

OPEN AIR BURNING LOCAL LAW 2007

(No. 4 of 2007)

Part 1 – Preliminary

1. Title

This is the Open Air Burning Local Law 2007 (No. 4 of 2007).

2. Purpose

The purpose of this local law is to manage fuel loads to minimise bushfire risk and to protect the amenity of the shire by:

- (a) controlling the use of incinerators and open air burning;
- (b) allowing burning for the purpose of fuel reduction for fire prevention purposes;
- (c) minimising nuisance and hazards caused by smoke; and
- (d) encouraging recycling, use of green waste services and other alternatives to the management of fuel loads and bushfire risk.

3. The power to make this local law

The Council's authority to make this local law is Section 111 (1) of the *Local Government Act 1989*.

4. Commencement and area of operation

This local law:

- (a) comes into operation on 1 July 2008; and
- (b) operates throughout the Council's municipal district.

5. Revocation

Unless sooner revoked, this local law ceases to operate 10 years after the date on which it comes into operation.

6. Definitions

Expressions used in this local law have the same meaning as in the *Local Government Act 1989*, unless the contrary intention appears.

Unless the contrary intention appears in this local law, the following words or phrases are defined to mean or include:

“**Act**” means the *Local Government Act 1989*.

“**adult**” means a person eighteen (18) years of age and over.

“Authorised Officer” means a member of Council staff appointed under Section 224 of the Act.

“barbeque” means a constructed or manufactured device which is used in the open air solely for cooking food.

“Council” means Yarra Ranges Shire Council.

“fire danger period” means the fire danger period as declared under the *Country Fire Authority Act 1958*.

“fuel reduction” means the planned use of fire to reduce fuel levels for the purpose of fire prevention.

“hazard” means where smoke from open air burning is having an adverse impact on visibility off the property, including on sight distances for motorists and other users of a public road.

“incinerator” means a structure, device or contraption which is used or may be used for the destruction or disposal of unwanted materials or matter by burning but excludes any incinerator licensed under the *Environment Protection Act 1970*.

“nuisance” means any condition which is likely to be noxious, annoying, dangerous or injurious to health.

“open air burning” means lighting a fire or keeping a fire alight in the open air and not within a permanent structure.

“offensive material” - means material which is noxious, harmful, annoying, offensive or injurious to any person when burned.

“permanent structure” means a structure of a permanent kind consisting of a roof and fully enclosed on all sides.

“permit, means a permit in writing issued under this local law which authorises that activity.

“public place” means a:

- (a) bridge, footway, footpath, court, alley, passage or thoroughfare formed on private land; and
- (b) park, garden, reserve or other place of public recreation; and
- (c) wharf, pier or jetty; and
- (d) place of public resort; and
- (e) open place to which members of the public have, or are permitted to have, access, whether or not on payment of a fee, or whether or not that place is sometimes closed; and
- (f) a road; or
- (g) any vacant land or vacant space adjoining a public road but does not include a free standing shopping centre on private land or a shopping mall.

“**Residential Bushland Area**” means an area as detailed in clause 24.

“**Rural Area**” means an area as detailed in clause 24.

“**Urban Area**” means an area as detailed in clause 24.

“**windrow**” means an accumulation of felled, fallen or cleared trees or other vegetation, the volume of which is 50 cubic metres or more.¹

Part 2 – Urban Areas

7. Incinerators and open air burning in Urban Areas

7.1 The following restrictions apply within an Urban Area.

7.2

- (a) A person must not engage in open air burning or use an incinerator without a permit.²
- (b) A person must not engage in open air burning or use an incinerator on a Sunday.
- (c) A person must not construct or install an incinerator without a permit.
- (d) A person who is the owner or occupier of land must not:
 - (i) direct another person to use an incinerator or light a fire on that land without a permit; or
 - (ii) direct or allow another person to construct or install an incinerator on that land without a permit.

