

Proposal

On-site Wastewater Disposal Systems Bylaw

1 Context and Situation

There are currently 15,602 on-site wastewater disposal systems in the Far North District, of which 12,213 (78%) are septic tanks. The main cause of on-site wastewater disposal system failure is lack of ongoing servicing and regular maintenance. Wastewater discharging from failing systems contains pathogens (e.g. E.coli, and campylobacter) and nutrients (e.g. nitrates, phosphorus and sodium) that can be harmful to humans and the environment. Effluent discharge and contamination can lead to public health harm and nuisance.

During 2002-2003, the Far North District Council (“the Council”) conducted on-site effluent surveys and identified that 90% of effluent discharge found in stormwater samples was due to the lack of maintenance of on-site wastewater disposal systems. To manage potential harms to the environment and public health, the Council made a Control of On-site Wastewater Disposal Systems Bylaw on 26 May 2010. The Bylaw was made under section 146(a)(i) of the Local Government Act 2002 and was due for review by 26 May 2020, but was not reviewed by that date. This means the Bylaw will be revoked, under section 160A of the Local Government Act 2002, on 26 May 2022.

On 20 May 2021, under section 155(1) of the Local Government Act 2002, the governing body of the Council determined that:

- that a bylaw is the most appropriate way of addressing problems related to the maintenance of on-site wastewater disposal systems in the Far North District
- a new bylaw should be made before the current Control of On-site Wastewater Disposal Systems Bylaw is revoked¹.

2 Proposal

The Council proposes to make a new on-site wastewater disposal systems bylaw under section 146(a)(i) of the Local Government Act 2002 to protect public health and prevent nuisance by prescribing requirements for the maintenance of on-site wastewater disposal systems.

3 Reasons for the proposal

As the bylaw was not reviewed in time, under section 160A of the Local Government Act 2002, the bylaw must revoke on 26 May 2022. Council is not able to stop the bylaw from being revoked.

Therefore, to continue the regulation of on-site wastewater disposal systems a new bylaw must be made.

¹ [20 May 2021 Far North District Council meeting minutes](#)

4 Analysis of the reasonably practicable options

The governing body of the Council considered four options for addressing problems relating to the maintenance of on-site wastewater disposal systems:

- Make a bylaw
- Provide information, education, and advice
- Council service all on-site wastewater disposal systems in the District

An option to “do nothing”, i.e. allow the Bylaw to revoke in March 2022, was not considered to be a reasonably practicable option due to the risk to public health from failing on-site wastewater disposal systems.

The advantages and disadvantages of the options are summarised in the following table.

Option	Advantages	Disadvantages
Make a Bylaw	Maintenance of on-site wastewater disposal systems continue to be regulated <ul style="list-style-type: none"> • preventing effluent discharge and contamination • protecting public health • preventing or abating health nuisances Register and contactor systems are already in place	None
Provide information, education, and advice	Register and contractor systems are already in place, removing the main set-up cost of an education only system.	Risk that property owners will be less inclined to clean and maintain on-site wastewater disposal systems without regulation leading to increased risk of effluent discharge and contamination. Council can only enforce repair of an on-site wastewater disposal system once complete failure has occurred.
Council service all on-site wastewater disposal systems in the District	Register and contractor systems are already in place, removing some of the set-up costs. All on-site wastewater systems would be maintained regularly	Requires the implementation of a targeted rate May require septage screens to be installed at more wastewater treatment plants, increasing infrastructure costs. Risk that Council may be liable for repairs to on-site wastewater disposal systems if damaged during the cleaning process. As a result of the upcoming Three Waters reforms, the operation and maintenance of wastewater will most likely be regionalised. Council can only enforce repair of an on-site wastewater disposal system once complete failure has occurred.

5 New Zealand Bill of Rights Act 1990 implications

Part 2 of the New Zealand Bill of Rights Act 1990 sets out twenty rights that are affirmed and protected, that may only be subject to reasonable limits that can be demonstrably justified in a free and democratic society. Section 155(2)(b) of the Local Government Act 2002 requires the Council to determine if the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990. The Council will fully assess these implications before it makes the On-site Wastewater Disposal Systems Bylaw.

However, a preliminary assessment has identified the Bylaw may potentially have implications on Section 14: Freedom of Expression in that information regarding the status of on-site wastewater disposal systems must be provided to the Council. The wording "information of any kind and in any form" suggests that section 14 may apply to a regulatory requirement to produce information or documents however this is unclear.

