



New Zealand Winegrowers

Background Issues Paper

November 2006

Document Reference : WINE1438 - Issues paper for development of Guidance Note

Date of this version: November 2006

Status of Report: Final

This report was prepared by: Rachel Pinson & Mark St Clair, Hill Young Cooper Ltd

Hill Young Cooper Ltd
PO Box 8092
The Terrace, Wellington
p: 04 473 5310
f: 04 473 5307
email: m.stclair@hyc.co.nz

Executive summary

The purpose of this report is to discuss the resource management issues facing the winegrowing industry. It seeks to identify how a range of territorial local authorities address the effects of winegrowing operations in terms of their duties and responsibilities under the Resource Management Act 1991 (RMA). The report is targeted at both officers within local authorities and the winegrowing industry generally.

NZ Winegrowers is working with the Ministry for the Environment (MFE) and Local Government New Zealand (LGNZ) to prepare an 'Industry Guideline' for winegrowing that can be included on the Quality Planning website. The Quality Planning website is hosted by MFE with the purpose of promoting best practice in the district plan preparation process.

This report identifies that the range of resource management issues facing the winegrowing industry varies across the country. The issues discussed include:

- reverse sensitivity
- vertical integration
- rural-residential subdivision
- noise
- agrichemical use
- traffic and carparking
- visual.

This report notes that some of these issues are specific to the winegrowing industry, as opposed to other primary production industries. It also demonstrates that the planning methods adopted within district plans to address these issues vary between territorial local authorities.

This report does not recommend a particular district plan approach for addressing issues facing the winegrowing industry or for the particular form or content of any proposed MFE 'Industry Guideline'. It recognises that elements from each of the approaches discussed in this report may be needed to develop a recommended path forward. This report seeks to elicit feedback in order for further research and consultation to be undertaken for the development of a MFE 'Industry Guideline'.

Table of Contents

Executive Summary	2
Table of contents	3
1 Introduction	4
1.1 Purpose of report	4
1.2 Key issues	4
1.3 Process	8
1.4 Background	9
1.5 Structure	9
2 Objectives and policies	11
2.1 Special area identified and separate chapter with winegrowing issues, objectives and policies	11
2.2 Reference to winegrowing throughout the district plan	13
2.3 Generic objectives, policies and methods	14
3 Rules	16
3.1 Noise	16
3.2 Subdivision	19
3.3 Agrichemical use	20
3.4 Activity status	22
3.5 Visual – bulk and location	24
3.6 Traffic safety and site access	26
3.7 Carparking requirements	27
3.8 Signage	29
3.9 Glare / Lighting	30
3.10 Odour	31
3.11 Hours of operation	32
4 Relevant case law	34
4.1 Fraser Shingle Ltd v Hastings District Council W7/92	34
4.2 Upper Clutha Environment Soc v Queenstown Lakes DC C012/98	35
4.3 Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council C135/97	36
4.4 Tutton Sienko and Hill v Canterbury R.C. W100/95	37
4.5 Isola Estates Ltd v Auckland City Council W042/06	39
5 Summary	41
References	42

1 Introduction

1.1 Purpose of report

The purpose of this report is to discuss the resource management issues currently facing the winegrowing industry, and to identify how a range of territorial local authorities address the effects of winegrowing operations in terms of their duties and responsibilities under the Resource Management Act 1991 (RMA). The winegrowing industry comprises grape growers and winemakers. The report is targeted at officers within local authorities as well as the winegrowing industry generally.

The resource management issues associated with winegrowing are wide and varied. They can include such matters as the impact that a primary production process can have on natural ecosystems and landscapes through to the effect of ancillary operations such as cafes and restaurants on the amenity of a rural area. How these issues are addressed varies between districts, as the nature of the winegrowing industry and the factors affecting it vary. There are a number of mechanisms that influence how these issues are addressed by the industry. The winegrowing industry is seeking to act responsibly by putting systems in place to address potential issues such as the Sustainable Winegrowers New Zealand programme, wastewater management code of practice, spraying guidelines, and the industry must also comply with Growsafe requirements. Even then there are issues that, if not addressed, then the winegrowing industry will not be sustainable.

This report focuses on the approaches used by district plans to addressing resource management issues facing the winegrowing industry. It also addresses regional plan approaches to particular issues, including the use of agrichemical sprays, to the extent that these issues contribute towards reverse sensitivity effects.

At this time, no approaches are advanced as recommended options for the development of a Ministry for the Environment 'Industry Guideline' for addressing issues facing the winegrowing industry. Elements from each of the approaches discussed in this report may be needed to develop a recommended path forward. Further research and consultation is required.

1.2 Key issues

The following is a summary of the key resource management issues facing the winegrowing industry:

- **Reverse sensitivity**

Reverse sensitivity applies to situations where incompatible land uses are sited next to each other, resulting in conflict between property users. In these situations there is a tension between the legitimate rights of one property owner to carry on an activity, and another owner's legitimate right to enjoy their property without unreasonable interference. Winegrowing operations involve some

activities which may have effects beyond the site boundaries that may not be capable of being completely avoided or mitigated. The attractive nature of vineyards within the rural environment and expanding rural-residential development will increasingly result in situations where conflict between uses and users will arise, often because of the amenity standards expected by rural residential dwellers which could place constraints on existing rural activities.

As circumstances will vary for each situation, no standard approach can be applied to achieve consistency and fairness in all cases where reverse sensitivity may arise. For example, the Hurunui District Plan includes a specific policy targeted at addressing the problems that can arise from the siting of residential activities in close proximity to existing rural land uses that have the potential to create significant adverse effects on amenity values. Circumstances in which such reverse sensitivity can occur are identified as including the location of dwellings close to vineyards, where there may be adverse cross-boundary effects such as noise and spray drift. In these situations, the policy recommends that some provision should be given to avoiding the creation of nuisance situations which may inhibit the continued use and development of existing rural activities.

A number of other Councils have also recognised reverse sensitivity as being a key resource management issue within the rural environment, and have provided guidance on amenity values and community expectations within a particular district through district plan objectives and policies, as well as standards and rules relating to separation distances and buffer zones.

- **Noise**

Bird-scaring devices, frost-protection measures and operational machinery associated with vineyards generated noise in standard winegrowing operations. Use of particular devices and machinery is often dependent on the conditions affecting the region within which a vineyard is located. For example, frost-protection measures such as the use of helicopters are not typically required as part of winegrowing operations on Waiheke Island. Noise from these operations when used, however, has the potential to elicit complaints from surrounding landowners, which may impact on the ability to undertake day-to-day winegrowing operations. Also, under the RMA there is a general duty on all occupiers of land to ensure that the emission of noise does not exceed a reasonable level. While compliance with district plan rules does not necessarily ensure compliance with this duty under the RMA, a number of Councils have provided rules and acceptable standards in district plans in an effort to alleviate ongoing problems and to recognise and provide for the often infrequent use of these devices.

- **Rural-residential subdivision**

Subdivision has the potential to affect winegrowing operations in two ways. The pattern and rate of subdivision influences the potential for reverse sensitivity conflict between winegrowing operations and other activities, particularly residential use, in the rural environment. The potential for conflict is significantly increased when subdivision results in an increase in the number of allotments

located close together and where the density of settlement near a vineyard intensifies as a result. Subdivision also has the potential to result in the loss of land available for winegrowing operations. A number of Councils have recognised the potential conflicts associated with subdivision, and have provided guidance on expected amenity values through standards, rules, objectives and policies in district plans.

- **Agrichemical use**

The use of agrichemicals in winegrowing operations is dealt with by systems such as Growsafe Standards and the Sustainable Winegrowing New Zealand programme. However, the environmental effects of their use are a relevant consideration under the RMA. Winegrowing operations have the potential to result in spray drift, whereby the agrichemical sprays drift across property boundaries. The potential for spray drift beyond the vineyard is governed by a number of factors, including wind direction and velocity, effectiveness of targeting, spray droplet size, type of spray equipment used, direction of spraying and frequency of application. Spray drift can create a perceived health risk on occupiers of adjoining properties, even if this is not valid. The use of agrichemicals on adjoining properties may also in turn affect a vineyard, resulting in harvest loss. A number of Councils have recognised the potential risks associated with the use of agrichemicals and have provided standards and rules in regional plans.

- **Vertical integration**

Vertical integration is where the primary production processes associated with the operation of a vineyard are supported by ancillary operations such as cafes, restaurants and retail operations, all on the same site. This increasing trend is a means by which winegrowers may make use of all the resources available to them, to ensure the ongoing financial viability of the primary production process in the face of an increasingly competitive market. For example, the Queenstown Lakes District Plan (Partially Operative) identifies this trend, highlighting that vineyard development is currently at a level where additional production facilities and structures are to be anticipated. This is noted as being consistent with recognised trends in the viticulture industry, where subsequent to initial production occurring, cash flow is moved away from vineyard plantings to winery investment.

A number of other Councils have also recognised and provided for this trend of vertical integration through objectives, policies, standards and rules in district plans relating to the activity status of vineyards and ancillary operations in an effort to give direction on how the future development of vineyards within a particular district are to be addressed.

