

The Burning Question

Important information for landowners wanting to burn tussock and other indigenous vegetation for farming purposes

Fact Sheet



This factsheet has been developed by Waitaki District Council as a guide for landowners who undertake tussock burn-offs for farming purposes. It is intended to raise awareness of some of the key considerations relating to the clearance of indigenous vegetation and to make sure landowners are aware of the statutory framework that applies.

Waitaki District Council is responsible under the Resource Management Act 1991 for administering the Waitaki District Plan which contains rules that need to be considered in relation to a burn-off of indigenous vegetation.

The Council recognises that many landowners may be unaware of the District Plan rules that apply to both freehold and Crown Lease properties, and that the complexity of rules and regulations across different Authorities requires further explanation, to ensure that landowners are clear on their compliance responsibilities.

The following information is intended as a guide only. If a landowner wishes to obtain technical advice in respect of a land-use application or activity, start by reading this factsheet then discuss the proposed activity with a consent planner at Council or make an email enquiry to planningenquiries@waitaki.govt.nz



What are the farming outcomes for burning indigenous vegetation, tussock and shrublands as a land management practice?

Historically, burn-offs have been used as a method to clear denser vegetation from land to allow for improved stock access and pasture development. In many cases, vegetation is burned, and the area is then top-dressed and/or over-sown with exotic grass or clover species. The practice of spelling stock from areas which have been burned has often been used to aid regeneration of tussock and other vegetation following a burn-off whilst also allowing exotic pasture species to become more established.

Does burning result in the 'clearance' of indigenous vegetation?

Tussocks are indigenous grasses. Areas where tussock is prevalent may also support indigenous shrubs, bush, and other plants.

The Waitaki District Plan defines vegetation clearance as:

'The felling, clearing or modification of trees or any vegetation by cutting, crushing, cultivation, spraying or burning. Clearance of vegetation shall have the same meaning.'

The practice of burning tussock and other indigenous vegetation is 'vegetation clearance' as the vegetation is modified or cleared.

Regeneration of the vegetation may occur following a burn-off, however this depends on many factors including moisture levels in the vegetation, whether stock is spelled from grazing in following months, and any subsequent pasture development.

Burn-offs are considered to result in 'vegetation clearance' whether or not the vegetation regenerates at a later stage.



What are the rules?

The District Plan has several rules relating to the clearance of indigenous vegetation. An example is the rule that applies to the clearance of tussock when no resource consent is required:

On any site there shall, over any five-year continuous period, be no clearance of: more than 1000 square metres or more of tall tussock grassland communities of the genus Chionochloa except where the vegetation clearance is carried out for the purposes of maintaining improved pasture

Note: The indigenous vegetation clearance rules 4.4.7 and 4.4.8 (Rural Rules) should be read in full by visiting the District Plan on Council's website www.waitaki.govt.nz.



Photo 1: Intact (unburnt) tussockland



Photo 2: Cleared (burnt) grassland (previously tussockland)

Key definitions in the District Plan are:

'Indigenous vegetation'

a plant community in which species indigenous to that part of New Zealand are important in terms of coverage, structure and/or species diversity. For these purposes, coverage by indigenous species or number of indigenous species shall exceed 30% of the total area or total number of species present, where structural dominance is not attained. Where structural dominance occurs (that is indigenous species are in the tallest stratum and are visually conspicuous) coverage by indigenous species shall exceed 20% of the total area.

'Improved pasture'

Improved pasture means an area of pasture where species composition and growth has clearly been modified and enhanced for livestock grazing by cultivation with or without associated burning, or by topdressing and over-sowing with or without associated burning, or by direct drilling, and where exotic improved pasture species dominate (i.e. where either the coverage of indigenous species or the number of species present, as estimated on a per hectare basis, does not exceed 30%). Improved pasture includes species such as ryegrass and clovers but excludes sweet vernal and browntop.

The photos on the left show intact tussock and burnt tussock in adjacent areas on the same site. The burnt tussock in Photo 2 is 'vegetation clearance' that contravened the District Plan rules as narrow leaved snow tussock was structurally dominant and its coverage was over 20% of the total area.

Can existing use rights apply to the rotational burning of indigenous vegetation?

It may be difficult for a landowner to show that existing use rights apply to the practice of burning indigenous vegetation, as detailed records and ecological information relating to historic burn-offs would be required to demonstrate that environmental effects of proposed burning will be the same or similar in character, intensity and scale. It would also need to be shown that the activity had been lawfully established in the past.

The same or similar in character, intensity or scale

This aspect of existing use rights means that the effects of the activity must remain substantially the same or similar. This can often be a very technical assessment as indigenous vegetation values and biodiversity of species may differ greatly between various blocks on a property. If a new block is entered into the burning regime, the effects of the indigenous vegetation clearance may be different in character. Similarly, if a landowner decides to burn a larger land area or more blocks than had historically been the case, the effects of that land use may also be different in character, intensity, or scale.

What are the options?

If existing use rights apply:

- A landowner may lawfully continue the activity without a resource consent.
- An existing use certificate may be applied for, which if granted, shows that the activity may be done lawfully in a particular location if the activity is the same as it was in the past.

If existing use rights do not apply:

- Indigenous vegetation clearance which is not a permitted activity must be authorised by a resource consent.
- An application for a resource consent must contain a comprehensive assessment of environmental effects of the activity. In some cases, affected party approvals may be required from adjacent landowners, individuals, or agencies such as the Department of Conservation.
- Landowners may apply for a resource consent for rotational burn-offs within defined periods or on an ongoing basis, meaning that future, longer-term land use can be planned.

It is important to note that applications go through a detailed assessment and statutory process to determine whether consent will be granted and the conditions it may be subject to.

It is recommended that landowners engage a suitably qualified ecologist to undertake an ecological assessment of historic, current and/or planned burning activities, to ensure that the correct option is taken before undertaking a burn-off of indigenous vegetation.

What are the risks involved with unauthorised burn-offs?

If indigenous vegetation clearance is undertaken and it is found that the clearance should have been authorised by a resource consent, there is a legal risk to the landowner.

Unauthorised clearance is a contravention of the District Plan rules, making it an offence under the Resource Management Act 1991, for which a person may be prosecuted.

In addition to any penalty, Abatement Notices or Enforcement orders may be issued requiring the person responsible to take certain actions to avoid, remedy or mitigate an adverse effect on the environment, or to cease or prohibit an activity. Compliance with these directions may be complicated, costly and time consuming.

Note: This factsheet does not address Discretionary Activities on Crown Pastoral Land or specific risks associated with fire itself which is regulated by Fire and Emergency New Zealand (FENZ). The District Plan rules are separate to any other authorisations required. If other authorisations or permits are granted, these do not automatically mean the activity can be undertaken in compliance with District Plan rules.

Regional Council rules may also apply to vegetation burning in the high country, including provisions under the Canterbury Land and Water Regional Plan and Canterbury Air Regional Plan.

The burning question:

? Is the burn-off likely to result in clearance of indigenous vegetation that must be authorised by a resource consent?

Landowners need to be clear on the answer that applies to their particular situation before a burn-off is undertaken.

Waitaki District Council recommends a cautious approach to the burning question, as there is an onus on landowners to comply with the District Plan rules and strict liability for any non-compliance. This means that for any enforcement action, it is not necessary for Council to show that a landowner intended clear indigenous vegetation in contravention of the rules.

Got a question about burning?



Call 03 433 0300 to make an appointment with a Consent Planner



or email planningenquiries@waitaki.govt.nz

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