



*Western Bay of Plenty
District Council*

Change to the District Plan - First Review

Plan Change 89

Rural Contactors Depots - Separation Distances

Section 32 Report



1.0 Introduction

1.1. General Introduction and Background

The purpose of this report is to consider a plan change to clarify that vehicle accessways, driveways, manoeuvring and parking areas associated with Rural Contractors Depots are required to meet permitted activity Rule 18.4.1(p)(v). This rule requires a 60m separation between Rural Contractors Depots and existing dwellings, minor dwellings, education facilities and accommodation facilities.

2.0 Resource Management Act 1991

2.1. Section 32 – Requirements for Preparing Evaluation Reports

Before a proposed plan change can be publicly notified the Council is required under section 32 ("s.32") of the Resource Management Act 1991 ('the Act' or 'RMA') to carry out an evaluation of alternatives, costs and benefits of the proposal. With regard to the Council's assessment of the proposed plan change s.32 requires the following:

- (1) An evaluation report required under this Act must—*
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) summarising the reasons for deciding on the provisions; and*
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

- (2) An assessment under subsection (1)(b)(ii) must—*
 - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) economic growth that are anticipated to be provided or reduced; and*
 - (ii) employment that are anticipated to be provided or reduced; and*
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

- (3) If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—*
 - (a) the provisions and objectives of the amending proposal; and*
 - (b) the objectives of the existing proposal to the extent that those objectives—*
 - (i) are relevant to the objectives of the amending proposal; and*

(ii) would remain if the amending proposal were to take effect.

(4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

(4A) If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in Schedule 1, the evaluation report must—

(a) summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and

(b) summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.

2.2. Section 74 – Iwi Management Plans

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority that has been lodged with Council. None of the iwi/hapu management plans lodged with Council raise any issues of particular relevance to this Plan Change.

2.3. Clause 3 of Schedule 1 - Consultation

Clause 3(1) of Schedule 1 of the RMA requires the Council to consult the following during the preparation of a proposed plan:

- a. The Minister for the Environment;
- b. Other Ministers of the Crown who may be affected;
- c. Local authorities who may be affected;
- d. Tangata Whenua of the area who may be affected (through iwi authorities); and
- e. Any customary marine title group in the area.

Information was provided to the Minister for the Environment on a range of proposed plan changes and feedback was requested. No feedback has been received.

No other Ministers of the Crown or local authorities are considered affected by this proposed plan change. Nevertheless, the Bay of Plenty Regional Council has been consulted and they identified no issues with the proposed change. No marine title groups are considered affected.

Under Clause 3B of Schedule 1, with respect to Tangata Whenua, the Council is treated as having consulted iwi authorities if it:

- (a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and*
- (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and*
- (c) consults with those iwi authorities; and*

- (d) enables those iwi authorities to identify resource management issues of concern to them; and*
- (e) indicates how those issues have been or are to be addressed.*

Tangata Whenua have been consulted through the Tauranga Moana and Te Arawa ki Tai Partnership Forum on 14 March 2019 and 25 June 2019. No feedback was provided in relation to this proposed plan change.

In addition, the Council engaged with the public to request input prior to the writing of this report. This was done through notices in local newspapers and the Council's 'Have Your Say' website.

One response was received in support of the proposed change to clarify that vehicle accessways, driveways, manoeuvring and parking areas associated with Rural Contractors Depots are required to be setback 60m from dwellings and other sensitive activities. The feedback identifies particular concerns with dust produced from vehicle accessways, and the use of shells for driveways which have the potential to cause issues associated with odour.

In addition, to account for sites with limited options for the development of future dwellings, it has been suggested that the separation distance of 60m should apply to the property boundary, rather than existing dwellings, minor dwellings, education facilities and accommodation facilities. A response to the feedback is provided within the discussion of options being considered.

Council also engaged with the following groups and stakeholders on a range of proposed plan changes:

- a. Representatives of the kiwifruit industry through NZKGI;
- b. New Zealand Transport Agency ('the Agency'); and
- c. Toi Te Ora Public Health.

No specific issues were raised by any of these stakeholders regarding this proposed plan change, however, kiwifruit industry representatives sought clarification regarding application of the rule and whether it applied to properties on the opposite side of the road.

3.0 Issue 1 – Rural Contractors Depots – Separation Distances

3.1. Introduction

As a result of a recent complaint and investigation into a non-compliant Rural Contractor's Depot, staff have identified that there is opportunity to clarify that permitted activity Rule 18.4.1(p)(v) applies to vehicle accessways/driveways, manoeuvring and parking areas associated with Rural Contractors Depots. In this regard, Rule 18.4.1(p)(v) requires a 60m separation between new Rural Contractors Depots and any existing dwelling, minor dwelling, education facility, or accommodation facility located on a separate site and in different ownership.

