



Control of Burning

Business Unit: Land Use Services
Responsible Officer: Team Leader Building & Regulation
Contact Officer: Team Leader Building & Regulation
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1 DOCUMENT VERSION HISTORY AND CONTROL

Version Number	Date	Brief Description	Council Minute Number
1.0	03/04/2007	Initial Adoption	09.020.07
2.0	28/10/2015	Adopted	045/15

2 PURPOSE

The Protection of the Environment Operations (Clean Air) Regulation 2010 applies to the entire Bellinghen Shire Council Local Government Area. The Regulation prohibits the burning of vegetation in the Shire in the open, or in an incinerator except in accordance with an approval.

The Regulation gives Council the authority to issue approvals to burn dead and dry vegetative matter on the premises on which the vegetation grew.

This Policy aims to clearly set out the obligations of landowners and residents in respect to burning within the Bellinghen Local Government Area and support Councils Community Vision and strategic directions in relation to air quality management.

3 SCOPE

This policy is in force all year round and applies to all land within the Bellinghen Shire Council Local Government Area.

4 DEFINITIONS

approval : an approval issued in accordance with Division 3 Control of burning in local government areas under the *Protection of the Environment Operations (Clean Air) Regulation 2010*.

blanket approval: an approval issued in accordance with the provisions of Clause 13(2)(a) of the Protection of the Environment Operation (Clean Air) Regulation 2010 that confirms the circumstances in which landowners may burn without the need for separate approval. See Schedule 1 of this policy for the blanket approval.

the regulation : the *Protection of the Environment Operations (Clean Air) Regulation 2010*.

rural parcel : land zoned RU1- Primary Production, RU2- Rural Landscape, , RU4- Primary Production Small Lots, E3 - Environmental Management, & E4 – Environmental Living as defined in the Bellingen Local Environmental Plan 2010.

rural residential parcel : lots 4000m² or greater zoned R5- Large Lot Residential as defined in the Bellingen Local Environmental Plan 2010.

5 POLICY STATEMENT

5.1 Introduction

The Protection of the Environment Operations (Clean Air) Regulation 2010 is designed to minimise air pollution from air borne particulates and chemicals and to eliminate localised nuisance caused by smoke and odour generated by inefficient backyard burning.

Open burning is prohibited in the Bellingen Local Government Area except in accordance with an approval issued by Council or as excepted by the Protection of the Environment Operations (Clean Air) Regulation 2010.

You may be able to seek approval for the burning of vegetation in the open, such as pruning's, dead branches and weeds if that vegetation is grown on the same property.

If your land is a *rural parcel* of land or a *rural residential parcel* of at least 4000m² you may already have permission to burn under Council's *blanket approval*.

Where the *blanket approval* does not apply, you are required to get written permission to burn from Bellingen Shire Council prior to contacting the relevant fire authority.

Fires inappropriately lit or managed, can endanger and impact on lives, property and the environment.

The proper management of open burning will contribute to an improvement of local air quality and amenity.

5.2 Policy Application

Council is listed under Schedule 8 Part 2 of the Regulation which means an approval is required prior to the burning of any vegetation within the Bellingen Local Government Area.

This policy confirms the circumstances under which Council is prepared to grant approval (see Schedule 1) to burn only dry and dead vegetation;

- a. on the premises on which the vegetation grew;
- b. to persons occupying premises; and
- c. Only in the following zones as per the Bellinghen Local Environmental Plan 2010.
 - RU1 – Primary Production
 - RU2 – Rural Landscape
 - RU4 – Primary Production Small Lots
 - E3 - Environmental Management
 - E4 – Environmental Living
 - R5 – Large Lot Residential if land is 4000m² or greater.

Persons wishing to burn on any allotment other than those listed above must submit a separate written application to Council for consideration (see section 5.3 - Approvals to burn).

Notwithstanding the above, this approval does not permit:

- Burning of vegetation as a result of clearing for construction activities, including subdivision works; or
- Burning of vegetation unless prior consideration has been given to its re-use, recycling or disposal by an alternative means such as chipping or mulching.