- **Visual – bulk and location**

Winegrowing operations, as a primary production process, often necessitate the use of large scale buildings and tanks in a rural setting. The ancillary operations, including cafes and restaurants, may also require large areas for carparking.

These features may appear visually inconsistent with the surrounding rural area. A number of Councils have recognised this potential conflict, and provided for it through standards, rules, objectives and policies in district plans as guidance on amenity values anticipated within the rural environment of a district.

- **Traffic and carparking**

Winegrowing operations, and their ancillary operations, have the potential to increase traffic to and from the site and within the surrounding area. The traffic generated may include heavy vehicles delivering and picking up supplies and products, as well as staff and visitor movements. The ability for a site to cater for the parking demand generated is necessary to ensure that the traffic effects of the activity do not extend beyond the site, such as where visitors may park on the side of the road. A number of Councils have recognised the potential inability of the surrounding road network to cater for such traffic flows, and have provided standards and rules in district plans. For example, the Wairau/Awatere Resource Management Plan (Proposed) includes a specific parking requirement per square metre of gross floor area for a winery.

- **Signage**

Winegrowing operations, and particularly ancillary operations such as restaurants and cafes, often use signage to advertise their location and attract visitors. There is the potential that this signage may be perceived to be inappropriate in terms of its location, size and nature for the particular setting where the vineyard is located. A number of Councils have recognised the potential conflicts associated with signage, and have provided objectives, policies, standards and rules in district plans.

- **Tourism**

Winegrowing operations, and the ancillary operations discussed above, have the potential to provide important visitor attractions in an area and generate a significant level of tourism. This is an important distinction between the winegrowing industry and many other primary production processes. A number of Councils have recognised this role of winegrowing as a tourism-generating activity, and provided guidance through standards, rules, objectives and policies in district plans. For example, the Queenstown Lakes District Plan (Partially Operative) highlights the importance of the viticulture environment at Gibbston to the visitor facilities/attractions available within the Queenstown District.

- **Glare/lighting**

Winegrowing operations often require a high level of lighting, both for operational and ancillary purposes. These features may appear to be visually inconsistent with the surrounding rural area. Glare also has the potential to elicit complaints from surrounding landowners, which may impact on the ability to undertake day-to-day winegrowing operations. A number of Councils have recognised this potential conflict, and provided for it through standards and rules in district plans.

- **Effluent disposal**

Winegrowing operations create both liquid and solid waste from crushing and winemaking. Solid waste, such as grape skins, stems and leaves, can be composted, spread onto vineyards or deposited in landfills. Liquid waste typically contains high levels of natural sugars and is often acidic when it enters the environment untreated, and has the potential to pollute waterways.

- **Water allocation**

Winegrowing operations require water for irrigation and during the winemaking process. Water allocation for winegrowing operations will be affected by district-wide and regional strategic considerations, as well as site specific issues associated with individual water takes. Under the RMA the taking of water from rivers, lakes and aquifers must either be authorised by consent or be a permitted activity in the relevant plan. This is an issue dealt with by Regional Councils.

1.3 Process

NZ Winegrowers is working with the Ministry for the Environment (MFE) and Local Government New Zealand (LGNZ) to prepare an 'Industry Guideline' for winegrowing that can be included on the Quality Planning website. This website is hosted by MFE with a purpose of promoting best practice in both the plan preparation process and the content (topics) of plans. The website is for use by Council practitioners, consultants and other people involved in resource management practice under the RMA.

There are a number of steps that need to be completed to have the 'Industry Guideline' accepted for inclusion on the Quality Planning website. In summary these include:

Process	Timeframe
Wine Planning Conference: <i>Presentation of a background issues paper to elicit feedback on issues and set out development of the Guidance Note</i>	23 Nov 2006
Develop Draft Guidance Note: <i>Using feedback received from Wine Planning Conference</i>	Early 2007
Wine Planning Workshop: <i>Small number of relevant local authority planners with representatives from MFE, LGNZ and winegrowers to review draft Guidance Note.</i>	Early 2007
Finalise Industry Guideline: <i>Quality Planning review process involving an independent panel of professionals to enable the 'Industry Guideline' to be placed on Quality Planning Website.</i>	Early 2007

1.4 Background

As noted above, this report focuses on district plan approaches to address resource management issues facing the winegrowing industry. It also addresses regional plan approaches to particular issues, including the use of agrichemical sprays, to the extent that these issues contribute towards reverse sensitivity effects.

For information purposes, the following table provides a summary of activity and resource consent type requirements for District and Regional Councils, and Unitary Authorities.

Table 1: Summary of activity and resource consent requirements

Local Authority	Type of Resource Consent	Type of rules in Council plan
District Council	Land use consent Subdivision consent	<i>Permitted activity</i> – allowed without a consent provided they comply with standards, terms and conditions in the Council plan. <i>Controlled activity</i> – will be granted a consent subject to conditions on the matters specified in the Council plan.
Regional Council	Land use consent Water permit Discharge permit Coastal permit	
Unitary Authority	Land use consent Subdivision consent Water permit Discharge permit Coastal permit	<i>Restricted discretionary activity</i> – may be granted a consent-based on the Council’s consideration of specified matters. <i>Discretionary activity</i> – may be granted a consent-based on the Council’s consideration of the overall application. <i>Non-complying activity</i> – contravenes the plan or is not specifically referred to, but a consent may be granted if adverse effects on the environment are minor, or the activity is not contrary to the objectives and policies of the Council plan. <u>Prohibited activity</u> - cannot apply for a consent.

1.5 Structure

The report is structured as follows:

- Section 1 outlines the purpose of the report and provides a summary of the key resource management issues facing the winegrowing industry, activity and resource-consent type requirements

- Section 2 outlines current objective and policy approaches to the winegrowing industry
- Section 3 outlines current rule structures in district plans to address issues facing the winegrowing industry
- Section 4 outlines useful case law to address particular issues facing the winegrowing industry
- Section 5 provides a summary of the report and outlines future work.

2 Objectives and Policies

There is no simple solution to addressing the resource management issues affecting the winegrowing industry. Each Council will develop its own response, with regard to the characteristics and issues of their district.

Section 75(1) of the RMA requires that a district plan contain objectives and policies to manage the identified issues. With regard to issues facing the winegrowing industry, current district plans generally rely on one of the following three approaches:

1. Separate chapter with winegrowing issues, objectives and policies
2. Reference to winegrowing throughout the plan
3. Generic objectives, policies and methods

Each of these approaches is discussed in this section, supported by examples from selected district plans.

2.1 Special area identified and separate chapter with winegrowing issues, objectives and policies

Explanation

One approach is for district plans to identify a special character area and contain a separate chapter within the plan which includes objectives and policies relating to winegrowing issues within this special character area. This chapter would also typically contain the preferred methods to implement these policies.

Approaches

Hastings District Plan

An example of this approach is Hastings. In the Hastings District Plan, the Te Mata Special Character Area, which includes the Te Mata Hills area, is identified as being a desirable place for rural/residential occupation, while its soils and orientation have allowed its development as a centre for viticulture. The District Plan has a separate section (Section 11.1) containing a discussion of the resource management issues, followed by objectives, policies and methods of implementation, which sets out how these issues will be addressed within this special character area.

This section of the District Plan recognises that the Te Mata Special Character Zone integrates a wide range of legitimate, but competing activities, while establishing a long term sustainable development plan for the area. Issue statements, objectives and policies are targeted at addressing complex issues facing the winegrowing industry, including vertical integration, tourism and reverse sensitivity. For example, the following Hastings District Plan policies state:

TMP4: “Provide for a range of visitor and tourism-based activities that are dependent upon the rural resources and special character of the Te Mata Special Character Zone.”

TMP7: “Allow shelter belts and artificial windbreaks to be erected in the Te Mata Special Character Zone, where they support activities associated with the sustainable management of the soil resource without significant adverse effects upon adjacent activities.”

TMP8: “Ensure noise standards are not inconsistent with the character and amenity of the Te Mata Special Character Zone.”

The District Plan seeks to implement such objectives and policies through the inclusion of standards within the Te Mata Special Character Zone to mitigate the effects of activities on the environment, and to manage the effects at the interface with adjoining land users. It is also noted that rules for the adjoining Residential Zone introduce the provision for buffer strips to separate incompatible activities, establishing greater separation distances between residential dwelling in the urban zones and activities in the Te Mata Special Character Zone.

Queenstown Lakes District Plan (Partially Operative)

Another example of this approach is within the Queenstown Lakes District. In the Queenstown Lakes District Plan (Partially Operative), the Gibbston Character Zone is identified as being an attractive rural environment with a significant viticulture resource. It is also recognised that there is potential for further diversification of this resource. The District Plan has a separate section (Section 5.5) containing a discussion of the resource management issues, followed by objectives, policies and methods of implementation, which set out how these issues will be addressed within the Gibbston Character Zone.

This section of the District Plan recognises that the Gibbston Character Zone is distinguishable from the surrounding district for a number of reasons, including:

- soils and microclimate which are particularly suitable for grapes for high quality wines
- the density of viticulture plantings to other productive activities
- the visual amenity of viticulture development.

