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Foreword

The Resource Management Act 1991 (RMA) enables resource managers to use a wide range of techniques and methods to achieve environmental outcomes. The Ministry for the Environment has developed a programme aimed at “encouraging excellence in RMA practice”. The programme includes seminars, training, booklets and other initiatives intended to highlight good practice.

The purpose of the Managing Rural Amenity Conflicts project is to provide practical and theoretical assistance to councils and practitioners on possible approaches to managing rural amenity issues in district plans. The development of this report involved a close partnership with local government. Facilitated by the Ministry, the working group was largely made up of staff from local authorities. Released as a draft, the report provided the basis for a national series of workshops hosted jointly by the Ministry and the New Zealand Planning Institute during May and June 2000. The feedback and suggestions received at those workshops has assisted in finalising the document as this final report.

The ‘look’ of many districts has changed significantly over the last few years. These changes have occurred as farmers and growers have responded to variable terms of trade for sheep and beef farming and as new agribusiness opportunities have developed. These changes have sometimes introduced either a new set of environmental effects into a district, or intensified the range of effects that are already present. Consequently, councils (through their district plans) have sought to manage the adverse environmental effects associated with these landuse changes.

The report has important linkages to other Ministry projects, including the quality plans project, urban amenity indicators, environmental performance indicators, landscape and rural subdivision (*The Impact of Rural Subdivision and Development on Landscape Values*), a guide to using section 32 (*What are the options*), and guides for assessing and managing the environmental effects of dust and odour emissions. The Ministry produces a wide range of publications on environmental legislation, policies and issues. Information about the Ministry for the Environment’s programmes and projects, and many of its publications are available through the Ministry’s web site at www.mfe.govt.nz



Denise Church
Chief Executive
Ministry for the Environment

Executive Summary

This report has been prepared by Environmental Management Services Ltd for the Ministry for the Environment. It has been prepared to assist with the improvement in practice of implementation of the Resource Management Act 1991 (RMA) by territorial local authorities. The report was released as a draft in May 2000 and provided the basis of a series of workshops hosted jointly by the Ministry and the New Zealand Planning Institute in eight centres around New Zealand during May and June 2000. The feedback and suggestions received at those workshops has assisted in finalising the report.

The project's aims are to:

1. clearly outline the range of rural amenity values that can be identified by the community, the overall RMA context and the RMA issues associated with those values
2. support improved practice through consideration of community processes and approaches for dealing with changes to amenity values and conflicts in the rural environment where there are perceived/potential adverse environmental effects
3. clearly identify the range of effects from activities that can give rise to rural amenity resource management conflicts
4. clearly identify and evaluate potential approaches for dealing with rural amenity resource management conflicts including both statutory and non-statutory initiatives
5. provide good practice examples of RMA issues, objectives, policies and methods for managing rural amenity values and conflicts.

The report focuses on rural amenity values and excludes:

- urban environments
- the management and protection of outstanding natural features and landscapes
- the management and protection of significant indigenous vegetation or habitats of indigenous fauna
- the coastal marine area
- the management and protection of heritage values
- landscape issues (MFE report published July 2000).

The methodology included an email survey of local authorities and consultation with key stakeholders representing resource users involved in rural production.

Amenity, as a resource management issue, has two components:

First, amenity attributes – these are the tangible and measurable matters such as noise, odour, density of development, shading, etc that together define the amenity character of an area.

The second component is the perceptions and expectations that people hold about rural amenity. These derive from people's culture, values, and desires, and from

differing tolerances in relation to amenity attributes and changes to those attributes. It is the differences in people's perceptions and expectations that lie at the root of most amenity conflicts and these vary significantly within rural communities.

The RMA's concern is with amenity values, and this invariably means that successful management of rural amenity conflicts requires management of people's expectations and perceptions.

The report identifies the amenity issues that commonly concern rural communities and describes a number of typical examples of rural amenity conflicts. The report notes that amenity issues can be broadly characterised in terms of our basic human senses of sight, smell, hearing and touch. Cultural and spiritual values are also factors as are concerns about unseen, unsmelt and untouchable effects such as toxins and electromagnetic radiation.

There is a discussion of the complementary roles of territorial local authorities and regional councils. The other legislative provisions that have a part to play in managing rural amenity conflicts are also identified.

The report notes that there are several significant factors influencing amenity conflicts:

- the determining influence of rural subdivision and particularly subdivision creating rural residential allotments
- fundamentally different views of the rural environment as either a passive landscape or a place of production
- existing activities and their impact on rural amenity
- the Maori perspective on rural amenity
- particular issues arising for peri-urban rural environments
- cumulative effects and environmental capacity.

The report identifies the specific provisions of the RMA which address amenity values and also highlights the importance of considering amenity issues within the context of other relevant provisions including:

- section 9 and the presumption that land may be used unless there is a rule in a plan constraining that use
- section 32, which invokes a discipline that district plan provisions must be able to be justified as necessary and appropriate
- section 75(1)(a), which states that district plans shall make provision for the significant resource management issues of the district (that is, plans must be clear about the reasons why amenity is a significant issue).

Robust community process is identified as being critical in developing approaches to the management of rural amenity. A number of techniques for achieving community participation are discussed in this context.

The report identifies the importance of councils widely communicating their intended approach to amenity management so as to inform and educate people about what they can reasonably expect in terms of amenity in the rural area.

A brief analysis is presented of the principles emerging from recent case law relevant to rural amenity focusing particularly on the concepts of internalisation of adverse effects and reverse sensitivity.

The experiences and ideas from other countries are briefly examined with particular attention on England, the United States and Australia as being the most currently relevant to the New Zealand context.

The report examines the key success factors necessary to the development of appropriate policy approaches for managing rural amenity and develops a section 32 framework within which policies and methods can be evaluated.

Three broad policy approaches are examined:

- effects-driven intervention – managing the effects of activities using effects-based standards applied at site boundaries to avoid, remedy or mitigate conflicts over effects
- indirect intervention – using proxy standards such as controls on the location of activities or controls on the intensity of subdivision to avoid, remedy or mitigate conflicts over effects
- conflict resolution – pursuing dialogue to resolve conflicts once they have occurred.

A range of methods, suitable for implementation as part of any of the three broad strategies, is identified. The methods are presented as a toolbox of techniques together with analysis of their suitability, advantages and disadvantages and recommended best-practice challenges or tips for each method. Examples are also given of how the methods could work in practice.



CHAPTER ONE Introduction

CHAPTER ONE

Introduction

The sustainable management of rural amenity is a significant resource management issue in nearly all rural areas. The importance of the issue has been highlighted by the work of the Ministry's Rural Issues Working Group, which comprises staff of six rural territorial authorities, MAF Policy and the Ministry's two regional offices and head office. The working group identified a number of common difficulties experienced by councils in attempting to manage rural amenity conflicts and recommended that a best-practice guideline be developed to assist councils and their communities manage this issue.

This report has been prepared by Environmental Management Services Limited for the Ministry for the Environment. It has been prepared to assist with the improvement in practice of implementation of the Resource Management Act 1991 (RMA) by territorial local authorities. The report was released as a draft in May 2000 and provided the basis of a series of workshops hosted jointly by the Ministry and the New Zealand Planning Institute in eight centres around New Zealand during May and June 2000. The feedback and suggestions received at those workshops has assisted in finalising the document as this final report.

1.1 Objectives

The specific objectives of the project are to:

- clearly outline the range of rural amenity values that can be identified by the community, the overall RMA context and the RMA issues associated with those values
- support improved practice through consideration of community processes and approaches for dealing with changes to amenity values and conflicts in the rural environment where there are perceived/potential adverse environmental effects
- clearly identify the range of effects from activities that can give rise to rural amenity resource management conflicts
- clearly identify and evaluate potential approaches for dealing with rural amenity resource management conflicts including both statutory and non-statutory initiatives
- provide good practice examples of RMA issues, objectives, policies and methods for managing rural amenity values and conflicts.

The report has important links to other projects the Ministry has in progress:

- Quality Plans Project – This project aims to collate best practice information on the development and contents of plans under the RMA. The project is an initiative driven by a partnership between central and local government and planning professionals' organisations.
- Landscape and Rural Subdivision – Report published July 2000.
- A guide to using section 32 – Report published July 2000.

- Analysis of Options for Odour Evaluation for Industrial or Trade Premises. The Ministry is also intending to review the Guide to Odour Management under the RMA (published in 1995). The revised document will contain guidance on assessing the environmental impacts of odorous discharges, practical solutions to odour problems and methods for monitoring the effects of odour on local communities. The Ministry is not pursuing national environmental standards for odour, given the highly subjective nature of odours.
- The Ministry's Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions published in draft form in March 2000. The guide addresses the effects of dust emissions on amenity values. Planning issues related to dust management are discussed and relevant case law is summarised. Guidance is provided on dust control methods, trigger levels for action, management plans, complaints response and criteria for assessing dust nuisance.
- Urban Amenity.
- Environmental Performance Indicators.

1.2 Scope and methodology

The report addresses the two challenges of managing rural amenity conflicts: first, examining practices and techniques for avoiding and managing *future* amenity conflicts and, second, techniques and methods for dealing with *existing* amenity conflicts.

The report begins with a discussion of amenity and the issues that can affect amenity. It draws a distinction between amenity attributes and the expectations and perceptions that people hold about rural amenity. Examples that illustrate some typical problems and issues where amenity conflicts are arising around the country are developed. Some of the significant factors influencing amenity conflicts are then discussed.

A brief review of overseas literature and practice has been included along with a review of relevant New Zealand case law. The report discusses the range of methods potentially available to ensure the sustainable management of rural amenity.

It is important to note that the scope of this report is limited to amenity conflicts arising from rural activities and does not specifically include amenity issues associated with:

- urban environments
- the management and protection of outstanding natural features and landscapes, significant indigenous vegetation or habitats of indigenous fauna
- the coastal marine area
- the management and protection of heritage values
- landscape issues.

This report does, however, have regard to amenity issues within the coastal environment, as many amenity conflicts (particularly those focused on visual character) occur there.

The research undertaken in the preparation of this report includes:

- an email survey of all territorial authorities asking them to describe the nature of rural amenity issues in their areas and to identify the successful and unsuccessful approaches they had used to manage the issues
- a review of New Zealand case law involving rural amenity conflicts
- a search of international literature to identify alternative approaches to the issue tried elsewhere
- follow-up telephone interviews with particular territorial authorities
- telephone contact with representatives of significant resource users who are typically involved in issues of rural amenity.

The workshops held during May and June 2000 generated lively discussion of the rural amenity issues confronting local authorities, which contributed valuable information to the finalisation of the report.



CHAPTER TWO Amenity values

CHAPTER TWO

Amenity values

The RMA defines amenity values as:

“those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”

Amenity values form part of the Act’s definition of “environment” which is, in turn, incorporated into the Act’s purpose of promoting sustainable management in section 5(2) through, amongst other things:

- (a) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Section 7 of the RMA also specifically requires those with functions and powers under the RMA to have particular regard to “the maintenance and enhancement of amenity values”. It is important to note that the words anticipate not only maintenance but also *enhancement* of amenity values so that the debate will not always be about maintaining the status quo but could be about seeking improvement in amenity.

The Second Schedule of the RMA specifically requires policy statements and plans to address any matter relating to the management of the use, development or protection of land and any associated natural and physical resources. They also have to address the control and management of any actual or potential effects which naturally encompasses “amenity values”.

Section 17 of the RMA is also important. It requires every person to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by, or on behalf of that person, whether or not the activity is otherwise permitted by the RMA or by a plan.

Leaving aside the statutory definition and provisions for “amenity values”, if one were to ask an ordinary person to articulate what they consider to be the amenity of their environment they would likely talk about matters such as “privacy”, “peace and quiet”, “pleasantness of the environment”, “clean air”, or “an attractive landscape”.

Amenity, as a resource management issue, is comprised of two components. First, amenity *attributes* – these are the tangible and measurable matters such as noise, odour, density of development, shading, etc that together define the amenity character of an area. The second component is *perceptions and expectations* that people hold about rural amenity. These derive from people’s culture, values, and desires, and from people’s differing tolerances in relation to amenity attributes and to changes to those attributes. It is the differences in people’s perceptions and expectations that lie at the root of most amenity conflicts and these vary significantly within rural communities and between different communities. The RMA’s

concern is with “amenity values” and this invariably means that successful management of rural amenity conflicts requires management of people’s expectations and perceptions.

At the workshops, anecdotal examples were given of the mismatch between people’s expectations and the reality of rural life being a common cause of amenity conflicts in the rural environment. Some local authority staff have coined the expression “amenity refugees” to describe people who have become disillusioned by the loss of amenity and quality of life in their urban environment and who flee to the countryside in search of enhanced amenity. Other local authorities call it “negative urbanism”. The reality of the rural environment as a working environment, with the noise and smell and other effects that go with rural production, is often far removed from the image of a rural haven anticipated by the refugee. Conflict often ensues.

The threat of change, and particularly the rate of change, in a rural environment is also a key causative influence on amenity conflicts. Some local authorities described very high rates of change of ownership of small rural allotments in their districts. The implication of this is that there are frequently large numbers of new residents entering the area from elsewhere (often from urban areas).

Conflicts between rural people about amenity are however not confined to conflicts between those who live there and those who work there. The rural environment is where people both live and work. Many conflicts occur between people engaged in different rural production activities and do not involve rural residential amenity.

Consultation with local authorities has shown that the amenity issues that most often cause conflicts in rural environments and which councils are often confronted with include:

- smell (particularly from factory farming, effluent disposal and feedlots)
- noise (especially from bird scaring devices, frost protection machinery, harvesting equipment, rural industries)
- loss of rural character and the increasing presence of buildings within the rural landscape, structures on hilltops, effects of power lines and increased signage
- concern that new buildings are located too close to existing buildings (usually residential dwellings) or are of much greater scale or bulk
- spraydrift
- smoke
- dust (particularly from traffic movements on unsealed roads)
- vibration
- safety and convenience of local roads, and concerns about increased traffic volumes on rural roads
- competition for water and other resources
- degraded water quality
- effects of forestry plantations and shelterbelts in shading adjoining properties and damaging fences

- concerns about changes in the rural landscape resulting from extensive crop changes (for example, from pastoral farming to pine plantations) or from changes from traditional rural land uses to more intensive activities such as tourism or rural industry
- disputes arising over the intensification of use of shared access ways.

When looked at more carefully from an effects perspective, many of the above issues can be simplified and characterised in terms of our basic senses of smell, hearing, sight and touch as described in the following table:

Sense	Generic effect	Scope of effects
Smell	Loss of air quality	Odour, dust, spraydrift, smoke
Hearing	Noise	Traffic noise, activity noise
Sight	Visual effects	Landscape values and character, privacy, built form and structures, glare, light emissions, shading, dust, smoke
Touch		Vibration, dust
Taste		Changes in the quality of air and water, dust, smoke

There is also, perhaps, a further category of unseen, unsmelt, and untouchable effects. These include effects such as electromagnetic radiation, electrical interference, toxins and chemicals, the safety and convenience of roads and other environmental health and safety matters. In these cases there is often a great deal of uncertainty about the actual effects and debates about effects can centre on people's perceptions and fears as much as on scientific evidence. Effects on spiritual, cultural and heritage values are also relevant.

There is also an important distinction between what is predominantly private amenity and what is public amenity. Most neighbour conflicts relate largely to private amenity. In contrast, a new and highly prominent hilltop structure, for example, may have wider potential effects on the public amenity as well as more localised private amenity effects.

Having noted the specific provisions of the RMA which single out amenity, it is important to consider these within the context of other relevant provisions. In particular:

- section 9 and the presumption that land may be used unless there is a rule in a plan constraining that use
- section 32 which invokes a discipline that district plan provisions must be able to be justified as necessary and appropriate
- section 75(1)(a), which states that district plans shall make provision for the *significant* resource management issues of the district (that is, district plans must be clear about why amenity is a significant issue).



CHAPTER THREE Amenity conflicts

CHAPTER THREE

Amenity conflicts

From the experiences of territorial authorities and regional councils, amenity conflicts are most prevalent where there is a high rate of land use change, and particularly where:

- the population of an area is increasing or rapidly changing, and when the people coming into the area from outside hold different values and expectations, and wish to pursue different lifestyles from those already there
- people arriving into the area establish a diverse range of activities and land use practices which are different from those formerly undertaken in the area
- the pattern of land subdivision means that people are settling in relatively close to each other.

By contrast, amenity conflicts occur less in more stable and static rural areas where:

- the community is relatively homogeneous and holds similar values
- there is little change in land use practices
- there is little difference between practices on adjoining properties
- there is generous space between people's dwellings.

The following examples illustrate the ways in which conflicts in amenity values in the rural environment commonly develop:

3.1 Factory farming near intensifying subdivision

Visualise

- An existing broiler chicken operation – long established in a rural area – on a small (2-hectare) block of sufficient size to fit the intensive indoor chicken farming operation
- Growing market demand for chicken
- A market opportunity for the chicken farmer to expand the operation within the 2-hectare property to meet market demand
- The land surrounding the chicken farm was historically a series of pastoral farms which have capitalised substantial parts of those holdings by subdividing them into pockets of small blocks
- Over the past 10 years the chicken farm has found itself surrounded by substantial numbers of smaller land holdings – many of which are now owned by recent migrants from the city who are seeking the peace and quiet of a country lifestyle
- The chicken farmer has adapted and improved operations over the years to diminish odour emissions but, periodically, the nearby landowners endure offensive odours from the chicken farm
- The chicken farmer applies to the district and regional councils for the necessary consents to expand the operation

- Public notification of the applications for consent attracts considerable opposition from nearby landowners: they seek to demonstrate that the existing operation adversely affects their amenities and vehemently oppose any intensification of activities for fear of an increase in smell effects and an increase in traffic on the narrow local roads.

Visualise

- A long-established pig farm of moderate size (20 hectares) located in a rural area on the outskirts of a city surrounded by a growing number of smaller rural-residential allotments
- Owners of land holdings in the vicinity continue to subdivide their land to capitalise on the popularity of lifestyle blocks so close to the city
- The pig farm has existing use rights in terms of the district council's district plan – having lawfully established originally
- The regional plan requires the pig farmer to apply for resource consent to discharge effluent
- The pig farmer's application is opposed by the nearby small block owners because they currently smell offensive odours emanating from the pig farm.

3.2 Horticulture at odds with rural residential development

Visualise

- An existing market garden located on the outskirts of a town
- Over time, adjacent market garden properties have been sold and re-zoned for rural-residential development in response to demand as the town's population has grown
- The market garden is now substantially surrounded by rural-residential allotments
- The market gardener continues to burn off vegetation, apply fertiliser, spray pesticides and use harvest machinery long into the night at the peak harvest time much as has always been done on the property
- The nearby rural-residential occupiers periodically experience smells and noise which are annoying, and some regularly complain to the district council.

3.3 Exotic forestry at odds with pastoral farming

Visualise

- A former pastoral hill country farm was purchased some 30 years ago by a commercial forestry company and is subsequently planted in pine trees
- The adjoining properties remain largely pastoral farms
- Over time, as the pines have matured, there have been occasional difficulties caused by shading of roads and neighbouring paddocks, branches falling and damaging fences

- Neighbours are concerned about the prospect of tree harvesting generating traffic, causing a hazard on local roads and potentially damaging the road surface.

