

2013

Plan Topics

Land – Non Residential activities in residential areas



Non-Residential activities in residential areas

Non-residential activities in residential areas can provide valued, accessible services for the local community. They can also provide for home-based employment and economic diversification. However, they may also cause a loss of amenity values and be regarded by a community as a symptom of residential decline.

Good practice in managing non-residential activities in residential environments requires decision makers to reconcile these conflicting factors. This guidance note is intended to assist with the formulation of district plan provisions for non-residential activities in residential areas. Guidance is also provided on district plans provisions for mixed use developments, but the primary focus on this guidance note is on existing residential areas. This guidance note does not address non-residential activities outside residential environments.

Practitioners must have sound information on the changes taking place in the community and the nature and resilience of the receiving residential environment. This should be accompanied by ongoing monitoring of community feedback and consent applications within residential areas.

Guidance note

What are Non-Residential activities?

Why are non-residential activities in residential areas a planning issue?

Adverse and positive effects of non-residential activities

Formulating strategies for managing non-residential activities

Establishing an information base

Regulatory approaches taken in district plans

Non-regulatory approaches

The concept of mixed use

Section 32 and other methods

Monitoring

To access the guidance note scroll down or click the link above.

What are non-residential activities?

Virtually all district plans in New Zealand are based on a zoning model that identifies areas for residential (or living) purposes, within which residential activities are dominant and a high level of amenity values is expected. These amenity values include visual quality, open space, gardens, trees, low noise levels, limited traffic generation and other characteristics people usually associate with domestic life.

Non-residential activities can range from those associated with self-employment in the home, to a wide range of employment, community support and commercial activities. Some of these non-residential activities may conflict with or entirely displace residential occupation. These categorisations have often resulted in three classes of non-residential activities in plans:

1. **Home occupations**, where the activity is carried out on site by the occupant of the dwelling
2. **Community facilities**, which are generally required and favoured to meet local needs but usually have little or no residential component (e.g. preschools, churches and medical practices)
3. **Other non-residential activities**, which typically include activities such as motels, café bars, larger medical facilities, specialised recreation facilities, offices and service stations.

Why are non-residential activities in residential areas a planning issue?

Traditionally New Zealand residential communities have segregated residences and workplaces. As a result, there has been ongoing community concern about non-residential activities establishing within, or encroaching into, residential areas. The degree to which non-residential activities are tolerated is influenced by the sensitivity, character and status of the host community.

However, in recent years there has been a trend to encourage mixed use in some modern suburban developments (the 'new urbanist' model), and within existing residential areas close to public transport. This allows for redevelopment at higher densities and a more compact urban form. Given these changes and ongoing development pressures, non-residential activities need to be appropriately managed by plan provisions to guide the location of activities in appropriate areas and through the resource consent process.

Non-residential activities may seek to establish in residential environments under the following scenarios:

- establishment of a new activity within a residential area
- expansion from a business zone into a residential area
- intensification of an existing non-residential activity within a residential area
- a change in use from one non-residential activity to another within a residential area.

Adverse and positive effects of non-residential activities

Adverse effects from non-residential activities can be tangible or intangible. Tangible adverse effects may include:

- the potential for increased noise and traffic generation
- visual detraction associated with building scale and appearance
- signage and lighting
- expanses of car parking
- overshadowing and loss of privacy.

Intangible adverse effects may include:

- loss of residential coherence through a reduction of on-site occupation and isolation from residential neighbours
- a perception that the character of the neighbourhood is changing and in decline.

Positive effects of non-residential activities may include:

- cheaper entry costs for new businesses, particularly where these are initially small scale
- economic and employment growth
- providing a wider range of accessible local services
- clustering of businesses providing mutual support and self sufficiency.

As part of a planned mixed-use community, non-residential activities may help facilitate less dependency on car travel and enhance urban sustainability. For some people, a mixed-use urban environment will be a more diverse and interesting place to live.

Formulating strategies for managing non-residential activities

A wide range of approaches can be taken to manage non-residential activities in residential areas, and the most appropriate one will depend on local circumstances. The actions listed below will assist in formulating a strategy for managing non-residential activities.