Issue statements, objectives and policies are targeted at addressing complex issues facing the winegrowing industry, including vertical integration, tourism and reverse sensitivity. For example, the following explanation to issue statement number 3 states:

“The Gibbston area has a particular suitability for productive land use activities, enabled by the microclimate of the area. It has an established reputation for the production of high quality wines from its grape plantings. The extent of these plantings is expanding rapidly.

Vineyard development is now at a level where additional production facilities and structures are to be anticipated. This is consistent with the recognised trends in the viticultural industry, where subsequent to initial production occurring, cash flow is moved away from vineyard plantings to winery investment.

For the District as a whole the viticultural environment at Gibbston is an important component of the visitor facilities/attractions available within Queenstown...”

The District Plan seeks to implement the objectives and policies through the inclusion of standards within the Gibbston Character Zone, and the provision of rules relating to subdivision, activities and the erection of buildings in the Gibbston Valley. Rules and standards to protect the amenity and environmental quality of Gibbston Valley are also used.

Discussion

In areas with an extensive winegrowing industry or clusters of winegrowing activities, the concept of identifying and providing for special character areas has the potential to work well, particularly in light of the complex and often unique nature of the issues facing the winegrowing industry, including vertical integration, reverse sensitivity and tourism. However, if this approach was applied to every industry sector within a district, there is the risk for a district plan to become very long and complex.

2.2 Reference to winegrowing throughout the district plan

Explanation

Another common approach is for district plans to contain objectives and policies relating to winegrowing, which are scattered throughout different sections of the plan. For example, policies relating to winegrowing may be included in the 'Rural Section' of the plan.

Approaches

Hastings District Plan

An example of this approach is within the Hastings District Plan. The District Plan identifies the Industrial 5 (Winery) Zone. This zone encompasses the site of the original Vidal's Winery and some surrounding properties subsequently taken over by the company. This zone is one of six industrial zones identified in the District Plan. The District Plan has a section (Section 10.0) containing a discussion of the resource management issues facing all of the Industrial Zones, followed by objectives, policies and methods of implementation, which set out how these issues will be addressed, both for specific zones and for the overall Industrial Zone.

For example, this section of the District Plan contains the following objectives for the Industrial Zone:

- IZO1: "To facilitate efficient and optimum use and development of existing industrial resources within the Hastings District."*
- IZO2: "To ensure that adverse effects of industrial use, development or subdivision are avoided, remedied or mitigated."*
- IZO3: "To ensure that industrial use and development is capable of co-existing with existing activities and maintains acceptable amenity levels."*
- IZO4: "To ensure that existing industrial use is protected from incompatible uses and activities (including more sensitive activities) of surrounding environments."*

IZO5: *“To enable the efficient and effective use of the District’s resources by providing for the development of new industries.”*

The District Plan recognises that the winery was established before the areas surrounding it were developed for urban purposes, and in recent years a wider range of uses associated with the winery and its growing role as a tourist attraction have been added. However, the Council recognises that there is some potential for conflict with the surrounding residential zone, and seeks to provide standards and rules to avoid, remedy or mitigate this potential conflict.

Discussion

This approach in a district plan recognises that winegrowing may be a key part of rural oriented industry in the district and cannot be separated in a simple manner. It may not however give enough specific direction in established areas of winegrowing where there are rapid rates of rural-residential growth in adjoining areas. It may also not adequately respond to the complex set of issues specific to the winegrowing industry, such as vertical integration and tourism.

2.3 Generic objectives, policies and methods

Explanation

District plans may contain no objective or policy statements that refer specifically to winegrowing. Winegrowing may however, be mentioned in the ‘explanations’ for an issue, objective or policy as one of the reasons why the issue is being addressed in the district plan.

Approaches

Hurunui District Council

An example of this approach is within the Hurunui District. The Hurunui District Plan identifies and refers to the Waipara Wine Growing Area. This area is currently managed under the general provisions of the Plan, although is discussed within the explanations to issue statements and policies.

For example, the explanation to Policy 10.6 states:

“Policy 10.6 addresses the problems that can arise from the siting of residential activities and other environmentally sensitive activities in close proximity to existing intensive rural land uses that have the potential to create significant adverse effects on amenity values. Circumstances in which such “reverse sensitivity” can occur include the location of residences close to intensive farming activities, which may create odour nuisances, or close to vineyards in the Waipara Wine Growing Area, where there may be adverse cross-boundary effects such a noise and spray drift. In such situations, some provision should be given to avoiding the creation of nuisance situations which may inhibit the continued use and development of existing rural activities.”

Methods identified to implement such policies are District Plan rules relating to separation distances between residential and other activities that are known to be potentially environmentally incompatible.

It is noted that the District Plan recognises that Waipara Wine Growing Area has the potential to become an identified ‘environment of special concern’, supported by a separate set of objectives and policies, depending on the speed, direction and type of land use change.

Wairau/Awatere Resource Management Plan (Proposed)

Another example of this approach is within the Wairau/Awatere Resource Management Plan (Marlborough District), where the Wairau/Awatere Resource Management Plan is administered by Marlborough District Council, a unitary authority. Section 12 of the Plan sets out the key resource management issues and objectives for the rural areas of the district. Within this section, the Plan contains references to viticulture as a principal land use within the rural area, but does not contain statements on issues, objectives or policies specifically related to winegrowing.

Discussion

This approach recognises the diversity of an area and all of the contributors to its economy. It may also be more flexible to emerging winegrowing trends within a district.

If winegrowing is a major industry in a district, this approach may not however give sufficient weight in the district plan to the relatively unique positive and negative effects of the winegrowing industry and the methods needed to manage these effects. This approach may also be too general and not provide a strategic direction for managing key resource management issues unique to the winegrowing industry.

3 Rules

District plan rules are a method of implementation of the objectives and policies of the plan. As with objectives and policies, each Council will develop its own response, with regard to the characteristics and issues facing their district.

District plan rules are discussed in this report in terms of specific issues facing the winegrowing industry, and how a range of Councils address these through rules relating to winegrowing and ancillary activities. The category of activity (permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited) is expected to closely follow the requirements of the rule-making power in section 76 of the RMA.

A number of the key issues facing the winegrowing industry are dealt with by Regional Councils, and have only been assessed in this report to the extent that they may contribute towards reverse sensitivity effects.

More complex issues such as reverse sensitivity and tourism, for which a number of rules seek to combine in order to avoid, remedy or mitigate effects, have not been addressed individually in this section of the report.

3.1 Noise

Explanation

Bird-scaring devices, frost-protection measures and operational machinery associated with vineyards are types of noise generated by standard winegrowing operations. Noise from these operations has the potential to elicit complaints from surrounding landowners, which may impact on the ability to undertake day-to-day winegrowing operations. Also, under the RMA there is a general duty on all occupiers of land to ensure that the emission of noise does not exceed a reasonable level. While compliance with district plan rules does not necessarily ensure compliance with this duty under the RMA, a number of Councils have provided rules and acceptable standards in district plans in an effort to alleviate ongoing problems. A number of Councils provide specific standards for noise generated by bird-scaring devices and frost-protection measures. These are detailed below.

Approaches

Bird-scaring devices	
Wairau/Awatere Resource Management Plan (Proposed)	Includes a definition of an audible bird-scaring device, with devices falling into one of two categories. Within the Rural 3 and 4 zones, there are permitted noise standards for the operation of audible bird-scaring devices. The permitted activity standards include the hours, location and frequency of use, the density of devices per hectare and the maximum noise level generated. Where these standards are not complied with, the activity requires resource consent as a Discretionary

	Activity.
Hurunui District Plan	Audible bird-scaring devices not defined. There are permitted activity standards for the operation of audible bird-scaring devices, including firearms relating to time, location, and frequency of use, and the maximum noise level. Where these standards are not complied with, the activity requires resource consent as a Discretionary Activity (Unrestricted).
Hastings District Plan	Audible bird-scaring devices are not defined. Within all zones, there are permitted activity standards for the operation of audible bird-scare devices, applying to gas guns and audible avian distress alarms. The permitted activity standards include the times and months and frequency of use, maximum noise levels generated, and use of the best practicable option to keep the noise produced to the reasonable level. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity or Restricted Discretionary Activity, dependent on the zone within which the site is located.
Tasman Resource Management Plan	Audible bird-scaring devices are not defined. Within Rural Zones, bird-scarers are exempt from the permitted activity standards in relation to noise.
Queenstown Lakes District Plan (Partially Operative)	Audible bird-scaring devices are not defined. Within the Gibbston Character Zone of the Rural Area, bird-scaring devices that rely upon the generation of noise for the efficiency of the device are exempt from the permitted activity standards in relation to noise.
Frost-protection mechanisms	
Wairau/Awatere Resource Management Plan (Proposed)	Frost-protection mechanisms are not defined. Within the Rural 3 and 4 Zones, there are permitted activity standards for any wind machine used for frost control. These permitted activity standards include the noise emission levels, the period of use, the speed of and the location of the wind machine. Where these standards are not complied with, the activity requires resource consent as a Discretionary Activity.
Hastings District Plan	Frost-protection mechanisms are not defined. There are permitted activity standards for the operation of frost-protection fans, including the use of the best practicable option to avoid unreasonable noise and the location of the fans in relation to the residential zone. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity or Restricted Discretionary Activity, dependent on the zone

	within which the site is located.
Queenstown Lakes District Plan (Partially Operative)	Frost-protection mechanisms are not defined. Within the Gibbston Character Zone of the Rural Area, wind machines and frost fighting devices, operated in accordance with the manufacturer's specifications, are exempt from the permitted activity standards in relation to noise.
Other	
Hastings District Plan	There are permitted activity standards for the operation of hail cannon, including the use of the best practicable option to avoid unreasonable noise and the location of the fans in relation to the residential zone. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity or Restricted Discretionary Activity, dependent on the zone within which the site is located.
Hurunui District Plan	Noise from normal agricultural practices undertaken for a limited duration, such as harvesting, are exempt from the permitted activity standards in relation to the maximum noise levels generated.
Tasman Resource Management Plan	Noise from hail cannon, mobile horticultural and agricultural equipment, tree harvesting activities and all other noise from any intermittent or temporary rural activity are exempt from the permitted activity standards for maximum noise levels generated.
Queenstown Lakes District Plan (Partially Operative)	Within the Gibbston Character Zone of the Rural Area, noise from the use of agricultural vehicles, machinery or mobile portable agricultural machinery are exempt from the permitted activity standards for maximum noise levels generated.

