Far North District Council

Te Kaunihera o Tai Tokerau ki te Raki

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 Former Bylaw Repealed

3.1 At the date this Bylaw comes into force, the Control of Earthworks Bylaw 2009 is repealed.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 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~~ 50m^2 ; or
  ~~(ii) 100m^2; or~~
  ~~(iii)~~(ii) exceeds 50m^3 .~~;~~
(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
Reports to Council/Committee/Panels			
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		
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Document	Description	Location	Date
Legislation			
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 bedelegated	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