Proposed Marlborough Environment Plan

Topic 10: Urban Environments

Hearing dates:	30 April 2018 – 2 May 2018
S42A Report Writer:	David Jackson
Conflicts of Interest:	None
Interim decision:	None

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

List of Abbreviations

MDC	Marlborough District Council
PMEP	Proposed Marlborough Environment Plan
RMA	Resource Management Act 1991
WARMP	Wairau/Awatere Resource Management Plan

Submitter abbreviations

FENZ	Fire and Emergency New Zealand
KiwiRail	KiwiRail Holdings Limited
NMDHB	Nelson Marlborough District Health Board

Structure of Decisions

1. It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel[1].

2. The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.

3. Where the PMEP provisions **remain as notified**, it is because:

   (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.

4. Where there is a **change to a provision** within the plan it is because:

   (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or

[1] (The only exception to that approach relates to the Noise section of the Nuisance topic where the reasoning and recommendations in the responses to Minutes 54 and 59 may have been adopted, rather than the reasoning and recommendations in the Section 42A Report or the Reply to Evidence report. The reasons for that difference in that topic are dealt with in detail at the commencement of the Noise section of the Nuisance topic decision. In respect of that topic the approach to understanding of the individual submission point decisions addressed in paragraphs 13.3 to 13.5 below should be adjusted accordingly to apply references to the Section 42A Report and/or Reply to Evidence in those paragraphs as being references to the responses to Minutes 54 & 59 for that Nuisance topic.)

(d) A consequential change has been necessary following on from a decision in either a), b) or c).

5. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.

6. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.

7. Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

Urban Environments

Permitted activity standards

Fire fighting standards

Standards that apply to all permitted activities

8. FENZ sought standards for firefighting water supply and access, seeking compliance with the Code of Practice SNZ PAS 4509: 2008. It wants to ensure that there is sufficient supply of water for firefighting purposes, and for buildings on long driveways there is adequate access for fire appliances, including width, clearance and gradient. It proposes a new standard be added under 5.2[2], 6.2[3], 9.2[4], 10.2[5] and 12.2[6]:

> *X.2.x Water supply and access for firefighting*
>
> *X.2.x.1 New buildings (excluding accessory buildings that are not habitable) shall have sufficient water supply for firefighting in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.*
>
> *X.2.x.2 Where a building is located more than 135m from the nearest road that has reticulated water supply (including hydrants) access shall have a minimum formed width of 4m, a height clearance of 4.0m and a maximum gradient of 1 in 5 (with minimum 4.0m transition ramps of 1 in 8).*

9. Effectively, FENZ sought the introduction of the above standards to apply to new buildings in the Urban Residential 1, 2 and 3 zones; Business 1 and 2 zones; and Industrial 1 and 2 zones.

10. FENZ sought similar relief for 18.2 in the Open Space 2 zone.[7] This request was considered in in Topic 7: Public Access and Open Space.[8]

Section 42A Report

11. The report writer agreed with an addition of a standard to ensure firefighting capability was supplied but he outlined concerns as to the ability to always be able to meet the compliance rule sought by FENZ in relation to SNZ PAS 4509:2008 in all urban environments. The report stated that:

[2] FENZ (993.39).
[3] FENZ (993.44)
[4] FENZ (993.55)
[5] FENZ (993.59)
[6] FENZ (993.63)
[7] FENZ (993.82)
[8] Topic 7 Section 42A Report, pages 23, 27

> *187...Assets &Services may not be able to confirm the water supply to SNZ PAS 4509:2008 in those existing older areas, including Renwick.*

and concluded on this issue:

> *189…. I believe the matter is best addressed via the Council's infrastructure upgrade process, its review of the Code of Practice for Subdivision and Land Development, and through liaison with FENZ. I do not think that requiring individual property owners to apply for resource consents will achieve a better outcome. For this reason, I support the proposed new rule referencing a 'Council reticulated water supply', but not that it meets SNZ PAS 4509:2008. In this I follow the wording recommended by Mr Sutherland under Rule 24.3.1.3.*
>
> *190. I note that the above issue does not apply to greenfield subdivision, where I understand that the infrastructure to the correct standard for firefighting capability is being installed.*

12. The recommendation made therefore was for a new rule to provide for those access areas and to generally require access to a 'Council reticulated supply'.

13. The report also addressed concerns as to access issues which required a new standard. Discussions occurred between the Section 42A Report Writer for Topic 17: Subdivision and Ainsley MacLeod for FENZ. As set out in the Topic 10 Section 42A Report[9], these discussions appeared to result in a reduction in the distance from the road (from 135m to 75m) that would trigger the access requirement. That is the distance recommended by the report writer.

Consideration

14. The Panel has considered similar requests from FENZ in respect of coastal and rural environments and in those settings has decided that the cost of requiring compliance with SNZ PAS 4509 is so high that it would need broader consultation to be considered as it would effectively require mandatory installation of sprinkler systems which would add significantly to housing construction costs.

15. Whilst the same considerations do not apply where reticulated water is available the advice as to an inability to be sure in some limited older urban areas that compliance can be achieved in the Panel's view militates in favour of the approach the report writer has recommended. That will ensure connection to a Council reticulated supply in urban settings even in older areas

[9] Section 42A Report, page 40

which in practical terms effectively will mean firefighting capability is enhanced and in most cases to a compliance level.

16. New greenfields subdivisions in urban environments will be addressed at subdivision stage where compliance to the correct standard can be ensured.

17. This approach appeared to be supported in evidence by Mr Paul McGimpsey. He stated:

> *"Given Fire and Emergency's view on this type of infill development, and that the provision of firefighting water supply for greenfield subdivision and development in non-reticulated areas is covered by other plan provisions, and that Council is working towards compliance through network upgrades, I agree with Mr Jackson's recommendation that the rule should be amended to refer to 'Council reticulated water supply' but that full reference to the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 is not warranted in the rule."*[10]

18. The Panel has reached a conclusion on using references to external documents such as the Code of Practice SNZ PAS 4509: 2008. This is recorded in Section 17 of the Introduction. However, as a result of the view of Mr McGimpsey recorded above, the Panel is not required to apply this reasoning in the current context, with the exception of Open Space 2.

19. The Panel agrees with the recommendations of the report writers with respect to new standards in the Urban Residential 1, 2 and 3 zones; Business 1 and 2 zones; and Industrial 1 and 2 zones and the wording for those standards.

20. In the case of Open Space 2, the report writer did recommend compliance with the Code of Practice. However, Topic 7 was also heard before this topic and before Mr McGimpsey provided evidence.

21. For reasons also set out in the Topic 12: Rural Environments decision, the Panel considers that reference simply to the Code creates uncertainty as to the standard that is to be met by somebody constructing a new building. For this reason, the Panel is accepting the submission in part and has not included reference to the Code in the recommended standard.

22. There is land that is zoned Open Space 2 that does not currently have access to a hydrant. Due to this circumstance, he Panel does not consider that the same standards as recommended for the urban zones are appropriate for the Open Space 2 zone. An amendment is made to the standard as a result.

[10] FENZ, Evidence Paul McGimpsey, Evidence, page 24

Decision

23. Insert a new standard in 5.2, 6.2, 9.2, 10.2 and 12.2 as follows:

X.2.x Water supply and access for firefighting

X.2.x.1 New buildings (excluding accessory buildings that are not habitable) shall have direct access to a Council reticulated water supply with fire fighting capability including hydrants.

X.2.x.2 Where a building (excluding accessory buildings that are not habitable) is located more than 75m from the nearest road that has reticulated water supply (including hydrants) access must have a minimum formed width of 4m, a height clearance of 4m and be free of obstacles that could hinder access for firefighting and emergency service vehicles.

24. Insert a new standard in 18.2 as follows:

X.2.x Water supply and access for firefighting

X.2.x.1 New buildings (excluding accessory buildings that are not habitable) shall have sufficient water supply for firefighting.