7.3 Clause 7.2 does not apply to:

- (a) a barbeque while it is being used for cooking purposes; or
- (b) a fire lit in the course of duty by a member of Council staff, or an employee or officer of the Metropolitan Fire and Emergency Services Board, the Country Fire Authority or the Department of Sustainability and Environment.

¹ 50 cubic metres occupies, for example, a space 5 metres long, 5 metres wide and 2 metres high.

² Open air and incinerator burning is prohibited on Total Fire Ban days under the *Country Fire Authority Act 1958*.

Part 3 – Residential Bushland Areas

8. Incinerators and open air burning in Residential Bushland Areas

- 8.1 The following provisions apply within a Residential Bushland Area.
- 8.2 A person must not engage in open air burning or burn any material in an incinerator without a permit unless it is for the purpose of fuel reduction for fire prevention and:
- (a) the volume of fuel to be burned at any one time is no greater than one cubic metre;³
 - (b) the burn is conducted between the end of the declared fire danger period and the following 31 May; or
 - (c) the burn is conducted between 1 August and the commencement of the next declared fire danger period.
- 8.3 A person must not engage in open air burning or burn any material in an incinerator between 1 June and the following 31 July inclusive.
- 8.4 A person must not engage in open air burning or burn any material in an incinerator for the purpose of fuel reduction under clause 8.2 other than on a Thursday, Friday, Saturday or Monday between 8am and 6pm.⁴
- 8.5 A fire must be extinguished outside of the times prescribed in clause 8.4
- 8.6 A person must not engage in open air burning or use an incinerator on a Sunday.
- 8.7 A person who is the owner or occupier of land must not direct another person to light a fire in contravention of this clause.
- 8.8 A person must not light to allow to remain alight more than one fire at any time on any property without a permit.

9. Exemptions

- 9.1 This Part does not apply to:
- (a) a barbeque while being used for cooking purposes; or
 - (b) a fire lit in the course of duty by a member of Council staff, or an employee or officer of the Metropolitan Fire and Emergency Services Board, the Country Fire Authority or the Department of Sustainability and Environment.

³ One cubic metre, for example, occupies a space 1 metre in length by 1 metre in width by 1 metre in height.

⁴ Open air and incinerator burning is prohibited on Total Fire Ban days under the *Country Fire Authority Act 1958*.

Part 4 – Rural Areas⁵

10. Windrows⁶

- 10.1 The following restrictions apply within a Rural Area.
- 10.2 A person must not light a windrow:
 - (a) without a permit in the period between October 31 and the following May 1; or
 - (b) on a Sunday.
- 10.3 A person who directs another person to light a fire in contravention of this Part contravenes this local law.

11. Open air burning⁷

- 11.1 The following restrictions also apply within a Rural Area.
- 11.2 A person must not:
 - (a) light a fire with a fuel volume greater than one cubic metre at any one time on a property under one hectare in area without a permit;
 - (b) allow more than two fires, with a fuel volume greater than one cubic metre per fire at any one time, to remain alight, without a permit; or
 - (c) light a fire on a Sunday.
- 11.3 A person who is the owner or occupier of land in which a fire has been lit in contravention of this Part contravenes this local law.
- 11.4 A person who directs another person to light a fire in contravention of this Part contravenes this local law.

12. Exemption

- 12.1 This Part does not apply to:
 - (a) a barbeque while it is being used for cooking purposes; or
 - (b) a fire lit in the course of duty by a member of Council staff, or an employee or officer of the Metropolitan Fire and Emergency Services Board, the Country Fire Authority or the Department of Sustainability and Environment.

⁵ Open air burning in Rural Areas during the declared fire danger period is controlled by the provisions of the *Country Fire Authority Act 1958*.

⁶ Open air and incinerator burning is prohibited on Total Fire Ban days under the *Country Fire Authority Act 1958*.

⁷ Open air and incinerator burning is prohibited on Total Fire Ban days under the *Country Fire Authority Act 1958*.

