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A Comparative Study of 
Land Use Planning under the 
Resource Management Act 1991 
and the 
Town and Country Planning Act 1977 

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Abstract

This study examines the hypothesis that the change in land use planning ideology embodied in the Resource Management Act has had a significant effect on the practice of land use planning in New Zealand. The Resource Management Act 1991 represented a major review of land use planning statutes in New Zealand and introduced a new planning ideology of 'sustainable management' drawn from international recognition of the emerging 'sustainable development' paradigm.

A comparative analysis is undertaken of the emerging district plans prepared under the Resource Management Act 1991, and their preceding district schemes prepared under the Town and Country Planning Act 1977, in order to determine the significance of the effects of the statutory change on district planning practice. Five proposed district plans prepared under the Resource Management Act and the preceding district schemes are analysed with respect to two key planning issues: the protection of residential amenities through restrictions on the establishment of non-residential activities in residential areas, and the protection of high quality soil resources through rural subdivision controls.

The conclusions of this analysis are that while the land use planning ideology embodied in the Resource Management Act 1991 represents a significant change, the scope of district planning under that Act is comparable in many respects to its previous form. Local authority planning practitioners have generally retained past approaches to planning controls with respect to these issues in the proposed district plans.
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Finally, I would like to share the following quote which I feel summarises the shortcomings of the prevailing world view:

So you cut all the tall trees down, you poisoned the sky and the sea;
You've taken what's good from the ground, but you left precious little for me; ...
There should be enough for us all, but the dollar is driving us still; ...
It must be the curse of the age, what's taken is never renewed.
Midnight Oil, "River Runs Red" from the album - Blue Sky Mining (1989)
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Chapter 1 - The Research Problem

1.1 The Research Problem

Planners in New Zealand are currently facing the challenge of applying the new land use planning ideology of 'sustainable management' to New Zealand's natural and physical resources under the Resource Management Act 1991 (henceforth the RMA or the Act). This study investigates the effects of the introduction of the RMA on the practice of land use planning as undertaken by local authorities.

To achieve this aim, comparison is made between the way key land use planning issues were dealt with prior to this legislation in district schemes, prepared under the Town and Country Planning Act 1977 (henceforth the TCPA), and in the new district plans prepared under the RMA. Following the comparative analysis of the emerging district plan provisions in relation to these key issues, it should be possible to determine the effects of the RMA on the practice of land use planning at the local government level in New Zealand.

The results of this research will contribute to our understanding of how the practice of land use planning in New Zealand is responding to the challenges of the RMA, and to the new land use planning ideology of 'sustainable management'. Achieving the 'sustainable management' of New Zealand's natural and physical resources is the single and overriding purpose of the Resource Management Act (section 5). As discussed in this study, the statement of purpose and principles in Part II of the Act represents a significant departure from past town and country planning ideologies, and reflects aspects of the emerging global paradigm of 'sustainable development'.

One of the initial tasks of this study was to identify the range of key land use planning issues which have been of particular concern to New Zealand local authority planners over the years. From the wide range of issues identified, two key issues of particular significance emerged. The two key issues selected for this study are of particular significance in the New Zealand land use planning context. They are:
The Research Problem

(a) The protection of the high amenity standards of residential areas from the adverse effects of non-residential activities located in residential areas.

(b) The protection of high quality soil resources from the demands for urban expansion into rural areas, and from extensive rural subdivision.

Both of these issues have been prevalent in district schemes over many years in New Zealand. In urban areas, expansion and diversification of commercial and industrial operations has put pressure on councils to allow certain forms of commercial and industrial activity in residential areas. The prime example of this is a 'home occupation', where a person uses part of their dwelling to carry out their occupation in a residential area. In an attempt to protect the high amenity standards of residential areas from the potential adverse effects of incompatible non-residential activities, councils have introduced measures in district schemes to restrict these types of activities. However, as demonstrated in this study these measures have typically lead to the exclusion of commercial or industrial activities from residential areas, even if the adverse effects of these activities on residential amenities would have been minimal.

Similarly, the pressures of urban expansion onto rural land, and in particular areas of high quality soils, has been a major influence on local authority land use planning policies. Over the years, a number of measures have been developed in an attempt to ensure that only \textit{bona fide} rural activities were established in rural areas with high quality soil resources. In particular, subdivision of land in rural areas has been closely controlled to prevent the loss of productive land to other activities, such as rural residential developments. A range of methods for the control of rural subdivision, and the relative merits of each of these are considered in this study.

By focusing on the way these two issues are addressed in district schemes and the emerging district plans, it will be possible to determine the effects of the Act on the practice of land use planning in New Zealand. With the RMA's emphasis on controlling the effects of development and the requirement for the adoption of any policy measure to be justified, the proposed comparison becomes an interesting and
A Comparative Study of Land Use Planning under the RMA 1991 and the TCPA 1977

challenging exercise. The results of this research will contribute to our knowledge of the practice of land use planning in New Zealand. Conclusions reached will assist our understanding of the adaptive responses of professional planners and local authority policy makers in New Zealand to the challenges of the RMA.

Such a challenge has rarely been faced by the New Zealand planning profession since it has been in existence. While planning legislation has been periodically reviewed in the past, never before has such a comprehensive statute as the RMA, representing a considerable departure from past experience, been introduced. However, as Tremaine has stated:

*It is important to remember that any piece of legislation is no more than an enabling framework. It can, of itself do very little to dictate the quality of planning practice in New Zealand. It can only provide opportunities which people can respond to.* (1990, p.5)

1.2 Objectives and Hypothesis

The specific objectives of this study may be defined as follows:

(a) To determine the theoretical basis for land use planning as an activity of local government in the modern capitalist state, and to examine the sources of legitimacy for planning intervention in the 'public interest';

(b) To examine the traditional ideology and the underlying rationale of the land use planning system as a function of local government in New Zealand, through the evolution of successive town and country planning statutes;

(c) To examine the international forces leading to a shift in the land use planning ideology towards a new environmental paradigm embodied in the concept of 'sustainable development', and to discuss New Zealand's policy response to these forces, leading to the evolution of the 'sustainable management' concept as a new land use planning ideology under the RMA; and

(d) To determine to what extent the practice of planning in New Zealand has adapted to this change in planning ideology, by embracing and implementing the interrelated principles of 'sustainable management' and the 'effects based'
ideology of the RMA, through a comparative analysis of selected key planning policies in district schemes prepared under the TCPA with those of new district plans emerging under the RMA.

The following working hypothesis was adopted to guide the achievement of the above objectives:

The change in land use planning ideology embodied in the concept of 'sustainable management' has resulted in significant changes to the practice of land use planning in New Zealand.

1.3 Methodology

The research problem and objectives discussed above have led to the statement of an a priori research hypothesis for this study. Following this, the first stage of the research methodology is to define the research strategy which identifies the essential nature of the data, and the process by which it was selected and analysed.

The strategy adopted for this study was to select five emerging district plans, prepared under the Resource Management Act 1991 for the purposes of comparative analysis with the corresponding district schemes prepared under the Town and Country Planning Act 1977. While it was originally hoped to be able to select these district plans on the basis of certain criteria, such as population, mix of rural and urban areas, and location, this has not been possible due to many district councils delaying the preparation of their plans for various reasons. The passing of the Resource Management Amendment Act in July 1993 was a significant contributor to these delays. Initial indications, late in 1992 were that a considerable number of district plans were at advanced stages of preparation and that they would be publicly notified during 1993. However, uncertainty regarding the final form of some key sections of the Amendment Act and other difficulties encountered by district councils resulted in many of the district plan review programmes being delayed. The plans selected for this study were some of the first to be publicly notified. Therefore, the choice of district plans for this study has been severely limited and may not be representative of
the range of plans eventually prepared and implemented under the RMA.

The following district plans were notified as proposed plans during 1993 and were accordingly selected for the comparative policy analysis section of this study:

1. Proposed Hikurangi Section of the Whangarei District Plan.
2. Proposed Waikato District Plan.
3. Proposed Auckland Isthmus Section of the Auckland District Plan.
4. Proposed Papakura District Plan: Section One - Rural, and Section Two - Urban.
5. Proposed Kaipara District Plan.

The locations of these local authorities are shown in Figure 1.1. The preceding district schemes prepared under the TCPA for each of these respective local authorities were also obtained to enable the comparative analysis to be carried out. The objectives, policies and rules in the district plans relating to the two key land use planning issues were then extracted and grouped for further analysis. These objectives, policies and rules were often taken from separate sections of their respective plan, such as the section on subdivision or the rules for specific planning areas.

The analysis of policies relating to each of the two key land use planning issues was undertaken by directly comparing the policies between the corresponding district schemes and the emerging district plans. The range of policies relating to the respective planning issue in each of the district schemes were critically compared and contrasted with those provisions relating to the same issue contained in the corresponding district plan. Discussions were undertaken with key individuals directly involved in the preparation of the emerging district plans, with their comments aiding the interpretation of district plan provisions. Those persons interviewed are listed in the Bibliography.

Information for the broader conceptual and historical context of this study was obtained from published and unpublished sources cited in the text and listed in the Bibliography.
1.4 Chapter Outline

The objectives stated above relate to the contents of the following chapters, as each objective is examined in turn, culminating in a comparative analysis of the two significant planning issues in chapters five and six.

Chapter two discusses the historical development of the traditional ideology of land use planning and critically examines the underlying justifications for land use planning. The concept of land use planning as a collective action of the state is discussed with reference to the characteristics and values of land as a primary resource for human activities. Finally the sources of legitimacy for planning intervention are examined, including a discussion of the concepts of the 'public interest', public participation and the goals and values of planners as further sources of legitimacy.

In chapter three the evolution of land use planning in New Zealand is examined with respect to the TCPA, as it defined the statutory basis for the preparation of local authority district schemes prior to the RMA. As a specific manifestation of the traditional land use planning ideologies described earlier in chapter two, the incorporation of planning ideologies in the New Zealand legislation is discussed, and consideration is given to the scope of district planning under the TCPA.

This is followed in chapter four by a discussion of the international forces leading the development of an alternative world view or paradigm for land use planning. The key forces leading to this alternative world view came from many sources including environmental organisations, scientists, economists and politicians. The concepts of sustainability and 'sustainable development' may be considered as products of these forces which have progressively influenced policy making over the last 15 years. The process of resource management law reform drew from these principles to form the overriding objectives of the Resource Management Act 1991. The concept of 'sustainable management' in the RMA and how it relates to the principles of sustainability and 'sustainable development' is then considered.

As a basis for the two case studies in chapters five and six, chapter four also examines the current institutional context of land use planning in New Zealand, including the
institutional responsibilities and the hierarchy of policies and plans under the RMA and the TCPA.

The comparative analysis of selected former district schemes and emerging district plans is undertaken in chapters five and six. While the final chapter summarises the research findings of this study with respect to the hypothesis stated above.
Chapter 2 - The Conventional Rationale for Land Use Planning

2.1 Introduction
Based on a review of published literature, this chapter discusses the historical development of land use planning, and examines the traditional justifications for this activity. From a neo-marxist perspective, the role of planning as an intervention by the state necessary for the continuation of the capitalist society is reviewed. From this viewpoint, the spatial distribution of land use is seen as an outcome dictated by a combination of market forces and political processes. The market provides the means by which individuals, firms and institutions pursue their self interest, and the planning process is the means by which government articulates and pursues intervention for collective wellbeing.

The nature of land in society as a unique resource for all forms of human activity is then considered. Land values and ownership rights, and the influences of planning with respect to these are discussed. The rationale for land use planning is considered with respect to sources of legitimacy for planning intervention including the concept of the 'public interest'.

Finally, the limitations of the land use market and the need for planning intervention to deal with market failure are discussed. An understanding of this broader context of planning as an activity of the capitalist state is necessary for the analysis of the evolution of land use planning in New Zealand undertaken in the next chapter.

2.2 The Evolution of Town Planning
The industrial revolution, in the early nineteenth century, led to a new form of urbanisation based on the capitalist mode of production. Society in the industrialised European city of the mid-nineteenth century was a contrast between the traditional wealth of the land owners, the growing wealth of the industrialists, and the poverty of the masses. Out of this period of rapid social change, pressure for urban improvement
The Conventional Rationale for Land Use Planning

in Europe was brought about by a combination of the political turmoil of the 1830's and 1840's, and the imminent threat of the spread of disease. As such, it may be considered that: "The design and regulation of towns evolved with the gradual consolidation of liberal capitalism." (Low, 1990)

Initially, town planning combined the visions of social reformers and political campaigners, with the views of religious philanthropists, influential landowners, and the practical administrators of the time (Rose, 1984). In different nations, depending on the prevailing social, political and economic conditions, the state intervened at varying levels to guide urban expansion and reconstruction. For example, French town planning became a function of the state in the latter part of the nineteenth century. From this time onwards it undertook construction work, including the development of parks, drainage and sewerage schemes, roads and public transport.

According to Brunton (1984), the development of town, or land use planning in the United Kingdom, has its origins in the movements for social and sanitary reforms of the nineteenth century. Initially, the town planning movement originated from attempts to improve the social conditions in British cities and towns. Social reformers such as Ebenezer Howard and Robert Owen developed physical plans for towns under the ideology of the 'garden city' movement. Their plans aimed to eradicate the social problems of overcrowding, poverty, poor health, unemployment, and insanitary and inadequate living conditions (Robertson, 1986).

The widespread adoption of the ideals of the town planning movement also resulted from the support of professionals, forward thinking businessmen and politicians. These groups considered that the movement offered an ideal mechanism for the promotion of civic investment, and economic growth. At this time the technique of zoning, which had been developed and applied in Germany, was heralded because of its ability to produce a "... more economical and efficient organisation of land use and transportation and for the relief of congestion by planned urban expansion." (Low, 1990, p.17) The zoning technique was adopted by the growing planning movements, in an attempt to satisfy those property interests that sought to protect the value of developed land against the encroachment of undesirable uses, industrialists who sought more
efficient transport networks, and those who considered civic overcrowding as a threat to civil order.

The early years of the development of the town planning profession in Britain were heavily influenced by the professions of architecture and engineering. However, the operational scope for the practice of town planning in Britain was determined by a series of town and country planning statutes enacted in response to the increasing social pressures of the time. According to Rose:

> The rationales for town planning have evolved over time. They have responded to the growth of the industrial city in a characteristically English fashion, reflecting the ideas of the emerging town planning movement: visionary ideas of how town, country, region and even the state might be ‘planned’ to create a better place in which to live. (Rose, 1984, p.32)

British town planning practice was initially concerned with land use, layout, and design. However, in following years practitioners, backed up by legislation, attempted to acknowledge the wider social and economic context within which land use planning operates. Overall it is considered that:

> The town planning movement may be viewed as a search for community and a life-enhancing local environment. (ibid, p.36)

Meanwhile, in the United States it became clear that for effective city planning the authority of the state was required to ensure the implementation of plans. Consequently, land use control became a function of local authorities, federal and state government organisations (Low 1990). Similarly, in the United Kingdom, the regulation of urban development was gradually devolved to local government through a series of Acts initiated in 1901, and culminating with the enactment of the Town and Country Planning Act 1947.

Thus, throughout the western world land use planning evolved as an activity undertaken by state organisations at various levels. Similarly, in the New Zealand experience, as discussed in the next chapter, land use planning evolved as a role of local government through a series of legislation initiated in 1867, but was not widely
applied until the Town and Country Planning Act 1953. In this respect, the New Zealand experience emulated that of its peers, although the planning system which resulted reflected New Zealand's social and political context, and drew heavily on the planning practices of both the United Kingdom and the United States.

### 2.3 The Role of Planning in the Capitalist State

The marxist and neo-marxist theories of the capitalist mode of production form a useful framework for the analysis of the role of planning in modern capitalist states, such as New Zealand. According to Dear and Scott (1981), planning may be considered as an activity which is embedded within society and derives its meaning from the general nature of society as a whole.

From a marxist perspective, the fundamental characteristics of capitalist society are its division into three main classes or social groups (Harvey 1985). The key group is the capitalists who control the means of production, while the proletariat (workers) comprise the masses, whose income is derived from the sale of their labour. As the capitalists are able to exploit the proletariat through the production process, the interests of the two groups conflict. The land owners comprise the third class of individuals in the capitalist society, and their income is obtained in economic rent from the use of land by capitalists and the proletariat. Land owners' interests therefore oppose the interests of the other classes, as both require land as a basis for their activities.

Understanding the social structure of capitalism provides the basis for the examination of planning as a collective action of the state. The state is a necessary social institution within a capitalist society as it provides the stability to prevent class conflict from leading to the downfall of the capitalist system. It is considered that the most important function of the state, is: "... to mediate class conflict in civil society by guaranteeing and legitimating capitalist social property relations." (Scott and Roweis, 1977, p.1102) The four fundamental responsibilities of early capitalist states are outlined by Roweis (1981), as:
maintaining and perpetuating the essential socio-economic institutions of civil society;
securing internal social stability by upholding legal rights, and by legitimate use of force;
preserving and defending national sovereignty; and
administering public works programmes funded by public taxes.

Thus, the state emerges as the collective guarantor of production and reproduction relations in capitalist society. As such, a major role of the state is to facilitate capital accumulation. The central guidance mechanisms within capitalist society are market price levels and profitability criteria, which operate in the context of private and individual decision making. As long as these mechanisms work effectively, societal reproduction proceeds naturally. However, any failure of these mechanisms requires collective action in the form of state intervention (Dear and Scott, 1981).

The two most significant failings of these mechanisms are: in the provision of major infrastructure and goods for collective consumption, and in the recognition of social values in the control and management of land use outcomes. Roweis (1981) considers that the continued survival of the capitalist system requires a measure of collective action, requiring the state to provide public goods such as national defense, education, medical care and other social services, and in particular the enforcement of property rights. The large capital requirements of infrastructure development, and the lack of financial returns on many collective goods, mean that private companies are unwilling to provide these goods and services. Therefore state intervention through the planning system is required to ensure the creation of a socially desirable distribution of land uses through the rational allocation of land between competing activities. It may be considered that:

... urban planning constitutes a sphere of collective political calculations, and it fills a vital decision-making gap within the totality of capitalist society. (Dear and Scott 1981, p.12)

Planning is viewed as a socially necessary state response to the conflicts and failings
within capitalist society. Planning provides a basis for rational collective action by the state, and in modern capitalist states, planning activities have become embedded in society (Alexander 1986). Roweis (1981) outlines the three principle functions of modern capitalist states, which demonstrate the reasons for increased state intervention over time. These functions are:

- to redress grievances and inequalities which emerged from early capitalist society, and to stabilise the social order and prevent class conflicts;
- to mitigate the failure of socio-economic institutions to avoid crises related to market competition, international commodity exchange conflicts, and cyclical economic fluctuations; and
- to organise the provision of public goods, such as educational institutes, transport infrastructure, essential services, and health and welfare organisations.

In modern capitalist states many aspects of planning are so integrated in the public decision making process that they are taken for granted. Planning is an instrument serving the society which it is a part of, and in many ways it has become indispensable for the organised life we know today. Harvey (1985) considers that the main role of planning in a capitalist state is to contribute to the processes of social reproduction by maintaining and managing the built environment. In this role, part of the task of planning is to maintain a balance between conflicting interests in the built environment, and to uphold the 'public interest'.

Given the ever changing nature of the modern capitalist state it is expected that the goals, emphasis and ideologies of land use planning will change over time. Thus, planning ideologies, which are represented by current planning theory, planning education and professional codes of practice, change in response to specific developments and to changes in societal values. As modern society becomes increasingly complex, the requirement for collective action by the state is likely to increase, so that in the future planners are likely to be more involved in the management of societal development (Alexander 1986).
2.4 Local Government as an Organisation of the State

Clark and Dear (1984) consider that local government is both an instrument of the state and a democratic institution in its own right. They define local government as any state entity with political and spatial jurisdiction at a sub-national geographic level, which has the ability to raise revenue and to make expenditure on behalf of the people it represents. The justification for local government is based on the need for long-term social crises avoidance in order to ensure the continuation of capitalist reproduction at the local level. Local government not only provides an essential function for capitalism, it also provides for local self determination in keeping with the principles of democracy.

The relationships between local government and the state show varying degrees of autonomy. As discussed in the next chapter, in New Zealand the state, through Parliament, has passed a range of statutes over the years which define the activities, responsibilities and organisational structure of local government. However, within the provisions of these statutes the level of local autonomy has progressively increased, so that today central government exerts little direct control over the actions of local government.

Local government is considered as the most efficient level for the provision of many public goods and services. As such, local government is responsible for interventions in the local economy which contribute to the reproduction of the capitalist state. These include employment of labour, purchaser and provider of goods and services, and as the primary source of capital infrastructure (Clark and Dear 1984). Activities of local government are legitimised through their direct involvement with the local communities which they serve. Thus, the actions and activities of local government vary in different localities in response to the community's requirements and aspirations. As the local level of the state, local government has a unique position and has delegated state responsibilities which range from the control of land uses to the provision of essential services and infrastructure.
2.5 The Nature of Land in Society

The neo-classical economic view that land is essentially a limited resource, fixed in quantity and scarce in supply contributes to the justification for land use planning in modern capitalist societies. From this perspective, Ratcliffe (1976) considers that land is a resource that possesses certain distinctive characteristics, including the notions that:

- it is immobile;
- land is fixed in quantity and variable in quality;
- each piece of land is unique and therefore irreplaceable by another;
- there are no costs involved in creating it, and in the long run it is not used up;
- land, like most other economic resources, is subject to the law of diminishing returns (after a point additional units of other inputs produce successively lower increases in production).

Unlike capital and labour, land (as a basic factor of production) exists naturally without any human effort (Litchfield and Darin-Drabkin 1980). Because of this and the fact that the characteristics and quality of individual pieces of land are unique, certain areas of land are obviously more suited for particular uses than others:

> Since land ... can be identified as a function of virtually all forms of production, its availability, management and allocation between competing uses is a prime determinant in the economic performance of a community. (Ratcliffe 1976, p.11)

According to Ratcliffe (1976), this is effectively the raison d'être, or the justification, for land use planning and its intervention in the land market. As such, one of the aims of land use planning is to achieve an efficient allocation of land resources between competing forms of production in order to maximise or at least increase the production from, and/or the economic rent returned by land resources.

Rights of Land Ownership

The rights that come with the ownership of land are embodied in the land tenure system. The land tenure system includes the legal, contractual or customary
arrangements whereby individuals and organisations gain access to the use of land resources. With the ownership of land comes what may be considered as a bundle of rights, including the rights: of access, to light and air, to occupy and to develop. The rights and privileges to use land in certain ways are restricted by physical limitations, statutory controls, planning provisions, and the existence of other interests applying to the same area of land.

Ratcliffe (1976) discusses a number of basic rights relating to the ownership of land which may be identified as follows:

(a) Surface right - to enjoy the current use of the land;
(b) Productive right - allows the owner to make a profit from the productive use of land;
(c) Development right - allows the owner to invest capital to improve the land;
(d) Pecuniary right - benefit from the potential development value of land;
(e) Restrictive right - the right not to develop the land and to retain its existing state;
(f) Disposal right - allows the owner to sell or to bequeath the land.

Contrary to popular belief, systems of freehold tenure, such as the Torrens system which operates in New Zealand, do not guarantee the free exercise of these rights. The land use planning system places restrictions on the free exercise of land ownership rights, aimed at controlling the nature and effects of land development.

The placement of these restrictions leads to a conflict between land law and statutory planning. While land law aims to protect the security of title and the exercise of ownership rights to land, the planning system places limitations on the exercise of the those rights. Planning law intervenes in the name of the 'public interest', to allow community interests to restrict and at times dominate the rights of individual land owners. The very existence of planning law represents a manifestation of the conflict between the public interest and the private ownership of land (ibid.). However, the existence of this conflict provides further justification for planning controls over the use of land, since:
Land Value Under Market Conditions
The value of land in a free market is determined primarily by the interaction of demand and supply. The value of a piece of land is determined by a combination of 'transfer earnings' and 'economic rent' (Ratcliffe 1976). Transfer earnings are created because land can be used for many different activities, with the most productive and profitable use of land being determined by the highest level of transfer earnings. The value of transfer earnings is equal to the resultant increase in profit which would accrue by transferring land to another use, and is known as the 'opportunity cost' of land. In turn, economic rent is the return for the scarcity value of land over and above its opportunity cost. Since the supply of land is essentially fixed, the level of economic rent, or economic surplus, gained by the owner of a piece of land, is determined by the demand for the rights to the use of that land. Therefore, a portion of total land value, the economic rent, is unrelated to the actual quality of the piece of land. It is essentially fortuitous and unearned. This concept is fundamental to the analysis of land values and their relationship to planning policy.

Building on this discussion, it may be argued that economic rent is largely dependant on the location and accessibility of a parcel of land. Given the demand for land by various competing land use activities, the search for the optimum location for a land use takes into account the physical proximity of the land to a wide range of services, facilities, markets, and complementary activities. In New Zealand and other capitalist societies, one of the principle determining factors for the spatial distribution of activities is the land use zoning mechanisms of planning process. Therefore, it can be seen that the economic rent component of land value is influenced by planning policies, and is not solely dependant on the actions of the property owner. In fact, it may be concluded that land values are affected by all aspects of the planning process, including economic, social and political influences.
The Influence of Planning on Land Values

The operation of the land use planning system leads to a redistribution of land values, and therefore to some extent wealth, throughout the community. This can either occur directly through the allocation of land for specific public purposes, or indirectly by land use zoning measures, and through the provision of public services and utilities. The implementation of any planning policy or measure will affect the distribution of land values within an area. These effects may be either positive or negative depending on the circumstances. It can be argued that:

...intervention in the market mechanism and the consequent redistribution of land values by way of the planning process is only justified if an overall benefit to the community results. (Ratcliffe 1976, p.29)

However, the end result of planning interventions are often difficult to fully predict. An otherwise well conceived intervention may have unexpected adverse effects. Therefore it is vital that every planning intervention is fully assessed before it is implemented. It is a common New Right criticism of planning that many interventions have been undertaken on the basis of a limited understanding of the prevailing social and economic systems, and have correspondingly failed to meet their objectives. Planners have therefore been advised to take care when implementing policies, especially when there is a limited understanding of the potential economic and social consequences of their actions.

Interests in Land

The concept of an interest describes the relationship between an individual and an object. As land is the focus of land use planning, an understanding of 'interests in land' is significant. According to Healy (et.al. 1988b), the two schools of thought which dominate the planner’s understanding of interests in land are the positivist view and the marxist perspective.