Discussion

A major difficulty with providing a permitted activity status for an activity is that the permitted activity standards and conditions need to be certain and not contain any element of discretion. To ensure clarity for the Council and applicants as to what is included within a permitted activity definition, it seems apparent that a definition of an audible bird-scaring device and frost-protection mechanism is required. This is particularly necessary because of the wide range of equipment that may be used to undertake bird-scaring and frost-protection activities.

A need for permitted activity standards which provide a level of certainty are also necessary. For example, it would be difficult for winegrowers know if they were using the best practicable option to avoid unreasonable noise. Easily measurable standards, such as maximum noise limits and separation distances from residential boundaries are easily understandable and decrease the

opportunity for misunderstanding between Council, winegrowers and residential neighbours.

It is also important that any standards regulating the use of bird-scaring devices and frost-protection measures recognise the often infrequent occasions on which these devices may be needed to be used, typically dependent on factors beyond a winegrowers control (eg, weather dependent). It is also important that the consequences of a winegrower not being able to use these devices as or when required, which may include harvest loss, be recognised and provided for where appropriate.

3.2 Subdivision

Explanation

Subdivision has the potential to affect winegrowing in two ways. The pattern and rate of subdivision influences the potential for conflict between winegrowing operations and other activities, particularly residential use, in the rural environment. The potential for conflict is significantly increased when subdivision results in an increase in the number of allotments located close together and where the density of settlement intensifies as a result. Subdivision also potentially results in the loss of land available for winegrowing operations. A number of Councils have recognised the potential conflicts associated with subdivision, and have provided standards and rules in district plans. These are detailed below.

Approaches

Hurunui District Plan	The general minimum lot size in the rural area is 5ha. Subdivisions that comply with the permitted activity standards in relation to servicing and size of the proposed allotments are a Controlled Activity.
Tasman Resource Management Plan	Within the Rural 1 zone, the minimum lot size is 12ha. Within the Rural 2 and 3, the minimum lot size is 50ha. Subdivisions that comply with the permitted activity standards in relation to size, buildings and servicing are a Controlled Activity.
Wairarapa Combined District Plan (Proposed)	Within the Rural (Primary Production) Zone, the minimum lot size ranges between 2ha and 4ha (dependent on the location of the site within the region and the size of the subdivision). Subdivisions that comply with the permitted activity standards in relation to size, buildings and servicing are a Controlled Activity.
Gisborne Combined Regional Land and District Plan (Partially Operative)	Within the Rural Productive Zone, the minimum lot size is 8ha. Within the Rural General Zone, the minimum lot size is 1000m ² . Subdivisions that comply with the permitted activity standards in relation to size, buildings and servicing are a Controlled Activity.

Queenstown Lakes District Plan (Partially Operative)	Within the Gibbston Character Zone of the Rural Area, there is no minimum lot size. Subdivisions within this area are a Discretionary Activity.
Hastings District Plan	Within the Te Mata Special Character Area, the minimum lot size is 6ha, within the Industrial 5 (Winery) zone, the minimum lot size is 1,000m ² , and within the Rural Zone, the minimum lot size is 20ha. Subdivisions that comply with the permitted activity standards in relation to size, buildings and servicing are a Controlled Activity.

Discussion

It is noted that the inclusion of objectives and policies in relation to reverse sensitivity issues associated with rural subdivision will have little influence on a resource consent application for a subdivision if the activity has a Controlled Activity status, where resource consent must be granted.

Other mechanisms, such as a no-complaints covenant, may be imposed at subdivision stage with agreement between the developer and the adjoining vineyard owner. It is noted that the Proposed Napier City District Plan identifies the use of no-complaints covenants as a method of achieving the objective of protecting the City from the adverse effects of inappropriate subdivision, use and development of land (objective 33.2).

3.3 Agrichemical use

Explanation

Winegrowing operations have the potential to result in spray drift, whereby the sprays and/or pesticides used drift across property boundaries. The potential for spray drift beyond the vineyard is governed by a number of factors, including wind direction and velocity, effectiveness of targeting, spray droplet size, type of spray equipment used, direction of spraying and frequency of application. Spray drift can create a perceived health risk on occupiers of adjoining properties, even if this is not the case. Agrichemical use on adjoining properties may also affect vineyards, potentially resulting in harvest loss. Spray drift is primarily a Regional Council issue, relating to discharges to air. Regional Councils and Unitary Authorities examined in this report have recognised the potential risks associated with spray drift, and have provided standards and rules in their plans. This is detailed below.

Approaches

Tasman Resource Management Plan	Within the Rural 1 Zone, where a building is built for use as a school, visitor accommodation or tourist accommodation a resource consent as a Discretionary Activity is required. Where the building is on a site adjoining a vineyard where pesticides may be discharged to air, that building must be set back at least 30m from the vineyard plantings, otherwise a resource consent will be
---------------------------------	--

	required as a Non-Complying Activity, as the proposal will fail to meet the standards of a Discretionary Activity. Also within the Rural 1 Zone, a permitted activity standard requires that spray belts, shelter belts and artificial shelter are set back at least 3m from property boundaries and 10m from the intersection of any formed legal road. Permitted activity standards relating to the height and maintenance of spray belts are also included. It is noted that the Plan includes a definition of spray belt. A further permitted activity standard requires that vineyards where pesticides may be discharged to air be set back at least 30m from any dwelling. Where these standards are not complied with, the activity requires a resource consent as a Restricted Discretionary Activity. Pesticides are defined as any substance used to eradicate, modify or control flora or fauna, and includes herbicides and fungicides, but excludes fertiliser. The discharge of pesticides to air is a permitted activity subject to conditions including that discharges must be undertaken in such a way that pesticide drift does not move over any adjoining property that is a school, place of public assembly, or dwelling unless there is a mutual agreement with the occupier of the dwelling. Activities that do not comply with the permitted activity conditions require resource consent as a controlled activity or a discretionary activity, depending on the conditions not complied with.
Wairau/Awatere Resource Management Plan (Proposed)	Agrichemicals are defined as including those used to control flora or fauna associated with viticulture activities. Application of fertiliser and agrichemicals are a permitted activity subject to conditions, including requiring that all reasonable care be undertaken to ensure that spray drift does not pass beyond the legal boundary of the area of land on which the agrichemical is discharged. Activities that do not meet the permitted activity conditions require a resource consent as a Discretionary Activity.
Auckland Regional Air, Land & Water Plan (Proposed)	Agrichemicals defined as any substance used to eradicate, modify or control flora and fauna, excluding fertiliser. The discharge of agrichemicals by handheld application is a permitted activity subject to conditions. Non-handheld applications are a permitted activity subject to conditions including requiring the preparation of a spray plan, and upon the request of any potentially affected

	party provide notification of spraying occurring. Activities that do not meet the permitted activity conditions require a resource consent as a Discretionary Activity.
Hawkes Bay Regional Resource Management Plan	Agrichemicals defined as any substance used to eradicate, modify or control flora and fauna, excluding fertiliser and pheromones. Application of agrichemicals is permitted, subject to conditions including requiring a property spray plan be prepared where the application is on private land and occurs on land within 50m of an adjacent property twice in any 12-month period, and requiring signage to indicate the use of agrichemicals. Activities that do not meet the permitted activity conditions require a resource consent as a Restricted Discretionary Activity.

Discussion

It is noted that Regional Councils and Unitary Authorities typically seek to control the use of agrichemicals, through notification and spray plan requirements, as opposed to the effect of their use through requiring spray belts or buffer zones. The nature of the permitted activity requirements differ to a great extent across the regions.

It is also important that any standards regulating the use of agrichemical sprays for viticulture purposes recognise the often infrequent occasions on which they may need to be used, typically dependent on factors beyond a winegrowers control (eg, weather-dependent). It is also important that the consequences of a winegrower not being able to use these devices as or when required, which may include harvest loss, be recognised and provided for where appropriate.