X.2.x.2 Where a building (excluding accessory buildings that are not habitable) is located more than 75m from the nearest road that has reticulated water supply (including hydrants) access must have a minimum formed width of 4m, a height clearance of 4m and be free of obstacles that could hinder access for firefighting and emergency service vehicles.

New standards - Construction and siting of a building or structure.

25. KiwiRail supports the standards in part, which reference construction and siting of a building or structure[11], and seeks an additional clause. It requests for safety reasons that the rail corridor is not publicly accessible. To ensure that access to all buildings can be provided without the need for occupiers to access the rail network, buildings need to be set back from the rail corridor boundary to ensure people's health and wellbeing. Given the consequence of an incident in the event of a neighbour accessing the rail corridor without the necessary safety permits in place, KiwiRail seeks a setback for new structures from the rail corridor, as follows: *A building or structure must not be within 5m of the rail corridor.* [12]

Section 42A Report

26. The report writer considers the setback requested is excessive for the purpose stated. A 5 metre setback would impose a large restriction on the use of a person's property, and seems disproportionate in achieving KiwiRail's desired outcome which seems to be sufficient space

[11] Standards 5.2.1, 9.2.1, 10.2.1 and 12.2.1
[12] KiwiRail (873.130, .134, .137, .140).

for property owners to be able to construct and maintain their buildings without having to go into the rail corridor.

27. In the report writer's view, a 1.5 metre setback would be sufficient. It would allow space for people to get around buildings to work on them, and space to erect scaffolding if needed (which typically is 850 mm wide). The report writer has concerns about the words 'any structure' as that would require any fence to be set back 5 metres into a person's property, effectively nullifying use of a significant portion of a person's property. The report writer suggests excluding fences from the setback (as long as the palings or main fence elements can be replaced from within owner's property).

28. The report writer considers a consequential amendment would assist with interpretation of the proposed standard if the term 'rail corridor' was defined. The term is proposed in the KiwRail submission to be used in a number of provisions throughout the PMEP. In another submission point, in relation to its Designation K1, KiwiRail indicates the rail corridor consists of the Main North Line.[13] The report writer suggests this term, linked to the designation, also be used.[14]

29. In evidence, KiwiRail reasserted they want a 5 metre setback from the boundary, not 1.5 metres as recommended by the report writer. Five metres is already recommended in the Public Access and Open Space Section 42A Report. Some zones permit structures up to 15 metres in height and therefore poles, ladders and other equipment needed for maintenance can be long, needing more space. A 5 metre setback also ensures structures do not interfere with sight lines at level crossings.[15]

30. KiwiRail accepts that fences could be caught by the proposed rule and accepts that fences up to 2.5 metres high are unlikely to have safety impacts or a need for access to the rail corridor.

31. Ms Beals proposes amending the rule as follows:[16]

> *… building or structure must not be within ~~1.5~~ 5.0 m of the rail corridor, except for a fence up to 2.5m in height ~~provided the fence is constructed, and palings or main fencing elements are able to be replaced, from within the site and without accessing the rail corridor.~~*

[13] KiwiRail (873.159).
[14] Section 42A Report, paragraphs 199-200.
[15] KiwiRail, Rebecca Beals, Evidence, paragraph 39.
[16] Section 42A Report, Reply to Evidence, page 12.

32. In terms of a definition of 'rail corridor', Ms Beals identifies that the company does not support the recommended definition as the legal boundary identifies the rail corridor and this is more precise than a mapped designation.[17]

33. The report writer in reply reiterates his concerns outlined in the Section 42A Report – that a 5 metre setback imposes considerable restrictions on other people's land – but nevertheless accepts that setbacks apply to buildings and private land for various other purposes such as street amenity and sight lines on corners, albeit this is for a private company but with a degree of public benefit.

34. The report writer also accepts:

- In business and industrial zones where buildings are permitted to be taller (10-15 metres), a 1.5 metre setback may not be large enough to manoeuvre, erect and support scaffolding or ladders. He argues a smaller setback could apply in residential zones as the maximum building height is less than 7.5 metres.
- The 5 metre setback would be appropriate in the Urban Residential Zone and in the other zones KiwiRail submitted on – Business 1 and 2, Industrial 1 and 2.
- The wording change in relation to fences suggested by Ms Beals, except for the 2.5 metre height. This is higher than the fences permitted in Urban Residential zones standards 5.2.1.15 and 6.2.1.10 and the Business Zone 2 Standard 10.2.1.6. It is better to align the fence height with the zone rules. (Ms Beals responded she would be comfortable with 2 metres.[18])
- Using the term 'rail corridor' in a rule but not defining the term creates potential uncertainty in interpretation. This could be avoided by referring to 'the boundary with the rail corridor'. This definition fits with the intent of the KiwiRail evidence on the basis that it is legally surveyed with a defined boundary. (Ms Beals is supportive of such wording.)

35. The Panel asked if the term 'rail corridor' could be better defined. This raised the question of how to differentiate the Main Trunk Line from the small railway line down to Taylor River and elsewhere. One way to do this is to refer to the 'Main North Line'. This is the term used in KiwiRail's submissions and evidence. The rule could then read: *The boundary with the rail corridor of the Main North Line.*

[17] KiwiRail, Rebecca Beals, Evidence, paragraph 47.
[18] Section 42A Report, Reply to Evidence, pages 11-12.

36. The report writer, as a result of the evidence from KiwiRail for consistency across zones, accepted that 5 metres was recommended in the Section 42A Report on the Open Space Zone and in other zones that KiwiRail has submitted on (Business 1 and 2 and Industrial 1 and 2). He accepts that instead of a 1.5 metre setback, a 5 metre setback could be recommended for Standard 5.2.1.21 as follows:

> *A building or structure must not be within ~~1.5m~~ 5m of the boundary with the rail corridor of the Main North Line, except for a fence up to 2m in height ~~provided the fence is constructed, and palings or main fencing elements are able to be replaced, from within the site and without accessing the rail corridor~~.*

37. The same changes are suggested for Rules 9.2.1.21, 10.2.1.11 and 12.2.1.11.

Consideration

38. In spite of the report writer's reconsideration that a 5 metre setback for the KiwiRail corridor was appropriate for consistency purposes, the Panel nevertheless concluded a 1.5 metre setback in the rail corridor was appropriate for other reasons, namely:

- In practical terms, a substantial rail corridor setback commonly exists within KiwiRail's legal boundary and the railway tracks.
- An additional 5 metre setback would be an unacceptable inroad into private property space/availability.
- A 1.5 metre setback on residential property would allow for ladders, scaffolding and building materials to be easily manoeuvred on site without having to access the rail corridor land.
- We consider as a result that access to structures adjoining the rail corridor for maintenance purposes would not compromise health and safety, as suggested by KiwiRail.

Decision

39. As recommended, and for the reasons given, new standards are inserted as 5.2.1.21, 9.2.1.15, 10.2.1.11 and 12.2.1.11, and are to read as follows:

A building or structure must not be within 1.5m of the legal boundary with the rail corridor of the Main North Line, except for a fence up to 2m in height.

Standard 5.2.1.2

Within the Urban Residential 1 Zone, the construction or siting of a dwelling on land must meet the following access requirements:

(a) access for one dwelling must be a minimum width of 3.0m;

(b) access for two to four dwellings must be a minimum width of 3.5m and a minimum sealed width of 3.0m;

(c) access for five to six dwellings must be a minimum width of 6.0m and a minimum sealed width of 5.0m.

40. One submitter supports the rule and seeks its retention. Several others oppose the standard because increasing minimum access widths (compared to the current Plan), combined with larger minimum lot sizes and other controls, will make subdivision very difficult. They consider that the changes will reduce housing choice, promote inefficient use of expensive land, and reduce the stock of available housing, particularly affordable housing. They seek the reinstatement of the old access standards.[19]

41. For the WARMP (Rule 32.1.2.1.7) these are:

No. Units Served	Minimum Width (m)	Minimum Formation Width (m)	Qualification
1	3	NA	
2-4	3	2.5	Sealed
5-6	6	5	Sealed. Width allows passing

Section 42A Report

42. The report writer (Jackson), having read the report writer's (Sutherland) recommendation in the Section 42A Report on Topic 17 Subdivision, in relation to subdivision access standards under recommended Standard 24.3.1.3 of that topic, agreed with his recommendation that narrower access standards are appropriate in Blenheim where sites are mostly flat. Mr Jackson supports aligning the widths in Standard 5.2.1.2 with those proposed in the Subdivision Standard 24.3.1.3.[20]

Consideration

43. The Panel accepts from the evidence that the increase in the proposed access widths in the PMEP will make subdivision difficult for both developers and home buyers.