The 'positivist' view looks at interests in land as being in accord with an individual's desires for the use of their land. Because an individual knows what they want to do with their interests in land, they are capable of expressing their preferences through the political system. This view is fundamental to the land use planning system, because
plan-making and decisions are undertaken in line with the expressed consensus view on certain issues. However, certain groups which hold power within the community are often able to dictate to the decision makers. These groups with influence, are commonly referred to as 'actors' in the planning process. Actors in the land use planning process include the following: government agencies, developers, neighbourhood groups, environmental groups, political organisations, and other lobby groups (Healy et.al. 1988b). Often in the planning process the views of these actors are well known, and their interests may be hypothesised in a 'positivist' manner from past experience.

However, because of the dominance exerted by actors in the planning process under the positivist view, this approach is unlikely to accurately reflect the true composition of interests in society. In addition, critics of the positivist view argue that it is not possible to isolate individuals' interests from the social context in which they are created (ibid.). They suggest that the social context of individual and group interests must be examined and understood in the planning process.

According to Healy (et.al. 1988b), the marxist perspective contrasts strongly with the positivist view because it considers that the basis of individual’s interests lie in the structured divisions that exist within society. Marxists consider that interests are not subjectively defined by the individual, rather that interests are imposed upon individuals by the place they occupy in the structure of the capitalist state, as either a capitalist, proletariat or land owner. (Clark and Dear 1984). As the distribution of power between the different groups in society is likely to be unbalanced the state is often required to take the role of mediator to ensure that all interests are equally considered.

Criticism has been levelled at the marxist perspective for being simplistic and over structured. Recent analysis of case studies have determined that non-classed based views are often more critical than class divisions in defining the true interests in land. Such factors as race, gender, religion, social status, and locality tend to cut across class distinctions.
Studies undertaken by Healy (et.al. 1988b) and others have led to a reconsideration of interests in land. This post-structuralist view sees an underlying structure to society which generates interests in relation to the social relations of production. These influence and in turn are influenced by the range of social relations and interests which exist outside the production process. Thus, the marxist perspective is used to set the context for the cultural and locational interests which dominate the formation of interests and are vital for the analysis of planning in action. Healy (ibid.) considers that this approach has considerable relevance, as understanding the mechanics of society enables planners to deduce the range of interests which will inevitably be present in society.

2.6 Sources of Legitimacy for Planning

In defining the rationale for land use planning in a capitalist society it is also crucial to examine the sources of legitimacy for planning action in society, as legitimacy is considered to be a prerequisite of authority (Alexander 1986). As mentioned above, it is commonly considered that the exercise of planning authority, to make collective societal decisions, is undertaken in order to safeguard the 'public interest'. The concept of the 'public interest' is considered as one of the primary sources of planning legitimacy. Other common sources of legitimacy are public participation in the decision making process and the goals of the planning profession.

A. Planning as a Servant Of The Public Interest

Land use planning is generally undertaken in order to protect the so called 'public interest'. Where the 'public interest' represents an aggregation of all the values of the community, and forms the agreed-upon set of goals and objectives towards which the planning system is expected to work (ibid.).

Land use planning interventions are often justified in the name of the public interest. These interventions may be negative or positive. One of the main forms of intervention is the use of regulatory measures. These include limiting the risks to public health and safety through the regulation of location, density, bulk, use, and the forms of construction allowed in land development. However, the most widely
recognised land use control is the land use zoning technique, combined with subdivision regulations and the reservation of land for roads and public facilities.

For planning purposes nine elements of the public interest have been identified by Chapin and Kaiser (1979):

- public health
- public safety
- convenience
- efficiency
- energy conservation
- environmental quality
- social equity
- social choice
- amenity values

These are briefly discussed below.

(i) Public Health and Safety
Public health and safety considerations were responsible for the development of early land use planning systems towards the end of the last century. Although they may be considered as separate elements of the public interest, they are usually linked together. In order to prevent the development of conditions injurious or hazardous to the physical wellbeing of the community, state intervention is required to introduce regulatory measures such as building codes, health regulations and subdivisional and development standards. While these measures are not all placed through the land use planning system, they are complementary to the provisions of the planning system and seek to achieve the same end result.

Recently, emphasis has also been given to improving public health and safety by planning for and building these considerations into the physical environment. It is in this role, directing the development of the built environment, that land use planning in western cities has sought to influence public health and safety. This type of planning may be considered as acting positively for society, as it seeks to improve the standards of the built environment, and enabled the development of more socially desirable living conditions.
(ii) Convenience
According to Chapin and Kaiser (1979), convenience, in the land use planning sense, is a derivative of the spatial arrangement of land uses and the relationship between those land uses. Thus convenience may be judged in terms of home-to-work, home-to-recreation and a variety of other spatial relationships intrinsic to the land use pattern. Convenience is typically measured in minutes of travel time.

In addition to the locational factor, convenience is also related to the intensity of land development, that is the level of land occupation and the density of that occupation. Obviously a spread out pattern of development and low population densities will tend to increase the time/distance relationships between different areas of land uses. Thus, the intensity of development and the distribution of land uses are fundamental to the concept of public convenience.

While health and safety considerations normally indicate that low order density is desirable, convenience requirements tend to favour higher order densities. This contradiction does not necessarily lead to conflict. However, it does require that a balance be achieved in the land use planning process.

(iii) Efficiency and Energy Conservation
Efficiency and energy conservation are closely interrelated, so they may be discussed together. Efficiency is related to the public cost implications of land use planning. It has to do with land development from a community viewpoint, rather than from the individual developer's perspective. The basic concern is to determine what spatial land use arrangement is the most efficient and least costly to the community as a whole. As energy sources have become increasingly scarce over recent years, the importance of having an energy-efficient pattern of development has become significant (ibid.). The location of new residential areas close to existing services such as schools is a logical application of efficiency in land use planning.

(iv) Environmental Quality
In the past, public concerns regarding environmental quality have been incorporated into public health and safety concerns. However, with the growth of the environmental
movement since the early 1970's, environmental quality has become an element of the public interest in its own right. Widespread public concern, relating to the effects on the environment from rapid population growth and resource depletion, have increased the consideration of environmental issues as important considerations in land use planning. In addition, local environmental degradation arising from air and water pollution, high noise levels in urban areas, and habitat destruction have become significant concerns in local land use planning conflicts (Chapin and Kaiser 1979).

(v) Social Equity and Social Choice
Chapin and Kaiser (1979) consider that the issues of social equity and social choice both involve fundamental issues of human rights. Social equity concerns giving people equal opportunities for access to the necessities of life: shelter, education, employment and a fair distribution of the benefits and costs of societal development. Social equity includes not only equal access to education, recreation, health care and other services provided by tax funding, but also the right for equal employment opportunity and legal rights without prejudice. Similarly social choice concerns the range of opportunities among which choices are made, and the participation of all groups in society in the decision making process including minority groups.

(vi) Amenity
Amenity is one of the major concerns of land use planning in western cities. Amenity refers to the pleasantness of an area as a place in which to live, work and spend one's leisure time. It can be considered as a community's perception of its surroundings, including the aesthetic appearance and the comfort and enjoyment offered. Amenity as a social objective of land use planning, has become increasingly important as we seek to improve general public health and mental well-being (ibid.). In modern societies:

Social concern about the amenity and appearance of things is now firmly directed towards environmental health and safety objectives: keeping cities clean, renewed urban fabric, maintaining cultural and historic links with an illustrious heritage of the city as artefact and memory by the recycling of building fabric. (Rose, 1984, p.38)
It is often difficult to define amenity standards accurately in land use planning because of the subjective nature of people's aesthetic tastes. Because of the problems in obtaining public consensus on desired amenity features, controlling amenity through the land use planning system can be difficult. In societies such as New Zealand, amenity concerns may be relatively accurately predicted, and have particular importance in the urban environment. However, they are often balanced against other elements of the public interest.

B. Public Participation

Public participation in the planning process means the involvement in the decision making process of those individuals, groups, interests, organisations, and communities who might be affected by its outcomes. Public participation is closely related to the concept of the 'public interest'. According to Alexander (1986) the planning process and its outcomes will be in the public interest if all the affected groups have had access to the planning process and have been involved in making the relevant decisions.

Since the institutionalisation of local planning activities in local government, public participation has been emphasised as a means of giving planning the legitimacy demanded by the process of rational administrative and political decision making. Public participation can serve a variety of purposes, including increasing the public's trust in local government decision making and consequently their acceptance of the resultant planning decisions.

Another view of public participation is that it empowers groups and individuals in the community to directly influence those decisions which may affect their quality of life. There are many techniques of public participation including: public meetings, hearings, community boards and surveys. Test of good public participation in the final analysis, is determined by what extent the decisions made reflect the communities goals and aspirations.

C. Goals of Planning

Difficulties in defining the true nature of the public interest makes it hard to consider this as the ultimate goal of planning. Faludi (1973), having considered the range of
planning objectives, proposes that the goal of planning is the encouragement of human growth. As the desired outcome of planning, this goal may be considered to be logical as it encompasses all other objectives of planning.

Faludi (1973) considers that the rationale for planning is the promotion of human growth through rational procedures of thought and action. He defines human growth as "the fulfilment of an increasingly diverse range of goals" (ibid. p.40).

According to Faludi (1973), planning is concerned with guiding the future direction of growth, rather than letting the human race drift into the future, or have no future at all. The rational planning process, whereby problems are defined, alternatives are generated and the consequences of these are predicted prior to selection of the most suitable alternative, may be viewed as a vehicle for the process of growth in society. Awareness of the considerations given and choices made during the rational planning process, are fed back into the system along with the measured outcomes of past actions. These in turn increase knowledge and add to the capacity for future growth.

Faludi's perspective has been criticised by Alexander (1986), who considers that human growth should not only be the ultimate goal of planning but of all societal activities. In Alexander's view, the universal application of the goal of human growth makes it an impractical goal for the planning profession, as it would not be practical to measure the success or failure of planning actions against this goal.

Alexander (1986) suggests that an operational goal for planning may be expressed as the maximisation of the choices open to all groups in society for their present and future growth. The achievement of equity in society is tangible enough to be applied for the evaluation of planning action in the public interest, and in comparing the impacts of policy options. Given the problems in reaching a consensus on the goals of planning in society, it is recognised that planning is often little more than a mechanism for change. Whether planners allow change in society by maximising choice, or whether changes in society lead to a change in the planning process, may in the final analysis be dependant on circumstance.
2.7 Conclusion

The discussion above reviews the conventional justifications for land use planning at the local authority level.

Theoretically the market, under perfect conditions, represents the most efficient and effective allocation of land and other resources between various competing uses. However, it does not take into account the full costs and benefits of individual's actions on society as a whole. The neo-classical economic view considers that the operation of a market will lead to the most effective allocation of resources, and that it should be left to operate naturally as long as possible (Roweis and Scott 1981). Public intervention in the operation of the market is justified if, and only if, the market fails to achieve an optimum allocation of goods.

An 'externality' arising from individual or group action is an example of market failure. Externalities may have beneficial or adverse effects on society that lie beyond the consideration given to the original action. Environmental pollution is the classic example of an adverse external effect arising from others' actions. Such effects are called externalities because they are not incorporated into the costs of production, and are therefore not passed onto the consumer. The existence of free market competition provides an incentive for such effects to remain external to the market price of a particular good. Public interventions, such as zoning or environmental controls, are therefore required to mitigate these effects. With respect to externalities:

Private owners of land can have considerable freedom but group action is needed to discourage activity which may prove injurious or costly to the owner ... neighbours and ... society at large. (Robertson 1986, p.33)

The free market also has other limitations, such as the emergence of monopolies. A monopoly occurs when an individual organisation is the sole producer of a good, or the sole provider of a service (Syme and Stewart, 1988). The consumer therefore must accept the price set by the monopoly, and is unable to turn to a competing firm for a different price or a substitute. To prevent monopolies from setting high prices in the absence of competition, governments are forced to regulate them as public or private
The government will supply some services, such as street lighting, for the mutual benefit of all citizens. These are termed public goods and are equally available to everyone, whether or not they have the ability to pay. Governments will also undertake the provision of merit goods to society. These are goods, such as education, which confer a greater benefit to an individual than they would be willing to pay for (Alexander 1986). Because of the long term benefit of merit goods to society as a whole, merit goods are provided free or at a portion of their market cost, with the funding deficiency being made up from taxes.

In each of these situations public intervention is justified to correct the deficiencies of the free market. Each intervention in the market will require a planned action either through direct intervention by local government, or planning controls. With respect to land use, Healy summarises this need as follows:

*The demand for strategies for managing land use and environmental change thus rests as much on the search for improved production and investment conditions as on the concern for social welfare and environmental quality and amenities ... The conflicts which arise over land use and environmental change are as likely to be between economic interests, as between economic, environmental and welfare values. Hence, a major function of a land use planning system is the mediation of conflict between conflicting production and consumption interests in respect of how land should be used and developed.* (Healy et al. 1988b, p.10)

Thus, the aim of land use planning as an intervention in the operation of the land market, is to promote the orderly development of land, minimise the depletion of its resources, and to anticipate and resolve land use conflicts in the public interest.

In addition to market failure as a justification for planning intervention, the three sources of legitimacy for planning action provide further explanation of the rationale for land use planning in capitalist societies. The public interest, while potentially difficult to define, remains one of the main sources of legitimacy for planning intervention. Each of the separate elements of the public interest discussed above add to the considerations which need to be incorporated into the land use planning system.
Public participation is a valuable technique of seeking consensus views on the desired outcomes of planning intervention, and aids in the legitimisation of planning action. Finally, the goals and values of the planning profession provide the third source of planning legitimacy.

The broader understanding of planning, as a necessary state intervention in the land market, gained from this review of published literature forms the basis for the analysis of land use planning as a function of local government in New Zealand undertaken in the following chapter.
Chapter 3 - Town and Country Planning Legislation

3.1 Introduction
The development of the town and country planning system in New Zealand has its origins in some of the early legislation passed in the young colony during the last century. However, it was not until 1926 that the first specific planning legislation - the Town Planning Act 1926 was passed. Following the passing of that Act, which made planning a function of local government in New Zealand, Parliament progressively amended and improved the provisions and powers of local government planning through the Town and Country Planning Act 1953 and the Town and Country Planning Act 1977. These Acts firmly established land use planning as a delegated function of local government in the New Zealand context, emulating the processes followed by other western capitalist nations.

3.2 Early Planning Legislation
The first legislation which brought together a range of local government functions in relation to the built environment was the Municipal Corporations Act 1867. It covered such matters as the width of streets, sewerage, lighting, water supply, markets, community buildings, and reserves (Robinson 1981). However, the first legislation to actively regulate the built environment was not enacted until the Plans for Towns Regulation Act 1875. It applied to the laying out of towns, controlled the width of new streets, and made provision for reserves, rubbish disposal areas and gravel pits. Even though the Act was quite limited in application, its intent was clearly aimed at achieving a better built environment, and reflected the growing concerns relating to the problems of urbanisation experienced in other western nations as discussed in chapter two.

The evolving planning movements in both the United Kingdom and the United States of America in the early 1900's influenced, and led to the establishment of societies promoting the town planning movement in New Zealand. Following the experiences of urban squalor in many European and American cities, living conditions and public health problems were subjects of public concern in New Zealand's larger and
expanding cities of the time, particularly in Auckland and Dunedin (Memon 1991). The passing of the first British Town Planning Act in 1909, and the growing interest in amenity improvements and town planning, helped to focus public and political concerns towards the need for comparable legislation in New Zealand. Unsuccessful attempts were made in both 1911 and 1917 to introduce a town planning act. So it was not until 1926 that the first Town Planning Act was passed.

Town Planning Act 1926
The Town Planning Act 1926 came into force on 1 January 1927. It required each city or borough council in New Zealand with a population of more than 1000 people to prepare a town planning scheme. Section 3(1) of the Act stated the general purpose of a town planning scheme to be: "... the development of the city or borough ... in a way as will most effectively tend to promote its healthfulness, amenity, convenience and advancement." (Robinson 1981) This clause defined the general scope, and reasons or rationale for planning under the Act and incorporated many of the elements of the 'public interest' discussed in chapter two. The statute was the first to introduce the method of land use zoning to New Zealand by requiring local authorities to define "... areas to be used exclusively or principally for specific purposes or classes of purposes." The application of land use zoning under the Act was intended to regulate the use of privately owned land to protect the 'public interest', while at the same time providing a high level of certainty regarding the acceptable uses of land.

The Act was limited in operation largely because of central government and local authority inertia, but also because the courts found that local authorities were able to utilise the Act without fully accepting its responsibilities or undertaking the preparation of a district scheme. A further reason for the limited implementation of the Act was the retention by central government of the power to approve district schemes prepared by local authorities. This was under the responsibility of the Town Planning Board, a board headed by the Minister of Works to approve schemes and to consider any applications for exemptions or changes. The retention of the power to approve district schemes was interpreted by local authorities as a threat to their autonomy, and as an unnecessary action by central government. However, from the central government point of view the retention of this power related to the perceived
lack of political and technical ability within local authorities to carry out this function (Memon 1991). Consequently, in both central and local government, there was a distinct lack of political will to facilitate the implementation of the Act. Because of these factors, the time frame for preparing town planning schemes under the Act was extended progressively from 1930 to 1937 in an attempt to encourage more councils to prepare schemes. However, during this period the Depression, followed by World War II, meant that the government was too preoccupied with major issues to be concerned with the implementation of town planning legislation. Therefore, by 1953 only one city and twelve boroughs had approved schemes in operation.

The Town and Country Planning Act 1953

In the post World War II years, the rate of urbanisation and town development throughout the country increased rapidly, and interest in town planning was renewed. Much of the urban growth at this time occurred incrementally, and as a result of private investment and development decisions, rather than under the direction of the fledgling planning system. During this period, many rural areas adjoining established urban centres were developed into new residential suburbs. Consequently, in recognition of the nation's heavy reliance on the agricultural sector, a new area of policy concern emerged: the need to protect high quality rural land from uncontrolled urban expansion (ibid.). By the early 1950's, the need for revised planning legislation became apparent, and the momentum created by this unprecedented urban growth lead to the enactment of the Town and Country Planning Act 1953.

The 1953 Act represented a significant improvement on past legislation, and provided the basis for the establishment of town and country planning as a significant activity of local government within New Zealand (Robinson 1981). As such, it laid the foundation of the New Zealand planning system (Palmer 1977).

The 1953 Act introduced a general requirement for all local authorities to prepare district schemes, either alone or in combination with another authority. Unlike its predecessor, local authorities were empowered to prepare and approve their planning schemes. The role of the Town Planning Board was revised, and it was replaced by an independent planning Appeal Board with jurisdiction limited to the hearing of
appeals, and to dealing with applications for departures to the scheme (Palmer 1977). The Appeal Board was headed by a legally qualified chairperson, heralding the increasing involvement of the legal profession in the planning system.

The 1953 Act placed a greater emphasis on the need for comprehensive planning of the local environment. The purpose of district planning under the Act was stated in section 18, as follows:

Every district scheme shall have for its general purpose the development of the area to which it relates ... in such a way as will most effectively tend to promote and safeguard the health, safety, and convenience, and the economic and general welfare of its inhabitants, and the amenities of every part of the area.

The importance of health, safety, convenience, economic and general welfare, and amenities as legitimate goals of district planning, as discussed as elements of the 'public interest' in chapter two, was demonstrated in many of the Court decisions which followed under the Act. In addition to these considerations, the Second Schedule of the Act specified certain matters to be dealt with in planning schemes. These included public access and transport efficiency considerations. Amenity controls were required in relation to the regulation and control of advertising, and recognition was given to the need to preserve objects or places of historical or scientific beauty, or of natural interest. Overall, these matters and considerations defined the scope and purpose of land use planning under the Act and are related to many of the purposes of public intervention discussed in chapter two.

Under the 1953 Act, the format of district schemes was specified to comprise three basic parts. These were: the scheme statement which included a description of the purposes of the scheme, the code of ordinances which specified the policies, objectives and rules of the scheme, and finally the maps which illustrated the zones and any proposed infrastructural developments. Statutory regulations were published which provided a model for the formulation of schemes. These were widely adopted and unfortunately resulted in a high level of uniformity between district schemes throughout the country. The schemes prepared under this Act could typically be
described as land use control plans in which existing activities were recognised in basic land use zones, and which aimed to consolidate the existing patterns of development (Palmer 1977). The Act provided for the ongoing review of schemes after a five year period of operation, which placed some onus on local authorities to continually seek to improve the standards of their district schemes.

The use of zoning as the primary mechanism for restricting private development rights through public intervention was reinforced by the 1953 Act. For each defined zone, the scheme identified a range of "predominant" uses, which could be established as of right, and a similar range of "conditional" uses, which may be established at the councils discretion. Within the stated range of predominant uses, there were few restrictions placed on the development rights of land owners. Significantly, rural land uses, such as agriculture and forestry, were typically excluded from planning controls under rural zone ordinances.

Planning practitioners became more widely employed by local authorities during this period, and assumed the role of professional advisors to the elected representatives. Increasing resources were made available for the completion of planning tasks, and planners drew upon overseas experience in search of techniques applicable to the New Zealand context. However, the involvement of the legal profession in the planning system also increased significantly during this period. According to Memon (1991), the district scheme came to be considered as a legal document, which could be challenged at council hearings, and ultimately through the courts on the merits of the land use restrictions it placed. Consequently, and to the detriment of the evolving planning system, the planning Appeal Board supported this adversarial approach to the settlement of planning disputes. The legal side of planning became involved with the protection of private rights and interests in land, while public rights in land were largely overlooked. Their arguments were based on the principles that the rights of individuals, as land and property owners, should not be restricted by local authority intervention, as discussed in chapter two. The accumulation of case law under the Act served to emphasise to local authorities the significance of respecting private land use rights in the preparation and implementation of planning controls (ibid.).
Because of the emphasis placed on the protection of private land use and development controls, many of the planning schemes prepared by local authorities tended to recognise and confirm existing development trends, while placing minimal controls on their most obvious adverse effects. For these reasons, according to Memon: "... public intervention by local government may have merely served to perpetuate the status quo and benefit largely those with vested interests." (1991, p. 26)

Significant amendments were made to the 1953 Town and Country Planning Act in 1973. These introduced a range of "Matters of national importance", which were required to be recognised in district schemes. The "Matters of national importance", were a form of central government policy directive, and set out specific considerations for district planning including: the preservation of the natural character of the coastal environment, the avoidance of encroachment of urban development onto land of high value for the production of food, and the prevention of sporadic urban subdivision and development in rural areas. The introduction of these matters of national importance showed a statutory recognition of the changing emphasis of land use planning in the early 1970s. The 1953 Act now incorporated a wider range of environmental concerns in addition to it's traditional focus on directing the physical form of urban development. Subsequently, following the review of the Act in 1977, the range of environmental concerns and values represented by the "Matters of national importance" clause were broadened and given added emphasis to become overriding considerations in land use planning decision-making.

3.3 The Town and Country Planning Act 1977

The 1953 Act was substantially reviewed during the mid 1970's to incorporate the growing environmental concerns of the time, and resulted in the enactment of the Town and Country Planning Act 1977. It is this Act, and the district schemes prepared under it, which provide the basis for the case studies undertaken in chapters five and six of this study.

Under the Town and Country Planning Act 1977 (hereinafter referred to as the TCPA) every council was required to prepare and implement an operative district
scheme for its district. In addition the revamped matters of national importance, stated in section 3(1) and discussed below, the purpose of planning under the Act was specifically stated in section 4(1) to require that:

... subject to section 3 of this Act, regional, district and maritime planning ... shall have for their general purposes the wise use and management of the resources, and the direction and control of the development of a region, district, or area in such a way as will most effectively promote and safeguard the health, safety, convenience, and the economic, cultural, social and general welfare of the people and the amenities of every part of the region, district, or area.

While section 4(1) clearly defined the purposes of local authority land use planning under the Act, section 36 defined the format of district schemes. As such, section 36 required that every district scheme comprised the three basic sections previously introduced by the 1953 Act, which were as follows: the scheme statement, code of ordinances and the district planning maps.

The scheme statement included a descriptive analysis of the planning area, and outlined the natural and cultural resources of the district. It also contained a planning strategy for the area, expressed as a series of objectives and policies for the achievement of these objectives.

The code of ordinances comprised a series of control measures and specified the different land uses permitted within each defined zone. It also specified the standards for subdivision, restrictions on building size and location, vehicle access and parking, and amenities in each zone.

Finally, the district planning maps identified the extent of the various zones in the area, the designated areas for public works, and other identified proposed public developments. The planning maps effectively defined the areal restrictions which applied to parcels of land as a result of the scheme. The primary land use zoning classifications present in the majority of district schemes were: rural, residential, commercial and industrial. However, many schemes extended these by classifying different subsets and variations of these basic zones.
Under the Act, appeals on council decisions continued to be taken to the Appeal Board, now renamed the Planning Tribunal. Rights of objection to planning applications, and ultimately of appeal to the Planning tribunal, were widened to include not only those individuals directly affected by a proposal, but also any person representing some relevant element of the 'public interest' (Memon 1991).

3.4 Planning Objectives under the TCPA

Sections 3(1) and 4(1) stated the fundamental planning principles of the Act. The wording of these sections is examined in an attempt to understand their implications to the practice of district planning. In addition, statements from key legal judgements which assisted in defining these provisions are used to illustrate the legal interpretations given to them by the courts. This review will assist with the case studies in chapters five and six, by providing an understanding of the framework under which district schemes were prepared under the TCPA.

A. Purposes of Planning

Initially, we shall examine those purposes of district planning which were stated in section 4(1) of the TCPA. The "wise use and management" of resources, is the first and one of the most significant purposes we may draw from this section. It implies that the role of planning under the act required a balance to be made between the development and management of resources, where management may be considered to include not only the use of resources, but also suggests the possibility of conservation or protection of resources. The use of the word "wise" in this clause implied that local government decision makers were expected to show reasoned judgement when placing controls on development within their schemes, and when considering applications for proposed land uses. The "wise use and management" of resources was also specified as a matter of national importance in section 3(1), and the legal interpretation of its meaning is included in the discussion of that section below.