3.4 Lifestyle blocks set amongst vineyards

Visualise

- A block of land within an area traditionally used for pastoral farming is developed for growing grapes
- The management techniques on the grape block include pesticide spraying, the use of bird scaring devices and frost protection machinery, which are new to the predominantly pastoral farming area and which cause a nuisance to neighbours.
- The grape growers' neighbours complain to the district council about the bird scaring and frost protection noise and concerns about spraydrift
- As the popularity of viticulture relative to pastoral farming grows, some of the surrounding farmland is subdivided to create lifestyle blocks close to the vineyard
- The bird scaring devices and pesticide sprays were not something that the new owners of the subdivided blocks were expecting in their vineyard lifestyle, and the complaints to the district council mount, resulting in pressure on the grape grower to change management techniques.

3.5 Lifestyle blocks – Dream or nightmare?

Visualise

- Any area of traditional pastoral farming relatively close to a city
- Changing terms of trade for sheep and beef product and pressure from pastoral farmers to subdivide lifestyle blocks from several of the farms in the area creating a scattering of smaller blocks throughout the area
- Although the lifestyle blocks are of moderate size (4 to 10 hectares), the hilly topography of the area means that it is expensive to construct driveways and house sites very far from the road frontage; most of the lifestyle blocks have house sites located close to their road boundary and relatively close to neighbouring properties
- Pastoral farming continues on the balance of the larger blocks, but the movement of stock on roads, noise of farm machinery, noise at weaning time, drift from fertiliser applications are perceived to cause nuisance to some of the lifestyle block occupants who complain to the district council that the farming activities should confine their effects to within their own sites
- The increased density of settlement also means that there is pressure on the metal local road, on underground water supplies; the council receives requests to upgrade the road, extend the reticulated water supply to the area and collect refuse from the property gates

- The council accedes to the requests but has to pay for the upgrading and services from rates charges (or uniform annual charges) applied to all of the properties in the area (including the pastoral farms, whose owners are not happy with changes).

3.6 Horticulture at odds with emerging organics

Visualise

- An existing market garden on the outskirts of a town
- Steady subdivision of surrounding land into lifestyle blocks
- Purchase of those subdivided blocks by people interested in pursuing organic farming and horticulture
- Growing concern by the organic growers about spraydrift from the traditional commercial vegetable growing/horticulture operation adversely affecting their commercial viability because the detection of spray residues on their produce would compromise their ability to achieve organic certification necessary for domestic and international trade
- The new organic farming community voices its concerns about spraydrift to the district and regional council and seeks changes in the traditional market gardening practice.

3.7 Themes arising from the examples

Each example given oversimplifies the complex circumstances in different parts of New Zealand but portray some of the typical changes and consequences that have occurred in rural areas. In each of these examples, no one party is necessarily wrong or right. The examples illustrate the competing needs, aspirations and amenity expectations of different people in pursuing their economic, social and cultural wellbeing:

- The chicken and pig farmers' acceptance that a certain level of smell and traffic will be generated in the course of chicken/pig production competes with the amenity aspirations of surrounding rural residential occupants for fresh air and a quiet road.
- The market gardeners' need to apply fertiliser, spray pesticides and use noisy machinery competes with the amenity aspirations of people in the rural residential blocks.
- The effects generated by the vineyard conflict with the amenity aspirations of the surrounding occupants of the pastoral farms and the lifestyle blocks.
- The effects of activities on the pastoral farms conflict with the aspirations of the people who seek a peaceful haven on their lifestyle block.

3.8 Rural change contributes to conflict

The reality for many rural districts is that the environment is not static and is constantly changing as a result of people seeking to fulfil their social, economic, and cultural needs. Change in the rural environment comes from various sources:

- The need to diversify production to meet changing market demands and to enable individual property owners to remain economically viable:

- conversion of pastoral farms from sheep to dairy farming and horticulture
- planting of pastoral farms as commercial forestry plantations
- introduction of grape-growing and wine production to some areas
- capitalisation of rural land by subdividing and selling smaller allotments from larger blocks
- Social trends and changes in people's aspirations about where and how they want to live:
 - the desire to live in the country on small blocks of land (seeking a peaceful rural lifestyle)
 - the desire to live at or close to the coast
 - "negative urbanism" and people's rejection of perceived poor quality urban living environments
- Values:
 - the Green movement and people's heightened expectations that their environment should be "clean and green" with their lowered tolerance for traditional agricultural and horticultural practices involving pesticide sprays
 - organic production and stringent requirements for absence of chemicals and additives in food and the places food is grown
 - a shift away from a rural-dominated society
 - change in emphasis concerning the use of productive rural soils
 - less opportunities for urban people to be exposed to rural experiences.
- Natural processes:
 - climatic conditions such as high rainfall causing periodic floods
 - volcanic and seismic events
 - drought and erosion.



CHAPTER FOUR

Roles and functions

CHAPTER FOUR

Roles and functions

4.1 Local government

The responsibility for the regulation of amenity attributes is split between territorial authorities and regional councils, with the former being primarily responsible for land use¹ activities and noise, and the latter being responsible for discharges to the environment², particularly discharges to air.

Resource consents are required from regional councils for discharges to air from industrial and trade premises³ unless a rule in a regional plan provides otherwise. Conversely, regional councils do not regulate other discharges to air unless the regional air plan provides otherwise.

Discharges to air (predominantly nuisance discharges of odour, dust, smoke and spraydrift) form the basis of over half of the historical amenity value conflicts identified by both local authority personnel consulted as part of this project, and they also feature prominently in the relevant amenity value case law. Consequently the split local government jurisdiction is a significant issue, as when developing district plans territorial authorities need to consider the role of regional councils in managing air discharge matters. A joint or cooperative approach to this issue is desirable, otherwise, as pointed out in the 1995 MFE document on odour management, “The opportunity for both regional and district councils to double up and cover the same processes with their plans is high. Alternatively both councils could leave gaps if neither deals with a particular activity resulting in an odorous discharge”⁴.

Many of the rural production sector groups who contributed to this report highlighted the difficulties of having to deal with different local authorities and differences in the standards applying in different jurisdictions affecting the same amenity issue. While this can create a duplication of effort for rural producers in terms of consent procedures and compliance, the different needs and desires of local communities need to be recognised.

Simple techniques for ensuring that such differences or gaps or duplication of effort do not occur include:

- establishment of clear protocols between district and regional councils about the scope of their respective roles and responsibilities relating to particular amenity issues (odour, dust, smoke)
- regular sharing of information about amenity issues between each agency
- regular forums between regional and district councils to provide an opportunity to discuss current issues and explore ways of resolving issues.

¹ Section 31(b) and section 9

² Section 30(1)(f) and section 15

³ Industrial and trade premises exclude production land (namely most pastoral or arable farming activities).

⁴ *Odour Management under the Resource Management Act*, MFE, 1995

This split jurisdiction can be contrasted with the issues of noise and light glare, where clear and enforceable standards have been included in the majority of district plans, thereby facilitating the resolution of amenity conflict situations. This occurs either through the enforcement of the standards, or through educating people about realistic rural amenity expectations in relation to those attributes.

4.2 Other legislation

There are also other legislative provisions that impact on the regulation and resolution of amenity value conflicts, where the generation of nuisances crossing a property boundary exceeds either the level of tolerance of the recipient property owner or occupier, or accepted health and safety standards. The principal provisions⁵ are:

Local Government Act 1974: Part XXVIII enables territorial authorities to make bylaws regulating the disposal of trade wastes into water.

Health Act 1956: enables territorial authorities to appoint health officers and make bylaws to secure the abatement of nuisances that are likely to be injurious to health or that are offensive.

Health and Safety in Employment Act 1992: requires employers (including farmers) to identify, eliminate or isolate workplace hazards (including dust and noise).

Common-law actions: individuals are able to take civil cases against people generating nuisances that trespass onto their properties. These civil actions can include compensation for damages incurred by the recipient of the nuisance or trespass⁶.

These non-RMA avenues add to the composition of the tool box available to local authorities when dealing with amenity value conflicts. However, the scope of this report does not include the consideration of them in any detail.

⁵ Other legislative provisions that have some bearing on amenity values are the Dangerous Goods Act 1974, the Building Act 1991, the Toxic Substances Act 1979, the Hazardous Substances and New Organisms Act 1996, the Radiation Protection Act 1965, the Transport Act 1962, OSH Guidelines, Department of Health regulations.

⁶ For example, one neighbour can sue the other for crop loss caused by dust from cultivation causing damage to stone-fruit (as has occurred in Hawke's Bay).



CHAPTER FIVE
**Significant factors influencing
amenity conflicts**

CHAPTER FIVE

Significant factors influencing amenity conflicts

5.1 Subdivision

The feedback from councils and case law confirm that the pattern of subdivision continues to have a determining influence on amenity conflicts. Quite simply, the chances of conflicts between activities in the rural environment are significantly increased where subdivision results in an increase in the number of small blocks located close together and where the pattern of settlement intensifies as a result. This is particularly acute in districts that experience high rates of turnover in small rural allotments. Some districts report average turnover of three years in small rural/residential allotments. This means that the rural community's population is constantly changing and, because of a continual influx of new residents with their respective expectations, the potential for conflict is heightened.

The fundamental premise of the RMA is that a person may use land as they wish unless the adverse effects of that activity are such that a plan or a resource consent decision prevents them doing so. If subdivision significantly increases the density of rural settlement, councils need to be aware of the increased likelihood of amenity conflicts and the importance of actively managing amenity effects across (closer) boundaries.

Subdivision itself of course does not automatically mean an increase in the density of rural settlement. Whereas subdivision is simply a process for effecting change in land ownership, it gives rise to consequences. Subdivision of land has traditionally, and in most plans continues to derive rights to develop that land. For example, the construction of a dwelling is usually a permitted or controlled activity provided certain standards are met. It is generally permissible to construct driveway entrances and access tracks and to erect fences and plant shelterbelts along boundaries. New owners of land can introduce changed land use practices (different stock, different crops). All of these changes can give rise to changed effects on the environment including changes in amenity conditions (changed visual character, new demand for water, additional or changed noise sources, new juxtaposition of buildings on adjoining properties). Such changes in the environment can reasonably be anticipated as natural consequences of the subdivision of land in districts whose district plans enable such subsequent activities.

There is a strong presumption by purchasers of rural land in New Zealand that subsequent occupation and development will be permitted and the market therefore values subdivided allotments accordingly.

Anticipating such changes in the environment and, in order to control the potential density of dwellings in rural areas, controls have traditionally been placed on the density of subdivision.

5.2 The rural environment – Place of production or bucolic paradise?

One issue that arises frequently in the experience of territorial authorities and in the case law is a fundamental difference in attitude to the rural environment.

Some people view the rural environment as a landscape to be enjoyed, which should always feature high amenity standards, characterised by clean fresh air, clean water, peace and quiet with low density of buildings. Those who hold this view may be intolerant of existing rural activities which they perceive as interfering with these amenities by creating noise or smell or smoke or dust. It is often the case, though, that existing activities were legitimately established in accordance with rules and standards applying at an earlier time and have existing use rights by virtue of section 10 of the RMA.

Others view the rural environment as a resource to be used and accept that, in the course of using and developing rural resources, smells, smoke, spraydrift, noise and traffic will be generated.

Neither view is right nor wrong, but they are the principal source of conflicts. The distinctions sit with different expectations and tolerances to the amenity attributes and amenity values discussed earlier. In defining the nature of a rural environment and the amenity issues arising for that environment, district and regional plans should be explicit about the extent to which that environment is a place of production or a passive landscape. This can only be achieved through careful analysis of the nature of that environment and deliberate debate within the community about the levels of amenity to be sought and the types and intensity of amenity effects that will be accepted.

5.3 The right-to-farm and existing use rights

The expression “right-to-farm” means that rural farming activities do not incur unreasonable resource management constraints. Where the expression has been used overseas, it has not always been exclusively in the context of resource management but has also been a reaction against trade barriers and tariff and taxation issues affecting farming. However, the expression oversimplifies the issues and suggests that farming is seeking to be protected simply for its own sake. The reality is much more complex than that.

Many of the rural amenity conflicts that arise relate to concerns about existing activities brought about by circumstances that have changed surrounding a rural activity. There are three important considerations here:

- existing use rights
- section 16 duty to avoid unreasonable noise
- section 17 duty to avoid, remedy, or mitigate adverse effects.

Some existing activities may have existing use rights but do not necessarily have superior rights over newcomers to an area. Neither are they completely free to create adverse effects simply by virtue of their existence. Existing activities are, like all resource uses, subject to the same obligations in relation to avoiding, remedying or mitigating adverse effects. Length of tenure in the rural environment does not provide a licence to perpetuate unacceptable adverse amenity effects.

The RMA is not directly concerned with the fortunes of individual industry groups or with protecting groups of resource users. Its purpose is the promotion of sustainable management of natural and physical resources. Plan provisions, created under the Act, to manage amenity conflicts need to relate to legitimate resource management issues as defined by a process of consultation and debate within a community. Constructing a regime of policies and methods for managing amenity conflicts on the basis, for example, saying “all sheep and dairy farmers should have an unconstrained right to farm” would not be legitimate in terms of the Act.

However, plans can and should determine performance standards for adverse effects that provide for a reasonable level and frequency of cross-property boundary adverse effects of such farming activities and thereby enable such activities to continue to operate provided they are managed in accordance with current accepted best practice and in a reasonable manner.

It was observed at the workshops that the people involved in the subdivision and sale of small rural allotments are most often rural landholders and producers themselves. The potential that such subdivision and sale creates for conflicts between the aspirations of future landowners is, in many cases, initiated by the same group of people and possibly the same individuals who could have their activities constrained by future concerns about amenity conditions. This highlights an interesting tension within rural communities that is widely acknowledged.

Although the RMA is not concerned with the fortunes of individual resource users, the reality is that its implementation can have an impact on the fortunes of different types of resource users. Activities that involve small amounts of capital investment and achieve financial returns over relatively short time periods and have few obvious adverse effects should find it easier to establish. Examples include the subdivision and sale of rural land, and the development of residential dwellings on small rural allotments.

Activities which are more difficult to establish and to continue to operate are those which require large capital investment or a particular location (climate, soil, access to transport), which achieve financial returns over long rather than short time periods and which generate adverse effects. Examples are market gardens, vineyards, wine processing plants, factory farms, feedlots and quarries. Such industries are vital to the economic wellbeing of communities and their performance will be of interest to those communities beyond the limited terms of reference of the RMA.

These issues are wider than the RMA, extending to councils' wider role of promoting the economic welfare of the district. Careful analysis of the issues and development of a broad strategy of measures including, but not necessarily limited to, plans and methods under the RMA are required.

5.4 Acknowledging existing activities

Existing activities and the effects that they (legitimately) create are component parts of the natural and physical environment. They contribute to and partly define the nature of amenity in any rural area. Councils reported that they commonly experience rural amenity conflicts in relation to legitimate existing activities that, in more recent times, rural neighbours (often new arrivals) find objectionable. Common examples include complaints about noise from stock movements or weaning, or the smell of dairy or pig or poultry operations.

In defining the environment and the nature of rural amenity, councils must recognise the impact that legitimate existing activities have on amenity conditions. In defining the attributes and quality of rural amenity, the environment should be described in terms of what actually exists. If the environment features periodic smells and noise and smoke, then it should be described as such rather than as a pristine landscape. Councils then need to decide whether or not to accept the existing standards of amenity or to seek some improvement. Whatever policy direction is selected, it is important to commence with an honest description of the existing environment (including legitimate existing activities and effects).

It may be necessary to consider controls to manage reverse sensitivity effects. This is currently common in district plans in the context of requiring minimum setback distances of new dwellings from existing pig and poultry farms. The concept may have application as well in relation to other legitimate activities that would be sensitive to amenity complaints from too-close neighbours. Such factors could also be included within the criteria for assessment of land subdivision proposals.

Not all existing effects are legitimate. Councils need to clearly identify any particular sources of adverse effects that will not be tolerated. There are mechanisms available to address non-compliance. In determining rural amenity standards, councils need to identify standards that are reasonable having regard to:

- effects and amenity conditions created by existing legitimate activities
- amenity effects created by activities that do not have consent or do not comply
- expectations (sometimes competing) of rural producers and their neighbours.

Where amenity conflicts are likely to cross property boundaries, councils need to determine the degree to which they will require activities to confine their adverse effects within their site of origin. If adverse effects are to be permitted to escape from a property, councils need to determine the extent of off-site environment able to be affected. There is no magic formula to determine this in every situation because the answer will depend on the community's tolerance of amenity effects, the intensity of rural settlement and the nature of the actual physical environment. Striking the right balance requires consideration of all of the above factors through a robust process involving community participation.

5.5 The Maori perspective of amenity

One of the results of analysing the environment in the course of preparing RMA plans and policies is that issues can become boxed into a number of convenient headings determined by the Part II matters and the functions of local authorities. The distinctions of classes of issues such as “amenity values” or “amenity issues” or even “rural environment” are examples of such boxing.

Conceptually dividing the environment in this way is not necessarily consistent with a tangata whenua view of the environment which is based on whenua – a relationship with land and resources and a consideration of the way in which the whole environment functions.

Changes in land use practice could lead to significant adverse changes to the whole environment as seen by Maori. These changes could, for example, include a higher intensity of effluent disposed to land with downstream pollution, a new level of point source pollution of water, or an offensive smell.

The effects of the changed activity include some matters that may be inconsistent with kaitiakitanga as exercised by local Maori. The effects of the change may, to this extent, interfere with the relationship of Maori with their culture and traditions, ancestral lands, water and other taonga. Taking an effects-based approach can assist in addressing the issues and effects that might be of concern to Maori.

The ability to live on the land is essential to the relationship of Maori with their ancestral lands. Plan provisions which box up the environment and resource management issues into neat parcels of amenity or visual character or density of buildings have the potential to cut across this relationship. This example demonstrates the importance of understanding the nature of the relationship of Maori with land. In this sense, land is not simply a landscape, or a set of resources to be used for production but is whenua.

In fulfilling the section 5, 6, 7 and 8 duties, it is important to provide for issues that are important to Maori, to understand the nature of the relationship of the tangata whenua of a district to the environment. This is best achieved through dialogue with tangata whenua early and throughout the course of the preparation of RMA plans and policies.

5.6 Peri-urban situations

Demand for small rural allotments in close proximity to urban centres and the pattern and density of rural settlement on the fringes of urban centres intensifies the potential for amenity conflicts in these areas. Many of the activities found in these locations are there because of their particular site requirements. For example, many airports, landfills, sewage treatment plants and quarries are located on the outskirts of urban areas because of their need for large sites which may, once, have been suitably removed from residential homes. As urban areas expand, new communities can surround these activities that are usually not easily re-located. The potential for conflict about amenity effects (noise, odour, night time lights, traffic movements) arising from the pre-existing activity is enormous.

