



**Far North
District Council**



AGENDA

Extraordinary Council Meeting

Thursday, 5 September 2019

Time: 12:30pm
Location: Council Chamber
Memorial Avenue
Kaikohe

Membership:

Mayor John Carter - Chairperson
Cr Tania McInnes
Cr Ann Court
Cr Felicity Foy
Cr Dave Hookway
Cr Colin (Toss) Kitchen
Cr Sally Macauley
Cr Mate Radich
Cr John Vujcich
Cr Kelly Stratford

COUNCIL MEMBERS REGISTER OF INTERESTS

Name	Responsibility (i.e. Chairperson etc)	Declaration of Interests	Nature of Potential Interest	Member's Proposed Management Plan
Hon John Carter QSO	Board Member of the Local Government Protection Programme	Board Member of the Local Government Protection Programme		
	Carter Family Trust			
Felicity Foy	Director - Northland Planning & Development	I am the director of a planning and development consultancy that is based in the Far North and have two employees.		I will abstain from any debate and voting on proposed plan change items for the Far North District Plan.
		Property owner of Commerce Street, Kaitia		I will declare a conflict of interest with any planning matters that relate to resource consent processing, and the management of the resource consents planning team.
				I will not enter into any contracts with Council for over \$25,000 per year. I have previously contracted to Council to process resource consents as consultant planner.
	Flick Trustee Ltd	I am the director of this company that is the company trustee of Flick Family Trust that owns properties on Weber Place, Seaview Road and Allen Bell Drive.		
	Elbury Holdings Limited	This company is directed by my parents Fiona and Kevin King.	This company owns several dairy and beef farms, and also dwellings on these farms. The Farms and dwellings are located in the Far North at Kaimaumau, Bird Road/Sandhills Rd, Wireless Road/ Puckey Road/Bell Road, the Awanui Straight, Allen Bell Drive.	
	Foy Farms partnership	Owner and partner in		

Name	Responsibility (i.e. Chairperson etc)	Declaration of Interests	Nature of Potential Interest	Member's Proposed Management Plan
		Foy Farms - a farm in three titles on Church Road, Kaingaroa		
	Foy Farms Rentals	Owner and rental manager of Foy Farms Rentals for 6 dwellings on Church Road, Kaingaroa and 2 dwelling on Allen Bell Drive, Kaitaia, and 1 property on North Road, Kaitaia		
	King Family Trust	This trust owns several titles/properties at Cable Bay, Seaview Rd/State Highway 10 and Ahipara - Panorama Lane.	These trusts own properties in the Far North.	
	M and F Foy properties	1 property at Panorama Lane, Ahipara, and 1 property Church Road, Kaingaroa		
	Previous employment at FNDC 2007-16	I consider the staff members at FNDC to be my friends		
Partner Felicity Foy	Employed by Justaplumber Taipa			
	Friends with some FNDC employees			
Dave Hookway	Resident shareholder in Kerikeri Irrigation			Declare if issues arise.
	Shareholder in Farmlands.			Declare if issues arise.
	Employee – Northland District Health Board – Public Health Unit – Health Improvement Advisor		Am employee have no personal gain.	Declare employment should issues concerning the Northland DHB arises.
	On property in Waipapa West Rd.		Possible issues relating to the street or zoning.	Declare when appropriate.
Colin Kitchen	No form received			
Tania McInnes	Director – GBT Ventures Ltd	Company not currently operational		Will notify Council if company becomes operational.
	Member of Northland Conservation Board		Conservation matters not aligned with Council policy.	Will notify Council should a perceived conflict arise.
	Trustee – Northland		No perceived conflicts	Will notify Council

Name	Responsibility (i.e. Chairperson etc)	Declaration of Interests	Nature of Potential Interest	Member's Proposed Management Plan
	Youth Education Trust			should a perceived conflict arise.
	Founder – Bay of Islands Women's Nexus	No perceived conflicts. An informal organisation		
	Own a section on Seaview Road, Paihia 0200			
	Having worked within the organisation in the early 2000's, I know a number of staff, none of which I am close with.			
Mate Radich	No form received			
Ann Court	Waipapa Business Association	Member		
	Warren Pattinson Limited	Shareholder	Building company. FNDC is a regulator and enforcer	No FNDC Controls
	Kerikeri Irrigation	Supplies my water		No EM intervention in disputes
	Top Energy	Supplies my power		No other interest greater than the public's
	District Licensing	N/A	N/A	N/A
	Top Energy Consumer Trust	Trustee	crossover in regulatory functions, consenting economic development and contracts such as street lighting.	Declare interest and abstain from voting.
	Ann Court Trust	Private	Private	N/A
	Waipapa Rotary	Honorary member	Potential community funding submitter	Declare interest and abstain from voting.
	Properties on Onekura Road, Waipapa	Owner Shareholder	Any proposed FNDC Capital works or policy change which may have a direct impact (positive/adverse)	Declare interest and abstain from voting.
	Property on Daroux Dr, Waipapa	Financial interest		
	Flowers (I get flowers occasionally)	Ratepayer 'Thankyou'	Bias/ determination? Pre-	Declare to Governance
	Coffee and food	Ratepayers sometimes 'shout' food and beverage	Bias or pre-determination	Case by case
	Consider all staff my friends	N/A	Suggestion of not being impartial or pre-determined!	Be professional, due diligence, weigh the