5.3 Approvals to burn

1. An approval to burn will be issued in one of two ways:
 - a) To a class of persons by means of a notice published in a local newspaper, or
 - b) To a particular person by means of a written notice to the individual.
2. For written notice to be issued to a particular person, pursuant to Clause (1)(b) above, a control of burning application form must be submitted to Council for consideration along with the approved fee.
3. An approval issued under 1(a) above remains in force as per the specified period indicated in the public notice published in the local newspaper. An approval issued under 1(b) above to an individual remains in force for a period of 31 days from the date the notice is issued.
4. Before determining an application to burn, the council will take the following matters into consideration:
 - the impact on regional air quality and amenity,
 - the impact on local air quality and amenity,
 - the feasibility of re-use, recycling or other alternative means of disposal,
 - any opinions of the sector of the public likely to be affected by the proposed approval,
 - in the case of an approval issued under 1(a) above, any opinion of the EPA in relation to the proposed approval.
5. Where an approval to burn is issued, conditions may be attached to the approval as deemed necessary.

6. An approval may be amended or revoked by means of a notice given or published in the same way as the original notice granting approval was given or published.

Note: Other approvals may be required prior to burning, such as a fire permit.

5.4 General Exemptions

The Regulation exempts:

- a) The carrying out of emergency bush fire hazard reduction work (within the meaning of the Rural Fires Act 1997);
- b) Destruction by burning of prohibited plants or drugs under the Drugs Misuse & Trafficking Act 1985;
- c) Destruction by means of burning of an animal that has died or suspected of having died of a disease proclaimed under the Stock Diseases Act 1923 or an exotic disease within the meaning of the exotic diseases of Animals Act 1991.

5.5 Specific Exemptions

It is not an offence under Clause 12(4) of the Regulation:

- a) To cook or barbeque in the open, or to light, maintain or use a fire for recreational purposes such as camping, picnicking, scouting or similar outdoor activities, so long as only dry seasoned wood, liquid petroleum gas (LPG), natural gas or proprietary barbeque fuel (including a small quantity of fire starter) is used, or;
- b) To burn vegetation, in the course of carrying on agricultural operations, on premises on which the vegetation grew, including:
 - i. The burning of vegetation for the purpose of clearing (other than for construction), or;
 - ii. The burning of stubble, orchard pruning's, diseased crops, weeds or pest animal habitats on farms, or;
 - iii. The burning of pasture for regenerative purposes, or
- c) To burn anything for the purposes of the giving of instruction in methods of fire fighting by any of the following persons when acting in his or her official capacity:
 - i. An officer or member of a fire fighting authority, or;
 - ii. A fire control officer within the meaning of the Rural Fires Act 1997, or;
 - iii. An industrial fire control officer, or
- d) To burn anything under the authority of, and in accordance with, a bush fire hazard reduction certificate issued under the Rural Fires Act 1997, or
- e) To burn anything in an incinerator that is authorised or controlled by a licence under the Act, or
- f) To burn anything in an incinerator that:
 - i. is equipped with a primary and secondary furnace, and
 - ii. is designed, maintained and operated in a manner that ensures the maintenance of appropriate temperatures for the complete combustion of

- anything that the incinerator is designed to burn and prevents the escape of sparks or other burning material, and
 - iii. is equipped with suitable equipment that is designed, maintained and operated for the purposes of controlling air impurities in the exhaust gas once the incineration process has been completed, and
 - iv. is not installed in a residential building comprising home units, flats or apartments, or
- g) To burn air impurities by the process known as flaring if the flare is designed, maintained and operated so as to prevent or minimise air pollution.

5.6 Other Considerations

- a) There are provisions in the Protection of the Environment Operations Act 1997 that enable Council's authorised officers to require extinguishment of any fire, which the officer can confirm is causing a serious risk to the health of any person. A similar provision applies where it can be confirmed that a fire is not conducted in such a manner as to minimise air pollution.

Further inquiries may be made of Council regarding these provisions.

- b) For any burn proposed to be conducted within a Rural Fire District, a minimum of 24 hours notice of intention to burn must be given to the occupants/owner of all adjoining land (including land separated by a road, lane or waterway, fenced or unfenced). In addition, a minimum of 1 hour notice must be given to the local Fire Control Officer by phoning the 24hr burn notification line 6653 1097.
- c) For any burn proposed to be conducted with a Fire & Rescue NSW District, prior notice must be given to the nearest Fire Station.