Another significant issue for rural producers located at the fringes of urban centres is the effect that demand for rural residential properties can have in inflating land values above what would be considered their production-based value. This can create financial pressure on producers, for example by increasing value-based rates paid to councils, and erode their viability relative to cropping the land for rural residential allotments. In some situations around major cities in New Zealand, traditional forms of agriculture and horticulture are being forced to change or relocate in the face of the growing demand for rural residential development.

It can then become increasingly difficult for producers to expand their operations or to find sites to establish new production units. This is an issue for, in particular, intensive poultry or pork production that gives rise to effects that are, to most people, not compatible with residential living.

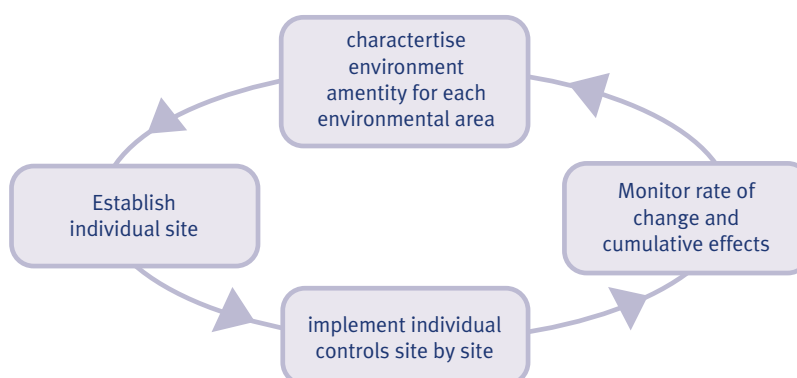
5.7 Cumulative effects and environmental capacity

Plans have traditionally, and continue to, set standards that apply to each individual site within a particular environment or defined geographical area. In rural areas the effectiveness of amenity protection measures often relies on the fact that relatively few sites will develop or operate to these threshold levels.

The reality is that different environments have different capacities to absorb different environmental effects. This is particularly so in the case of structures and buildings where the topography and vegetation play a major factor in the visibility of such activities. Similarly, the density and nature of existing land uses have a major bearing on the existing character and amenity of the environment.

It is therefore important that, after carefully characterising different environments and setting standards, the effectiveness of the standards is monitored with respect to the cumulative effects of a given rate of change.

The process can be illustrated as:





CHAPTER SIX
Robust community process

CHAPTER SIX

Robust community process

A robust process is essential if amenity issues are to be appropriately addressed. Such a process should be one undertaken *with* the community and not exclusively *by* the council. Ideally, there will be:

- early technical assessment of the rural environment by the council, sufficient to understand the nature of rural amenity conditions (this may include assessments of noise conditions, privacy, quality of the landscape). Importantly, this early technical assessment should not extend to settling on the issues. In other words, it should not presume, on behalf of the community, what the issues are but should allow the community the opportunity to play a strong role in identifying or determining the significant resource management (amenity) issues
- early dialogue with stakeholders and sector groups to help identify whether there are any amenity issues and to properly understand the issues. Issues and options or discussion papers are useful tools to spark thought and discussion of the issues. These are likely to meet with opposition or mistrust, though, where they go too far in presuming to decide what issues are important. They should be thought-pieces rather than definitive solutions
- clear articulation of the issues as understood by council (perhaps in a discussion paper). Many councils have produced discussion papers *after* consultation with a diverse range of rural community groups, to confirm that they have properly understood and articulated the issues
- development of a strategy – looking at broad alternative policy approaches. These should be genuine alternatives
- selection of an appropriate combination of methods to achieve the strategy in consultation with community groups interested in participating
- continual dialogue with the key stakeholders and sector groups to debate issues, to seek or bounce ideas about strategic policy and methods, and to gauge community acceptance of proposed policies and methods.

6.1 Techniques for community participation

Some of these could be:

- council-hosted workshops of rural stakeholders identified and invited by the council
- a general invitation to a broad spectrum of rural dwellers and resource users to join a council forum to discuss (rural amenity/rural) issues
- establish community liaison groups where representatives of rural stakeholders and council meet to discuss rural issues (generally and amenity issues specifically)
- direct individual or small-group discussions with identified rural sector group representatives (eg, Federated Farmers)

- ordinary meetings of existing rural community groups, where rural amenity issues can be discussed
- discussion paper(s) distributed to key rural stakeholders, with an invitation to reply
- surveys of the perceptions of rural dwellers about their environment, their amenity values, the quality of amenity in their rural area and about their attitude to the effects of rural activities. Follow up the survey by advising findings in council newsletters or in the media, saying how the council intends to use the information and, perhaps, suggest policy ideas for addressing some of the issues identified and call for responses to those ideas. In the face of considerable pressure for subdivision and development, the Western Bay of Plenty District Council has conducted such surveys in recent years.

Dialogue with the community can be undertaken by either the staff or elected members of council but there is widespread agreement that the elected councillors need to have a thorough understanding of and ownership of issues as community representatives and should be closely involved in all stages of the process. Many councils find that it is useful for elected members to be directly involved in discussion of the issues with community groups at some early stage before they are asked to endorse any policy initiatives. This early exposure to the issues and debates is generally found to assist the process and understanding of the issues.

The increasing diversity amongst rural communities highlights the importance of ensuring that the full spectrum of rural opinion is reflected in the debate about amenity issues. This requires that councils maintain good information about the interest groups that are active in their rural communities. Regular contact with representatives of different groups is a good investment in good community process because it maintains a relationship between the council and groups within the community. Reliable lines of communication can be established over time making consultation and dialogue easier over time.

6.2 Public benefit – Private cost

Maintenance and enhancement of amenity values can often only be achieved by establishing standards which have the effect of constraining or directing the nature of rural activities. Those constraints can impose private costs. Part of the rigour of the section 32 evaluation of alternative policies and methods involves a consideration of likely benefits and costs. These cannot be fully considered if issues such as public/private benefit and cost have not been aired through the council's community process.

Debates about the costs and benefits of controls will inevitably be passionate and sometimes uncomfortable; they will always be essential to fully understanding the issues and to exploring alternative ways of approaching issues. A discussion about new or more rigorous standards may highlight costs for producers. The issue is then about where these costs most appropriately lie. Industry suggests that investment in the development of industry codes of practice or on-site management plans could be less expensive and more effective in resolving some issues.

6.3 Using community process to resolve amenity conflicts

Many of the ingredients in rural amenity conflicts are *people* issues and that they are best dealt with by *people processes*. The particular examples given at the workshops related to large production activities in rural situations but the processes used have application to the generality of the rural environment. Processes used include:

- involvement by council as a mediator between neighbours. This requires good mediation and negotiating skills by council staff
- establishment of a community liaison group of neighbours to a particular activity including a representative of the activity to be the forum for raising and addressing amenity concerns experienced off-site. Such a group can only work where all parties are prepared to take responsibility for either their amenity concerns (the neighbours) or the effects they create (the activity). The council can work with all parties to encourage them to take responsibility for their own process. The result can be a substantial shifting of the burden of managing/resolving amenity conflicts away from council to voluntary mechanisms between people who establish their own codes of operating and establish their own conventions for the way they intend to co-exist
- assistance with preparing (site-specific or industry-specific) management plans which establish the best practice that will be adopted and set out the procedures and lines of communication to follow for resolving concerns about adverse amenity effects.

The experience of councils of that have tried these methods is that they require a certain amount of effort to begin with but, when the methods are successful, the arrangements can be left to operate without undue recourse to complaints involving the council over the longer term.



CHAPTER SEVEN
Communicating council's approach

CHAPTER SEVEN

Communicating council's approach

Managing rural amenity conflict is as much as anything about managing people's perceptions and expectations about rural amenity. It is commonly the case that, even where a district plan clearly describes the amenity to be expected in a rural environment, the community remains largely unaware and continues to hold very different expectations for the rural environment. RMA plans have not proved to be the most effective way of communicating the message.

Councils can influence people's expectations of rural amenity by providing information that describes the amenity characteristics of the rural environment and the types of activities and (sometimes unpleasant) environmental effects that will be experienced in the rural environment. Supplementary communication strategies are essential if a council wants to broadcast its policies and ensure the community has a good awareness of the issues and the council's approach to them.

An effective communication strategy does not need to be complex. Opportunities to inform and educate arise regularly in the normal course of any council's business. These include regular council newsletters, meetings with residents, responses to comments/complaints, resource consent hearings and attendance as a guest at the meetings of rural producer groups and community groups. It is important that the council gives a consistent message throughout all means of communication. Rural people understandably find it frustrating if the response they get to inquiries about amenity standards differs between staff or between councillors and staff.

A communication strategy could include combinations of the devices discussed in the following sections.

7.1 Information sheets

The council could prepare a series of pamphlets or kits of information on amenity and other issues that would spell out clearly the council's approach and the kinds of amenity conditions that should be expected in the rural environment.

This written information could be supplied directly to new rural residents and to the agencies most closely involved in facilitating the development of new activities or settlement in rural areas or in influencing people's decisions about locating in the rural environment: real estate agents, valuers, surveyors. The information could also be supplied directly to new rural residents and/or supplied automatically whenever council receives a notice of sale of a rural property.

Western Bay of Plenty District Council has developed a one-page summary of the kinds of activities that are allowed in its rural zones and the kinds of amenity effects people should expect to find there. The information sheet explicitly describes usual rural activity as featuring the use of chemicals, noise, odours, busy roads, unsealed roads and outlines the obligation on rural dwellers to provide their own water and maintain their septic tanks.

7.2 Code of rural practice

This emerging concept takes the idea of an information sheet and encodes it as a set of rights and obligations of living in the rural area. The concept is an extension of the conventions that people living in rural areas develop amongst themselves anyway. For example, agreement about the times of day that stock is moved along roadsides, the weather conditions during which spraying occurs and other similar matters is essentially about respecting the amenity between neighbours.

To a degree, district plan standards can cut across these interpersonal arrangements. Voluntary codes of rural rights have the potential to provide suitable people processes for managing amenity conflicts between people.

7.3 Land information memorandums

The council could specifically include its rural amenity policies and standards in Land Information Memorandums (LIMs) although since only a few land purchasers obtain LIMs, this coverage is relatively limited).

Hastings District Council's proposed district plan includes with all LIMs a statement advising people that they are establishing in a productive agricultural environment, where the council will uphold the amenity standards associated with the normal conduct of farming operations in the zone.

"The zone concerned is located close to productive rural areas and that residents live in an environment where agricultural management practices such as agrichemical spraying, use of farm machinery, the seasonal operation of bird scarers, odour, and night harvesting occur."

It is important that the cost of obtaining LIMs is not set at a level that is a disincentive to their use. Some advertising might be necessary to encourage people to access LIMs. Councils could encourage prospective rural residents to make use of the LIM process and gain a clearer picture of what to expect in the rural environment.

7.4 Media

Amenity issues are topical issues. There is good value for money in generating frequent articles for local newspaper discussing rural amenity issues, the amenity conditions that should be expected in the rural area and the standards that apply to activities.

7.5 Satisfaction surveys

Many councils find it useful to undertake periodic satisfaction surveys to gauge their community's attitude to a number of issues. Questions about the values the community sees as important in the rural area or about rural amenity conflicts could be included in such a survey.

The responses should provide information about whether people's expectations are being met by the standards adopted in the district plan. The findings also help the council identify whether it needs to do more to communicate its approach to rural amenity.



CHAPTER EIGHT
Policy development

CHAPTER EIGHT

Policy development

8.1 Success factors for developing policy

Conflicts in rural amenity arise from changes in the attributes that make up the rural environment and in people's perceptions and tolerances of those changes. Successful management of rural amenity conflicts needs to target both the attributes and the perceptions. Critical to this are:

- a clear definition of the quality of rural amenity to be expected in different parts of the rural environment
- the establishment of amenity standards that are clear, reasonable, measurable and enforceable
- management of people's expectations of rural amenity
- management of the effects of activities within agreed standards.

These goals cannot be achieved without:

- understanding the natural, physical and economic resources of the rural environment and of the people who live there and their social values
- understanding the attributes that make up the amenity of the rural environment
- understanding the economic, physical and social processes which drive change in the rural environment
- understanding the effects of different rural activities on the environment
- dialogue with key stakeholders, Maori and sector groups in the rural community, and with rural resource users, to understand their perspectives
- ongoing monitoring of change in the rural environment and in rural amenity
- integrating rural amenity management measures with other territorial authority policies affecting the rural environment and with regional council initiatives.

The importance of developing policy on amenity using a robust community process (incorporating these features) has already been discussed (Chapter 6).

8.2 A clear statement of issues

The starting point for all policies is a statement of the issues they are intended to address. Issues need to be clearly articulated in terms of the particular characteristics of each district's rural environment. Amenity issues are most often generally expressed as being about:

- adverse effects of activities on the amenity conditions enjoyed on individual rural properties and the rural environment taken as a whole
- conflicts between rural occupiers arising from the effects of activities that adversely affect amenity conditions enjoyed on individual rural properties
- cumulative adverse effects of activities on the collective amenities and character that define the rural environment.

It is important that the issues arising for individual amenity attributes are described comprehensively – for example, as issues of:

- noise emissions from activities adversely affecting the amenity conditions enjoyed on rural land
- the potential for an increase in the overall ambient noise level of the rural environment resulting in an overall reduction in rural amenity
- odour generated by activities adversely affecting the air quality and amenity conditions of rural properties
- the potential for intensification of unpleasant odours arising from several activities adversely affecting overall rural air quality and amenity.

8.3 Section 32 evaluation

Section 32 of the RMA requires that, before adopting any objective, policy, rule or other method (for managing rural amenity conflicts), a territorial authority should have regard to:

- the necessity for the measure
- alternative measures available (including doing nothing)
- the need for regulation compared with other approaches
- reasons for and against
- likely benefits and costs
- effectiveness
- appropriateness.

In addition, the following should be considered:

- whether the policy or method is reasonable
- the need for complementary policies or methods to ensure success
- the degree to which the policy or method will be accepted by the community
- the extent to which the method can be implemented, enforced and monitored
- critical risk factors or vulnerabilities that will influence the success or failure of the policy or method.

These points are a useful checklist against which to assess the merits of the alternative methods for managing rural amenity (discussed in the next chapter). The Ministry for the Environment has prepared a handbook, *What are the Options – a guide to using section 32 of the RMA* (July 2000), that provides practical guidance about section 32 analysis. The steps set out in the handbook can be applied to new plans, plan changes and variations to proposed plans.

As noted earlier, rural amenity values can only validly be considered to warrant district plan management if they are clearly identifiable as *significant* resource management issues.

The freedom to use land provided by section 9 should not be constrained by amenity controls unless such controls can be justified as being necessary to give effect to the purpose of the RMA.

8.4 Strategic policy

At a strategic policy level, there are three broad strategies available to councils for managing rural amenity:

- effects-driven intervention – managing the effects of activities using effects-based standards to avoid, remedy or mitigate conflicts over effects
- indirect intervention – using proxy standards such as controls on the location of activities or controls on the intensity of subdivision to avoid, remedy or mitigate conflicts over effects
- conflict resolution – pursuing dialogue to resolve conflicts once they have occurred.

In practice, councils will likely develop strategies involving aspects of each of the above approaches. The discussions in Chapters 9 and 10 describe individual methods that could be combined to form the council's strategy. In any such strategy, it may be that there is one method which is the driving means of controlling amenity in the rural environment. All of the methods may be required in combination but it may be that one of them is highly influential in determining the cumulative impact on amenity conditions.

For example, it may be that site coverage is the best indicator of intensity of built development in the rural landscape and is a strong determinant of impact on overall amenity. Maximum permitted site coverage could, then, be set at a level that would ensure that the cumulative impact is acceptable. Activities that do not comply with the coverage standard would trip into a category requiring consent enabling careful consideration to be given to impacts on the overall intensity of development.

Alternatively, where the impact of buildings on the rural landscape is identified as the leading amenity issue, a rule requiring all buildings other than very small new buildings and additions to be the subject of a controlled activity consent may be the driving means of controlling amenity.

This approach is adopted in the Porirua City District Plan and ensures that all buildings can be assessed in terms of their impact on overall landscape quality, prominence from ridgelines, visibility from roads and neighbouring properties. Other methods are included to supplement this driver and to address other issues, but the landscape issue is the key determinant of rural amenity.



CHAPTER NINE
**Techniques for managing
rural amenity conflicts**

CHAPTER NINE

Techniques for managing rural amenity conflicts

9.1 Effects-based techniques

9.1.1 *Differentiated zones*

Many district plans differentiate rural zones on the amenity characteristics of various parts of their rural areas. Some parts may be identified as general rural or working rural zones in which the usual amenity conditions are expected to feature noise, smells and traffic activity commonly associated with a broad range of rural production activities. The effects-based standards (discussed below) for activities within this zone would be set at levels appropriate to the types and intensity of effects commonly created by rural production activities.

Other parts of the rural area may have amenity conditions more appropriate to relatively intensive rural living, and effects-based standards for these zones may be set at higher levels in order to maintain those particular amenity conditions.

Suitability

It is possible and appropriate to differentiate zones within most rural areas because of the character and amenity conditions that are usually found in different locations. These would not usually lead to a fine mesh of zones but, rather, to a small number of broadly varying zones.

Differentiated zones can also be used to direct certain types of effects to certain parts of the rural area. For example, the identification of a countryside living zone with amenity standards pitched towards residential amenities could be useful in absorbing rural residential pressure that might otherwise result in amenity conflicts between rural production activities and rural residential occupiers.

The discussion of the characteristics of each zone should include a clear statement describing the features and characteristics which contribute to the amenity of the zone's environment. This is done in some detail in the proposed New Plymouth District Plan. The discussion needs to be concise and targeted at the significant resource management issues identified. (See, for example, the proposed Waimakariri District Plan's concise discussion of the way in which building density is important to the visual character and amenity of the rural environment and the measures intended to maintain and enhance that visual character.)

The discussion could also describe the levels of amenity or the levels of certain effects (noise, traffic building density) that will be tolerated in the zone. This approach is adopted in the proposed district plans of the Taupo and Kaikoura District Councils to emphasise the working nature of the rural environment and the consequential character of rural amenity.

Advantages

Differentiated zones can be clearly identified in the district plan, and such identification can help to articulate to the rural community the types of effects that will be permitted in different parts of the rural area. This can be particularly useful in clarifying that certain adverse effects will be tolerated in parts of the rural area (for example, those associated with some rural production).

The measure is straightforward to implement and provides certainty.

Areas identified in this way can be adapted and extended or diminished as changes occur in the character of amenities of different and in the expectations of the rural community. It is helpful if the district plan includes criteria or objectives and policies against which proposals to create new or extend existing zones can be assessed. (For example, the proposed Waimakariri District Plan includes a comprehensive section on the circumstances in which new zones will be created and the issues that will be assessed in considering district plan changes.)

Best practice challenges

Successful implementation of the measure requires a thorough understanding of the character of the amenity of different parts of the rural area and of the expectations of the rural community with regard to the amenity standards they seek in those areas.

The differentiation between different parts of the rural area needs to be clearly related to the character of the environment and/or effects-based standards rather than on preferences between activities.