- Undertake an analysis, in consultation with the community, stakeholders and affected parties, of the nature and character of neighbourhoods and areas within an urban area as a whole.
- Consider whether any residential areas have special amenity characteristics that require enhanced protection.
- Assess whether development pressures are likely to compromise or adversely affect small residential areas or transition zones, and determine whether their long-term retention for residential purposes would be realistic.
- Consider how beneficial economic and employment outcomes can be accommodated by a host community. Assess where development pressures are likely to lead to conflict between incompatible activities and whether there should be provisions to discourage particular activities in residential areas.
- Consider whether retaining particular areas in residential use is an anomaly in terms of adjoining land-use patterns.
- Assess the extent and nature of existing non-residential activities in the area, and whether particular types of development should be of a similar character and scale.
- Explore opportunities to facilitate environmental compensation, such as providing viable uses for heritage buildings in the area, or measures to discourage the loss of such buildings.
- Assess the capacity and safety of the local road network.

Establishing an information base

It is necessary to have a good understanding of the urban environment in order to justify any differentiation and associated controls through zoning. This may include undertaking the following.

- Identify any unique or localised aspects of the residential environment that may justify different treatment of non-residential activities. Examples include age of housing stock, or any special heritage, visual, landscape or natural values. Another example is proximity to public transport, community facilities or business areas.
- Analyse the results of consultation with residents groups, tangata whenua, or stakeholder groups.
- Acknowledge that, in many cases, operators of non-residential activities may not be part of any local or organised groups, and therefore may be overlooked in consultation or information gathering. In these cases inviting broad-based consultation, such as through regular council newsletters, may be necessary.
- Review resource consent applications, case law and complaints to determine development pressures, conflict and trends.
- Acknowledge that a desk-top exercise will be inadequate, and that field visits to areas subject to non-residential activity applications and pressures, or controversial sites, will be necessary.
- Look at areas which have deteriorated or declined in terms of amenity values and the factors which have contributed to this outcome.
- This information can both help identify both what standards are appropriate, and issues that cannot be addressed through regulatory means.

Regulatory approaches taken in district plans

Regulatory control is likely to be the primary management tool for controlling non-residential activities in residential areas. This is reflected in district plans generally. Plans can adopt an effects-based approach (with little or no identification of particular activities), an activity-based approach, or a combination of both. The approach adopted will have significant implications for the development of objectives, policies and rules. Whatever approach is taken, this will need to be subject to an evaluation under s32 of the RMA. This is particularly important as the Resource Management Amendment Act 2013 provides greater guidance and specificity about what is required in s32 reporting, particularly for the assessment of costs and benefits. These changes to s32 reporting come into force 3 December 2013 (3 months after Royal Assent of the Act).

Plan strategy

- Plan strategies should adopt a top-down approach, beginning with objectives and policies through to zone statements (if applicable), rules and assessment matters. Some plans have quite specific rules which are supported by only limited and very general objectives and policies.
- Decide whether to differentiate between residential and non-residential activities, and then whether to differentiate between different types of non-residential activities. For example, a Council may want to provide church activities and preschools with more generous provisions on the basis that they are argued to serve local needs.
- The Council may wish to provide more liberal standards for different categories of non-residential activities (e.g. for preschools but not for offices). If so, such an approach needs to be justified at a policy level, and the rules carefully drafted to support this. This is important because if the activities have similar effects the Council's intentions may succumb to the 'baseline test'. The permitted baseline is a concept designed to disregard effects on the environment that are permitted by a plan or have been consented to (further information is provided in the guidance note [on writing provisions for regional and district plans](#)).

Objectives and policies

- Objectives should specify desired environmental outcomes (i.e. 'what' is desired) and policies the means (i.e. 'how') to achieve them.
- Avoid circularity in policy wording by supporting non-residential activities, while also pointing out that their potential adverse effects must be avoided. It is more helpful to specify the circumstances in which consent might be favored or discouraged.
- Similarly, wording such as 'avoid, remedy and mitigate' in policies only paraphrases one component of s5, and provides little assistance to decision makers. It should be clear to readers of the plan and to interested residents the



THE RMA QUALITY PLANNING RESOURCE

extent to which non-residential activities are likely to be acceptable in their neighbourhood, and under what circumstances.