3.4 Activity status

Explanation

Vertical integration is where the primary production processes associated with the operation of a vineyard are supported by ancillary operations such as cafes, restaurants and retail operations, all on the same site. This increasing trend is a means by which winegrowers may make use of all the resources available to them to ensure the ongoing financial viability of the primary production process. A number of Councils have recognised and provided for this trend of vertical integration through standards and rules in district plans relating to the activity status of winegrowing and ancillary operations. These are detailed below.

Approaches

Hurunui District Plan	All activities are permitted subject to meeting the relevant permitted activity standards. Viticulture is specifically included within the definition of farming activities, which are permitted activities subject to meeting the relevant permitted activity standards.
Hastings District Plan	Within the Rural Zone and Plains Zone, land-based primary production activities and wineries are permitted activities subject to meeting relevant permitted activity standards, including minimum threshold measures for the activity. The definition of wineries includes activities carried out on the same site as a vineyard, including winemaking, cellar door sales and any related entertainment facilities involving the serving of food and beverage. Within the Industrial 5 (Winery) Zone, winemaking and ancillary processes, including bottling, packaging, despatching, and wholesale and retail sales of wine and directly associated products, are also permitted activities subject to meeting the relevant permitted activity standards.
Queenstown Lakes District Plan (Partially Operative)	Within the Gibbston Character Zone of the Rural Area, industrial activities, limited to wineries and underground cellars, are controlled activities subject to meeting the relevant permitted activity standards. There is no definition of a winery. Other commercial activities involving retail sales, including retail sales of wine from a winery or vineyard, are also controlled activities subject to meeting the relevant permitted activity standards. All other commercial activities, including restaurants, require resource consent as a Discretionary Activity. Within the Rural General Area, cafes and restaurants located in a winery complex within a vineyard are specifically provided for as a Discretionary Activity.
Wairau/Awatere Resource Management Plan (Proposed)	Viticulture is specifically included within the definition of farming activities, which are permitted activities within the Rural 3 and 4 zones, subject to meeting the relevant permitted activity standards. Wineries and commercial activities, which include restaurants, require resource consent as a Discretionary Activity.
Tasman Resource Management Plan	Viticulture is not specifically included in any activity definition, but appears to be included within the definition of rural industry. Rural industry activities and commercial activities,

	including restaurants and the sale of liquor, require resource consent as a Discretionary Activity.
--	---

Discussion

A major difficulty with providing a permitted activity status for an activity is that the permitted activity standards and conditions need to be certain and not contain any element of discretion. To ensure clarity for the Council and applicants as to what is included within a permitted activity definition, it seems apparent that a definition of viticulture and/or winemaking is required. If a district clearly envisages the expansion of ancillary activities associated with winegrowing, subject to specified standards, it should not be necessary to make wide use of the Discretionary Activity category and a certain level of permitted activity status should be appropriate. However, given the diverse nature of the ancillary activities associated with winegrowing, a Discretionary Activity status does enable all matters relevant to that particular proposal to be assessed, rather than trying to regulate for every eventuality.

3.5 Visual – bulk and location

Explanation

Winegrowing operations, as a primary production process, often necessitate the use of large-scale buildings and tanks in a rural setting. The ancillary operations, including cafes and restaurants, may also require large areas for carparking. These features may appear to be visually inconsistent with the surrounding rural area. A number of Councils have recognised this potential conflict, and provided for it through standards and rules in district plans. These are detailed below.

Approaches

Hurunui District Plan	Screening is defined, and includes trees, shrubs, solid walls and fences. Permitted activity standards require that in non-urban areas when viewed from specified roads, adjoining residential sites or an open space zone, parking of vehicles and non-residential buildings shall be screened. Permitted activity standards state that screening shall not be necessary for buildings accessory to farming activities, which as outlined above, includes viticultural activities. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity (Unrestricted).
Hastings District Plan	Permitted activity standards state that within the Industrial 5 (Winery) zone, the maximum building height is 11m, provided that on any boundary with a site zoned rural, residential or public space, the buildings shall comply with a specific sunlight access plane off that boundary. Permitted activity standards also specify front and side yard setback

	requirements. Also, within the Industrial 5 (Winery) zone, a specific management plan prescribes the landscaping requirements for that zone. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity. Within the Te Mata Special Character Zone, permitted activity standards state that the maximum building height is 10m and comply with a specified sunlight access plane. The permitted activity standards also state minimum setback requirements for residential, industrial and commercial and accessory buildings. Storage areas, outdoor display areas and parking areas are also required to be screened by landscaping or fences so that they are not visible from adjoining roads or residential buildings on adjacent properties. Where these standards are not complied with, the activity requires a resource consent as a Restricted Discretionary Activity.
Wairau/Awatere Resource Management Plan (Proposed)	Within the Rural 3 and 4 Zones, permitted activity standards require that the maximum building height is 10m and must comply with a specified sunlight access plane. Permitted activity standards also set minimum front, side and rear yards, and requires that no more than 15% of the area of the site may be covered in permanent buildings. Where these standards are not complied with, the activity requires a resource consent as a Limited Discretionary Activity.
Tasman Resource Management Plan	Within the Rural Zones, permitted activity standards state that the maximum building height is 7.5m, and specifies specific setbacks, and requires sites adjoining the residential area comply with a specified sunlight access plane. Permitted activity standards also set a building coverage limit, dependent on the size of the underlying allotment. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity.
Queenstown Lakes District Plan (Partially Operative)	Within the Gibbston Character Zone of the Rural Area, permitted activity standards require that no part of any non-residential building ancillary to viticultural activities shall exceed 10m high above ground level, the minimum setback from road boundaries for buildings shall be 20m, and storage areas for waste materials, outdoor display areas and parking associated with commercial activities, wineries and other productive activities shall generally be positioned and managed to minimise

	any adverse visual effect. Where these standards are not complied with, the activity requires resource consent as a Non-Complying Activity. District-wide permitted activity standards also require that every outdoor carparking area include a minimum rate of landscaping. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity.
--	--

Discussion

A major difficulty with providing a permitted activity status for an activity is that the permitted activity standards and conditions need to be certain and not contain any element of discretion. Where screening is required for a permitted activity standard, certainty over what falls within the definition of screening is required. This is particularly important as screening in itself, depending on location, size and extent, has the potential to adversely affect adjoining properties in terms of shading and dominance.

Given the large number of buildings and structures required on a site for winegrowing operations and ancillary operations such as cafes, restaurants and retail operations, there may be an opportunity for design guides to be used and referenced in district plans to promote quality of design for winery-related developments.

3.6 Traffic safety and site access

Explanation

Winegrowing operations, and their ancillary operations, have the potential to increase traffic to and from the site and within the surrounding area. The traffic generated may include heavy vehicles delivering and picking up supplies and products, and staff and visitor movements. A number of Councils have recognised the potential inability of the surrounding road network to cater for such traffic flows, and have provided standards and rules in district plans. These are detailed below.

Approaches

Wairau/Awatere Resource Management Plan (Proposed)	Permitted activity standards in relation to sight lines at new intersections, and vehicle crossing design and location, dependent on the status of the road on which the vehicle access is to/from. Permitted activity standards also in relation to the design and formation of loading facilities. Where these standards are not complied with, the activity requires resource consent as a Discretionary Activity.
Hurunui District Plan	Permitted activity standards requiring no servicing of activities and operation of vehicles at night within 50m of a residential site, and except within

	industrial and business zones and certain activities including primary production activities, restricting the number of vehicle movements. Permitted activity standard requiring on-site manoeuvring so that no vehicle reverses on to a site. Where these standards are not complied with, the activity requires resource consent as a Discretionary Activity (Unrestricted).
Tasman Resource Management Plan	Permitted activity standards in relation to site access and sight distances specified. Permitted activity standards also in relation to the design and formation of loading facilities. Where the standards are not complied with, the activity requires resource consent as a Discretionary Activity.
Hastings District Plan	Permitted activity standards in relation to site access and sight distances. Permitted activity standards also in relation to the design and formation of loading facilities. Where these standards are not complied with, the activity requires resource consent as a Restricted Discretionary Activity.
Queenstown Lakes District Plan (Partially Operative)	District-wide permitted activity standards in relation to site access and sight distances. Permitted activity standards also in relation to the design and formation of loading facilities. Where these standards are not complied with, the activity requires resource consent as a Controlled Activity or Discretionary Activity, dependent on the zone and aspect of non-compliance.

Discussion

The issue with defining a permitted activity standard in relation to on-site manoeuvring and loading is that these requirements will differ greatly between activities.

3.7 Carparking requirements

Explanation

Winegrowing operations, and their ancillary operations, have the potential to increase traffic to the site. The ability for a site to cater for the parking demand generated is necessary to ensure that the traffic effects of the activity do not extend beyond the site, such as where visitors may park on the side of the road. A number of Councils have recognised the potential for inadequate parking levels having an effect on the operation of the surrounding road network, and have provided standards and rules in district plans. These are detailed below [GFA = gross floor area].

