

8.4 EXCAVATIONS AND PLACEMENT OF FILL

8.4.1 BACKGROUND

Section 9(4) of the Act includes the following "uses" in relation to land:

1. any **excavation**, drilling, tunnelling or other disturbance of the land.
2. any **deposit** of any substance in, on or under the land.

Many land use activities involve excavations and placement of deposits in the form of fill on land. In most circumstances such activities are considered to constitute part of the operation of the use. Where the use concerned (**say farming, forestry etc**) is permitted as of right, the various activities involving excavations/filling are seen as part of that operation and are likewise permitted as of right eg digging offal holes, putting metal on races, constructing tracks, digging drains (private) on farms, establishing silage pits, land cultivation (including "hump and hollow" formation), obtaining small amounts of gravel/sand for on farm use, wintering pads, etc. Other situations eg **road works** would normally require a resource consent except where the work is within the road reserve (discretionary activity or designation) and any aspects of concern regarding the works can be addressed through that process.

Further, the management of the principal effects of some excavations are primarily the responsibility of the Waikato Regional Council. This includes ground clearance, soil erosion, water quality control, where excavations such as land clearance, recontouring, establishment of stock watering ponds etc are involved. Such activities may form part of forestry or farming operations and as such are permitted as of right in the District Plan. Nevertheless resource consents from the Region may be necessary in some circumstances eg proposed changes to the Transitional Regional Plan provide for earthworks on Class VIII land as a non-complying activity.

Particularly in an urban context the management of excavations and fills on land is generally handled through either:

- Other legislation, in particular the Building Act 1991 in terms of which site works (including earthworks) require approval by Council as part of the building consent.
- The subdivision of land procedures under the Resource Management Act 1991 eg conditions of subdivision consent relating to filling, compaction, protection against erosion, slippage etc and requirements that a completion certificate confirm the works have been undertaken in conformity with such conditions.

It should also be recognised that excavations or fills on one property may affect the adjoining property (fence might fall over, trees die etc). So long as such activities fall within the general scope of an activity permitted on the land, any such disputes are to be treated as civil matters. However, should an excavation/fill in say a residential area relate mainly to an off site business which is not a permitted activity in the area, control in the Resource Management Act 1991 is available (abatement notice, enforcement order etc).

On occasions surplus cut material from road works needs to be disposed of. Such material normally comprises clean topsoil/subsoil and is valued by farmers to fill gullies, depressions etc. The disposal of such material is not considered by the Council to require a land use consent (however resource consents from the Regional Council may be required).

There are however excavations and fill placements which are of concern to Council and which are best managed through the District Plan. These fall essentially into two categories:

- Where excavations cease to be minor works which are part and parcel of the principal land use (generally farming) and effectively become an **extractive industry**.

- Where imported spoil of various sorts is being used to fill gullies/depressions etc where this is not provided for as a refuse landfill.

A distinction can be drawn between undertaking excavations and placing of fill which is sourced from within the same property as against importing large amounts of fill from another area. The former is likely to be part of a normal farming operation and no management by Council is considered necessary.

8.4.2 RESOURCE MANAGEMENT ISSUES

The principal resource management issue is to ensure that some measure of control is exercised through the District Plan where large scale excavations and fills are undertaken and not managed through subdivision or building consent procedures and are not ancillary to normal permitted land use activities. Particularly in an urban context, it is important that Council be informed regarding the placement of fill especially where substances other than clean topsoil/subsoil is used.

Small scale excavations and fills are regarded as a legitimate part of normal farming, forestry or other permitted land use activities. Other than where very small volumes are involved, excavations of minerals for use on other than the property of source (defined for the purposes of this section as a separate valuation reference) are treated as extractive industry.

8.4.3 ANTICIPATED ENVIRONMENTAL RESULTS

The resource management outcome sought is to ensure Council is fully informed regarding the placement of significant volumes of imported fill and is able to manage the placement of fill which does not comprise clean topsoil/subsoil and demolition rubble. The effects of the placement of significant volumes of fill will be managed by Council to ensure the amenities of the area concerned are not compromised and that future building activity is not compromised. Council also wishes to ensure that excavations for mineral extraction where this involves the movement of significant volumes off the property of source are treated as extractive industry.

