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# Executive Summary

All councils surveyed had rules in their district plans limiting how close buildings can be constructed to the front boundaries of residential sections (front yard setback controls). Despite this, almost all resource consent applications (applications) for non-compliance with these controls were approved without notification. Less than half of these consents had conditions attached to them. This virtual “rubber stamping” of applications brings into question the need for the controls, their effectiveness, and the justification for the application fees .

## Aims and design of the project

This project aimed to assess the effectiveness of front yard setback controls and whether they are achieving the environmental outcomes anticipated. The time and costs spent on applications for non-compliance with these controls has also been considered.

Nine district councils were chosen for the study. From these councils a total of 94 applications dealing with setbacks in residential areas were selected. The objectives, policies and rules related to setback controls were extracted from the proposed district plan (district plan) of each council.

## Summary of Key Findings

- Ninety-eight percent of the applications were approved.
- Ninety-eight percent of the applications were non-notified.
- Forty-seven percent of the applications had conditions of consent placed on the consent approval.
- Forty-eight percent of the applications assessed were for garages or carports within the front yard.
- Fifty-two percent of the applications were for dwellings or additions in the front yard.
- Approvals from affected parties were not required for 25 percent of the applications.
- No assessment of environmental effects information was initially provided by the applicant in 9 percent of the applications.
- Fifty-seven percent of the officers’ reports referred to specific objectives and policies of the relevant district plan in reaching the decision on the application.

- Nineteen percent of the applications dealing solely with front yard setback (setback) non-compliance went over the 20 working day time period for processing non-notified applications.
- Application fees vary widely between \$90 and \$500. The average charge was \$280.
- All nine district plans had objectives and policies which generally related to bulk and location controls (of which setbacks is one).
- Five district plans had a clear explanation for the setback controls.
- Three district plans had specific assessment criteria for determining applications for setbacks.
- The general setback permitted in district plans ranged between 3 and 6 metres.
- The environmental outcomes within the district plans used broad statements which relate to all general bulk and location controls.

# Section One

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## Introduction

The district plans of many territorial authorities contain controls on the size and positioning of structures on residential sections. Included in these are “setback controls” which define how close to the front boundary buildings can be constructed.

This project has been undertaken as part of the Ministry for the Environment’s work programme “Resource Management Act Improvements in Practice and Performance”. To enable the Ministry to assess performance under the Resource Management Act, it is undertaking case studies covering aspects of the Act regularly applied by local government, reporting on comparative results, and identifying good practice.

This case study looks at different aspects of having setback controls in district plans. It asks what environmental outcomes are desired from setback controls, if this is being achieved with these controls, and the time and cost spent administering these controls.

Although the focus of this study is confined to the specific issue of setback controls, the project is designed to encourage councils to look at other controls in their district plans and ask whether they are achieving the environmental outcomes anticipated when they were put in place. Another consideration is whether the council processes for dealing with these controls are fair and reasonable given the nature of the environmental effect they seek to manage.

The issues considered in this project are:

- whether there are clear and linked district plan objectives, policies and controls
- whether consideration has been given to the relevant objectives and policies when deciding a application
- whether the administration of controls within a council is consistent
- what time and cost is associated with considering applications
- whether these controls are necessary to achieve the environmental outcomes anticipated, and avoid the environmental effects that could result from non-compliance with these controls

Melvin M. Webber in a paper titled “Comprehensive Planning and Social Responsibility”<sup>1</sup> states:

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<sup>1</sup> Contained in Andreas Faludi “A Reader In Planning Theory” (Pergamon Press 1973) 98

*“Although it is true that we have over-estimated the roles that buildings play in shaping social behaviour, it is nonetheless also true that some aspects of the physical environment can bring appreciable direct benefits to the city’s residents. Imaginative and carefully designed buildings, streets, and open spaces are in themselves direct rewards of an advanced society; and the visual qualities of the physical environment warrant considerably more attention than they have been receiving. The beautiful city remains a goal we have yet to achieve.”*

This comment leads us to consider whether such district plans controls are a means of working toward achieving a “beautiful city”, or are there other reasons for these controls? Are they in fact imposing unnecessary time and cost delays by not achieving any particular environmental outcome?

## Section Two

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### Why are there front yard setback controls?

The following gives a perspective on setback controls by outlining the potential reasons for them.<sup>2</sup>

#### Visual Character

Setbacks can determine the visual character of an area. If buildings are located against the street there may be a feeling of enclosure. There are many examples throughout the world where houses are built to the front boundary, including Greek whitewashed houses, English terrace houses and Venetian apartments. There are also some New Zealand examples of residential buildings located up to front boundaries.

The usual situation in New Zealand, however, is for a setback from the front boundary, even though it may be small. This could be a reflection of New Zealanders' desire for open space and sunlight. Visual openness can also be achieved through wide footpaths and road carriageways.

Once the character of an area has been established by the alignment of its buildings, the community must decide whether future activities should retain their character. If the character is to be retained, setback controls may be needed. The issue of character is more focused in heritage areas.

#### Open Space and Amenity

A setback in the front yard provides open space about a building. Traditionally the front of the house is the entrance, and generally most people have a desire to present as good a facade as possible. The front yard may be planted and landscaped, or may have a more practical use of allowing space for garaging, or for play. The landscaping (or lack of it) in front yards creates a definite vista or outlook.

Where there is a tradition of landscaped front yards, any different approach will look incongruous. Evaluation of the aesthetic effect of this depends on personal taste.

Setbacks also minimise the effects of buildings overshadowing neighbours and roads, and prevent buildings creating a tunnel effect. They increase the privacy

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<sup>2</sup> The reasons defined in the district plans analysed for having setback controls are set out in the Section Four - District Plan Controls

of neighbours, and ensure that the buildings are not overbearing for pedestrians and those across the road. Setbacks may reduce the risk of fire spreading between buildings.

## **Traffic and Pedestrians**

Many district plans require garages to be set back from the front boundary. This may be to allow space for a garage without it interfering with pedestrians or traffic. Setting the house or garage back should provide adequate on-site maneuvering to enable vehicles to leave the site going forward rather than reversing out onto the road. Setbacks are also required to ensure road traffic has unrestricted visibility and to provide a buffer between the traffic and the building. This buffer reduces traffic noise for residents inside the house, and provides safety for residents should a vehicle leave the road and enter the property.

