

# Proposed Control of Earthworks Bylaw Statement of Proposal

## Introduction

A 'Statement of Proposal' (SOP) document is a legal requirement when Council is proposing to make, amend or revoke a bylaw. The SOP is the document that is made available to you as part of the consultation process to provide background information on the proposal to assist you in providing your thoughts to Council on the topic.

This SOP includes a summary of information and the proposed policy and bylaw.

## Reason for the proposal

Sections 145 and 146 of Local Government Act 2002 give Council the power to make a bylaw for its District for the purpose of regulating, managing and controlling activities that may pose a danger to the public, properties and the environment.

The reason for this proposal is to clarify when an earthworks permit is necessary in relation to specific building work. Whilst the Far North District Plan does have some controls for earthworks, they do not cover the full extent of the type of earthworks that are carried out throughout the district, but tend to cover the more major earthworks.

The current Control of Earthworks Bylaw 2009 will be automatically revoked in 2020. Until further District Plan changes are possible, it is considered necessary for a Control of Earthworks Bylaw to remain in place.

## Summary

### Problem Definition

Council requires a legal framework within which it can manage and control earthworks to safeguard the public, their properties and the environment.

The main intentions of the proposed bylaw are:

- To protect the public from harm that may be caused as a result of unsafe earthworks activities.
- Ensure neighbouring property are not affected by uncontrolled earthworks activities.
- To safeguard the districts environment from uncontrolled earthworks activities.
- To meet the current social, cultural, environmental and economic well being of the community.

### Options

In order to assess whether a bylaw is most appropriate method of addressing the perceived problem, the following options have been considered.

1. **Do nothing:** Council would need to rely on the current provisions of the District Plan to regulate earthworks. However, this only covers more major earthworks activities and some zones do not have any earthworks controls within the District Plan. This option would mean that, in the absence of new District Plan provisions, earthworks would be unregulated in certain circumstances and zones. This would have an impact on the safety of the public, their properties and the environment from certain uncontrolled earthworks.
2. **Rely on non-regulatory options:** This option relies on goodwill, existing legislation and public education to encourage people to undertake earthworks in a responsible and appropriate manner. Council would have very limited powers of enforcement, which may compromise its ability to address risks to the public, their properties and the environment.
3. **District plan change:** The level of control in the current District Plan does not capture earthworks at a level that is necessary and within all zones. While work is being undertaken on a revised District Plan, which is intended to incorporate revised earthworks controls, this will not be operative before the current bylaw is revoked.
4. **Replace the existing bylaw:** Replacing the existing bylaw would provide the Council with the regulatory mechanism to provide for the safety of the public, their properties and the environment from uncontrolled earthworks.

In balancing the assessments of these options, Option 4 will deliver the required outcomes and is the recommended option.

### **Key Features of the Proposed Bylaw**

The proposed Bylaw covers the following principal areas related to controls over earthworks carried out throughout the District.

- Control of excavation and/or filling work, through a requirement for a permit for specified excavation and/or filling works.
- Setting out the information to be provided in an application for an earthworks permit and ability for the Council to issue a permit subject to conditions.
- Exclusion of Council liability for any damage caused during the carrying out of excavation or filling work from any defect in any public utility under the control of the Council (such as water supply, sewerage system).
- Provisions dealing with damage to a road or public property.
- Requirements to complete work under an earthworks permit as soon as reasonably practical.
- Provisions relating to bylaw breaches.

### **Proposed Changes to the Bylaw**

The proposed Control of Earthworks Bylaw 2019 is essentially the same as the previous Control of Earthworks Bylaw 2009, with minor formatting changes to improve readability. However, a small number of changes are proposed to improve the operational application of the Bylaw.

- The definition of “commercial zone” has been deleted as it is not used in the Bylaw.

- Earthworks and fill related to retaining walls and swimming pools have generally been excluded as these works are more minor in nature and in most cases do not warrant an application for a permit.
- The guiding document for erosion and sediment control has been amended to the GDO5 (Auckland Council’s Erosion and Sediment Control Guide for Land Disturbing Activities) as this has replaced the TP90 (Auckland Regional Council Technical Publication).
- Clause 7.1(b)(i) previously stated that an earthworks permit was required if the work “exceeds 500mm in depth, over a significant portion of an area which is less than 100m<sup>2</sup>”. To remove confusion over the meaning of “significant portion”, the wording has been refined to work that “exceeds 300mm to 500mm in depth, over an area of 50m<sup>2</sup>”.
- Clause 7(d) has been amended to more clearly reference Part 3 of the District Plan, to aid understanding and interpretation.
- The application form has been removed from the Bylaw schedule, as this is an administrative matter.
- Footpaths and vehicle crossings have been added to the provisions relating to damage to roads or public property for the purposes of clarification.
- Clause 10.4, which relates to visual amenity of completed works, has been re-worded for the purposes of clarity.

A new clause 12 is also proposed as follows:

*The Council may, in its absolute discretion, exempt an owner or occupier from a requirement to obtain a permit under clause 7.1, provided that an application for an exemption is made in writing and accompanied by the payment of any required application and processing fees in accordance with Council’s Fees and Charges Schedule. No exemption will be valid unless it is given to the applicant by the Council in writing*

This covers the situation where the proposed work may technically fall within the requirement for a permit but be minor in effect. In such cases, Council will have a discretion to exempt the owner or occupier from the need to apply for a permit (with the associated requirement to provide drawings and reports as set out in clause 7.2). This will reduce compliance costs.

## **Regulatory Impact Statement**

The proposed Control of Earthworks Bylaw 2019 will enable the Far North District Council to control and regulate earthworks and/or filling in the most effective manner to ensure the safety of the public, their properties and the district’s environment.

## **How to give us your feedback**

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The community can give feedback on the proposed Control of Earthworks Bylaw 2019 in July and August 2019. You can make a submission in support of the proposal as it is, or recommend changes be made to the policy or bylaw before final adoption. To make a submission you can:

- submit online at [insert]
- email your comments to [insert] will set up the email based on bylaw title)

- drop-off a written submission at any Council service centre or library
- post your submission to: Freepost Authority 6124  
Submissions – Land Drainage  
Far North District Council  
Private Bag 752  
Kaikohe 0440