The characteristics which form the basis for the differentiation between zones (and therefore any consequent differences in standards between zones) need to be clearly articulated in the district plan. The proposed New Plymouth District Plan, for example, includes a list of the elements which define rural character and a discussion of the potential threats to rural character and amenity expressed in terms of types of adverse effects of activities.

Any of the effects-based techniques discussed below can be used within the differentiated zones to provide site-by-site controls on the effects of activities.

Examples of differentiated zones:

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- Rural production zone:**
- Many councils identify the bulk of their rural area as a general rural zone and set standards for permitted activities that recognise the likely effects of common existing production activities.
 - Alternatively, the district plan could identify the bulk of the rural area as a rural production zone or rural working zone with the standards for permitted activities set at levels recognising the likely effects of common existing production activities. This approach is the basis of the provisions developed for the Manawatu District Plan and the proposed Hastings District Plan.

Special character areas:	<ul style="list-style-type: none"> Identify particularly sensitive areas in which standards reflect the particular landscape or rural amenity or special character of the area. This is adopted for the areas of landscape and ecological value (eg, the Port Hills and Grasslands) in the Christchurch City District Plan, the special rural and rural/coastal character areas identified in Rodney District Council's proposed Change 55, in the landscape units identified in the proposed Marlborough Sounds Resource Management Plan, and the special character zones identified in the Queenstown Lakes District Council proposed District Plan.
Countryside living areas:	<ul style="list-style-type: none"> Identify particular parts of the rural area in which rural residential living is expected and in which the standards for permitted activities are set at levels recognising the high amenity requirements for residential dwellings, particularly for noise, smell, distances from factory farming. This approach is adopted in the rural residential zones of many district plans including the proposed Hastings District Plan and the Waikato District Plan and the "countryside living (rural) and countryside living (town)" zones in Rodney District Council's proposed Change 55.

9.1.2 Effects-based environmental standards within zones

Effects-based standards manage amenity conflicts by addressing adverse effects at site boundaries. They directly target specific effects (such as noise, smell, dust emissions). They are not, by contrast, proxies. Using the earlier example of a market garden and the control of spraydrift, an effects-based standard would be expressed so as to prevent the occurrence of spraydrift on land adjoining the area of intended spray application and it would be up to the market gardener to determine how best to achieve that standard. By contrast, a proxy standard might seek to establish a buffer distance or some form of screening at the boundary of the spray area to avoid or mitigate the effects of spraydrift experienced on adjoining land.

Effects-based standards, like all standards, should be measurable, certain and enforceable. Different standard levels can be set to reflect a particular environment and this can include a specified level and frequency of standard exceedence as appropriate.

Suitability

Standards are best suited for managing individual amenity attributes for which there are established and reliable measurement techniques (eg, noise).

Standards can only be applied on a site-by-site basis; they cannot directly address cumulative effects such as increased presence of buildings and change in visual character. Site-by-site standards can help (indirectly) to manage cumulative effects if they are set at levels which have been determined having regard to the likely cumulative effect.

Standards cannot be used to override the terms of current resource consents or the existing use rights of activities that are legitimately established. They are most effective when applied to new or changed activities. For example, if more stringent noise standards were introduced into the district plan, these could not reasonably

be enforced against a grape grower's bird scaring activities that were earlier established under to less-stringent standards. Such circumstances would, of course, always be subject to the obligation under sections 16 and 17 of the RMA to avoid unreasonable noise and to avoid, remedy, or mitigate adverse effects.

Effects-based standards can in theory be constructed to address all of the effects discussed in Chapter 3, although enforcement limitations mean that other measures may be more effective in some circumstances. (Separation distances as a proxy for odour may be better than imprecise odour standards, for example.)

Advantages

Standards directly address the adverse effects of activities.

The adverse effects of activities are internalised (the polluter pays).

Precisely expressed standards can be measured, making ongoing monitoring more consistent.

Activities' methods of operation are not prescribed.

Disadvantages of effects-based standards

It is difficult with some attributes (such as dust and odour) to establish quantifiable standards. Consequently it is difficult for a resource user to know precisely whether or not a proposed activity will comply in the future. For some activities it is not possible to know precisely what dust or odour emissions will be and how they will be experienced at the boundary until an operation is up and running. This creates some uncertainty in establishing new enterprises.

Compliance costs can be high both for resource users (a private cost) and for the council because compliance relies on constant monitoring.

Enforcement can be difficult for qualitative standards (eg, for odour and dust) which rely on subjective assessment rather than instrument measurement.

Best practice challenges

The factors that give rise to the most common rural amenity conflicts (noise, odour, dust and smoke) are difficult to create standards for, because they largely occur intermittently. For many councils, a greater level of accuracy in measurement will not necessarily resolve the practical challenge of monitoring intermittent events and crafting standards which can be enforced for intermittent events. One of the approaches that some councils have used is to look at the overall context and allow a certain number of events or a certain intensity of effects, acknowledging that such intermittent events are a legitimate feature of the amenity of their rural environment.

Standards expressed in a district plan may not receive a wide viewing audience. A deliberate communication strategy such as that suggested in Chapter 7 is recommended. It would have a two-fold benefit: it advises rural resource users of the standards they must meet and it advises people who live in the rural environment what kind of amenity conditions they should expect.

Council should maintain dialogue with representatives of rural resource users to ensure it has current knowledge of best practice guidelines and codes of practice.

Council could also actively promote best practices and the guidelines or codes of practice that are available and which would assist rural resource users to meet the standards set in the district plan.

In order to set standards at reasonable levels, councils need to accurately assess the amenity conditions and character of the existing rural environment (including noise, air quality, privacy, overall landscape character). They also need to find out how tolerant the community is (or is not) of certain environmental effects.

Depending on the significance of amenity issues and the intensity of rural settlement, different standards may be acceptable. The variables that will determine this include the quality of the environment, distances separating dwellings, and other historical levels of activity in the area.

In areas in which there is a low density (large farm) pattern of settlement and generous distances between rural dwellings the levels at which standards are set may be less critical simply because the interfaces between adjoining properties are large spaces. Where there is close subdivision and settlement, the levels at which the standards are set may be more critical and more detailed work may be required. In such situations, standards need to be set at higher levels to protect amenity across boundary interfaces. For example, the amenity standards for rural activities close to the edge of urban areas might reasonably be set at levels close to those for the urban environment.

A council may not have the financial or people resources to undertake the preparatory work necessary to establish workable standards covering all attributes of amenity. In this case, it may be appropriate to target the approach to the highest priority attributes because they cause the most frequent conflict and are most easily measured. (These will differ between councils but are likely to be noise and odour.)

The existing amenity conditions and amenity values should be explicitly described in the discussion of issues and in the objectives and policies of the district plan.

It is operationally difficult and/or expensive for most rural activities to fully contain their environmental effects within their property boundary 100 percent of the time. Enforcement of a regime requiring nil adverse effects at all boundaries would mean that many rural activities could no longer operate. Standards need to be reasonable, bearing in mind current best practice and the surrounding environment.

Where a council may seek to enhance amenity conditions, there are particular challenges. Current district plan standards may suffice for a low concentration of effects caused by particular activities but the combined effect on the environment may not be acceptable. Noise from harvesting is such an effect. Where there is only one producer, the level of control exerted by the plan may be sufficient. Where the number of similar activities, and thus the effects, grows markedly (eg. with viticulture around Marlborough), the overall impact and therefore the adequacy of plan provisions may warrant attention. In such circumstances, any changes (particularly tightening) to plan provisions could only be enforced on new or expanded activi-

ties. Existing activities could continue which could create inequities within industry groups. The dilemma would not be resolved unless all activities adopt the same standards. This is likely to be best achieved by working with industry groups to achieve best practice standards or codes of practice that individual producers are prepared to accept.

Standards are not sufficient on their own – they need to be supported by a consistent programme of ongoing monitoring and enforcement proceedings may be required to ensure compliance.

Standards need to be expressed in terms that are precise, enforceable, and capable of measurement in a way that is not cost-prohibitive.

Measurement of rural amenity attributes may lead to the conclusion that the rural environment is comprised of several zones, each with different base amenity conditions where different quality of environment should be expected, so different standards are considered necessary. Such differences need, though, to specifically derive from a significant resource management issue which gives rise to the need for such a distinction. If there is no such significant issue or significant distinction, one would need to question the need for differentiation of zones.

Examples of effects-based standards:

NOISE:

Notional boundary noise standards:	<ul style="list-style-type: none"> • Maximum levels for corrected noise level at the notional boundary of the property (often defined as being 20 m from the façade of any rural dwelling or the legal boundary of the site where this is closer than 20 m to the dwelling). • Set at a higher maximum level for daytime (0700 to 1800 hours) of, say, 50dBA L10 and for a lower level for night and public holidays (say, 45 dBA L10).
Maximum noise:	<ul style="list-style-type: none"> • A maximum limit on single event noise (expressed using the Lmax unit eg, 75 Lmax). • The maximum noise standard often applies only at night.
Background noise standards:	<ul style="list-style-type: none"> • Maximum levels for background noise measured on or close to the boundary of any site. • Often measured in L95 units. • Set at a higher level for daytime level (say, 45 dBA L95) and a lower level for night time and public holidays (say, 40 dBA L95).
Standards particularised to individual activities:	<ul style="list-style-type: none"> • In some areas, where rural activity commonly involves audible bird scaring devices or hail cannons, there may be specific maximum noise standards specified for these activities expressed as maximum noise at the boundary.
Exemptions for particular noise sources:	<ul style="list-style-type: none"> • Some district plans exempt from the noise standards the noise from certain mobile sources (eg, agricultural vehicles, lawnmowers, chainsaws, post hole borers) which would not meet the standards but are activities usually found in a working rural environment.

Examples of each of the above techniques can be found in most district plans. Notable examples include Rodney District Council proposed Change 55/Variation 1, proposed New Plymouth District Plan, proposed Marlborough Sounds Resource Management Plan, and the proposed Hastings District Plan

ODOUR:

Qualitative standard:

- No activity shall discharge contaminants into air that result in odour beyond the boundary of the premises that is, in the opinion of a [specified council officer], offensive or objectionable. An example of this approach is found in the proposed Marlborough Sounds Resource Management Plan.
- Some resource consent conditions specify offensive or objectionable as being defined as such by an appropriately experienced officer of the council after having considered the frequency, intensity, duration and offensiveness of an odour or no less than three individuals who declare in writing that an objectionable odour was detected (provided that the council is satisfied that the declaration is not vexatious). An example is *Purnell v Waikato Regional Council Ao85/96* which, although involving a regional resource consent, provides food for thought for district plan provisions and land use consents considered by territorial authorities in terms of the clarity of the standards set for managing odour at the boundary interface.
- Such declarations must include name, date, and time of odour incident(s), and circumstances leading to the declaration (ie, whether the odour was detected from a distance or whether the declarer was requested to detect the odour).

Spray drift:

- Control of the discharge of agricultural sprays lies with regional councils although the environmental effects caused by spraydrift are in many circumstances a concern to territorial authorities.
- Standards addressing the adverse effects of spraydrift have been included in some resource management plans prepared by unitary authorities. Provisions include rules seeking to ensure that no spraydrift occurs beyond the boundary of the site, or causes deposition into surface waters; requiring the notification of nearby land occupiers of the intention to spray; and requiring the application of agricultural sprays to be in accordance with recognised national standards (NZS 8409: 1995). Examples of such rules are found in the Marlborough Sounds Resource Management Plan.

LIGHT:

Maximum light emissions:

- Expressed as a maximum additional illuminance (measured in lux in both the horizontal and vertical planes).
- Alternatively expressed as a maximum level of light overspill (measured in lux).
- The point of measurement may differ depending on the time of day: for example during the daytime an appropriate measurement point may be any point on or close to the boundary or at a building (whichever is closer) on any adjoining land. An appropriate night time measurement point may better be at any window of any adjacent dwelling. Alternatively, a night time standard might be expressed as a maximum additional illuminance at any point of any adjacent land on which there is a dwelling.

-
- Prevention of glare:**
- Expressed so as to shield any glare created by the external lighting of any activity from affecting adjoining land (and particularly land on which there is a dwelling).
 - Light emitted by any light fitting must be projected below a horizontal plane running through the lowest point on that fitting.
 - A typical example of these approaches is found in the proposed New Plymouth District Plan.

TRAFFIC SAFETY:

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- Design of access points:**
- Require all activities to have access connections to roads of minimum dimension and safety design.

-
- Traffic movement:**
- Specify a maximum volume of vehicle trips from any activity measured per hour or per day or averaged over a longer period as in the proposed New Plymouth District Plan.

DUST:

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- Qualitative standard:**
- No use of land shall give rise to offensive or objectionable levels of dust at or beyond any boundary of the site on which the use occurs. This approach is used in the proposed New Plymouth District Plan.

VIBRATION:

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- Maximum limits on vibration at source:**
- Expressed as a peak particle velocity of (say) 5 mm per second.
 - May provide for exemptions by permitting a higher maximum level for up to (say) 5% of the time over 12 months.
 - Another measure is maximum airblast overpressure (from blasting activity) measured in peak non-frequency weighted dB.

-
- Maximum limits experienced on adjoining land:**
- Vibration from any activity on a site shall not exceed a peak particle velocity (measured in m/sec inside any dwelling on adjoining land).
 - These approaches are used in the proposed Marlborough Sounds Resource Management Plan.

-
- Visual impacts of building colour:**
- Few district plans include controls on building appearance and colour, although some (eg, the proposed Kaikoura District Plan) proposes such controls to protect the special landscape character of the rural zone. Such controls need to be carefully justified and relate to significant visual and landscape issues.

9.1.3 Codes of practice and guidelines

These can be regulatory or non-regulatory documents produced by resource users or councils which address operational practices and the management of environmental effects of certain rural activities. Some of the well-known codes of practice that have been published by resource users address management practices and environmental effects for the pork and poultry industries, forestry and agricultural spraying.

Many councils have incorporated a *Code of Subdivision* into their district plans. Many councils also make reference to *Design Guides* addressing amenity issues. These are commonly used in urban situations although some councils have adopted them to deal with landscape issues in rural areas and they are being promoted for rural areas in England as *Village Design Statements*.

Codes of practice and guidelines are generally not prescriptive but express standards of performance that should be met and include alternative means of compliance. They are often used as a secondary form of control (ie the prime regulatory control is via a resource consent or Plan standard) although they have significant potential for application to amenity in sensitive environments. Some codes of practice are certified and monitored. Others are not.

Codes of practice are generally well accepted by rural producers and are useful for raising standards within industry practice. There is support from rural producer sector groups for the idea of councils (individually or as a group) working with sector groups to produce codes of practice addressing the management of environmental effects (including amenity). Some industry sector groups consider that such an approach would achieve greater widespread acceptance than district plan rules.

Suitability

Codes of practice and guidelines have application to the management of most environmental effects experienced in the rural environment.

Either resource users or councils can promote them as a recommended best-practice guideline.

Alternatively, and depending on the way in which a code or guideline is expressed, they can be adopted as standards in district plans or as an accepted means of compliance with district plan standards.

Codes and guidelines can be incorporated within district plan text or sit alongside district plans as referenced documents or as separate volumes.

Advantages

Where codes and guidelines are generated by or in close consultation with resource user groups, they represent the current best practice aspirations of resource users. It is then reasonable to expect that there will be high levels of acceptance of them when used as the basis for plan standards.

They can include numerous alternative suggested ways of meeting standards and ways of operating which would be unnecessary in district plans.

Codes and guidelines generally directly address the effects caused by different aspects of rural production operations (eg, they specifically discuss smell from cleaning out stock enclosures or containment of spraydrift by spraying in appropriate conditions). This level of detail is important to avoiding, remedying or mitigating adverse effects but may be an inappropriate level of detail for district plans.

Disadvantages

Codes that are worded ambiguously or in such a way that standards are not expressed precisely have limited value as the basis for plan standards.

They are often developed without public participation. They operate outside the district plan and can be subject to change without public participation.

Best practice challenges

- Codes and guidelines work best when tied in to specific plan standards.
- Promotion of the code or guideline by the council and/or producer groups is useful to achieve acceptance by resource users.
- In order to have value as the basis for enforceable standards, codes and guidelines need to be precise.
- Councils need to maintain their knowledge of current best practice guides and codes.

Examples of codes of practice and guidelines:

Pork production:	<ul style="list-style-type: none">• New Zealand Pork Industry Board's <i>Codes of Practice – Pig Farming 2nd Edition August 1997</i>.
Poultry production:	<ul style="list-style-type: none">• Poultry Industry Association of New Zealand's <i>Poultry Industry Agreed Standards and Codes of Practice</i>.• Some individual producers have management plans containing environmental standards such as the <i>Inghams Grow Out Management Manual</i>, which provides a standard for operators of broiler chicken units which produce poultry for Inghams.
Forestry:	<ul style="list-style-type: none">• The <i>Forestry Management Code of Practice</i> addresses management practices in forest planting, maintenance and harvesting.
Agricultural spraying:	<ul style="list-style-type: none">• The <i>Agrichemical Users' Code of Practice (NZS 8409:1995)</i> addresses practices in the application of agricultural chemicals.

9.1.4 ISO 14000 systems

ISO 14000 is an international standard for the development and operation of environmental management systems developed for individual industries or businesses. ISO systems specifically address all the relevant environmental performance issues of a particular industry or business. They may apply across an industry type or to an individual business. They involve the development of an environmental policy and implementation programme, which is regularly audited and reviewed.

Suitability

Environmental management systems are well suited to managing many environmental effects.

The built-in standards may differ from those specified as district plan standards so may not be a good substitute for plan rules in all cases. An environmental management system can be a good means of demonstrating that an activity's effects comply with standards specified in district plans.

Advantages

Environmental management systems can address actual effects generated by activities in some detail.

Where they are incorporated into the planning and implementation programmes of activities, they can assist to ensure compliance with standards is readily achieved and monitored.

The monitoring, audit and certification process ensures that the environmental practices involved are the best practice available.

The audit and certification is undertaken independently of the council or the resource user and could relieve a council of some monitoring and compliance costs.

Disadvantages

Resource users use environmental management systems variably.

The standards adopted for implementation can differ from standards adopted in district plans.

Such systems can be complex and costly to implement.

They can focus on process rather than environmental outcomes, and they have shortcomings as a technique for managing amenity effects unless they are accompanied by a commitment to monitoring and implementation of environmental standards.

Best practice challenges

Plan standards may still be required, although adherence to an environmental management system could be specified as an accepted means of compliance with standards.

To be effective, councils need to have an appreciation of the standards represented by the certification, to be certain that those standards are compatible with council's own district plan standards.

9.2 Controls on activities as proxies for effects-based standards

9.2.1 Separation distances

Separation (or "buffer") distances are a proxy for effects-based standards. They are based on the concept that certain effects of activities diminish with distance from a boundary. They can apply in respect of buildings or setback of certain activities from boundaries, waterways and wetlands.

Separation distances are usually administered as rules establishing minimum distances separating buildings and activities from boundaries, special features and other activities. Where the minimum standard cannot be met, an application for resource consent is usually required to consider a lesser distance. Separation distances can also be imposed as conditions of consent.

Suitability

Although separation distances do not directly address individual environmental effects, they are a good proxy for dealing with odour, dust, spraydrift, privacy and noise effects, effects which can be diminished with distance.