Setbacks also ensure that windows and doors do not open onto the footpath and interfere with pedestrian movement

# Section Three

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## Methodology

### Council selection

For logistical reasons the report concentrated on larger 'urban' authorities. A range of councils agreed to participate in the study and of these the following nine urban councils were selected:

1. North Shore City Council.
2. Auckland City Council.
3. Manukau City Council.
4. Wellington City Council.
5. Hutt City Council.
6. Porirua City Council.
7. Dunedin City Council.
8. Nelson City Council.
9. Christchurch City Council.

The original intention in choosing councils for the study was to use a wide range of urban, rural, territorial and unitary authorities from throughout the country. This however imposed a number of limitations such as geographic constraints, time and cost of visiting remote councils, and the fact that many rural authorities did not have enough current data.

### Collection of Data

Each council was visited by a Ministry for the Environment official. The main contact within each council was a senior consent planner.

## Data Sheet Design

The following data was sought from each district plan chosen for the study:

- the residential area description
- the objectives and policies for the residential area of the district
- the rules for front yard setback controls in the residential area
- assessment criteria for these rules

Approximately ten resource consents dealing with front yard setbacks were selected from each council. The following data was sought from each of these files:

- resource consent application form, including any assessment of environmental effects submitted by the applicant
- letter of acknowledgment from council advising applicant they had received the application
- further information requests from the council to the applicant
- officers' report showing assessment of the application and the recommendation
- invoice
- letter advising the applicant if consent was approved or declined

## Data Analysis

### District Plan Objectives and Policies

- whether there are appropriate objectives and policies in the district plan and if so, whether they be clearly linked to setback controls
- reasons in the district plan for setback controls
- consent category which an activity is placed if the permitted activity standards can not be complied with
- analysis of any assessment criteria for the setback controls

## **District Plan Controls**

- reasons set out in the district plans for having setback controls
- whether this justification clearly relates to the reasoning in officers' reports for approving applications and the conditions placed on the consent

## **Resource Consent Applications**

- type of activities requiring consent (for example: garage, dwelling, additions)
- whether the applications were notified or non-notified
- whether affected parties approvals were required and the extent of these approvals
- whether consideration was given to the objectives and policies in the district plan
- the adequacy of the assessment of environmental effects provided by the applicant
- whether the district plans set out the assessment criteria used for assessing resource consents applications for non-compliance with setbacks
- whether the application was approved or declined and the reasoning for this decision
- whether any conditions were imposed on the resource consent approval, and the nature of those conditions
- the costs of the application including any monitoring fees
- the number of days taken to process the application
- whether there is consistency in administration of the setback controls within each council
- the consent category for non-compliance with setback controls
- the range of setback distances in the district plans
- whether the district plan states the environmental outcomes it seeks from having these controls

## Limitations

This analysis of district plan objectives, policies and controls did not include an analysis of the consultation undertaken with the community, or look at the submissions made to these parts of the proposed plans. Many of the district plans reviewed are only at the proposed stage, it is uncertain whether changes will occur to the objectives, policies and controls regarding setbacks in these plans.

The study focuses on residential areas within urban areas. There has been no analysis of similar controls in smaller or more rural councils. The findings of this study, however, are transferable to the rural situation.

No consultation has been undertaken with the applicants whose resource consents were analysed as part of the study. Many of the resource consents analysed included non-compliance with other controls in addition to the front yard setback controls. Consequently, in some circumstances, the time and cost of the application is difficult to attribute directly to setback controls. It was also difficult to determine from the officers' reports the importance of front yard setback controls in the consideration of the total application. Accordingly, wherever possible the report focuses on the applications which only involve non-compliance with setbacks controls.

An important aspect to consider when considering the findings in this report is the influence that various players may have had on potential applications. Although the majority of the applications were approved without conditions, this may be because council staff, architects, builders, or the like, dissuaded applicants from applying for consent (saying that the application would not be approved). Alternatively, they may have encouraged applicants to submit altered plans that had a better chance of being approved. Hence the high approval rate. Application fees, and the plain fact that an actual rule exists, are also aspects to be considered that may have deterred applicants from applying for consent, or submitting plans that do not reflect the original design.

Finally, there is the issue of private settlement or agreement. If such is reached between applicants and affected persons (generally neighbours) then the affected persons forms would be signed with little genuine regard had to potential adverse environmental effects.

# Section Four

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## Findings

### District Plan Objectives and Policies

This highlights the key issues found in the objectives, policies and controls in the district plans relating to setback controls.

#### **Are there appropriate objectives and policies to justify the controls?**

All nine district plans had objectives and policies on the following:

- diversity of living environments based on different characteristics
- recognition of the relationship of open space and buildings (including providing opportunities for garden plantings)
- the need for privacy, outlook, sunlight or views
- the desire for a high level of amenity (achieved through considering size, scale, proportion, unity, coherence and style of buildings, and minimising the effects of traffic noise on residents)
- maintaining and enhancing streetscape (landscapes should not be dominated, intrusiveness should be minimised, attractive appearance, heritage issues, avoiding the tunnel effects of buildings)
- maintaining safety and visibility for traffic and pedestrians

All district plans had objectives and policies which related to the need to control bulk and location of buildings. The explanations for the objectives and policies all referred to amenity and character. This allowed a general link to be established to the controls on setbacks. The link however, was not always explicit.

This linkage between objectives, policies and controls was clearly lacking in the majority of officers' reports on the applications for non-compliance with setbacks. Many of the officers' reports (57 percent) did not identify the objectives and policies that were relevant in considering the application.

This lack of reference to objectives and policies in the officers' reports may be due to objectives and policies which are unclear, thereby providing little guidance for the rationale of having setback controls.

# District Plan Controls

## Reasons for front yard setback controls

The district plans contained the following reasons for setback controls:

- set visual character
- reduce the impact of buildings (scale)
- allow space for gardens and landscaping to screen activities
- provide a pleasant outlook
- provide an open vista when viewed from the street
- provide for special amenity areas e.g. mature landscaping; heritage areas, a consistent street scene, and public open space areas
- provide a transition from rural to urban areas
- provide adequate vehicular maneuvering area, and space for cars to park off the street
- provide a noise buffer from traffic on main roads
- provide a setback from power pylons for health reasons

The Auckland, North Shore, Christchurch, Wellington, Manukau and Nelson district plans have a clear explanation for the setback controls within the rules section of their respective district plans. Nelson City Council's explanation for the controls was particularly clear. Detailed reasons for specific controls are provided and this gives district plan users a clear understanding of the rationale for the controls.

Dunedin City's district plan had a zone description which defined the type of amenity character to be retained in each area.