The next purpose of section 4(1) may be considered as the "direction and control of the development" of an area. This clause effectively enabled councils to promote development within their territories, and encouraged active participation and
intervention in the development process. The Act also required that these purposes were undertaken in a way that would "most effectively promote and safeguard" a range of matters including health, safety and amenities, incorporating many of the elements of the 'public interest' discussed in chapter two. By stating that these powers should be exercised in the most effective way, Parliament emphasised the responsibility of local authorities to act in the best interests of their local communities. However, the limitations of council's powers to actively intervene in the direction of development were stated by the Planning Tribunal in the case Environmental Defence Society (EDS) v Mangonui County Council, decision A3/86, as follows:

*A district scheme can only define the nature and form of development; it cannot define the steps to be taken to ensure that there will be beneficial economic and social effects on the community.* (Sheppard 1991, p.14b)

The final range of purposes encompassed the promotion or safeguarding of the "health, safety, convenience, and the economic, cultural, social and general welfare of the people and the amenities of every part" of the area. The use of the word *promote* implied an active duty, whereas *safeguard* may be interpreted more passively, in the sense that no action by a council may have safeguard certain resources or values. The range of matters to be either promoted or safeguarded was broad, but strongly oriented towards human activities. Health, safety and convenience are all elements of the 'public interest', as discussed in chapter two. While the reference to economic, cultural, social and general welfare implied consideration of the elements of social equity and social choice, as also discussed in chapter two. However, the reference to economic welfare went beyond these issues of human rights, and again implied that economic development should be provided for in the provisions of district schemes. The final reference to amenities in this clause reinforces the focus of land use planning in New Zealand on amenity considerations, following their initial introduction in the Town Planning Act 1926, and is examined further in chapter five.

B. Matters of National Importance

The matters of national importance were stated in section 3(1) of the Act, and were required to be recognised and provided for in the preparation, implementation and administration of district schemes under the Act. The Act stated the "Matters of
national importance, as:

(a) The conservation, protection and enhancement of the physical, cultural, and social environment;
(b) The wise use and management of New Zealand's resources;
(c) The preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development;
(d) The avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food;
(e) The prevention of sporadic subdivision and urban development in rural areas;
(f) The avoidance of unnecessary expansion of urban areas into rural areas in or adjoining cities;
(g) The relationship of the Maori People and their culture and traditions with their ancestral land.

The matters of national importance above provided the basis for local authorities to take a broader and more environmentally oriented approach to the preparation of district schemes than had been attempted in the past. The matters of national importance provided considerable direction for the exercise of planning powers by listing those matters which were considered by Parliament to be nationally significant. The requirement that the matters of national importance be recognised and provided for essentially made them not only the primary considerations, but also guiding principles for the preparation of the ensuing planning documents. The use of the word "shall" in this section made it mandatory for planning authorities to have regard to these matters when exercising their powers. It is therefore clear that the matters of national importance were intended to have a wide application in the planning process.

According to Sheppard (1991), the matters of national importance were to be given greater weight than the district goals set under section 4(1), which were considered as subordinate to them. When more than one matter of national importance applied to a particular planning proposal, the following interpretation from the case EDS v Mangonui County Council [1989] 3 NZLR 257 clarified how any conflict should be considered:

Where there is, in a particular case, a conflict between the matters of
Looking at the clauses of section 3(1) in turn, it is possible to group the matters listed for analysis. Section 3(1)(a) emphasised the need for land use planning to provide for the "conservation, protection, and enhancement of the physical, cultural and social environment". By listing this as a matter of national importance, Parliament gave recognition to changing public perceptions with respect to the potential for land use planning to influence the development of local communities. These considerations were broad based and wide reaching, encompassing not only the importance of conservation and protection of the physical environment, but also extended the scope of land use planning to incorporate aspects of the cultural and social environment. In addition, the reference to "enhancement" gave recognition to the powers of land use planning to achieve positive improvements to the built environment.

The following case extract shows how the Courts interpreted section 3(1)(a) relating to the physical, cultural, and social environment. The Tribunal concluded in Orton v Taupo County, decision A93/84, that:

In pursuing the conservation, protection, and enhancement of the physical, cultural and social environment, account must be taken of the needs of all New Zealanders. (ibid. p.10a)

Thus, through its interpretation of section 3(1)(a), the Tribunal emphasised the broad range of considerations encompassed by these matters, and specifically directed that the section should not be overridden by the sole consideration of individual needs.

One of the most important planning principles applicable under the TCPA was stated under section 3(1)(b), and repeated the concept of the "wise use and management" of resources also stated as a purpose of planning under section 4(1). The "wise use and management" of resources became one of the key objectives of planning under the TCPA, resulting in most local authorities pursuing through their plans a primary objective of "promoting the wise use and management of the District's resources."
discussion of section 4(1) above, hinted at the possible interpretations and implications of this phrase. However, more specific understanding of its application may be obtained from those legal interpretations which referred specifically to the meaning and application of sections 4(1) and 3(1)(b). Justice Chilwell gave probably the clearest interpretation of the purposes of planning under section 4(1) in the case *Environmental Defence Society v Mangonui County Council* (HC), Wellington, decision M573/86, stating that:

*The Act is confined to land use planning, aimed at facilitating development or directing development to take place in particular areas; it is not concerned with planning in a wider sense, including economic planning. The phrase "New Zealand's resources" has to be interpreted in that context, in which it means the country's stockpile of actual and potential benefits associated with or arising out of land or other physical features of the environment affected by the planning process.* (Sheppard 1991, p.10a)

In this interpretation of section 4(1), the emphasis was placed specifically on land use planning, and the facilitation or direction of development. It excludes the ability to plan in a wider social or economic sense under the Act. In relation to the elements of the 'public interest' discussed in chapter two, this interpretation confined the scope of planning under the TCPA to the formulation or direction of land uses and development, and specifically excluded socio-economic planning. This narrow interpretation of section 4(1), effectively established the limits of the Act's scope, by relating it specifically to land use planning.

The following extract from *Smith v Waimate West County Council* (1980) 7 NZTPA 257 gave guidance to the relevance of section 3(1)(b) with respect to district schemes, as follows:

*The section requires that a district scheme be so drawn up and administered as to take notice of and make provision for the wise use and management of resources. That is to enable and permit resources to be wisely used, not to determine or direct that they shall be so used.* (ibid. p.10b)

Thus, the Tribunal emphasised the protection of private land use rights, as discussed in chapter two, by restricting the powers of local authorities to making provision for
the wise use and management of resources, rather than directing the use of private property.

Section 3(1)(c) was directed at the protection of the coastal environment and the margins of lakes and rivers. This section emphasised the concerns of Parliament had with respect to the conservation of these two important areas of New Zealand's natural environment. The reference to unnecessary subdivision and development demonstrated a concern for the protection of the natural character of these areas, and may also have incorporated concerns relating to the potential for damage arising from natural hazards in these areas.

The following relevant case law helped to clarify the application of this section. In Adamson Taipa v Mangonui County Council, decision A134/80, it was held that the question raised by section 3(1)(c) was whether the development proposed in the coastal environment was a necessary development; and that the availability of alternative sites was relevant only to the necessity or otherwise of developing in the coastal environment. Similarly, when considering the difficult problem of balancing conservation and development in the coastal environment in Bayly v Bay of Islands County Council, decision A88/81, the Tribunal considered that:

There are some activities which need not take place in the coastal environment and which should be excluded therefrom. But the coastal environment is there to be enjoyed and appreciated, and that cannot occur unless the community is given access to it. Often the question is one of deciding whether the form of development proposed is one which will enhance the enjoyment and appreciation of the coastal environment without damaging the very qualities which the community seeks to preserve. (Sheppard 1990, p.12)

These decisions demonstrate the recognition given by the courts to the scenic and conservation values of coastal areas. By applying this section to preserve the natural character or coastal land, and directing proposed developments to alternative sites, the courts have adopted a strict interpretation of this particular clause.

Sections 3(1)(d), (e) and (f) all referred to the need to control the spread of urban
development into rural areas, or onto land with a high actual or potential value for the production of food. These sections took the perspective that this land should be protected for its productive value, and that the most desirable use for New Zealand’s high quality soil resources was for the production of food. They also showed a distinct concern for unnecessary or sporadic urban expansion either into rural areas or at the fringes of existing urban areas. The inclusion of three sections specifically addressing these issues, and the reference to unnecessary subdivision in section 3(1)(c), show that at the time the legislation was enacted these matters were of considerable concern. Many court decisions were given which addressed these issues in various contexts. In *Cochrane v Franklin County* (1979) decision A20/79, the Tribunal considered that one of the guiding principles for land use planning is that proposed land use should be related to the intrinsic capabilities of the land resource. While, in the most comprehensive commentary on section 3(1)(d), in the case *Annan v National Water and Soil Conservation Authority and the Minister of Energy* (1980) 7 NZTPA 417, the Tribunal considered that:

> Anyone wishing to use land having a high actual or potential value for food production in a way which would destroy that value would be required to demonstrate in a positive manner that the proposed use is of such importance or necessity as to outweigh that value. (Sheppard 1991, p.13)

Overall, the emphasis placed on the protection of high quality rural land under the Act provided a clear directive to local authorities to incorporate these principles into their district schemes, as is apparent in the analysis in chapter six.

Finally, section 3(1)(g) was significantly the first reference to the need for Maori values to be taken into consideration during the decision making process. According to Sheppard (1991), in the case *Brighthouse v Dannevirke County* (1981), decision A86/81, the Tribunal considered that in relation to this section, planning should as far as possible remove impediments to Maori use of land, not only for the purposes of daily life, but also so that Maori culture and traditions may be strengthened. However, as was clearly stated in *Royal Forest and Bird Protection Society v Clutha County* (1985) 12 NZTPA 449, this paragraph was not intended to free Maori ancestral land from ordinary planning restrictions or constraints which may have been lawfully imposed.
under the Act.

3.5 Scope of District Schemes

The above discussion has highlighted the planning objectives which were put in place by the TCPA, and subsequently evolved through planning practice and the legal interpretations of the courts. Together, they may be considered as defining the scope of land use planning intervention, and contributed to defining the ideology of land use planning under the TCPA.

The land use planning objectives of the Act incorporated not only the matters of national importance in section 3(1) and the purpose of planning in section 4(1), but also the other interrelated matters to be dealt with in district schemes stated in section 36, and in the Second Schedule of the Act. The matters to be dealt with in district schemes were clearly stated in section 36(1), which specified that:

"Every district scheme shall, subject to section 3 of this Act and having regard to the present and future requirements of the district and its relationship to any neighbouring area, make provision for such matters referred to in the Second Schedule to this Act as are appropriate to the circumstances or as are necessary to promote the purposes and objectives of district planning set out in section 4 of the Act."

According to the Courts, as stated in *Fifth City Estates v Christchurch City Council* [1976], 5 NZTPA 385, a council was clearly empowered to provide for those things which the Second Schedule required to be dealt with in the district scheme, in order to achieve the planning purposes set out in sections 3 and 4. However, unless any power a council sought to exercise was limited to attaining the matters in accordance with the Act and its regulations, it was not authorised by the Act and was therefore *ultra vires* (beyond the powers of) the council (Sheppard 1989). Thus the latitude for council action through the district scheme was limited by the provisions of the Act.

In summary the matters to be dealt with in district schemes, as stated in the Second Schedule, were:
• provision for social, economic, spiritual and recreational opportunities and for amenities appropriate to the needs of present and future inhabitants of the district.
• provision for the establishment or undertaking of land uses or activities which are appropriate to the circumstances of the district and to the purposes and objectives of the scheme.
• provision for marae and ancillary uses, urupa reserves, pa, and other traditional and cultural Maori uses.
• provision for the safe, economic, and convenient movement of people and goods, and for the avoidance of conflict between different modes of transport, and between transport and other land and buildings.
• The preservation or conservation of:
  - buildings, objects, and areas of architectural, historic, scientific, or other interest or visual appeal;
  - trees, bush, plants, or landscape of scientific, wildlife, or historic interest, or of visual appeal;
  - the amenities of the district.
• The control of subdivision.
• The design and arrangement of land uses and buildings, including:
  - size, shape, and location of allotments;
  - size, shape, number, position, design, and appearance of buildings;
  - excavation or contouring of the ground, the provision of landscaping, fences, walls, or barriers;
  - control of verandas, signs, and advertising displays;
  - provision of insulation from internal or external noise;
  - location, design, and appearance of roads, tracks, cycleways, pathways, accesses, and watercourses;
  - access to daylight and sunlight.
• The avoidance or reduction of danger, damage, or nuisance caused by:
  - earthquake, geothermal and volcanic activity, flooding erosion, landslip, subsidence, silting, and wind;
  - emission of noise, fumes, dust, light, smell, and vibration;
storage, transport, and disposal of hazardous substances.

- The relationship between land and water use.
- The scale, sequence, timing and relative priority of development.

Together, this list of matters to be dealt with in district schemes defined the scope of planning through district schemes under the Act. Any matter not specified in the Act or its regulations lay outside the scope of district planning and therefore, it was considered *ultra vires* for any council to attempt to address any other matters in their district plan. It is therefore clear that the primary influence on the contents of district schemes, and hence the application of planning objectives under the Act, were these key provisions of the Act. By limiting the scope of district planning to these matters, and by requiring district schemes to be prepared subject to section 3, and to promote the purposes and principles of district planning set out in section 4, Parliament effectively defined the operational extent of local government land use planning intervention under the Act.

### 3.6 Conclusion

In this chapter we have examined the development of the land use planning system as a function of local government in New Zealand. The scope of land use planning, and the range of planning principles influencing the implementation of the land use planning system, have progressively evolved under the town and country planning acts from 1926 through to 1977.

The development of the land use planning system in New Zealand resulted from the desires of central and local government to direct and manage land uses to achieve the efficient utilisation of land resources, and to enable economic growth. The planning process has provided for the facilitation of private capital investment, while attempting to mitigate those environmental externalities arising from the development process. The incorporation of social, cultural and environmental considerations into the planning process has been limited to the extent to which their management was necessary to regulate perceived impacts. Throughout the development of the land use planning system, the rights of property owners to utilise their land as they desire has
been largely protected, while the various statutes have focused on safeguarding elements of the 'public interest', and ensuring the adherence to acceptable development standards.

Thus, according to Memon (1991), while the 1977 Act recognised an increased range of environmental concerns, it continued to restrict the scope of local government land use planning to the role of controlling the process of land use change in the built environment to promote functional efficiency and to preserve amenity values. Both the Planning Tribunal and to a lesser extent local authority representatives and planners combined to support this restricted range of intervention through the land use planning system. The positive changes made to incorporate wider social and environmental concerns into the Act were as a result of the influence of environmental groups combined with an increasing recognition of Maori cultural values in New Zealand society.

The range of planning principles incorporated into the developing planning practice under the TCPA, were built up from the provisions of the Act, decisions and legal interpretations of the courts, the contents of planning documents, and the beliefs of planning practitioners. These principles jointly defined the scope and reflected the ideology of land use planning in New Zealand under the TCPA. In the final analysis this ideology incorporated a combination of social, political and environmental objectives that were acceptable in a capitalist society with a recent colonial heritage.

In the next chapter we shall examine the international forces leading to the development of an alternative world view and a potentially new rationale for environmental planning embodied in the concept of 'sustainable development'. The manner in which the principles of 'sustainable development' influenced the review of planning legislation recently undertaken in New Zealand, and helped to shape the contents of the Resource Management Act 1991 is also examined.
Chapter 4 - Sustainable Management as a New Rationale for Environmental Planning

4.1 Introduction
This chapter examines the development of the 'sustainable development' paradigm and its influence in the evolution of a new rationale for environmental planning in New Zealand. The process of resource management law reform, undertaken during the late 1980s, embraced an emasculated version of this concept and resulted in a new land use planning regime for New Zealand in the form of the Resource Management Act 1991 (hereinafter referred to as the RMA or the Act).

The fundamental differences between the principles of the Town and Country Planning Act 1977 (TCPA) and the Resource Management Act 1991 (RMA) are examined in this chapter as they relate to district planning. The functions of local authorities are then closely examined in an attempt to determine the shift in the emphasis of district planning between the two Acts. Following this, the contents of district plans and district schemes as prescribed by the RMA and TCPA respectively, are compared with reference to the two key land use planning issues examined in chapters five and six.

4.2 Towards Sustainable Development

Dominant Paradigm
In times of social stability, there is a dominant set of beliefs, ideas, and values from which public policies and the behaviour and expectations of society are logically drawn. This is thought of as the dominant social paradigm, the prevailing framework of theories and concepts within which society functions (Porter and Brown 1991, and Taylor 1991). However, according to Porter and Brown (1991) every dominant paradigm is ultimately challenged, and progressively gives way to a new paradigm in a process described as a paradigm shift.

During the period of rapid global economic growth experienced over the last century
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neo-classical economic principles provided the rationale for the growth of capitalist nations as discussed in chapter two. The dominant social paradigm was based primarily on the assumptions of neoclassical economics: that the free market will always operate to maximise social welfare, and that the environment provides free natural resources for the exploitation of human beings. These beliefs have dominated societal development from the industrial revolution to the present day. They are closely linked to the principles of capitalism, and have spread their influence throughout the global economy with the consolidation of capitalism.

The dominant social paradigm is based on a view which considers that the environment has little or no intrinsic value, and has thus been referred to as the 'exclusionist' paradigm as it effectively excludes the environmental values from economic considerations (Porter and Brown 1991). The prevailing exclusionist paradigm embraces neo-classical economic principles and advocates minimal government intervention in societal affairs, emphasising the role of the 'invisible hand' in a market driven economy to achieve the desired end state in the 'public interest' as discussed in chapter two. The desired end state is viewed as the maximisation of individual freedom, private accumulation of wealth and property, and possession of material goods. As such, it is a desired end state which is based on an underlying assumption that all economic growth is good, and should be relentlessly pursued at any cost. It does not consider the existence of finite resources, or the limits to the assimilative and regenerative capacity of the biosphere (Grundy 1993).

Towards A New Paradigm

Since the early 1960s the prevailing exclusionist paradigm has been criticised, originally by scientists and later by rebel economists with an understanding of natural systems. The 1962 publication of Rachel Carson's *Silent Spring*, which documented the threat to human health from pesticides, is widely considered as the beginning of the modern environmental movement (Porter and Brown 1991, and Grundy 1993). Carson questioned some of the fundamental assumptions of the prevailing exclusionist paradigm, such as the belief that technological advancement is necessary and beneficial to human growth. In the following years, a growing number of critics linked many of the earth's problems, such as exponential population increase, the adverse
environmental impacts of rapid industrialisation and technological advancement, and the inequitable distribution of wealth to the failure of the prevailing exclusionist paradigm.

The developing scientific discipline of ecology, which examines the inter-relationships between elements of the biophysical world, made a significant contribution to the growing concerns relating to the impacts of human activities on the environment. Under ecological principles, it is considered that all elements of the earth, whether organic, inorganic, living, non-living, energy or matter, are interdependent and inseparable in the biosphere (Grundy 1993). Further, the activities of all members of an ecosystem, including human beings, are ultimately constrained by the biophysical limits of that ecosystem.

During the 1960s and early 1970s the knowledge of ecological principles and their relationship to economic development issues spread throughout the global scientific community. Their influence helped shift the beliefs of many individuals away from the economic based principles of the prevailing exclusionist paradigm, and emphasised the need for the replacement of these by ecologically sound principles. At the same time, the general public became increasingly aware and outspoken against the high costs of environmental degradation.

The first worldwide environmental conference, the United Nations Conference on the Human Environment, was held in Stockholm in 1972. It marked the first serious international consideration of human relationships with the earth. According to Grundy (1993), the conference epigram Only One Earth, symbolised the changing human perceptions towards environmental management. It is credited by Porter and Brown (1991) as the first forum at which the concept of 'ecologically sustainable development' was discussed on the international stage.

During the 1970s and into the 1980s, an alternative paradigm challenging the assumptions of the prevailing exclusionist paradigm was beginning to take shape. Two important scientific studies which helped to highlight the need for an alternative paradigm were the Limits to Growth study by the Club of Rome (1972), and the Global
2000 Report to the President by the U.S. Council of Environmental Quality and the Department of State (1980). These studies implied that unconstrained economic development and population growth would eventually impair the earth's carry capacity, or the ability of the earth to support a certain level of resource use without suffering irreversible environmental degradation.

The influence of these and similar studies was evident in the World Conservation Strategy published in 1980 by the International Union for Conservation of Nature and Natural Resources, the United Nations Environment Programme and the World Wildlife Fund. This publication is credited as the first international policy statement to incorporate ecological principles. The World Conservation Strategy indicated that development can only be sustained by conserving the living resources on which humans depend by achieving the integration of development and conservation (Horsley 1989). The strategy emphasised three main objectives for conservation, which were to:

- maintain essential ecological processes and life support systems;
- preserve genetic diversity; and
- ensure the sustainable utilisation of species and ecosystems.

Influence of the Bruntland Report
The concept of 'sustainable development' came to prominence as a response to the growing awareness of the need for action on global issues such as environmental degradation, resource depletion, and socio-economic inequalities. By the mid 1980s the 'sustainable development' concept had emerged as an alternative paradigm on the world stage. This was emphasised by the landmark publication of Our Common Future, the report of the World Commission on Environment and Development (WCED) in 1987 (commonly known as the Bruntland Report after the Commission’s chairperson, Norwegian Prime Minister Gro Harlem Bruntland). The Bruntland Report discussed the interrelated requirements for the implementation of sustainable development policy on a global basis. The report drew on and synthesised the views and research of hundreds of people across the globe and codified some of the central beliefs of the alternative paradigm (Porter and Brown 1991). The definition of sustainable development given by the report was:
Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. (WCED 1987, p.43)

The fundamental ideal behind the sustainable development paradigm is the need to redefine the concept of "development". It requires that economic growth should not take place at the expense of the earth's natural capital - the stock of renewable and nonrenewable resources. It implies a transition to sustainable systems of renewable natural resource management, and a global effort to achieve a stabilisation of the world's population (Porter and Brown 1991).

The sustainable development paradigm also assumes the need for greater equity between wealthy and poor nations, within individual societies, and between generations. In addition, it recognises that developing countries must meet the basic needs of their people in ways that do not deplete their stock of natural resources:

Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life. (WCED 1987, p. 44)

The role of the market in assisting the progression of society to a sustainable future is considered vital. Typically markets fail to encourage the sustainable use of resources by not adequately representing the true costs to society incurred by the production of commodities and the consumption of natural resources, including externalities, as discussed in chapter two. Collective public intervention is therefore required to correct such market failures and encourage the adoption of sustainable consumption levels.

Attributes of the Sustainable Development Paradigm

The emergence of the sustainable development paradigm represents a definite shift away from exclusionist principles and ideals. The emerging paradigm represents a holistic view that sees humans and the natural environment as interdependent and interconnected entities within the earth's biosphere. This recognition of human dependence on ecosystems represents a fundamental shift away from a technocentric
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(technology centred) to a more ecocentric (ecologically centred) viewpoint. It recognises that the on-going survival of the human race depends upon the maintenance of those essential ecological processes, and of the genetic diversity, which are essential to support life on earth (Grundy 1993).

The fundamental differences between the two paradigms are outlined in Table 4.1, adopted from Grundy (1993, p.69). One of the major differences between the two world views is that the emerging paradigm recognises the implicit biophysical limits to growth, and the necessity for technology to be applied selectively and developed in accord with sustainable resource utilization and equity considerations. As such, sustainable development infers a predetermined end state, to which economic activity should be directed. It therefore reinforces the need for state intervention in societal affairs, through a rational collective planning process at both macro and micro levels as discussed in chapter two. In essence, it rejects the ability of market mechanisms, applied under neo-classical economic principles, to achieve a desired and socially equitable end state. The emerging paradigm seeks an end state where individual choice is maximised within the constraints imposed by the 'public interest'. It refutes the prevailing view which seeks accumulation of material wealth, and the unconstrained maximisation of individual freedom.

4.3 Resource Management Law Reform

The process of resource management law reform in New Zealand was initiated by the Fourth Labour Government, and took place during its second term in office from 1987 to 1990. It is the biggest law reform undertaken in New Zealand's history, involving the review of more than 20 resource management statutes, including: the Town and Country Planning Act, the Water and Soil Conservation Act, and other legislation relating to minerals, pollution, and coastal management. The reform sought to integrate all the different parts of the environment into one management regime, so that all aspects of land, air and water could be managed together.
Table 4.1 - The Structures of the Two Alternative Paradigms

<table>
<thead>
<tr>
<th></th>
<th>Prevailing Exclusionist Paradigm</th>
<th>Sustainable Development Paradigm</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Underlying Principles</strong></td>
<td>anthropocentric reductionist</td>
<td>ecocentric holistic</td>
</tr>
<tr>
<td></td>
<td>mechanistic</td>
<td>disequilibrium/ relativity</td>
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<tr>
<td></td>
<td>deterministic</td>
<td>indeterminate</td>
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<tr>
<td></td>
<td>sectorial</td>
<td>interdisciplinary</td>
</tr>
<tr>
<td><strong>Assumptions on Resources</strong></td>
<td>infinite sources</td>
<td>finite sources</td>
</tr>
<tr>
<td></td>
<td>infinite assimilative/ regenerative capacity</td>
<td>finite assimilative/ regenerative capacity</td>
</tr>
<tr>
<td></td>
<td>utilitarian value of nature</td>
<td>intrinsic value of nature</td>
</tr>
<tr>
<td><strong>Behavioral Patterns</strong></td>
<td>competitive individualism</td>
<td>communal cooperation</td>
</tr>
<tr>
<td></td>
<td>individual responsibility</td>
<td>collective responsibility</td>
</tr>
<tr>
<td></td>
<td>aggressive/ dominant</td>
<td>cooperative/ harmonious</td>
</tr>
<tr>
<td></td>
<td>materialistic</td>
<td>non-materialistic</td>
</tr>
<tr>
<td><strong>Policy Directives</strong></td>
<td>free market ideology</td>
<td>consensual social wellbeing</td>
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<tr>
<td></td>
<td>non-interventionist</td>
<td>collective planning</td>
</tr>
<tr>
<td></td>
<td>unlimited growth</td>
<td>directed/ limited growth</td>
</tr>
<tr>
<td></td>
<td>short term outlook/ technological solutions</td>
<td>intergenerational equity/ selective technology</td>
</tr>
<tr>
<td><strong>Value Systems</strong></td>
<td>individual freedom</td>
<td>collective freedom</td>
</tr>
<tr>
<td></td>
<td>individual justice</td>
<td>social justice</td>
</tr>
<tr>
<td></td>
<td>value in accumulated wealth</td>
<td>value in community service</td>
</tr>
<tr>
<td></td>
<td>and materialism</td>
<td>communal cooperation</td>
</tr>
<tr>
<td></td>
<td>competitive domination</td>
<td></td>
</tr>
<tr>
<td><strong>Desired End State/ Outcomes</strong></td>
<td>Maximisation of individual freedom and welfare</td>
<td>maximisation of collective freedom and social</td>
</tr>
<tr>
<td></td>
<td>emphasis on private accumulation of wealth</td>
<td>common property</td>
</tr>
<tr>
<td></td>
<td>dominance over nature</td>
<td>distributed wealth</td>
</tr>
<tr>
<td></td>
<td></td>
<td>harmony with nature</td>
</tr>
</tbody>
</table>

Source: Grundy (1993, p.69)

An essential aspect of the reform process was linked to the general and on-going deregulation of market operations by the government, and the widespread removal of government interventions in the economy. According to Gow (1991), the law reform
was based on two key objectives: intervention to promote the 'sustainable management' of natural and physical resources, and the integration of institutions and systems that dealt with natural resources so that the environment could be viewed from a holistic perspective. These objectives were met by the subsequent development of a single, coherent and consistent statute dealing with the management of natural and physical resources.

