002 to make bylaws which apply throughout the district on both private and public land. It is acknowledged that this approach is not deemed to be consistent with the Treaty of Waitangi but is regardless the legislative environment that the Thames-Coromandel District Council is able to operate within.

c) General

The fire service sector is regulated by several pieces of legislation, has multiple different organisations involved and is currently under reform. The bylaw reflects this uncertainty and does not attempt to create a new regulatory regime for urban fire districts which would further complicate matters and instead aligns with the current rural fire district regulation. It is hoped that this complexity and duplication is addressed by the fire service sector reform. In the meantime, gains can be made through using a comprehensive and easy to understand education campaign to ensure that the public are aware of the current rules in place throughout the district.

It is recommended that permits and other services proposed under this bylaw be free of charge to encourage individuals to apply for permits and to comply with the bylaw. The fees and charges provision included in the bylaw is a standard clause across many of the Council's bylaws to ensure that in the event it is appropriate for the Council to charge a user for a service, it has the ability to do so (for example, on a complicated commercial application or other cost recovery).

Recommendations

Recommendation 13.

That any educational campaign regarding the implementation of the bylaw is targeted to visitors to the peninsula as well as residents and absentee ratepayers.

H. Out of scope submissions

Summary of submission points

- One submitter expressed concern that the Thames Volunteer Fire Bridge was not consulted with regarding this bylaw
 - One submitter expressed disappointment that he was not consulted with regarding this bylaw, as volunteers are important. The submitter stated that it has not been a problem before but now people complain about changes made by Council
 - One submitter commented that the permit book was taken away from Fire Chiefs without consultation
 - Stated that Council should prosecute those under the bylaw who pose a risk - people who are dangerous with fire
 - One submitter noted that there was an inconsistency/typo in the statement of proposal in referencing New Zealand Fire
- a) Fires in the open in rural fire districts**
- One submitter recommended that rural areas are included in the bylaw as the risk is lower because there are less people to be harmed
 - One submitter noted concern about regulation in rural areas as there is a need for greater need for controlled fires in these areas to get rid of rubbish and to burn off flooding damage
 - One submitter noted that there is a higher population in rural areas and that not all of them know how to light fires and they need education on how use fire appropriately

Staff analysis

The submissions above relate to the consultation process and other operational matters which fall outside of the scope of this deliberations process.

It is recommended that these submission points be loaded into Council's request for service system and are responded to by staff.

a) Fires in the open in rural fire districts

These submission points relate to fires in the open in rural fire districts. As these areas are not able to be included within the bylaw and fall under the jurisdiction of rural fire authorities, it is recommended that these submission points be directed to the rural fire authorities (Department of Conservation and the Thames Valley Rural Fire Authority) for their information.

Recommendations

Recommendation 14.

That Council staff be instructed to respond to out of scope submission points through Council's request for service system.

Recommendation 15.

That submission points relating to fires in rural fire districts be passed on to the rural fire authorities for their information.

5 Suggested Resolution(s)

That the Judicial Committee:

1. Receives the ' Deliberations on the proposed Fires in the Open Bylaw' report dated 15 June 2016.

2. Recommends the following to Council:

Recommendation 1.

To assist in future proofing the bylaw in the event of fire sector reform, that references to organisations are removed from the bylaw as follows:

6. DEFINITIONS

Gazetted Rural Fire District means land constituted under the Forest and Rural Fires Act 1977 as a rural fire district ~~under either the Department of Conservation or the Thames Valley Rural Fire Authority~~

Gazetted Urban Fire District means those areas in the Thames-Coromandel District that have been gazetted ~~by the New Zealand Fire Service~~ under the Fire Service Act 1975 as urban fire districts and as mapped in Schedule Two of this bylaw.

Recommendation 2.

That a letter from the TCDC Mayor is written detailing the expectations of the Thames-Coromandel District Council and community for the Regional Council to enforce this provision of the Regional Plan, and an invitation to collaborate with TCDC on the promotion and communication of rules for fires in the open throughout the district.

Recommendation 3.

Edit the clause allowing authorised council officers the ability to extinguish fires in the open that breach the bylaw to reflect that extinguishing the fire is only undertaken if appropriate, and that other action (for example calling the NZ Fire Service) may be undertaken instead.

16. COUNCIL MAY EXTINGUISH FIRES

16.1. Where a fire has been lit or allowed to burn in breach of any part or parts of this bylaw, ~~the councilan authorised officer~~ may direct the occupier of the land where the fire is located and/or the person(s) who lit the fire, to immediately extinguish the fire.