Part 5 – General Provisions

13. Supervision of fire and availability of water

A person must not light a fire in the open air or use an incinerator unless:

- (a) the fire or use of the incinerator is supervised by an adult present; and
- (b) a hose attached to a reticulated water supply (either tank or mains) or a vessel containing at least ten (10) litres of water is available at the site of the fire or incinerator

at all times that the fire or incinerator is alight.

14. Fires in a public place

14.1 Notwithstanding anything in any other clause, a person must not, without a permit, light a fire in a public place.

14.2 A person who directs another person to light a fire in contravention of this clause contravenes this local law.

14.3 This clause does not apply to:

- (a) a barbeque while such barbeque is being used for cooking purposes; or
- (b) a fire lit in the course of duty by a member of Council staff, or an employee, officer or member of the Metropolitan Fire and Emergency Services Board, the Country Fire Authority or the Department of Sustainability and Environment.

15. Nuisance

15.1 A person must not light a fire on land that:

- (a) causes a nuisance beyond the property boundary;
- (b) has an adverse impact on visibility beyond the property boundary, including reducing the visibility of motorists and other users of a public road; or
- (c) creates a hazard on, or near, a public road.

15.2 A person must not light a fire on land to burn, cause or allow to be burnt any:

- (a) green or wet material;
- (b) non timber based building materials;
- (c) rubber or plastic, including plastic mulch, plant pots and packaging materials;
- (d) furnishings and carpet;

- (e) manufactured chemicals;
 - (f) petroleum or oil products;
 - (g) paint, including any container in which paint is kept;
 - (h) food waste;
 - (i) manure and straw;
 - (j) carcasses or dead animals or birds, unless prescribed by the Department of Primary Industries as the only means of disposal; or
 - (k) other offensive, noxious or toxic matter.
- 15.3 A person who is the owner or occupier of land on which a fire has been lit in contravention of this clause contravenes this local law.
- 15.4 A person who directs another person to light a fire in contravention of this clause has contravened this local law.

16. Weather conditions

- 16.1 A person must not light a fire to burn or allow a fire to remain alight:
- (a) on any smog alert day declared by the Environment Protection Authority, or
 - (b) if, at the site of the fire, the wind speed exceeds 15 kilometres per hour.
- 16.2 A person who is the owner or occupier of land on which a fire has been lit in contravention of this clause contravenes this local law.
- 16.3 A person who directs another person to light a fire in contravention of this clause contravenes this Local Law.

Part 6 – Administration

17. Applying for a permit

A person can apply for a permit by:

- (a) lodging an application with the Council in a form approved by the Council or an Authorised Officer; and
- (b) paying to the Council the appropriate application fee, if applicable.

18. Fees

The Council may, from time to time by resolution, determine fees for the purpose of this local law.

19. Issue of Permits

- 19.1 The Council or a Delegated Officer may:
- (a) issue a permit with or without conditions, as appropriate; or
 - (b) refuse to issue a permit.
- 19.2 The conditions of a permit must be set out in the permit.
- 19.3 The Council or an Authorised Officer may, during the life of a permit, alter its conditions after providing the permit holder with an opportunity to make comment on the proposed alteration.
- 19.4 A person who undertakes open air burning for which the Council or an Authorised Officer has issued a permit must comply with the conditions of the permit.
- 19.5 A person who fails to comply with conditions of any permit has contravened this local law.
- 19.6 A permit is in force until the expiry date indicated on the permit, unless it is cancelled before the expiry date.

20. Cancellation of a permit

- 20.1 The Council or an Authorised Officer may cancel a permit if it or he or she considers that:
- (a) there has been a serious or ongoing breach of the conditions of the permit; or
 - (b) there was a serious error, concealment of fact or misrepresentation in the application for the permit; or
 - (c) in the circumstances the permit should be cancelled.
- 20.2 Before the Council or Authorised Officer cancels a permit, the permit holder must be provided an opportunity to make comment on the proposed cancellation.