Separation distances can be established to restrict the location of a proposed activity on the grounds that that activity might cause adverse effects for other activities (eg, requiring all new poultry farms to locate a minimum distance from boundaries and from existing dwellings or notional boundaries on adjoining sites).

Separation distances can also be used to restrict the location of a proposed activity in order to protect that activity from the adverse effects of an existing activity (reverse sensitivity). Examples include requiring all new rural dwellings to locate a minimum distance from all boundaries in order to minimise the impact of usual rural noise from the surrounding environment. Alternatively the requirement could be for all new rural dwellings to locate a specified minimum distance from any existing poultry farm to minimise the impact from that particular point source. Applying the method in this way raises the issue of fairness of constraining the freedom of building location on one property because another activity on adjoining land has not contained its effects. Equally, any separation distance should avoid being unfair to existing activities that have existing use rights by introducing activities very close to them that are bound to give rise to conflicts and complaints about their existing level of effects.

Separation distances cannot be applied to resolve existing amenity conflicts arising from activities that have existing use rights. They are best suited to new activities.

Separation distances are not suited to addressing cumulative effects (because they are proxies), but the distances chosen as standards will have a cumulative effect over time. In determining what is an appropriate minimum separation distance for buildings or activities, consideration needs to be given to the cumulative effect over time of applying the separation distances to new development and whether or not the resultant pattern is consistent with the community's vision for the rural environment.

Separation distances have application to most of the situations discussed in the visualised examples in Chapter 3 – particularly in mitigating some of the factory farming effects, horticulture and vineyard effects, shading by forest plantations and privacy effects between rural dwellings.

Advantages

Measures such as separation distances are simple to enforce because the rules can be expressed as fixed, certain and unambiguous requirements.

Compliance costs for council and resource users are relatively low because of the straightforward implementation.

Separation distances provide a notional buffer area at the boundary between properties, which allows individual activities on each adjoining property a certain amount of leeway in terms of effects escaping across the boundary.

Disadvantages

Separation distances alone will not guarantee that all of the effects of activities are contained within their site of origin. This can be a problem where as levels are set too low and do not effectively mitigate the worst of effects. This may not matter so much where there are large land holdings and generous separation between rural buildings. In situations of closer rural settlement, though, insufficient separation distances can result in high levels of conflict and dissatisfaction about adverse effects.

One of the difficulties in determining an appropriate separation distance is that it is often the proxy for a number of effects wrapped up together (noise + odour + privacy). It may be that a relatively short distance is sufficient to mitigate noise effects but odour may require a much greater distance. If the separation distance is too low, it will not adequately address all effects.

Separation distances (and buffer zones) can be good proxies for effects-based standards. However, they apply as an average and, in their basic form, take no account of the nature of the topography, vegetation or other features that might be present to moderate or intensify effects. If necessary, criteria can be added to provide for flexibility.

Because the method is a proxy, rather than a measure directly targeting an effect, unnecessary constraints may be imposed on the location of buildings and activities, which do not themselves generate adverse effects. Effects of some activities will thus be externalised, so others who do not generate the same type or level of effects will pay the price of generating effects.

Best practice challenges

Acknowledging that separation distances may not, alone, effectively manage all adverse effects, it is useful to also have in place some effects-based standards addressing the most troublesome effects (usually noise and odour). In combination, separation distances and effects-based standards have greater potential to effectively manage adverse effects such as noise and odour.

A communication strategy as discussed in Chapter 7 is needed, to ensure that the community is aware of the relevant standards and conditions to expect at boundaries.

Separation distances are often a proxy for a number of adverse effects including noise, odour and privacy. In establishing an appropriate separation distance it is important to isolate the minimum distance necessary to satisfactorily mitigate each individual effect in the circumstances of the district. In establishing, for example, a minimum setback for rural buildings from boundaries, relevant considerations include:

- usual background noise and odour conditions
- typical levels of noise and odour likely to be produced by usual rural activities
- the degree to which these effects can be diminished by distance
- average size of land holdings and whether or not there is likely to be sufficient area to provide for appropriate setbacks

- the pattern of location of existing rural buildings
- an awareness of the occurrence of effects from particular point sources (eg, poultry or pig farms or dog kennels) which may be more acute than from other rural activities
- the likely cumulative effect of implementing separation distances throughout the district over time.

Some of the effects for which separation distances are proxies may be matters for which the regional council also has controls. (Odour is a common example of this.) Councils should maintain close liaison with the regional council's regulatory division to ensure that standards are consistent. The regional council may have already undertaken some work on standards for different effects which need not be duplicated by the district council. Alternatively, the district and regional councils could combine their resources to develop consistent standards for effects of mutual concern (such as odour).

In close rural settlement, where rural land holdings are relatively small, separation distances may need to be reasonably generous to improve the chances of activities meeting individual effects-based standards such as noise and odour. Where the pattern is less dense and there is more space, the need for a minimum separation distance may be less critical.

Councils should ensure that they have a good understanding of the current best practice for the activities in their district. This will assist in understanding what is a reasonable level of effects generation on any one property. The codes of practice published by some rural sector groups can help, but there is no substitute for talking with sector groups to obtain the best understanding of what "reasonable" means in any particular circumstances.

It is important to undertake some monitoring of the effectiveness of separation distances to check whether or not they are effective proxies for managing effects. High levels of complaints relating to amenity conflicts would indicate that separation distances are not working well. No complaints may or may not indicate that separation distances are effective, but it is difficult to check whether or not levels are set too high. A review of the numbers of applications for reduction in the separation distance standard will help here.

Examples of separation distances:

General building separation:

- All buildings are required to be set back a minimum distance from all boundaries.
- Distances may be short – 1.5 m to 5 m – in low density rural zones and greater in higher density rural or rural residential zones – 10 m and more.
- Some plans require a minimum setback distance from boundaries as well as a requirement that all dwellings be able to be located within an area of land of minimum dimension (eg, the proposed Waimakariri District Plan's building setback distance from all boundaries 10 m plus requirement for all dwellings to locate within a square of 200m by 200m dimension).

To manage privacy and the landscape effects of buildings:

- Minimum distances may be higher for small allotments (say, minimum 10 m from all boundaries on allotments of 4000 m² or less and 5 m on allotments greater than 4000m²) where the intention is to reduce the visual impact of buildings, as in the proposed New Plymouth District Plan.
- Minimum distances may be higher in relation to road boundaries where the intention is to reduce the visual impact of buildings in the landscape as seen from the road (an approach applied in the Manawatu District Plan and the proposed Taupo District Plan which requires a 25-m setback from front boundaries).
- Relatively high minimum separation distances may be required from side boundaries where the intention is to maximise opportunities for privacy between rural dwellings.
- Alternatively, there could be a requirement that all new buildings be located a minimum distance from boundaries and from existing buildings on adjoining land or from notional boundaries on adjoining land where there is no existing (residential) building on the adjoining land.
- The proposed Taupo District Plan requires a minimum setback from boundaries and requires dwellings to be able to be accommodated within a 100-m radius inside the allotment to provide a buffer area for protection against potential future effects.
- Some district plans use separation distances and minimum allotment areas to protect visual character and manage rural building density. Other plans (eg, the Rangitikei District Plan and the proposed Taupo District Plan) have no minimum allotment area and rely on separation distances between residential dwellings to protect these aspects of rural amenity.

Separation distances as a proxy for internalising the adverse effects of specified activities:

- Particular activities may be identified specifically on the grounds that they are known to generate particularly acute or objectionable effects and rules established to attempt to contain their effects within their own sites. For example: All factory farms or poultry farms or pig farms are required to locate a minimum distance from boundaries and from existing residential buildings on adjacent land (or from notional boundaries where there is no residential dwelling on adjacent land).
- The minimum setback distance could be determined having regard to the level of activity eg, a 250-m setback for 25- 500 pigs and 500 m for 501-2000 pigs and so on according to the formula recommended by the NZ Pork Industry Board's *Code of Practice – Pig Farming*.
- Similar stepped minimum distances can be constructed for different types of factory farming depending on the intensity of effects experienced for different sizes of operation. The proposed New Plymouth District Plan sets out minimum separation distances between habitable buildings and intensive poultry farms based on distances specified in the Taranaki Regional Air Plan.
- Similarly, the proposed Waimakariri District Plan specifies minimum separation distances between intensive farming activities and dwellings or residential zones (these distances apply in respect of new intensive farms and also new dwellings locating near to existing intensive farms).
- Another example is a requirement for a minimum buffer distance adjacent to boundaries, waterways and wetlands in which no agricultural spraying may occur. The Tasman District Resource

Management Plan requires buffer set-back distances in relation to spraydrift, shelter belts and orchards.

- Many district plans set a minimum buffer distance between boundaries and production forestry (eg, the Kapiti Coast and Tasman District Plans)

To mitigate the reverse sensitivity effects of certain activities:

- Require all rural dwellings to locate a minimum distance from the perimeter of any existing pig or poultry farm on adjoining land.
- As above, the minimum distances can be stepped in proportion to the intensity of effects resulting from different sizes of operation as in the proposed New Plymouth District Plan.
- Other existing activities which may warrant such provision include quarries, rural industries, intensive feedlots, dog kennels depending on the particular circumstances of any district. The Clutha District Plan identifies a noise/nuisance buffer zone around certain existing industries within which sensitive activities (eg, dwellings) require consent.

Shading effects:

- Require all buildings to be located a minimum distance from boundaries calculated in terms of a daylight envelope formula to avoid or minimise buildings shading adjoining land.
 - Require a minimum separation distance for all plantation forests and shelterbelt plantings from boundaries to prevent shading of adjoining land and public roads.
 - These approaches are adopted in many district plans including the proposed New Plymouth District Plan.
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9.2.2 Site coverage

Controls on the area of a site that can be covered by buildings or hard paved surfaces are used as a proxy for limiting the impact of buildings on the landscape and for limiting the intensity of effects from buildings on a site. The method assumes that the intensity of effects is related to the presence of buildings. A high density of buildings is expected to be associated with greater effects (eg, from a factory farm or a tourism accommodation venture or packing shed or a school). Conversely, sites that have few buildings are not expected to generate high levels of effects (eg, pasture, allotments with single dwellings).

The method is applied as a regulatory standard, setting a maximum level of site coverage as either a percentage of site area or as a maximum curtilage or building footprint. Activities that cannot meet the maximum standards are considered as applications for resource consent.

Suitability

Such a proxy has application to situations where buildings are common (eg, factory farming, intensive rural residential development). The technique is not effective where quite intensive levels of adverse effects such as noise, odour, smoke, and spraydrift can be generated by activities that do not involve buildings (eg, market gardening, vineyards).

Site coverage can address cumulative effects if the maximum level is derived from an understanding of the maximum cumulative impact of buildings that can be tolerated in the rural environment.

Advantages and disadvantages

The site coverage standard can be expressed in precise, measurable, enforceable terms, and it is straightforward to implement.

Compliance costs for councils and for resource users are relatively low because the measure is straightforward.

On its own, site coverage has limitations as a proxy control because there is a wide range of adverse effects that can be generated by activities in relatively small buildings.

Best practice challenges

Given the limitations of site coverage as a proxy, other methods such as effects-based standards and separation distances may be necessary to appropriately manage the full range of effects possible from all rural sites.

The trick is to adopt a maximum level for site coverage that will not result in a cumulative intensity of development that is beyond the capacity of that rural environment to absorb. District plans often use the figure 35 percent or 40 percent consistently in both urban and rural situations. It is not always clear whether this level relates well to the actual rural environment, and what the effect would be if 35 percent of the entire rural environment was developed. It is important to carefully analyse the capacity of the environment. A lower figure may be appropriate in most circumstances, and different figures may be appropriate in different parts of a district (higher perhaps in a rural residential zone than in a general rural zone or special rural landscape area).

Examples of site coverage:

For areas of intensive rural settlement:	<ul style="list-style-type: none"> • Perhaps 35% or 40% in rural residential zones. • Perhaps 35% or 40% on small sites (eg, those having less than 4000 m² area as in Rodney District Council's proposed Change 55.
For areas of less intensive rural settlement:	<ul style="list-style-type: none"> • Perhaps 10% in general rural zones. • Perhaps 10% on large sites (eg, those of greater than 4000 m²) as in Rodney District Council's proposed Change 55. • The proposed Taupo District Plan requires a maximum floor area for all buildings of 1000 m² or 2.5% of the site area whichever is the more restrictive.
Activity-specific levels	<ul style="list-style-type: none"> • Different maximum coverage levels could be adopted for different activities (eg, 10% for factory farming) to encourage these activities to locate on sites that are large enough to contain most effects although the concept of singling out individual activities is difficult to apply particularly when sites may host a number of different activities. • The proposed Kaikoura District Plan proposes a maximum of 2000 m² limit on residential buildings per rural allotment and no maximum is specified for other rural buildings.

9.2.3 Resource consents

Most district plans require applications for resource consent as discretionary activities for activities that fail to meet specified standards. Many plans also require controlled activity or discretionary activity resource consents for some specified categories of rural activity on the grounds that their effects are expected to be greater than can be considered as a permitted activity and that they will require site-specific assessment.

Suitability, advantages and disadvantages

The resource consent technique is well suited to considering effects where the exercise of some discretion is required in the particular circumstances of a proposal and for which site-specific assessment is appropriate.

The technique is particularly well suited for considering landscape impact.

Resource consents facilitate assessment of a broad spectrum of effects that would, otherwise be very difficult to particularise as standards. Some district plans make specific references to reverse sensitivity effects, and these issues therefore have to be assessed in considering such applications. The proposed Taupo and Waimakariri District Plans include objectives and policies discussing reverse sensitivity effects in the context of the rural environment. The proposed Taupo Plan also includes Landscape Amenity Management Areas, which encapsulate a different concept from outstanding natural or significant areas but are still relevant to visual amenity in the rural environment. The attributes of these Landscape Areas are relevant in considering any applications for resource consent in the rural environment.

They facilitate an integrated assessment.

Applications for resource consent involve time and money compliance costs for resource users and councils.

Best practice challenges

The adverse effects of many rural activities can be adequately managed by implementing standards and do not need full resource consent consideration.

Many district plans continue to specify certain activities as requiring resource consent. The reasons for singling out certain types of activities should be clearly articulated in the district plan in terms of their expected environmental effects.

It is important to monitor the effectiveness of the grant of resource consents and the conditions imposed over time.

Where categories of effects or activities are identified as requiring consideration through the resource consent process, the justification for this (in terms of effect on amenity) needs to be clearly detailed in the plan.

The plan could usefully include clear policies or explanations or assessment criteria to provide guidance in the assessment of effects and in the drafting of consent conditions so that the consideration focuses on the amenity effects identified in the plan as being important.

Examples of resource consents:

Protection of landscape amenity:	<ul style="list-style-type: none"> • Require controlled activity resource consent applications for all buildings in the rural environment over a threshold size/scale to enable an assessment, against specified landscape/amenity values, of the impacts of the buildings. Controlled activity status should be sufficient to provide a measure of control over the location and scale and visual impact of buildings. This approach is adopted in the Porirua City District Plan. The Tasman District Resource Management Plan adopts a similar approach and one of the specific matters for consideration is the effect of a dwelling on the amenity of the area. • Alternatively, such proposals could be classed as discretionary activities if there is identified a need for greater discretion in the control of visual impacts. This approach is adopted in the proposed Marlborough Sounds Resource Management Plan.
Non-complying effects:	<ul style="list-style-type: none"> • Specify minimum/maximum standards for environmental effects identified in the plan as being of concern for amenity reasons. • Require applications for discretionary activity resource consents for any activities that do not meet those standards. • Alternatively construct a hierarchy of consent status starting with permitted activity status for activities that comply with standards; controlled or restricted discretionary activity status for a certain level of exceedence; and full discretionary activity status for greater exceedence as in the proposed New Plymouth District Plan.
Certain subdivisions:	<ul style="list-style-type: none"> • Some district plans require resource consents for certain types or (usually small) sizes of rural subdivision to provide an opportunity to assess impacts on landscape and rural character (eg, Waipa District Plan).

9.2.4 Nominating building platforms

Nominating future building platforms at time of subdivision involves identifying on a proposed new allotment the location of a future dwelling and accessory buildings. The location is usually identified in broad terms by the notation of a circle to allow some flexibility in refining a future house design. The technique can be volunteered by a subdivider or required by a council as a condition of consent noted on the title to the allotment. Proposals to alter the nominated building platform are usually handled as applications for resource consent.

Suitability

The method is particularly suitable in situations where it is appropriate to tightly control the juxtaposition of buildings as a proxy for managing adverse effects.

The method has application where reverse sensitivity effects arising from the presence of an activity generating adverse effects mean that it is important to control the separation between that activity and future dwellings.

The method is not, of course relevant for existing allotments.

Advantages and disadvantages

A fixed future building platform provides certainty in the location of future buildings and may help to avoid future boundary conflicts.

The nomination of a building platform at one point in time may not meet the needs of a future owner – it might simply not be the most favourable site from the owner's point of view. (However, proposals to alter the platform location can be considered as resource consents.)

Best practice challenges

The method has limitations on its own and, for optimum success in managing future amenity conflicts, needs to go hand in hand with minimum allotment size and separation distances for non-building activities likely to give rise to effects and effects-based standards.

Examples of nominated building platforms

Farm parks and cluster developments:	<ul style="list-style-type: none">• Where allotments are quite small and positioned close to each other, as in the farm park and cluster development concepts, new allotments can have nominated building platforms to maximise separation between future buildings and opportunities for privacy between future buildings.• The Waikato and Waipa District Plans adopt this approach.
Nominated building platform in relation to special areas:	<ul style="list-style-type: none">• Nominated building platforms are often used to ensure that future buildings do not adversely affect identified areas of native vegetation or heritage features or other special areas that would be sensitive to the effects created by buildings nearby.
Other ordinary rural allotments:	<ul style="list-style-type: none">• A nominated building platform is noted on the plan of subdivision.• The allotment's certificate of title is annotated by caveat or consent condition outlining the position and terms of the nominated building platform.

9.3 Controls on subdivision

9.3.1 Controls on the rate of subdivision

This method seeks to manage the rate at which new allotments become available and thereby manage the opportunities for adverse effects to be created. It assumes that development will occur as a consequence of subdivision.

Suitability

This method can assist to suppress the potential for amenity conflicts to occur and is most effective in situations where there are not already large numbers of small rural allotments available to the market.

Where the rate of past and current subdivision of rural land is very intense and has resulted in large numbers of small rural allotments, controlling the rate of subdivision may be appropriate as a means of suppressing future potential conflicts. Other measures are required, though, to address actual conflicts emerging as a result of the close juxtaposition of rural activities and rural residents.

Advantages

The method is capable of simple implementation, provided a simple formula is developed for calculating the number of additional allotments to be subdivided from any allotment.

A regime that suppresses the number of rural allotments available and maintains a low intensity of rural settlement and generous separation distances between rural dwellings can lower the potential for amenity conflicts.

Disadvantages

The method avoids rather than addresses amenity conflicts. Where subdivision pressure is intense and there is a large pool of small rural allotments available for development, such a method will not be sufficient to manage amenity conflicts.