8.4.4 OBJECTIVES AND POLICIES

Objective 1

To recognise that excavations and fills are undertaken as part of legitimate land use activities (eg associated with forestry, farming, land subdivision, building construction).

Policies

Objective 1 will be achieved by the implementation of the following policies:

1. Not requiring any land use consents beyond any applying to the principal activity where excavation and fills are undertaken as part of land use activities provided for in the zone.
2. Accepting that, in the Rural zone, minerals may be excavated for end use on the property of source without the need for any land use consent from Council.
3. Accepting that fill material sourced on a property may be moved to another location on that property without the need for a land use consent from Council.

Reasons

1. Many excavations and fills are managed through land subdivision and building consent procedures. There is no need for any further management of these activities. Excavations and fills are often undertaken as part of legitimate land use activities and Council does not consider there is any need for management other than where volumes of material are being transported from one property to another and the excavations have become, in effect, a mine.

2. It is noted that some excavations/fills will require authorisations from the Waikato Regional Council notwithstanding that no land use consent is required under the District Plan.

Objective 2

To enable clean surplus fill from road works to be disposed of in Rural zones.

Policies

Objective 2 will be achieved by the implementation of the following policies:

1. Accepting that in Rural zones the disposal of surplus **clean** fill from roadworks is a matter of negotiation between landowner and roading authority. Council is to be **informed** where larger volumes (over 2000m³) of clean material are placed.

Reasons

1. Surplus clean fill from roadworks is a valuable resource for farmers for filling depressions etc. Council does not consider any land use authorisation is required so long as the fill is clean. However, large volumes of fill, if not properly compacted may cause problems of land instability. For this reason, Council wishes to be **informed** where large volumes of fill are placed on rural land.

Objective 3

To ensure that excavations are not permitted to develop into commercial mines.

Policies

Objective 3 will be achieved by the implementation of the following policies:

1. Treating excavations to acquire minerals including topsoil, sand, gravel etc in volumes beyond a purely "domestic" scale as extractive industry where transportation off the property of source is involved.

Reasons

1. Excavations to acquire gravel or sand etc are frequently undertaken as part of legitimate land use activities and the material is used on the property of source. If excavations for such minerals result in the transportation of the material off the property of source, this is no longer part of the legitimate land use and has become another activity all together. The scale of the activity is likely to increase and effects will occur including greater noise, dust, vibration, visual effect, traffic and rehabilitation issues.

Objective 4

To ensure that only clean imported fill is placed on sites.

Policies

Objective 4 will be achieved by the implementation of the following policies:

1. Treating the placement of fill material other than cleanfill as a landfill operation and requiring consideration by the consent procedures specified for this activity.

Reasons

1. The environmental effects of the placement of other than clean fill require consideration in a systematic manner by application procedure.

Objective 5

To ensure Council has a record of where significant volumes of clean imported fill is placed on sites particularly in urban areas.

Policies

Objective 5 will be achieved by the implementation of the following policies:

1. Requiring that Council be **informed** where medium volumes of imported clean fill comprising topsoil/subsoil and demolition rubble are placed on any property.
2. Requiring Council consent to a discretionary or non-complying activity to place large volumes of imported clean fill comprising topsoil, subsoil and demolition rubble on any property.

Reasons

1. To enable Council to ensure that property records show where areas have been filled and also to enable Council to ensure that the fill is indeed "clean". Where large volumes of material are involved, assessment by a discretionary activity application is appropriate to enable Council to assess traffic, noise, dust, compaction proposals, rehabilitation measures, effects on watercourses, etc.

8.4.5 METHODS TO IMPLEMENT OBJECTIVES AND POLICIES

- By Rules in the District Plan.
- By Council providing advice.
- Council's Land Information System to incorporate details regarding any significant filling known to have been carried out on a site.

8.4.6 ACTIVITIES

The rules applying to excavations and fills are set out in the particular zones.