Name	Responsibility (i.e. Chairperson etc)	Declaration of Interests	Nature of Potential Interest	Member's Proposed Management Plan
				evidence. Be thorough, thoughtful, considered impartial and balanced. Be fair.
		My husband is a builder and may do work for Council staff		
Warren Pattinson (Husband)	Warren Pattinson Limited	Director	Building Company. FNDC is a regulator	Remain at arm's length
	Air NZ	Shareholder	None	None
	Warren Pattinson Limited	Builder	FNDC is the consent authority, regulator and enforcer.	Apply arm's length rules
	Kurbide Rod and Custom Club (unlikely)	President NZ Hot Rod Association	Potential to be linked to a funding applicant and my wife is on the decision making committee.	unlikely to materialise but would absent myself from any process as would Ann.
	Property on Onekura Road, Waipapa	Owner	any proposed FNDC capital work in the vicinity or rural plan change. Maybe a link to policy development.	Would not submit. Rest on a case by case basis.
	Worked with or for Mike Colebrook and Kelvin Goode	Paid employment	N/A	N/A
Sally Macauley	Chairman	Northland District Health Board	Matters pertaining to health issues re Fluoride and freshwater as an example.	Declare a perceived conflict.
	Chairman	Oranga Tamaraki - Ministry of Vulnerable Children- Northland Community Response Forum	Matters pertaining to this ministry	Declare a perceived conflict.
	Judicial Justice of the Peace	Visitations to Ngawha Prison	Matters pertaining to Judicial Issues re Ngawha Prison	Declare a perceived Interest
	The Turner Centre	FNDC Representative	Observer, acknowledging FNDC financial contribution.	Note FNDC partnership
	Trustee	Kaikohe Education Trust	Providing students laptops - possible request for written support to funders	Declare a conflict
	Executive member	Kaikohe Business Association	Matters pertaining to request for written support to funders.	

Name	Responsibility (i.e. Chairperson etc)	Declaration of Interests	Nature of Potential Interest	Member's Proposed Management Plan
	Chairman	Bay of Islands Arts Festival Trust	Issues pertaining to the application of support funds	Declare a conflict of interests
	Trustee	Bay of Islands Radio Marine	Issues pertaining to the application of support funds	Declare a conflict of interests
	Secretary/Trustee	Kerikeri International Piano Competition	Issues pertaining to the application of support funds	Declare a conflict of interests
	Trustee/Director	Kaikohe Community and Youth Trust	Possible application of support funding	Declare a conflict of interests
	Commercial	Palmer Macauley Offices- Kerikeri and Kaikohe	Infrastructural matters with FNDC	Declare a conflict
	Private property of which there would not be any conflict.			
	Paihia, Kerikeri, Kaikohe			
Peter Macauley (Husband)	Senior Partner	Palmer Macauley		
	Peter Macauley	Barristers and Solicitors- Kerikeri, Kaikohe and Mangonui	Legal matters with FNDC	
	Director/Trustee			
	St John NZ Priory Chapter	St John Priory Chapter	Legal matters with FNDC	Declare a conflict
	Senior Partner	Peter Macauley- Palmer Macauley Barristers and Solicitors Kaikohe, Kerikeri AND Mangonui	Legal matters with FNDC	Declare a conflict
	St John NZ	Priory Trust Board	Writing of policies and legal matters as an example	Note Interests
	Lions Club of Kaikohe	Director	Legal matters etc	Note Interests
	Kaikohe Rugby Club	Patron	Legal Matters	
	Viking Rugby Club, Whangarei	Life Member	Legal Matters	
	Private Property			
	Kerikeri, Paihia - no contents.			
John Vujcich	Board Member	Ngati Hine Health Trust	Matters pertaining to property or decisions that may impact of their health services	Declare interest and abstain
	Board Member	Pioneer Village	Matters relating to funding and assets	Declare interest and abstain
	Director	Waitukupata Forest Ltd	Potential for council activity to directly affect	Declare interest and abstain

Name	Responsibility (i.e. Chairperson etc)	Declaration of Interests	Nature of Potential Interest	Member's Proposed Management Plan
			its assets	
	Director	Rural Service Solutions Ltd	Matters where council regulatory function impact of company services	Declare interest and abstain
	Director	Kaikohe (Rau Marama) Community Trust	Potential funder	Declare interest and abstain
	Partner	MJ & EMJ Vujcich	Matters where council regulatory function impacts on partnership owned assets	Declare interest and abstain
	Member	Kaikohe Rotary Club	Potential funder, or impact on Rotary projects	Declare interest and abstain
	Member	New Zealand Institute of Directors	Potential provider of training to Council	Declare a Conflict of Interest
	Member	Institute of IT Professionals	Unlikely, but possible provider of services to Council	Declare a Conflict of Interest
	Member	Kaikohe Business Association	Possible funding provider	Declare a Conflict of Interest
Mike Edmonds	Chair	Kaikohe Mechanical and Historic Trust	Council Funding	Decide at the time
	Committee member	Kaikohe Rugby Football and Sports Club	Council Funding	Withdraw and abstain
Adele Gardner	N/A - FNDC Honorarium			
	The Far North 20/20 , ICT Trust	Trustee		
	Te Ahu Charitable Trust	Trustee		
	ST Johns Kaitia Branch	Trustee/ Committee Member		
	I know many FNDC staff members as I was an FNDC staff member from 1994-2008.			
Partner of Adele Gardner	N/A as Retired			
Terry Greening	Greening Family Trust	Beneficiary		Highly unlikely to interface with FNDC
	Bay of Islands Walking Weekend Trust		Potential of seeking funds	Step aside from any requests or decisions regarding requests
	Russell 2000 Trust (Chairman)			Trust is about to wind up.
	Russell Centennial Trust	Manages Russell	Seeks funds from	Step aside from

Name	Responsibility (i.e. Chairperson etc)	Declaration of Interests	Nature of Potential Interest	Member's Proposed Management Plan
	(Chairman)	Museum	council	any requests or decisions regarding requests
	Residence at Kaha Place, Russell	Nil	Nil	N/A
Terry Greening (Wife)	Greening Family Trust	Beneficiary	N/A	N/A
	Residence at Kaha Place, Russell			
Cr Kelly Stratford	Office manager at Kinghans.			
	Denture assistant at Kawakawa denture Services self-employed as book keeper Kelly@ksbookkeeing.net	None	None	
	KS Bookkeeping and Administration	Business owner, bookkeeping and development of environment management plans for clients.	None perceived	I'd step aside from decisions that arise, that may have conflicts.
	Kinghans Accounting	Office Administration	None perceived	I'd step aside from decisions that arise, that may have conflicts.
	Waikare Marae Trustees	Trustee	May be perceived conflicts	Case by case basis
	Kawakawa Business & Community Association	Committee member/newsletter editor and printer	None perceived	If there was a perceived conflict, I will step aside from decision making
	Bay of Islands College	Parent elected trustee	None perceived	If there was a perceived conflict, I will step aside from decision making
	Karetu School Bay Cosmos Soccer	Parent elected trustee. Committee member and coach	None perceived	If there was a perceived conflict, I will step aside from decision making
	Property in Waikare and Moerewa			If there was a perceived conflict, I will step aside from decision making
	Sister is currently employed by the Far North District Council.			Will not discuss any matters regarding her role or my role as Councillor that are confidential.