Rules - activity-based approach

- Rules need to provide reasonable certainty for both communities and developers. Rules that result in large numbers of existing non-residential activities becoming non-complying and reliant on existing-use rights are likely to be resisted by affected landowners and the business community.
- Special provisions such as scheduling, site-specific permitted activity status, or rezoning could be considered for significant or established existing facilities in these circumstances. These techniques involve identifying existing activities on their sites and having special rules for their operation, protection or expansion.
- Give careful consideration to allowing some reasonable ongoing use and expansion of these activities while ensuring they do not detract from the character and amenities of the residential locality. Specific rules could be applied to ensure minimum setbacks, limiting large scale buildings, signage, etc.
- Failure to provide for larger scale non-residential activities elsewhere in appropriate zones is likely to result in pressure to establish in residential areas on the edge of existing business zones. In this respect a council needs to be realistic about retaining residential zonings in locations where this might be an anomaly, and where amenity values are already compromised.
- In an activity based plan there will be other rules or general activities (e.g. traffic and parking) that apply. These need to be adequately cross referenced.
- If particular categories of non-residential activities are to be discouraged (and this can be justified), give consideration to the consent category applied. If the Council decides a certain activity is unsuitable in a residential area, and is contrary to well focused policies, its categorisation as a non-complying, rather than as a discretionary activity, should be considered. New service stations in a quiet residential area are a potential example of such an activity.
- Controlled activity status will be inappropriate if the council anticipates there may be situations where consent should be declined as controlled activities must be granted under the RMA.

Rules - effects-based approach

In the case of effects-based plans, similar principles apply but are linked to the threshold level set in the rules. For non-residential activities threshold levels may include floor-space limits, traffic generation levels, requirements for continued on-site residential occupation, and noise levels. This approach requires a judgement as to the relative significance of non-compliance and the consequent activity status.

If an effects-based approach is adopted, rule provisions are more demanding to draft and have a particular need for policy clarity. Policies should use phrases such as 'the council will discourage non-residential activities generating traffic levels greater than that anticipated for residential use' rather than 'to avoid, remedy and mitigate the effects of traffic'.

Effects checklist

Thresholds in effects-based plans are quantifiable standards that trigger consent. In activity-based plans they can form the basis of assessment criteria, without necessarily being in the form of a rule. A possible effects checklist is as follows.

- Floor-space threshold
- Noise threshold:
 - Day
 - Night
 - on zone boundaries
- Traffic generation:
 - by category of vehicle (total)
 - day
 - night
 - hourly (peaks)
 - heavy traffic
- On-site residential occupation
- Number of people employed (from offsite)
- Total site area for a non-residential activity (scale)
- Heritage and protected trees
- Size, number and design of signage
- Hazardous substances threshold
- Glare threshold
- Parking:
 - numbers required
 - maximum number threshold (scale)
- Location and safety of access point – standards
- Differentiation in rule thresholds by zone - according to sensitivity of the particular residential environment
- Adequacy of controls relating to certain existing non-residential activities in the residential area
- Specific provisions for any expansion of existing non-residential activities
- Earthworks
- Setbacks from waterways.

A plan need not contain all of these standards, and may include any combination of them. 'Hybrids' between these two models may well be the most practicable approach.

With effects-based plans in particular, it is important that standards are not subjective to the point that the status of the activity is unclear.

Enforcement

Non-residential activities in residential areas are one of the main sources of complaints to councils. This reinforces the need for a clear policy framework in district plans to ensure



THE RMA QUALITY PLANNING RESOURCE

that the public expectations as to what the plan can deliver are realistic. Where standards are set these must be legally certain, so that the plan can be enforced.

Assessment criteria

Assessment matters or assessment criteria can be included in plans to assist decision making on resource consents. Such assessment matters are in addition to and not a substitute for the matters in s104. Assessment matters are not required under s75, but will assist the decision-making process for controlled and discretionary activities, and may be taken into account under s104(1)(c). They are not policies, but provide more detailed guidance, particularly to an applicant as to the factors a Council considers is relevant when consent is required under a particular rule.

Assessment matters can enable the Council to address factors it considers important, but which are too subjective to qualify as rules. For example, assessment matters could take into account factors such as external appearance. This will enable Council to consider whether the non-residential activity looks residential in appearance and is of a similar scale and signal the relevance of this factor to developers.

Definitions

If an activity-based approach is adopted, identified activities will be given particular status within zones (e.g. preschools as a discretionary activity). In this case, although rule drafting is easier, accurate definitions assume critical importance.

Some plans use generic categories (e.g. 'places of assembly') without defining them, or by describing them as comprising education facilities, preschools, spiritual facilities, etc. without defining them. This may lead to difficulties in administering the plan which is why clear definitions are often important.

'Home occupations' are almost universally provided for as permitted activities, although the threshold levels for the establishment as of right (e.g. floor space) can vary.

Non-regulatory approaches

While regulatory intervention is likely to be the primary management tool, other options may assist in managing the effects of non-residential activities. These include:

- private covenants on developments that may restrict certain non-residential activities
- environmental compensation, such as policy incentives for non-residential activities where this might facilitate the retention of a heritage building, protected trees, etc.
- rates relief or the use of a non-complying activities fund to acquire land to enable the removal or modification of unattractive long-established non-residential activities
- design guides
- urban enhancement works, such as street works, street furniture and other neighbourhood improvements, which signal a commitment by to rejuvenating the local community.