## **Reasons for approving resource consent applications**

It is evident that approving applications for non-compliance with setback controls is the norm (98 percent). The most often cited reasons for approval were:

- steep topography
- existing buildings which limited the area available for extensions or new buildings

This raises the question of how well the district plans recognise the actual physical characteristics of a district. There is little point in requiring setbacks if they are not able to be complied with due to unsuitable (for example, steep) topography. As a result:

- many applications will be lodged seeking approval to deviate from the setback
- building design is constrained, and the resulting design may not be the best one possible for the site
- the constant approval of non compliance will start to undermine the integrity of the district plan provisions
- it calls into question whether the district plan is an accurate reflection of the community's desires

One approach may be to recognise specific areas based on their physical characteristics in the setbacks of district plans.

Manukau, North Shore, Christchurch, Auckland and Dunedin have a number of residential areas or zones. This is a useful approach to differentiate between areas based on their characteristics and accordingly, the setback controls differ in each zone.

## **Conditions**

Where conditions are placed on the consent these tend to relate to:

- the need for landscaping (either retaining existing landscaping or planting new vegetation)
- ensuring the design and appearance of the building is in keeping with neighbouring buildings or other buildings on the site

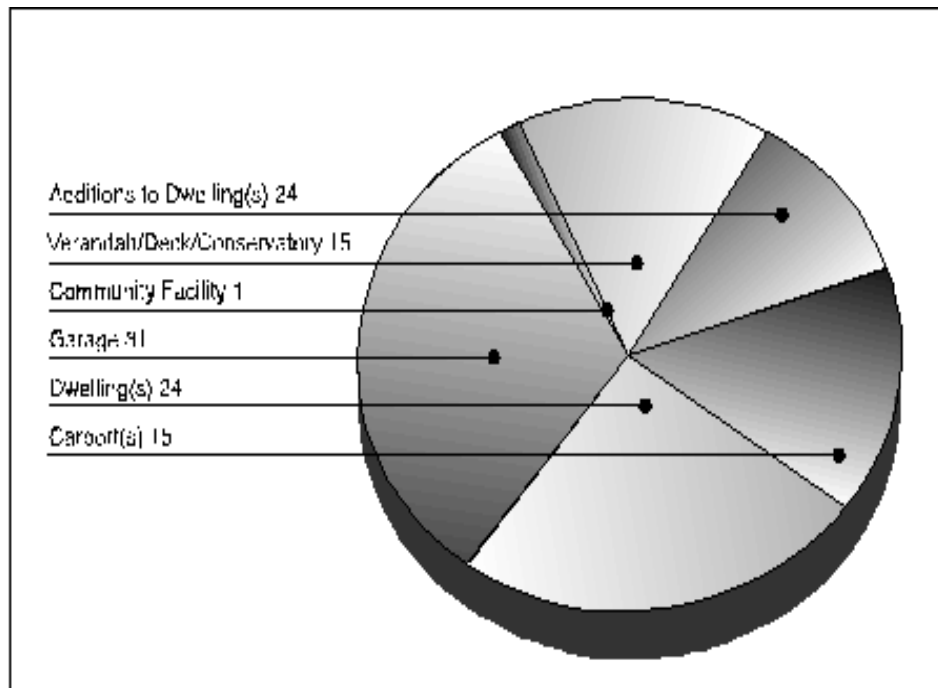
Most district plans however, did not have performance standards directly targeting the issues of landscaping or design and appearance. In Auckland there are standards for landscaping in the front yard.

# The Resource Consent Applications

This section provides an analysis of the 94 applications that were collected for the study.

## Type of activities

Table 1



Note: Some applications related to setbacks for more than one activity. For example; a garage and a dwelling. In these situations each separate component has been identified above.

Nearly half of the applications were for garages or carports in the setback. The other half were for dwellings or additions to dwellings in the setback.

## **Notified or non-notified**

92 of the 94 applications were non-notified. The two notified applications were:

### *Wellington City Council*

The consent of the affected party could not be obtained and therefore the application was notified. Consent was required for non-compliance with several controls (i.e. not just the setback). The application was approved.

### *Porirua City Council*

This application involved a dwelling to be located 0.6 metres from the front boundary which also intruded into the height recession plane. The application was notified after affected neighbours would not give their consent. Four submissions were received. An independent commissioner approved the application subject to conditions including requiring a 2 metre setback. The application was appealed to the Environment Court and was finally settled through consent order.

As 92 applications were non-notified it seems reasonable to assume that the councils were satisfied that the tests of section 94 of the Resource Management Act had been met. The degree to which the applications are dealt with on a non-notified basis suggests there were not wide effects on the environment which required notification. This aspect is important to consider later in the report where there is discussion on the reasons for approving or declining applications.

## **Affected parties approval**

Affected parties approval was sought for 75 percent of the non-notified applications.

Where affected party approvals were required, this generally only involved the immediately adjoining neighbours. Data showing the exact number of affected parties for each consent was not collected.

Many of the officers' reports cite "no effects on streetscape" as a reason for granting consent. Maintenance of streetscape is one of the assessment criteria contained in a number of the district plans. If only immediately adjoining neighbours are approached as affected persons it calls into question the degree to which wider streetscape matters are an issue.

Adjoining neighbours (who are largely those deemed to be affected) are signing the affected party approval forms. Only two applications were notified because affected parties would not sign the approval forms. It is difficult to say what considerations are taken into account in the signing of the forms. Presumably though the neighbour is happy that they will not be adversely affected by the development, or alternatively, that some sort of private agreement was reached.

## Consideration of objectives and policies

It is difficult to quantify the number of councils who specifically identify the district plan objectives and policies in the officers' reports. The difficulty is a result of inconsistency within the same council in their report writing. Only in some instances would an officer's report clearly articulate the objectives and policies being considered. Other reports (from the same council) only state that the objectives and policies have been met and provide no further elaboration. This is a result of different writing styles for officers' reports. The following shows whether objectives and policies were considered in officers' reports:

**Table 2**

Local authority	Specific mention of objectives & policies	General statement that objectives & policies met	No mention of objectives & policies	Total number of applications reviewed
North Shore <sup>1</sup>	4	3	2	9
Auckland	5	4	1	10
Manukau	1	1	8	10
Wellington	3	5	2	10
Hutt <sup>2</sup>	-	-	-	-
Porirua	8	3	-	11
Dunedin <sup>3</sup>	8	1	-	9
Nelson <sup>2</sup>	-	-	-	-
Christchurch	3	7	-	10
<b>Total</b>	<b>32</b>	<b>24</b>	<b>13</b>	<b>69</b>

<sup>1</sup>One application did not have an officers' report on the file

<sup>2</sup>Officers' report not available - only notice of decision

<sup>3</sup>Four applications did not have an officers' report on file

Less than half of the officers' reports reviewed refer to specific objectives and policies. One key finding is that officers' reports need to be consistent and should make reference to the specific objectives and policies being considered. This provides justification and reasoning for the decision on the application.