[19] GJ Gardner Homes (99.1), Mainland Residential Homes (506.1), Peter Ray Homes (507.1) and Andrew Pope Homes (508.1).
[20] Section 42A Report, paragraph 206.

Decision

44. Standard 5.2.1.2 is amended as follows:

Within the Urban Residential 1 Zone, the construction or siting of a dwelling on land must meet the following access requirements:

(a) access for one dwelling must be a minimum width of 3.0m;

(b) access for two to four dwellings must be a minimum width of 3.0 ~~3.5~~m and a minimum sealed width of 2.5 ~~3.0~~m;

(c) access for five to six dwellings must be a minimum width of 6.0m and a minimum sealed width of 5.0m.

Standard 5.2.1.3

No more than one residential dwelling must be construction *[sic]* or sited per Computer Register within the Urban Residential 2 Zone.

45. Six submitters oppose the standard for reasons given.[21] GJ Gardner Homes, Mainland Residential Homes, Peter Ray Homes and Andrew Pope Homes focus on lot size, access width and bulk and locational matters. Messrs Gilbert and Hawke consider there is no practical reason why more than one rental property could not be built on a section if the density and access requirements could be met as at present. Mr Hawke's inferred decision seeks to allow for two residential dwellings on one site, provided the area and access requirements in the zone are met. He points to the fact that provision is made in the Urban Residential 1 Zone for more than one dwelling on an allotment because this is a higher density zone where multi-unit and multi-development is enabled (Policy 12.1.2 and Rule 5.2).

Section 42A Report

46. In response, the report writer pointed out that the characteristics sought in the PMEP for the Urban Residential 2 Zone are for lower density and lower building form development on larger lot sizes. In the report writer's opinion, the characteristics of the Residential 2 Zone, as set in the policy, are inconsistent with multiple units on an allotment. Further, the submitters have not requested amendments to Policy 12.1.3. The change requested by the submitters to Standard 5.2.1.3 would create an inconsistency between the policy and the rule. Moreover, if more than one dwelling was allowed on an allotment, then other rules would be needed to regulate bulk and location and other matters, since the existing rules rely on allotment boundaries and sizes established at the time of subdivision. For these reasons, and the fact

[21] Perry Mason Gilbert (192.2), Tony Hawke (369.7), GJ Gardner Homes (99.7), Mainland Residential Homes (506.7), Peter Ray Homes (507.7) and Andrew Pope Homes (508.7).

that housing companies did not focus on there being one house per lot in the Residential Zone, the report writer initially recommended that Standard 5.2.1.3 be retained as notified.[22]

47. In evidence, Tony Hawke responded to the report writer's initial indication that he recommended no change to Standard 5.2.1.3 as notified. Mr Hawke considered that the report writer had not understood the request he made in his submission that if there are additional dwellings on the lot, they need to meet the density and bulk and locational requirements. '*Allow for more than one residential dwelling to be sited on a title, provided the net site area for each dwelling can meet the minimum allotment area in the Residential 2 Zone.*'[23]

48. Nor did Mr Hawke accept the report writer's opinion that the change to the rule would create inconsistency with Policy 12.1.2.

49. Perry Gilbert in his submission on the same subject does not agree either with the report writer's opinion that a change in the rule would create inconsistency with Policy 12.1.2. For at present under the WARMP a building is often started before title can issue. He requests no change to that rule and requests '*Within the Urban Residential 2 Zone, the construction or siting of a dwelling must be on a Computer Register with a net site area of no less than 400 m^2*' and complies with the density and access rules.[24]

Reply to Evidence

50. After identifying there is scope for Mr Hawke's request because the further submitter supported the retention of the provision in the PMEP to have one house per computer register[25], the report writer identified:

- His original argument for a potential inconsistency between Policy 12.1.3 and a changed rule is no longer appropriate.[26]
- MDC staff indicate there are no 'fishhooks' with the application of the WARMP provisions for building applications as currently applicants are made aware that, if they subsequently want to subdivide, then the dwellings need to be sited so they will comply

[22] Section 42A Report, paragraph 208.
[23] Tony Hawke, Evidence, paragraph 18.
[24] Perry Mason Gilbert, Evidence, page 1.
[25] The term 'computer register' has been changed. It is now 'record of title'. See Topic 17: Subdivision decision. See https://www.linz.govt.nz/land/land-records/types-land-records/record-title-current
[26] Section 42A Report, paragraph 208.

with the subdivision rules and relevant boundary controls or they would have to seek resource consent.[27]

- There are benefits in what is now proposed by Mr Hawke – a reduced bureaucracy and more flexibility are the advantages of making the change.[28]

51. The report writer's further recommendation is to replace Standard 5.2.1.3 with a new standard that ensures that where more than one dwelling is constructed, each dwelling meets the net site requirements for the Urban Residential 2 Zone as set out in his Reply to Evidence.

52. He favoured following the original request from Mr Hawke as he included the important requirement – *provided the area and access requirements in the Residential 2 zone can be met*. It is necessary that both these are achieved (as is the case in the Urban Residential 1, Standard 5.2.1.1), not just the site area as Mr Gilbert proposed.

53. As, Mr Hawke did not tie his area just to 400 m^2, this is important because there are different minimum site areas that apply in the Urban Residential 2 Zone as set out in Rule 24.3.1.2, that would need to be brought into an amended rule to define the 'net site area' that the submitters discussed. Similarly, in terms of access standards, these vary in Rule 24.3.1.3 and would need to be reflected also.[29]

Consideration

54. The Panel decided the new standard was appropriate for all the reasons given, but with the insertion of the words 'for each dwelling' after 'net site area'.

55. Due to legislation changes, and for the reasons provided in the Topic 17: Subdivision decision, the term 'Computer Register' is amended to 'Record of Title'.

56. As a consequence of the amendments made to Standard 5.2.1.3, Standard 5.2.1.1 will also require similar amendment to ensure consistency.

Decision

57. Existing Standard 5.2.1.3 is deleted and replaced with new Standard 5.2.1.3 as follows:

5.2.1.3 Within the Urban Residential 2 Zone, the construction or siting of a dwelling must be on a Record of Title with a net site area for each dwelling no less than the relevant Minimum Net Allotment Area in rule 24.3.1.2, and with access that complies with rule 24.3.1.3.

[27] Section 42 A Report, Reply to Evidence, page 14.
[28] Section 42A Report, Reply to Evidence, page 14.
[29] Section 42A Report, page 14.

58. Standard 5.2.1.1 is amended as follows:

5.2.1.1. Within the Urban Residential 1 Zone, the construction or siting of a dwelling must be on a ~~Computer Register~~ Record of Title with a net site area no less than 290m^2.

Recession planes – standards apply to all permitted activities

Standard 5.2.1.6

No part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26. The recession plane angle must be measured from a starting point 2m above ground level at the property boundary.

