

City of Tauranga District Plan Review – Industrial Issues and Options Paper

Industrial – Industrial Reverse Sensitivity	
Issue Summary	Where ‘sensitive’ land uses like accommodation are established in industrial areas they may be subject to effects from other existing industrial uses, and might complain about those effects - impacting on the operation of existing uses.
Introduction	The role of the Council through the District Plan is to address matters of subdivision, land use and development to meet the purpose of the RMA – the sustainable management of resources. In meeting this objective, adverse effects of activities on the environment are to be avoided, remedied or mitigated. Industrial development can have effects that result from large buildings and infrastructure, traffic, the use of hazardous materials and noise impacts. Under the RMA existing uses may have a right to continue to produce such effects, or have specific approval to do so. Even though uses that create effects have a right to continue, they are also subject to an obligation to avoid, remedy or mitigate adverse effects. This obligation may cause conflict where a new use is proposed in industrial areas that may be sensitive to those effects. This issue concerns what measures may be taken to address this sensitivity.
Identification of Issues	<p>Reverse sensitivity has been described as the legal vulnerability of an established use to complaint from a new land use. Reverse sensitivity comes about when an established use is creating an effect and a new, benign land use is proposed that would be subject to that effect. The sensitivity is that if the new use is permitted, the existing use may be required to mitigate its effects so as not to impact on the new activity.</p> <p>At present this is addressed in the District Plan through sensitive uses being ‘discretionary’ uses – that is, only given approval if meeting certain criteria. Through this level of assessment the ability to test the impacts of sensitive uses on existing uses is established. The criteria for assessment is partly set through:</p> <ul style="list-style-type: none"> • policies requiring acoustic design for noise mitigation in residential buildings (policy 3.1.1.3); • setting higher noise limits in industrial areas than in residential areas (Chapter 13); and • assessment criteria for discretionary activities that includes: the “potential for adverse effects, including adverse cumulative effects on existing and future lawful activities permitted in the zone and including effects of <i>reverse sensitivity</i>”. <p>Applications for consent have also been subject to what are termed ‘no-complaint covenants’ in the past, whereby approval of a sensitive use is subject to the imposition of a covenant limiting the rights of the burdened land to complain about the effects of an existing use. There has been divided opinion on the application of no complaint covenants and easements to address the issue of reverse sensitivity, and this is not an issue to which the District Plan provides any direction.</p> <p>It may be that there are other activities than residential uses that can give rise to reverse sensitivity effects. It may also be that the criteria guiding discretion could better describe the consideration that is to be given to this issue.</p>
Description of some options	<p>One option is to consider is that the plan content for addressing the issue of reverse sensitivity could be more specific.</p> <p>Another option could be to find that the current provisions of the District Plan are providing adequate means to address the issue of reverse</p>

	sensitivity.
Relevant technical information	<p>A useful publication on the topic of reverse sensitivity is: Pardy, B and Kerr, J (1999) "Reverse Sensitivity – The Common Law Giveth, and the RMA Taketh Away" The current District Plan Chapter 20 (Business Activity Zone rules) can be viewed at: www.tauranga.govt.nz The Ministry for the Environment's Quality Planning website contains a number of publications addressing this issue that can be found at: www.qualityplanning.org.nz</p>
Key Contact	<p>If you require any further detail on this issue, or any other matter to do with Landscape please contact:</p> <p>Nick Logan Senior Planner: Environment email: nick.logan@tauranga.govt.nz ddi: 07 577 7147</p> <p>or visit www.taurangadistrictplan.govt.nz</p>