The resource management law reform process was carried out in conjunction with the process of local government reform. This process was a massive exercise which led to a reduction in the number of local government organisations from over 600 in 1984, to only 94 by 1989. The driving principles of the reform were based on achieving stronger accountability, deregulation, more efficient use of public resources, and the separation of regulatory and service delivery functions (Department of Statistics 1990). According to Memon (1993), the underlying reasons for these reforms were linked to the government's belief that the creation of an open and more competitive economy would lead to economic growth. This was also backed by the desire of the government to allow market mechanisms to be the prime determinants of resource allocation.

The culmination of the resource management reform process, the Resource Management Act came into effect on 1 October 1991. Statutory recognition of the notion of sustainable development is evident in the purpose and principles of the Resource Management Act 1991 as discussed below.

4.4 The Resource Management Act 1991

To fully understand the context of district planning under the new legislative framework of the RMA, it is important to analyse the relevant provisions of this Act in comparison to the corresponding provisions of the TCPA 1977. The purpose and principles of the Act are stated in Part II, which comprises sections 5, 6, 7 and 8.

Achieving 'sustainable management' of New Zealand's natural and physical resources is the single and overriding purpose of the Resource Management Act (section 5). All persons or organisations, in exercising their functions and responsibilities under the
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Act, are required to work within their powers to ensure that this purpose is achieved. The purpose of the Act and the definition of 'sustainable management’ are stated in section 5 as follows:

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
(c) Avoiding, remediating, or mitigating any adverse effects of activities on the environment.

It is important to consider the principles of sustainable management as enacted, with respect to the principles of sustainable development contained in the Bruntland Report. Overall, we seek to determine to what extent the principles of sustainable management embody the fundamental and interrelated goals of sustainable development, which have been expressed as:

• ensuring that all societies needs are met, referring to those essential inputs required to sustain human life;
• ensuring equity between all members of society, so that the needs of all are met;
• ensuring that development is sustainable over time in a social, economic and environmental sense. (MFE 1991b)

There are obviously differences between the concept of sustainable management defined in the Act, and the goals of sustainable development above. In essence, sustainable management seeks to achieve only one of the goals of sustainable development, that is sustainable development in a social, economic and environmental
sense. The Act's purpose focuses on the sustainability of natural and physical resources only. It does not attempt to cover the wider concerns of sustainable development. This is confirmed by comments made by the Resource Management Bill Review Group, who concluded that:

... the concept outlined in the Bruntland Commission's report "Our Common Future" embraces a very wide scope of matters including social inequities and global redistribution of wealth. It is inappropriate for legislation of this kind to include such goals. (MFE 1992b)

Section 5(2) clearly sets the focus for all activities under the Act on the sustainable management of natural and physical resources. While there are different interpretations of the balance intended between the clauses of this section, hinging on the word "while", it does provide a clear but constrained mandate for planning action under the Act.

According to Memon (1993a), the provisions of the Act were influenced by sustained political pressure from two principle interest groups: the New Right lobby and the environmental movement. These two groups, from often opposing viewpoints, are credited as pushing for changes which culminated in the enactment of the RMA. The environmental movement strongly advocated for more recognition of bio-physical values in planning legislation. Meanwhile, the New Right interests, represented in New Zealand by a closely linked network of business people, bureaucrats, politicians and lobby groups, advocated for minimal government intervention and market based resource allocation. The New Right had long expressed concerns about the delays and high costs of the planning system, and commonly viewed planning as an unwarranted intervention in the market place.

It is felt that the Act attempts to achieve a balance between the views of these two interest groups. Ecological principles have clearly been incorporated into the sustainable management purpose and principles of the Act. However, the influence of the New Right is believed to have been successful in gaining the exclusion of socio-economic concerns from the provisions of the Act. It may be considered that:
[The Act is essentially a compromise between environmentalist demands for a more holistic approach to resource management and the agenda of new right interests who have long demanded greater flexibility in planning practice. (Gleeson and Memon 1994, p.18)]

As an integral part of the purpose and principles of Part II, the RMA specifies the following matters considered to be "Matters of national importance" under section 6, which all persons working to implement the RMA are required to recognise and provide for:

- The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:
- The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

In order to understand the significance of section 6, it is useful to compare the matters of national importance stated in the RMA with those previously included in the TCPA. Between the two acts, there has been a substantial change in the focus of the matters of national importance. One of the most significant changes is that the reference to the "wise use and management" of New Zealand's resources in section 3(1)(b) of the TCPA has been omitted, as it is clearly contrary to the focus of the RMA on controlling the adverse environmental effects of development. However, some of the other provisions of the TCPA have been retained in a recognisable form. The first of these is section 3(1)(c) relating to the: "... preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development:", which forms the basis of section 6(a) of the RMA. The second is section 3(1)(g) which referred to the "... relationship of the Maori People and their culture and traditions with their ancestral land.", upon which section 6(e) is clearly based.
In contrast to these similarities, it is significant in terms of this study to note the omission of any direct reference in the RMA to the avoidance of the encroachment of urban development, either into rural areas, or onto land having a high actual or potential value for the production of food, as was stated in sections 3(1)(d), (e) and (f) of the TCPA. It may be argued that these rural areas and natural values may be thought of as "outstanding natural features" under section 6 (b) of the RMA. However, by omitting these principles, the RMA removes the clear directive of past legislation to protect productive rural land from urban expansion. This issue is one of the two significant planning issues examined further in the case studies of emerging district plans in chapters five and six.

In addition to the matters of national importance above, the RMA introduces a new section into its statement of purpose and principles - section 7 "Other Matters", for which there was no direct comparison under the TCPA. Section 7 states a range of "Other matters" which persons exercising functions and powers under the Act are required to have "... particular regard to ...", these are:

(a) Kaitiakitanga:
(b) The efficient use and development of natural and physical resources:
(c) The maintenance and enhancement of amenity values:
(d) Intrinsic values of ecosystems:
(e) Recognition and protection of the heritage values of sites, buildings, places, or areas:
(f) Maintenance and enhancement of the quality of the environment:
(g) Any finite characteristics of natural and physical resources:
(h) The protection of the habitat of trout and salmon.

The matters stated under section 7 encompass a wide range of values. The Maori word "kaitiakitanga" is defined under the Act to mean "... the exercise of guardianship; and in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself." This is a significant new concept in the New Zealand land use planning context. It implies that recognition be given to the role of the tangata whenua and of all New Zealanders as the guardians (kaitiaki) of our natural resources.

The remaining clauses of section 7 traverse a wide range of planning considerations including references to: efficient use and development of natural and physical
resources, amenity values, intrinsic values of ecosystems, protection of heritage values, quality of the environment, the finite characteristics of resources, and the protection of trout and salmon habitats. It could be argued that for almost any proposed activity one or more of these matters become a valid consideration. It will therefore be interesting to note what regard decision makers and the Courts give to these matters and to what extent they will be incorporated into district plans. The inclusion of the specific reference to amenity values in section 7(c) is significant with respect to the case study relating to residential amenities in chapter five. Overall, the relevance of these matters to planning practice is discussed further in both of the case studies in chapters five and six.

Finally the last section of Part II, section 8, is significant because it represents a clear directive by Parliament to give statutory recognition to the Treaty of Waitangi. Section 8 requires that:

_In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)._ 

By making specific reference to the principles of the Treaty, rather than to the Treaty itself, allows the principles of the Treaty which have been developed by the Waitangi Tribunal and the High Court through a number of recent decisions to be applied (Crengle 1993). These decisions have placed a strong emphasis on the development of consultation between government agencies and the _tangata whenua_ in order to recognise the fundamental partnership between Maori and the Crown. The major challenge is to determine how the _tangata whenua_ should be involved in resource management as partners with local authorities. Thus it will be important to see how councils interpret and implement section 8 in their district plans. However, the examination of this matter lies outside the scope of the policy analysis undertaken in this study.

Throughout Part II a number of references are made to the term "environment". The definition of "environment" under the Act therefore becomes crucial in defining the
Environment is defined in section 2 as follows:

"Environment" includes -
(a) Ecosystems and their constituent parts, including people and communities; and
(b) All natural and physical resources; and
(c) Amenity values; and
(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:

The definition of the term environment given above implies a very broad scope for district planning under the Act. Environment encompasses not only ecosystems, people and communities, natural and physical resources, and amenity values, but also the socio-economic and cultural conditions which effect or are affected by these matters. Thus the term environment may be interpreted to encompass all natural and physical resources, the values placed on those resources, and recognises that different socio-economic or cultural conditions effect the specific value of particular resources. Such a definition theoretically gives district councils a broad planning mandate under the Act. However, this mandate is limited by the restrictions of section 5 (as described earlier) and by the restricted range of functions and responsibilities local authorities are empowered to carry out by the Act as discussed below.

By comparison, the definition of the term "effect" given in the Act contributes to defining the scope of planning under the RMA. Effect is defined in section 3 of the Act as:

In this Act ... the term "effect" includes -
(a) Any positive or adverse effect; and
(b) Any temporary or permanent effect; and
(c) Any past, present, or future effect; and
(d) Any cumulative effect which arises over time or in combination with other effects - regardless of the scale, intensity, duration, or frequency of the effect, and also includes -
(e) Any potential effect of high probability; and
(f) Any potential effect of low probability which has a high potential impact.
This definition implies a potentially wide range of effects which decision makers are required to control under the Act. As such, the definition of 'effect' contributes to defining a broad scope for land use planning intervention under the Act.

4.5 Functions of Local Authorities

The RMA introduces to the New Zealand planning system a hierarchy of policies and plans, extending from national policy statements down to district plans. Under the new regime, local authorities (city and district councils) have the primary responsibility for land-use management within their territories. The district plan is the primary policy document through which local authorities carry out their functions under the Act. The Act sets out those matters to be addressed by the territorial authority when preparing its district plan, as discussed below. District plans may include district rules, which have the power to prohibit, regulate or allow activities in order to mitigate, avoid or remedy the adverse effects of activities on the environment.

Under the RMA, the land use planning functions of local authorities have a different emphasis than they had under the TCPA. While some common matters have been retained, Parliament has attempted to focus land use planning at a district level on controlling the adverse effects of activities. This has led to a definite shift in focus between the two Acts. This can be demonstrated by examining the functions of local authorities as defined under the RMA in contrast to the district planning provisions of the TCPA as discussed in chapter three.

Under the RMA, the functions of local authorities are specified in section 31 as follows:

Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:

(b) The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the
avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:

(c) The control of subdivision of land:
(d) The control of the emission of noise and the mitigation of the effects of noise:
(e) The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:
(f) Any other functions specified in this Act.

The emphasis placed by the Act on the management of effects by local authorities is manifest in paragraphs (a) and (b) of section 31. Paragraph (a) refers to the establishment, implementation and review of objectives, policies and methods for which the district plan is the primary mechanism. These objectives, policies and methods in the district plan are required to achieve integrated management of the effects of the use, development, or protection of land and associated natural resources of the district. This has two important implications. The first is the management of effects rather than activities per se. While the second is the recognition that the provisions of the Act restrict the scope of district planning interventions to land and associated natural resources. This recognises that land use planning remains the primary responsibility of local authorities as was the case under the TCPA, but places some limitation on local authority powers by restricting the range of issues which they may address through the district plan. The remaining paragraphs in the above section repeat aspects of the TCPA but again demonstrate the shift in focus of local authority functions to controlling the adverse environmental effects of activities.

4.6 Purpose of District Plans

We shall now examine the purpose of district plans under the RMA and compare this with the equivalent purpose of district schemes under the TCPA. The purpose of district plans under the RMA is stated in section 72, as:

The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.
Thus, the Act clearly establishes the district plan as the primary mechanism for the preparation, implementation, and review of objectives, policies and methods for local authorities to carry out their functions under the Act as discussed above.

The purpose of district schemes was not specifically stated in the TCPA. However, that Act did specifically define the purpose of district planning, which was stated in section 4(1) as the "wise use and management" of resources, and the "direction and control" of development as discussed in chapter three.

The RMA clearly specifies the contents of district plans in section 75 which, along with the functions of local authorities discussed above and in conjunction with the matters stated in the Second Schedule, may be considered as defining the scope of district planning under the Act. When compared to the purpose, functions and matters to be dealt with in district schemes under the TCPA a significant change in focus is evident, as discussed below.

The contents of district plans under the RMA are stated in section 75(1), as:

*A district plan shall make provision for such of the matters set out in part II of the Second Schedule as are appropriate to the circumstances of the district ...*

Which compares with the contents of district schemes under the TCPA which were stated in section 36(1), as:

*Every district scheme shall ... make provision for such matters referred to in the Second Schedule to this Act as are appropriate to the circumstances or as are necessary to promote the purposes and objectives of district planning set out in section 4 of the Act.*

It is therefore obvious that the Second Schedules of both Acts are vital to the definition of the scope of planning under the respective Acts. A comparison of those matters required to be addressed by district schemes and district plans, as set out by the Second Schedules of the respective statutes, will therefore assist in determining the shift in focus of district planning between the two Acts.
Table 4.2 attempts to demonstrate this shift in focus. Where similar provisions have been made under both Acts, these have been italicised in the table for emphasis. These common provisions are numbered so that a simple cross reference between the two Acts may be made. The matters to be dealt with in district schemes as stated in the Second Schedule of the TCPA are listed under column one, while those matters to be dealt with in the Second Schedule of the RMA are listed under column two.

### Table 4.2 - A comparison of the Second Schedules of the TCPA and the RMA.

<table>
<thead>
<tr>
<th>Second Schedule of the TCPA:</th>
<th>Second Schedule of the RMA:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• provision for social, economic, spiritual and recreational opportunities and for amenities appropriate to the needs of the district.</td>
<td>Any matter relating to the management, use, development, or protection of land and any associated natural and physical resources, including the control of:</td>
</tr>
<tr>
<td>• provision for the establishment or undertaking of land uses or activities which are appropriate in the district.</td>
<td>• Any actual or potential effects of any use of land including:</td>
</tr>
<tr>
<td>• provision for marae and other traditional and cultural Maori uses.</td>
<td>- for the purpose of the avoidance or mitigation of natural hazards (4), and</td>
</tr>
<tr>
<td>• provision for safe, economic, and convenient transport infrastructure.</td>
<td>- for the purpose of the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances. (6)</td>
</tr>
<tr>
<td>• The preservation or conservation of:</td>
<td>• The control of subdivision of land. (3)</td>
</tr>
<tr>
<td>- buildings, objects, and areas of architectural, historic, scientific, or other interest or visual appeal;</td>
<td>• Emissions of noise from land, and mitigation of the effects of noise. (5)</td>
</tr>
<tr>
<td>- Trees, bush, plants, or landscape of scientific, wildlife, or historic interest, or of visual appeal;</td>
<td>• Effects of activities in relation to the surface of water in rivers and lakes.</td>
</tr>
<tr>
<td>- the amenities of the district.</td>
<td>• Any matter relating to the management of any actual or</td>
</tr>
</tbody>
</table>
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- The design and arrangement of land uses and buildings
- The avoidance or reduction of danger, damage, or nuisance caused by:
  - natural hazards; \(^{(4)}\)
  - emission of noise \(^{(5)}\), fumes, dust, light, smell, and vibration;
  - storage, transport, and disposal of hazardous substances. \(^{(6)}\)
- The relationship between land and water use.
- The scale, sequence, timing and relative priority of development. \(^{(7)}\)

Potential effects of any use, development, or protection, including on:
- any part of the community;
- other natural and physical resources; \(^{(2)}\)
- natural, physical, or cultural heritage sites and values. \(^{(1)}\)
- The circumstances when a financial contribution may be imposed, and the general purposes for its use.
- Modifications in the district plan to the requirements for esplanade reserves, esplanade strips and access strips upon subdivision.
- The scale, sequence and timing of public works. \(^{(7)}\)

This analysis reveals that seven matters previously included in the TCPA are retained in recognisable form or incorporated into wider considerations under the Second Schedule of the RMA. While many of the references to these matters may have changed, there is obviously considerable continuity between the provisions of the two Acts, and hence the scope of district planning. However, in many respects it is not those provisions which have been retained which are crucial. It is those provisions that have either been omitted or altered by the RMA which actually reveal the shift in emphasis between the two Acts.

Those matters which have been omitted may be placed in two categories: those which are incorporated into other sections under the RMA, and those which have been omitted altogether. In the first instance those matters which are now either incorporated into other sections, or addressed in a different manner under the Act, are: the amenities of the district; the design and arrangement of land uses and buildings; avoidance of nuisance caused by fumes, dust, light, smell and vibration; and the relationship between land and water use. In the main, these matters are still had
regard to under the RMA. Thus, amenities are specifically mentioned in section 6, while the remainder may be considered under the general requirement of district planning under the Act, which may be summarised as: the avoidance or mitigation of any actual or potential effect of land use activities.

Significantly, the second group of matters which have been omitted from the RMA include: the need to provide for social, economic, spiritual and recreational opportunities; provision for the establishment or undertaking of land uses or activities; the provision for traditional and cultural Maori uses; and the provision of transport infrastructure. The omission of these matters signals and reinforces the shift in emphasis away from local authorities making provision for, or actively promoting economic, cultural, social and general welfare. As earlier analysis has determined, the emphasis under the RMA is now clearly focused on controlling the effects of human activities, while allowing people and communities to provide for their own social, economic, and cultural wellbeing.

4.7 Conclusion

This chapter has focused on the continuing process of paradigm shift, from the prevailing exclusionist paradigm, to the emerging sustainable development paradigm. The ideology behind this shift in global thinking has influenced the evolution of the key principles of the resource management law reform process. However, in developing a definition of sustainable management as the purpose of the Resource Management Act 1991, it has been demonstrated that Parliament has emasculated the principles of the emerging sustainable development paradigm.

Sustainable management does not address the interrelated concerns of sustainable development. It seeks only to achieve one of the goals of sustainable development, that is sustainable development in a bio-physical sense. The Act focuses on the sustainability of natural and physical resources, it does not attempt to cover the wider concerns of sustainable development.

The new ideology of district planning is limited to taking account of environmental
externalities within the context of sustainable management. It remains to be seen how these provisions will be implemented through district plans under the Act, and the ensuing council, Planning Tribunal and Court decisions on the interpretation of the provisions of these plans.

At this stage, the most we can derive from the above discussion is that while there has been a definite change in overall philosophy between the two Acts, from the "wise use and management" of resources and the "direction and control of development", to that of promoting the "sustainable management of natural and physical resources", many of the matters to be included in district plans have remained in a similar form to those that were previously prescribed for district schemes under the TCPA. More importantly, the differences between the two statutes signal the wish of central government to limit the scope of local authority planning to focus on the adverse effects of activities.

The following case studies of key planning issues will examine to what extent the emerging district plans prepared under the RMA reflect these ideological and statutory changes in planning at the local authority level in New Zealand.
Chapter 5 - Protection of Residential Amenities

5.1 Introduction

Since the introduction of zoning in the early district schemes prepared under the Town Planning Act 1953 the areas defined by residential zones have been subject to controls aimed at maintaining and enhancing residential character. The main justification for these controls has been the preservation of residential amenities. Under section 2 of the TCPA 1977 "amenities" were defined as:

... those qualities and conditions in an area which contribute to the pleasantness, harmony, and coherence of the environment and to its better enjoyment for any permitted use:

In practice, residential amenities are effectively defined by the perceived residential character of particular residential areas, which may range from sparsely populated rural-residential areas to high-density inner city residential neighbourhoods. In a particular area, there are a wide range of factors which combine to determine the standard of residential amenity. These are a combination of density, residential development and servicing standards, landscaping, traffic levels, proximity to other potentially conflicting land uses and so on. People tend to view their homes as a refuge from the hustle and bustle of the work environment, and expect their residential areas to have a high standards of visual appeal, to be relatively free of noise, and to be subject to minimal traffic disturbances. These factors are primary considerations when contemplating the desirability of protecting residential amenities.

However, there are many types of non-residential activities, ranging from crafts to professional uses, which people may wish to carry out from their homes. These activities often benefit from their location, and add to the vitality of residential areas. The opportunity to carry out such activities has been limited under the statutory land use planning system in New Zealand by the restrictive provisions in district schemes, and often by the strict definition of, or by conditions placed on 'home occupations' in these schemes.

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Gleeson and Memon (1994) use a political economy perspective to explain the strong desire of homeowners to protect the value of their homes and residential land from the potential adverse effects of incompatible land uses in their neighbourhood. They consider that these "[l]ocal conflicts are often expressed as defensive reactions by homeowners confronted with land uses which are perceived as threats to residential amenity ..." (p.5). In areas with a high concentration of homeowners, resistance to unwanted land uses is evident as homeowners pursue a common interest - the protection of residential land and property values - through collective action to prevent the establishment of undesirable land uses.

Under the TCPA, the most common mechanism for controlling non-commercial activities in residential areas through district schemes has been to allow a limited range of small scale commercial activities in residential zones under the definition of a 'home occupation'. A typical definition of a 'home occupation' requires that the home occupation is a craft, occupation or service, and is:

- clearly incidental and secondary to the use of the dwelling for residential purposes;
- carried out by a member of the household residing in the dwelling; and
- does not involve retail sales from the site.

Typically, home occupations are listed as predominant uses (permitted activities) in residential zones, but are controlled either by a strict definition, or by a set of performance standards stated in the district scheme. Many district schemes discuss the provision for non-residential activities in residential areas, and recognise their contribution to the convenience, diversity and social

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1 In recognition of the fact the district schemes prepared under the TCPA remain the effective regulatory documents controlling land use activities under the transitional provisions of the RMA, these are referred to in the present tense throughout this discussion. Those proposed new district plans examined will not come into effect in their territories until they have gone through public submission and hearing stages, are amended accordingly and have finally been officially approved by the local authority.
cohesion of residential neighbourhoods. Generally, non-commercial activities in residential areas, including home occupations, are considered to be acceptable as long as their potential adverse effects are controlled, and the existing standards of residential amenities are protected. The importance of small businesses, such as home occupations, in providing employment opportunities for the wider community is recognised by local authorities, and it is considered that a range of small businesses may be established in residential areas without unduly detracting from residential character.

In the main, the range of non-residential activities permitted in residential zones has been limited to ensure the retention of the predominantly residential character of these areas. However, it is considered by many councils that certain types of non-residential activities may have adverse effects on residential neighbourhoods, such as traffic, noise and air pollution. Of particular concern is the potential for home occupations to develop in an uncontrolled manner into full scale commercial activities. In order to protect residential amenities, non-commercial activities are typically required to meet specific performance standards to ensure that they remain ancillary to the residential use of the site, and to avoid significant adverse effects on adjacent properties.

The enactment of the RMA, and the preparation of new district plans under this Act, has provided an opportunity for the implementation of a wider range of approaches to the control of non-residential activities in residential areas. By considering the residential policies in these emerging district plans, it will be possible to determine whether there has been either a relaxation or re-enforcement of controls on non-residential activities in residential areas. Given the ideology of the RMA, with its strong focus on effects, it may be expected that some of the tight controls on home occupations will be relaxed. This would allow a wider range of commercial and light industrial activities to be established in residential areas, as long as their adverse effects on residential amenities are no different from accepted residential activities.

The issue is of particular significance under the RMA as the Act clearly prescribes to district councils the responsibility of controlling the adverse effects of the use,
development or protection of land, as discussed in chapter four. Therefore, the crucial issue to focus on in the following case studies is to analyse how the effects based ideology of the Act has influenced land use planning at the district level when compared to the traditional approach adopted under the TCPA.

5.2 Significance of Residential Amenities

Amenities Under The Town and Country Planning Act 1977

Amenity was an important consideration under the TCPA. Specific reference was made to the: "... preservation or conservation of ... the amenities of the district", as a matter to be dealt with in district schemes under clause 5 of the Second Schedule. Amenities were also mentioned in more general terms under clause 1 of the Second Schedule, which stated that district schemes should make: "[p]rovision for social, economic, spiritual and recreational opportunities and for amenities appropriate to the needs of the present and future inhabitants of the district..." Amenity values were also included as a matter of national importance, under section 3(1)(a), as they are related to the "... conservation, protection and enhancement of the physical .... environment:", and were also specifically mentioned in section 4(1), where the purpose of district planning encompassed the safeguarding or promotion of the districts amenities. These provisions combined to place a strong emphasis on the preservation or enhancement of amenity values in district schemes under the Act. As will be verified from a content analysis of the district schemes discussed below, amenity values, and in particular residential amenities, were a significant consideration in district schemes prepared under the TCPA. This generally resulted in quite strict controls on the establishment of non-residential activities in residential areas.

In case law under the TCPA, amenities were frequently mentioned and were often used as valid justification for turning down land use applications. For instance, in New Plymouth Operatic Society (Inc.) and others v New Plymouth City Council, decision W30/86, the Operatic Society proposed to use an existing building and to erect a new building on land in the Residential 2 Zone. As the Society could not satisfy the Tribunal that suitably zoned land was not available, and as the residential area still
appeared as a cohesive whole, the Tribunal ruled that there was no reason why that
cohesion (a basis of residential amenity standards) should be upset by the granting of
a specified departure. Several subsequent Tribunal decisions also took a similar view.

However, it is also evident from other case law that under certain circumstances the
Tribunal was prepared to consider proposed activities in terms of their effects on
residential amenities, and to permit the establishment of non-residential land uses
which did not meet the strict requirements of district schemes. In Whitehead RJ and
others v Far North District Council, decision A031/92, an appeal arose from the granting
of a consent to permit retail sales of garments, souvenirs and handcrafts from a garage
on land zoned Residential 3. The Residential 3 Zone was intended to provide for
travellers’ accommodation and a mix of residential and non-residential uses. The
proposed use could not meet the requirements for a home occupation as defined
under the district scheme. The Tribunal concluded that the nature of the proposal
met almost all of the requirements for a home occupation under the relevant
ordinance of the district plan. On the Tribunal’s evaluation of the Act’s provisions,
it found that granting a departure to the Scheme would not be contrary to the public
interest, and would have little town and country planning significance beyond the site.