5.7 Hazard Reduction Burning

The NSW Rural Fire Service provides an environmental approval (Bush Fire Hazard Reduction Certificate) free of charge for any mechanical clearing and/or burning of vegetation for the purposes of bush fire hazard reduction.

(Note: Where a certificate has been issued, the provisions of this policy do not apply).

5.8 Fire Permits & Total Fire Bans (RFS)

In addition to any environmental approvals that may be required, a fire permit is required, from the NSW RFS if a fire is to be lit in the open during the Bush Fire Danger Period. The Bush Fire Danger Period for Bellingen Local Government Area is from 1 September to 31 March annually, however this may vary due to local conditions. Permits are required at all times when a fire is likely to endanger a building.

To reduce the risk of fires damaging or destroying life, property and the environment the NSW Rural Fire Service Commissioner may declare a Total Fire Ban, when adverse weather is forecast. In a Total Fire Ban no fire may be lit in the open and all fire permits are suspended. This includes incinerators and barbecues which burn solid fuel, eg: wood, charcoal or heat beads.

To determine whether a Total Fire Ban is in force, phone the Rural Fire Service Bush Fire Information Line on 1800 679 737, or view updates on www.rfs.nsw.gov.au

5.9 No Burn Days (EPA)

Outside of the bushfire season, the EPA may prohibit the burning of fires in the open or in incinerators by issuing a No-Burn Notice if it is of the opinion that, because of forecast weather conditions, burning is likely to contribute to the build-up of air pollution.

Recorded information about "No Burn Notices" is usually available from 4pm the day before the notice comes into effect and can be accessed by calling 13 15 55.

Further information is available on the EPA website <http://www.epa.nsw.gov.au/air/aboutnb.htm>

5.10 Penalties

Council authorised officers and certain officers of other authorities, are empowered to serve Penalty Notices where it can be established there has been a breach of the Regulation. Penalties are set by the Protection of the Environment Operations Act 1997.

Penalties also apply for breaches of the Rural Fires Act 1997 and Rural Fires Regulation 2013. This includes, amongst other things, the lighting of a fire without a permit during the Bush Fire Danger Period.

6 ROLES AND RESPONSIBILITIES

Applications to burn will be processed by Councils Land Use Services Department. Approvals will be by means of a written notice given to the individual (applicant).

Enquiries shall be directed to Council's Customer & Business Services by telephone on 02 6655 7300.

7 RELATED PROCEDURES

None on adoption.

8 LEGAL PARAMETERS

- National Parks and Wildlife Act 1974
- Native Vegetation Act 2003
- Native Vegetation Regulation 2013
- Protection of the Environment Operations Act 1997
- Protection of the Environment operations (Clean Air) Regulation 2010
- Rural Fires Act 1997
- Rural Fires Regulation 2013
- Threatened Species Conservation Act 1995

9 ASSOCIATED DOCUMENTS

NSW Rural Fire Service "Standards for Pile Burning"

http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0012/13323/Standards-for-Pile-Burning.pdf

NSW Rural Fire Service "Before You Light That Fire"

http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0013/12451/BeforeYouLightThatFire.pdf

Clean Air Regulation 2010 Notice of Approval

The approval is granted subject to the provisions of Clause 13(2)(a) the *Protection of the Environment Operation (Clean Air) Regulation 2010* and subject to the following conditions, in accordance with Clause 13(4)(a).

This approval commenced operation upon publication of the Notice of Approval in the Bellingen Courier Sun and the Don Dorrigo Gazette on 11 November 2015 and remains in force until revoked. It is limited by the following conditions, and exclusions.

CONDITIONS

1. Approval is granted to burn only dry and dead vegetation;
 - a) On the premises on which the vegetation grew;
 - b) To persons occupying premises; and
 - c) Only in the following zones as per the Bellingen Local Environmental Plan 2010.
 - RU1 – Primary Production
 - RU2 – Rural Landscape
 - RU4 – Primary Production Small Lots
 - E3 – Environmental Management
 - E4 – Environmental Living
 - R5 – Large Lot Residential if land is 4000m² or greater.