Although, the bylaw's provisions are justified because they only limit the rights of individuals to the extent it is reasonable to do so to in order for other people's rights and freedoms to be maintained

The Bylaw may also potentially have implications on Section 21: Security Against Unreasonable Search or Seizure, whether of the person, property, or correspondence. However, the bylaw does not contain any new powers for search or seizure, the applicable powers (that are cross-referenced in the bylaw) are already in statutes.

Therefore, any limitations on the rights mentioned are likely to be justified in accordance with the New Zealand Bill of Rights Act 1990.

6 How to give your views on the proposal

The Council encourages any person or organisation affected by, or having an interest in, the On-site Wastewater Disposal Systems Bylaw to present their views on the proposal to the Council by making a submission.

You can make a submission by using any of the following methods:

- online at the Council's website www.fndc.govt.nz/have-your-say
- email your submission to submissions@fndc.govt.nz
- drop-off your submission at any Council service centre or library, details of their locations and opening times are listed at www.fndc.govt.nz/contact or you can get that information by phoning the Council on 0800 920 029
- post your submission to: Strategy Development Team, Far North District Council, Private Bag 752, Kaikohe 0440
- make an oral presentation of your submission at a meeting of the Council's Strategy and Policy Committee

Please include your full name and email address or postal address in your submission if you want:

- the Council to acknowledge receipt of your submission
- to make an oral presentation – you will be contacted about when and where the meetings for this are taking place.

Privacy statement – Please be aware, any submissions that are made on the new on-site wastewater disposal systems bylaw become part of the public consultation process. As such, all submissions, any summaries of

submissions, and any documents provided with your submission, are copied and made available to the Council’s governing body as well as the public. Any personal information included with a submission such as your name is treated as part of the submission and will also be released publicly. Your submission and any personal information that you supply such as your name will not be treated as confidential unless you specifically request it in your submission.

6.1 Draft On-site Wastewater Disposal Systems Bylaw

The draft bylaw is as follows:

On-site Wastewater Disposal Systems Bylaw

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1 Title

This bylaw is the On-site Wastewater Disposal Systems Bylaw.

2 Related information

Boxes headed “Related information” in this bylaw are for information purposes only, and –

- (a) they do not form part of this bylaw; and
- (b) cannot be considered in the interpretation or application of a provision of this bylaw; and
- (c) may be inserted, amended or removed without any formality.

3 Commencement

This bylaw comes into force two days after the date it is made.

Related information

This bylaw is due for review by [date to come].

4 Application

This bylaw applies to the district of the Far North District Council.

Part 1: Preliminary provisions

5 Purpose

The purpose of this bylaw is to protect public health and prevent nuisance by prescribing requirements for the maintenance of on-site wastewater disposal systems.

Related information

The design and installation of on-site wastewater disposal systems are regulated under the Building Act 2004, Resource Management Act 1991, and Plumbers Gasfitters and Drainlayers Act 2006.

6 Interpretation

(1) In this bylaw, unless the context otherwise requires, -

alternative system means an on-site wastewater disposal system that separates all, or some of, the grey water from toilet wastewater for treatment, including waterless toilet systems such as composting toilets, and vermiculture systems, peat bed treatment systems, and powerless systems.

commercial has the same meaning as in schedule 1 of the Building Regulations 1992.

Related information

As at 01 January 2017, the definition is: "Applies to a building or use in which any natural resources, goods, services or money are either developed, sold, exchanged or stored.

Examples: an amusement park, auction room, bank, car-park, catering facility, coffee bar, computer centre, fire station, funeral parlour, hairdresser, library, office (commercial or government), Police station, post office, public laundry, radio station, restaurant, service station, shop, showroom, storage facility, television station or transport terminal."

council means the governing body of the Far North District Council, or any person delegated to act on its behalf.

industrial has the same meaning as in schedule 1 of the Building Regulations 1992.

Related information

As at 01 January 2017, the definition is: "Applies to a building or use where people use material and physical effort to:

- (a) extract or convert natural resources,
- (b) produce goods or energy from natural or converted resources,
- (c) repair goods, or
- (d) store goods (ensuing from the industrial process).