16.2. If a direction given under clause 16.1 is not complied with to the satisfaction of ~~the councilan authorised officer~~, an authorised officer may extinguish the fire ~~and or~~ take other steps as considered ~~reasonably necessary appropriate~~, to prevent the spread of fire.

Recommendation 4.

That staff be instructed to coordinate and implement a system for recording where and when permitted fires will be lit throughout the district and for this information to be shared with the NZ Fire Service, the Department of Conservation and with the Thames Valley Rural Fire Authority.

Recommendation 5.

That staff be instructed to continue to engage with the NZ Fire Service throughout the implementation of the bylaw in order to foster a multi-agency approach to permits, education and other implementation matters.

Recommendation 6.

That the compliant fire device definition is amended to reflect the feedback from submissions while keeping the definition appropriate to manage fire risk as follows:

A compliant outdoor fire device must have the following characteristics -

- d) is a permanent fixed structure; and
- e) is constructed of non-combustible materials; and
- f) has a chimney with a spark arrester fitted; and ~~either~~ has:
 - a. a non-combustible hearth or base (which can include the ground surrounding the fixed structure) that extends no less than 750mm forward from the front edge of the fire box and no less than 500mm from the outside edge of the fire box to both sides; and
 - b. a door to contain burning materials, or a protective grille or barrier across the front of the fire box, with a minimum height of ~~400mm~~80mm, to contain burning materials

~~;~~~~or~~

~~has a non-combustible hearth or base that extends a minimum of 750mm from the outside edge of the fire box opening and 900mm forward from the front edge of the fire box; and a door that can be put in place when use is complete, so no burning material can escape such as in a pizza oven.~~

Recommendation 7.

That staff undertake an educational campaign where pictorial guidelines are developed to assist in the public's understanding of what a compliant fire device is, in conjunction with the Thames Valley Rural Fire Authority and the Department of Conservation where possible.

Recommendation 8.

That on adoption of the Fires in the Open Bylaw council staff work the other regulators of fires in the open (the Department of Conservation and with the Thames Valley Rural Fire Authority) in the Thames-Coromandel District to put a procedure in place to ensure consistent fire seasons are maintained between rural and urban fire districts.

Recommendation 9.

That the heading of the provision 'PERMITTED FIRES' be amended to read 'PERMITS' to better reflect the intention of the provision:

13 ~~PERMITTED FIRES~~PERMITS

Recommendation 10.

That no change be made to the bylaw regarding amateur fireworks in the urban fire district in that no permit is required for fireworks in Restricted and Total Fire Ban Seasons.

Recommendation 11.

That the following amendments be made to the bylaw to require a permit for the use of professional fireworks in the Thames-Coromandel District.

6 DEFINITIONS

Fireworks has the same meaning as in section 2 of the Hazardous Substances (Fireworks) Regulations 2001 but excludes pyrotechnic displays.

Pyrotechnic display means a firework display which use Class 1 hazardous substances as regulated by the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001.

7 FIRES IN THE OPEN

7.5 Notwithstanding any other provision in this bylaw, any pyrotechnic display requires a permit.

8 OPEN FIRE SEASON

8.1 Council may at any time prescribe an open fire season or seasons within the district or in any specified part or parts thereof, and may at any time cancel or vary such prescription.

8.2 Permits are not required for lighting fires in the open air during an open fire season, with the exception of pyrotechnic displays.

13 **PERMITTED FIRES**PERMITS

13.4 Where the permit is for a pyrotechnic display, the authorised officer may require proof that the requirements under 'Code of Practice for Outdoor Pyrotechnic Displays HSNOCOP 30' (New Zealand Environmental Protection Agency, October 2012) have been complied with before issuing a permit.

Recommendation 12.

That staff be instructed to include guidelines for the sensible use of fireworks throughout educational communications in the implementation of the bylaw.

Recommendation 13.

That any educational campaign regarding the implementation of the bylaw is targeted to visitors to the peninsula as well as residents and absentee ratepayers.

Recommendation 14.

That Council staff be instructed to respond to out of scope submission points through Council's request for service system.

Recommendation 15.

That submission points relating to fires in rural fire districts be passed on to the rural fire authorities for their information.

References-Tabled/Agenda Attachments

Attachment A *Fires in the Open Bylaw - deliberations strikethrough version*

Attachment B *Example of pictorial diagram which could be used to communicate the requirements of the bylaw in an easy to understand manner*

Attachment A

Attachment A - Draft Fires in the Open Bylaw - Deliberations Version -...

Attachment B

<<Insert DW Link or place Attachment here>>