Overall, a review of the case law demonstrates the Tribunal’s general approach under
the TCPA towards the approval of non-residential activities tended to uphold the
protection of residential amenities. Often, activities which would have had minimal
adverse effects on residential amenities were unable to gain approval as a specified
departure to the provisions of the district scheme, as demonstrated by the operatic
society case above. This restrictive approach was widespread under the TCPA and
became one of the justifications for the review of planning legislation in New Zealand.
However, while the general approach under the TCPA was restrictive, the Tribunal
showed that it encouraged the application of some flexibility under the Act, as the case
relating to a non-complying home occupation application above demonstrates.

Amenity Values Under The Resource Management Act 1991
The RMA makes specific reference to amenity values under section 7(c): "The
maintenance and enhancement of amenity values:", along with a list of "Other matters"
which persons acting under the Act are required to have particular regard to. Significantly, amenity values are also listed in the Act under the definition of "environment", which makes them a particular consideration when assessing the actual and potential effects of activities on the environment.

In contrast to the TCPA, amenity values are not specifically listed as a matter to be addressed by district plans. However, by including the consideration of amenity values under the definition of environment and specifically in the list of "Other matters" under section 7, the protection of amenity values is provided for in the preparation of district plans.

Under section 2 of the RMA "amenity values" are defined in terms similar to the TCPA, to mean:

... those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes:

From the limited emerging case law under the RMA, it appears that amenities remain a significant consideration and will continue to be used as a valid justification for turning down resource consent applications. In Montreal K v Whangarei District Council, decision A083/92, an appeal was brought against the issuing of an Abatement Notice in respect of a property in a suburban residential area. The reasons given were that the storage of derelict vehicles, old machinery, white goods and other materials was objectionable to such an extent as to have an adverse effect on the environment. The Tribunal found that the use to which the property was put was a major detriment from the amenities of what should be a quiet residential area. The property was not being managed in a way which protected the values of section 5(2) of the Resource Management Act 1991, and the Tribunal recognised that the Act's definition of "environment" allowed the Council to specifically address the issues raised. The provisions of the Abatement Notice were endorsed by the Tribunal who directed that all derelict motor vehicles, tractors and other assorted items be removed from the property.
In other recent case law under the RMA, amenities are also mentioned and have been used as valid justification for turning down resource consent applications. In *Shell Oil NZ Ltd v Wellington City Council*, decision W057/92, the appeal challenged refusal of resource consent to enable the establishment of a non-complying activity, a service station, on a Residential A zoned site. The Tribunal found that the proposed service station would have a visual impact upon residents who could see the site. The Tribunal considered that the definition of "amenity values" places strong emphasis on present neighbourhood character, and that the effect on adjacent residential properties would not be minor. The Tribunal also considered that under section 5(2)(c) the proposed use would have adverse effects on the "environment" as defined in the Act, and would not achieve the purpose of section 7 in terms of the maintenance and enhancement of amenity values and of the quality of the environment. It was considered that amenity values would be enhanced if the site was used for residential purposes. Accordingly the appeal was dismissed.

Similar circumstances applied in the case *BP Oil NZ Ltd v Auckland City Council*, decision A153/92, where the appeal challenged refusal of consent to the erection and use of a residential site for the purposes of a petrol station with associated retail outlet. The Tribunal concluded that the effect of the service station on the environment would not be minor. Referring to the definition of "environment", and bearing in mind the definition of "effect" under section 3 of the Act, the Tribunal found that: aesthetically the effects on the area would be appreciable, the effect on the amenity values was adverse, and the effect upon traffic would be significant. Accordingly, under section 5 of the RMA the Tribunal found that the potential adverse affects of activities on the environment would best be achieved by avoiding the creation of a major service station on this site. In terms of section 7, the Tribunal did not find that amenity values would be enhanced, and on these grounds dismissed the appeal.

However, there are also instances of recent case law under the RMA where non-residential activities have been permitted to establish in residential areas on the basis of the minor nature of their actual and potential effects on residential amenities. In *M Arthur GC and NJ v Tauranga District Council*, decision A045/93, the case deals with
the proposed establishment of a non-complying art gallery including retail sales, at a property situated in the Residential B Zone. The immediate locality was residential, but the wider neighbourhood was characterised by a mixture of residential, community and commercial activities. The Tribunal found there would not be any adverse effect on the residential amenities of the surrounding area. The applicant would be residing on the property, the activity would not generate traffic likely to endanger pedestrians in the area, and there would be no loss of privacy to residents in the street. The Tribunal considered that the environment of the area was such, both in terms of land use mix and traffic on the road, that a gallery operation would cause no significant loss of privacy or other detrimental effect. The Tribunal considered that granting consent was in keeping with the Act’s purpose having particular regard to section 5(2)(c), and would reflect a suitable balancing of relevant considerations such as: section 7(b), (c) and (f).

Similar considerations were taken into account in Warbrick MJR and BJ and McDonalds System of NZ Ltd v Whakatane District Council, decision A005/93. The applicant sought land use consent for a proposed family restaurant as a discretionary activity in the Residential B Zone. The Tribunal considered that a restaurant proposal, if not adequately controlled, could impart a non-residential flavour to a degree unacceptable for the residential locality. Aspects considered were: the need for exposure, signage, building design and use of primary colours, provision of manoeuvring and parking areas and landscaping. Having considered these matters, the Tribunal was satisfied that the proposal was of an appropriate scale, and would be effectively controlled by the conditions imposed relating to signs, hours of operation, fencing, retention of specified trees, landscaping, and noise levels.

The evolving approach under the RMA already demonstrates the increased flexibility under the Act towards the establishment of non-residential activities in residential areas. However, strong regard continues to be taken to the protection of residential amenities as demonstrated by the issuing of an Abatement Notice, and the refusal of consent to the establishment of service stations in residential zones above. The application of an effects based approach to the consideration of non-residential activities under the RMA is evident in each case above. The Tribunal has
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demonstrated a willingness to support the development of an art gallery, and likewise a family restaurant in the cases above on the basis of the minor nature of their actual and potential adverse effects. The following comparative analysis of district planning provisions with respect to this issue will enable the determination of how the effects based approach of the Act has influenced land use planning practice at the district level.

5.3 Alternative Formats for District Plan Rules

Before discussing the five case studies, it is necessary to briefly comment on the range of possible formats for district plan rules and the use of zoning as a policy technique. During the preparation of new district plans under the RMA, each council must decide what format of district plan rules to adopted. While the range of potential formats is extensive in view of the flexibility of the Act, there are three main alternative formats which are likely to cover the majority of approaches to district plan rules. These are: the traditional approach of listing activities, the effects based model focusing on the actual and potential effects of activities, and a third alternative whereby these two approaches are combined. Each of these options and their relative merits are discussed below.

(a) Traditional Approach

The traditional approach to district plan rules follows the standard format of district scheme ordinances under the TCPA. It requires that the entire range of activities which are either permitted or which may be approved in each identified zone are listed, and that each of those activities is specifically defined in the plan. This approach worked relatively well under the TCPA, where the ability for a council to permit a dispensation or waiver, or a specified departure to the scheme allowed it the flexibility to approve certain non-conforming uses. However, following the introduction of the RMA and the new range of activity categories, many activities which were either not listed, or which were not able to meet any one of the conditions or standards of the district plan, immediately became non-complying activities, and are thus subject to a more stringent consent process.
The traditional approach remains an acceptable format for district plans under the RMA. However, in some respects it is not entirely appropriate under the Act to rely on the somewhat restrictive listing of activities, with the shift in emphasis to focusing on controlling the effects of activities. Hence, it is not encouraged by the Ministry for the Environment. In particular, it may be difficult to justify in terms of the Act as it makes all activities which are not listed become non-complying, even when the actual and potential effects of those activities are not significantly different from other activities which are permitted. Nevertheless, because of its obvious familiarity to planning practitioners and other participants in the planning process, the traditional approach is likely to be retained in many new district plans. In fact, one of the main benefits of using the traditional model is that the rules tend to provide certainty to landowners of their ability to carry out specified activities on their land. This certainty is not always provided for to the same extent by the alternative approaches discussed above.

(b) Effects Based Model

The effects based model has been developed specifically to reflect the approach of the RMA, with its primary emphasis on controlling the adverse effects of land use activities. This approach is favoured by the Ministry for the Environment. Under the effects based model, there is no listing of activities. Instead, each proposal is tested against specified development standards for the zone or planning area. Only those activities which are able to meet all of the standards for the area are permitted as of right, while other activities become either controlled, discretionary, or non-complying subject to their ability to comply with the prescribed standards for the area. In addition, a small number of activities with significant actual or potential adverse effects may be listed as prohibited activities in an area.

Under the effects based model, standards may be specifically related to the desired environmental outcomes for an area. However, these standards must be developed in a comprehensive manner to avoid any activity with significant adverse effects from being able to meet all of the specified standards and thus become a permitted activity. This is the major limitation of the effects based model, as specifying standards to cover every possible adverse effect can be a difficult task, especially where knowledge or
technical expertise is limited. The effects based model can also be difficult to administer and to enforce, and it may be relatively difficult for people unfamiliar with the planning process to understand. Finally, it becomes difficult to discern with any certainty whether specific activities in an area will be permitted as of right.

(c) The Combined Approach
The combined approach to rules in district plans involves the listing of specific or generic activities, in combination with the application of various standards in the zone or planning area. The combined approach was applied to some extent in district schemes under the TCPA. For example, most of the controls on home occupations in the following case studies utilised this approach. However, now under the RMA, it is seen as a preferable alternative whereby certainty is provided that specific essential activities in an area are permitted, while the rules focus on controlling the potential adverse effects of all activities. Activities which are considered as appropriate or essential in an area are listed under a particular activity category, often in generic terms. In many instances, these listed activities will also be required to comply with a certain range of standards specified in the plan. However, as opposed to the traditional approach, those activities which are not listed in the plan do not automatically become non-complying in an area. Instead, prescribed standards are used to assess activities not listed in order to determine their ability to be categorised as a controlled, discretionary or non-complying activity. This approach places a great emphasis on the comprehensiveness of the stated standards. However, some administrative and enforcement difficulties are overcome by a range of appropriate activities being listed subject to their compliance with prescribed standards.

This approach is likely to be widely adopted in new district plans as it is considered to combine the best features of both models, provides certainty for many activities, and does not overly discriminate against those unlisted activities which have a level of effects compatible with the desired standards of the area.

5.4 Analysis of District Plan and District Scheme Provisions
In this section the objectives, policies and methods which control non-residential land
use activities in residential areas are examined in five case studies. Because some of the local authorities examined have adopted similar approaches, to avoid repetition only three of these case studies fully examine the respective district scheme and district plan provisions. For each local authority area, the provisions contained in their most recent district scheme prepared under the TCPA are compared to those of their proposed district plan prepared under the RMA. By critical examination of these provisions from a comparative perspective, it is then possible to determine the emphasis that has been placed on the protection of residential amenities, and whether there has been any relaxation of the controls placed on non-residential activities in residential areas.

A. Hikurangi Section of the Whangarei District Council

Hikurangi Town Council - District Scheme 1981

The objectives, policies and rules below have been extracted from the Hikurangi District Scheme, prepared under the TCPA. The Scheme, like the majority prepared under the TCPA, takes what is considered a traditional approach whereby all activities which are considered to be appropriate in a particular zone are listed under particular land use categories and are correspondingly defined in the scheme. While Hikurangi is a relatively small town of 1300 people, the standard of residential amenity expected in the residential zones is comparable to larger urban areas. The following extracts from the Hikurangi Residential Zone section of the scheme demonstrate the former Council's intent with respect to non-residential activities in that zone.

6.0 Hikurangi Residential Zone

6.1 Prime Objective:

To permit a wide range of uses within the residential zone, controlling possible conflict situations by performance standards but above all ensuring that all controls are easily understood and administered.

2 In recognition of the amalgamation of local authorities completed in 1989, a number of the local authorities whose district schemes are examined no longer exist, and are consequently referred to in the past tense throughout this discussion.
6.4.1 **Policy:**
Make provision for acceptable non-residential uses as predominant uses eg home occupations, health and social services, pre-school facilities.

6.6 **Explanation**
... some controls over the wide range of uses permitted will be necessary. Such controls will be the simplest forms of performance standards to ... minimise nuisance which may arise. Noise, sunlight, daylight, open space and landscaping minimums will be required as will controls over the effects of non-residential uses such as home occupations.

**Predominant Uses:**
The following shall be predominant uses in the residential zone:

(e) Home occupations.

The Scheme specifically provides for home occupations in the Residential Zone as a predominant use. However, provision is also made for a rather wide range of other non-residential activities as predominant uses, including: housing for the elderly, schools, day care centres, boarding houses, specialist services (medical centres and scientific laboratories), traveller's accommodation, and garden centres subject to scale limitations. The listing of these activities indicates that the Council considered that the range of activities listed was acceptable in terms of the residential amenities of the Hikurangi Residential Zone. In addition, the development standards specified by the bulk and location requirements of the Scheme were designed to ensure that the physical appearance and effects of these activities are compatible and largely indistinguishable from typical residential uses. With respect to home occupations, the Scheme specifies a range of performance standards which are required to be met by home occupations. These are as follows:

6.8 **Objective:**
**Home Occupations:**
To permit home occupations in residential areas where they operate on a one or two person basis and do not have any detrimental effect on the residential environment.

6.8.1 **Policy:**
To allow the establishment of home occupations subject to performance standard criteria.

**Explanation:**
In times of economic recession and unemployment, home occupations become important as alternative income earners. To make provision for such activities helps reduce the movement of people and goods and allows for the useful occupation of people who may be housebound for various reasons. Provided the scale of the activity is carefully controlled, no detriment to residential amenity should result. Controls on the types of uses, the number of persons employed, advertising and detraction from amenities will ensure that home occupations will not affect adjoining properties.

The standards for home occupations are stated in ordinances 6.8.2.1 to 6.8.2.8, and include:

- maximum gross area for a home occupation shall not exceed 50m²;
- the design and siting of a home occupation shall not detract from neighbourhood amenity;
- no building for a home occupation shall be located in a front yard;
- home occupations may not generate atmospheric emissions subject to the Clean Air Act 1972;
- no equipment or materials shall be stored outdoors;
- there shall be no exterior display nor any exterior advertising of the occupation;
- hours of operation are limited to the hours of 8:00 to 20:00 hrs (Mon-Sat);
- noise levels measured on the boundary of the site concerned shall not exceed 40 dBA, during operating hours, and 35 DBA outside these hours.

In addition "home occupation" is specifically defined in the Scheme as follows:

*Home occupation means an occupation, craft of profession which:*

(a) Is carried on by a member of the family residing in the dwelling unit.
(b) Is clearly incidental and secondary to the use of the household unit for residential purposes.
(c) Employs not more than one person outside the family, the total number of persons' involved not to exceed two ...
(e) Has no exterior display, no exterior sign, (except as permitted under this code) no exterior storage of materials ...
(f) Is carried on either wholly within the household unit or within an accessory building erected or modified for the purpose ...
(g) Makes no retail sales from the site.
(h) Produces no objectionable noise or fumes, or significant increase in traffic.
Such a restrictive definition effectively places further controls on home occupations in addition to those listed in the performance standards stated earlier. Overall, while the Scheme allows a fairly wide range of non-residential activities, it also places effective safeguards to protect local residential amenities from the potential adverse effects of those activities. One may conclude that the combination of strict standards and the relatively tight definition applied to home occupations, severely restricts the scope of land uses able to be carried out as a home occupation in residential areas.

**Whangarei District Plan - Proposed Hikurangi Section 1993**

The objectives, policies and rules outlined above may now be compared to those of the recently proposed Hikurangi District Plan, prepared under the RMA. The Plan, like its forerunner above, adopts a traditional approach to the format of rules whereby all activities considered to be appropriate in a particular zone are listed under a particular activity category, and are correspondingly defined in the Scheme or controlled by performance standards.

The Hikurangi District Council identifies as a significant resource management issue, under section 3.2.4, the effects of activities within residential areas. They consider that certain types of non-residential activities may have adverse effects on residential neighbours, such as traffic, noise and air pollution. At the same time, they accept that various community, cultural, educational, health, sports and work related activities can be appropriately located within a residential environment and add to the diversity of that environment. Of particular concern to the Council are home occupations which may develop into uncontrolled commercial activities. For these reasons, the Council have chosen to apply performance and development standards in the Residential Zone to ensure that the effects of non-residential activities do not undermine the amenity values of residential neighbours. The following objectives and policies extracted from the Hikurangi Residential Zone section of the proposed Plan demonstrate the Council’s intent with respect to non-residential activities in residential areas and the protection of amenity values in that zone:

12.1.1 *Management of Residential Development*

1. **Objective:** That the on-site and off-site effects of residential
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development are managed in a manner that protects amenity values and avoids adverse environmental effects.

12.1.2 Management of Non-residential Activities

Objective: To enable a range of activities including non-residential activities to be established in the residential zone whilst protecting and maintaining amenity values.

Policies:

1. To control the establishment of a range of community facilities in a manner that avoids any adverse effects on neighbours and residential amenities.

2. To provide for home based small businesses subject to appropriate standards containing the scale and any subsequent possible adverse effects of such activities.

These objectives and policies indicate that while the protection of residential amenities remains of paramount importance in the Hikurangi Residential Zone, consideration has been given to the need to allow for home occupations of limited scale, subject to performance standards.

The Plan specifically provides for home occupations in the Residential Zone as a permitted activity. However, provision is also made for other non-residential activities as permitted activities including: child care centres, private schools and private hospitals subject to scale limitations. Other non-commercial activities are listed as controlled activities in the Plan. These are: health centres, traveller’s accommodation and telephone exchanges, while market gardens, camping grounds, community facilities, and veterinary clinics are listed as discretionary activities. The listing of these activities indicates that the Council considers that the range of activities listed as permitted or controlled activities are acceptable in terms of the existing residential amenities of the Hikurangi Residential Zone. Those activities listed as discretionary activities above may be considered acceptable in the Residential Zone. However, the Council has decided that these activities should be subject to the Council’s consideration and discretion, and will not automatically be approved in the Residential Zone.
With respect to home occupations, the Council specifies a range of performance standards which are required to be met by home occupations. These are listed as follows:

12.4.1 Home Occupations

Any home occupation to be a permitted activity must satisfy the following standards:

1. To be carried out in association with a dwellinghouse on the same site in which the principal of the business resides.
2. Not more than one person not being a member of that household may be employed on the premises.
3. Uses no more than 60 square metres of the floor area on the site.
4. Involves no retail sales from the site.
5. To be carried out principally indoors...

In addition to the above, standards 6 to 12 state additional requirements which home occupations must meet to be permitted activities. These include: the avoidance of visible untidiness, no significant increase in traffic, no noise or vibration discernable immediately outside the house or building, the production of no glare, odour, dust or fumes detectable at any boundary, no production of electrical interference, no storage of hazardous substances, and no motor vehicle servicing, pannelbeating or wrecking.

The reason given for these standards is as follows:

Home based business activities perform a beneficial social and economic role. However to avoid any adverse effects on the amenity values of residential areas such activities must be small in scale, be subsidiary to the residential use of the premises and potential off-site effects carefully controlled. (12.4.1)

Home occupations are not specifically defined in the proposed Plan.

Comparison of the Hikurangi Plans

The general approach to the format of rules is unchanged between the Hikurangi District Scheme 1981 and the proposed Hikurangi District Plan 1993. What has changed between the two documents is that there has been an apparent tightening of controls on all non-residential activities apart from home occupations. Activities such as garden centres were predominant uses in the 1981 Scheme. However, in the
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proposed Plan, they have been listed as discretionary activities. By comparison, home occupations are listed as a predominant use or permitted activity in both documents, and the standards required to be met by home occupations have remained essentially unchanged, although the proposed Plan relies solely on performance standards and does not define a home occupation.

These changes may be explained by the perceived need to tighten the controls on non-commercial activities in the Residential Zone, which arose as a result of public consultation and from the concerns expressed by Councillors in relation to the protection of residential amenities. (Peter Frawley, pers comm.)

It could be argued that the provisions in the proposed Plan are contrary to the intent of the Resource Management Act, whereby all activities which are able to meet the expected environmental standards in a particular area should be able to gain approval on the basis of an assessment of their actual and potential adverse effects. While amenity standards in residential areas should certainly be maintained, unnecessary restrictions unrelated to the actual and potential effects of non-commercial and other land use activities not permitted in the Plan should be avoided.

B. Auckland City Council

Borough of One Tree Hill District Scheme 1986

The One Tree Hill Borough was one of the thirteen former borough and county councils which were amalgamated in 1989 to comprise the Auckland City. In the amalgamated Auckland City Council there are ten District Schemes prepared under the TCPA which apply to the Auckland Isthmus area, and which will be superseded by the proposed Auckland Isthmus District Plan discussed below.

The Borough of One Tree Hill District Scheme 1986 provides a good indication of how non-residential activities were viewed in the Auckland Isthmus prior to the RMA. The Scheme, like the nine other schemes which apply in the Auckland Isthmus area, takes a traditional approach to the format of rules, whereby acceptable land uses are
listed under different activity categories. In this Scheme, home occupations are allowed as a predominant use, subject to prescribed restrictions and standards.

The relevant objectives and policies for Residential zones in the Borough of One Tree Hill District Scheme are as follows:

3.0.1 Objectives
1. To preserve and enhance the quality of the residential environment ...
3. To protect all residential zones from encroachment by, or the adverse effects of adjacent commercial, industrial or entertainment uses ...
5. To provide for those non-residential activities within residential zones which are beneficial to their residents and compatible with the character of the zone ...

3.0.2 Policies ...
9. Home occupations will be permitted in all residential zones, subject to appropriate controls to protect the residential qualities of the zone.

Section 3.0.9 of the Scheme discusses the provision for neighbourhood non-residential activities, and recognises their contribution to the convenience, diversity and social cohesion of residential neighbourhoods. The Council accordingly considered that uses such as home occupations should be permitted in all residential zones, subject to conditions. These conditions are intended to restrict the character, intensity and scale of home occupations to ensure that residential amenities are preserved, and to avoid the encroachment of a commercial character into residential neighbourhoods. Home occupations are listed as predominant uses in all residential zones of the Scheme and are defined (pp.315-316) as an occupation craft or profession which complies with the following:

(a) the principal person responsible for and performing the occupation resides in the household unit;
(b) is incidental and secondary to the use of the household unit for residential purposes;
(c) the occupation is carried out either wholly within the dwelling unit or within an accessory building, and occupies not more than one third of the household unit;
(d) the occupation employs not more than one person outside the family, and the total number of persons engaged does not exceed three;
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(e) there is no exterior display or variation from the residential character of the neighbourhood, except for a sign as provided for in the Scheme.

(f) the generated characteristics are not significantly different from those of other predominant uses in the zone, and in particular no discernable vibration, smoke, smell, fumes or traffic increase is to result;

(g) the noise level resulting from any home occupation, as measured on the boundary shall comply with the noise control ordinances of the Scheme;

(h) no retail sales may be made from the site, other than: handicrafts produced on the property, or fruit and vegetables grown on the property.

Overall, the Scheme allows a limited range of non-residential activities to be established in the Borough's residential zones, either as predominant uses, or as controlled or conditional uses. However, residential amenity standards are protected by the bulk and location requirements for all activities and by the definitions for specific uses, such as those for home occupations above. This approach is common throughout the other nine Schemes in the amalgamated Auckland City area, although the specific details vary somewhat.

City of Auckland - Proposed District Plan Isthmus Section 1993

The objectives, policies and rules outlined above may now be compared to those of the proposed Isthmus Section of the Auckland City District Plan prepared under the RMA. The Plan, like its forerunners above takes a traditional approach to the format of rules whereby particular activities are listed under activity categories. The Auckland City Council discusses, under section 7 - "Residential Activity", the importance of residential amenity values, and of non-residential supporting activities, as significant resource management issues in the residential areas of the District, as follows:

- The need to recognise, maintain and where possible enhance the recognised character and amenity of established residential environments.
- The need to provide for supporting activities where they complement the residential environment. (p.3)

In the statement of objectives and policies for the residential zones the Council specifically considers the issue of non-residential activities as follows:
7.3  Resource Management Objectives and Policies

7.3.4  Objective
To recognize the need for certain supporting activities to be located in residential areas to promote the economic and general welfare and convenience of residents.

Policies
• By providing for non-residential activities in certain residential areas where they provide benefit or support for residential activity.
• By permitting ancillary work opportunities by way of home occupations.
• By taking into account the impact of location, scale, and generated effect on neighbouring sites and the local environment when administering development controls in relation to non-residential activities in residential zones.

Supporting activities, including home occupations, are generally considered to be acceptable in the residential areas as long as their potential adverse effects are controlled to ensure a reasonable level of protection to residential amenities. The range of supporting activities permitted in the residential zones is limited to ensure the retention of the predominantly residential character of these areas. The likely effects of home occupations at the intensity levels specified in the Plan are not anticipated to differ from those generated by residential uses at the same density. The Auckland City Council considers by keeping the intensity level of residential activities in line with those of existing residential activities, the character and amenities of residential areas will be maintained. Development controls or performance standards are used by the Council to ensure that the amenity standards desired by the community are maintained.

In the rules contained in the proposed Plan, Rule 7.7.1 makes home occupations a permitted activity in all of the Auckland City residential zones. In addition Rule 7.7.2 clarifies the status of permitted activities as follows: "The permitted activities listed in Clause 7.7.1 are allowed without a resource consent where they comply in all respects with the relevant development controls." A range of other non-residential activities are listed as discretionary activities under Rule 7.7.1. These include: dairies, community welfare facilities, educational facilities, hospitals, and health care centres. The Plan states a range of general and specific criteria which apply to these discretionary non-residential activities. Overall, while other non-residential activities may be permitted in the residential zones at the Council's discretion, the stated criteria and range of...
development controls combine to mitigate their potential adverse effects.