Name	Responsibility (i.e. Chairperson etc)	Declaration of Interests	Nature of Potential Interest	Member's Proposed Management Plan
	Coffee and food	Ratepayers sometimes 'shout' food and beverage	Bias or pre-determination	Case by case
Kelly Stratford (Husband)	Property in Moerewa		N/A	N/A

Far North District Council
Extraordinary Council Meeting
will be held in the Council Chamber, Memorial Avenue, Kaikohe on:
Thursday 5 September 2019 at 12:30pm

Order Of Business

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1 PRAYER**2 APOLOGIES AND DECLARATIONS OF INTEREST**

Members need to stand aside from decision-making when a conflict arises between their role as a Member of the Council and any private or other external interest they might have. This note is provided as a reminder to Members to review the matters on the agenda and assess and identify where they may have a pecuniary or other conflict of interest, or where there may be a perception of a conflict of interest.

If a Member feels they do have a conflict of interest, they should publicly declare that at the start of the meeting or of the relevant item of business and refrain from participating in the discussion or voting on that item. If a Member thinks they may have a conflict of interest, they can seek advice from the Chief Executive Officer or the Team Leader Governance Support (preferably before the meeting).

It is noted that while members can seek advice the final decision as to whether a conflict exists rests with the member.

3 DEPUTATION

No requests for deputations were received at the time of the Agenda going to print.

4 MAYORAL ANNOUNCEMENTS

5 STRATEGIC PLANNING AND POLICY GROUP

5.1 CONTROL OF EARTHWORKS BYLAW 2019 DELIBERATIONS

File Number: A2630417

Author: Roger Ackers, Manager - Strategy Development

Authoriser: Darrell Sargent, General Manager - Strategic Planning and Policy

PURPOSE OF THE REPORT

The purpose of this report is to provide information to enable Council to deliberate on submissions received during the public consultation period for the Control of Earthworks Bylaw 2019.

EXECUTIVE SUMMARY

- The Far North District Council's proposed Control of Earthworks Bylaw 2019 was adopted on 27 June 2019 for public consultation. Consultation opened 8 July 2019 and closed on 9 August 2019
- One submission was received from a submitter who did not wish to be heard
- It is now for Council to consider the submission received to determine whether the recommended changes to the draft bylaw will meet the purpose of the bylaw. These deliberations will inform the final Control of Earthworks Bylaw that will be submitted to the 3 October Council meeting for adoption.

RECOMMENDATION

That Council agree to make the following changes to the Control of Earthworks Bylaw 2019 prior to the adoption:

a) Modify section 7.1 to read as follows;

7.1 Where a Resource Consent for earthworks and/or filling is not required under the Far North District Plan, then no person shall carry out or cause to be carried out, any excavation, cellar construction or filling until the Council's approval has been obtained and a permit has been issued for earthworks:

(b) that is beyond 3 metres of any boundary or water body, in any zone, except Mineral zone and Rural Production zone, and:

- i. exceeds 500mm in depth, over an area that exceeds 50m²; or
- ii. exceeds 50m³

1) BACKGROUND

The operative District Plan currently covers earthworks which could be considered major. Improved provisions for the control of earthworks are planned for inclusion in the proposed District Plan. In the interim Administration consider it necessary to retain the current earthworks controls in the form of a bylaw to ensure the safety of the public, their properties and the district's environment.

At the June 27, 2019 meeting, Administration recommended that a new bylaw for the Control of Earthworks be made. A new bylaw is necessary as the Control of Earthworks Bylaw 2009 review was not completed by 28 February 2018.

The proposed new Bylaw that was consulted on was essentially the same as the Control of Earthworks Bylaw 2009; however it included the following changes:

- The definition of “commercial zone” was deleted as it is not used in the new bylaw
- Earthworks and fill related to retaining walls and swimming pools were generally 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 was 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 100m². To remove confusion over the meaning of “significant portion”, the wording was refined to work that “exceeds 500mm in depth, over an area of 50m²”
- Clause 7(d) was amended to more clearly reference Part 3 of the District Plan, so as to aid understanding and interpretation
- The application form was removed from the Bylaw schedule, as this is an administrative matter and will be considered as part of implementation
- Footpaths and vehicle crossings were 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, was re-worded for the purposes of clarity.

A new clause (clause 12) was 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.”

The intent of this new clause was to address situations where the proposed work may technically fall within the requirement for a permit but be minor in effect. With this new clause Administration will have 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).

Section 156 of the LGA sets out consultation requirements when making, amending, or revoking bylaws made under this Act. Consultation opened 8 July 2019 and closed on 9 August 2019. One submission was received. Based on the submission Administration undertook further consultation with its in-house subject matter experts to understand the impact of the submission.

2) DISCUSSION AND OPTIONS

The table below summarises submissions and provides Administration’s recommendations for each submission. Administration will be at the deliberations meeting to provide further clarity or advice if the Elected Council requests it.

Proposed bylaw content subject to submission	Summary of submitters comments	Administration’s recommendation
Proposed exemption Clause 12	The submitter comments on the concept of the exemption, which must be applied and paid for. The	The current charge for an earthworks permit is \$460.