Approaches

Hurunui District Plan	Permitted activity standards in relation to on-site parking and manoeuvring standards apply to specific activities. Where a particular site contains more than one activity (eg, industrial and business), the parking requirement shall be separately determined where the GFA of an activity exceeds 10% of the total GFA. Where these standards are not complied with, the activity requires resource consent as a Discretionary Activity (Unrestricted).
Wairau/Awatere Resource Management Plan (Proposed)	Permitted activity standards in relation to on-site parking and manoeuvring requirements apply to specific activities. Where there are two or more similar activities, the higher parking rate shall apply. Parking for wineries is specified at a rate of 1 space per 20m ² of GFA plus 1 per 30m ² of outdoor eating area. Where these standards are not complied with, the activity requires resource consent as a Limited Discretionary Activity. Also, any activity providing more than 75 carparks on a site is a Discretionary Activity.
Tasman Resource Management Plan	Permitted activity standards in relation to on-site parking and manoeuvring requirements apply to specific activities. The total parking requirement for any development is the sum of the requirements for each activity forming part of the development. Where these standards are not complied with, the activity requires resource consent as a Discretionary Activity.
Hastings District Plan	Permitted activity standards in relation to on-site parking and manoeuvring requirements apply to specific activities. Within the Industrial 5 (15 Winery) Zone the requirement is 95 carparks for activities existing prior to the operative date of the District Plan. Any new or proposed activities must comply with the specific activity requirements. Where these standards are not complied with, the activity requires resource consent as a Discretionary Activity.
Queenstown Lakes District Plan (Partially Operative)	District-wide permitted activity standards in relation to on-site parking and manoeuvring requirements apply to specific activities. Where a particular site contains more than one activity, the separation of area into different activities will be required where the GFA of an activity exceeds 10% of the total GFA.

Discussion

An easily calculable on-site carparking figure gives certainty over the parking requirements for an activity. The ability for parking requirements to be broken down across a wide range of activities, including viticulture and restaurants, acknowledges the different requirements that may be necessary for different activities.

3.8 Signage

Explanation

Winegrowing operations, and particularly ancillary operations such as restaurants and cafes, often use signage to advertise their location and attract visitors. There is the potential that this signage may be perceived to be inappropriate in terms of its location, size and nature for the particular setting that the vineyard is located. A number of Councils have recognised the potential conflicts associated with signage, and have provided standards and rules in district plans relating to signage. These are detailed below.

Approaches

Hurunui District Plan	Permitted activity standards for signage in relation to the size and location of signage on a site, the minimum visibility distance to advertising signs, the minimum distance between successive advertising signs and the design of the signage. Signage that does not comply with the permitted activity standards will require resource consent as a Discretionary Activity (Unrestricted).
Hastings District Plan	Permitted activity standards for signage in relation to size, with a permitted maximum size of 2.5m ² , placement and positioning, illumination, and location relative to state highways. Signage that does not comply with the permitted activity standards will require resource consent as a Restricted Discretionary Activity.
Wairau/Awatere Resource Management Plan (Proposed)	General permitted activity standards for signage in relation to location and lettering sizes of signage. Specific permitted activity standards within the Rural Area requiring a minimum visibility distance to advertising signs, a minimum distance between advertising signs and lettering height. Permitted activity standard states that the total area of the sign shall be the minimum required to accommodate the message. Signage that does not comply with the permitted activity standards will require resource consent as a Discretionary Activity.
Queenstown Lakes District Plan (Partially Operative)	Within the Rural Area, permitted activity standards for signage requires a maximum area of 2m ² , the signage be located on the site, not project over any road, and not extend over any footpath. Signage

	that does not comply with the permitted activity standards will require resource consent as a Non-Complying Activity.
Gisborne Combined Regional Land and District Plan (Partially Operative)	General permitted activity standards for signage in relation to location, lighting and glare, content and design, duration of display, and restrictions on location within road reserve. Specific permitted activity standards within the Rural Area requiring a maximum sign face area of 3m ² and restrictions on when signage is designed to face a state highway. Signage that does not comply with the permitted activity standards will require resource consent as a Restricted Discretionary Activity.

Discussion

Permitted levels of signage provide a clear indication of the accepted level of advertising that may be required for an activity on a site, and within the context of the amenity of the surrounding area.

3.9 Glare / Lighting

Explanation

Winegrowing operations often require a high level of lighting, both for operational and ancillary purposes. These features may appear to be visually inconsistent with the surrounding rural area. Glare also has the potential to elicit complaints from surrounding landowners, which may impact on the ability to undertake day-to-day winegrowing operations. A number of Councils have recognised this potential conflict, and provided for it through standards and rules in district plans. These are detailed below.

Approaches

Hurunui District Plan	Permitted activity standards for light require emissions from a site to not exceed 8 lux measured 1.5m above the ground at the boundary of the site. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity (Unrestricted).
Hastings District Plan	Within the Industrial 5 (Winery) Zone, the permitted activity standard for lighting and glare specifies maximum lux levels received within any residential zone for different times of the day. Permitted activity standards also require that any outdoor lighting be selected, located, aimed, adjusted and screened as to direct the lighting away from any residential activity, other sensitive activities, State Highways or other formed roads. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity.

	Within the Te Mata Special Character Zone, the permitted activity standards requires that all external lighting from a site be shaded or directed away from any residential buildings or roads, and be less than 8 lux measured 1.5m above the ground at the boundary of the site. Where these standards are not complied with, the activity requires a resource consent as a Restricted Discretionary Activity.
Queenstown Lakes District Plan (Partially Operative)	Within the Gibbston Character Zone of the Rural Area, permitted activity standard for lighting requires that all fixed exterior lighting be directed away from adjacent sites and roads. Where these standards are not complied with, the activity requires a resource consent as a Non-Complying Activity.
Gisborne Combined Regional Land and District Plan (Partially Operative)	Within the Rural Zone, permitted activity standard for lighting requires that all exterior lighting be directed away from adjacent properties and roads, and also sets maximum lux levels which differ depending on whether the receiving environment is residential or commercial zoned or a road. Where these standards are not complied with, the activity requires a resource consent as a Restricted Discretionary Activity.

Discussion

It is noted that not all district plans contain rules regarding lighting. Where there is the potential for future development in an area and conflict over the effects of lighting may arise, permitted activity standards referring to a maximum permitted lux level are easily measurable (if required), and provide certainty over an effect that often contributes directly to reverse sensitivity effects.

3.10 Odour

Explanation

Winegrowing operations have the potential to generate odour, primarily during the primary production process associated with winemaking. The odour may be generated through the decomposition or composting of grape skins and other solid waste from the winemaking process, or during the process of the fermentation of the grape juice.

It is acknowledged that this issue is primarily dealt with by Regional Councils. However, unitary authorities that have been examined also provide permitted activity standards and rules in relation to odour, which are detailed below.

Approaches

Tasman Resource Management Plan	Permitted activity standards require that no activity emit offensive and pervasive dust or odours that are discernable in a Residential Zone. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity.
Wairau/Awatere Resource Management Plan (Proposed)	Within the Rural 3 and 4 Zones, the permitted activity standards require that the best practicable option be used to avoid, remedy or mitigate any adverse effects resulting from the discharge of odorous or potentially odorous contaminants into the air.

Discussion

It is acknowledged that odour is a relatively subjective test, and therefore providing certainty over what is the best practicable option and who is in a position to determine whether a discharge is odorous is useful to remove potential misunderstandings or disagreements.

3.11 Hours of operation

Explanation

Ancillary operations undertaken to support winegrowing activities have the potential to be inconsistent with the effects arising from existing primary production-related processes within the surrounding area. For example, noise and traffic-related effects arising from the operation of restaurants and cafes on a site may be inconsistent with the existing rural amenity of the surrounding area. A number of Councils have recognised the potential conflicts associated with these ancillary operations, and have provided standards and rules in district plans relating to their hours of operation. These are detailed below.

Approaches

Hurunui District Plan	Permitted activity standards state that any activity involving the sale of alcohol for consumption on the premises, where the site on which it is located, fronts to or adjoin a residentially zoned site, shall comply with the hours of operation of 7am to 10pm on any day. Where an activity does not meet this permitted activity standard, resource consent is required as a Discretionary Activity.
Hastings District Plan	Within the Industrial 5 (Winery) zone, the permitted activity standards state that a winery bar, restaurant and function room shall only be permitted to operate on Sunday to Wednesday from 8.30am to 11.30pm, and on Thursday to Saturday from 8.30am to 1am the following day. Also sets hours of operation for the Restaurant Outdoor Area, bar facilities and live bands. Permits

	extended opening hours on 12 occasions a year. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity. Within the Te Mata Special Character Area, the permitted activity standards state that activities which involve the retailing of goods and/or the serving of food or beverages to the public shall be restricted to any day of the week from 8am to 10pm. Where these standards are not complied with, the activity requires a resource consent as a Restricted Discretionary Activity.
Gisborne Combined Regional Land and District Plan (Partially Operative)	Within the Rural Productive Zone, visitor accommodation, wine tasting and sales, cafes and restaurants which are ancillary to and associated with rural production on the site, provided that for wine processing industries the hours of operation are from 7am to 9pm. Where these standards are not complied with, the activity requires a resource consent as a Discretionary Activity

Discussion

Permitted activity standards relating to hours of operation cater for the likely extension of activities ancillary to a winegrowing operation, and provide certainty over the anticipated level of effect on the existing rural amenity of an area.