59. One submitter wants the provision from the WARMP restored (in the recession plane rules) that allowed a garage to be sited up against a side or rear boundary and to intrude into the recession plane a certain amount. The same rule provided that a length of up to 9 metres of garage could be sited on or near to the boundary and intrude into the recession plane.[30]

60. Other submitters made identical submissions opposing the standard. They are concerned at changes in lot size, bulk and location controls, setback and recession planes that compromise the efficient use of a site, reducing housing choice and affordability. The building controls should be revisited to ensure the recession planes promote efficient use of space and maximise the area available for outdoor living.[31]

61. Another submitter supports the standard but seeks the standard is linked to the definition of 'site' in Chapter 25, which makes it clear that setbacks cannot include right of way areas. It seeks that Standard 5.2.1.6 be amended as follows:

> *On a site, no ~~No~~ part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26. The recession plane angle must be measured from a starting point 2m above ground level at the property boundary.*[32]

Section 42A Report

62. The report writer considers:

- The change sought by Mr Hawke would have a significant impact on a neighbour's amenity – more so on the southern boundary where a length of building up to 9 metres long, intruding 50% above the boundary recession plane height, could have a significant

[30] Tony Hawke (369.10).
[31] GJ Gardner Homes (99.6), Mainland Residential Homes (506.6), Peter Ray Homes (507.6) and Andrew Pope Homes (508.6).
[32] MDC (91.198).

impact on winter sun to the neighbour located to the south (also on eastern and western boundaries). This change is not supported.

- The RMA now provides for a simpler 'consenting process' for boundary activities. If a neighbour's written approval can be obtained then the Council within 10 working days will issue a permission known as a 'deemed permitted activity'.
- In the report writer's experience, a set angle is sufficient to ensure adequate amenity to the road and footpath while roads do not require the same level of daylight access. A low recession plane inclined into the front yard of the property can be unnecessarily restrictive on building development. He therefore supports introducing a fixed angle on the road boundary of the site.
- There are four definitions of 'site' in the PMEP, but the one applicable in this instance is the first one, as follows:

  in relation to a building or structure, means any area of land/or volume of space of sufficient dimensions to accommodate any complying activity provided for by a rule in the Plan:

  (a) Corner site - will be deemed to be a 'front site';

  (b) Front site - means a site having one frontage of not less than the minimum prescribed by the Plan for the particular zone in which the site is situated to a road, private road, or the sea; and

  (d) [sic] *Rear site - means a site that is situated generally to the rear of another site and that has not the frontage required for a front site for that use in the zone.*

  Where a right of way is employed, the line(s) defining the extent of that right of way on a survey plan must be treated as a legal boundary for the purpose of bulk and location controls for buildings.

63. The report writer identifies that the last sentence of the definition states that bulk and location controls for buildings are determined from the lines defining the right of way. While not defined in the PMEP, inclusion of the proposed new words in Standard 5.2.1.6 will remove any doubt as to whether this includes recession planes. The report writer supports the change and as a consequential change, the reference in the rule to 'property boundary' should be changed to 'site boundary'.

64. It is recommended that Standard 5.2.1.6 be amended as follows:[33]

> *On a site, no ~~No~~ part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26, except that a recession plane angle of 55 degrees, inclined into the site, applies in all cases on a road/street boundary. The recession plane angle must be measured from a starting point 2m above ground level at the ~~property~~ site boundary.*

65. GJ Gardner Homes and other housing companies identified in evidence that the current WARMP rules have 2.3 metres above ground for a starting point in the Residential 1 Zone as opposed to 2 metres in the PMEP. The Urban Residential 1 Zone is intensive and having a more generous recession plan allows more flexibility in the siting of buildings and better utilisation of small sites. The Urban Residential 2 Zone would similarly benefit if the recession planes started at 2.3 metres rather than 2 metres.[34]

66. The report writer in reply to this evidence supports changing the starting point for the recession plane to 2.3 metres for the Urban Residential 1 Zone as that zone seeks to allow more intensive development and the recession plane, as notified, can restrict that. The report writer does not support the same change for the Urban Residential 2 Zone as that zone has lower density and higher on-site amenity requirements (as set out in Policy 12.1.3) and would fail to differentiate the Urban Residential 1 and 2 Zones in terms of this control (the WARMP and the MSRMP use a 2 metre starting point and the PMEP is not changing this).

67. The report writer observes the recession rules in the PMEP are slightly tougher than the operative plans in some respects, but are still generous, in his experience (citing the Nelson and Tasman plan's relevant provisions to the contrary).[35]

Consideration

68. In terms of the standard, the Plan needs to be clear that the setbacks required do not apply to right of way areas. The Panel accepts the amended standard as recommended with minor further amendments (the amendment ties with the notified definition of 'site' which excludes rights of way and bulk and location rules). In the course of this consideration, as a consequence, the Panel needed to consider the definition of site as it affected bulk and location requirements generally. On doing so the Panel was concerned that the last paragraph addressing the treatment of rights of way areas in respect of all bulk and location

[33] Section 42A Report, paragraph 230.
[34] Section 42A Report, Reply to Evidence, GJ Gardner Homes and others, page 15.
[35] Section 42A Report, Reply to Evidence, page 16.

requirements was ambiguous and needed clarification. The notified wording of that paragraph was:

Where a right of way is employed, the line(s) defining the extent of that right of way on a survey plan must be treated as a legal boundary for the purpose of bulk and location controls for buildings.

69. The Panel has decided that to ensure greater clarity to ensure the consequence of the amendment to include reference to 'on-site' is accurately achieved by adopting the following wording:

> *… Where a right of way is employed, the line(s) defining the extent of that right of way on a survey plan shall not be included as the legal boundary but instead the inner boundary of the right of way closest to the building shall be treated as the must be treated as a legal boundary for the purpose of bulk and location controls for buildings.*

70. As a consequence, Appendix 26 Figure 1b also requires amendment to reflect the change in the Urban Residential 1 Zone, as set out in the Reply to Evidence.[36] A further consequential change is necessary to apply the same standard in the Urban Residential 3 Zone.

Decision

71. Standard 5.2.1.6 is amended as follows:

On a site, no ~~No~~ part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26, except that a recession plane angle of 55 degrees, inclined into the site, applies in all cases on a road/street boundary. The recession plane angle must be measured ~~from a starting point 2m above ground level~~ at the ~~property~~ site boundary from a starting point 2.3m above ground level on sites within the Urban Residential 1 Zone, and 2.0m on sites within the Urban Residential 2 Zone.

72. Standard 6.2.1.4. is amended as follows:

On a site, no ~~No~~ part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26, except that a recession plane angle of 55 degrees, inclined into the site, applies in all cases on a road/street boundary. The recession plane angle must be measured ~~from a starting point 2m above ground level~~ at the ~~property~~ site boundary from a starting point 2.3m above ground level on sites within the Urban Residential 3 Zone.

[36] Section 42A Report, Reply to Evidence, page 15.

73. Figure 1b 'Recession Plan Cross Section' in Appendix 26, is amended to include the words '(*2.3m Urban Residential 1 Zone)'* next to '2m', as shown below:

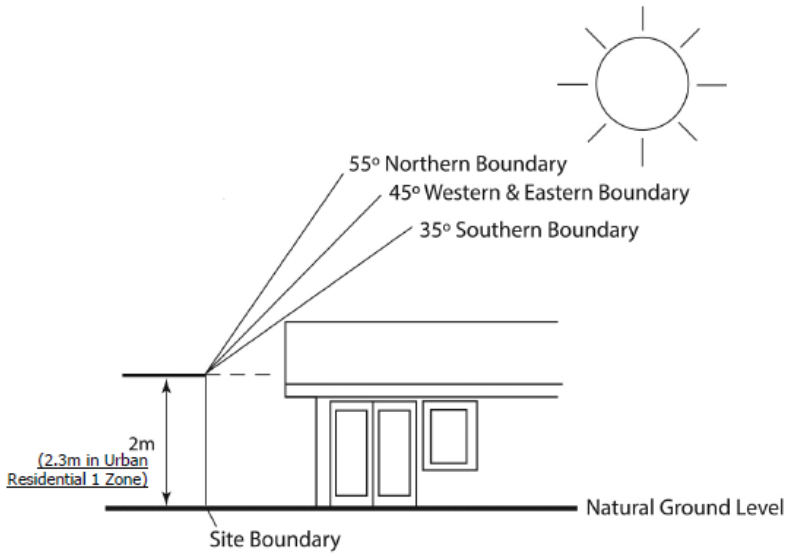

Figure 1b. Recession Plane Cross Section.