With respect to home occupations, the development controls apply the following standards under rule 7.8.1.14 "Additional Controls for Home Occupations":

(a) No more than one third of the gross floor area of all buildings on the site shall be occupied by the home occupation.
(b) No more than one full-time equivalent person from outside the household shall be employed in the home occupation activity.
(c) No exterior display, no exterior storage of materials and no other exterior indication of the home occupation shall occur.
(d) No retail sales shall be made from the site other than: handicrafts produced on the site, or fruit and vegetables or other natural products grown on the property.

As the standards for home occupations are effectively set under the rule above, the definition given to home occupations is consequently brief:

*Home Occupation*

means the use of a site for an activity which is secondary to and incidental to the use of the site for residential purposes, where:

- it is performed by a member of the household unit residing in a residential unit on the site;
- it is carried on either wholly within the residential unit or within the accessory building erected or modified for the purpose, except where fruit and vegetables are grown, such an activity may be located outside a building; and
- the generated effects are not significantly different from those of other permitted uses in the zone.

**Comparison of the Auckland Plans**

The Borough of One Tree Hill District Scheme, and the recently proposed Isthmus Section of the Auckland City District Plan 1993 both take a traditional approach to the format of their rules, as is evident from the discussion above.

There has been little apparent change in the approach to the controls on non-residential activities, including those relating to home occupations, between the two
documents. Home occupations are listed as a predominant use or permitted activity in both documents, and the standards required to be met by home occupations have remained essentially unchanged. The specific controls on home occupations and the restrictive definition, combined with the general development control provisions of the residential zones will ensure that home occupations continue to be strictly controlled in the proposed Plan.

The Council has not only retained the discretion to approve the other non-residential land uses listed as discretionary activities, but has also placed additional controls and specified a comprehensive range of criteria for their approval. Overall, the controls on other non-residential activities are as restrictive as those on home occupations and are certain to ensure that residential amenities are not compromised.

Once again these provisions may be considered as contrary to the intent of the Resource Management Act, whereby all activities which are able to meet the expected environmental standards in a particular area should be able to gain planning consent on the basis of an assessment of their actual and potential adverse effects. It is therefore possible that these provisions will be amended, following submissions on the proposed Plan, so that all activities which are able to meet the development controls and other listed standards are considered as controlled or discretionary activities.

C. Kaipara District

Dargaville Borough District Scheme 1987

The major residential area in the Kaipara District is Dargaville. Therefore the residential objectives, policies and ordinances which are examined for comparison purposes are drawn from the Dargaville Borough District Scheme 1987. The Scheme takes a traditional approach to the format of rules in the Scheme ordinances. Section 2 of the Scheme discusses the planning issues and objectives of the Borough, section 2.2 discusses the residential settlement issues, and sub-section 2.2.3 addresses home occupations specifically. The former Dargaville Borough Council recognised the importance of small scale commercial activities or home occupations in providing
employment opportunities in the community. However, the Scheme requires these activities to meet specific performance standards to ensure that they remained ancillary to the residential use of the site, and result in no adverse effects on adjacent residences.

Section 5 of the Scheme deals specifically with residential development in the Dargaville Residential Zone. In the zone statement the Scheme states that small scale home occupations are permitted as of right in the Residential Zone subject to performance standards to ensure that they have no adverse effect of adjacent residents. Home occupations are listed as a predominant use under ordinance 5.1.2, with the required performance standards for home occupations being listed under ordinance 5.2.2, as follows:

*Home occupations in the residential zone are to meet the following performance standards:-*

1. The craft occupation or profession is
   • to be carried out only by those persons residing in the household unit;
   • to be ancillary to the residential use of the household and to occupy no more than 25% of the combined gross floor area of the household unit and any accessory buildings; and

2. No raw material of finished product shall be displayed or stored in such a manner as to detract from the amenities of the area or be in view of any person on a street or public place.

3. No activity shall be carried out that would give rise to dust, effluent, fumes, noise, smell, vibration or any other like objectionable element detracting from the amenities of the adjacent properties.

4. No signs shall be erected except one stating the name of the resident(s) and the craft, occupation or profession and which occupies an area of not more than 0.3m².

5. No sales of goods other than those produced or repaired on the property.

The Scheme states that the performance standards above are designed to ensure that home occupations will: remain ancillary to the residential use of the site, not generate significant parking demands in a residential street, not create dust, noise or smell problems, and that no raw materials, finished products or advertising signs will be displayed so as to detract from the residential character of the neighbourhood. The Dargaville Borough District Scheme makes no provision for either commercial shops or light industrial operations to be developed in residential areas. These uses are
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directed to establish in the commercial and industrial zone of the Borough.

A small range of other non-residential activities are listed as conditional uses in the Residential Zone, and which may be approved at the Council's discretion. These are: community and recreational facilities, camping grounds, and motels.

The Scheme defines home occupation (p.151) as follows:

*Home Occupation* means any craft, occupation or profession that is carried out in a dwelling unit or accessory building and which is ancillary to the residential use of the site.

Overall, the Scheme allows a very limited range of non-residential activities to be established in the Dargaville Residential Zone as conditional uses. Residential amenity standards are protected by the bulk and location requirements for all activities and the performance standards for specific uses, such as those for home occupations above.

Proposed Kaipara District Plan 1993

The objectives, policies and rules outlined above may now be compared to those of the proposed Kaipara District Plan, prepared under the RMA. The Plan, like its forerunner above takes a traditional approach to the format of its rules whereby particular activities are listed under activity categories. Section 3.3 of the proposed Plan discusses the resource management issues of the District. Under sub-section 3.3.2 the "Form and Scale of Residential Development", it is stated that the Council considers that the zoning provisions should be kept relatively simple, and should not unnecessarily restrict development where appropriate environmental and servicing standards can be met. Accordingly, the Plan provides one Residential Zone which applies to all land considered suitable for residential related activities throughout the District. In this Residential Zone the Council makes some provision for small scale commercial activities. However, the majority of commercial activities are listed as discretionary activities because of their potential adverse effects on the environmental qualities of residential areas.
Home occupations are addressed specifically under sub-section 3.3.7. The Council recognises the importance of small businesses as home occupations in providing employment opportunities for the wider community, and considers that a range of small businesses may be established in residential areas without unduly detracting from their character. The proposed District Plan lists home occupations as permitted activities in the residential zones. However, the associated definition of home occupations and performance standards are intended to meet the following objectives:

- The activity will remain ancillary to the residential use of the site both in terms of the floor area occupied and the number of people employed; and
- The activity will not generate significant traffic and parking demands in a residential street, and
- No manufacturing operations will be carried out that will create a dust, effluent, noise or smell problem for adjacent residents; and
- No raw materials, finished products or advertising signs will be displayed so as to detract from the residential character of the neighbourhood. (pp.30-31)

The objectives, policies and methods of implementation for activities in residential areas are set out in section 3.4, as follows:

3.4.1. Objective - Residential Settlement
To facilitate the coordinated development and servicing of residential areas with high amenity values.

3.4.2. Policies and Methods of Implementation ...
(2) Residential Amenities
Policy: To maintain the low density open space character of residential areas and their associated amenity values.
Methods of Implementation
- Provide for residential dwellings comprising one household unit per site and home occupations as permitted activities in the Residential zone ...
- Provide for community and recreation facilities, visitor accommodation and some commercial uses as discretionary activities in the Residential zone.
- Administer environmental standards relating to the location and height of all buildings, site coverage, and noise emissions ...

The Residential Zone rules are stated in section 1.5 of the Code of Rules. In the zone statement discussion the Council states that the purpose of the Zone is to provide for a range of land use activities which are compatible with a predominantly residential living environment.
Rules 1.5.2 and 1.5.3 list the range of activities allowable in the Residential Zone. Home occupations and homestay accommodation are listed as a permitted activities, while cottage industries and rest homes are listed as controlled activities. Commercial services, offices and shops are listed as discretionary activities along with camping grounds, community and recreational facilities, hospitals and restaurants. Therefore, it is obvious that the respective definitions of home occupations, cottage industries, commercial services, offices and shops are crucial in determining the range of non-residential activities of a commercial nature which are permissible in the Residential Zone.

"Home occupation" is defined (p.258) as:

... any occupation, craft, or profession that is carried out in a residential dwelling of [sic] accessory building and is ancillary to the residential use of a site such that:
(a) the activity is carried out by at least one person who resides permanently on the site and not more than two persons who reside off the site; and
(b) the activity occupies not more than 25% of the gross floor area of any residential dwelling and any associated accessory buildings.
(c) the activity does not involve the sale of goods or products other than those produced or repaired on the site.

While "Cottage industry" is defined (p.257) as:

Cottage Industry means a use or activity which is carried out within a residential dwelling or accessory building, and is incidental to the principle use of the site but does not come within the definition of home occupation.

The difference between these two types of activity is not immediately clear. While it is not explicitly stated in the definition of "cottage industry", it may be interpreted that any home occupation which is unable to meet the conditions stated in the definition of home occupations would be approved as a controlled activity subject to conditions under the definition of cottage industry. Therefore, non-complying activities would be limited to any home occupation or cottage industry that is unable to meet the environmental standards of the Residential Zone. For example, a bicycle repair workshop employing two outside people and accessory to a residential dwelling would be permitted as a home occupation, and if any larger in scale would be considered to
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be a cottage industry and therefore approved as controlled activity.

Finally, "Commercial services, offices and shops" are defined (pp.257-261) as follows:

Commercial Service means a building site used for a business activity such as a domestic appliance repair shop, a drycleaning shop, or a hairdressing salon, which provides a service to people and other businesses, but does not include the servicing or repair of motor vehicles or the fitting of any part to or the dismantling of motor vehicles.

Office means any building used for administrative commercial or professional office purposes.

Shop shall have the meaning given in the Factories and Commercial Premises Act 1981.

Which effectively allows the approval of a wide range of commercial activities, under the definitions of commercial services, offices and shops, at the Council's discretion in the Residential Zone. It can be concluded that these rules provide flexibility for the approval of a wide range of commercial activities in the Residential Zone, with prescribed environmental standards and assessment criteria applying to protect residential amenities.

Comparison of the Two Plans

Once again the traditional approach to the format of rules has been retained from the Dargaville Borough District Scheme 1987 to the Proposed Kaipara District Plan 1993, but the details have changed considerably.

The Dargaville Borough Scheme restricts the ability of non-residential activities to be established in the Residential Zone. Home occupations are listed as a predominant use, but are controlled by restrictive performance standards. A small range of other non-residential activities may be permitted subject to the Council's discretion. In distinct contrast, the proposed District Plan takes a more liberal approach to non-residential activities in the Residential Zone. Home occupations are listed as permitted activities in the Zone, subject to a moderately restrictive definition. However, and most significantly, the definition given to a cottage industry includes those activities which do not fall within the definition of a home occupation, and the
Plan lists cottage industries as controlled activities, for which consent must be granted.

In contrast to the proposed Hikurangi Section of the Whangarei District Plan and the proposed Isthmus Section of the Auckland District Plan discussed above, the provisions in the proposed Kaipara District Plan are considered to be more in accord with the intent of the Resource Management Act. All activities which are able to meet the expected environmental standards in a particular area will be approved on the basis of an assessment of their actual and potential adverse effects. These provisions are significant and demonstrate how the ideology inherent in the RMA has been influential in the preparation of this District Plan. The Council has attempted to define a threshold between what constitutes an acceptable home occupation, and at what level of non-residential activity additional controls are required. The three tiered structure adopted appears to be relatively innovative and should provide the Council sufficient control over the effects of non-commercial activities in residential areas to maintain a high standard of residential amenity.

D. Other Plans Examined (Papakura and Waikato)

The provisions of two other sets of district schemes and district plans were also compared as part of this analysis. These were the: Papakura District Scheme 1992 in comparison to the Proposed Papakura District Plan 1993 - Section 2: Urban Papakura, and the Huntly Borough District and the Ngaruawahia Borough District Schemes (both 1991) in comparison to the Proposed Waikato District Plan 1993.

Between the Papakura District Scheme and the proposed Papakura District Plan there are significant changes in the approach to controlling non-residential activities in residential areas, apart from those which relate to home occupations. Non-residential activities including commercial horticulture and doctors' surgeries were predominant uses in the 1992 Scheme. However, in the proposed Plan, which takes an effects based approach to the format of rules, the use of buildings for permitted activities has been restricted to residential activities and home enterprises. Significantly, all other non-residential activities may be approved as discretionary activities, with the use of buildings for non-residential activities being limited to accommodating no more than
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50 people. In comparison home occupations are listed as a permitted activity in both documents, and the standards required to be met by home occupations have remained essentially unchanged. By including a rule in the proposed plan making all non-residential activities discretionary in the Residential Zone the Council is reliant on their discretion and the application of the prescribed standards placed on discretionary activities to protect residential amenities. Notably, this also provides the flexibility for a wide range of non-residential activities to be able to be approved in the Residential Zone, other than as non-complying activities.

These changes may be explained by comparing the two different approaches taken to the format of the respective documents. The Council has attempted to add some certainty to the effects based approach, to retain a predominance of residential activities, by restricting the permitted use of buildings in the Residential Zone. This provision effectively results in the limitation of permitted activities in the Zone to a generic range of activities encompassed by the definitions of residential activities and home enterprises. The result of this restriction is much the same as if the Council had adopted a traditional approach to the format of rules, and had actually listed permitted activities outright in the Plan.

Meanwhile, the two major urban areas in the amalgamated Waikato District Council are Huntly and Ngaruawahia. Therefore, the provisions of the Huntly and Ngaruawahia Borough District Schemes relating to the protection of residential amenities have been compared to those provisions of the proposed Waikato District Plan. These two Schemes are very similar in format as both were prepared by the same planning consultants at the same time.

Between the existing Schemes and the proposed Plan there has been little change in the approach to the controls on non-residential activities, including those relating to home occupations. Home occupations are listed as a predominant use or permitted activity in both of the existing Schemes and in the proposed Plan. However, the definition of home occupations is more restrictive in the proposed Plan, although the development standards are somewhat less rigorous than the existing Schemes. The restrictive definition of home occupations and the conditions to be met by permitted
activities in the proposed Plan will ensure that home occupations are strictly controlled.

The Waikato District Council has not only retained the discretion to approve other non-residential land uses listed as discretionary activities, but has also specified additional standards which they are required to meet. Overall, the controls on other non-residential activities are as restrictive as those on home occupations and are certain to ensure that residential amenities are not compromised.

5.5 Conclusion

From the analysis of selected district schemes and proposed district plans in this chapter it may be concluded that:

(a) The protection of residential amenities has received an equal if not greater emphasis by local authorities under the RMA than it was accorded under the TCPA.

(b) While there has been some relaxation in the provisions controlling non-residential activities in residential areas, these changes have been relatively small and have not gone as far as possible towards the implementation of the effects based ideology of the RMA.

These conclusions are elaborated below.

In the proposed Hikurangi Section of the Whangarei District Plan the provisions relating to non-residential activities are actually considered to be more restrictive in the proposed Plan than in the preceding District Scheme. Meanwhile, in three of the other proposed district plans - Auckland, Papakura and Waikato, there has been little change in the provisions relating to non-residential activities. The proposed Papakura District Plan is the only one of these plans to make provision for those non-residential activities which would be able to meet the development standards of the Plan, to be approved as either controlled or discretionary activities. This is significant, as each of
these plans may be interpreted as being contrary to the intent of the RMA which attempts to put the focus of district planning on controlling the effects of activities, rather than the activities themselves, as discussed in chapter four.

Only one of the proposed district plans examined - Kaipara, has actually liberalised controls over non-residential activities in residential areas. In the proposed Kaipara District Plan, home occupations are listed as a permitted activity subject to compliance with a restrictive definition. However, the Plan lists "cottage industries" as controlled activities, and defines cottage industries to include all activities which are carried out within a residential dwelling or accessory building, incidental to the principle use of the site, but which do not come within the definition of home occupation. Thus, a wide range of non-residential activities which do not come within the restrictive definition of home occupations under the Plan, are able to be approved as "cottage industries" in the District. In addition commercial service activities, offices and shops are listed as discretionary activities, which may be approved at the Council’s discretion following their assessment against stated criteria. Although the Plan does not state a general rule allowing those activities, which are able to meet all of the development standards stated in the Plan, to be approved as discretionary activities, by providing this three tiered approach to activities of a commercial nature the proposed Plan may be considered as being in accord with the effects based focus of district planning under the RMA.

In contrast to Kaipara District, it is likely that the remaining Councils discussed in this chapter have deliberately taken a cautious approach to the development of the format and contents of their district plan rules. While their objectives and policies are generally supportive of allowing appropriate non-residential activities to be established in residential areas, these attitudes have not been adequately reproduced in their rules. This may stem from the perceived difficulty in preparing rules under an effects based model while providing certainty that the establishment of unwanted activities and effects will be prevented. It is a common perception that the adoption of an effects based model may result in undesirable activities meeting the criteria for permitted activities and thus being able to establish without any ability for their adverse effects to be controlled. This appears to be a contributing factor which may have turned each
of these local authorities away from adopting that approach. Instead, they have opted to follow the conservative path by retaining the traditional approach to district plan rules and by tightly controlling non-residential activities in order to ensure the protection of residential amenities in the district.

It could be argued that the reasons for conservatism in the district plan provisions proposed by local authorities discussed above may have arisen from a number of influences. These influences are likely to include political conservatism, legal advice, budgetary constraints, the results of public consultation and a lack of innovation from planning practitioners in adopting the effects based ideology of the RMA. Political conservatism is apparent in many local authorities, where influential elected representatives tend to represent powerful stakeholder interest groups and are conscious of the need to protect these often property based interests to secure their political support. In addition, many elected representatives appear comfortable with the status quo, and are often reluctant to support innovative ideas which have not already been proven to be successful by other local authorities, and which they consider to be unsuitable or unnecessary in their area.

The legal advice given on the provisions of proposed district plans prior to their notification is considered to be another possible reason for conservative approaches in emerging district plans to date. This legal advice often concentrates on the issue of *vires*, or the power of local authorities to control land uses and the methods of this control. In most instances, legal advice will have been sought on the provisions of proposed plans, in order to minimise the potential for expensive litigation at a later stage when any contentious provisions in district plans are likely to be challenged in the Courts. Thus, innovative approaches which may be difficult to justify in terms of the property based interests in the district are liable to be dropped from the provisions of district plans on this legal advice.

In the case of many smaller local authorities, budgetary constraints are likely to restrict their ability to undertake in-depth research into significant resource management issues, or to develop innovative approaches to the format of district plan rules. Thus, these local authorities will tend to base the provisions of their proposed district plans
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on the tried and tested provisions of their current district scheme and those proven by other local authorities. This reuse of earlier provisions is evident in some of the plans examined above where controls in the proposed plans have been closely based on the provisions of current district schemes. While this relatively cautious approach may not be an entirely bad thing, it has meant that so far little innovation is evident in the emerging district plan provisions examined in this chapter.

Public consultation undertaken throughout the plan preparation process is likely to reveal the interests of traditional stakeholders in the community, the majority of whom are owners of single family dwellings. These groups will seek to advocate the adoption of provisions in the plan which will secure the protection of their vested interests. In particular, the interests of homeowners will strongly support collective intervention through the district plan to protect suburban residential amenities and thus safeguard their land and property values. Similarly, business people will seek to ensure the maintenance and enhancement of existing business areas, and will be reluctant to support additional provisions for the establishment of commercial or industrial activities which may lead to direct competition to their existing enterprises.

Planning practitioners may also be criticised for a perceived lack of innovation in the provisions of district plans, particularly with respect to the adoption of an effects based approach to district plans rules. Many of the reasons for this lack of innovation are outlined in the discussion of alternative approaches to district plan rules above. In particular, one of the main reasons for a lack of innovation is related to the need to maintain the high level of certainty that particular activities are able to be established in different areas, which is provided by the traditional approach to district plan rules typically adopted under the TCPA. Thus, it may be argued that while the effects based approach offers certain advantages as a planning methodology, the traditional and the combined models provide more certainty to all participants in the planning system, are more easily administered, and may be adapted to adequately incorporate the effects based ideology of the RMA.

Each of these influences has contributed to the conservatism seen in the range of methods adopted to control non-residential activities in residential areas.
The relatively innovative approach adopted by the Kaipara District Plan may be the result of the community's, and hence the Council's, desire for minimal constraints on economic development in the township. The three tier structure of controls, for the establishment of non-residential activities in residential areas, adopted in the Plan provides for a wide range of activities, while the Council retains sufficient control over these activities and should consequently be able to safeguard residential amenities in the township. The Kaipara approach may not be ideal for application in the larger urban areas. However, in each of the other proposed plans examined it appears that the level of control over non-residential activities in residential areas appears unnecessary solely for the protection of residential amenities, and does not fully apply the effects based ideology of the RMA.

The following chapter examines a resource management issue of an entirely different nature, the protection of high quality soil resources, in an attempt to determine the level of adoption of the sustainable management purpose and principles of the Act in emerging district plans.
Chapter 6 - Protection Of High Quality Soils

6.1 Introduction
The need to protect high quality soils for their food producing potential has long been recognised as a valid purpose of land use planning in New Zealand. Many of New Zealand's urban settlements were originally established in close proximity to areas where there were easily developed and farmed soils. As these settlements expanded, increasing pressure was placed on the subdivision of adjoining good soils for residential use. Consequently, the expansion of urban areas into their surrounding rural hinterland has resulted in significant losses to the area of New Zealand's high quality soils available for productive use.

While the expansion of urban land uses into prime rural land has long been recognised as an undesirable result of urbanisation and urban development, it was not until the matters of national importance were introduced into planning legislation in 1973 by an amendment to the Town and Country Planning Act 1953, that the importance of preserving productive rural land, and in particular high quality soils, was specifically recognised as an objective of land use planning in New Zealand.

Under the TCPA 1977 the following matters, relating to the protection of rural land resources, were incorporated as "Matters of national importance" in section 3(1):

(b) The wise use and management of New Zealand's resources:
(d) The avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food:
(e) The prevention of sporadic subdivision and urban development in rural areas:
(f) The avoidance of unnecessary expansion of urban areas into rural areas in or adjoining cities:

It is significant to note the emphasis placed on these matters, as sections 3(1)(d), (e) and (f) above all refer to the need to control the spread of urban development into rural areas, or onto land with a high actual or potential value for the production of food. The inclusion of these three matters of national importance indicate that at the
time the legislation was passed in 1977, the protection of high quality rural land was of considerable concern. Section 3(1)(b), the "wise use and management" of resources, was also included in the purpose of planning under section 4(1) of the TCPA, and provided an additional justification for the protection of high quality soils under the Act.

The way local authorities interpreted these matters of national importance led to the widespread adoption of various planning measures aimed at protecting high quality soil resources. As an indication of local authority interpretation of these matters, some of the reasons given for the protection of productive land in district schemes include:

- to protect land having a high actual or potential value for the production of food;
- to conserve the potential of the rural land resource to be used for a wide range of primary land use activities;
- the protection of high quality soils for future horticultural and agricultural use;
- providing for the efficient use and development of the soil as a natural resource.

It is generally considered that any land with a land use capability classification of Class I, Class II, and often Class III, as identified by the New Zealand Land Resource Inventory, possess high actual or potential value for food production. The New Zealand Land Resource Inventory (NZLRI) was prepared by the Ministry of Works and Development in the early 1970s. It identifies eight classes of land use capability, which have subsequently been widely referred to in land use planning documents. The NZLRI and its applications are described in Appendix B.

Because of the versatility of high quality soils, which may be easily adapted to a wide range of uses, many district schemes give recognition to the food production value of this land. While former councils recognised the value of their high quality soil resources, it was widely considered by rural land owners that the extent to which this land may be used should not be limited by unreasonable planning restrictions. The importance of maintaining the versatility and flexibility of high quality rural land resources was justified under the TCPA in terms of the capacity of these areas for the production of food, and for their contribution to the self sufficiency and economic
well-being of an area.

The significance of this issue with respect to the implementation of the RMA is that from a comparative perspective the way that the protection of high quality soils is addressed in emerging district plans is indicative of how district councils are giving effect to the Act, and are actually implementing the purpose and principles of sustainable management. While the protection of high quality soils is not specified by the RMA, it is widely considered that the protection of scarce natural resources for use by current and future generations is fundamental to achieving sustainable management in the context of section 5 of the Act. Therefore, by recognising the need to protect high quality soil resources district councils are recognising one of the fundamental principles of sustainable management. The comparative analysis of the provisions of four district schemes and recently proposed district plans in this chapter should enable the determination of how local authorities are responding to the challenge of implementing the sustainable management purpose of the RMA.

Initially in this chapter, the recognition given to the protection high quality soil resources under the TCPA and RMA, and in case law under these respective statutes is examined. This is followed by a discussion of the different land use planning techniques for controlling subdivision in rural areas. These range from traditional approaches such as those which prescribe minimum allotment sizes, to more innovative approaches which attempt to balance demands for different size allotments in rural areas against the need to protect rural land resources from unnecessary subdivision. In the final part of this chapter a series of case studies examine some of the emerging district plans in order to determine the significance of protecting high quality soils as a planning issue under the RMA.

6.2 Significance of High Quality Soils

High Quality Soils under Town and Country Planning Act

Under the TCPA, the matters of national importance in section 3(1) specifically refer to the protection of high quality soil resources, as discussed earlier. In addition, the
general purpose of planning under the Act was specifically stated in section 4(1) as the "wise use and management of resources", which applied equally to all resources including those soils recognised as being of high quality for their productive potential. Thus, through these provisions the TCPA clearly placed a significant emphasis on the need for rural land resources, including high quality soils to be protected from unnecessary subdivision and urban expansion.

In case law under the TCPA, as demonstrated below, the Planning Tribunal placed considerable emphasis on the protection of high quality soils, and the avoidance of unnecessary urban development in rural areas.

In the case Auckland Regional Authority v Waitemata City Council and Lendish Heavy Equipment Ltd, decision A009/87, the applicant wished to establish and operate a contractor's depot on a site in the Rural 1 zone (Resource Protection). The Tribunal considered the compelling factors in this case were:

- The preservation of the integrity of the district scheme.
- The avoidance of unnecessary encroachment of urban development on and the protection of a site and locality where the soils are of high value for the production of food.
- The prevention of sporadic urban development in a rural area.
- The avoidance of unnecessary expansion of an urban area into a rural area.

Accordingly, the Tribunal decided that the effect of a departure was contrary to the criteria contained in the Act, and that consent should not be granted in order to protect the public interest.