There is a danger that some of the formulas developed to limit the creation of allotments can create injustices between landowners.

Controlling the number of new allotments addresses only part of the issue. The shape and size of allotments should be of a size to enable a range of possible future activities to ensure that basic environmental standards for waste disposal and water supply can be cost-effectively met.

The method does not address the problems of reverse sensitivity that can arise when land is subdivided into small rural allotments close to existing activities that generate adverse effects. This is discussed in the case law section; it commonly involves the subdivision of land near a factory farm, where it can be reasonably expected that resulting allotments will experience odour and noise. Other measures may be required to address reverse sensitivity, including criteria to assess the suitability of the land for subdivision (refusing consent where reverse sensitivity issues warrant that or imposing conditions in relation to the future location of dwellings on the new allotments).

Implementation of this method requires a relatively sophisticated and potentially complex system of tracking the creation of allotments from parent titles.

Whilst such a system may be relatively straightforward to implement for the first generation of subdivision, experience indicates that there is considerable pressure from owners of allotments to seek exceptions to progressively re-subdivide allotments and thereby eventually diluting the effectiveness of the method.

Best practice challenges

There is a debate as to how controls on the *rate* of subdivision can be justified as a valid RMA technique when they clearly control the allocation of a resource (land). The rationale for the use of this technique must clearly derive from a justifiable significant resource management issue. For instance, some councils have sought to justify controls on the grounds of adequately providing for future generations, or concern about adverse effects on the landscape.

Effects-based standards and other methods will also be required to ensure that allotments are designed in a way that will enable a range of likely future activities and to directly address amenity conflicts arising from activities that occur at boundaries.

Formulae for calculating entitlements to subdivision need to be expressed in terms that are not ambiguous and are capable of implementation for first and subsequent generations of subdivision.

A robust policy framework is necessary to manage applications that seek to increase the rate of subdivision.

Examples of controlling the rate of subdivision:

Restrictions on subdivision in one area combined with tradable development rights:

- The district plan identifies parts of the rural environment in which subdivision will be tightly controlled with limited opportunities for the creation of additional allotments.
- The plan identifies other parts of the rural environment where intensive subdivision will be permitted.
- Construct a formula for allowing the transfer of subdivision entitlements from the tightly controlled area to the area in which intensive subdivision is to be permitted.
- Specify a formula for calculating the entitlement of allotments that could theoretically be created and transferred.
- The method is often applied in respect of parts of the district identified as having particular landscape or other natural or heritage special features. In order to suppress subdivision in these areas, rights to subdivide are transferred to other (less special) parts of the district.
- This technique is applied by a number of councils including Rodney District Council in its proposed Change 55.

Restrictions on the number of allotments that can be created from any parent title;

- Permit the creation of a maximum number of allotments from any parent certificate of title.
- Prevent the re-subdivision of allotments that result from that subdivision.
- The method can be varied to specify the maximum number of allotments of a small or large size that can be created from any parent title (ie a limited number of small allotments might be permitted but no restriction on the number of large allotments).
- Specifying a cut-off date and proscribing subdivision of additional allotments from titles created after that date can also vary the method.
- The proposed Manawatu District Plan adopts a kind of subdivision entitlement formula based on the number of allotments that could be subdivided in terms of the minimum allotment area of 8 ha but requiring that half the parent title remain as a single allotment.
- This method is used to create what are currently referred to as farm parks or cluster developments – subdivisions of rural land to enable a number of additional allotments to be created from a parent title leaving a substantial land area in the balance title. Limits are specified for the maximum number and minimum area of the (usually small rural-residential) allotments created. The concept enables the larger balance area to remain whilst meeting some demand for small rural allotments and also envisages that the smaller allotments could indeed be very small removing the pressure often associated with owning a rural block which is too big to be a garden and too small to farm. The Waikato and Waipa District Plans apply this approach.

- Some district plans provide for a sliding scale of the numbers (and sizes) of allotments that can be subdivided from a parent allotment (eg, the Manukau City District Plan which provides for a minimum allotment area but limits the number of allotments that can be created from an existing allotment. Two new allotments can be subdivided from a 4 ha – 6 ha parent allotment. Three new allotments can be subdivided from a 6 ha – 10 ha parent allotment).

9.3.2 Controls on allotment size

This control seeks to achieve a maximum density of rural settlement opportunities and to thereby indirectly control the future juxtaposition of rural activities and rural residents.

Suitability

Controls on the minimum allotment size would assist in some measure in suppressing the potential for amenity conflicts in each of the visualised examples in Chapter 3.

The method is likely to have only an indirect influence on the management of amenity effects and conflicts between future neighbouring properties because the nature of future activities and therefore effects is unknown at the time of subdivision. A good example of this is the creation of 4-ha allotments thought to be sufficient and appropriate for rural residential development. Many of these allotments are being used for intensive factory farming or market gardening which give rise to adverse effects significantly more detrimental to neighbours than the residential/pastoral activities that might have been envisaged at the time the allotments were created.

The measure is ineffective in relation to existing allotments, being only relevant for future subdivisions.

Advantages and disadvantages

As a fixed measure, it is simple to implement and compliance costs for councils and subdividers are relatively low.

The controls do not directly address effects, do not guarantee separation of activities, and may not achieve effective management of amenity conflicts.

The minimum area(s) selected may not match well with current market demand resulting in resistance to comply or unmet demand.

Minimum allotment size does not address reverse sensitivity issues associated with subdividing land in the vicinity of an existing activity (commonly a factory farm or rural industry) which will result in allotments on which will be experienced noise or odour. Other measures are necessary to address this issue.

Best practice challenges

Other controls on the shape and configuration of allotments to ensure that they

are capable of providing for basic environmental standards (eg, enabling the location of a dwelling, water supply, sewage disposal, road access).

Other measures to manage conflicts in amenity at boundaries arising from future activities on the allotment(s).

Allotment size should relate to identified environmental effects and/or amenity issues (eg, the need to provide for water supply, ability to dispose of effluent, cumulative impact on landscape character of subdivision throughout the rural environment, retention of productive soils). Reliance on traditional minimum sizes that are justified by a desire to support certain types of rural production is not sufficient.

Where the visual character of the rural environment is important, a higher minimum area may be warranted. For example, the proposed Lower Hutt District Plan provides for a 15-hectare minimum accommodating two dwellings in the Rural Zone and for a lesser minimum of two hectares in the Rural Residential Zone.

Examples of allotment size controls:

Single fixed standard:

- Minimum area is prescribed for a controlled activity.
- Any allotment less than the above size is a discretionary activity.
- Minimum areas vary markedly between district plans depending on the characteristics of each rural area; the intensity of existing subdivision; land values and market demand for new rural allotments; and the community's desire to retain existing rural character or tolerate intensification of rural settlement and consequent changes to rural character.
- Some district plans do not specify a minimum allotment area but require a minimum allotment shape dimension which seeks to ensure a minimum of separation between future dwellings and which, in effect, determines the minimum area (eg, proposed Waimakariri district plan's minimum dimension of internal square of 200 m by 200 m).

Range of sizes:

- Specify two or more sets of minimum sizes.
- Limitless number of allotments over a certain size (say, 100 ha or 50 ha or 10 ha or five ha dependent on the factors discussed above).
- Limit the number of allotments able to be created having area less than the above standard (eg, an additional three allotments permitted to have area between five ha and 50 ha).
- Require a minimum average allotment size (the sum of areas of all allotments divided by the number of allotments).
- Require exceptions to be considered as discretionary activities.
- Minimum area requirements are often determined by the method of proposed sewage disposal on a site (a larger area being required for on-site sewage disposal) and these vary between districts depending on the soil conditions and intensity of existing rural settlement.

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- Supplementary controls on allotment shape:**
- These are controls on the shape and configuration of boundaries to maximise the allotment's suitability for a range of uses and to manage the future juxtaposition of neighbouring buildings eg:
 - Ability to contain a minimum diameter circle or size of square
 - Length of access legs to ensure ease of road access
 - The size of shape factor circles (or squares) varies between district plans depending on factors such as the existing intensity of residential settlement and the size of the allotment (ie for larger allotments the shape factor is less of an issue than for small allotments).

9.3.3 Restrictions on subdivision to minimise reverse sensitivity

This technique involves assessing the suitability of a proposed subdivision in terms of the likely future effects of that subdivision (demand for water supply and ability of local water resources to meet demand, ability to absorb effluent disposed to the ground, safety and efficiency of local roads).

The technique also involves assessing the nature of existing activities in the vicinity and determining whether any restrictions on the proposed subdivision are warranted to avoid or minimise reverse sensitivity issues in relation to existing activities giving rise to particular effects. Examples might include proximity to an existing rural industry which, although operating within the terms of consents previously granted, is known to be the source of periodic odour and smoke likely to be objectionable to rural dwellers.

The technique could be applied as a requirement to consider certain matters in assessing a subdivision proposal. Alternatively it could be applied by requiring all subdivisions or subdivisions located close to certain nominated activities to be considered as discretionary activities.

The concept of considering reverse sensitivity issues is a relatively new one although the technique has some support in principle in recent case law discussed in Chapter 12.

Suitability

The technique is well suited to avoiding or minimising some of the conflicts described in the visualised examples about horticulture, market gardening and factory farming.

The method could be applied as restrictions imposed on the grant of a subdivision consent relating to the permitted density of subdivision, size of allotments, nominated building platforms, minimum buffer distances from boundaries. Alternatively, the result could be a refusal of consent.

In practice, it may be that restrictions on the configuration of the subdivision or location of future buildings might be the result of negotiation between a subdivider and opponents who seek to avoid or minimise future complaints against their existing operation.

The method would be inappropriate if it were used to attempt to absolve polluters of their responsibilities to avoid, remedy or mitigate adverse effects.

Advantages and disadvantages

The method would avoid the inevitability of future amenity conflicts.

The method would be useful in clearly signalling to future residents the nature of the environment into which they come and clarifying rights and obligations.

There is potential to create injustices by restricting development opportunities by virtue of the (poor) performance of an existing rural activity and care would be needed to ensure the existing activity that is the subject of the reverse sensitivity effect has exhausted all avenues in avoiding, remedying or mitigating adverse effects before the technique is contemplated.

Best practice challenges

The concept is relatively new, and rules to implement it would need to be carefully worded to identify the justification for the restriction.

Examples of reverse sensitivity restrictions on subdivisions:

Case law:	<ul style="list-style-type: none">Recent case law includes examples where subdivision consent has been either refused or restricted on the grounds of reverse sensitivity effects from existing activities.
Plan rules:	<ul style="list-style-type: none">Identify in the plan any existing activities or geographic areas within which special considerations of reverse sensitivity will apply in considering applications for subdivision consent. This approach is signalled in the proposed Taupo District Council district plan).If necessary and appropriate provide for certain classes of subdivision in certain areas as discretionary activities rather than controlled or permitted to provide an opportunity to review all issues and impose conditions or refuse consent as appropriate.

9.4 Other techniques

9.4.1 *Controlling the rate of development through infrastructure controls*

This method seeks to manage the process of change in the rural environment by allowing subdivision and development only up to the capacity of certain identified infrastructure. The technique is more common in urban environments where there is a range of public infrastructure (water supply, sewage disposal, solid waste disposal, roads). In the rural context, the most effective control relates to the capacity of rural roads.

The technique would be implemented as a restriction on the level of subdivision and development permitted on roads according to the capacity and safety constraints of those roads. Narrow, metalled roads would be permitted to support only limited development whereas widened, sealed roads would be permitted a higher intensity of development.

Suitability

The method can be used to assist in controlling subdivision and development of rural areas where the capacity of infrastructure is sensitive to increased demand.

The analysis required to support the measure (ie determining the capacity of critical infrastructure) provides an essential basis for the development of district plan standards about the density of subdivision or rate of creation of additional rural allotments.

Advantages and disadvantages

They directly address capacity issues such as the capacity of a rural road to take additional traffic. For example, road capacity may be determined by the road's geometry and whether or not it is sealed and also by the level of traffic using the road and the noise and dust that those traffic movements cause and the effect of that dust and noise on adjoining properties.

Successful implementation of the measure requires that a council determine the ultimate capacity of the infrastructure (the road, water supply, effluent receiving environment) and take a firm stance in not permitting development beyond that threshold. This can be difficult to achieve where the capacity of the environment is difficult to determine absolutely. For example, the capacity of an underground aquifer may be difficult to quantify and therefore it is difficult to set defensible limits on the extent of development permitted. It may be easy to raise arguments about the capacity of a road making it difficult for a council to hold a firm line.

In situations of intense development pressure, the technique may not be sufficient on its own to control the rate of development because, as noted above, developers may persistently argue that the capacity of the infrastructure is more elastic than the level nominated by the council.

The measure should not be relied on as a sole means of constraining development in the environment if there are other amenity reasons for constraining development. This is because it is often relatively easy to upgrade a road or infrastructure service to meet demand.

Best practice challenges

Thorough analysis of the capacity of the infrastructure concerned is required in order to properly justify the measure.

Implementation of the measure requires firm and consistent action by the council.

The measure may be best implemented through district plan rules for subdivision and standards relating to the maximum number of users of a road or infrastructure service.

This technique is an indirect means of managing a limited range of effects and should be used in conjunction with other techniques addressing other effects.

Examples of infrastructure controls:

Roads:	<ul style="list-style-type: none">• Rule restricting subdivision allotment size or the rate of creation of additional allotments on certain roads identified in the plan as having insufficient capacity• Rule requiring resource consents for certain activities which gain access to roads identified in the plan as having low capacity. This would allow the assessment of the impact of the proposed activities on the road's capacity, safety and convenience.
Water supply and effluent disposal:	<ul style="list-style-type: none">• Require resource consent for all activities which either require water or which will dispose of effluent to provide an opportunity to assess the impact of that activity on the water supply or receiving environment.

9.4.2 Property purchase and lease-back

This is a straightforward method whereby land is purchased to provide a buffer between an activity and adjoining properties. The buffer provides an area around the activity in which adverse effects are absorbed so as to avoid or mitigate adverse effects from the activity on the adjoining properties. In some circumstances the buffer land may be leased on terms that enable the activity to continue without complaints or constraints from occupants of the buffer area. The method is commonly used by large rural industries, which need a high degree of certainty about their ability to operate without constraints created by adverse effects experienced on adjoining properties.

Suitability, advantages and disadvantages

In some cases where amenity conflicts are apparently unable to be resolved, it may be financially viable for the alleged offending party to simply purchase the neighbouring properties. This option may be preferable to a protracted legal battle, or the introduction of high cost mitigation technology. As with any sale and purchase process, this necessitates a willing buyer and seller. Successful examples include of meat processing plants that have bought out their neighbours to provide a buffer for the effects of their activities. In the absence of viable alternatives, it may be appropriate for the local authority to facilitate or even broker such an outcome. The method provides a comprehensive solution to most of the potential amenity conflicts described in the visualised examples including situations where no breaches of standards have occurred but where an activity'.

The key to whether or not property purchase is appropriate is the cost-effectiveness of the measure: For many smaller rural industries in areas of highly valued land, property purchase may be simply out of the question because the cost is prohibitive relative to the return from their rural industry. This is the case for many pig, dairy and poultry farms in areas where rural land is expensive.

The method can effectively internalise the costs of adverse effects within the site of origin and, where this can be achieved, is favourable for the community and council.

Property purchase may be a method the council needs to consider in situations where it is having difficulty achieving enforcement of standards and the adverse

effects are creating a severely detrimental situation for nearby property. If, in these circumstances, a council faces the prospect of spending large sums of money on enforcement proceedings, it may be logical at some point to consider negotiating property purchase or a share in property purchase with the polluter. This has the potential to remove the amenity conflict at the boundary interface with the adjoining property. Although the method has been seldom used in this way, it may well, for financial reasons, be the most cost-effective way of addressing a severe problem.

9.4.3 Compensation, easements and private agreements

These methods involve private negotiation between a polluter and parties affected by adverse effects. This is a legitimate method where loss of amenity is contained to an effect on the parties to the negotiation.

Examples of private agreements are:

- Private agreements between parties whose written approval is sought under section 94 RMA to enable applications for resource consent to proceed without notice providing cash or other compensation for limited effects associated with proposed activities.
- Private agreements involving cash or other compensation negotiated as a result of the leverage provided to third parties through appeal and enforcement proceedings under the RMA.
- Private agreements preventing future owners of subdivided land from constraining the operations of a rural activity in return for withdrawal of opposition to a proposed subdivision consent thereby protecting the rural industry from future reverse sensitivity effects.

Suitability, advantages and disadvantages

Unless prescribed on certificates of title, a private agreement is not necessarily enduring with the ownership of the land so does not secure rights to pollute over time.

In some countries easements can be created for environmental effects. An example is an odour easement where a landowner is compensated by a polluter for a certain level and frequency of odour and this right is recorded on the land's title as an easement. Enforcement of such an easement would be an entirely private matter.

The concept of compensation could be extended to the use of economic instruments as penalties for non-compliance with standards. This could be applied to particularly objectionable effects in sensitive areas such as smell and smoke generated by intensive livestock operations or rural industries or effluent disposal plants. Such a technique would be complex, however, and would require regular and frequent ongoing monitoring and environmental reporting to justify successful claims. The effects so compensated would need to be confined to those experienced by the parties to the compensation. Wider effects would still need to be subject to monitoring and enforcement of standards.

Private agreements or covenants on land titles are used to alert people to the presence of existing legitimate activities and to limit the scope of future complaints

about that existing activity. Covenants on the titles of rural subdivisions next to forestry plantations or viticulture blocks or rural industrial sites are common. There is a concern that such covenants could be used to usurp the normal rights of rural landowners under the RMA. There is potential for abuse of such techniques, particularly if covenants do not clarify the overriding rights that people retain to the section 16 and 17 protections relating to the duty on all people to avoid, remedy or mitigate unreasonable noise and the adverse effects on the environment. Covenants cannot, and should not seek to, deny people the basic rights guaranteed by sections 16 and 17 of the RMA.



CHAPTER TEN
Resolving existing conflicts

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Resolving existing conflicts

Some degree of amenity conflicts will arise no matter what we do, if only because people's expectations and tolerance levels change. In addition, most councils will have a number of historical amenity based conflicts that require resolution. This chapter looks at some methods for resolving existing conflicts.

10.1 Monitoring and quantifying actual effects

The starting point for dealing with existing amenity conflicts is to quantify the actual scale of the problem. This involves verifying and then measuring the level of nuisance effects being incurred by the aggrieved party. For some amenity attributes – such as noise, glare, water quality degradation and dust deposition – this is relatively simple. The Ministry for the Environment's *Good Practice Guide for Assessing and Managing the Environmental Effects of Dust Emissions* was published in draft form in March 2000. The guide addresses the effects of dust emissions on amenity values. Planning issues related to dust management are discussed and relevant case law is summarised. Guidance is provided on dust control methods, trigger levels for action, management plans, complaints response and criteria for assessing dust nuisance. Other nuisance effects (such as odour and spraydrift) are more complex and time-consuming to quantify. For example, the Ministry for the Environment's *odour management* document provides a range of methods for quantifying odour (including the keeping of odour diaries, assessments by enforcement officers (whose "noses" are designated sensitive, normal, or insensitive), and assessments by community panels). The Ministry intends to review the odour management guide. The revised document will contain guidance on assessing the environmental impacts of odorous discharges, practical solutions to odour problems and methods for monitoring the effects of odour on local communities. The Ministry is not pursuing national environmental standards for odour, given the highly subjective nature of odours.