Christchurch has a good format for officer reports dealing with non-notified applications. Dunedin and Auckland have helpful and informative officer report formats for section 94 determination on whether the application needs to be notified.

The majority of officer reports from Manukau, North Shore and some of Christchurch are hand written and approximately one page in length. If approval of consent is recommended this calls into question the need for the setback controls and the justification of the fees charged. On the other hand it is questionable whether this level of assessment would be adequate to withstand scrutiny in the Environment Court.

## Assessment of Environmental Effects (AEE)

Table 3

Local authority	No AEE	Minimal AEE	Detailed AEE	Number of AEE's received	Total number of applications reviewed
North Shore	-	-	5	5	10
Auckland	1	4	3	8	10
Manukau	-	3	1	4	10
Wellington	-	2	7	9	10
Hutt	-	7	3	10	10
Porirua	1	7	2	10	11
Dunedin	3	8	2	13	13
Nelson	-	1	-	1	10
Christchurch	1	6	1	8	10
<b>Total</b>	<b>6</b>	<b>38</b>	<b>24</b>	<b>68</b>	<b>94</b>

Table 3 shows that only 72 percent of the applications reviewed had AEE's supplied by the applicant. Of these, only 35 percent were considered detailed enough to enable a thorough assessment of the application.

The lack of sufficient AEE's may reflect the view of the community that applications seeking a reduction in setbacks are insignificant. Certainly many councils had to request further information from applicants in order to allow them to adequately consider any adverse effects.

Many of the requests for further information did not clearly set out the issues that needed to be addressed by the applicant. For example, should the applicant focus on the wider streetscape issues, traffic issues, effects on adjoining neighbours and so on. In addition, it would be useful if district plans showed clear cross referencing from the setback control to the associated objectives and policies. This would allow applicants to understand the rationale for the control.

Resource consent application forms which provided a space after the requesting that an AEE be provided, or provided specific details of the information required, received a good response rate. Wellington and Dunedin produced particularly good forms.

Applicants need to have clear information on what is expected of them in their assessment of environmental effects. Assessment criteria should be set out in district plans to provide a clear idea of the circumstances in which consent may be granted.

## Assessment Criteria

Christchurch, Wellington and Nelson district plans had specific criteria for assessing applications for setback infringements. The assessment criteria include:

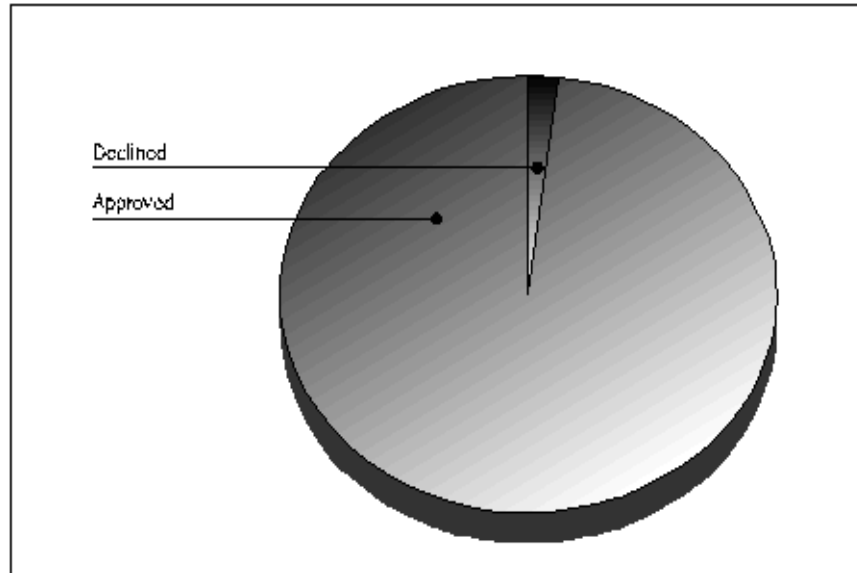
- allow efficient, practical and pleasant use of the site
- provide for the protection of trees or the provision of garden and tree planting
- avoid detracting from the pleasantness, coherence, openness (including public vistas), and attractiveness of the area and streetscape including relationship with other buildings
- issues relating to screening, outlook, privacy, sunlight
- adequacy of parking and effects on traffic and pedestrian safety
- compatibility of appearance (including special amenity areas)
- factors in the surrounding environment (including the existence of road reserve and the location of the formed carriageway)
- whether a better standard of development is achieved
- whether topography imposes constraints

Auckland's district plan has general criteria which applies to any application seeking to modify one or more of the provisions described as development controls. Manukau's district plan had general criteria relating to effects on traffic and amenity values.

Assessment criteria in district plans are useful as they provide a clear idea of the circumstances in which consent may be granted, thereby providing certainty for both those administering the plan and the public.

## Approved or declined

Table 4



98 percent of all applications assessed were approved. The reasons given for approving consent are:

- no adverse effects on the safety and efficiency of the road, or the safety of pedestrians (for example, from cars reversing out of the site, from windows and doors overhanging the road or from cars parking on the footpath)
- steep topographic constraints or the location of existing buildings constrained development elsewhere on the site
- no adverse impact on streetscape (for example, there were other garages in the front yards or other dwellings at the same setback)
- adjoining neighbours signed the affected party approval forms
- vegetation screened the activity (either existing or proposed vegetation)
- the activity was set back from the road because of an existing wide road berm
- minor visual impacts no affect on privacy, views, sunlight or outlook; or in keeping with the house and surrounding residential or heritage activities and character
- better use of the site (for example, orientated to the sun)

Both applications that were declined were dealt with by North Shore City Council. The first application involved a garage and studio sleepout proposed to be located on the front boundary. The application also infringed the height in relation to boundary and floor area controls. Approval by the immediately adjoining neighbours was obtained. The application was assessed as a non-complying activity as the activities exceeded the 50m<sup>2</sup> building floor area (actual area 50.75m<sup>2</sup>) although the building floor area was not a major factor in assessing the application. The front yard infringement by itself would have made the activity a limited discretionary activity.