Proposed bylaw content subject to submission	Summary of submitters comments	Administration's recommendation
	comment questions whether the exemption will actually reduce compliance (or operations) costs, in that there is still a requirement for an application fee and processing costs; this not achieve the objective of reducing costs.	<p>Administration proposes that the fee will be based on the actual cost of processing the submission for an exemption.</p> <p>There is a requirement to modify the fees and charges schedule if the draft bylaw is adopted. This will need to be considered as part of the implementation of the bylaw. However, there is no requirement to modify the draft Control of Earthworks Bylaw 2019 based on the substance of this submission point.</p>
Permissible excavation depth (Clause 7.1 (b)(i))	The submitter requests that clause 7.1 (b) (i) be amended to allow excavation depth of up to 600mm without triggering the bylaw. The submitter explains that most standard pile foundations for residential buildings in clay soil require embedment of 600mm, and that in these instances the bylaw has been triggered. This is considered an unnecessary outcome as the difference between 500mm and 600mm excavation does not present environmental effects that are comparably different.	<p>In the definitions contained in the draft Control of Earthworks Bylaw 2019 Excavation means the digging out of materials from the ground, but does not include:... (f) excavation for building foundations and stripping of topsoil to for a building footprint;</p> <p>Therefore, under the draft Control of Earthworks Bylaw 2019, a permit is not required for the excavation of pile foundations as these are excavations for building foundations.</p> <p>There is no requirement to modify the draft Control of Earthworks Bylaw 2019 based on the substance of this submission point.</p>
Resource or building consents and earthworks permit	<p>The submitter requests that earthworks permits be not required for any earthworks that relate to work that is associated with a Building Consent or Resource Consent application. The submitter explains that this will streamline the process and allow the development engineer to complete the internal checklist while they are processing other aspects of the consent anyway.</p> <p>FNDC already don't require an earthworks permit where a Resource Consent is required, but only where there is a breach of the District Plan earthworks standards. This rule needs to be expanded.</p>	<p>An earthworks permit is required where any excavation or filling exceeds the thresholds as per clause 7 in the bylaw.</p> <p>The requirement for an earthworks permit is currently triggered during the processing of building consent and resource consents among other processes that Council is responsible for. Administration will continue to require an earthworks permit where Administration has identified one is required.</p> <p>There is no requirement to modify the draft Control of Earthworks Bylaw 2019 based on the substance of this submission point.</p>

Administration, as part of assessing the draft bylaw and submissions, identified an issue with the interpretation and application of section 7. The table below summarises Administrations concerns regarding this section and provides a recommendation on how to correct the identified issue. Administration will be at the deliberations meeting to provide further clarity or advice on this issue if the Elected Council requests it.

Proposed bylaw content subject of the issue raised by Administration	Summary issue raised	Administration's recommendation to correct the issues
<p>Section 7.1 (b)</p> <p>Where a Resource Consent for earthworks and/or filling is not required under the Far North District Plan, then no person shall carry out or cause to be carried out, any excavation, cellar construction or filling until the Council's approval has been obtained and a permit has been issued for work:...(b) that is beyond 3 metres of any boundary or water body, in any zone, except Mineral zone and Rural Production zone, and that exceeds:</p> <p>500mm in depth, over an area of 50 m²; or</p> <p>100 m²; or</p> <p>50 m³;</p>	<p>The following issues have been identified;</p> <p>Applying these rules would mean a permit is not required for any excavation, cellar construction or filling that is over 500mm in depth and over an area from 50 m² but less than 100m². This is not the intent of the bylaw and opens up the application of the bylaw permitting provisions to wide interpretations by customers and Administration.</p> <p>It is not self evident on how the need to permit earthworks or filling beyond 100m² in area contributes to achieving the purpose of this bylaw.</p>	<p>Administration recommends the following change to section 7.1 of the draft Control of Earthworks Bylaw 2019 be made;</p> <p>Where a Resource Consent for earthworks and/or filling is not required under the Far North District Plan, then no person shall carry out or cause to be carried out, any excavation, cellar construction or filling until the Council's approval has been obtained and a permit has been issued for <u>earthworks</u>:...(b) that is beyond 3 metres of any boundary or water body, in any zone, except Mineral zone and Rural Production zone, and</p> <p>exceeds 500mm in depth, over an area that exceeds 50m²; or</p> <p>exceeds 50m³</p>

Reason for the recommendation

Administration has identified a need to include stricter provisions in the District Plan to control earthworks beyond what is in the current operative District Plan. In the interim between now and the adoption of new District Plan there is a need to continue to control earthworks activity beyond what is currently controlled via resource consenting.

The draft Control of Earthworks Bylaw 2019 that went out for consultation drew one submission that raised three submission points. The submission points raised will require Administration to consider operational changes that will be addressed via the implementation of the bylaw post adoption. However, in the opinion of Administration, none of the submission points warrant a change to the draft Earthworks Bylaw 2019 that Council adopted for consultation at the 27 June Council meeting.

Administration identified an issue with the application of the permitting provisions under section 7.1 and has recommended that these be modified so as to rectify any misinterpretation of the rules when it comes to customers needing to apply for an Earthworks permit and Administration assessing permit applications.

3) FINANCIAL IMPLICATIONS AND BUDGETARY PROVISION

There are no financial implications that will result from the adoption of the recommendation in this report.

ATTACHMENTS

1. **Submissions on the draft Control of Earthworks Bylaw 2019 - A2632352** [!\[\]\(31b03e46ee8a80a1f1467b8c03bd76e8_img.jpg\)](#) 
2. **Draft Control of Earthworks Bylaw 2019 - A2632439** [!\[\]\(7cea648fec4dfc1e99934873e9173b69_img.jpg\)](#) 
3. **Draft Control of Earthworks Bylaw 2019 - marked up - A2632466** [!\[\]\(01a1fc700f38e6e09ee62e6a9c54d804_img.jpg\)](#) 

Compliance schedule:

Full consideration has been given to the provisions of the Local Government Act 2002 S77 in relation to decision making, in particular:

1. A Local authority must, in the course of the decision-making process,
 - a) Seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
 - b) Assess the options in terms of their advantages and disadvantages; and
 - c) If any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water sites, waahi tapu, valued flora and fauna and other taonga.
2. This section is subject to Section 79 - Compliance with procedures in relation to decisions.

