

Reverse Sensitivity

Reverse sensitivity arises where a new incompatible activity is introduced into an environment which has the potential to limit the operation of existing activities. The concept of reverse sensitivity has evolved through a number of cases and articles to become a label for a type of effect which should be considered by planning decision-makers.

The Courts, however, still have some reservations that it might be used to create an illegitimate buffer zone around an existing use (*Affco New Zealand Limited v Waikato District Council* (EnvC A36/98, 23 April 1998)). The Courts have stressed that activities should internalise their effects unless it is shown that they cannot reasonably do so, and the relevant industry must be of considerable economic or social significance locally, regionally or nationally to warrant restrictions on the use of adjoining land (*Winstone Aggregates v Matamata-Piako District Council* 11 ELRNZ 48).

The Wine Industry

Reverse sensitivity is particularly relevant to rural industries, including the wine industry, as such activities necessarily have effects which reach beyond site boundaries and may not be able to be completely avoided or mitigated (for example, spray drift, and bird scaring and frost protection devices). This leaves existing rural activities open to complaints from more sensitive activities, such as rural-residential developments, whose higher amenity expectations may be unrealistic in a working rural environment.

While resource consent applications for proposed rural-residential developments have been declined due to reverse sensitivity concerns, the potential use of land for primary production, such as viticulture, has generally only been a decisive factor if the land was of a significantly high quality. This approach is evident from the decision in *Fraser Shingle Limited v Hastings District Council* (W7/92, 25 February 1992 (PT)), which was a landmark decision for the wine industry. The appellant had applied for consent to quarry gravel from a property in Fernhill, Hawkes Bay. However, the Court found that the land possessed a “relatively rare combinations of qualities” (at p 22) which made it suitable for growing high quality wines and that these qualities would be irreparably damaged by the proposed quarrying.

While *Fraser Shingle* is still viewed as a benchmark decision, more recent cases seek to address reverse sensitivity by requiring mitigation measures developed in earlier caselaw (*Isola Estates Limited v Auckland City Council* (EnvC W042/2006, 1 June 2006). In *Upper Clutha Environmental Society v Queenstown Lakes District Council* (EnvC C112/98, 30 September 1998) reverse sensitivity issues associated with locating a residential subdivision in close proximity to the existing Rippon vineyard, were mitigated by requiring the subdivision plan to be amended to provide for a 30 metre buffer strip of Kanuka to be planted.

However, in some circumstances the Courts have found subdivision in close proximity to vineyards unacceptable, where this would be incompatible with rural zoning and aggravate the potential for land fragmentation by removing it from use for productive purposes (*Calapashi Holdings Limited v Marlborough District Council* (EnvC W045/04, 8 June 2004)).