74. The final paragraph in the definition of 'site' is amended to read:

… Where a right of way is employed, ~~the line(s) defining~~ the extent of that right of way on a survey plan shall not be included as the legal boundary but instead the inner boundary of the right of way closest to the building being assessed shall be treated as the ~~must be treated as a~~ legal boundary for the purpose of bulk and location controls ~~for buildings~~.

Standards applying to specific permitted activities

Standard 5.3.7

Relocated building

Standard 5.3.7.1.

A building intended for use as a dwelling must have previously been designed, built and used as a dwelling.

Standard 5.3.7.2.

All work required to reinstate the exterior must be completed within 6 months of the building being delivered to the site. This includes providing connections to all infrastructure services and closing in and ventilation of the foundations. The owner of the land on which the building is to be located must certify to the Council, before the building is relocated, that the reinstatement work will be completed within the 6 month period.

Standard 5.3.7.3.

The siting of the relocated building must also comply with Standard 5.2.1.6.

75. Coffey House Removals supports in part Standard 5.3.7.2, but wants the first sentence changed to '*All work required to reinstate the exterior must be completed within ~~6~~ 12 months*

of the building being delivered to the site'. The company does not give reasons why 12 months is necessary.[37]

76. House Movers support the standard in part.[38] It too does not provide reasons but requests that Standards 5.3.7.1 and 5.3.7.2 [and inferred 5.3.7.3 also] are deleted, and replaced with:

5.3.7.a Any relocated building intended for use as a dwelling must have previously been designed, built and used as a dwelling.

5.3.7.b A building pre-inspection report shall accompany the application for a building consent for the destination site. That report is to identify all reinstatement works that are to be completed to the exterior of the building. A suggested pre-inspection report is attached as Schedule 2 in the submission.

5.3.7.c The building shall be located on permanent foundations approved by building consent, no later than 2 months of the building being moved to the site.

5.3.7.d All other reinstatement work required by the building inspection report and the building consent to reinstate the exterior of any relocated dwelling shall be completed within 12 months of the building being delivered to the site. Without limiting 5.3.7.c reinstatement work is to include connections to all infrastructure services and closing in and ventilation of the foundations.

5.3.7.e. The proposed owner of the relocated building must certify to the Council that the reinstatement work will be completed within the 12 month period.

5.3.7.3f The siting of the relocated building must also comply with Standard 5.2.1.6.

Section 42A Report

77. The report writer considers House Movers' request for a 12 month period to reinstatement is reasonable, and notes it would also meet the request of Coffey House Removals.

78. He also considers a report accompanying the building consent would be useful. However, it should not be called a pre-inspection report to avoid potential confusion with reports and processes under the Building Act 2004.

79. But the report writer prefers the term 'owner' of the land on which the house will be relocated to the term 'proposed owner' as the owner of the land can easily be established. Moreover, land use resource consents attach to a site, not to people.[39]

[37] Coffey House Removals (365.3 and .4).
[38] House Movers (770.9).
[39] Section 42A Report, paragraphs 263-264.

80. The report writer's recommended amendment[40] is as follows:

> *5.3.7.1 Any relocated building intended for use as a dwelling must have previously been designed, built and used as a dwelling.*
>
> *5.3.7.2 A report shall accompany the application for a building consent for the destination site that identifies all reinstatement works that are to be completed to the exterior of the building.*
>
> *5.3.7.3 The building shall be located on permanent foundations approved by building consent, no later than 2 months from when the building is moved to the site.*
>
> *5.3.7.4 All other reinstatement work required by the report referred to in 5.3.7.2 and the building consent to reinstate the exterior of any relocated building must be completed within 12 months of the building being delivered to the site. Without limiting 5.3.7.3, reinstatement work is to include connections to all infrastructure services and closing in and ventilation of the foundations.*
>
> *5.3.7.5 The owner of the land on which the building is to be located must certify to the Council, before the building is relocated, that the reinstatement work will be completed within the 12 month period.*
>
> *5.3.7.6 The siting of the relocated building must also comply with Rule 5.2.1.*

81. In evidence, House Movers support the report writer's recommendations but would like a report template in the Plan as an appendix, and/or on the MDC website; and request that definitions be included in the Plan (these definitions were not covered in this hearing report, but have been coded to the Definitions chapter and are reproduced below:

> *Relocated Building means any previously used building which is transported in whole or in parts and re-located from its original site to its destination site; but excludes any prefabricated building which is delivered dismantled to a site for erection on that site.*
>
> *Removal of a Building means the shifting of a building off a site.*
>
> *Relocation of a Building means the placement of a relocated building on its destination site.*
>
> *Re-siting of a Building means shifting a building within a site.*

[40] Section 42A Report, Reply to Evidence, page 22

82. The report writer responds that the report template, in his view, is not so critical that it needs to be in the PMEP. He supports the template being promoted and used by the Council, but considers it is sufficient for this to be via the Council's website.

83. The report writer supports the inclusion of a 'relocated building' definition in the PMEP and considers there is no need to define in the Plan the other three terms. Having said that, there is merit in including in the 'relocated building' definition an element from the suggested definition for 're-siting of a building' as that would help clarify that relocating a building does not include re-siting a building within a site.[41]

Consideration

84. The Panel agree with the replacement of rules 5.3.7.1, 5.3.7.2 and 5.3.7.3 with six new standards as proposed by the report writer, with one minor amendment. In new standard 5.3.7.6, the reference to 'Rule 5.2.1' is amended to read 'Standard 5.2.1'.

Decision

85. A new definition be included in Chapter 25 as follows:[42]

Relocated Building means any previously used building which is transported in whole or in parts and re-located from its original site to its destination site; but excludes any prefabricated building which is delivered dismantled to a site for erection on that site and any building which is shifted within a site.

Objective 12.7

Reverse sensitivity effects on adjoining residential zones from activities within business and industrial zones are avoided.

86. One submitter supported the policy and another supported in part, seeking amendments to the wording to widen the latitude of the objective to reflect the broader description in the overarching Issue.[43]

87. Two submitters opposed the objective. The first on the basis that it confused the concept of reverse sensitivity, where reverse sensitivity effects on business and industrial activities should be avoided rather than reverse sensitivity effects on residential properties. The other sought the replacement of the overarching Issue and consequently the objective to support it.[44]

[41] Section 42A Report, Reply to Evidence, page 23.
[42] House Movers (Heavy Haulage Association) (770.21).
[43] NMDHB (280.58), KiwiRail (873.39)
[44] Fonterra (1251.96), Mark Batchelor (278.1)

Section 42A Report

88. The report writer agreed with the concerns raised by KiwiRail and Fonterra that the objective confuses the concept of reverse sensitivity. However, he notes the explanatory text to the objective does not refer to reverse sensitivity; instead it is concerned with 'protection of the amenity along the interface of business and industrial areas with adjoining areas'.

89. The report writer proposes two aspects to manage the zone interface that have not been fully addressed in the objective, these being:

    (a) managing reverse sensitivity (the potential for residential activities to impact on lawful business and industrial activities), and

    (b) business and industrial activities properly managing their effects, so as to minimise adverse effects outside their sites, and their zones.

90. After the hearing of evidence, the report writer suggested the following amendments to the objective to address these.

    ~~Reverse sensitivity~~ Adverse effects, including reverse sensitivity, ~~on adjoining~~ across zone boundaries between residential zones, ~~from activities within~~ and business and industrial zones, are minimised, and avoided where possible.[45]

Consideration

91. The Panel concluded that by requiring reverse sensitivity effects to be avoided in the objective as notified had too great an emphasis on reverse sensitivity effects alone. In the Panel's view the objective should be aimed at minimising all adverse effects between zones, including reverse sensitivity as one of those effects, by avoiding or mitigating such effects.

92. The Panel did not agree fully with the recommended wording in the Reply to Evidence and preferred to use the word 'mitigated' with either avoidance or mitigation of adverse effects, including reverse sensitivity, being options.

Decision

93. Objective 12.7 is amended to read:

    Objective 12.7 ~~Reverse sensitivity~~ Adverse effects across zone boundaries between ~~on adjoining~~ residential zones and ~~from activities within~~ business and industrial zones, including reverse sensitivity effects, are avoided or mitigated.