Compliance requirement	Staff assessment
State the level of significance (high or low) of the issue or proposal as determined by the Council's Significance and Engagement Policy	The content of this report and the adoption of the recommendation in this report do not exceed any of the thresholds currently contained in the Council's Significance and Engagement Policy.
State the relevant Council policies (external or internal), legislation, and/or community outcomes (as stated in the LTP) that relate to this decision.	Local Government Act 2002 Resource Management Act 1991
State whether this issue or proposal has a District wide relevance and, if not, the ways in which the appropriate Community Board's views have been sought.	The recommendation in this report has district wide relevance.
State the possible implications for Māori and how Māori have been provided with an opportunity to contribute to decision making if this decision is significant and relates to land and/or any body of water.	The recommendation in this report has implications for Māori in that the adopted Earthworks Bylaw will apply to Manawhenua.
Identify persons likely to be affected by or have an interest in the matter, and how you have given consideration to their views or preferences (for example – youth, the aged and those with disabilities).	The draft Earthworks Bylaw was subject to the consultation requirements as specified in the Local Government Act. The draft bylaw was publicly notified and consultation ran for over a month. Submitters were provided with the opportunity to be heard on their submission.
State the financial implications and where budgetary provisions have been made to support this decision.	There are no financial implications that will result from the adoption of the recommendation on this report.
Chief Financial Officer review.	The Chief Financial Officer has reviewed this report

Control of Earthworks Bylaw 2019

Submission



Proposed Control of Earthworks Bylaw 2019 Submissions

ID	CEB19/2
First Name	Paul
Surname	Spooner
Group / Organisation	Spooner Architectural Solutions
Position	Director
Do you support the proposed Bylaw?	I seek amendments to the proposed bylaw
My submission is: <p>1. Regarding the following statement: 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 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. The above paragraphs contradict each other. In the second paragraph it suggests the purpose is to reduce compliance costs, however the first paragraph states that the application fee and processing costs still need to be paid just to apply for an exemption.</p> <p>2. I request clause 7.1 (b) (i) be amended to allow excavation depth of up to 600mm without triggering the bylaw.</p> <p>3. I request that earthworks permits be not required for any earthworks that relate to work that is associated with a Building Consent or Resource Consent application.</p>	
My reasons are: <p>Re item 1 above: The council will not achieve the objective of reducing compliance costs if the application and processing fee is still payable when applying for an exemption. Re item 2 above: Most standard pile foundations in clay soil require embedment of 600mm. We have had several small residential projects where the bylaw has been triggered due to pile embedment of 600mm, which is an unnecessary outcome as the difference between 500mm and 600mm excavation does not present environmental effects that are comparably different. Re Item 3: Eliminating the earthworks permit requirement where there is a Building Consent will streamline the process and allow the development engineer to complete the internal checklist while they are processing other aspects of the consent anyway. In my experience this is the way other councils do it (Auckland Council, TCDC, Queenstown Lakes, Wellington City, Kaipara District to name a few). FNDC already don't require an earthworks permit where a resource consent is required, but only where there is a breach of the DP earthworks standards. This rule needs to be expanded.</p>	



Proposed Control of Earthworks Bylaw 2019 Submissions

I would like Council to make the following amendments to the proposed Bylaw:

Re item 1: Continue with the proposed change to allow exemptions, however waive the application and processing fee. Perhaps it could be that the application and processing fee are waived "if the earthworks are in relation to works that are associated with a Building or Resource Consent"? There must be some way of reducing the compliance costs, otherwise why bother having exemptions?

Re item 2: I wish council to change the rule as suggested.

Re item 3: Introduce a new clause that means an earthworks permit application not required where a Building Consent is associated with the works.



CONTROL OF EARTHWORKS BYLAW

2019

1. Title

This Bylaw is the Control of Earthworks Bylaw 2019.

2. Commencement

This Bylaw comes into force on the [INSERT]

3. Former Bylaw Repealed

- 3.1 At the date this Bylaw comes into force, the Control of Earthworks Bylaw 2009 is repealed.
- 3.2 All approvals, permits and other acts of authority that originated under the Control of Earthworks Bylaw 2009 and all applications shall, for the purposes of this Bylaw, continue as if they had originated under this Bylaw.
- 3.3 The revocation of the Control of Earthwork Bylaw 2009 shall not prevent any legal proceedings, criminal or civil, being taken to enforce that bylaw, and such proceedings may continue to be dealt with and completed.

4. Application

This Bylaw applies to the Far North District.

5. Purpose

- 5.1 The purpose of this Bylaw is to control excavation, filling or cellar work on private property where a Resource Consent under the District Plan is not required, and also to control erosion and sedimentation created by such work.
- 5.2 This Bylaw is made by the Far North District Council pursuant to section 145 of the Local Government Act 2002 and every other enabling power and authority.

6. Interpretation

- 6.1 In this Bylaw, unless the context otherwise requires -

Abatement Notice means any Abatement Notice issued under the Resource Management Act 1991.

Cellar means underground room or vault.

Council means the Far North District Council, including its authorised agents.

Engineer means a Chartered Professional Engineer (CPEng) with a current level of competency, as determined by, and who is registered with, the Institution of Professional Engineers of New Zealand Incorporated (IPENZ).

Erosion means the wearing away of land caused by action of water, wind, waves or similar actions.

Excavation means the digging out of materials from the ground, but does not include:

- (a) normal garden activities;
- (b) digging of post holes or trenches for drainage;
- (c) dam maintenance, driveway maintenance and drain maintenance;
- (d) normal rural practices;
- (e) septic tanks and associated drainage fields;
- (f) excavation for building foundations and stripping of topsoil to form a building footprint;
- (g) any works to public roads;
- (h) any quarry, public tip or similar use of land where fill is mined or stored pursuant to some other authorisation consent;
- (i) cuts behind retaining walls;
- (j) excavation of swimming pools if:
 - a. excavated material is removed from the property to a permitted dump site; or
 - b. excavated material remaining onsite meets the requirements of clause 7;
- (k) vehicle crossings.

Existing ground level means the ground level that exists on a property:

- (a) at the time this Bylaw came into force; or
- (b) following the completion of earthworks carried out in accordance with this Bylaw.