Regulatory provisions can be supported by information of an advisory nature made available by councils. Rather than adhering to the 'how to apply for a resource consent' standard guidance. Such advice should relate specifically to non-residential activities, such as homestays, preschools, etc.

The type and content of non-regulatory approaches will be largely determined by the nature and sensitivity of the host community.

The concept of mixed use

For some larger urban areas, increasing emphasis has been given to proactively encouraging a mix of residential and non-residential activities. This is usually associated with new greenfield developments (with associated structure plans), or around major transport nodes in the existing urban area where public transport is a viable alternative and intensification is desirable.

Note that the concept of 'mixed use' means as part of a comprehensively designed development, not the establishment of stand-alone business activities among existing houses in declining residential areas. In contemporary mixed-use developments residential activities are usually established above street level, with compatible low-impact non-residential activities at street level (e.g. cafés, small shops, offices). This is similar to the land-use pattern found in many European cities.

Councils as landowners, and roading and regulatory authorities, can proactively provide for mixed-use development. However, this should be at a rate the host community desires or feels it can accept. Preferred locations are:

- large greenfield sites as a part of a comprehensive structure planning exercise
- areas where housing stock is due for replacement or regeneration; and
- areas readily accessible by frequent public transport.

There also needs to be a commitment by the Council to enhance public spaces in higher-density developments involving mixed uses, particularly in respect to roads, footpaths, street furniture, traffic management, stormwater and sewer upgrading, parking and landscaping.

Section 32 and other methods

The nature of non-residential activities is such that regulatory intervention at a policy and rule level is the only viable method for dealing with the issue.

The objectives of any regulatory intervention need to be subject to a s32 evaluation that considers reasonably practicable options, and efficiency and effectiveness. This evaluation needs to be robust as the Resource Management Amendment Act 2013 now provides greater guidance and specificity about what is required in section 32 reporting, particularly for the assessment of costs and benefits. These changes come into force on 3 December 2013 (3 months after Royal Assent of the Act) and require s32 evaluations to:

- specifically assess the benefits and costs of the environmental, economic, social and cultural effects
- assess the opportunities for providing or reducing economic growth and employment
- quantify the costs and benefits of provisions, where practicable.

When assessing methods, it is important to note:

- If restrictions are proposed that are greater than those set by a national environmental standard, then those restrictions must be justified as part of the assessment.
- The efficiency and effectiveness (of plan provisions) and the link to s 7(b) - 'the efficient use and development of natural and physical resources' still remain.
- There will inevitably be a balancing exercise with amenity effects in terms of s 5(2)(c) and s 7(c).
- Administration and compliance costs are not explicitly mentioned under s 32, but are an inherent component of the effectiveness and efficiency of rules. Councils will need to be cautious in reconciling these issues with the enabling aspects of s5 and s9.

Monitoring

Change within residential areas usually takes place over long timeframes. However, it will be appropriate to undertake monitoring at the time of plan reviews or when major variations or plan changes are undertaken. An exception to this approach may be required if the Council is unsuccessful on appeal, or a major controversy arises over a particular land use. In these circumstances an investigation of what went wrong should be initiated.

The establishment of non-residential activities inevitably involves a balance between economic diversification and enabling community support services on the one hand, and protection of residential integrity, character and amenity values on the other. Some potential methods to measure and balance this issue are provided below:

- A review of complaints and feedback (whether from residents or sector groups) will be one indication of whether this balance is right.
- A review of resource consent applications may also provide information on this issue. Consents granted by the Council that appear inconsistent with the plan (or by the Environment Court on appeal) may indicate that provision for non-residential activities is inadequate.
- Consents granted that are inconsistent with plan objectives may also indicate problems with effects thresholds being too liberal or too restrictive (e.g. noise/traffic generation rules), poor definitions (particularly in activity-based plans), or poorly focused policies on which to base decisions.
- Where particular residential environments are fragile, a review of resource consents and field checks should be undertaken on a geographically targeted basis to see whether the residential integrity of the area is being maintained. Inner-city housing enclaves and areas adjacent to major centres and on arterial routes are particularly relevant in this context.
- Finally, where applications for non-residential activities have been granted, information from monitoring consents and longer-term reviews will provide some indication as to the adequacy of rules. Any rules in the plan need to be sufficiently clear to enable enforcement. Without this, the community may have their expectations of the residential integrity of their neighbourhood undermined.



THE RMA QUALITY PLANNING RESOURCE



newzealand.govt.nz