

# **Western Bay of Plenty District Council**

## **Change to the District Plan – First Review**

### **Plan Change 67 Rural Contractors Depots - Setbacks For Sensitive Activities**

#### **Section 32 Report**

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## 1.0 Introduction

### 1.1. General Introduction and Background

Rural Contractors Depots are defined in Section 3 – Definitions of the District Plan as “land and/or buildings used for the purpose of storing equipment and goods associated with a rural contracting business which wholly serves the farming industry”.

Rural Contractor Depots are currently provided for as a permitted activity in the Rural Zone subject to a number of performance standards which limit the scale and effects of such operations. These performance standards relate to number of persons, sale of goods, access within proximity to state highways, vehicle crossings, and setbacks from dwellings, minor dwellings, accommodation facilities and education facilities (hereon referred to as “sensitive activities”). This approach allows those smaller operations with minimal effects to establish without unnecessary regulation. This approach was introduced through Plan Change 1 (Rural Contractor Depots) which became Operative in September 2013. Previously, all Rural Contractors Depots were a discretionary activity and automatically required resource consent.

The need for a further Plan Change is due to an Environment Court appeal lodged by George D’Emden in respect to the performance standard requiring Rural Contractor Depots to be set back 60m from sensitive activities. While the appellant agreed with this requirement, they argued that a reciprocal setback should apply to sensitive activities being established next to an existing lawfully established Rural Contractor Depot. The specific relief sought was a change to the Rural Zone yard rules (Rule 18.4.2 (c) (i) (e)) as follows;

#### (c) Yards

- (i) Dwellings, minor dwellings, accommodation facilities, education 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 *dwelling, minor dwelling, accommodation facility or education facility* or Rural Contractors Depot that is located on a title separate to that of the subject site and in different ownership;

While Council supported this change in principle, it was agreed with the appellant that the change was beyond the scope of the appeal and could not be resolved through that process. Instead, it was agreed that Council would notify a further Plan Change to address this matter.

## **2.0 Resource Management Act 1991**

### **2.1. Section 32**

Before a proposed plan change can be publicly notified the Council is required under section 32 ("s.32") of the Act to carry out an evaluation of alternatives, costs and benefits of the proposed review. 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.*

## **2.2. Section 74**

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority lodged with Council.

None of the iwi management plans that have been lodged with Council raised any issues which are of relevance to this Plan Change.

## **3.0 Consultation**

Council sought feedback on the proposed change from all parties involved in the D’Emden Environment Court Appeal. One response was received on behalf of George D’Emden supporting the proposed change.

Council also engaged with the surveying and planning community in the Western Bay of Plenty and Tauranga area via the “Surveyors Newsletter”.

## **4.0 Issue**

The D’Emden appeal identified that while there was a requirement for new Rural Contractors Depots to be set back from existing sensitive activities, there was no reciprocal rule requiring new sensitive activities to be setback from existing Rural Contractor Depots. The appellant’s concern is that Rural Contractors Depots will not be adequately protected from reverse sensitivity effects. Reverse sensitivity is defined in the District Plan as “the vulnerability of an existing lawfully established activity to other activities in the vicinity which are sensitive to adverse environmental effects that may be generated by such existing activity, thereby creating the potential for the operation of such existing activity to be constrained”. Plan Change 1 had previously identified that a 60m separation distance would be sufficient for the prevention of such effects.

### **4.1. Option 1 – Status Quo – No requirement for new sensitive activities to be set back from existing Rural Contractor Depots.**

<b>Benefits</b>	<ul style="list-style-type: none"> <li>▪ Allows flexibility for landowners to make best use of their land.</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>▪ Potential for adverse effects on landowners including those relating to noise, dust, traffic, operating hours and visual amenity.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Potential for reverse sensitivity effects on existing Rural Contractor Depots.</li> <li>▪ Allowing landowners to establish sensitive activities within 60m of existing Rural Contractor Depots may lead to these Rural Contractor Depots having to apply for resource consent to extend their operations when previously such extensions would have complied.</li> </ul>
<b>Effectiveness/ Efficiency</b>	<ul style="list-style-type: none"> <li>▪ Not effective as it allows for adverse effects on landowners and reverse sensitivity effects on Rural Contractors Depots.</li> <li>▪ Efficient in terms of the rule being easy to administer. Not efficient in terms of its potential to constrain existing Rural Contractors Depots which are an integral part of the rural sector.</li> </ul>
<b>Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter</b>	<ul style="list-style-type: none"> <li>▪ N/A – sufficient information is available.</li> </ul>