Far North District means the area within the boundaries under the territorial authority of the Far North District and includes all coastal areas to the line of mean low water springs.

Far North District Plan means the plan or plans (whether operative or proposed) for the time being in force in the district under the provisions of the Resource Management Act 1991.

Fill or Filling means to deposit soil, rock or other material not restricted by the requirements of the Far North District Plan in such a manner as to alter the natural and/or existing contour of the land, but does not include:

- (a) normal garden activities;
- (b) digging of post holes or trenches for drainage;
- (c) dam maintenance;
- (d) normal rural practices;
- (e) septic tanks and associated drainage fields;
- (f) filling of building foundation with granular fill under concrete slab foundation or filling with drainage metal behind retaining wall;
- (g) any works to public roads;
- (h) any quarry, public tip or similar use of land where fill is mined or stored pursuant to some other authorisation consent;
- (i) fill material behind retaining walls;
- (j) backfilling of swimming pools and associated drainage.

GDO5 means Auckland Council's, "Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region".

Notice means either a stop work notice, notice to fix, Abatement Notice, infringement notice or a notice requiring the work to be completed, or corrected, issued to the owner or occupier, for the reasons given in that notice.

Occupier means any person, other than the owner, who has a right to occupy the property, by virtue of a tenancy granted by lease, licence or other authority.

Owner means any person, as defined in the Building Act 2004.

Person includes a corporation sole, a body corporate, and an unincorporated body.

Resource consent means a resource consent issued under the Resource Management Act 1991.

Water body means any body of water as defined in the Far North District Plan and section 2 of the Resource Management Act 1991.

Zone means any zone defined in the Far North District Plan

6.3 Any explanatory notes are for information purposes only and do not form part of this Bylaw.

6.4 The Interpretation Act 1999 applies to this Bylaw.

7. Earthworks Application Required

- 7.1 Where a Resource Consent for earthworks and/or filling is not required under the Far North District Plan, then no person shall carry out or cause to be carried out, any excavation, cellar construction or filling until the Council's approval has been obtained and a permit has been issued for work:
- (a) that is within 3 metres of any boundary or water body in all zones, except Minerals zone;
 - (b) that is beyond 3 metres of any boundary or water body, in any zone, except Minerals zone and Rural Production zone, and that exceeds:
 - (i) 500mm in depth, over an area of 50m²; or
 - (ii) 100m²; or
 - (iii) 50m³;
 - (c) that is in a Rural Production zone, and beyond 3 metres of any boundary or water body, and that exceeds 1.5 metres in depth;
 - (d) in any area of natural or physical resource specified in Part 3 of the Far North District Plan

Explanatory note: Examples of an area of natural or physical resource include landscape features and sites of cultural significance to Maori.

- (e) that affects the flow of stormwater in such a way that it adversely impacts on adjoining properties.
- 7.2 Every application for a permit to undertake work pursuant to clause 7.1 shall:
- (a) contain a drawing of the location, scope and description, to scale, on a site plan, to the Council's approval;
 - (b) be supported by any engineering reports that may be required by the Council to assess the application;
 - (c) be accompanied by evidence, to Council's satisfaction, of erosion and sediment controls

- to be introduced for all work covered under the application, and to comply with GDO5;
- (d) be made in the prescribed form as specified by Council
- (e) be accompanied by the payment of any required application and processing fees in accordance with the Council's fees and charges schedule.

- 7.4 The Council shall issue a permit for earthworks upon satisfaction that all relevant information has been provided and the proposed works meets the criteria of this Bylaw.
- 7.5 Where approval is given to any application for an earthworks permit, such approval may be given under any conditions considered necessary by the Council to control risks to public safety, subsidence or sediment controls, or any other matter considered appropriate under the circumstances.

8. Exclusion of Liability

- 8.1 No owner or occupier, nor their successors in title, of any property for which approval for excavation, fill or cellar work has been given, shall be entitled to claim against the Council for any damage caused during the carrying out of such work, or post-construction or latent defects, whether direct or indirect, from any defect in any water supply, sewerage system, or other public utility service under the control of the Council

9. Damage to Road or Public Property

- 9.1 Where, in the course of the execution of works approved by a permit under this Bylaw, any damage is caused to public roads, carriageway, kerb, berm or verge, footpaths, vehicle crossings, underground services or property, the owner or occupier shall be liable for the full cost of any repairs required to re-instate the said road or property to its original condition.
- 9.2 Where, in the opinion of the Council there is a possibility of damage to public roads, carriageway, kerb, berm or verge, footpaths, vehicle crossings, underground services or property arising from works approved by a permit under this bylaw, a road damage deposit of such amount as may be determined by the Council shall be payable by the owner or occupier.
- 9.3 Where a road damage deposit has been paid in respect of works approved by a permit under this Bylaw, and in the opinion of the Council damage has been caused in the execution of those works, a Notice shall be sent to the owner or occupier, either during or after the execution of those works, requiring the re-instatement of the road or property, to its original condition. If within seven (7) days of the date of the Notice no action has been taken to affect the repairs stated in the Notice, the Council may arrange for the necessary repairs, and to retain the cost of those repairs from the road damage deposit.
- 9.4 Where a road damage deposit has been paid in respect of works approved by a permit under this Bylaw, and in the opinion of the Council, no damage has occurred to public roads or property in the execution of those works, the road damage deposit shall be refunded in full to the owner or occupier

10. Completion of work

- 10.1 Every person, to whom an earthworks permit has been issued under this Bylaw, shall ensure that all work approved under the permit is completed as soon as practically possible, to Council's

satisfaction.