[45] Reply to Evidence, page 26.

Policy 12.7.1

Business and industrial activities are appropriately separated from the boundary of adjoining residential zones so that any adverse effects on residential activities are avoided, remedied or mitigated through:

(a) establishing setbacks for industrial activities from a residential boundary;

(b) screening of business or industrial outdoor storage areas from a residential boundary;

(c) restrictions on light spill;

(d) setting more sensitive noise limits at the boundaries between the Industrial 1 Zone and the Urban Residential 1 Zone; and

(e) standards for dust and odour.

94. Several submitters support the policy and seek its retention as notified. One submitter requests that the policy is replaced because it does not give effect to Objective 12.7 and further states reverse sensitivity can be managed in a number of ways including the provision of appropriate separation distances between conflicting zones and ensuring that activities establish in zones appropriate to their amenity requirements (wording provided);[46] under Policy 12.5.6 another submitter was concerned about reverse sensitivity from activities in sensitive zones extended towards the Industrial 2 Zone affecting the permitted industrial activities – he seeks a new sensitivity policy that is concerned with recognising the effects of extending or providing for the extension of sensitive activities (subdivision, zoning, resource consents) towards high levels of effects (the report writer proposes addressing the relief sought under Policy 12.7.1);[47] another submitter in a submission discussing Objective 12.7 seeks the inclusion of various new policies to address the residential and business/industrial interface. The policies sought are under Objective 12.7.[48]

Section 42A Report

95. The report writer's preferred approach to addressing these submissions (given the array of approaches sought which range from seeking new policies to replacing the existing policy), is to amend the existing policy to better focus on the management or 'spill over' effects from business and industrial activities, and to include a new policy focused on management of reverse sensitivity along the lines proposed by Fonterra in new Policy 12.7.2.[49]

96. The report writer recommends that Policy 12.7.1 is amended as follows:

> *Policy 12.7.1 - Business and industrial activities are <u>managed</u> ~~appropriately separated from the boundary of adjoining residential zones~~ so that any adverse effects on*

[46] Fonterra (1251.97).
[47] Timberlink (460.16).
[48] Mark Batchelor (278.1).
[49] Section 42A Report, paragraph 433 and Reply to Evidence, page 29.

~~residential activities~~ adjoining residential zones are avoided, remedied or mitigated through:

(a) establishing setbacks for industrial activities from a residential boundary;

(b) screening of business or industrial outdoor storage areas from a residential boundary;

(c) restrictions on light spill;

(d) setting more sensitive noise limits at the boundaries between the Industrial 1 Zone and the Urban Residential 1 Zone; ~~and~~

(e) standards for dust and odour;

(f) standards for vehicle parking; and

(g) requirements for landscaping.

97. The report writer recommends a consequential amendment be inserted into the explanation to Policy 12.7.1 as follows:[50]

This policy recognises that some activities may result ~~in reverse sensitivity~~ conflicts at the boundary of some zones. The inherent nature of industrial activities means that, for example, higher noise levels will be produced intermittently through the use of machinery related to light manufacturing and production, or that there may be increases in traffic generation. This policy describes a range of matters for which standards will be applied to business or industrial activities located immediately adjacent to another zones, such as Open Space Zones or Urban Residential Zones. These standards will be more stringent to ensure that ~~reverse sensitivity effects do not occur and that~~ the quality of residential environments is not lowered.

98. The report writer also recommends that a new Policy 12.7.2 is added, after Policy 12.7.1, as follows:

Policy 12.7.2 - Manage reverse sensitivity effects by:

(a) encouraging new business and industrial activities to locate in an appropriate zone;

(b) not allowing new business and industrial activities that are likely to have adverse effects to locate in residential zones;

[50] Section 42A Report, Reply to Evidence, page 27.

(c) discouraging residential activities (other than those provided for elsewhere) or sensitive receptors from locating in Industrial Zones where reduced amenity is recognised and provided for, or close to such zones;

(d) avoiding subdivision, rezoning or resource consents that bring residential activities or sensitive receptors close to Industrial Zones such that there may be adverse reverse sensitivity effects, unless those adverse effects can be avoided, remedied or mitigated;

(e) ensure adequate separation distances between residential activities, and business and industrial activities; and

(f) ensure that the adverse effects of industrial and business activities are adequately regulated.

99. The report writer recommends a consequential amendment be inserted into the explanation to the new Policy 12.7.2 as follows:[51]

> *This policy recognises that some activities may result in reverse sensitivity conflicts, and sets out a range of approaches to manage this. Part of the solution is industrial and business activities managing their adverse effects to minimise the degree they spill over onto other sites, and particularly into other zones. For some industries in particular, it is not possible to manage the effects within the site, and zones with appropriate industrial amenity have been established to allow these activities to operate. In those instances, it is important to provide separation distances between more sensitive activities and the industry or business, or to use other techniques (for example noise bunds) to manage any conflict. Sensitive activities are residential activities, and 'sensitive receptors' which are defined in Chapter 25 and include schools, daycare centres, hospitals and elder care facilities. Where industrial activities have been provided for and are lawfully established, it is important that their activities are not compromised by the encroachment of sensitive activities, or the establishment of such activities within the business and industrial zones, so that a new reverse sensitivity conflict arises.*

100. In evidence, several submitters support the wording proposed in Fonterra's submission, and not as the report writer recommended. Mark Batchelor noted an issue with the last clause in the proposed new policy *(f) ensure that the adverse effects of industrial and business activities are adequately regulated*. He was concerned this was in the reverse sensitivity policy and

[51] Section 42A Report, paragraph 438 and Reply to Evidence, page 27.

appeared to put added onus on the industrial and business activity, rather than the activity causing the reverse sensitivity effect.

101. The report writer's response to this evidence is that the recommended revised Policy 12.7.1 and revised Policy 12.7.2 adequately cover what the submitters seek but accepts they need modification. He noted the concern Mr Batchelor had with the last clause in the recommended policy and that it seemed to put a double requirement on the industry or business to improve. He agreed the clause may be removed.

102. The report writer also decided, as the result of discussion during the hearing, that he now recommends moving other clauses from Policy 12.7.2 into Policy 12.7.1. In that way, Policy 12.7.1 will focus on managing industrial and business effects to acceptable levels, while Policy 12.7.2 would focus on the perturbing activity and the more sensitive activity and what can be done to avoid that occurring to manage the reverse sensitivity effects.

Consideration

103. The report writer has specifically addressed reverse sensitivity effects and in his Reply to Evidence he recommended substantial changes to the wording of policies 12.7.1 and 12.7.2 These are addressed in his Reply to Evidence.

104. The Panel sought advice on a description of 'sensitive activities'. The report writer identifies that 'sensitive activities' are residential activities, and 'sensitive receptors' as defined include school, daycare centres, hospitals and elder care facilities.[52]

105. The Panel accepts the new provisions as recommended for the reasons given, with one amendment to Policy 12.7.2(c) 'ensure adequate separation distances between residential activities, and business and industrial activities'.

Decision

106. Policy 12.7.1 is amended as follows:

Policy 12.7.1 - Business and industrial activities are <u>managed</u> ~~appropriately separated from the boundary of adjoining residential zones~~ so that any adverse effects on ~~residential activities~~ adjoining residential zones are avoided, remedied or mitigated through:

<u>(a) encouraging new business and industrial activities to locate in an appropriate zone;</u>

<u>(b) not allowing new business and industrial activities that are likely to have adverse effects to locate in residential zones;</u>

(c~~a~~) establishing setbacks for industrial activities from a residential boundary;

[52] Section 42A Report, Reply to Evidence, pages 27-28. PMEP Chapter 25 Definitions, page 25-21.

(d~~b~~) screening of business or industrial outdoor storage areas from a residential boundary;

(e~~c~~) restrictions on light spill;

(f~~d~~) setting more sensitive noise limits at the boundaries between the Industrial 1 Zone and the Urban Residential 1 Zone; ~~and~~

(g~~e~~) standards for dust and odour;

(h) standards for vehicle parking; and

(i) requirements for landscaping.