Similarly, in Griffiths KW, Hodge G and Henry AS v Waikato County, decision A122/88, the subdividers (Hodge and Henry) applied for planning consent and subdivisional scheme plan approval to create 11 rural-residential lots out of part of a rural block. The Tribunal considered that the proposed strip of rural-residential lots would be contrary to the essential functions of the Rural D Zone which recognised and provided for the preservation of an area of high quality soils for food production, as required.
by sections 3(1)(b) and 3(1)(d) of the Act. The Tribunal felt that the proposal would remove part of one of the very few pieces of Class I land in the locality of sufficient area and dimensions to enable the wide ranging potential of its high quality soils to be utilised. Accordingly, the land was considered to be unsuitable for the proposed rural-residential use and the subdivision consent was withdrawn.

In *McMillan DJ v Silverpeaks County Council*, decision C43/85, the appeal arose from the Council’s refusal to grant a specified departure to a proposed dwelling on a 4 ha site zoned Rural A. The appellant had purchased the site to develop it as an intensive deer farming unit and wished to live and work on the deer farm. Land in the Rural A Zone was recognised as having high value for the production of food by the District Scheme, and the ordinances restricted the circumstances under which dwellings could be built. Dwellings were permitted as a predominant use if an "economic unit", as defined by the Scheme, was already established, and were a conditional use if the establishment of an economic unit was proposed. The Council declined consent because the proposal did not meet the economic unit criteria. These criteria include firstly, that the site has as its primary purpose the production of livestock or vegetable matter for sale. Secondly, that it is of sufficient size that the production from the land shall, in the Council's opinion, provide full-time employment for at least one person. Thirdly, that the production from the land would in the Council’s opinion, yield for the operator a reasonable standard of living without recourse to other sources of income. Evidence was produced demonstrating that the site was not of sufficient size to provide full-time employment. The appeal was dismissed, as the Tribunal considered that it did not meet the criteria for a specified departure under the Act.

These cases demonstrate how the matters of national importance were used as assessment criteria for the consideration of planning applications. The Tribunal’s refusal to grant consent in these cases shows how much weight was given to these matters by the courts.

**High Quality Soils under the RMA**

In comparison to the TCPA, the RMA does not specifically address the protection of high quality soils or rural land from unnecessary urban expansion. Instead, under
section 5(2), the following matters may be considered relevant to the protection of high quality soil resources:

(a) **Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;**

and

(b) **Safeguarding the life-supporting capacity of air, water, soil, and ecosystems;**

These provisions of section 5 may be interpreted with respect to the high quality land resources of rural areas, whereby giving protection to such resources is considered as safeguarding the life-supporting capacity of the soil, and enabling these resources to meet the needs of future generations.

Similarly, the following provisions from the "Matters of national importance" under section 6, are relevant to the protection of high quality soils:

(a) **The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:**

(b) **The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:**

Sections 6(a) and (b) are the only reference to protection from inappropriate subdivision in the RMA. While section 6(a) applies specifically to the coastal environment and the margins of lakes and rivers, the objective of protecting rural land of high quality may still be considered valid under the RMA. Outstanding natural features are not defined in the Act. However, in certain circumstances they may be interpreted to include those soils of high actual or potential value in an area. Therefore, given a particular council's interpretation of the outstanding natural features of their district, the protection of high quality soils may be considered as a matter of national importance in certain areas.

The most significant provisions of the RMA with respect to the protection of high quality soil resources, are some of the "Other matters" stated under section 7. The relevant matters under section 7 are:
Protection of High Quality Soils

(b) The efficient use and development of natural and physical resources:
(f) Maintenance and enhancement of the quality of the environment:
(g) Any finite characteristics of natural and physical resources:

Each of these matters is particularly relevant when considering the protection of high quality soils. The retention of high quality soils in rural use would be considered as an efficient use of natural resources and as maintaining the quality of the environment in terms of section 6(b) and (f). High quality soils are a finite resource which may only be created by natural processes over time. Therefore, the recognition of these characteristics and their protection, or retention in productive use, may be considered as meeting the requirement of section 6(g). Thus, it is under these other matters that much of the justification for the protection of high quality soils under the Act is drawn.

It is interesting to note under the RMA the omission of any direct reference to the avoidance of the encroachment of urban development, either into rural areas, or onto land having a high actual or potential value for the production of food, as stated in section 3(1) (d), (e) and (f) of the TCPA. By omitting any direct reference to these principles, the RMA removes the clear directive of past legislation to protect productive rural land from urban expansion.

In summary, while the specific requirement of the matters of national importance under the TCPA to protect high quality soil resources have not been reproduced under the RMA, it may be considered that protection of high quality soils in rural areas is a policy objective which fits within the overall sustainable management purpose of the Act.

In the developing case law under the RMA, the Planning Tribunal has given some direction as to how valid an objective the protection of high quality soils is with respect to the sustainable management of natural and physical resources. The following recent cases all consider the need for protection of high quality soils under the RMA.

In the case *Pickmere RH and Others v Franklin District Council*, decision A046/93, the appellants sought resource consent to subdivide their kiwifruit orchard in the Rural zone into two lots: a rural-residential lot (Lot 1); and, the balance (Lot 2) a
horticultural lot. Following consideration of the relevant matters, the Tribunal found that the proposed Lot 2 would not be an independent farming unit. This decision was based on the conclusion that subdivision of rural land containing high quality soils for the creation of a rural residential lot would be contrary to Part II, the purpose and principles of the Act. Similarly, they concluded that the creation of residential uses unrelated to primary production and beyond the defined limits of the metropolitan area would be inconsistent with the value that the RMA placed on the efficient use and development of resources.

In *Peters AB and RL v Franklin District Council*, decision A049/93, an appeal resulted from refusal to grant resource consent for the subdivision of a 4 ha site in the Rural zone into two rural-residential lots of 2 ha each. The rules of the District Plan allowed subdivision as a controlled activity for the creation of rural-residential activities if the land did not have high actual or potential value for food production. The land was not identified in the District Plan as being of Class I or II soils under the New Zealand Land Use Inventory (the subject land was Class III), and was not included in the soil protection policy area of the Plan. However, the Tribunal held that quality has to be judged on evidence about the capability of the land, and whether or not it has that value depended on factors including: soils, climate, slope, aspect, drainage and the availability of water. Accordingly, on the basis of expert evidence presented, it was held that the land had high potential value for food production, and the proposed subdivision should be considered as a non-complying activity. The Tribunal’s decision was based on the grounds that: the proposed subdivision for rural-residential lots would not sustain the land’s potential to meet reasonably foreseeable needs of future generations, nor would it be an effective use of natural resources. It would conflict with the policies and objectives for the Rural zone directed to preserving the district’s agriculturally productive land, and that there would be adverse potential effects on confidence in the administration of the Plan. Thus the decision to refuse the application was supported.

In *Todd JJ v Queenstown Lakes District Council*, decision C108/92, the appeal arose out of the refusal to grant consent for a subdivision and erection of a dwelling unit on a proposed allotment in the Rural A Zone. The Tribunal supported the Council’s
decision on the grounds that the land had high potential value for primary production, and that subdivision for residential use would be in conflict with sustainable management.

In *Duncan JW v Christchurch City Council*, decision C102/92, the appeal arose from the refusal to grant consent to a subdivision involving a boundary adjustment between two small rural properties in the former Waimairi District to enable the establishment of intensive horticulture in combination with the existing dwellings. The creation of two rural-residential allotments was considered contrary to the objectives and policies of the District Plan for rural zones, which sought to protect, preserve and encourage proper management of the rural land resource for the production of food and to discourage activities that lead to an unnecessary or uneconomic demand for services. However, the Tribunal found that there would be no adverse effects if the proposed subdivision were allowed. It was a boundary adjustment, would not result in any additional allotments and would not therefore result in further fragmentation of rural land. The potentially positive effects were the possibility of both allotments being used for intensive food production following the development of greenhouses. The Tribunal held that the proposed subdivision was in accord with the purpose of the Act, as it would promote the sustainable management and the efficient use and development of the land resources. Therefore the Council's decision was overturned and consent was granted.

Once again, these cases collectively demonstrate the weight given to the protection of high quality soils in developing case law under the RMA. In each of the cases above, the Tribunal has, when considering the actual and potential effects of the respective proposals, viewed the protection and use of high quality soils as a valid purpose of planning under the Act.

### 6.3 Control of Rural Subdivision

Protection of land having a high potential for the production of food hinges on the control of rural subdivision. Subdivision is a legal process involving the creation of a certificate of title for a new parcel of land. The purpose of subdivision is usually to
facilitate the subsequent development of land. However, it may also be considered as an activity in its own right. As an activity, subdivision requires the preparation of a site for its intended use which may involve: removal of vegetation, earthworks, and the installation of roading and services. These are all activities which have effects on the environment and which require consideration under district plans. However, the issues relating to subdivision which are of primary concern are the nature of future land uses and the effects of subdivision on the environment, including the effects of subdivision on established land uses.

While it is generally understood that subdivision enables the establishment of new land uses, what is often overlooked are the effects on the land resources themselves, including the potential effects on established land uses. An effect of subdivision on land resources may include the loss of high quality soils caused by the construction of buildings and impervious surfaces, such as the development of an airport, or by comprehensive urban development. Similarly, the establishment of new land uses may limit the potential use of neighbouring land for productive purposes, such as when new rural-residential neighbours object to accepted rural activities like aerial topdressing. These are effects of land subdivision which need to be considered in the development of subdivision controls in district plans. In general, provisions are made to accommodate a wide range of activities throughout rural areas. However, for reasons such as the protection of high quality soils, or the protection of rural amenities, certain activities may be restricted in their ability to be established throughout the rural area.

When examining the effects of subdivision on land resources, another consideration with respect to the establishment or continuation of rural activities is the price of land. In areas of established small horticultural holdings, where hobby farmers seeking to set up lifestyle lots are pushing up land prices, the existing horticultural activities may have difficulty in obtaining land for expansion, and new units may be too expensive to develop because of the high land prices.

Therefore, approaches to the control of land subdivision in rural areas are often required to balance competing demands for rural land, including: the continuation of established rural activities, the diversification of rural land use and establishment of
more intensive land uses, and the desire of many urban dwellers to live in the rural area on their own 'lifestyle lots' or in a rural-residential development. The discussion below outlines a range of approaches to the control of rural subdivision through district plan rules.

**Approaches to Rural Subdivision Rules**
The following discussion outlines a range of potential approaches to rural subdivision rules in district plans.

(a) **Market Led**
Under the market led approach, there are no planning controls placed on where subdivision may occur or the minimum lot sizes for subdivision. Rather, it is left up to the market to determine the demand for allotments with particular characteristics. The only controls are performance standards aimed at ensuring: a stable building platform of minimum dimensions, access, water supply, effluent and stormwater disposal, the protection of rural amenities, and the protection of natural, historical and cultural features.

The advantages of a market led approach include:
- allowing the market forces of demand and supply to determine where subdivision occurs and what characteristics and lot sizes are required within the physical constraints of the land;
- providing for the maximisation of choice;
- permitting Council involvement in the process only so far as controlling the adverse effects of land development; and
- the protection of other general environmental standards.

However, the disadvantages of a market led approach include:
- little consideration of the impact on rural character and existing land uses in an area;
- the potential for the establishment of concentrations of small allotments with their associated demand for services;
A Comparative Study of Land Use Planning under the RMA 1991 and the TCPA 1977

- that it does not take into account the productive value of land which may be removed from rural use; and
- the possibility of conflict between existing rural uses and increased residential use of rural land.

For these reasons it is unlikely that any local authority will seek to implement the market led approach in its district plan.

(b) Economic Unit

The economic unit approach is based on allowing subdivision in the rural area only if it results in the creation of an "economic farming unit". The definition of an economic farming unit is crucial in the application of this approach. Even though definitions differ between local authorities, a typical definition would require the economic farm unit to produce sufficient revenue to provide a living for the land owner. It may also be required to generate sufficient excess revenue to repay the purchase and development costs of the land for its intended use.

The advantages of the economic unit approach include:

- that it aims to ensure that the land resource continues to be used for productive purposes;
- that it prevents activities not reliant on the productive potential of the soil resource from being established on productive land; and
- that it provides the Council with control over rural subdivision by requiring that evidence is provided for proposed subdivision supporting the productivity of, and likely economic returns from the proposed activities.

The disadvantages of the economic unit approach relate to the past failures of the approach. In many cases it has been found to be ineffective and not able to ensure that the proposed productive uses are established and developed into economic units following subdivision. Other disadvantages of this approach include:

- that the Council is continually required to assess proposals for untested economic uses of rural land, such as new crops or horticultural activities;
Protection of High Quality Soils

- it can often be difficult to administer;
- it tends to dictate what activities may be undertaken on rural land;
- it hinders innovative rural land uses; and
- it does not provide for the demand for rural lifestyle lots.

It is therefore likely that past experience may discourage councils from adopting this approach.

(c) Prescriptive Zoning

The prescriptive zoning approach involves the zoning of specific areas for certain types of rural land uses, such as for rural-residential or horticultural developments in specified locations. It is often linked with the technique of prescribing minimum lot sizes discussed below.

The advantages of the approach are that the Council is able to identify those areas where:
- it is providing for specific demands;
- servicing may be provided to smaller lots concentrated in specific areas; and
- areas with special features such as high quality soils, native vegetation, or rural character may be protected.

The disadvantages of the approach include:
- difficulty in justifying the choice of specific areas for development;
- restricting the development potential in other areas;
- limiting the choice of rural land owners and flexibility of land uses;
- requiring that the environmental effects of more intensive development are closely controlled; and
- may result in the loss of rural character in areas selected for more intensive development.

Because of the ease of applying and understanding this approach, it is likely to be widely applied in various forms in emerging district plans, particularly for more
intensive or specialised activities, such as rural residential development.

(d) Prescribed Minimum Lot Sizes
Under this approach, rural subdivision is permitted subject to a prescribed minimum lot size relative to the resource capacity and/or the proposed land use. It may either be applied as a constant standard across the rural area, or applied with variation in smaller sub-zones of the rural area.

The advantages of this approach include: that certainty is provided for potential subdividers, and the relative ease of administering its provisions for the Council.

The disadvantages include that if the approach was applied across an entire rural area, it would not recognise differences in the physical land characteristics of particular localities, such as topography, soil quality, and accessibility. The approach typically results in a uniformity of lot sizes across the rural area, and therefore does not provide for those activities which require a range and variety of lot sizes. The council would have to be confident that the prescribed lot sizes would not jeopardise future rural land use options. For these reasons, this approach is often applied in combination with the prescriptive zoning approach discussed above.

(e) Flexible approach
Under the so-called flexible approach specified minimum and average lot sizes are required to be maintained following the subdivision of rural land. For example, if specified minimum lot sizes for horticulture lots are 4 ha, and the average lot size is required to be 12 ha, a 60 ha allotment could be subdivided to create: two 4 ha, two 12 ha and one 28 ha allotment to comply with this rule. In this manner, a Council seeks to maintain larger lots to accommodate current and future rural activities which require larger lots, but also recognises the demand for small lots to be created for horticulture or hobby farming.

The advantages of the flexible approach are that it:
- allows a balance to be achieved between small and large lot sizes thereby accommodating varying needs;
• provides for the rural character of an area to be maintained by scattering smaller holdings;
• ensures that the area of land is appropriate to the needs of the land use;
• helps to protect the character of the rural area by providing for a lower density of development;
• provides flexibility for a variety of lots size;
• removes an otherwise arbitrary distinction between zones; and
• may be considered to be equitable and to provide certainty.

The disadvantages of the flexible approach are that:
• it may cause potential for conflict between existing rural uses and potential rural-residential developments in the rural area; and
• the averaging provision needs to be carefully determined on the basis of existing lot sizes in the district.

The approach has considerable merits and is likely to be commonly applied under the RMA.

6.4 Analysis of District Plan and District Scheme Provisions
In this section the objectives, policies and methods which relate to the control of rural activities and rural subdivision in emerging district plans are examined. As in the preceding chapter for each local authority case study, the provisions contained in the operative district scheme prepared under the TCPA are compared to those of their proposed district plan prepared under the RMA. Following a critical examination of these provisions, it will then be possible to determine whether there has been any change in the approaches taken to rural subdivision controls, and the relative emphasis placed on the protection of high quality soils as a planning issue under the respective statutes.
A. Papakura District

Part Manakau City District Scheme 1984 and Part Franklin County District Scheme 1985

The rural area of Papakura District was formed following local government amalgamation in 1989 from parts of the Manakau City and Franklin County rural areas. In particular, rural areas to the north of Papakura in Takanini, Alfriston, Ardmore and the Hunua foothills, which were formerly part of Manakau City, and parts of Karaka, the Hingaia Peninsula, Drury and parts of the Hunua foothills to the south and west of Papakura, which were formerly administered by Franklin County became part of the Papakura District and were joined with the Papakura urban area. Therefore, the rural objectives, policies and rules used in this analysis are drawn from those parts of the Manakau City District Scheme and the Franklin County District Scheme which control rural uses in the amalgamated Papakura District.

The following extracts from the Franklin County District Scheme relating to the protection of high quality soil resources demonstrate the former Council’s intention for use of these resources. The discussion of rural land use in Part 6 of the Scheme recognised the value of land having high actual or potential value for the production of food because of the versatility of soils which may be easily adapted to a wide range of uses. While the Council recognised this land as being of prime agricultural value, it considered that the extent to which this land may be protected is limited by the need to ensure that wise use and development of rural land may occur without unreasonable planning restrictions (p.45). The Rural 3 Zone covers an area of high quality soils in the former County which are used primarily for market garden purposes. The Council’s objective for this Zone is:

To establish a Rural Zone to cover areas of the District used predominantly for market gardening purposes, as a means of conserving the food producing capacity of the elite soils found in such areas, and maintaining a sustainable productive land resource for the regions inhabitants. (p.47)

The majority of rural land in the former County is covered by the Rural 1 Zone, which the Council intended to be a general purpose zone in which they encouraged: "the
responsible use of land for the continuing production of food and primary produce, and for the export of livestock." Predominant uses listed in the Rural 1 Zone included: farming, horticulture, forestry, and dwellings (up to three per allotment). While, in the Rural 3 Zone predominant uses include the same range of land uses but with dwelling numbers restricted to two per allotment. The subdivision ordinances for the Rural 1 Zone also applied to the Rural 3 Zone, these defined the following subdivision standards (a combination of the prescriptive zoning and minimum lot area approaches) for different rural land uses:

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Minimum Lot Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forestry</td>
<td>- no specified minimum lot areas;</td>
</tr>
<tr>
<td></td>
<td>- application to include a forestry management programme.</td>
</tr>
<tr>
<td>Pastoral Farming</td>
<td>- no minimum lot area, 20 hectares recommended.</td>
</tr>
<tr>
<td>General Horticulture</td>
<td>- a minimum useable area of 4 hectares.</td>
</tr>
<tr>
<td>Intensive Uses</td>
<td>- for horticultural or factory farming purposes;</td>
</tr>
<tr>
<td></td>
<td>- minimum lot area of 1 hectare for horticulture;</td>
</tr>
<tr>
<td></td>
<td>- minimum lot area of 2 hectares for factory farming.</td>
</tr>
<tr>
<td>Retirement Lots</td>
<td>- minimum lot area of 4 hectares.</td>
</tr>
<tr>
<td>Permitted Uses</td>
<td>- area as appropriate for other permitted uses.</td>
</tr>
<tr>
<td>Rural-residential</td>
<td>- minimum lot area of 1 hectare.</td>
</tr>
</tbody>
</table>

An additional range of criteria, and a requirement for applicants to prove the productive potential and economic viability of the proposed unit for the intended use are also prescribed. It is a general requirement for all uses that:

Where practicable, buildings and uses shall be so located on sites to not compromise Class I soils or prejudice responsible farm management.

The District Scheme, while recognising the importance of protecting high quality soils, actually implements little in the way of protective controls to achieve this objective. By allowing such small subdivision of rural land for the various land uses above, and given the proximity of this land to employment opportunities throughout the greater Auckland area, the provisions of the Scheme had difficulty in preventing the conversion of smaller land holdings to rural-residential use with a corresponding loss
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of the land's productive potential. (Brendan Hogan, *pers comm.*)

In contrast to the Franklin Country District Scheme, the Manakau City District Scheme gives considerably more consideration to the need to protect high quality soils. The former Council recognised the loss of soil resource due to urban development, and went on to say that:

... the extent of land with soils having a high actual or potential value for the production of food which are still in general agricultural use in the rural areas of the district has enabled the Council to pursue the protection of such land as a major planning objective ... (12.1.2)

In the Scheme the Council attempted where possible to incorporate the land containing high quality soils into the Rural 2 Zone (horticulture and food production). Much of this Rural 2 land became part of the Papakura District as did areas of Rural 1 land (pastoral farming) and Rural 3 land (horticulture adjacent residential areas). The Scheme recognises the potential for increased production from high quality soils and accordingly provides for intensive horticultural use on this land, particularly in the Rural 2 Zone, while attempting to ensure the protection of the resource. The approach to rural subdivision in the Scheme, is to make provision for subdivision on land most suited to intensification of productive uses. However, the Scheme only allows subdivision for the creation of lots with an area sufficient to be an independent farm unit, and of sufficient size to accommodate alternative uses in the future. The relevant objectives and policies with respect to the protection of land of high actual or potential value for food production in the Scheme are:

**Objective:**

12.2.2 To protect land having a high actual or potential value for the production of food from changes which could decrease its value for such production.

**Policies:**

12.2.2.1 The Council will ensure that land in primary production is retained where practicable in independent farm units.

12.2.2.2 The uses in the Rural 2 zone will be confined to those which are dependant on the high quality soils or at least to ensure the protection of such soils for more productive uses in the future.
Similarly, the objectives and policies which relate to rural subdivision recognised the need to protect areas of high quality soils, are as follows:

Objective:

12.2.5 To ensure that rural land is used productively and that any subdivision for farming purposes protects its potential productivity by preventing fragmentation into areas which are not capable of being independent farm units.

Policies:

12.2.5.1 Subdivision in rural areas will only be permitted where the quality of the soils and other relevant factors will support intensification of land use and the development of smaller independent farm units.

The Rural 2 Zone statement demonstrates the Council's attitude to land uses in these areas. The Council considered that the listed range of permitted uses formed a balance between those uses dependent on high quality soils, and those existing uses which were well established but which would not threaten the potential use of the soils for future horticultural uses. In the Rural 2 Zone the independent farm unit (economic unit approach) is used as the basis for the granting of subdivision applications. The Scheme requires that evidence is provided which proves the suitability of the site for the proposed uses and the availability of sufficient resources to undertake the development of an independent farm unit. Predominant uses in the Zone include: horticulture, agriculture, dairy farming, grazing and breeding of livestock (excluding factory farming), farm forestry, stalls (up to $15m^2$ in area), and one household unit per operating independent farm unit.

The subdivision area standards for all subdivision in the Rural zones are stated in ordinance 12.5. In particular, the general ordinance for rural subdivision (12.5.1) states that:

... land shall not be subdivided for any purpose if -

(a) The creation of the lot will conflict with those matters of national importance required to be recognised and provided for in Section 3(1) of the Act, or the Council's rural objectives and policies;

This effectively reinforces the provision of the TCPA relating to the protection of high...
quality soils and the prevention of sporadic urban subdivision. The uses for which subdivision is permitted in each zone, and the requirements for subdivision in these respective zones are as follows:

Rural 1 Zone: - pastoral farm units with a minimum area of 120 hectares;
             - independent farm units for farming uses which are already established;
             - an independent farm unit, complying with the conditions of ordinance 12.5.3.

Rural 2 Zone: - independent farm units for horticultural uses, complying with ordinance 12.5.3, and with a minimum area of 12 hectares for the cultivation of short term crops such as market gardening, strawberries, melons, vegetables and cut flowers.

Rural 3 Zone: - independent farm units for horticultural uses complying with ordinance 12.5.3.

Rural 4 Zone: - independent farm units for farming uses and horse training establishments complying with the conditions of ordinance 12.5.3.

Ordinance 12.5.3 states the special conditions to be met for the subdivision of independent farm units. It requires that for the approval of a proposed subdivision evidence must be provided that for each of the proposed allotments:

- there is evidence that the proposed allotment will be developed and operated as an independent farm unit for the proposed use;
- the lot is suited to the proposed use, including the following parameters: land contour, soil properties, land drainage, availability of water for irrigation, and microclimate and the provision of shelter from the wind;
- the proposal would not generate traffic flow in excess of the design capacity of the roading system;
- that a management programme, including a detailed development programme and an economic unit assessment, be provided for any proposed allotment in the Rural 1, 2 and 3 Zones and for any proposed allotment less than 12 hectares in area in the Rural 2 Zone where compliance with ordinance 12.5.3 is required.
Protection of High Quality Soils

By requiring proof of the creation of an independent farming unit for all subdivisions in the rural zone, in combination with some stated minimum areas, the Council placed emphasis on the retention of high quality soil resource in productive use. This application of the economic unit approach contrasts strongly with that of the Manakau City District Scheme ordinances which applies a combination of the prescriptive zoning and minimum lot area approaches. However, the small size of the minimum areas stated in that Scheme provide little protection to high quality soil resources from being subdivided into small holdings. In practice there were administrative difficulties in applying these provisions, although they did prove to be more effective than those of the Franklin District Scheme in preventing unnecessary rural subdivision and the loss of rural land resources to unproductive uses. (Brendan Hogan, pers comm.)

Proposed Papakura District Plan - Section 1, Rural Papakura

The proposed rural section of the Papakura District Plan takes a traditional approach to the format of district plan rules. The Council's rural strategy includes three elements which are: protecting productive land, retaining rural character, and providing for a range of rural activities. In the discussion relating to the protection of productive land the Council considers that those soils suitable for intensive food production in the District should be protected and not compromised by closer subdivision and development:

In this manner the sustainability of that resource can be achieved and flexibility for future land use actions maintained. It will provide for the more efficient use and development of the natural and physical resource the soils represent and recognise their finite characteristics. (p.10)

The reasons given for the protection of productive land include: the maintenance of the resource, safeguarding the continuing or future use of the land for food production, and providing for the efficient use and development of the soil as a natural resource. The Council's method for the implementation of their rural strategy is through the application of varying subdivision standards based on the features and constraints of different areas. In the proposed Plan the Council outlines a range of alternative approaches to the control of subdivision in rural areas and the relative advantages and disadvantages of each. Following this assessment the Council discusses
its chosen alternative, the so called 'flexible approach' whereby a range of specified minimum and average lot sizes are applied to implement the rural land use strategy, as discussed above.