- 10.2 Every person, to whom an earthworks permit is issued under this Bylaw, shall ensure that any deposits of debris, mud, silt, sediment or residue of materials used shall be kept clear of road carriageways and road sides, at all times
- 10.3 Where such work, approved under the earthworks permit is, in the opinion of the Council, incomplete, the property owner or occupier shall be issued with a Notice requiring the work to be completed in a specified time detailed in that Notice, and such work shall also apply to any materials deposited, as described in clause 10.2.
- 10.4 Where in the opinion of the Council, the finished work is unsightly or unsatisfactory, a Notice may also include a requirement for the owner or occupier to complete such works that may be necessary to retain any visual amenities, by re-establishing vegetation cover, or by using some other appropriate method.
- 10.5 Where, in the opinion of the Council, the work to which a Notice to complete is still outstanding, the Council may organise the completion of that work and charge the owner or occupier with the full costs of that work, which may include all contractors costs, and the Council's administration, travel and inspection fees, at rates defined in the Council's Fees and Charges Schedules.
- 10.6 Where, in the opinion of Council, any incomplete work, or illegal work carried out without a earthworks permit, is considered to be a danger to persons, or property, the Council may immediately make safe that work, and charge the property owner or occupier with the full costs, which may include all contractors costs, and the Council's administration, travel and inspections costs, at the rates defined in the Council's Fees and Charges Schedules

11. Bylaw Breaches

- 11.1 Every owner or occupier on whose property a breach of any of the provisions of this Bylaw is committed is liable, on summary conviction, to pay a fine not exceeding \$20,000.
- 11.2 Any person convicted of an offence, under clause 11.1 of this Bylaw, shall not be relieved of the obligation to comply with the requirements of this Bylaw, but shall do so either before or immediately after conviction and where applicable shall carry out such remedial works, which may include the construction of a retention area, removal of filling, reinstatement or such other works as may be deemed necessary by the Council.

12. Exemptions

- 12.1 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.

Additional information to Control of Earthworks Bylaw 2019

This document is for information purpose only and does not form part of this Bylaw. It contains matters made pursuant to this Bylaw and information to help users to understand, use and maintain this Bylaw. The document may be updated at any time.

Section 1: History of the bylaw

Action	Description	Date of decision	Commencement

Section 2: Related documents

Document	Description	Location	Date
<i>Reports to Council/Committee/Panels</i>			
Adoption of Statement of Proposal	Statement of Proposal including draft Bylaw adoption for public consultation		
Submissions	Public submissions on the Statement of Proposal		
Deliberations	Deliberations on submission issues raised		
?			

Document	Description	Location	Date
<i>Legislation</i>			
Local Government Act 2002	Provides the functions, duties, powers and penalties to make and enforce this Bylaw. Particularly sections 147A and 147B relating to the making of alcohol control bylaws.	www.legislation.govt.nz	NA
Bylaws Act 1910	Provides for certain matters related to the validity of bylaws.	www.legislation.govt.nz	NA
Interpretations Act 1999	Provides for certain matters related to the interpretation of bylaws.	www.legislation.govt.nz	NA

Section 3: Delegations

Clause	Function,Duty,Power to be delegated	Delegated Authority	Delegation date	Delegation active date

Section 4: Enforcement powers

Legislative provision	Description

Section 5: Offences and penalties

Provision	Description of offence	Maximum fine upon conviction	Infringement fee

Section 6: Register of resolutions for controls



**CONTROL OF
EARTHWORKS
BYLAW**

2019

1. Title

This Bylaw is the Control of Earthworks Bylaw 2019.

2. Commencement

This Bylaw comes into force on the [INSERT]

3. Former Bylaw Repealed

- 3.1 At the date this Bylaw comes into force, the Control of Earthworks Bylaw 2009 is repealed.
- 3.2 All approvals, permits and other acts of authority that originated under the Control of Earthworks Bylaw 2009 and all applications shall, for the purposes of this Bylaw, continue as if they had originated under this Bylaw.
- 3.3 The revocation of the Control of Earthwork Bylaw 2009 shall not prevent any legal proceedings, criminal or civil, being taken to enforce that bylaw, and such proceedings may continue to be dealt with and completed.

4. Application

This Bylaw applies to the Far North District.

5. Purpose

- 5.1 The purpose of this Bylaw is to control excavation, filling or cellar work on private property where a Resource Consent under the District Plan is not required, and also to control erosion and sedimentation created by such work.
- 5.2 This Bylaw is made by the Far North District Council pursuant to section 145 of the Local Government Act 2002 and every other enabling power and authority.

6. Interpretation

- 6.1 In this Bylaw, unless the context otherwise requires -

Abatement Notice means any Abatement Notice issued under the Resource Management Act 1991.

Cellar means underground room or vault.

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- (a) normal garden activities;
- (b) digging of post holes or trenches for drainage;
- (c) dam maintenance, driveway maintenance and drain maintenance;
- (d) normal rural practices;
- (e) septic tanks and associated drainage fields;
- (f) excavation for building foundations and stripping of topsoil to form a building footprint;
- (g) any works to public roads;
- (h) any quarry, public tip or similar use of land where fill is mined or stored pursuant to some other authorisation consent;
- (i) cuts behind retaining walls;
- (j) excavation of swimming pools if:
 - a. excavated material is removed from the property to a permitted dump site; or
 - b. excavated material remaining onsite meets the requirements of clause 7;
- (k) vehicle crossings.

Existing ground level means the ground level that exists on a property:

- (a) at the time this Bylaw came into force; or
- (b) following the completion of earthworks carried out in accordance with this Bylaw.

Far North District means the area within the boundaries under the territorial authority of the Far North District and includes all coastal areas to the line of mean low water springs.

Far North District Plan means the plan or plans (whether operative or proposed) for the time being in force in the district under the provisions of the Resource Management Act 1991.

Fill or Filling means to deposit soil, rock or other material not restricted by the requirements of the Far North District Plan in such a manner as to alter the natural and/or existing contour of the land, but does not include:

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GDO5 means Auckland Council's, "Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region".

Notice means either a stop work notice, notice to fix, Abatement Notice, infringement notice or a notice requiring the work to be completed, or corrected, issued to the owner or occupier, for the reasons given in that notice.

Occupier means any person, other than the owner, who has a right to occupy the property, by virtue of a tenancy granted by lease, licence or other authority.

Owner means any person, as defined in the Building Act 2004.

Person includes a corporation sole, a body corporate, and an unincorporated body.

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Water body means any body of water as defined in the Far North District Plan and section 2 of the Resource Management Act 1991.

