

EXTRACT FROM MIKE GARLAND'S ADDRESS

Recently the Council has become concerned at the extent of demand for rural subdivisions and development that is occurring and the implications this may have for the environment in the absence of many specifically dedicated policies and controls. It has simply relied on an 8ha minimum lot size until now and it is becoming clear that such an arbitrary threshold does not allow sufficient flexibility. This is why it has notified a variation to its District Plan, but that is just an interim response.

The Council has indicated to us that a number of rural issues are emerging and that these will have to be addressed.

Our task is to undertake a study of the rural areas of the district. For the most part, this will be identifying the outstanding natural features and landscapes of the district. This is a requirement of section 6 of the Resource Management Act. However, we shall be identifying a number of other rural issues that we know are causing concern. These are concerned generally with rural productivity and amenity, the phenomenon known as reverse sensitivity and also the balance that must be struck between letting people get on with their own business unimpeded whilst taking care of the environment. Reverse sensitivity is the effect which occurs when legitimately established rural activities are affected by the introduction of rural lifestyle activities. The occupants of lifestyle properties may well not be prepared to put up with the noise and smells of rural activities and their complaints may lead to constraints being placed on these effects.

The outcome of the exercise will be a recommended package of changes to the rural elements of the District Plan. Those changes, if adopted, will then have to go through a process of public submission and further submission with rights of appeal.

Essentially, the process up until adoption of the plan change is an informal one of study, discussion, interaction and consultation.

The exercise is governed by the Resource Management Act. Acts of Parliament can be pretty obscure and can be very boring but it is worth trying to understand some of the fundamentals. This Act has become something of a punch bag of late and changes are likely but I think the imperatives and constraints will remain much the same. I will now explain what they are.

We begin with the purpose of the Act. This is outlined in section 5 (Attachment 1). Unfortunately, this section has come to mean all things to all people. Its purpose is to promote the sustainable management of natural and physical resources. It's what sustainable management means that causes confusion. If I am to paraphrase it, I think it means managing resources in a manner that simultaneously

1. allows people and communities reasonably to go about their affairs, and
2. takes care of the environment for future generations.

Since it is people and communities going about their affairs that causes damage to the environment, there obviously has to be some sort of balance. On the one hand, we must put up with some adverse effects on the environment if we are to continue to thrive and on the other we must hold back and make some sacrifices in the interest of retaining a benign environment and providing for the future.

Section 5 has an overarching function and pretty much everything we do has to be referred back to section 5.

Section 6 of the Act is accessory to section 5 and subservient to it. It sets down matters of national importance that must be recognised and provided for. These are:

- (a) preservation of natural character of wetlands, lakes, rivers and margins;
- (b) protection of outstanding natural features and landscapes and the protection of both from inappropriate activity;
- (c) protection of significant indigenous vegetation and habitats of fauna;
- (d) maintenance and enhancement of public access to lakes and rivers;
- (e) Maori culture;
- (f) heritage;
- (g) customary activities.

All of these things carry very great weight and achieving their protection is subservient only to section 5.

Section 7 of the Act outlines matters to which we must have particular regard. They are less important but must be part of the background of any District Plan work. These include:

- (a) Kaitiakitanga (guardianship);
- (b) the ethic of stewardship;
- (c) efficiency of and the use of energy;
- (d) amenity values;
- (e) ecosystems.

Section 8 covers the Principles of the Treaty of Waitangi – largely a matter to be dealt with in terms of the local Iwi.

From all this, we can easily conjure up an image of a highly regulated regime tempered only by the requirement in section 5 to enable people and communities. Such should not be the case however, and it was certainly not the intention of the legislature. This is apparent from section 5, but the theme of avoiding unnecessary interference into people's lives is carried through into section 9. Unlike previous legislation, section 9 starts from the basis that everyone should be allowed to do whatever they want with their land unless a provision in a district plan intervenes.

It is section 32 which provides the real test for any provision in a district plan. Before adopting any provision in a district plan, the Council must prepare a report justifying the provisions and comparing them against the risks of adopting no provisions. Also, it must show that the methods adopted are the most efficient (Attachment 2).

Many methods other than regulation can be used and at all times we need to realise that regulation through rules does not enable anything: rules are there to ensure rather than enable to that extent they are potentially disabling so we must make sure that they are really necessary to achieve the purpose of the Act. When working on changes to District Plans, I have developed a check sheet (Attachment 3) to keep us all in line. It was the late Judge Treadwell who said that section 32 is couched in terms which indicate that interference by means of plan provisions should be kept to a minimum.

What will we do to expedite the study?

1. Firstly, we will spend some time collating and reviewing all the information presently available.
2. We are establishing a reference group with whom we will liaise.

3. We are beginning with a series of meetings such as this one to inform people that the study is under way to outline the issues we have been asked to address and to establish some sort of protocol so that people can continue to communicate with us.
4. Out of this, we hope to establish a series of focus group with whom we can meet again to discuss various rural issues and some of our findings.
5. Mary Buckland will carry out the exercise of categorising the rural landscape units in parallel with the work I am doing examining rural issue and options for dealing with the issues.
6. Mary's landscape assessment sets out to:
 1. identify landscape units and landscape categories on the basis of character and physical characteristics;
 2. assess landscape values to identify natural character values, landscape quality including aesthetic heritage and values;
 3. determine the landscapes' capability to absorb change and vulnerability to change;
 4. development a landscape ranking, likely to include:
 - Outstanding natural features and outstanding landscapes.
 - Regionally significant landscapes.
 - Landscapes where a landscape assessment should accompany development proposals.
 - Areas with potential for expansion of settlements or countryside living.

5 Purpose -

- (1) The purpose of this Act is to promote the sustainable management of **natural and physical resources**.
- (2) In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –
 - (a) Sustaining the potential of natural and physical resources (excluding **minerals**) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, **water**, soil, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the **environment**.

SECTION 32 : (AS RELEVANT TO DISTRICT PLAN CHANGES)

[32.Consideration of alternatives, benefits, and costs—

- (1) In achieving the purpose of this Act, before a proposed change is publicly notified, an evaluation must be carried out by the local authority.
- (2) A further evaluation must also be made by—

a local authority before making a decision under clause 10 or clause 29(4) of the Schedule 1; (that is, when deciding on submissions received).
- (3) An evaluation must examine—
 - (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
 - (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
- (4) For the purposes of this examination, an evaluation must take into account—
 - (a) the benefits and costs of policies, rules, or other methods; and
 - (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.
- (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.
- (6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.]

SECTION 32

RESOURCE MANAGEMENT ACT 1991

Methods of achieving the purpose of the Act

- Take no action (adopt no methods)
- Provision of Information **CONFIDE**
- Education / Training
- Monitoring **CONVINCE**
- Provision of services
- Private Agreement **CO-OPERATE**
- Conservation covenants
- Economic Instruments
- Land Purchase **COERCE**
- Regulation (or retain existing regulations)

Issues

Objectives

Policies

Rules

Section 32 is couched in terms which indicate that interference by means of plan provisions should be kept to a minimum so we should ask:

Is it really worth doing something about?

Is the district plan really the right vehicle?

What is the least cost but effective method of achieving the objective or policy?

Is it in concert with the (enabling) purpose of the Act?