In addition, within the Rural Zone, permitted activity Rule 18.4.1(c)(i) requires new dwellings, minor dwellings, education facilities and accommodation facilities to be setback 30m from all boundaries. In accordance with Rule 18.4.1(c)(i)(e), a side or rear yard may be reduced to 10m without the need for resource consent if a separation distance of 60m is maintained between the new dwelling, minor dwelling, education facility, or accommodation facility and any existing or consented Rural Contractor's Depot. The same separation distance also applies between new and existing (or consented) dwellings, minor dwellings, education facilities, and accommodation facilities.

3.2. Plan Change 1 – Rural Contractors Depots

The current permitted rules for Rural Contractors Depots were introduced through Plan Change 1, which was publicly notified in 2012 and made operative in 2013. This Plan Change sought to provide for Rural Contractors Depots as permitted activities in the Rural Zone, subject to activity performance standards. Prior to this change, Rural Contractors Depots were classified as discretionary activities in the Rural Zone meaning that all Rural Contractors Depots (regardless of scale, intensity, and environmental effects) required resource consent.

The s32 analysis for Plan Change 1 identified that the extent of adverse effects associated with Rural Contractors Depots would need to be acceptable if they were to be provided for as a permitted activity within the Rural Zone. It was identified that restrictions would need to be imposed to address noise, transportation safety, access and visual impacts.¹

Proximity to neighbouring properties and potential disturbance associated with Rural Contractor's Depot activities, including the movement of traffic, was identified as a particular effect that needed to be addressed. It is clear from the s32 Report for Plan Change 1 that adverse amenity effects as a result of traffic movements associated with Rural Contractors Depots were intended to be addressed through the performance standard which requires a 60m separation between the Rural Contractor's Depot and any dwelling, minor dwelling, education facility, or accommodation facility (Rule 18.4.1(p)(v)).

In this regard, the s32 Report states that the separation distance "*...would ensure that the increased noise, noise from traffic, dust, and visual amenity will not adversely impact on neighbouring properties.*"² It is therefore clear that the separation distance required by Rule 18.4.1(p)(v) was intended to address amenity related effects associated with activities at Rural Contractors Depots, including potential adverse effects associated traffic movement.

¹ Plan Change 1, s32 Report, page 8

² Plan Change 1, s32 Report, page 10

3.3. Resource Consent Applications

A review of resource consent applications received by Council for Rural Contractors Depots has been undertaken. This showed that since 1991 there have been 36 applications, with 32 decisions granted (the remaining four were withdrawn or otherwise closed prior to a decision). None of the applications received were declined. Within the last 10 years there have been two resource consent applications, one before Plan Change 1 was made operative (28 September 2013) and one after. Both of these applications were granted.

The first application was made in 2010 (following complaints from neighbours) for a Rural Contractor's Depot involving hay harvesting and baling. The key effects assessed in the Council's decision relate to:

- a. The track record of the applicant;
- b. Scope of the 'rural contractor's depot' activity (relating to the preparation of hay bales for sale off-site);
- c. Hours of operation;
- d. Noise, dust, and odour effects; and
- e. Traffic and roading effects.

Conditions of consent relate to the odour, dust, noise, and limitations on hours of operation, traffic movements, number of staff, and financial contributions. A review of the decision shows that noise effects associated with traffic on the driveway at the site was a key concern of submitters opposed to the application and this effect was mitigated through conditions limiting the scale and intensity of the contracting business (e.g. through maximum staff numbers and vehicle movements) and hours of operation.

The second resource consent application was made in 2013 (also following a complaint). This Rural Contractor's Depot includes two separate businesses, one being an orchard management/contracting business and the other being associated with the storage of equipment for a logging business. The main effects assessed in the Council's decision report are associated with:

- a. Traffic generation, access and parking;
- b. Visual and landscape effects; and
- c. Rural character and amenity (including as a result of non-compliance with the required separation distance between the Rural Contractor's Depot activities and nearby dwellings).

Resource consent conditions relate to noise, maximum staff numbers, days and hours of operation, provision of on-site car parking, and hazardous substance requirements. The conditions relating to the scale and intensity (staff numbers and hours of operation) of the activities on the site appear to address amenity related effects, rather than safety or road capacity issues.

In summary, there has been a very limited number (i.e. two) of resource consent applications received for Rural Contractors Depots in the last 10 years, and only one since Plan Change 1 was made operative. A review of these applications shows that amenity related effects associated with traffic

manoeuvring and parking areas associated with Rural Contractors Depots.