4 Relevant case law

The following case law identifies directly or indirectly involved issues facing the winegrowing industry, particularly in the area of reverse sensitivity.

4.1 Fraser Shingle Ltd v Hastings District Council W7/92

Case Facts

This case involved an appeal against a decision by Hastings District Council to refuse planning consent for an application to quarry gravel from a property in Fernhill. The applicant had sought consent to excavate gravel for processing products required by the construction and building industries. The appeal included consideration of whether the potential of the subject land for growing grapes capable of producing top quality wine would be significantly diminished by the proposed excavation of gravel.

The Court agreed that the land had rare qualities that made it suitable for growing grapes from which high-quality wines can be produced.

Relevant Deliberation and Decisions

The Court considered that:

“...there is no doubt that the land possesses a relatively rare combination of qualities which make it suitable for consistently growing grapes from which wines of the very highest quality can be produced. That is shown by the success achieved by Dr Limmer in producing wines from the adjoining property; and by production from other vineyards in the Mere Road and Gimblett Road locality. The relevant qualities of the land are mainly the stony, free-draining soil, the relative depth of the water table, and the climate. Together, they enable a skilled viticulturist to control the water uptake of the grapes at times in the growing season which effect the quality of the wine which can be made from them... the fact that the land is not currently used for grape growing is irrelevant. We also accept that, because the excavation would be done progressively over many years, there would for most of the excavation duration be the opportunity to grow grapes on diminishing areas of the land which remain undisturbed meanwhile. However, grape vines can go on producing for up to 100 years. It is the effect which the proposed excavation would have on the future potential of the land for that production after excavation which is pertinent.

It was not contended that the condition of the land after excavation would preclude the growing of wine grapes altogether. Rather, it was claimed that it would no longer possess the conditions in which wines of the highest quality could be produced from grapes grown there.

...It is our finding from the evidence that although there are other areas of land in the Hawkes Bay which are also capable of producing wines of the highest quality, the subject land has that ability, and land possessing that potential is scarce.”

4.2 Upper Clutha Environment Society v Queenstown Lakes DC C012/98

Case Facts

This case involved an appeal against resource consents granted by the Queenstown Lakes District Council (QLDC). The applicant wished to excise a 23 lot subdivision. The appeal focused on the adverse effect on the landscape that the proposal would have. The proposal was a Non-Complying Activity and as such the Court considered the threshold test, and concluded that the effects of the proposal were more than minor.

The Court agreed that there would be adverse effects on an outstanding landscape, and also that there could be lesser, but significant, reverse sensitivity issues associated with locating a residential subdivision in close proximity to the existing Rippon vineyard which adjoins the proposed subdivision area. For example, occupiers of dwellings may complain about spray drifting onto their properties.

Relevant Deliberation and Decisions

The Court considered that:

“...a lesser but significant adverse effect unless mitigated is the effect of having a vineyard (on Block C) next door to a 3.85-ha residential subdivision. An issue as to reverse sensitivity arises here: see Auckland City Council v Auckland Regional Council [1997] NZRMA 205. The issue is that the vineyard does create potential nuisances (negative externalities) from the point of view of residential neighbours. Although we heard evidence that under the current management regime of the vineyard which is run by organic principles, the nuisance level would be low, we cannot assume that the vineyard would always be run in that way and we consider that some mitigation measures would be necessary. There is a thin strip of kanuka on Block C which the applicant volunteered to retain as a buffer strip. We will discuss later whether that is adequate, but in summary we are convinced that enough can be done to reduce this and other adverse effects so that they are no more than minor...”

The second set of adverse effects we have to consider relate to the vineyard operation next door. While the applicant volunteered a condition with the kanuka buffer being maintained, that was not shown in the plan and it would need to be identified more clearly. In any event, a question was raised by the Society as to whether that strip would be adequate...

In the circumstances, since there is kanuka present and more could be planted, we consider that a 30-metre strip is necessary as the Society suggested. We understood Ms Jerram to consider that appropriate. Accordingly, if consent is granted the subdivision plan will need to be amended so that a 30-metre strip is planted in kanuka (or other trees approved by the Council planner) and maintained. That 30-metre strip can be measured from the edge of the nearest strip of vines to the 3.85-ha subdivision.”

4.3 Wakatipu Environmental Society Incorporated v Queenstown Lakes District Council C135/97

Case Facts

This case involved an appeal against the granting of a land use and subdivision consent. The applicant intended to establish a large commercial vineyard to produce vintage sparkling wine, as well as construct a restaurant, 10 visitor accommodation units, and 14 new dwellings in small clusters and a manager's dwelling.

The large overheads in establishing any vineyard requires a large capital outlay because it takes up to 8 years to be in full production. The proposal is to have a "domain" system whereby 14 owners, each with their own residential accommodation, pool their resources by leasing their group vines to a central company owned by the property owners, which will in turn have a management agreement with a winemaking company. The appellants were concerned with the effects of the development on landscape values of the area, especially the effects of the proposed buildings.

Relevant Deliberation and Decisions

The Court considered that:

"The Society does not oppose the development of the Wentworth land for viticulture, wine making and wine sales. However, it opposes the residential and tourist accommodation activities. The actual and immediate adverse effects that Mr Wild saw were a loss of the open and spacious landscape character of the Gibbston area and compromising of the important path to Wakatipu by ribbon development. He also saw potential adverse effects in terms of the proposed design guidelines for buildings failing to deliver good architecture..."

The unvarying tussock and rock backdrop with greener introduced grasses on the terraces close to the road showing the relief of the countryside ('legibility' in landscape architect jargon) will be replaced with the artificial lines of the vineyards' posts, wires and vines and the seasonal changes on the grapevines, somewhat reducing the simplicity of the landscape..."

Whether or not those effects are adverse – and in the context we think not (perhaps the Kawarau Gorge will one day be as famous for its contrasts of vineyards and hills as the Moselle River in Germany) – the fact is that the vineyards can go in as of right so we need to consider the proposed residences in that context.

Secondly, stylish residences in the vine-covered terraces – if clustered as proposed so as to maximise the openness of the vineyards – could be seen as a positive effect. We do not, despite Ms Dewar's submission to the contrary, say that can be used in section 105 considerations to offset any adverse effect; we merely point out the subjective desirability – in some eyes – of adding residences to show that they are not necessarily an adverse effect..."

Thus on balance, in the context of this particular landscape with its potential for grape growing, we consider the proposed residences (if their platforms are relocated) can be built so as not to have more than a minor adverse effect on the landscape.

Turning to the second adverse effect identified by the appellant we do not accept that the number of visitors would, by itself in this environment be an adverse effect. The evidence is that the Gibbston Valley winery which is only one kilometre or so closer to Queenstown

has 80,000 visitors a year. There would presumably be some overlap between visitors and there was no evidence, for example, that the visitors to the Gibbston Valley winery are causing any particular problems. The Society's case was particularly vague in this respect and, in effect, it invited us to infer that the sheer number of visitors was in itself an adverse effect or at least was the cause of unspecified adverse effects. That is insufficient...

With respect to the transitional plan we find that the proposal does not in general contravene its objectives and policies. The proposal clearly uses land suitable for viticulture for that use and residential development does not encroach on it. We have found that although land has been used for urban purposes, that is expressly recognised by policy (b) (see para 3.1.03 quoted earlier). Again the use of rural land for urban purposes is expressly recognised in paragraph (e)...

Having regard to all factors referred to earlier in this decision and balancing them with a sense of proportion as outlined in *North Shore City Council v Auckland Regional Council* [1997] NXRMA p.59 and *Caltex Limited v Auckland City Council* (Decision A95/97) we find in a qualified way that the consents should be granted. Consequently leave is reserved for the applicant to amend its subdivision and concept plan, and to file the amended version with the Court. If it is accepted by the other parties it can be put in by consent, otherwise a further hearing can take place.

The exception, which we do not approve, is the proposed accommodation building. We are concerned with two aspects of this: first it is a large building and thus potentially out of scale in the landscape. Secondly, while its proposed maximum number of nightly guests is 20 in total, each of the units is large (100m²) and this could easily lead to an application to increase the number of visitors - that would breach the policy to the proposed plan."

4.4 Tutton Sienko and Hill v Canterbury R.C. W100/95

Case Facts

This case involved an appeal against a water permit which was granted to Maungatahi Farm Limited from the Waipara River to irrigate a 142-ha grape growing proposal. The appellants opposed the grant for a number of reasons including the effects an additional water take permit would have on the appellants' water permits.

Relevant Deliberation and Decisions

The Court considered that:

"Professor Donaldson [one of the appellants, with a 55-acre vineyard] deposed that his irrigation is set up on a trickle irrigation method with the water source being from the Waipara River. He deposed to the need to irrigate the vines daily during the summer months because of the light free-draining nature of the soil. He deposed that the availability of a reliable source of water for irrigation purposes is absolutely vital to the survival of his vineyard and winery business...

Evidence was also given by Mr B S Johns, the holder of a water permit on the Waipara River, which permits him to take water from an excavated pond some 300m from the river for trickle irrigation of 19 ha of vineyard...