The second application declined was for a garage which was to be setback four metres from the front boundary. The garage also infringed the height in relation to boundary control and there were already two existing single garages on the site. The decision was appealed to the Environment Court (lodged by the applicant). The matter was settled through a consent order with the agreement that a double carport would be erected rather than a double garage.

The reasons given for declining the applications were:

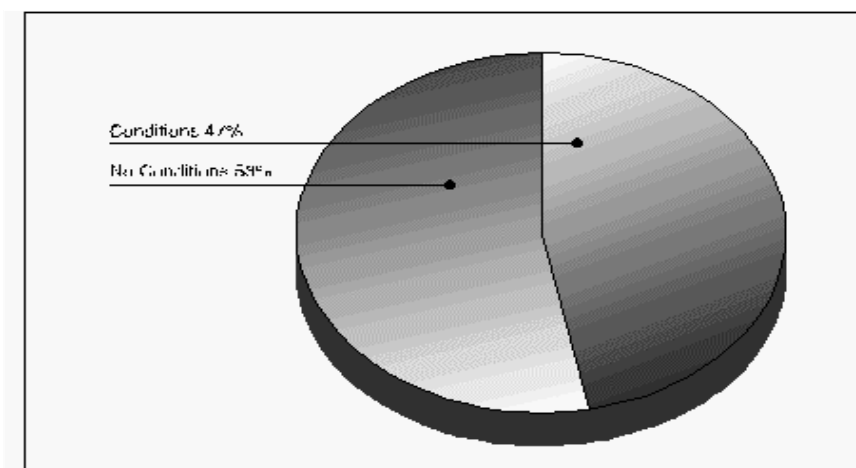
- inadequate screening
- visually dominant
- detracted from the character and dominates the streetscape
- adversely affects the living areas of the house on the application site
- affects pedestrian safety

North Shore City Council did approve one other application for a double garage or carport. The officer's report stated that the site characteristics were unique, other garages in the same street were located on the street boundary, and existing vegetation provided screening.

## Conditions

Nearly half of the applications considered had conditions placed on the resource consent approval.

**Table 5**



Those resource consents which did not have conditions imposed may have had conditions unrelated to the setback placed on them. These have not been considered in the report but include conditions relating to monitoring, paying of administrative fees, and undertaking the activity in accordance with the plans submitted.

**Table 6**

Local Authority	Conditions	No Conditions	Applications Reviewed
North Shore <sup>1</sup>	3	5	8
Auckland	5	5	10
Manukau	10	-	10
Wellington	5	5	10
Hutt	5	5	10
Porirua <sup>2</sup>	2	9	11
Dunedin	2	11	13
Nelson	5	5	10
Christchurch	6	4	10
<b>Total</b>	<b>43</b>	<b>49</b>	<b>92</b>

<sup>1</sup>Two applications were declined therefore only 8 and not 10 applications are considered for North Shore.

<sup>2</sup>The rest of the applications for Porirua has conditions relating to notifying the Compliance Officer when the buildings was finished, and that activities be in accordance with the plans submitted.

*The conditions imposed covered the following matters:*

- landscaping
- a different setback from that being sought in the consent
- placement or width of the kerb crossing
- colour of material or type of materials used for the buildings
- garage to have roller doors
- no buildings over easements
- the design to be similar to the existing house
- controls on the extent of excavation

53 percent of the applications had no conditions placed on them (relating to non-compliance with the setback control). The messages that can be read from these figures is that with the majority of applications:

- no action was necessary to mitigate effects on the environment
- adjoining neighbours were required to give their approval there were no wider adverse environmental effects that warranted mitigation
- the applicants were able to design buildings which adequately mitigated effects on the environment

The setback controls may have encouraged people to set buildings back from the street where they could have otherwise designed buildings carefully and modified designs to accommodate neighbours concerns. Justification for charging an application fee, and in some cases an additional monitoring fee, (just to make sure the building is built in accordance with the plans submitted) is highly questionable.

## Costs

The councils had a mixture of either a fixed fee or a time cost charging regime. The average charge for non-notified applications at each council were as follows:

### *Application fee*

The following tables show the range of resource consent applications fees from the councils surveyed:

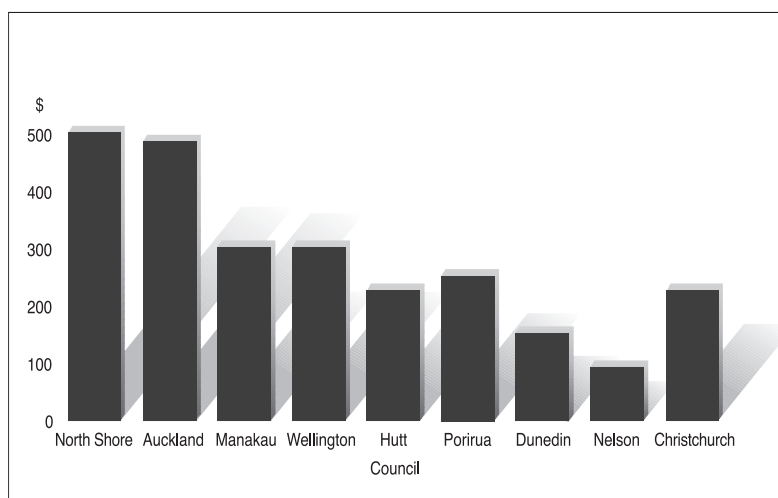
**Table 7**

Local authority	Cost of consent \$
North Shore	500
Auckland <sup>1</sup>	485
Manukau	300
Wellington	300
Hutt	225
Porirua	250
Dunedin <sup>2</sup>	150
Nelson	90
Christchurch	225
<b>Average</b>	<b>280</b>

<sup>1</sup>Only one application related solely to non-compliance with setback controls.

<sup>2</sup>Fixed fee for non-notified applications which do not comply with bulk and location controls. Other applications are generally dealt with on a time cost charge basis.

**Table 8**



### *Monitoring Fee*

Christchurch and Auckland also charge a monitoring fee of between \$40 and \$100. The monitoring fee is for a site visit to check the consent conditions are compiled with.