21. Register of permits

Council must keep a register of all permits issued under this local law.

22. Dispensation

Nothing in this local law requires a person to obtain a permit under this local law if the activity which would otherwise require a permit may be legally carried out under some other legislation or subordinate legislation and the person has complied with that other legislation or subordinate legislation.

23. Extinguishing of Fires

- 23.1 The Council or an Authorised Officer may direct a person to:
- (a) Immediately extinguish a fire or burning substance that a person has lit or allowed to remain alight contrary to this Local Law; or
 - (b) Take any other action that is reasonable to achieve compliance with this Local Law.
- 23.2 A person to whom a direction has been given under clause 23.1 must comply with the direction.

24. Area definitions

- 24.1 The Urban Area, Residential Bushland Area and Rural Area referred to in this Local Law are those respective areas detailed in Schedule 1 or as re-defined or re-detailed and published by the Council in accordance with section 112 of the Act.
- 24.2 Where the line which defines the boundary of the Urban Area, Residential Bushland Area or Rural Area in Schedule 1 or any boundary re-defined or re-detailed by Council:
- (a) appears on and follows a road or a defined watercourse the boundary of the respective areas will be the centre of the road or watercourse; or
 - (b) appears on or follows a property boundary the boundary will be that boundary as at the date of commencement of this Local Law or the date of publishing of any re-definition or re-detailing of the boundary regardless of any subsequent subdivision of that property.

Part 7 - Offences and Penalties

25. Offences and penalties

- 25.1 A person who breaches or fails to comply with any provision in this local law, or any conditions of any permit or any lawful direction by an Authorised Officer, contravenes this local law.
- 25.2 A person who contravenes this local law is guilty of an offence, and liable to a penalty:
- (a) for an initial offence – 10 penalty units
 - (b) for a subsequent offence – 20 penalty units.

26. Infringement notices

- 26.1 As an alternative to prosecution, an Authorised Officer may serve an infringement notice on a person who:
- (a) has contravened; or
 - (b) is reasonably suspected of having contravened this local law.
- 26.2 The penalty set out in an infringement notice shall be:
- (a) 2 penalty units for an initial offence; and
 - (b) 3 penalty units for a subsequent offence.
- 26.3 A person on whom an infringement notice is served may pay the amount specified in the notice to the cashier of the Council within 28 days of service, failing which legal proceedings may commence against that person.
- 26.4 If the amount shown on the infringement notice is paid in the manner described in clause 26.3 or before the service of a Charge and Summons in respect of the offence:
- (a) the person served with the infringement notice has expiated the offence by payment of the amount;
 - (b) no further proceedings may be taken in respect of the offence; and
 - (c) no conviction for the offence may be regarded as having been recorded.
- 26.5 Any person served with an infringement notice is entitled to disregard the notice and defend any subsequent prosecution in Court.
- 26.6
- (a) A delegated officer who was not involved in making the decision to serve the infringement notice may, following consideration of correspondence from any person served with an infringement notice, waive the infringement notice;
 - (b) an infringement notice may be waived, even if the appropriate amount has been paid; and
 - (c) once an infringement notice has been waived, any amount paid before the waiver must be refunded.
- 26.7 The power to waive an infringement notice under clause 26.6 is in addition to the powers given under the *Infringements Act 2006*.

27. Service of Notices

- 27.1 Any notice or notification required to be or which may be served on or given to a person under this Local Law may be served on or given to the person by either:
- (a) delivering the notice or notification to the person;
 - (b) leaving the notice or notification at his or her usual or last known place of residence or business with a person apparently over the age of sixteen (16) years and apparently residing or employed at that place; or
 - (c) sending the notice or notification by post to the person at his or her last known place of residence or business.
- 27.2 Where a notice or notification is directed to a person who is alleged to have contravened this local law by reason of being the owner or occupier of premises and that person's name is not known, the notice may be addressed to "the owner", "the occupier" or "the person in control" (as the case may be).
- 27.3 Any notice or notification served by post in accordance with this clause shall be deemed to have been served on the day following the day of posting.