Examples: an agricultural building, agricultural processing facility, aircraft hangar, factory, power station, sewage treatment works, warehouse or utility."

mechanical system means a system designed for the disposal of wastewater that operates in a mechanical way, and is driven by a power source, and is not a conventional septic tank, or similar type system.

on-site wastewater disposal system means:

- (a) any system for the reception and disposal of wastewater, including any septic tank, mechanical system, alternative system, greywater system, cesspit, drainage or soakage pit or bore; and,
- (b) the field tiles, scoria, or stone contained therein; and,
- (c) distribution bore, discharge field or soakage field that is a part of, or is connected to, any such system.

owner has the same meaning as in section 2(1) of the Local Government Act 1974

Related information

As at 22 October 2019, the definition is: "... in relation to any property, means the person entitled to receive the rack rent thereof, or who would be so entitled if the property were let to a tenant at a rack rent."

suitably qualified person means any person recognised by the Council as being suitably qualified to prepare appropriate reports and assessments for On-Site Wastewater Disposal Systems.

Related information

The current list of approved suitably qualified persons for assessment and effluent removal can be found on the Council's website under Onsite Wastewater disposal. Person(s) seeking Council approval as suitably qualified for Onsite Wastewater disposal services can apply on the Council's website under Onsite Wastewater disposal.

Examples of suitably qualified persons are:

- installers of the on-site wastewater disposal system; and
- industry service technicians; and
- persons recommended by the manufacturer of the on-site wastewater disposal system; and
- appropriately trained, experienced professional maintenance contractors

(2) The Interpretation Act 1999 applies to this bylaw.

Part 2: Maintenance Requirements

Related information

As part of the consenting processes all on-site wastewater disposal systems are required to have a manufacturer's maintenance and operation manual which the owner of a property or their agent is required to follow. Further resources on on-site wastewater disposal systems can be obtained from Northland Regional Council.

7 Owner is responsible for maintenance

- (1) The owner of the land where an on-site wastewater disposal system is located must:
 - (a) operate, clean and maintain the system to ensure the system does not cause a nuisance or endanger public health; and
 - (b) comply with clause 8.
- (2) The owner of land, on which an on-site wastewater disposal system is installed, must provide evidence to the council that a suitably qualified person has certified the on-site wastewater system is functioning in accordance with the manufacturer's maintenance and operation manuals. The owner will supply this evidence within 28 days of the system being assessed.

8 Maintenance of systems

- (1) Except as provided in subclauses (2) and (3), an on-site wastewater disposal system must be assessed by a suitably qualified person at least every five years.
- (2) Except as provided in subclause (3), if an on-site wastewater disposal system is installed on a commercial or industrial property, the system must be assessed and maintained by a suitably qualified person –
 - (a) in accordance with the manufacturer's maintenance and operation manual; or
 - (b) at least every three years.
- (3) If an on-site wastewater disposal system is –
 - (a) a mechanical system; or
 - (b) an alternative system –the assessment and maintenance must be carried out by a suitably qualified person at least once every year in accordance with the manufacturer's maintenance and operation manual.
- (4) If an assessment under this clause determines any physical work is required to ensure the onsite wastewater system is functioning correctly, that work must be undertaken within 28 days of the assessment.
- (5) Council may inspect on-site wastewater disposal system to protect public health or prevent nuisance -
 - (a) If the council has not received the certificate required in clause 7(2), the council may send a written notice to the owner requiring the owner to provide evidence that the required maintenance work has been carried out

and giving the owner 28 working days to comply;

- (b) If the owner does not comply with subclause (a), the council may inspect the on-site wastewater disposal system under section 172 of the Local Government Act 2002 to determine whether this bylaw has been complied with;
- (c) If an inspection under subclause (b) provides evidence the on-site wastewater disposal system has not been maintained, the council may, by written notice, require the owner to carry out work specified in the notice and give the owner 28 working days to comply;
- (d) If the owner does not comply with a notice given under subclause (c), the council may carry out the work required and recover any costs incurred under section 186 of the Local Government Act 2002.

Related information

If the council is satisfied an on-site wastewater disposal system is dangerous, affected or insanitary, the council can use its powers under section 124 of the Building Act 2004, including issuing a notice requiring work to be carried out.

Part 3: Offences and penalties

9 Offences

Any person who breaches this bylaw commits an offence under section 239 of the Local Government Act 2002.

Related information

Examples of breaches of this bylaw include:

- failing to provide Council with an on-site wastewater system maintenance certificate within the specified timeframe(s) at clause 7; or
- failing to perform necessary repair work identified by a suitably qualified person during the maintenance assessment of the on-site wastewater system; or
- failing to comply with Council notices to remedy, repair and/or maintain the on-site wastewater system.

10 Penalties

A person who is convicted of an offence of breaching this bylaw is liable to a fine of up to \$20,000 under section 242 (4) of the Local Government Act 2002.