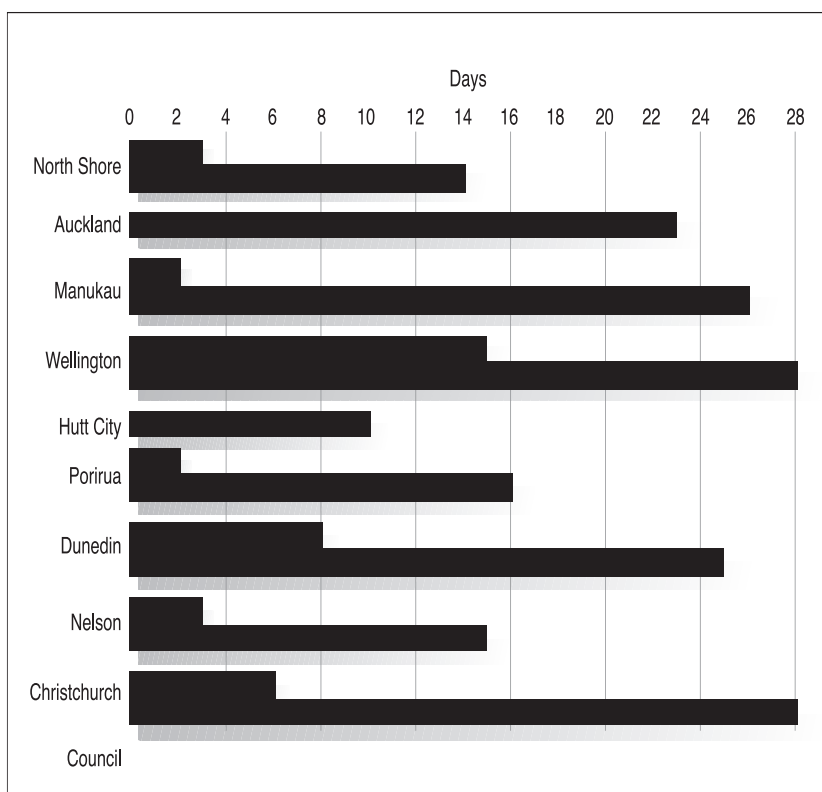
Applicants are sometimes being charged monitoring fees (one in Christchurch and two in Auckland) when there is nothing to monitor except whether the proposed building conforms with the plans submitted. As 53 percent of cases have no conditions placed on the consent, then charging a monitoring fee needs to be carefully considered.

## Time

Data showing the time taken to process the applications was possible with 80 of the 94 applications. Note that not all of these 80 applications relate solely to setback encroachments.

Examples are provided below of the time taken to process applications relating solely to setback infringements.

**Table 9**



Overall, 43 of the applications considered related solely to setbacks. Of these, eight applications (19 percent) went over the 20 working day limit for processing. Three of the applications which exceeded the limit had no conditions placed on the consent approval.

## Consistency in administration

- Resource consent applications are consistently being processed and approved without notification (98 percent). The high level of non-notification suggests councils are satisfied that effects on the environment are minor.
- In 25 percent of the cases the council did not request approval from affected persons. To avoid unnecessary applications councils should monitor applications to determine if certain activities could be permitted.
- Of the 98 percent applications approved, only 47 percent had conditions placed on them. The same type of conditions are consistently being placed on consents. These conditions could be developed into performance conditions. This would have the effect of greater efficiency while still avoiding, remedying or mitigating effects on the environment.
- Officers' reports on the applications do not consistently consider specific objectives and policies. 54 percent of the applications referring to specific objectives and policies. The result is that often there is no clear link between plan objectives and policies and the decision on the application.
- 19 percent of the applications dealing solely with setbacks went over the 20 working day time frame for processing. Many factors influence the time periods (including the information provided by the applicant) for processing applications. A third of the applications exceeding the time frame had no conditions placed on them.
- The adequacy of the AEE's is not consistent. Guidance from councils on what information should be provided when writing an AEE would be useful.
- The average charge for the applications assessed was \$280. Given that in 53 percent of cases no conditions were placed on the consents, it could be argued that applicants (or the community) are not getting value for money and whether council staff time is used efficiently when processing these applications.

Nelson City Council, as part of the information analysis for the preparation of its proposed district plan, assessed the number of consents processed for garages and houses in the front yard. In 1994, 248 consents were processed. 34 percent of the applications processed sought a reduction in setbacks.

## Consent categories

The consent categories used by those councils chosen for the study ranged from controlled, restricted discretionary through to discretionary.

**Table 10**

Local authority	Category
North Shore	Restricted Discretionary
Auckland	Discretionary
Manukau	Restricted Discretionary
Wellington	Restricted Discretionary
Hutt	Discretionary
Porirua	Discretionary
Dunedin	Restricted Discretionary
Nelson <sup>1</sup>	Controlled
Christchurch <sup>2</sup>	Controlled

<sup>1</sup> If controlled tests cannot be met then application discretionary

<sup>2</sup> Some garages in front yards are controlled otherwise discretionary

Councils should carefully consider whether it is really necessary to use the (unrestricted) discretionary and discretionary category of consent when performance criteria may be sufficient and the activity could be a controlled activity. This controlled category does however mean that the application must be approved.

## Setback distances

Table 11

Local authority	Zone	Setback requirement
North Shore	Residential 1,2,4,5,6,7	5 metres
	Residential 2A	10 metres
	Residential 3	Average of buildings either side or no closer than 3 metres.
Auckland	Residential 1, 3A	Average of buildings three either side, or six one side
	Residential 2a,2b,3b	6 metres
	Residential 4	7.5 metres
	Residential 5	4.5 metres
	Residential 6	2.5 metres
	Residential 7	1.5 metres
	Manukau	Main Residential, RH2
Main Residential Special, RH4,5,6,7,8, RSS, RSU		6 metres
RH1		5 metres
RH3		10 metres
RH5		9 metres
Wellington	Inner Residential	1 metre <sup>1</sup> or average of two adjoining buildings.
	Outer Residential	3 metres <sup>2</sup>
Hutt	Generally all residential	3 metres
Porirua	Suburban Zone	5 metres
Dunedin	Residential 1,4,5,6	4.5 metres
	Residential 2,3	3 metres
Nelson	Residential	1.5 metres
Christchurch	Living 1 (Outer ) Living 2 (Inner), Living Hills	4.5 metres
	Living 3 Inner City	4 metres

<sup>1</sup>Except Oriental Bay which is exempt.

<sup>2</sup>Or 10 metres less the width of the road, whatever is the lesser or less than 3 metres if average adjoining buildings is not exceeded.