107. As a consequential amendment that the explanation to Policy 12.7.1 is amended as follows:

This policy recognises that some activities may result ~~in reverse sensitivity~~ conflicts at the boundary of some zones. The inherent nature of industrial activities means that, for example, higher noise levels will be produced intermittently with machinery related to light manufacturing and production, or that there may be increases in traffic generation. This policy describes a range of matters for which standards will be applied to business or industrial activities located immediately adjacent to ~~another~~ other zones, such as Open Space Zones or Urban Residential Zones. These standards will be more stringent to ensure that ~~reverse sensitivity effects do not occur and that~~ the quality of residential environments is not lowered.

108. A new Policy 12.7.2 is added, after Policy 12.7.1, as follows[53]:

12.7.2 Manage reverse sensitivity effects by:

(a) discouraging residential activities (other than those provided for elsewhere) or sensitive receptors from locating in Industrial Zones where reduced amenity is recognised and provided for, or close to such zones;

(b) avoiding subdivision, rezoning or resource consents that bring residential activities or sensitive receptors close to Industrial Zones such that there may be adverse reverse sensitivity effects, unless those adverse effects can be avoided, remedied or mitigated;

(c) ensure adequate separation distances between residential activities, and business and industrial activities.

109. Explanatory text to the new Policy 12.7.2 is inserted as follows:[54]

[53] Fonterra (1251.97), Timberlink (4601.16), Mark Batchelor (278.1).
[54] Section 42A Report, Reply to Evidence, pages 29-30.

Where industrial activities have been provided for and are lawfully established, it is important that their activities are not compromised by the encroachment of sensitive activities, or the establishment of such activities within the business and industrial zones, so that a new reverse sensitivity conflict arises. This policy recognises that some activities may result in reverse sensitivity conflicts, and sets out a range of approaches to manage this. Policy 12.7.1 above seeks to manage the adverse effects of industrial and business activities to minimise the degree they spill over onto other sites, and particularly into other zones. For some industries in particular, it is not possible to manage the effects within the site, and zones with appropriate industrial amenity have been established to allow these activities to operate. Policy 12.7.2 seeks to avoid more sensitive activities from limiting the legitimate operations of business and industrial activities. Approaches can include physically separating incompatible activities, or use of other techniques (for example noise bunds) to manage any conflict. Sensitive activities are residential activities, and 'sensitive receptors' (which are defined in Chapter 25) [and] include schools, daycare centres, hospitals and elder care facilities.

Standard 9.3.1.1

A licenced premise must not be on land adjoining any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.

110. Progressive Enterprises seeks an exemption to provide for supermarket off-licences on the basis that these are likely to have reduced potential for adverse effects than other off-licences. It says a district plan is not the appropriate place for such a rule, and that if the rule is retained it is very likely that none of Progressive's existing supermarkets would be able to obtain a new liquor licence. In its view, such heavy control is draconian.[55]

Section 42A Report

111. The report writer identifies that Marlborough District does not have a Local Alcohol Plan. The Council relies on the district plan to regulate potential adverse effects of licensed premises on residential neighbours. The report writer advises that the District Licensing Authority explained that the Council at times has issues with the effects of licensed premises bordering residential areas, and that the rules in the district plans assist with regulating these effects.

112. Rule 9.3.1.1 applies in Business 1 Zone. In the WARMP as it currently applies to the CBD, licensed premises adjoining residential zones require discretionary resource consent. The activity status in Blenheim will remain the same. The report writer is unable to see why the submitter considers none of its existing supermarkets would be able to obtain a new liquor

[55] Progressive Enterprises (1044.12).

licence, at least in Blenheim Business 1 Zone, as the district plan environment proposed under the PMEP is essentially the same.

113. For Picton, the MSRMP does not require resource consent for licensed premises, but controls hours of operation generally, and has limits on noise received within residentially-zoned land. Existing licensed premises which were lawfully established would have existing use rights under s 10 RMA, provided the effects of the activity remained the same or similar in character, intensity and scale to those that existed before any rule in the PMEP became operative.

114. The current PMEP rule 9.3.1.1 would apply only to new premises or one expanding, and only if they adjoin the residential zone. Most sites within the Business 1 Zone would not be affected. In the report writer's opinion, the additional effects of the rule are very small, and they are reasonable in terms of controlling the potential adverse effects licensed premises could have on residential neighbours.[56]

115. The recommendation of the report writer is to retain Rule 9.3.1.1 as notified.

Progressive Enterprises

116. Evidence tabled by Zomac Planning opposes retention of the rule as follows:

- 'The existing supermarkets are protected by RMA existing use rights' (this, they consider, is a substandard resource management outcome). Licensing and renewal comes under the Sale and Supply of Alcohol Act 2012: the RMA existing use rights under s 10 relate to the use of land and its effects, not the sale of liquor.
- Progressive has three Countdown supermarkets (Redwoodtown, Springlands and Countdown Blenheim).
- The company accepts that some off-licence premises such as bottle stores can sometimes generate locality-related concerns. The same concerns do not arise with supermarkets.
- The submitter's preferred relief is deletion of the standard. Otherwise add the words '*provided that this rule shall not apply to any existing or proposed supermarket off-licence*'.

117. In response, the report writer does not accept that the rule is ultra vires. As he had noted in his Section 42A Report, the Council does not have a Local Alcohol Plan under the Sale and Supply of Alcohol Act and therefore relies on the district plan to regulate potential adverse

[56] Section 42A Report, paragraphs 523-525.

effects of licensed premises on residential neighbours. Nor does he accept that existing use rights do not apply.

118. On reconsidering the issue, however, the report writer accepts that supermarket off-licences are likely to be less of a problem near residential areas than other off-licences. He therefore can support Progressive's amended words '*provided that this rule shall not apply to any existing or proposed supermarket off-licence*'.[57]

Consideration

119. The supermarket seeks an exemption to provide for supermarket off-licences on the basis that these are likely to have more reduced potential for adverse effects than other off-licences. We agree because they are part of supermarkets and will be normally limited in what can be taken away. We also considered whether a better expression might be '*Except for supermarket off-licences'* and agreed this is more succinct.

120. There is a typographical error in Standard 9.3.1.1 in the notified Plan – the word 'licenced' is misspelled in the first line and should be replaced with 'licensed'.

Decision

121. Standard 9.3.1.1 is amended as follows:

Except for supermarket off-licences, licensed ~~A licenced~~ premises must not be on land adjoining any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.

Standard 10.3.1.1

A licenced premise must not be on land adjoining any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.

122. Several submitters oppose the standard. Derry Properties Ltd submit that in the current WARMP Rule 36.1.1 states that in the Neighbourhood Business Zone at Springlands, the sale of liquor from a supermarket is a permitted activity. The proposed Standard 10.3.1.1 places a restriction on the Springlands site that they consider unnecessary, and that would make renewal of existing liquor licences unlikely. They seek that the standard is amended to ensure there is certainty for Springlands to operate a licensed premise and continue to obtain a new liquor licence.[58]

123. Progressive Enterprises oppose the standard and consider it should be deleted as the district plan is not the appropriate place for the rule and if the rule has any merit, it should be the

[57] Section 42A Report, Reply to Evidence, page 34.
[58] Derry Properties Ltd (682.1).

Local Alcohol Plan. The submitter reiterates if the rule is retained it is very likely that none of their existing supermarkets would be able to obtain a new licence.[59]

124. Progressive notes that the operative plan has sale of liquor from a supermarket as permitted. It seeks to add the words *provided that this rule shall not apply to any existing or proposed supermarket off-licence.* Progressive supported Derry Properties with similar evidence to that put forward on Standard 9.3.1.1.