The regional council's position on this appeal was that the evidence demonstrates there will be no threat to the water resources available for the reasonably foreseeable needs of future generations arising from its consent...

Mr Forbes [the applicant] explained that the area beside the Waipara River was identified for growing grapes because it has exceptional advantages, namely, free draining soil; sufficient soil drainage beside the river to reduce the likelihood of frost damage; a three kilometre river boundary to enable water from the river to be utilised; a fall of 50 feet along the river boundary to enable water to be harvested by natural flow to storage areas; a low rainfall; clays within the area for dam sealing; a good site for grapes (surrounded as it is by 30 vineyards); three phase power one kilometre away; road access; and is typical of the hot/dry Waipara climate...

There are 30 grape growers who have permits to draw water from Weka Stream, Omihi Stream and the Waipara River between White Gorge and Teviotdale Bridge. Ten organisations hold permits at present to take water from the Waipara River or from excavated ponds...

It was contended by the applicant, supported by Mr Callander and Dr Crawford that by virtue of the relatively high minimum flow conditions ie, 161 litres per second at which the applicant must cease taking altogether, that other users would not be affected because the flows at which most must stop taking are very much less, eg, 50 or 60 litres per second. However, this issue is complicated because some users must stop taking at flows measured at other points on the river, namely at Stringers bridge and Teviotdale Bridge...

Most appellants saw the proposed abstraction affecting their priority although as noted they did not appear to have taken fully into account the raised flow minimums proposed by Dr Crawford...

The evidence of reasonable use from Mr Keating and Dr Crawford, together with the conditions now proposed have satisfied us that the reasonable use policy is met by the proposal. One of the appellants' witnesses suggested that the number of vines to be irrigated should be identified now so that the exact percentage of water to be allocated could be more closely identified. Mr Milligan in his submissions implied that this policy can only be justified if details of the end use are spelt out. We suggest that this is not what the policy intends. We consider there is a limit to which end use has to be identified. In this case such an approach is not necessarily appropriate, given that the applicant advised it may well include crops other than vines in its eventual use of the land to be irrigated...

The Court concluded that "we do not consider existing users will be adversely affected by the granting of a consent to Maungatahi Farm Ltd to take 38 litres per second of water from the Waipara River or a storage pond..."

It is our decision that the appeals should be disallowed and the respondent's decision (as modified by the recommended conditions) be confirmed."

4.5 Isola Estates Ltd v Auckland City Council W042/06

Case Facts

This case involved an appeal against the Council's decision to refuse consent to construct a 56-unit boutique hotel on Waiheke Island. The proposed hotel would serve a nearby events centre for which consent had been granted, and would be on a site that also contained an established vineyard. The Council's grounds for declining consent were that the scale and intensity of the proposed hotel would result in adverse effects on the environment and would harm the integrity of the District Plan, particularly in terms of the zone known as Land Unit 20 – Landscape Protection on Waiheke Island. In addition, a number of parties raised concerns relating to potential effects on traffic and increased noise.

Relevant Deliberation and Decisions

The Court considered that:

"The Objective for the Land Unit is described in 6.20.3.1:

To provide for a diverse range of land use activities compatible with maintaining special environmental amenity and open rural landscape of Land Unit 20, in order to secure its long-term protection as a rural buffer area with potentially productive rural use capacities in some parts.

Following from that Objective the following Policies appear to be particularly relevant to this issue:

- (c) By providing for non-rural land use activities where their character scale and intensity are compatible with the rural landscape and the environmental capacity of the Land Unit.*
- (f) By limiting land use activities and subdivision of the Land Unit to the opportunities provided for by the Plan's Rules.*
- (g) By ensuring on Waiheke Island that the Land Unit is maintained as a greenbelt buffer between and around residential settlements.*

There is, we think, a readily discernible theme in all of that. In the extracts we have quoted, the word buffer appears five times, variously identified as ...open countryside...greenbelt...visual and physical... and ...rural. The buffer is to be between the urban areas of Ostend and Onetangi. We observe that whatever may have been the case when the description of the Land Unit... was settled in 1996, one could not possibly now describe this area as pastoral, although the other uses mentioned remain largely valid. The absence of any mention of the winery/café and similar activities does however mean that the description in the Plan does not fully reflect current reality.

We think Mr Kirkpatrick and Isola's expert witnesses were right in suggesting that the Plan does not envisage only a strictly rural set of uses for Land Unit 20. This is evident from the list of possible discretionary activities under Rule 6.20.4.3. These include camping facilities, commercial airstrips, community facilities, educational facilities, entertainment facilities (providing the gross dwelling area of the building does not exceed 100m² and the activity is only for the sampling and sale of wines or other produce produced on the site), forestry, multiple dwellings, rural industries and visitor facilities. It can be taken from that list that it is not the activity itself that is important; it is whether the activity's effects are compatible with the overall purpose of Land Unit 20. That of course is as it should be under the effects-based regime of the RMA...

The legal position is, as has often been covered, that there is no real precedent when it comes to non-conforming activities. Rarely will two proposals be materially indistinguishable and, in any event, every proposal must be judged on its own merits. That said, expectations can be raised by the grant of consents in some circumstances, and consent authorities can be placed under practical pressure by the argument that like cases should be treated alike.

Particularly having regard to the mitigation offered by enhanced screen planting, we are left in no doubt that inserting a development of about 2500m² building coverage, plus its curtilage and site works, on this site is not at all incompatible with the buffer concept in the Plan. Nor will it harm the integrity of Land Unit 20 and its purpose of providing separation between the urban forms of Ostend and Onetangi...

In summary, the questions under this head are first, whether the proposed development is contrary (ie repugnant or opposed) to the purpose of maintaining an open space buffer between the two urban areas. Secondly, will the integrity of the Plan's provisions relating to Land Unit 20 as a means of controlling adverse effects be damaged if the proposal goes ahead. In our view the answer to both is a very plain No. The proposal and the Plan can quite comfortably co-exist. If there should be another non-complying proposal for a site within Land Unit 20 that has as few effects on the purpose of the Land Unit as this one has, then it can be dealt with on its merits.

Dealing sequentially with the s104 considerations, we have already mentioned that we see no significant actual or potential adverse effects on the environment arising from this proposal. There will, we think, be positive effects in terms of the provision of direct employment opportunities and the expansion and encouragement of tourism opportunities on Waiheke Island, to the advantage of contractors and providers such as transport and tour operators. Additionally there will be an obvious synergy between the hotel, the Events Centre, the surrounding wineries, and the golf course. The Events Centre site hosts an apparently successful annual Wine and Food Festival, and we were given to understand that there is already something of an informal wine trail among the wineries along Onetangi Road. All of that has a strong potential to contribute in a real way to enabling people and the community to provide for their social and economic wellbeing, in terms of s5(2). A recognition of those opportunities would account, we imagine, for the written approvals given to the proposal by its immediate neighbours, which does of course exclude a consideration any potential adverse effects on them...

For the reasons we have traversed we are satisfied, on the evidence presented to us, that those concerns, while understandable, will not come to pass and that, on balance, the purpose of the RMA will be better satisfied by granting the consent...

For those reasons, the decision of the Council is not upheld, and the consent is granted."

4 Summary

The purpose of this report is to promote debate on the best practice options used within district (and regional) plans to provide greater direction on how to address resource management issues facing the winegrowing industry.

Key questions that require further discussion include:

- What are the main resource management issues facing the winegrowing industry in your district or region?
- How do you think the resource management issues facing the winegrowing industry are best addressed by Councils?

Based on this report, feedback to it, and future discussion, a best practice guideline, in the form of a Ministry for the Environment 'Industry Guideline', will be formulated to provide future direction to both regional and local authorities when dealing with winegrowing issues.

References

- Auckland Regional Council: Auckland Regional Air, Land & Water Plan
- Beca Carter Hollings and Ferner Ltd & Tourism Resource Consultants Ltd (2004):
Tourism and the RMA Good Practice Guide
- Bell Gully (2005): Winemaker's Legal Handbook
- Gisborne District Council: Gisborne Combined Regional Land and District Plan
- Hill Young Cooper Ltd (1996): Discussion paper on the wine industry and a resource
management strategy for New Zealand
- Hawkes Bay Regional Council: Hawkes Bay Regional Resource Management Plan
- Hastings District Council: Hastings District Plan
- Hurunui District Council: Hurunui District Plan
- Marlborough District Council: Proposed Wairau/Awatere Resource Management Plan
- McGregor, D (1998): A national policy statement for 'the right to farm', NZ Grape and
Wine Regions Seminar
- Ministry for the Environment (2000): Managing rural amenity conflicts
- New Zealand Pork Industry Board (2005): EnviroPork: pork industry guide to
managing environmental effects
- New Zealand Winegrowers (2006): Sustainable Winegrowing New Zealand
(www.nzwine.com/swnz)
- Queenstown Lakes District Council: Queenstown Lakes District Plan
- Tasman District Council: Tasman Resource Management Plan
- Wine Institute of New Zealand Inc. & New Zealand Grape Growers Council Inc. (2006):
New Zealand Winegrowers Annual Report Year End June 2006