

28 Scheduled Activities or Overlay Areas

28.1 Significant Issues

Activities that are not permitted activities in terms of the Environment rules which apply to a site, but which have been established for some time on that site, may not in some cases be able to prove existing use rights. This can cause difficulties for owners/occupiers as they have no certainty about their rights to continue, or expand the activity.

Some site-specific activities may not be provided for in the Environment rules which apply to the site but do not warrant the creation of a new Environment. These activities should be provided for notwithstanding the requirements of the Environment in which they fall.

Site-specific control measures not provided for in a particular Environment in which an activity falls, may be necessary to avoid, remedy or mitigate site-specific effects not provided for in the general performance standards of the Environment in which the activity falls.

28.2 Overview

Generally speaking, activities which have been established lawfully have the right to continue in existence even though the District Plan rules may not provide for the activity as a permitted activity in the particular Environment. Section 10 of the Resource Management Act 1991 sets out these “existing use” rights.

However, in some cases, it is not easy to establish with certainty whether existing use rights apply. This may be because the activity has been established for a long time and the rules which applied to the use of land when the activity was established are not clear. In other cases the Council records may not be complete, for one reason or another, and therefore it is impossible to establish easily whether an activity was lawfully established or not.

The Council recognises that difficulties of this kind can and do arise. It also recognises that there are some activities in which it may not be possible to prove existing use rights, but which cause no adverse effect on the environment, and may in fact have a positive and beneficial effect. Typical examples may be a corner dairy, a doctor’s clinic or a solicitor’s office, located in a Living Environment where they may not be a permitted activity in terms of the Environment rules.

The Council considers that existing activities of this kind, which do not have any significant adverse effect on the environment, should be given greater security of tenure. Without such security there can be difficulties such as obtaining consent for rebuilding if the premises burn down, or difficulties with financial institutions if finance is sought for upgrading or refurbishment.

On the other hand, the Council considers that an activity which does not comply with the rules of the particular Environment in which it is located, should not be given unrestricted ability to continue to expand, or develop, or to change its nature. Such changes could lead to an adverse effect on the Environment which did not exist to begin with.

Some activities may not be provided for, or due to their effect on the environment may be more restricted than what is normally permitted in the Environment within which they fall. Council does not wish to needlessly increase the number of Environments in the District Plan. Therefore, Council will schedule (within the Plan) those activities and limiting conditions, as these have been agreed to by the applicant, landowner or appellant.

Consequently the Council has made provision for particular activities which are existing or otherwise, and which do not have any adverse effect or limit the adverse effects on the Environment in which they are situated, but which do not correlate with the rules for the Environment in which they are situated, to be classified as "Scheduled Activities".

Scheduled Activities are specific to a site and are shown on the Planning Maps. The rules that apply to Scheduled Activities are included in the Plan. These rules provide for the continued existence of the Scheduled Activity as a permitted activity. The rules also provide for applications for resource consent for development which exceeds the permitted activity standards. The rules are generally consistent with the rules in the surrounding Environment.

28.3 Objective

28.3.1

Existing activities which have no more than minor adverse effects on the environment, and which do not detract from the purpose and function of the Environment in which they are situated, but which are inconsistent with the rules of that Environment, are enabled to continue.

28.3.2

Provide, as exceptions to the general Environment rules and subject to conditions aimed at sustainable management of resources, for specific activities which are not otherwise permitted by the Environment rules and standards.

Explanation and Reasons: The objectives seek to provide flexibility but also certainty, both in respect of the particular activities to which the objectives apply and the Environment in which they are situated. It is considered that the sustainable management of natural and physical resources will be promoted by these objectives. The objectives recognise that reliance on rules which apply universally throughout an Environment does not provide for particular situations where the general rules are inappropriate or unnecessary in order to achieve the purpose of the Environment. The Overview set out in 28. 2 is also relevant in relation to the explanation and reasons for the objectives.

28.4 Policies

28.4.1 Scheduled Activities Classification

To classify as Scheduled Activities:

- Those activities which existed when the District Plan was first proposed, and which do not comply with the permitted activity standards for the Environment in which they are located, and which do not have any adverse

effects which are more than minor on the Environment in which they are situated;

- Those activities which are appropriate, in terms of their function, to be located in a particular Environment but which have particular effects that need to be controlled by activity specific standards, which may differ from the general standards that apply in that Environment.

Explanation and Reasons: The Scheduled Activity classification provides certainty for those existing activities which can not claim existing use rights, but which are appropriate in the particular Environment in which they are located. It also provides for activities which are appropriate in an Environment but for which the Environment rules are not suitable. A Scheduled Activity becomes a permitted activity, with the certainty that brings, but cannot exceed the limits imposed by the description in the schedule. This in-turn, provides certainty in terms of effects on the particular Environment in which the Scheduled Activity is located.

28.4.2 Scheduled Activities Rules

Rules for Scheduled Activities may be adopted by the Council. These rules will be designed to provide the possibility of some further development of the Scheduled Activity while ensuring that the effect of the Scheduled Activity does not become inconsistent or incompatible with the surrounding Environment.