**4.2. Option 2 – Amend Rule 18.4.1 (c) (i) (e) so that new sensitive activities cannot establish closer than 30m to a property boundary (up to as close as 10m) unless they can maintain a 60m separation from existing Rural Contractor Depots.**

<b>Benefits</b>	<ul style="list-style-type: none"> <li>▪ Removes potential for adverse effects on landowners in most cases.</li> <li>▪ Removes potential for reverse sensitivity effects on existing Rural Contractors Depots in most cases.</li> <li>▪ Reduces likelihood that landowners will establish within 60m of a Rural Contractors Depot and force that operation to obtain resource consent for extensions that previously would have applied.</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>▪ Loss of flexibility for landowners to make best use of their land.</li> <li>▪ There is still potential for adverse effects on landowners and reverse sensitivity effects on existing Rural Contractors Depot in cases where existing Rural Contractors Depots are already within close proximity of the same property boundary i.e. within 30m.</li> <li>▪ There may be some difficulty in determining the closest point of an existing Rural Contractors Depot given that their definition includes land used for the purpose of storing equipment and goods. For instance, the closest point could be where a tractor is parked or where hay is stacked.</li> </ul>
<b>Effectiveness/ Efficiency</b>	<ul style="list-style-type: none"> <li>▪ Effective, except in cases where existing Rural Contractor Depots are already within close proximity of a property boundary.</li> <li>▪ Not entirely efficient due to uncertainty surrounding where their closest point is to be measured.</li> </ul>

<b>Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter</b>	<ul style="list-style-type: none"> <li>▪ N/A – sufficient information is available.</li> </ul>
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**4.3. Option 3 – Introduce a requirement for new sensitive activities to be set back 60m from existing Rural Contractor Depots.**

<b>Benefits</b>	<ul style="list-style-type: none"> <li>▪ Removes potential for adverse effects on landowners.</li> <li>▪ Removes potential for reverse sensitivity effects on existing Rural Contractors Depots.</li> <li>▪ Removes ability for landowners to establish within 60m of a Rural Contractors Depot and force that operation to obtain resource consent for extensions that previously would have applied.</li> </ul>
<b>Costs</b>	<ul style="list-style-type: none"> <li>▪ Sensitive activities currently have a maximum 30m set back from a property boundary. Introducing a requirement for a 60m set back from existing Rural Contractor Depots would increase this maximum by up to double. It is unreasonable to add further restrictions on landowners to protect an activity on another site.</li> <li>▪ There may be some difficulty in determining the closest point of an existing Rural Contractors Depot given that their definition includes land used for the purpose of storing equipment and goods. For instance, the closest point could be where a tractor is parked or where hay is stacked.</li> </ul>
<b>Effectiveness/ Efficiency</b>	<ul style="list-style-type: none"> <li>▪ Effective.</li> <li>▪ Not entirely efficient due to uncertainty surrounding where their closest point is to be measured. Also not efficient as it adds further constraints on landowners.</li> </ul>
<b>Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter</b>	<ul style="list-style-type: none"> <li>▪ N/A – sufficient information is available.</li> </ul>

**4.4. Preferred Option**

The preferred option is:

Option 2 - Amend Rule 18.4.1 (c) (i) (e) so that new sensitive activities cannot establish closer than 30m to a property boundary (up to as close as 10m) unless they can maintain a 60m separation from existing Rural Contractor Depots, as follows;

## "(c) Yards

- (i) Dwellings, minor dwellings, accommodation facilities, education 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 *dwelling, minor dwelling, accommodation facility*, ~~or~~ *education facility* or *Rural Contractors Depot* that is located on a title separate to that of the subject site and in different ownership;"

## 4.5. Reasons

This option removes the potential for adverse effects on landowners and reverse sensitivity effects on existing Rural Contractors Depots in most instances. The only instance where the rule will not be fully effective is where an existing Rural Contractors Depot is already established within 30m of a property boundary as this may create a smaller than 60m separation distance between the these and sensitive activities. This is likely to be a rare occurrence however given the limited number of existing Rural Contractor Depots in the Rural Zone and the larger rural lot size allowing options for the placement of sensitive activities. This option also avoids creating any unreasonable restrictions on landowners. From an implementation point of view, there may be some confusion over where the closest point of an existing Rural Contractors Depot may be, however a common sense approach will be used at building consent stage.