Having verified that a problem either does or does not exist, it then becomes possible to attempt to facilitate the resolution of the problem.

10.2 Enforcement action

If a nuisance effect is verified as occurring and has been measured as breaching district or regional plan standards, then enforcement procedures are available under the RMA. Most councils have developed enforcement policy manuals, which generally dictate a staged approach to enforcement action, starting with inspections, warning letters and abatement notices and ending with enforcement orders, prosecutions or enforced physical remedy.

The aim of the enforcement action is to force the offending party to internalise their adverse off-site effects and cease the breaching of the plan standards. There are in turn many ways of achieving that end point including; operational, procedural and site management changes; the timing of on-site activities; or the use of emission control technology. In many cases the council staff can assist with the identification of these options.

Enforcement action is also available as an option in the absence of district or regional plan standards, in terms of the section 17 RMA responsibilities placed on everyone. However, this has a far lower chance of success, due to the high standard of proof required in RMA enforcement proceedings. Remedies under other legislation (such as the Health Act) may be quicker and simpler to implement.

Finally, Infringement Notices are a simple and effective enforcement option for low-level nuisance incidents.

10.3 Facilitating dialogue

If there are no amenity attribute standards in the district or regional plan, or if the council personnel cannot verify the existence of the nuisance effects, then the facilitation of dialogue between the aggrieved parties is often the only viable option for defusing an amenity value conflict. This approach requires a high level of commitment from both parties and a willingness to change.

This can be as simple as the alleged offending party opening a line of communication with the aggrieved parties. This can allow the parties to become aware of each other's concerns and needs. This in turn can facilitate operational or management changes at the offending site to limit the intensity or frequency of nuisance effects. It can also allow the aggrieved party to become more aware of the operational needs and limitations of the offending party, which in turn can lead to a change in their expectations.

More complex forms of dialogue include community working parties involving representatives of both parties, together with some independent community representation or leadership. A working party provides a forum for expressing and debating the problem, introducing outside (or neutral) people's views to the situation and of seeking acceptable solutions.

Sometimes it may be necessary to involve independent mediation at the outset to bring parties together and enable genuine dialogue to proceed.

10.4 Plan changes or variations

In some cases, the inability to pursue enforcement options, or to successfully facilitate dialogue between the aggrieved parties, will highlight the need to amend the underlying plan provisions for a rural area. This is an expensive and time-consuming option, but it has the advantages of providing the opportunity to introduce measurable amenity attribute standards, whilst allowing all parties to publicly express their views on the appropriate nature of those standards.

For example, the Hastings District Council initiated a plan change to introduce the Te Mata Special Character zone that makes for provision for viticultural activities adjacent to residential and traditional rural areas.

10.5 Relocation

The local authority can also assist with the relocation of the alleged offending party, either through direct financial contributions or through the provision of service delivery or rating incentives in the alternative location. This option is

appropriate where the local authority desires to facilitate a change in the level of amenity attributes in a particular area.

For example, the local authority may wish to facilitate the relocation of semi-industrial activities (such as feed lots or factory farms) away from developing rural residential areas. The cost of assisting with the relocation of the offending party could be significantly less than the true total cost of legal action or a district plan change, and the certainty of a successful outcome is far higher.

10.6 Managing vexatious complainers

Some people, unfortunately, just like to complain or have far lower tolerance levels than most. In some cases, where after careful consideration the range of options has either been exhausted or even discarded, it may be necessary to ignore the continuous complainer. In this case, the local authority has to clearly explain why it is no longer going to respond to the complainer's concerns (such as because no verified adverse effects are occurring, or the appropriate plan standards are not being breached).

This is a somewhat risky option, as it often leaves the complainer frustrated and angry, where they might decide to take inappropriate action themselves. Being open and informative is essential to handling such complaints successfully.



CHAPTER ELEVEN

Recent case law

CHAPTER ELEVEN

Recent case law

There is a substantial body of reported cases relevant to the management of rural amenity conflicts. These include applications for resource consent as well as references in relation to plan provisions. The cases cover a broad range of environments and activities although the most common conflicts have been over:

- noise
- air quality (odour, dust, agricultural and horticultural spraying)
- water quality
- traffic safety and convenience
- privacy.

Some of the key principles that have emerged from the case law. Particularly relevant cases are cited. There is a more full discussion of some of the cited cases in Appendix 1.

Note that the report authors, who are not lawyers, have developed the following observations and opinions. Practitioners wishing to rely on or use the quoted case law for their own purposes should seek their own legal advice on those matters.

11.1 Plan provisions

Key principles:

- The court will look to the district plan for guidance about rural amenity values and acceptable standards.
- District plans therefore need to accurately express communities' amenity values, amenity issues and the council's proposed approach to managing amenity effects.

The provisions of district plans provide the context in which any application for resource consent will be considered. In determining matters relating to amenity in applications for resource consent, the court has paid particular attention to the relevant amenity values as stated in district plans and to the council's policy in relation to amenity issues as expressed in objectives, policies, explanations and methods. These issues were canvassed in:

- *Hopper Nominees v Rodney District Council* (1996) NZRMA 179
- *O'Brien v Upper Hutt City Council* (W91/99).

11.2 Internalisation of adverse effects

Key principles:

- Resource users should, in the first instance, confine the adverse effects of their activities within their own sites (particularly where offensive odour is concerned)
- Adjoining property owners and occupiers should not be expected to suffer the adverse effects of activities; but

- Where all reasonable measures have been taken to avoid, remedy or mitigate adverse effects within the site of the activity and to prevent them being experienced on neighbouring properties, some form of restriction to prevent amenity conflicts in some interface or buffer area may be warranted.

All of the cases are concerned with the effects of activities extending beyond the boundaries of the activity's site and adversely affecting neighbours. Notable examples include the noise from rural industries such as quarrying and odour from pig and poultry factory farming. In principle, the court adopts a polluter pays approach, requiring the effects of activities to be internalised rather than expecting the rest of society to bear the cost of experiencing those effects.

The case law generally distinguishes internalisation of costs from internalisation of effects. In terms of costs, the court expects that all money spent avoiding, remedying or mitigating adverse effects should come out of the coffers of the polluter. The approach to effects is to require them to be contained within their site of origin except where it would be unreasonable to do so as discussed below.

The court has considered the question of whether or not it is reasonable to impose a buffer zone around an activity for the purpose of imposing restrictions on the activities on adjoining land so as to minimise the impact of effects from the buffered activity. The court accepts that such a buffer may be reasonable in certain circumstances but only where all reasonable measures have first been implemented to internalise adverse effects within the site on which the effects are generated using the best practicable means available. In other words, such a buffer should be seen as a last resort.

Useful references include:

- *Hill v Matamata-Piako District Council* (A065/99)
- *Winstone Aggregates Limited v Papakura District Council* (A096/98)
- *Tē Aroha Air Quality Protection Appeal Group v Waikato Regional Council* (A070/93)

11.3 Reverse sensitivity

The concept of reverse sensitivity was defined in *Auckland Regional Council v Auckland City Council* (A10/97) to mean “the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in the carrying out of those activities.”

Key principles:

- It is reasonable to restrict or refuse consent for proposed activities in close proximity to an existing activity on the grounds that the existing activity, although legitimately established, may give rise to adverse effects likely to be detrimental to the operation of the proposed activity;
- Activities legitimately established are still under an obligation to avoid, remedy or mitigate adverse effects and to contain adverse effects within their own sites. The reverse sensitivity principle does not enable activities to offend against the overriding duties expressed in sections 16 and 17 RMA;

- The principle has been considered only where the proposed activities required some form of consent – in other words they were, for some reason, outside the generality of activities that might reasonably be expected to establish within a zone;
- The RMA does not prevent the inclusion in plans of provisions which create buffer zones and restrictions designed to protect existing activities from reverse sensitivity effects arising from the presence or future presence of activities on nearby land;
- Such a broad class of reverse sensitivity buffer restrictions to protect a polluter should only be contemplated after being satisfied that the polluter has implemented all reasonable measures to internalise effects on its own site and a careful analysis of what level of adverse effects could reasonably, in the circumstances, be allowed to affect other land.

The concept of reverse sensitivity has arisen in two broadly different contexts:

- **One-off instances of opposition to individual resource consent applications:**

Where an existing activity opposes an application for resource consent on the grounds that the proposed activity might in some way constrain the way in which the existing activity operates. Appellants have variously sought the imposition of conditions on the proposed activity or sought refusal of consent to protect their existing operation

- **Blanket defence against all future activity:**

Where an existing activity seeks (by the imposition of Plan provisions such as buffer zones) to restrict the nature and extent of all other future activities nearby so as to avoid the possibility of future complaint about adverse effects from the existing activity

11.3.1 Successful one-off instances

Reverse sensitivity has been accepted as successful grounds for opposing an application for resource consent where it could reasonably be expected that, if the proposed activity or subdivision were to take place, the existing activity would create adverse effects which could not be remedied or mitigated but had to be avoided as in:

- *CJ McMillan Limited v Waimakariri District Council* (C087/98)
- *Ewing v Tasman District Council* (W04798)
- *Precious v Western Bay Of Plenty District Council* (W074/94)
- *Upper Clutha Environment Society v Queenstown Lakes District Council* (C12/98)

The reverse sensitivity effect is perhaps stronger where the appellant's existing activity is specifically identified in the district plan as in:

- *Arataki Honey Limited v Rotorua District Council* (A070/84)

Where the expected effects of the proposed activity were potentially severe (for example the severe health risk associated with exposure to chemicals in spraydrift

from existing horticulture operations affecting patrons of a proposed nudist club), the Court has taken a precautionary approach, accepted the potential reverse sensitivity and refused consent to the proposed activity as in:

- *McQueen and Others v Waikato District Council* (A045/94)

It should be noted that a subsequent application was made and granted for the activity which was the subject of the *McQueen* case although the principles highlighted in the case are relevant.

11.3.2 Unsuccessful one-off instances

In other cases it was found that the existing activity should reasonably be able to contain its adverse effects and prevent them from adversely affecting the proposed nearby activity. In these cases the court did not accept that there were reasonable grounds for the existing activity to constrain the proposed activity as in:

- *Wairoa Coolstores (1994) Ltd v Western Bay of Plenty District Council* (A016/98)
- *J Crooks and Sons v Invercargill City Council* (C81/97)
- *Martin v Far North District Council* (A97/99)
- *Lendich Construction v Waitakere City Council* (A77/99)

11.3.3 Successful blanket defences

Blanket defences embrace situations where existing activities seek changes to regional or district plans to create buffers around their operations to prevent or minimise complaint or opposition from future activity locating in that buffer. The court has established the principle that a council could include within a plan provisions that provide for reverse sensitivity to protect a polluter both within a zone and between zones. The court is careful to require that such a broad class of restrictions should only be imposed where all reasonable measures have first been implemented by the polluter to avoid, remedy or mitigate adverse effects. Useful references include:

- *Auckland Regional Council v Auckland City Council* (1997) NZRMA 205
- *Winstone Aggregates Ltd v Papakura District Council* (A096/98)
- *South Canterbury By Products Co. Ltd v Timaru District Council* (C90/99)
- *Coeur Gold v Waikato Regional Council* (A97/98)

11.3.4 Unsuccessful blanket defences

The court refused the request of a rural industry to include in a regional plan a provision which would have created a situation where adverse amenity effects generated by that industry should be suffered because it had established there first. The court was concerned that the suggested provision attempted to apply the principle of reverse sensitivity retrospectively to existing situations and had the potential to create a planning blight across zone boundaries as in:

- *RDM Consultants v Manawatu Wanganui Regional Council* (W91/98)

Reverse sensitivity was considered in the context of creating a buffer around a meat processing plant to protect that plant from future complaint or opposition. The court made some comments of criticism of the proposed technique but did not, in

the circumstances, need to decide the case on the issue of reverse sensitivity as in:

- *AFFCO New Zealand Limited v Waikato District Council* (A036/98)

11.4 Other legal pointers

Other legal pointers arise from the legal review and are worthy of note.

11.4.1 Traffic noise

Territorial authorities have no jurisdiction to control traffic noise, (*PH van den Brink (Karaka) v Franklin District Council*, A051/99), but they can do so indirectly by imposing controls on the hours and frequency of movement of vehicles to and from activities.

11.4.2 Existing activities and environment

Existing activities which have legitimately established and the physical resources associated with those activities must be included and considered as part of the environment for the purposes of assessing effects on the environment. As noted in *PH van den Brink (Karaka) v Franklin District Council* (A051/99):

“...it is this existing environment which sets the base line for the assessment of effects associated with new applications.”

The importance of considering existing activities when defining the nature of the existing environment is also fully discussed in *Contact Energy Limited v Waikato Regional Council and Taupo District Council* (A04/2000).

11.4.3 Accurate noise measurement

It is essential, in relation to the control of noise, to have a sound understanding of the background noise conditions in the environment. The court has been critical of situations where councils and other parties were unable to demonstrate an accurate understanding of the noise environment based on field measurements (*Wairoa Coolstores (1994) Limited v Western Bay of Plenty District Council* (A016/98); *Boswell v Gisborne District Council* (A023/98)).



CHAPTER TWELVE Other countries

CHAPTER TWELVE

Other countries

As part of the research for this report a brief review has been undertaken of practice and methods used in other comparable western countries for managing rural amenity issues.

The focus of inquiry has been on the United Kingdom, the United States, and Australia. The legal framework of each system is a key determinant of the range and nature of policies and methods that are used for amenity controls, however, some of the trends and issues arising are similar.

12.1 United Kingdom

In England, the government has recently released a report called “Rural Economies” published by the Cabinet Office Performance and Innovation Unit⁷. As the following quote indicates, there are direct parallels with the issues discussed earlier in this report:

“Social and economic trends have combined to produce a fundamental change in views of what the countryside is for and in values and priorities for public policy. Public concern about food has shifted from issues of quantity to issues of quality (notably safety). There has been a marked level of increase in interest in and concern for the environment, so that *many people now value rural England more as a source of environmental goods than as a place for food production* [emphasis added]. More and more people want to live in the countryside and to enjoy the leisure and recreational opportunities it offers. And a growing consensus has emerged that rural areas are appropriate for more than just land-based economic activity. In addition mobility and social trends have combined to weaken many of the traditional self support systems within rural communities. And a demand for higher quality services, allied to a reluctance to pay higher prices and taxes – has brought into question the viability of universal models of service provision in all locations.”

The report, released in December 1999, is a White Paper discussion document, which, it suggests, could constitute “the most substantial and positive set of reforms to rural policy in the last 50 years”.

Its principal thrusts are to promote a more enterprising countryside, a move to sustainable agriculture, an enhanced environment and thriving and inclusive communities.

Some of the policies and methods recommended to improve the environment include:

- a rise in the level of environmentally friendly practice across the agriculture industry
- protection for the land of greatest environmental value from inappropriate development

⁷ “Rural Economies” HM Stationary Office.

- improved land use planning in rural areas with more open and better informed debates at the start of the planning process about the needs of an area, and about how to balance economic and environmental objectives – debates that will engage the whole of a local community, not just the vociferous minorities.
- stronger, more transparent mechanisms to limit and compensate for any damage to the rural environment caused by development
- better management of local traffic
- improved access to the countryside for people from both rural and urban areas.

The report specifically proposes that the regulatory environment be eased to facilitate changes in commercial use, farm diversification and the conversion of redundant buildings for commercial purposes. However, there should be greater development control over new agricultural buildings, currently given a greater level of permitted status.

Another major recommendation is a fundamental policy shift from protecting “Best and Most Versatile” land to protecting land of high environmental value through a new national framework.

In terms of specific techniques and methods the White Paper proposes greater use of “deliberative processes” such as Village Design Statements, and the development of new policy instruments such as off setting mechanisms and impact charges.

A further recent policy release has come from the newly established Countryside Agency.⁸ This is a statutory body overseeing policy and management of the rural environment. Its interim planning policy released in late 1999 focuses on the current round of development plans from local authorities. In particular it promotes:

- the inclusion of design objectives which go beyond visual appearance to include wider sustainability in development plans
- the provision of design briefs for key development sites
- requiring proposals to demonstrate how they reflect the traditions of the local area
- the use of Village Design Statements prepared with community input.

In terms of methods for resolving conflicts relating to rural amenity there has been little consideration of new approaches. The system relies heavily on the legal framework which establishes the rights and opportunities of parties to challenge environmental effects.

A major difference from New Zealand is that third parties do not have appeal rights on planning matters. Groups affected by amenity issues must pursue action through other means such as lobbying of their local authority. In New Zealand the leverage opportunities created by the ability of appeal and or enforcement by parties actually or potentially affected by proposals sets a quite different context for resolution of conflicts. However, some of the policy development methods used are worthy of consideration in the New Zealand resource management context.

⁸ Planning for quality of life in rural England The Countryside Agency 1999

12.2 United States

The planning systems in the US are somewhat more similar to New Zealand, or perhaps more similar to the pre RMA regime. In particular, local authorities are able to prepare plans that establish rules and standards for particular activities.

All states have, in some form, 'right to farm' laws, which protect farmers from being sued for nuisance as long as they are engaged in widely accepted, conventional farming practices. These laws do not protect from negligence or non-compliance of state and federal environmental laws; but they do bar litigation over such issues as general farmyard odours and noise from the operation of normal farm equipment.

They were introduced in the 1970s and 1980s as a response to the reverse sensitivity issues arising from encroaching residential development.

As farming operations have become more intensive, the validity of such right to farm laws have come under closer scrutiny. In 1998 the Iowa Supreme Court in *Borman v Board of Supervisors for Kossuth County* made a landmark decision and threw out Iowa's right to farm nuisance protection as a flagrantly unconstitutional taking of the neighbouring landowner's private property. This has now brought into question the constitutional status of similar laws in every other state.

In another legislative attempt to protect family farming, mid western states beginning in the 1970s passed a string of laws prohibiting corporate ownership of farmland. These have had a significant impact on the social and economic fabric of rural communities.

Significant amenity issues been raised by the growth in intensive livestock farming (Concentrated Animal Feeding Operations or CAFOs). In terms of looking at most recent practice the American Planning Association published a Planning Advisory Service report in 1999 called *Planning and Zoning for Concentrated Feeding Operations*⁹.

Discharge of contaminants to water is controlled at the federal level, which operates the National Pollution Discharge Elimination System programme. Each state operates the system under delegation from the USEPA. Because of expressed concern over amenity from CAFOs the Clinton Administration in March 1999 released a new Unified National Strategy for Animal Feeding Operations, which is a joint statement of policy and planned activities for addressing the public health and water quality problems associated with animal feeding operations. One key issue that is not addressed is odour.

As part of this strategy, a new mechanism has been introduced of site specific Comprehensive Nutrient Management Plans. These include measures covering feed management manure handling and storage, land application of manure, land management and record keeping.