<p>Costs</p>	<ul style="list-style-type: none"> ▪ Does not address issues raised through public consultation that it may be more appropriate to apply the separation distance to the site boundary, rather than dwellings and other sensitive activities on neighbouring sites.
<p>Benefits</p>	<ul style="list-style-type: none"> ▪ For rural contractors depots, amending performance activity standard Rule 18.4.1(p)(v) will clarify that the required separation distances from existing dwellings, minor dwellings, education facilities and accommodation facilities apply to vehicle accessways, driveways, manoeuvring and parking areas associated with Rural Contractors Depots. ▪ Applying the 60m separation distance from new Rural Contractors Depots to nearby dwellings (and other sensitive activities) rather than the property boundary ensures the rule continues to complement Rule 18.4.1(c)(i)(e). This rule relates to side yard setbacks for dwellings, minor dwellings, accommodation facilities and education facilities in the Rural Zone. It allows the required side yard setback for dwellings, minor dwellings, accommodation facilities and education facilities to be reduced from 30m to 10m if a separation distance of 60m is maintained between the new (or extended) building and any existing dwelling, minor dwelling, accommodation facility, education facility, or rural contractor’s depot. ▪ Making a consequential change to Rule 18.4.1(c)(i)(e) (setbacks for dwellings etc from rural contractors) will ensure that this rule continues to compliment Rule 18.4.1(p)(v) (setbacks for rural contractors depots from existing dwellings, minor dwellings, education facilities and accommodation facilities) and that the separation distance is applied consistently.
<p>Effectiveness/ Efficiency</p>	<ul style="list-style-type: none"> ▪ Amending the activity performance standard is effective in addressing the identified issue as it will be clear that the separation rules for both rural contractors depots and dwellings, minor dwellings and accommodation facilities apply to vehicle accessways/driveways, manoeuvring and parking areas. ▪ Amending the activity performance standard is considered to be an efficient method to address the identified issue because it reduces time and financial costs associated with interpreting and disputing how rules are to be applied.
<p>Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter</p>	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

3.9. Preferred Option

The preferred option is Option 3:

- (a) Amend the Activity Performance Standard Rule 18.4.1(p)(v) to clarify that the separation distance required for rural contractors depots from existing dwellings, minor dwellings, education facilities and accommodation facilities applies to vehicle accessways/driveways, manoeuvring and parking areas associated with Rural Contractors Depots as follows:

The *Rural Contractors Depot* (including any associated vehicle accessways, driveways, vehicle parking and/or manoeuvring areas) shall not be located within 60 metres of any existing or consented *Dwelling, Minor Dwelling, Education Facility or Accommodation Facility* that is located on a title separate to that of the subject site and in different ownership to that of the *Rural Contractors Depot* operator.

- (b) Amend permitted activity Rule 18.4.1(c)(i)(e) to clarify that the separation distance required for new dwellings, minor dwellings, education facilities and accommodation facilities from existing or consented Rural Contractor's Depots applies to vehicle accessways/driveways, manoeuvring and parking areas associated with the Rural Contractor's Depot as follows:

(c) Yards

- (i) *Dwellings, minor dwellings, accommodation facilities*

Minimum 30m.

Provided that:

...

A *side* or *rear yard* may be reduced to not less than 10m in one or more of the following circumstances;

...

- (e) Where any new *dwelling, minor dwelling, accommodation facility* or *education facility* (including any additions or alterations to these) can meet all of the following permitted activity performance standards;

- Shall not be located any closer than 60m to any existing or consented *dwelling, minor dwelling, accommodation facility, education facility, rural contractors depot* (including vehicle accessways, driveways, vehicle parking and/or manoeuvring areas associated with a rural contractors depot), or approved building site assessed as part of a subdivision in accordance with Rule 12.4.1(b), that is located on a title separate to that of the subject site and in different ownership;...

3.10. Reasons

Option 3 is the preferred option as it is considered to be the most effective and efficient method to address the confusion regarding application of Rule 18.4.1(p)(v), which was intended to require new rural contractors depots to have a separation distance of 60m from existing or consented dwellings, minor dwellings, education facilities or accommodation facilities. In this regard, the preferred option addresses the identified issue and makes it clear for District Plan users how the performance standard is to be interpreted. Option 3 is also preferred over Option 2 because it clarifies how rural yard Rule 18.4.1(c)(i)(e) is to be applied to dwellings, minor dwelling, accommodation facilities and education facilities with respect to their required setbacks from existing Rural Contractors Depots, and does not confuse how other land use definitions and associated yard/setback rules are to be applied.