2. Pile burning of dry and dead vegetation should NOT be seen as the best method for disposing of dry and dead vegetation. Alternative means of disposal such as re-use, recycling, composting, disposal through Council's waste service, kerbside collection service or waste management facility should be thoroughly investigated as preferred disposal methods before electing to burn under the terms of this approval.

3. Only dry and dead vegetation originating on a property that is included in this approval shall be burnt on that property. Burning is to be conducted in accordance with the NSW Rural Fire Service "Standards for Pile Burning" February 2006; http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0012/13323/Standards-for-Pile-Burning.pdf

4. Burning must at all times be carried out by such practical means as are necessary to prevent or minimise air pollution. The potential for smoke impacting on any person due to wind direction and weather conditions must be taken into account.

5. A fire permit is required when burning within the Bush Fire Danger Period, or where fires are likely to be dangerous to a building. This must be obtained from the NSW Rural Fire Service, or Fire and Rescue NSW, prior to burning. Please refer to the NSW Rural Fire Service document "Before You Light That Fire".

http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0013/12451/BeforeYouLightThatFire.pdf

6. In the event of a Total Fire Ban being declared, this approval is suspended. Any existing fire is to be extinguished and cannot be re-commenced until the Total Fire Ban is lifted.

7. In the event of a "No Burn Day" being declared by the EPA, this approval is suspended for the duration of the declaration. When a "No Burn" notice is issued, it

applies to the lighting of new fires in the declared areas. Existing fires should be allowed to continue as extinguishing the fire will result in more smoke. "No Burn Notices" are notified in the Public Notices section of the Sydney Morning Herald not later than on the day on which the order is to take effect. Recorded information about "No Burn Notices" is usually available from 4pm the day before the notice comes into effect and can be accessed by calling phone: 13 15 55, further information is available on the EPA website <http://www.epa.nsw.gov.au/air/aboutnb.htm>

8. A minimum of 24 hours notice must be given to adjoining occupiers or owners of land, including land that is separated by a lane, road or waterway. This will allow for smoke-sensitive people such as asthmatics, to plan to be away from the area when the burn is conducted.

For fires within a Rural Fire District, at least one hour notice of intention to burn must be given to the Rural Fire Service via the 24 hour Burn Notification Line – 6653 1097.

9. In the event of any inconsistency between a condition of consent specified in the Notice of Approval to Burn, and any condition specified in a Fire Permit issued by the RFS in respect of that burn, the condition specified in the Fire Permit shall prevail, to the extent of that inconsistency.
10. A responsible supervising adult over the age of 18 shall be on site at all times when the burn is carried out, with a water supply and delivery system and/or machinery capable of preventing the spread of fire.
11. Any residue waste from the burning must be disposed of in an environmentally satisfactory manner and in accordance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 1996*. On completion of the burn, the burnt area must be maintained in a condition that minimises or prevents the emission of dust from the area and prevents sediment or ash from fires being washed from the area into waters.

EXCLUSIONS

This approval does NOT include:

- The burning of other matter other than dead and dry vegetation grown on the property.
- The burning of vegetation for the purpose of hazard reduction, land clearing or ecological burns without an environmental approval, or unless in accordance with any exemption or approval contained in other relevant legislation.
- The burning of vegetation which has been cleared for commercial development or building construction. Development consent must be obtained from Council for the burning of any such material in association with the completion of the development, and in most instances, such burning will be prohibited in preference to alternative means of disposal such as shredding, mulching etc..
- The removal or burning of any native vegetation that comprises an EEC or habitat for threatened species which requires assessment and approval under the Rural Fires Act.

If you do not comply with the conditions specified above, you are not permitted to burn without separate approval being issued by Council and/or the local Rural Fire Service authority.

PENALTIES

Failure to comply with this approval may result in an on the Spot fine of \$500 for an individual or \$1,000 for a corporation. In the event of prosecution, the maximum penalty is \$5,500 for an individual and \$11,000 for a corporation.