Zone means any zone defined in the Far North District Plan

6.3 Any explanatory notes are for information purposes only and do not form part of this Bylaw.

6.4 The Interpretation Act 1999 applies to this Bylaw.

7. Earthworks Application Required

7.1 Where a Resource Consent for earthworks and/or filling is not required under the Far North District Plan, then no person shall carry out or cause to be carried out, any excavation, cellar construction or filling until the Council's approval has been obtained and a permit has been issued for earthworks:

- (a) that is within 3 metres of any boundary or water body in all zones, except Minerals zone;
- (b) that is beyond 3 metres of any boundary or water body, in any zone, except Minerals zone and Rural Production zone, and ~~that exceeds:~~
 - (i) exceeds 500mm in depth, over an area that exceeds of 50m² ; or
 - ~~(ii) 100m²; or~~
 - ~~(iii)(ii) exceeds 50m³ ;~~
- (c) that is in a Rural Production zone, and beyond 3 metres of any boundary or water body, and that exceeds 1.5 metres in depth;
- (d) in any area of natural or physical resource specified in Part 3 of the Far North District Plan

Explanatory note: Examples of an area of natural or physical resource include landscape features and sites of cultural significance to Maori.

- (e) that affects the flow of stormwater in such a way that it adversely impacts on adjoining properties.

7.2 Every application for a permit to undertake work pursuant to clause 7.1 shall:

- (a) contain a drawing of the location, scope and description, to scale, on a site plan, to the Council's approval;
- (b) be supported by any engineering reports that may be required by the Council to assess the application;
- (c) be accompanied by evidence, to Council's satisfaction, of erosion and sediment controls

- to be introduced for all work covered under the application, and to comply with GDO5;
- (d) be made in the prescribed form as specified by Council
- (e) be accompanied by the payment of any required application and processing fees in accordance with the Council's fees and charges schedule.

- 7.4 The Council shall issue a permit for earthworks upon satisfaction that all relevant information has been provided and the proposed works meets the criteria of this Bylaw.
- 7.5 Where approval is given to any application for an earthworks permit, such approval may be given under any conditions considered necessary by the Council to control risks to public safety, subsidence or sediment controls, or any other matter considered appropriate under the circumstances.

8. Exclusion of Liability

- 8.1 No owner or occupier, nor their successors in title, of any property for which approval for excavation, fill or cellar work has been given, shall be entitled to claim against the Council for any damage caused during the carrying out of such work, or post-construction or latent defects, whether direct or indirect, from any defect in any water supply, sewerage system, or other public utility service under the control of the Council

9. Damage to Road or Public Property

- 9.1 Where, in the course of the execution of works approved by a permit under this Bylaw, any damage is caused to public roads, carriageway, kerb, berm or verge, footpaths, vehicle crossings, underground services or property, the owner or occupier shall be liable for the full cost of any repairs required to re-instate the said road or property to its original condition.
- 9.2 Where, in the opinion of the Council there is a possibility of damage to public roads, carriageway, kerb, berm or verge, footpaths, vehicle crossings, underground services or property arising from works approved by a permit under this bylaw, a road damage deposit of such amount as may be determined by the Council shall be payable by the owner or occupier.
- 9.3 Where a road damage deposit has been paid in respect of works approved by a permit under this Bylaw, and in the opinion of the Council damage has been caused in the execution of those works, a Notice shall be sent to the owner or occupier, either during or after the execution of those works, requiring the re-instatement of the road or property, to its original condition. If within seven (7) days of the date of the Notice no action has been taken to affect the repairs stated in the Notice, the Council may arrange for the necessary repairs, and to retain the cost of those repairs from the road damage deposit.
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10. Completion of work

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satisfaction.

- 10.2 Every person, to whom an earthworks permit is issued under this Bylaw, shall ensure that any deposits of debris, mud, silt, sediment or residue of materials used shall be kept clear of road carriageways and road sides, at all times
- 10.3 Where such work, approved under the earthworks permit is, in the opinion of the Council, incomplete, the property owner or occupier shall be issued with a Notice requiring the work to be completed in a specified time detailed in that Notice, and such work shall also apply to any materials deposited, as described in clause 10.2.
- 10.4 Where in the opinion of the Council, the finished work is unsightly or unsatisfactory, a Notice may also include a requirement for the owner or occupier to complete such works that may be necessary to retain any visual amenities, by re-establishing vegetation cover, or by using some other appropriate method.
- 10.5 Where, in the opinion of the Council, the work to which a Notice to complete is still outstanding, the Council may organise the completion of that work and charge the owner or occupier with the full costs of that work, which may include all contractors costs, and the Council's administration, travel and inspection fees, at rates defined in the Council's Fees and Charges Schedules.
- 10.6 Where, in the opinion of Council, any incomplete work, or illegal work carried out without a earthworks permit, is considered to be a danger to persons, or property, the Council may immediately make safe that work, and charge the property owner or occupier with the full costs, which may include all contractors costs, and the Council's administration, travel and inspections costs, at the rates defined in the Council's Fees and Charges Schedules

11. Bylaw Breaches

- 11.1 Every owner or occupier on whose property a breach of any of the provisions of this Bylaw is committed is liable, on summary conviction, to pay a fine not exceeding \$20,000.
- 11.2 Any person convicted of an offence, under clause 11.1 of this Bylaw, shall not be relieved of the obligation to comply with the requirements of this Bylaw, but shall do so either before or immediately after conviction and where applicable shall carry out such remedial works, which may include the construction of a retention area, removal of filling, reinstatement or such other works as may be deemed necessary by the Council.

12. Exemptions

- 12.1 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.

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<i>Legislation</i>			
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Bylaws Act 1910	Provides for certain matters related to the validity of bylaws.	www.legislation.govt.nz	NA
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Section 3: Delegations

Clause	Function,Duty,Power to be delegated	Delegated Authority	Delegation date	Delegation active date

Section 4: Enforcement powers

Legislative provision	Description

Section 5: Offences and penalties

Provision	Description of offence	Maximum fine upon conviction	Infringement fee

Section 6: Register of resolutions for controls

6 MEETING CLOSE