In addition, the government provides both technical and financial assistance. It also appears that compliance with regulations for many is voluntary. Environmental groups feel that the national strategy is a good start but does not go far enough. The livestock industry feels that it goes too far in some areas. However it is early days in its implementation.

At the state level a lot of controversy about adverse effects on amenity has arisen because of the historical exemption of agriculture from county zoning ordinances.

Schwabb considers that traditional planning zoning type controls are an effective planning tool for dealing with amenity issues. He also considers that site plans for CAFOs should be available for public scrutiny and comment.

The specific methods in terms of rules that he promotes are:

- Minimum lot sizes in the general rural area
- Maximum residential density – expressed as one dwelling per X acres.
- Minimum setbacks – eg, from roads and boundaries
- Separation standards eg, from urban edge or from zone and from existing activities eg, dwelling, school, church, park
- Separation standards reflecting upwind and downwind from the activity to the protected use or district
- Separation standards based on either single or multiple variables including:
 - the size of operation
 - management practices
 - species
 - location relative to prevailing winds
- Separation distance for new dwellings from existing animal feedlot or animal waste area – this is the reverse sensitivity issue
- Setback from any water supply
- Requirement for applicants to submit plans for odour control
- Emergency contact details to be posted at the entry to the property.

An oblique reference was also found to a method called an “Odor Easement”. This is presumably a compensated right to discharge an odour over a property with that right recorded on the title of the land. This appears to have potential for application to other effects such as noise.

12.3 Australia

The method of transferable development rights has had some attention in Australia. In Gosford, New South Wales, the technique was used to transfer development rights from sensitive coastal areas to a less sensitive zone in order to protect coastal open space values. It has also been used to try to control rural residential development and encourage the construction of new dwellings closer to existing rural villages making more efficient use of rural services.

The technique was found to present legal and process difficulties in terms of property law, the transfer process, and effect on loans and mortgages.

Some of these methods are analysed further in terms of application as methods in New Zealand in Chapter 9.

⁹ J Schwab planning and Zoning for Concentrated Animal Feeding Operations. American Planning Association. Planning Advisory Service Report Number 482.



CHAPTER THIRTEEN Conclusions

CHAPTER THIRTEEN

Conclusions

Amenity conflict is a significant issue in most rural districts. Amenity, as a resource management issue, is comprised of two elements: amenity attributes (the tangible and measurable matters such as noise and odour); and people's expectations and perceptions about amenity. People's differing amenity values are at the heart of most rural amenity conflicts, and these values vary considerably within rural communities.

The range of amenity issues that commonly concern rural communities includes odour, noise, loss of rural character, spraydrift, dust and road safety and convenience. Most of these concerns can be characterised in terms of our basic human senses of smell, hearing, sight, touch as well as cultural and spiritual values and concerns about unseen effects such as toxins and electromagnetic radiation.

The justification for including controls to manage rural amenity conflicts must be consistent with the purpose of the Act. To this end, such controls must derive from a significant resource management issue relating to rural amenity values. Territorial local authorities and regional councils have complementary roles in the management of rural amenity. Regional councils have specific responsibility for discharges to air. Air discharges (odour, dust, smoke, spraydrift) form the basis of many amenity conflicts. There is therefore a need for territorial local authorities and regional councils to work closely together on strategies for managing amenity values, in general, and amenity conflicts, in particular.

The pace of change, and particularly a very intensive rate of change, is a key causative influence on amenity conflicts. Subdivision policy is a key factor influencing the likelihood of amenity conflicts. Where there is a high density of small rural allotments, there is potential for amenity conflicts arising from the close juxtaposition of people and activities. In these situations, councils may have to adapt their amenity standards to suit the higher density. The separation distances, building controls and effects-based standards that sufficed when rural properties were larger and dwellings were further apart may no longer be appropriate.

Another key factor in amenity conflict is a basic difference in people's view of the rural environment. Some see it as a landscape (relatively passive) and others see it as a place of production. In defining the nature of any rural environment, councils need to be explicit about the extent to which that environment is a passive landscape or a place of production.

The right to farm expression, which is sometimes used to convey a priority for rural production activities, confuses the real issue that should focus on amenity values. Existing activities, including traditional rural production activities, must be acknowledged as a part of the environment and as contributing to the quality of rural amenity. All activities are, though, subject to the RMA duties to avoid adverse effects.

In determining rural amenity standards, councils need to identify standards that are reasonable having regard to:

- the effects and amenity conditions created by existing legitimate activities
- the amenity effects created by activities that do not have consent or do not comply (which may be more or less adverse than legitimate activities)
- the (sometimes competing) expectations of rural producers and their neighbours.

Maori perspectives are often not prominent in discussions about amenity because they do not fit well with a boxing of the environment into amenity or spiritual matters or heritage or landscape. Rather, a Maori perspective is likely to be holistic and view the environment as one entity. The values of Maori can only be established through direct dialogue with tangata whenua.

Robust community process is essential and should include key community stakeholders in identifying amenity attributes, values and issues at the outset and in developing policies for managing adverse effects on amenity. Ongoing dialogue is the key.

It is important to monitor the environment over time to gauge the effectiveness of the council's approach to amenity and to identify where standards may need to be adapted.

It is not enough to have amenity standards rest in a district plan. Given that amenity conflicts are largely about people's perceptions and expectations, councils can help to inform those perceptions and expectations by broadcasting loudly the council's view of what is to be expected in the rural environment.

Case law supports the principle that resource users should, in the first instance, confine the adverse effects of their activities within their own sites. Adjoining owners should not be expected to suffer adverse effects especially where these are particularly offensive or objectionable. However, where all reasonable measures have been implemented to avoid, remedy or mitigate adverse effects within a site, some level of dispersion of effects across boundaries may be justifiable.

Case law gives limited support for the concept of restricting the use of land in the vicinity of an activity that generates adverse effects on the grounds that that activity may give rise to reverse sensitivity effects. Careful consideration of individual circumstances is necessary before implementing such a regime.

There is a suite of regulatory and non-regulatory methods available for managing rural amenity. These include effects-based techniques, measures to avoid amenity conflict by controlling subdivision and measures that are proxies for effects-based standards. They can be applied to planning for future amenity values or for managing existing amenity conflicts. They can all be incorporated into a council's strategic policy approach.

The key success factors in developing appropriate policy for the management of rural amenity values are:

- clear definition of the quality of rural amenity throughout the rural environment

- establishment of clear, reasonable, measurable and enforceable amenity standards
- management of people's expectations of rural amenity
- management of the effects of activities within agreed standards.

These success factors cannot be achieved without:

- understanding the natural, physical and economic resources of the rural environment and of the people who live there and their social values
- understanding the attributes that make up the amenity of the rural environment
- understanding the economic, physical and social processes which drive change in the rural environment
- understanding the effects of different rural activities on the environment
- dialogue with key stakeholders, Maori and sector groups in the rural community and rural resource users and a thorough understanding of their perspectives on rural amenity
- ongoing monitoring of change in the rural environment and in rural amenity
- integration of rural amenity management measures with other territorial authority policies affecting the rural environment and with regional council initiatives



Appendix 1

APPENDIX 1

Summary of recent case law

The following discussion expands on the key principles to emerge from the relevant case law highlighted in Chapter 12:

1 Internalisation of adverse effects

The Environment Court noted (in *Hill v Matamata-Piako District Council* (A065/99) in referring to *Winstone Aggregates Limited v Papakura District Council* (A096/98) that “one of the guiding approaches of the RMA is internalisation of effects as a way of avoiding, remedying, or mitigating effects of activities.” The court accepts the approach “that the Act follows a polluter pays approach requiring the creators of adverse effects to internalise those effects rather than force the rest of society to bear the burden of dealing with them.” The court’s attitude to this issue is succinctly expressed in the following extract from *Winstone Aggregates Limited v Papakura District Council* (A096/98):

“In controlling undesirable effects, territorial authorities should impose restrictions to internalise adverse effects as much as reasonably possible. It is only where those effects cannot be reasonably controlled by restrictions and controls aimed at internalisation, that the sort of restrictions on other sites (as sought by the appellants) might be appropriate.”

The interim decision found that the evidence had been inconclusive as to whether or not it was reasonable, in the particular circumstances of the case, to impose a buffer zone with a set of restrictions on properties adjoining the quarry in addition to the measures undertaken within the quarry site to avoid, remedy and mitigate adverse effects on the environment. The court was not opposed to the creation of such a buffer zone with restrictions on adjoining properties intended to protect the quarry but wanted to be quite certain that all reasonable measures had first been implemented to internalise adverse effects within the quarry site.

The approach of requiring resource users to internalise adverse effects was articulated also in *Te Aroha Air Quality Protection Appeal Group v Waikato Regional Council* (A070/93) which involved a proposal to establish a rendering plant as a non-complying activity in a rural zone:

“The odour from the rendering process is offensive and can be nauseating. Occupiers of properties in the Rural A1 and Rural B zones in the vicinity of the site are entitled to be free from having to experience that odour...”

“It would not be sufficient for the proprietor of a rendering plant to demonstrate that emission of rendering plant odour which reached adjacent properties was the result of an unforeseen or random accident or malfunction. Nor would it be sufficient for the proprietor of a rendering plant to demonstrate that the best practicable option had been taken to avoid emission of odour which might reach adjacent properties. Defences available under s. 342 should not be sufficient response where a rendering

plant has been established out of zone on land where that activity is not a permitted activity.”

The court considered the possibility of granting the consents in reliance on the applicant’s assurances about the efficacy of the plant but concluded:

“However, avoidance of adverse effects is more consistent with the purpose of the Act than enforcement proceedings after adverse effects have been experienced... We find that there is a plausible risk (albeit of low probability) that as a result of management error, malfunction or mechanical failure, objectionable odours from the proposed rendering plant would reach other properties. We also find that if they did they would adversely affect people and their social, economic, aesthetic and cultural conditions, and the amenity values that contribute to people’s appreciation of the pleasantness of the area...”

“In our judgement such potential effects deserve such weight against the grant of the consents sought that it must prevail against even the most optimistic evaluation of the positive effects of establishing the rendering plant at the proposed site rather than on land suitably zoned for the purpose. In our opinion that is determinative against both applications.”

In *Hill v Matamata-Piako District Council* (A065/99) the court said:

“we are of the view that adverse effects such as objectionable odour emissions should be confined on site. People living and working in rural neighbouring properties adjacent to sites where intensive farming such as broiler chicken rearing is carried out should not be subjected to objectionable and nauseating odours. It is incumbent upon the industry as a whole and upon individual farmers to so arrange their affairs in the way of siting, management, technology and feed formulations to ensure that objectionable odours are confined on site. This may well involve extra cost to the industry generally and to particular farmers. As a general principle we are of the view that such cost should be borne by the industry in the event that the siting of operations are such that there is potential to cause adverse effects.”

2 Reverse sensitivity

2.1 One-off instances of opposition to individual resource consent applications

Arataki Honey Limited v Rotorua District Council (A070/84 - pre-RMA) involved an appeal against consent to establish a camping ground adjacent to Arataki’s honey processing site. Both sites were within the same rural zone but the Arataki site was specifically scheduled in the plan for honey production activities. The appellant feared that if a camping ground were established, steps would be taken to restrict or terminate its bee-keeping activities. The site was otherwise suitable for a camping ground. The reverse sensitivity effects were sufficient grounds to refuse consent for the camping ground.

McQueen and Others v Waikato District Council (A045/94) concerned an application to establish recreational facilities for a nudist club within an area of orchards on the rural outskirts of Hamilton (a discretionary activity in the rural zone). It was the appellants' case that the proposed club's activities located as proposed would expose club members to toxic sprays used to manage horticulture in the vicinity through skin contact with grass and foliage during both periods of spraying and for some time thereafter. The appellants maintained that the risk could not be avoided by vacating the site during (nearby) spraying and that the proposal would create a hazardous situation for the club members and liability for the owners and employees of surrounding orchards. The court did not accept that the risk could be "disposed of by the applicant's acceptance of the risk for its own members but that the wishes of orchardists in the vicinity to spray their crops would in law be restricted by the presence of people on the applicant's property for recreation."

The court concluded:

"the proposal would manage the use of natural and physical resources in a way that would enable people to use the facilities to provide for their social wellbeing and for their health, except to the extent that the selection of the subject site in an area of orchards may expose them to hazard to health from chemical sprays used for managing orchards in the vicinity". To the extent that establishment of the proposed facilities would cause restraint on use of chemical sprays in managing those orchards, it would impair the management and protection of natural and physical resources represented by the orchards in a way that enables people to provide for their economic wellbeing."

"...it would fail to avoid, remedy or mitigate an adverse effect of the activity on the environment, being the restraint it would create on the freedom of orchardists in the vicinity to use chemical sprays to manage their orchards."

For the reasons discussed, consent was refused. The case has some notably exceptional features (the nature of the activity involving skin exposure thereby heightening any possible risk of exposure to chemicals together with the proposed location amidst closely subdivided horticultural orchards). These features highlight the point that reverse sensitivity does not apply to a broad generality of situations but requires a very particular combination of conditions.

By contrast, *Wairoa Coolstores (1994) Ltd v Western Bay of Plenty District Council* (A016/98) presents a slightly different set of circumstances not identified as constituting reverse sensitivity. The matter at issue was, in the case of a proposed extension to a coolstore and packing house, whether pesticide spraydrift from adjoining orchards to the coolstore site (potentially settling on fruit stored outside) could be considered an adverse effect warranting refusal of consent for the coolstore. Submitters claimed that the packing house would restrict their abilities to carry out proper spray programmes on their own orchards due to the presence of kiwifruit stored outdoors on the packing house site. They proposed an arrangement whereby adjoining orchardists would give notice of intended spray operations and sought a condition of consent requiring the packing house operator to remove or cover fruit stored outdoors at the times of spraying. The court found that the

concern about spray drifting to the packing house site “is an actual or potential effect on the environment of allowing the activity.”

The court went on to note:

“...both the packhouse and the adjacent orchards have particular amenity needs. The packhouse has a particular need to generate noise, but we have found that it can contain that noise to a reasonable level within its own site. The orchards have a particular need to spray insecticide from a helicopter, on little notice. They are not confident that they can contain the spray within their own boundaries. The packhouse is already on the site and the current proposal is for an extension of it. It contributes to a wide range of activities which serve rural production, and it can be restricted so as to avoid “undue adverse effects on the environment or on the health, safety and welfare of the rural community”

As an aside, the court recognised “rural areas are areas of productive activity, which at harvest and other times may be intense and have extended hours”.

In *CJ McMillan Limited v Waimakariri District Council* (C087/98) the court considered the case of a proposed plan change to enable rural residential subdivision close to existing pig farms. Submitters were concerned that if the change proceeded, future residents of the rural residential subdivision would complain about or take steps to stop their pig farming activities. The court noted that the amenity values of the rural residential area would immediately be challenged by the existence next door of pig farms and concluded that the proposed rural residential development would be incompatible with the existing pig farms and confirmed the council’s decision declining the proposed plan change.

The effects of an activity on the future use of an adjoining property were also discussed in *Ewing v Tasman District Council* (W04798) in a case involving the subdivision and expansion of an existing poultry farm together with the erection of a dwelling on part of the farm. The district plan included a rule requiring a set back of 30 metres from the nearest dwelling for agricultural spraying. The court concluded that the proposed location of the dwelling would impinge unnecessarily on the normal activities on the neighbouring property by excluding as much as 50 percent of that property from vegetable planting (by virtue of applying the setback provisions) and recommended a revised location for the dwelling.

The concept was discussed in *Precious v Western Bay of Plenty District Council* (W074/94) although the expression reverse sensitivity was not specifically used. The case involved an application for resource consent to significantly extend the size of a retirement village in a rural zone. The court discussed the possibility of the extended retirement village infringing on existing rural activities:

“Here counsel is referring to what we regard as the important matter of the effect of the further expansion of this village upon those activities which, in the ordinary way, a rural landowner would expect to carry out either as of right or, in some cases, subject to other statutory constraints; for example the spraying of crops. We are satisfied on the evidence and indeed common sense dictates that it is not possible to carry on a horticultural activity without engaging in the spraying of crops, burning of some waste

products such as prunings, the erection of shelter belts, which tend to become a nuisance to residential dwellers, and the extermination of pests which affect the quality and quantity of the crops. All these, in our view, have the potential to cause friction, with and nuisance to the residential dwellers in the Retirement Village. That this has not been the case so far is a credit to the restraint of all parties but in considering whether or not the provisions of s. 105(2)(b) have been met we cannot assume that such will be the case in the future. As we previously mentioned, we think it important in this context to look at the question from the point of view of the residential dwellers who might take benefit from the proposal if it were granted. It is the rural users rights who will be restricted by further residential development and we are satisfied that, in that sense, what is proposed is clearly adverse to the environment of the rural users.”

The court came to the clear view that the adverse effects on the environment, previously referred to above, are significant and more than minor and allowed the appeals, thereby declining consent.

2.2 *Blanket defences seeking buffer zones to protect existing polluters*

In *AFFCO New Zealand Limited v Waikato District Council* (A036/98) the court was asked by the appellant to apply the reverse sensitivity principle “in a way which imposes restrictions in the use of land outside AFFCO’s industrial site so as to minimise the adverse effects generated by AFFCO and not contained on site,” but noted “we have some concern about the application of the reverse sensitivity rule if that were to have the effect of creating a buffer zone for the protection of the appellant” (the source of the adverse effects).

The *Auckland Regional Council* case established the principle that a council could include within a plan provisions that provide for reverse sensitivity. In that particular case, the context was specific to a situation within a zone (intra-zone). The court established in *Winstone Aggregates Ltd v Papakura District Council* (A096/98) that a council does have the jurisdiction to provide for a zone to provide for reverse sensitivity and “the interpretation of the functions of the territorial authority, and in particular section 76(3), does not exclude inter-zonal applications of reverse sensitivity where this is consistent with the overall functions and obligations of the territorial authority.”

In the *Winstone* case the court concluded, “territorial authorities should impose restrictions to internalise adverse effects as much as reasonably possible,” although it found the evidence was inconclusive on the question of what should reasonable be imposed on the quarry and what residual constraints should be imposed on the adjoining properties.

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The Ministry for the Environment Manatū Mō te Taiao advises the Government on policies, laws, regulations, and other means of improving environmental management in New Zealand. The significant areas of policy for which the Ministry is responsible are: management of natural resources; sustainable land management; air and water quality; management of hazardous substances, waste and contaminated sites; protection of the ozone layer; and responding to the threat of climate change. Advice is also provided on the environmental implications of other Government policies.

The Ministry monitors the state of the New Zealand environment and the operation of environmental legislation so that it can advise the Government on action necessary to protect the environment or improve environmental management.

The Ministry carries out many of the statutory functions of the Minister for the Environment under the Resource Management Act 1991. It also monitors the work of the Environmental Risk Management Authority on behalf of the Minister.

Besides the Environment Act 1986 under which it was set up, the Ministry is responsible for administering the Soil Conservation and Rivers Control Act 1941, the Resource Management Act 1991, the Ozone Layer Protection Act 1996 and the Hazardous Substances and New Organisms Act 1996.

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