28. Notice to Comply

- 28.1 If an Authorised Officer reasonably suspects that a person has contravened this Local Law he or she may serve a Notice to Comply with this Local Law on that person in a form approved by Council or a Delegated Officer.
- 28.2 A notice must:
- (a) Specify the act, matter or thing that must be done or cease to be done;
 - (b) Specify the time within which the person on whom the notice is served is required to do or cease to do the act, matter or thing;
 - (c) Be signed by an Authorised Officer; and
 - (d) Be served on the person named therein in accordance with this Local Law.
- 28.3 The time to comply specified in a notice must be reasonable in the circumstances; what is reasonable will depend on the acts, matters or things to be done or cease to be done but must take into account, as applicable:
- (a) The amount of work involved;
 - (b) The degree of difficulty
 - (c) The availability of necessary materials and other necessary items
 - (d) Climatic conditions
 - (e) The degree of risk or potential risk; and

(f) Any other relevant factor.

28.4 It is an offence to not comply with a Notice issued under this clause.

29. Power to act in urgent circumstances

29.1 An Authorised Officer may, in urgent circumstances arising from a contravention of this Local Law, take action to remove, remedy or rectify the contravention without having served a Notice to Comply provided:

- (a) He or she considers the circumstances of the contravention to be sufficiently urgent that the time involved or difficulties associated with the serving of a notice may place person, animal, property or thing at risk or in danger; and
- (b) Details of the circumstances and remedying actions are notified to the person on whose behalf the action was taken as soon as possible; and
- (c) Council is advised of the action taken.

29.2 The action taken by an Authorised Officer under Subclause 29.1(a) must not extend beyond what is necessary to cause the immediate abatement of, or minimise, the risk or danger involved.

30. Official Warnings

30.1 An Authorised Officer may serve a person with an official warning rather than serve an infringement notice if:

- (a) The Authorised Officer believes on reasonable grounds that a person has committed an infringement offence; and
- (b) The Authorised Officer is of the opinion that in all the circumstances that it is appropriate to serve an official warning.

30.2 An official warning must be in writing and contain the following details:

- (a) That it is an official warning;
- (b) The date of the official warning;
- (c) The name and address of the person served with the official warning;
- (d) The identifying reference of the official warning;
- (e) Either the name of the issuing officer or the identifying reference of the issuing officer;
- (f) The date, approximate time and place where the infringement offence is alleged to have been committed;

- (g) A brief description of the infringement offence alleged to have been committed.
- 30.3 Nothing in this clause limits an issuing officer's power to exercise his or her discretion as to whether to serve an infringement notice.
- 30.4 A Delegated Officer who was not involved in making the decision to serve the official warning may, following consideration of correspondence from any person served with an official warning, withdraw the official warning.
- 30.5 An official warning does not affect the power of an Authorised Officer to:
 - (a) Commence proceedings against a person to whom an official warning was given; or
 - (b) Serve an infringement notice; or
 - (c) Take no further action; or
 - (d) Take any other specified action permitted under this Local Law which establishes the infringement offence.

31. Revocation of Open Air Burning Local Law 2006

The Open Air Burning Local Law 2006 (No. 1 of 2006) is revoked.

Schedule 1

Maps of Urban, Residential Bushland and Rural Areas

The COMMON SEAL of the YARRA)
RANGES SHIRE COUNCIL was)
hereto affixed in accordance with)
Local Law No. 3 of 2007 in the)
presence of:)

.....
Chief Executive Officer/Senior Officer
Authorised by Chief Executive Officer

NOTE:

This Local Law was made on 11 March 2008.

It commences on 1 July 2008; consequently, unless revoked earlier, it will be automatically revoked on 1 July 2018.