- generally the district plans had a setback range between 3 and 6 metres
- all the district plans had setbacks from front boundary requirements (except Wellington which had no setbacks for buildings in one part of the City and garages were allowed to a maximum width of 6 metres, and Manukau which permits intensive housing development to go to the front boundary subject to parking being provided)
- two district plans (Wellington and Nelson) had minimal setbacks
- North Shore had a setback of 10 metres within an area of main arterial roads.
- Wellington had a setback control as an absolute of 3 metres in the outer residential area, or an alternative option of 10 metres minus half the width of the road
- four district plans (Manukau, North Shore, Auckland and Hutt City) require that houses be generally in line with adjoining neighbouring dwellings (taken as an average), or that accessory buildings be aligned with existing dwellings on the site
- Auckland linked setbacks to a requirement that a percentage of the front yard be landscaped in permeable surface.

Table 12 gives a pictorial indication of the range of setbacks required.

# Range of setbacks required

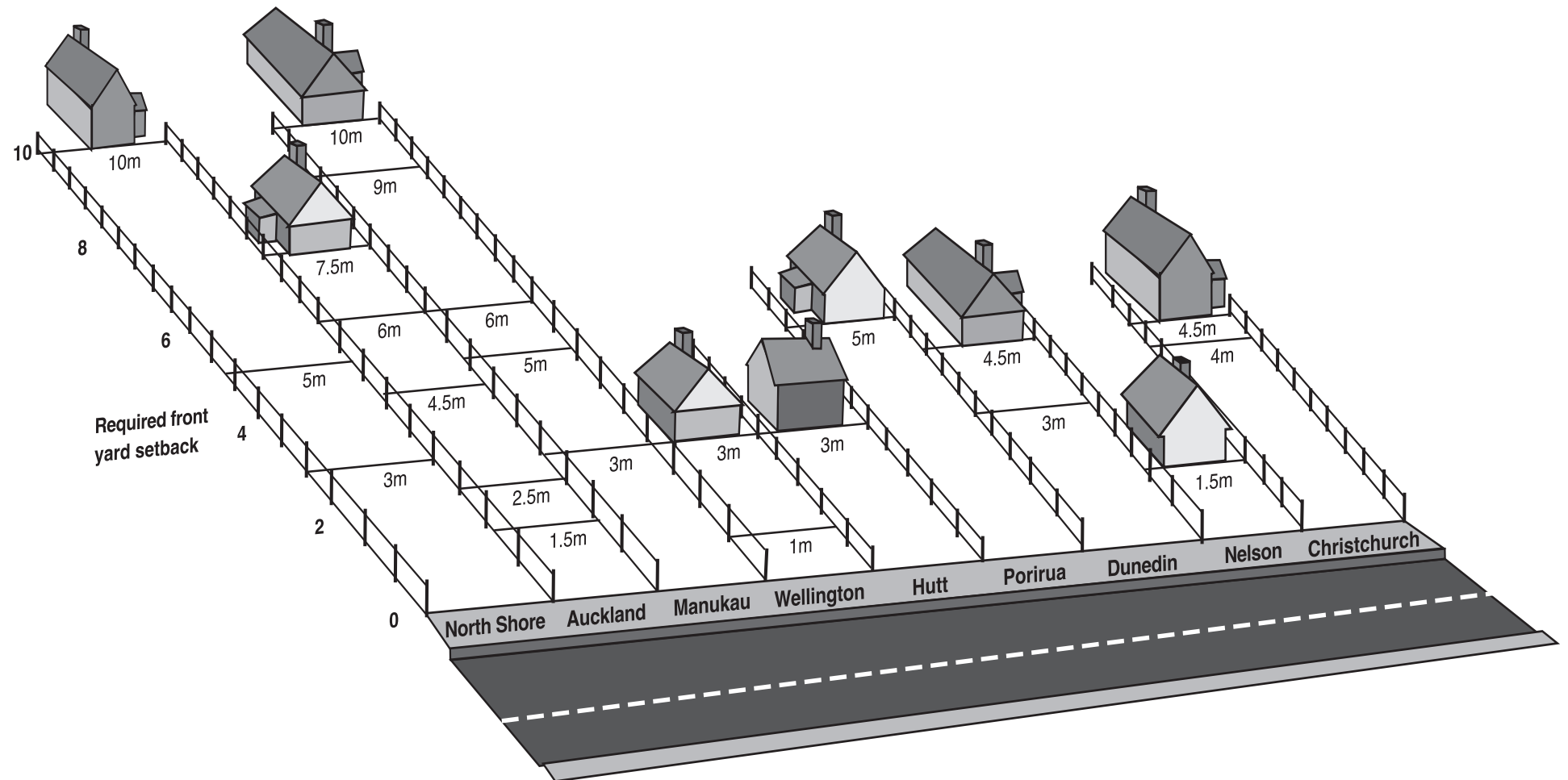


Table 12

## Environmental outcomes

The environmental outcomes in the district plans generally use broad statements which relate to all bulk and location controls. As a result it would be difficult to determine whether the setback controls are meeting the environmental outcomes being sought. Nelson goes one step further and identifies performance indicators which can assess whether the environmental outcomes are being achieved:

**Table 13**

<b>Local authority</b>	<b>Environmental Outcomes stated in the district plans</b>
North Shore	Information not available.
Auckland	Each of the seven residential zones have specific environmental outcomes.
Manukau	<ul style="list-style-type: none"> <li>• Quality residential living environments in particular residential neighbourhoods with a sense of place/identify:               <ul style="list-style-type: none"> <li>-appropriate scale and bulk in the built form</li> <li>-adequate on site amenity; e.g. sunlight and daylight</li> <li>-attractive streetscape and landscape</li> <li>-vegetation in residential area</li> </ul> </li> </ul>
Wellington	<p>Each policy had it's own environmental result.</p> <ul style="list-style-type: none"> <li>• The environmental result will be the continued development of housing which generally reflect the siting, scale and intensity of its area</li> <li>• The environmental result will be the ongoing development of identified areas in a manner that will maintain their character</li> <li>• The environmental result will enhanced streetscape and appearance</li> </ul>
Hutt	<ul style="list-style-type: none"> <li>• Maintenance and enhancement of residential characteristics and amenity values</li> </ul>
Porirua	<ul style="list-style-type: none"> <li>• A high standard of residential amenity which benefits the health and well-being of the community</li> </ul>
Dunedin	<ul style="list-style-type: none"> <li>• The amenity of neighbourhoods in residential areas is maintained or enhanced</li> </ul>
Nelson	<ul style="list-style-type: none"> <li>• An attractive and interesting streetscape</li> </ul> <p>The Plan also contains performance indicators</p>
Christchurch	<ul style="list-style-type: none"> <li>• Conservation and enhancement of areas identified as having special amenity value within the living environment of the City</li> <li>• Maintenance of the general suburban character and amenity values of the majority of the City's living environment</li> <li>• Reinforcement of the Garden City image of Christchurch.</li> </ul>

## Section Five

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# Value and desirability of setback controls

## Visual Character

Communities need to decide what they value in terms of resource management, and district plans need to reflect those values. In doing so, they need to recognise the requirements of section 32 and section 75 of the Resource Management Act.