125. Derry Properties in evidence had considered resource consent for all forms of liquor is restrictive, querying what would be the environmental effects of the company's café offering a glass of wine at lunch; and the effects of the supermarket increasing its internal space allocated to wine and beer sales. In the company's opinion, the rule should focus on the types of activities that create adverse effects, not approach licensing with a 'blanket approach'.[60]

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126. Relying on his earlier discussion under Standard 9.3.1.1, the report writer identified new information. Derry Properties correctly states that Rule 36.1.1 in the WARMP provides that the sale of liquor for a supermarket is a permitted activity within the Springlands Neighbourhood Business Zone. Rule 36.1.1 also makes the sale of liquor from other commercial activities at Springlands a discretionary activity. This is irrespective of whether the site adjoins a Residential Zone. He is aware of two sites that sell alcohol within the Springlands Business 2 Zone. The Speights Ale House has a resource consent to operate, and would be able to continue under that consent. The Countdown Supermarket would have existing use rights if Rule 10.3.1.1 of the PMEP is confirmed, provided the effects of the activity remain the same or similar in character, intensity and scale to those that existed before any rule in the PMEP became operative.

127. While the example given, of the café selling wine with lunch, might seem benign and acceptable, the same may not be true of a bar that was open 10.00am to 10.00pm, or a bottle store, adjoining a residential site. The resource consent process provides the opportunity for the community to have input in to what sort of alcohol sale, if any, might be acceptable in these suburban commercial centres, which tend to be in close proximity to residential areas.

128. The report writer notes that the Business 2 Zone, if changed to remove the alcohol rule (which is within the scope of Progressive's submission) would apply to all the Business 2 locations across the district. Many of those sites are much smaller than Springlands (single or one or

[59] Progressive Enterprises (1044.15).
[60] Derry Properties Ltd, Mark Lile, Evidence, paragraph 10.

two lots) and close to dwellings. Bottle stores and bars could therefore be permitted under the PMEP.[61]

129. The proposed PMEP rule is more restrictive for supermarkets, but is less restrictive for other activities selling alcohol in that it applies only to sites adjoining a residential zone, rather than to the entire Springlands area. Because there is no Local Alcohol Plan, the report writer considers that the controls proposed in the PMEP are reasonable in terms of controlling the potential adverse effects licensed premises could have on residential neighbours.[62]

Consideration

130. The report writer supports the change for supermarkets while identifying the PMEP is a key tool setting community preferences in such matters.

131. However, the Derry Properties request also has implications for the introduction or renewal of a bar that is open 10.00am-10.00pm or a bottle store adjoining a residential site.

132. The Panel agrees that the resource consent process provides the mandated process by which the community may have input to what sort of alcohol, if any, may be acceptable in these commercial centres, which tend to be in close proximity to residential areas.

133. [The Panel agrees an exception for supermarkets should be included but considered the wording 'Except for supermarket off-licences was more appropriate.]

134. There is a typographical error in Standard 10.3.1.1 in the notified Plan – the word 'licenced' is misspelled in the first line and should be replaced with 'licensed'.

Decision

135. Standard 10.3.1.1 is amended as follows:

Except for supermarket off-licences, licensed ~~A licenced~~ premises must not be on land adjoining any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.

[61] Section 42A Report, Reply to Evidence, pages 40-41.
[62] Section 42A Report, paragraphs 559-561.

Standard 10.2.1.4

A building in the Business 2 Zone in Blenheim, must have a veranda, and the veranda must:

(a) be self-supporting;

(b) not extend further than 2m from the front face of a building into the street;

(c) not extend closer than 0.5m to the street kerb;

(d) generally conform with adjoining verandas in regards to height, width, and depth of fascia.

136. One submitter supports the standard in part.[63] It seeks an amendment to allow for the functional requirements of service stations. It proposes a new sentence be added at the end of the rule: *Except that a service station need not provide a veranda.* (Note this submission was lodged under Standard 10.1 of the Plan.)

137. Another submitter opposes the standard and seeks its deletion.[64] It submits that the standard puts an unnecessary requirement for a specified veranda to be established on all buildings in the zone.

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138. The report writer supports the amendment requested by Z Energy as it is impractical usually for service stations to provide verandas over the street, due the nature of their business and buildings.

139. The report writer does not support the submission of Derry Properties. He notes that buildings without verandas will have existing use rights and will not have to provide one, and it will only apply to new buildings. Verandas are important for providing a pleasant environment for users of suburban and other small shopping centres, having social and economic benefits.[65]

140. In evidence, Derry Properties identified that half of the frontage at Springlands comprises supermarket car park. If the supermarket is extended, the company would have to seek resource consent as it does not have a veranda. The Speights Ale House does not have a veranda and that appears to work well. If land to the east of Speights were to be developed into an office or tourism-related activity, those buildings would have no purpose for a veranda.[66]

141. The report writer on considering this evidence largely agreed with Mr Lile. Having taken a closer look at the rule, the report writer concludes that 'it does not specify that it apply only to buildings that are built up to the road boundary (to provide shelter on the footpath). Policy

[63] Z Energy (1244.12).
[64] Derry Properties Ltd (682.2).
[65] Section 42A Report, paragraphs 552-553.
[66] Derry Properties Ltd, Mark Lile, Evidence, paragraph 11.

12.6.1, which identifies streetscape amenity in business zones requires under clause (g) 'shelter is provided for pedestrians on footpaths in the form of a veranda …'.

142. The report writer concludes that Standard 10.2.1.4 should give effect to that policy but goes further and requires a veranda on any building, and on any of its sides, irrespective of whether that veranda would serve a useful purpose. He concludes this is unintended, as the rule's standards refer to the street and footpath, but fail to say that it only applies when buildings are occupying road frontage.[67]

143. As a result, the report writer considers an amendment to Standard 10.2.1.4 is recommended to resolve the concerns of both Z Energy and Derry Properties, as follows:

> *A building in the Business 2 Zone in Blenheim, must have a veranda <u>on that part of the building immediately adjoining the road boundary</u>, and the veranda must:*
>
> *(a) be self-supporting;*
>
> *(b) not extend further than 2m from the front face of a building into the street;*
>
> *(c) not extend closer than 0.5m to the street kerb;*
>
> *(d) generally conform with adjoining verandas in regards to height, width, and depth of fascia.*

Consideration

144. The standard should apply only to buildings that adjoin the road boundary and this has now been made clear, and in the consequential change.

Decision

145. Standard 10.2.1.4 is amended as follows:

A building in the Business 2 Zone in Blenheim, must have a veranda <u>on that part of the building immediately adjoining the road boundary</u>, and the veranda must:

(a) be self-supporting;

(b) not extend further than 2m from the front face of a building into the street;

(c) not extend closer than 0.5m to the street kerb;

(d) generally conform with adjoining verandas in regards to height, width, and depth of fascia.

146. As a consequential amendment, a similar change is also made to Standard 9.2.1.10 in the Business 1 Zone:

[67] Section 42A Report, Reply to Evidence, page 39.

A building must have a ~~A~~ veranda on that part of the building immediately adjoining the road boundary, and the veranda must:

(a) not extend further than 2m from the front face of a building into the street;

(b) not extend closer than 0.5m to the street kerb;

(c) be self-supporting.

Except that a veranda is not required on a service station.

Definitions

Supermarket

147. One submitter supports in part the definitions but considers the 'commercial activity' definition is too wide; there is a significant difference between supermarket, greengrocer and butchers. It seeks inclusion of the following new definition of a 'supermarket' as follows:[68]

> *A retail shop where a comprehensive range of predominantly domestic supplies and convenience goods and services are sold for the consumption or use off the premises and includes lotto shops and pharmacies located within such premises and where liquor licences are held for each premise.*

148. The report writer in his original Section 42A Report noted that as there are no provisions that use the term 'supermarket', no definition is required.[69]

Consideration

149. The Panel noted that as it has now introduced an exemption for supermarket off-licences, a definition of 'supermarket' is now required.

Decision

150. The Panel accepts the definition of 'supermarket' proposed by Progressive Enterprises as follows:

Supermarket means a retail shop where a comprehensive range of predominantly domestic supplies and convenience goods and services are sold for the consumption or use off the premises and includes Lotto shops and pharmacies located within such premises and where liquor licences are held for each premise.

[68] Progressive Enterprises (1044.17).
[69] Section 42A Report, paragraph 698.