One of these values, particularly in heritage areas, could be the traditional layout of buildings in relation to the street and the site.

In some areas, this traditional setback is minimal. For example, buildings are permitted up to the front boundary in Oriental Parade in Wellington. By contrast, the Dunedin district plan states that the characteristics of the Residential 1 Zone are: *“large front yards, generally more than 4.5 metres deep which are landscaped with trees and/or gardens.”*

Given that 98 percent of the applications considered were approved, this suggests that the community accepts these infringements, and accordingly a change in visual character is often agreed.

## Open Space and Amenity

Setbacks have been used as a means of leaving space in the front of properties for landscaping (the issue of landscaping is important in the officers' reports). A setback on its own however is a fairly blunt mechanism to achieve landscaping. Porirua East (a planned community) has established a unique character of its own. While the houses are setback as required there is minimal landscaping in the front yards.

In Auckland a setback requirement is combined with a performance standard requiring a certain percentage of landscaped area. As a control, this is more likely to achieve the desired outcome of landscaping. The wider issue here however, is should the community be required to landscape their front yards?

Setbacks were used in some district plans as a method to protect adjoining neighbours sunlight, and to avoid overshadowing on the road. However, a combination of factors are required to deal with sunlight and overshadowing which focus mainly on the height, and height in relation to boundaries, of structures.

Retaining privacy is another reason for providing a setback. Again there are a combination of factors which affect privacy including: the orientation of windows, doors and the house to the street; the width of the road or footpath, and the presence of landscaping and fencing.

A setback control would not directly target the desired environmental outcome in any of these issues.

## Traffic and Pedestrians

Setbacks were designed to ensure that vehicles could exit the site safely, and would not be parked over footpaths. Again, setbacks are considered a blunt method to deal with these issues.

For vehicles to leave safely then site design needs to ensure vehicles can either manoeuvre from the site in a forward motion or have unrestricted visibility as they exit the site. At the same time, many district plan permit fences up 2 metres along the boundaries and dense vegetation. This defeats the purpose of having a setback as sight visibility for traffic is obstructed. Orientation of a garage on the site to prevent doors from opening onto the street and impeding pedestrian movement can be more critical than a setback.

Setbacks are also required to ensure that doors and windows do not open out onto the street. The direct means of dealing with the issue however, would be to restrict windows and doors from opening onto the street.

Setbacks do act as a buffer between vehicles and residents, minimise noise and safety risk., So too however, would requirements for noise proofing and designing buildings to minimise safety risks.

## Alternatives to Rules on Setbacks

- Having no setbacks controls. Relying on existing performance standards or adding new standards which deal more directly with the environmental outcomes sought For example, the retention or provision of landscaping, preventing windows or doors from opening out onto the street, maximum height and height in relation to boundary controls (from the front boundary), and on-site maneuvering of vehicles.
- Retaining setback controls in part but relate these more to surrounding activities rather than imposing blanket setbacks. For example, set the building in line with surrounding buildings, or assessed as an average.
- Being selective in areas where setbacks may be applied. For example, in heritage precincts and on major arterial roads.
- Directly targeting setbacks to the specific characteristics of distinct areas. In particular, identifying constraints such as topography where reduced setbacks would be more appropriate.

# Risks and Benefits of Not Having Setback Controls

## Risks

Change in streetscape character and potential loss of landscaping (unless performance conditions are developed to deal with landscaping).

## Benefits

- More effective use of staff resources (not tied up processing consents with potentially minor adverse environmental effects)
- Monitoring activities can be targeted to where they are important and the potential effects on the environment are greatest
- Time delays are not being placed on applicants
- Costs are not being charged for very little perceived environmental benefit

# Section Six

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## Conclusion

This study reports on front yard setback controls in proposed district plans. Although only front yard setback controls were studied, the findings and conclusions are likely to apply to other similar district plan controls.

The most significant figures to come out of the study is that 98 percent of all applications were approved and of these less than 50 percent had conditions placed on the consent. This indicates that approximately 50 percent of all applications for front yard setback controls are largely “rubber stamped”.

This high approval rate of consents allows three conclusions to be drawn. Firstly that neighbours are not particularly concerned with setback non-compliance, as shown in the affected persons approvals that appear to be readily given. Secondly, that the environmental effects from such non-compliance is not significant, as reflected in the officers’ reports. Finally, that having setback rules is perhaps not the best method to achieve the stated objectives.

Note that the study does not consider the influence of planners and other decision makers in deflecting inappropriate reports before they are even lodged. Neither has the extent to which private agreements are undertaken, (for example, monetary) between applicants and affected persons for the approval to be given, been considered.

Requesting adjoining neighbours’ approval does not appear to tie in with the objectives and policies in the district plans which often state streetscape amenity as the justification for the control. If this is an issue to be considered, then more than just adjoining neighbours approval may be needed to justify granting the consent.

Officers’ reports generally indicate a rather relaxed attitude when dealing with these applications. There is little real analysis of the control with the objectives and policies of the district plan and a recurring statement of “no more than a minor effect” as the justification for granting approval. In particular, it appears that the cumulative effect of granting approval is not being considered yet it is the cumulative effect of granting such consent that will, in particular, affect streetscape amenity and the like.

If the community has a true desire to achieve the stated objectives then the techniques available for achieving these need to be considered. If setback rules are the best technique, then they need to be administered accordingly. Obviously at present, these rules are ineffective as the stated objectives will not be realised with the large percentage being approved, particularly with no conditions. Controls also need to reflect the physical character of the district rather than requiring blanket setbacks which do not recognise topographic and other constraints of the district.

Section 32 of the RM Act requires that alternatives to rules are considered. Perhaps if front yard setback controls, and similar controls, are not achieving the desired outcome then alternative ways to achieve these could be considered. As an example, Wellington City Council have successful design guidelines for Thorndon, Mt Victoria, and for multi unit designs. These provide direction for setbacks, one of which is based on the average of neighbouring site setbacks.

The study raises the question of whether the time spent administering such controls and the subsequent costs to the applicant (average \$280) can be justified. Councils should really question whether these controls are necessary. In three cases monitoring fees were charged when there was nothing to monitor except whether the building conformed with the plans submitted.