With respect to their decision to retain a traditional approach to the format of district plan rules, the Council considers that while the emphasis of the RMA is different from that of the TCPA, zoning remains a tried and proven technique which is readily understood by the public. They consider that the emphasis in the Plan is on sustainable management and on the environmental effects of activities. Consequently, the definition of zones in the Plan is based on the management of rural land and the effects of activities. The zones have been developed: "to take account of the different natural and physical resources of the rural area, the need to manage these resources in a sustainable manner, and the effect of activities on the resources of various areas of the District." (pp.24-25)

The objectives and policies of the rural areas which are relevant to the protection of high quality soil resources in the Plan are:

8.1.5 Objectives
(a) To achieve sustainable primary production in the rural areas of Papakura District.
(b) To retain land having high actual or potential value for food production for a range of agricultural uses.

8.1.6 Policies
(a) The Council will encourage the continuing productive use of the rural lowlands ... by permitting a wide range of rural farming activities, and establishing a relationship between the nature of farming activities and minimum subdivision size.
(b) The Council will in evaluating any application for an activity which is not a permitted activity have regard to whether the activity has a function need for a location on rural land ...
(c) The Council in providing for small scale holdings and part-time farming activities will do so in such a way as will promote a variety of lot sizes but prevent the wholesale fragmentation of rural land.

8.1.10 Policies
(a) The council will make provision in a number of areas in the district for rural residential, semi-rural, and small lot rural living.
Protection of High Quality Soils

These will be areas where the soil is not of the highest quality for the production of food, or areas which are already fragmented by subdivision for part-time farming.

The proposed Rural Plan goes on to define three main sub-zones in the rural area with different ranges of permitted activities and varying standards stating permitted subdivision areas. These zones generally have the following characteristics:

(a) Rural Papakura Zone - which provides for a wide variety of rural activities, the use of land for the continuing production of food and primary produce, preservation of rural character, and makes provision for a range of rural living opportunities. Permitted activities in the Zone include: farming (excluding factory farming), horse training, forestry, stalls (up to 15m² in area), and household units for legitimate farm workers not exceeding one per four hectares. Subdivision is listed as a controlled activity in the Zone, with the following prescribed standards:
   - in any subdivision there must be at least one site of a minimum area of 12 hectares;
   - the average area of all lots created must be at least 4 hectares;
   - no lot shall be less than 1 hectare in area;
   - no more than three lots of less than 4 hectares in area may be clustered together;
   - for a retirement lot the minimum area is 0.5 hectares.

(b) Rural Farmlet Zone - which makes specific provision for the horse training industry and for part-time hobby farming, the Zone reflects the existing subdivision pattern and contains rules to maintain the rural character of the area and to provide for a range of rural lifestyles. Permitted activities in the Zone include: farming, horse training, forestry, stalls (up to 15m² in area), and a single household unit on each certificate of title. Subdivision is listed as a controlled activity in the Zone, with the following prescribed standard:
   - the minimum area for subdivision is 2 hectares.

(c) Rural-Residential Zone - has been designed to provide for large lot residential development in the Papakura foothills. Sites are required to be self sufficient in
terms of water supply, sewage treatment and stormwater disposal. Permitted activities in the Zone include: single household units, farming (excluding factory farming), horse training, farm forestry, horticulture, and stalls (up to 15m$^2$ in area). Subdivision is listed as a controlled activity in the Zone, with the following prescribed standard:

- the minimum area for subdivision is 1 hectare, provided that lot sizes may be reduced to a minimum of 4000m$^2$, if for every lot of less than 1 hectare there is a corresponding lot of at least 2 hectares.

Comparison of the Papakura Plans

In contrast to the approaches used in the two District Schemes discussed above, the current Papakura District Council has decided to adopt a flexible approach to the control of rural subdivision in the proposed Plan. The flexible approach appears to take the best features of the prescribed zoning and minimum lot size approaches, while adding the element of flexibility. With respect to the protection of high quality soil resources the flexible approach adopted may be considered as providing a practical solution to the wide range of often conflicting land requirements in the District. In the rural zones it allows for smaller lots to be created suitable for lifestyle farmlet developments, but also requires the retention of larger lot sizes for traditional rural land uses. In this way the proposed Plan should result in a diverse range of rural land uses, but also provide some protection to the higher quality soils in the district from subdivision, thereby enabling them to be converted to other future productive uses.

B. Kaipara District

Otematea County District Scheme 1987 and Hobson County District Scheme 1986

The rural areas of the amalgamated Kaipara District Council were previously under the jurisdiction of the former Otematea County and Hobson County Councils respectively. As demonstrated below, both the Otematea County and Hobson County District Schemes take a traditional approach to the format of their rules, with those acceptable land uses in each of the rural zones being listed in these Schemes.
The objectives, policies and ordinances of the Otematea County District Scheme address the protection of high quality soils in the former County as follows. In section 7 of the Scheme, which discusses rural development, the Council stated their intention to encourage horticulture in the County by increasing subdivision flexibility in order to facilitate the creation of suitable sized holdings on good quality soils. The former Council went on to discuss their intent with respect to forestry and rural-residential living in the County. Their approach stated in the District Scheme is to:

... facilitate the development of farm production in the County, both full-time and part-time through the following policies:
- No town planning consent will be required for subdivision into holdings of 10 hectares or greater.
- Below 10 hectares, the Council will permit subdivision into small holdings of appropriate size following conditional use procedures for the intended use. (p.24)

Mention is also made of protection from residential zoning and development given to the high quality Class II soils at Mangawhai for their future horticultural use. The stated goals (objectives) for the Rural Zone are:

- To encourage the continued viability of pastoral farming throughout the County.
- To encourage the diversification of the rural economy and community into horticulture, forestry, tourism, crafts and non-traditional farming activities. (p.51)

While the Schemes policies for the Rural Zone include:

- To place only the minimum of restrictions on a wide range of predominant uses to ensure the most beneficial development of the rural environment.
- To make subdivision and building controls flexible to encourage the settlement of rural areas and the diversity of activities and occupation groups required to enrich the rural community. (p.51)

None of these goals or policies specifically address the need to protect the high quality soils of the County. However, by inference from the Council’s earlier discussion relating to the development of horticulture on the County’s good quality soils, it may be considered that some recognition is given to the value of these resources.
Predominant uses listed in the Rural Zone include: farming (except factory farming), roadside stalls, saleyards, community facilities, one household unit per site, traveller's accommodation and tearooms (except on State Highways 1 and 12).

The Scheme specifies a minimum subdivision area of 4 hectares throughout the Rural Zone. However, some provision is made for subdivisions for rural-residential purposes, allowing the creation of one allotment every five years down to a minimum area of 5000m\(^2\). Thus, the Scheme gives only passive recognition to the need for high quality soils in the County to be protected.

The Hobson County District Scheme identifies the range and quantity of soil classes in the County. While there is no class I land, 8.8% of the County's land is made up of either class II or class III soils which may be considered as high quality soils with attributes making them suitable for the production of food. The former Council recognised the value of these areas by including them into the Rural A Zone, which contains: "the most productive and versatile farmland in the County." (p.71). While much of the land is considered to be particularly suited for forestry, the Council, in taking the responsibility to ensure that wise use is made of the District's land resources, directed the development of major forestry projects into the less versatile land in other rural zones.

The predominant uses stated for the Rural A zone include: farming, farm forestry (not exceeding 40 hectares or 10% of the total land holding), residential dwellings and a range of rural service uses. In the discussion of rural development issues the Council stated their policies with respect to forestry. One of these policies specifically addressed the protection of high quality land as follows:

To protect productive agricultural land from large scale afforestation and to maintain the economic viability of the dairy industry. (p.91)

Section 16, deals specifically with land subdivision in the County. In the discussion of planning objectives and policies the Council stated that in the prevailing social and economic climate they recognised the need for a flexible approach to rural subdivision.
in order to encourage diversification and intensification of land use and to enable a range of people to live and work in the County. This flexible approach is based on an assessment of each subdivision application against a set of criteria, including the matters of national importance set out in section 3(1) of the TCPA. The Council set no minimum frontage or lot size standards, in order that a wide range of subdivision types and layouts may be approved in relation to: the physical features of the land, its productive potential, situation and available services. The Council aimed to provide for land use change and to encourage new and innovative forms of subdivision. Accordingly, the principle objective with respect to land subdivision in the Scheme is:

- To encourage the closer subdivision and settlement of rural areas in a manner which promotes productive land use and the protection of landscape features, soil and water values. (p.176)

This objective is supported by the following policies:

- To permit the subdivision of rural lots which enable the establishment of productive farming, forestry and horticultural based enterprises.
- To concentrate residential subdivision within existing settlements and townships and to limit the subdivision of rural land for residential use. (p.176)

The criteria for subdivision of land which applies to all zones in the County includes: the "Matters of national importance", subdivision layout, access, land drainage, services, natural hazards, features of natural or historic interest, and reserve contributions. With respect to the "Matters of national importance", the Council provided some explanation of how they were be taken into account during the assessment of proposed subdivisions. Having regard to the requirements of section 3 (1)(d), the Scheme states that these are applied to:

... ensure that the Class II and Class III land in the district .... is subdivided in such a manner as to encourage productive utilisation of the land for pastoral farming and horticultural use. (p.177)

Similarly with respect to the requirements of section 3(1)(e), the Scheme states that these are applied to:
... control unplanned commercial, industrial and residential development along major arterial roads and surrounding the townships of Dargaville and Te Kopura. The Council will not permit the subdivision of rural land for non-rural related commercial, industrial or residential uses if suitable alternative sites are available in nearby settlements or townships. (p.178)

Overall, the application of these criteria in the assessment of subdivision proposals should have ensured that suitable protection was given to the high quality soil resources of the County. However, the subjective nature of applying criteria of this nature resulted in administrative difficulties with these provisions, and in maintaining a consistent approach to the approval of rural subdivisions. (Mark Vincent, pers comm.)

Proposed Kaipara District Plan 1993

The proposed Kaipara District Plan retains a traditional approach to the format of district plan rules. The amalgamated District, comprising rural land from the former Otematea and Hobson Counties has no Class I land. However, 5.7% of the District is Class II land and 4.9% Class III. These soils are considered as being potentially suitable for market gardening, cropping, orcharding, and other general horticultural activities. Significantly, the kumara grown on the Kaipara Clay soils in the District represents around 80% of New Zealand's total kumara crop.

The Council discusses the protection of high quality soils as one of its significant resource management issues. While the requirements of the matters of national importance under the TCPA have not been reproduced under the RMA, the Council considers that protection of high quality land is considered: "a worthwhile policy which fits within the sustainable management purpose of the Act and its underlying principles." (p.22). While the Council considers that the creation of a special zone to protect high quality soils resources is not required, it has incorporated assessment criteria into the subdivision process which enable applications involving such soils in the Rural zone to be rigorously assessed. The proposed Plan requires that people seeking consent for controlled or discretionary activities in the Rural Zone show that the proposed activities: "will not unduly compromise the long term productivity of any Class II or III soils and promote forms of development which are more appropriately located in a
The Council’s proposed objectives, policies and methods of implementation with respect to rural development are:

2.4.1. Objectives - Rural Development
To promote the sustainable management of the District’s soil and water resources and utilisation of its mineral resources in an environmentally sensitive manner.

2.4.2. Policies and Methods of Implementation
(1) Land Features
Policy: To recognise and protect land which is of high actual or potential value [sic] food production.

Methods of Implementation.
- Develop within the provisions of the Rural zone special assessment criteria relating to the use and subdivision of Class II and III land shown on the N.Z. Land Resource Inventory.
- Limit the subdivision and use of Class II and III land for activities of principally residential, commercial or industrial nature.

Section 11 of the proposed Plan addresses subdivision in the District. In subsection 11.3.2 the Council discusses rural subdivision and the protection of valuable soils. The Plan states that a 4 hectare minimum area requirement in the Rural Zone has been adopted, with subdivisions below 4 hectares listed as discretionary activities. The Council recognises that land in the Rural Zone is capable of supporting a wide range of farming, forestry and horticultural activities with varying area requirements. Accordingly, the 4 hectare minimum area requirement has been adopted to give some protection to the small areas of Class II and Class III land in the District. The Council considers that the principles of the RMA enable them to take a more performance oriented approach. Therefore, they intend to give land owners more options to subdivide their land, while preventing unsuitable subdivisions.

Accordingly, the Council’s objectives, policies and methods of implementation with respect to rural subdivision are:

11.4.1 Objective - Land Subdivision
To encourage the subdivision of land in a manner which ensures sustainable use
is made of the land [sic] associated infrastructural services whilst significant natural features and amenity values are protected.

11.4.2 Policies and Methods of Implementation

Policy: To ensure that the long term productive use of high quality soils is not compromised by inappropriate forms of subdivision.

Policy: To enable land of limited productive potential and landscape significance to be subdivided for residential use.

Methods of Implementation

- Establish minimum area requirements for new lots in the Coastal and Rural zones with provision for lots of lesser area for specific purposes as controlled activities.
- Provide for principally residential forms of subdivision as discretionary activities in the Coastal and Rural zones and use performance criteria for assessing related applications. (p.145)

The Code of Rules for activities in the District sets out the range of permitted activities in the Rural Zone. These include: farming, forestry, plant nurseries and residential dwellings (up to three on sites over 4 hectares in area). Subdivision of land in the Rural Zone into allotments of more than 4 hectares in area, and for a limited range of other purposes, are listed as controlled activities, while subdivision into allotments of less than 4 hectares is listed as a discretionary activity. For discretionary subdivisions in the Rural Zone the Council lists as one of the assessment criteria:

The productive nature of the land and the extent to which any land of high actual or potential value for food production will be compromised by the proposed subdivision. The Council will consider any land identified as Class II or Class III on the NZ Land Resource Inventory as being of high actual or potential value for food production. It will generally not grant consent to multiple lot subdivisions of a principally residential nature on such land. (p.218)

This effectively requires careful consideration of the need to protect the productive potential of high quality soil resources for discretionary subdivisions under 4 hectares in area.

Comparison of the Kaipara Plans

The provisions of the proposed Plan apply a minimum lot size approach to rural subdivision. However, flexibility is added to these provisions by allowing for smaller
subdivisions as discretionary activities following their assessment against certain criteria, including the need to protect the productive nature of high quality soils in the area. The Council considers that these provisions will be effective, given the relatively low population and development pressures in the District. (Mark Vincent, pers comm.)

This is an improvement over the provision of the two operative District Schemes which currently apply in the area. The Otematea County District Scheme states a minimum subdivision area of 4 hectares, with some allowance for smaller subdivisions. While the Hobson County District Scheme effectively makes all rural subdivision application subject to assessment against certain criteria at the Council’s discretion. These provisions do not provide any certainty to subdividers, and are unable to ensure the retention of allotments of minimum areas. However, they have provided some protection to high quality soil resources in the District.

C. Waikato District

Waikato County Section of the Waikato District Scheme 1991 and Raglan County
District Scheme 1983

The rural areas of the amalgamated Waikato District Council are comprised of those areas previously under the control of the former Waikato and Raglan County Councils, and a small area from the former Waipa County. As such the relevant objectives, policies and ordinances which control rural land use and subdivision in the rural areas of Waikato District are contained in these documents, and form the basis of this analysis.

In the Raglan County District Scheme the former Council stated that in the Rural Zone they wish to encourage the most economically productive use of rural land resources. Recognition is given in the Scheme to the productive potential of Class I and Class II soils, which are included in a special productive soils area identified on the planning maps.
The relevant objectives with respect to the protection of soil resources are stated in the discussion of farming as one of the main activities in the County. The relevant objectives and policies are as follows:

604. The Council's objective for farming is to encourage the continued development of farming in the County and to provide for the balanced and sustainable development of the County's resources. The policies which the Council has adopted to implement this objective are:

604.1 To allow for a full range of productive rural land uses and to enable some future flexibility in the use of areas of high actual or potential value for food production. Further to enable land owners to choose how to use their land, subject to safeguards to protect the amenities of residents. (p.30)

The Scheme lists an extensive range of predominant uses in the Rural Zone including: farming, horticulture, forestry, cottage industries, rural industries, dwellings, community facilities and reserves. The Scheme discusses the issue of rural subdivision and states that while wishing to permit a wide range of farming and non farming activities in the Rural Zone, it also aims to protect against the uneconomic extension of services and the unnecessary loss of agriculturally productive land.

The former Council adopted an economic unit approach to the control of rural subdivision, by stating a set of relevant guidelines for the consideration of a proposed subdivision. A primary purpose of these guidelines is to ensure that high quality soils are protected, and that subdivisions are not permitted which would require the uneconomic extension of services. The guidelines applied to rural subdivisions include:

(a) the proposed use of the land to be subdivided must be authorised under the Scheme, and any approved subdivision must allow the establishment of that use in compliance with the provisions of the Scheme;

(b) within areas of land which are of high actual or potential value for food production, the Council must be satisfied that the allotments created by subdivision would support a range of viable land based productive uses;

(c) the proposed allotments should each be capable of being self contained with respect to water supply and on-site sewage disposal.
In addition, a further set of guidelines are stated which applied to proposed rural-residential subdivisions in the Rural Zone. Overall, by not stating any minimum areas for subdivision the Council has retained absolute discretion over subdivision in the Rural Zone. The stated guidelines have been relatively effective in ensuring the protection of high quality soils in the District. However, they also caused some administrative difficulties and necessitated consent applications for small subdivisions, such as boundary adjustments. (Bruce Sumpner, pers comm.)

In the Waikato County District Scheme the former Council stated as one of the major planning objectives their intention to maintain the long term productive potential of the County's soil and water resources. In section 3.2.3 the Scheme states that 43.5% of land in the County is classified as Class I or II. As such, the County contains 6.8% of the Class I land and 9.0% of the Class II land in the North Island, making these soils a resource of particular significance. In addition a further 13.6% of the County is classified as Class III land.

The former Council's objectives and policies with respect to rural subdivision are stated as follows:

**Objective**
To protect the productive capacity of the land and to encourage farming uses which do not compromise this capacity.

**Policies**
(v) To permit subdivision for farming as of right down to minimum areas which are capable of sustainable use for a range of productive farming purposes in the long term, based on the productive quality of the land.

In the Council's explanation of these policies they stated that their rural subdivision policy seeks to relate subdivision to the future and potential uses of the land. Consequently, they adopted a policy of setting minimum areas for new allotments based on the potential productivity of the land.

The Scheme specifies a number of rural zones in the rural area of the County. The primary zone which applies to rural areas with high quality soils in the Scheme is the
Rural B Zone. In the zone description, the Council discussed the reasons for the creation of this zone, which are stated as the protection of elite soils and highly productive land from uses which may impair its quality or potential use for the production of food. However, they also consider that the protection of these soil resources must be balanced against the demand for rural-residential housing in those areas in close proximity to established urban areas. Accordingly, restrictions are placed in the Scheme on the number of houses able to be established on each allotment, and similarly on the creation of rural-residential allotments. The predominant uses listed in the Scheme include: farming, forestry, houses, horticulture and produce stalls.

The subdivision standards are listed for specific permitted uses in the Rural B Zone as follows:

(a) Farming and Forestry - permitted subject to assessment of site suitability, with the following minimum area standards:
   - 10 ha for intensive cropping and intensive grazing;
   - 20 ha for general farming;
   - 1.5 ha for greenhouse cultivation; and
   - 2 ha for cropping, nurseries, factory farming and horse training.

With various criteria applying to particular uses. (8.3.1.3)

(b) Horticulture - subdivision of land suitable for horticulture shall not be less than 6 ha with a minimum area for each lot of 2 hectares. For each lot less than 6 ha there shall be at least one lot that exceeds 6 ha. (8.3.1.3)

(c) Houses - one house on a certificate of title in excess of 2000m$^2$ in area, and an additional house with a maximum floor area of 70m$^2$ where there is already an existing house. (8.3.4.1)

By relating subdivision standards in the Scheme to specific uses, and requiring that subdivisions for farming and forestry meet the criteria summarised above the former Council retained quite restrictive control over land subdivision in the Rural B Zone where the County's high quality soils are located. These provisions have been relatively successful in protecting the areas of high quality soils from unnecessary
subdivision, and from falling into unproductive uses. (Bruce Sumpner, pers comm.)

Proposed Waikato District Plan 1993
The proposed Waikato District Plan retains the traditional approach to district plan rules which prevailed in the above district schemes.

The Council specifically discusses "farming and houses in rural areas" as one of the significant resource management issue of the District. The Council interprets section 5 of the RMA with respect to the land resources of the rural areas, and considers that: "[s]afeguarding the life-supporting capacity of the soil" (p.2.10), is a valid matter to be taken into account. The District has soil resources of particularly high quality, with Class I and Class II comprising approximately 26% of the District's total land area. These soils have few limitations to their productive use and are considered by the Council to have special significance in policy terms. The proposed District Plan recognises that these soils, in the Waikato lowlands area, are a resource of national importance and form the basis of extensive food producing areas, presently dominated by the dairy farming industry. While the Council considers that it is the role of the market to determine the most suitable productive activity for these areas in response to commodity prices and profitability, the plan is concerned with ensuring that: "the District's land resources remain available and accessible to those productive activities which are reliant on them in the long term." (p.2.11)

With respect to the protection of high quality soil resources in the District, the Council has the following objectives in the Rural Zone:

9.1 Objectives
9.1.1 To make suitable provision in the proposed District Plan for those activities which are reliant on the District's natural resource base [land, soil and water] for food, fibre and fuel production purposes, where such activities are conducted in a manner that is consistent with the resources' sustainable management.

9.1.3 To maintain the potential for versatility and flexibility of the District's rural land resources in terms of their capacity for the production of food, fuel and fibre.

9.1.13 To enable intensive horticultural operations to develop in a manner
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which does not lead to land, subdivided for this activity, lapsing into alternative uses incompatible with the sustainable management of the District's high quality land resource.

These objectives are backed up by the following policies:

9.2 Policies

9.2.1 Objective 9.1.3: The Council provides for a minimum subdivisional lot size (12 ha) for the Rural zone.

9.2.2 Objective 9.1.3: The further subdivision of land for perennial horticultural purposes is not provided for. This policy will be reviewed should the results of production trends indicate a change is needed. In the interim horticultural activities may establish:

(a) By making more effective use of the eminently suitable existing store of 4-6 ha lots comprised of high quality soils. Existing lots in separate title and ownership may be developed for this purpose with a dwelling as a permitted activity.

(b) By the amalgamation of relatively small contiguous lots of high quality soils in common ownership into more appropriately sized holdings, with a minimum of 12 hectares ...

9.2.3 Objective 9.1.3: To provide for factory farming preferably on other than high quality soils and with some limits so that the amenity values of the surrounding area do not suffer.

9.2.16 Objectives 9.1.13 - 9.1.15: Specific rules controlling subdivision for intensive horticulture are provided in the proposed District Plan. These require that a nominated owner be specified at the time a subdivision consent is granted, that the owner be committed to the capital development of the property and that this be done in accordance with a management plan approved by Council.

The Council gives their reason for objective 9.1.3 as:

*It is necessary to maintain versatility and flexibility of the District's rural land resources in terms of their capacity for the production of food, fuel and fibre for the District's self sufficiency and economic well-being.*

The rules for the Rural Zone list the permitted activities within the zone, which include: farming, intensive horticulture, horse training and racing tracks, and one dwellinghouse per certificate of title (or two if the area exceeds 24 ha, and three if the area exceeds 36 ha).
Protection of High Quality Soils

The subdivision rules for the Rural Zone are stated in section 9S.2 of the Plan. All subdivisions are listed as discretionary activities under this section, apart from boundary relocations or adjustments, which are listed as controlled activities. The Council lists subdivisions for the following purposes as discretionary activities in the Rural Zone provided that the prescribed standards and terms for discretionary activities are complied with:

1. Rural Lots - minimum area of 12 ha for any permitted activity in the Rural Zone. The parent allotment shall not be less than 24 ha in area.
2. Rural House Lots - the creation of one rural residential allotment from any rural allotment of at least 24 ha in area. The area of a rural house lot shall not be less than 2500 m\(^2\) and not more than 1 ha.
3. Lifestyle Lots - the creation of one allotment from any allotment with an area of at least 36 ha in the Hill Country Policy area. The lifestyle lot shall be between 4 and 12 hectares in area.
4. Surplus House Lots - for the subdivision of one house surplus to farming requirements, where a holding contains two houses over 5 years old. The area of a rural house lot shall not be less than 2500 m\(^2\) and not more than 1 ha.
5. Conservation House Lots - the creation of one rural residential allotment, including a protected conservation feature, such as an area of indigenous vegetation or a wildlife habitat, provided that the balance is a complying rural lot. The conservation house lot shall contain a minimum area of 1.0 ha, and the area to be occupied by the dwelling shall not be less than 2500 m\(^2\).
6. Lots for intensive horticulture or covered cropping. The lot shall have a minimum usable area for horticulture of 2 ha, and must be proved to be suitable for the specific intensive uses in terms of: the useable area for development, land contour, aspect, soil quality, drainage and water table, and shelter.

The Council's primary environmental outcome for subdivision in the Rural Zone is:

9S.3.1 The protection of high quality soils for future horticultural and agricultural use.
By retaining discretion over the approval of all but the most simple subdivisions in the Rural Zone, and by stating the minimum acceptable lot sizes for different types of subdivision, the Council has attempted to ensure the protection of the District's appreciable high quality soil resources. Overall, while this approach is very restrictive, it should ensure that the Council is able to use their discretion to achieve a suitable range of allotments to provide for rural activities in the District and the productive use of high quality soils.

Comparison of the Waikato Plans
The provisions of the proposed Waikato District Plan represent a consolidation of the provisions in the preceding County Schemes. The approach allows for the establishment of a wide range of activities in the Rural Zone, and attempts to define appropriate minimum areas for these activities while discretion to approve all subdivisions is retained by the Council. This approach should result in a diverse range of allotment sizes and the establishment of a wide range of rural activities, while achieving the Council's objectives with respect to the protection of high quality soils.

However, the subdivision provisions are particularly restrictive and would be little different in effect if the Council had provided for subdivisions complying with the minimum stated areas as controlled activities, while retaining discretion on those subdivisions below these levels and for particular activities such as horticulture. Overall, the Council should achieve its objectives in relation to rural subdivision, while many landowners will most likely be put through unnecessary expenses to obtain the Council's consent for otherwise complying subdivisions.

D. Other Plan Examined - Hikurangi section of the Whangarei District Plan
In addition to the Plans examined above, the provisions of the proposed Hikurangi Section of the Whangarei District Plan 1993 were compared to the Hikurangi Town Council District Scheme 1981.

While the former Council did not state any particular area standards for rural subdivisions in the Hikurangi Town Council District Scheme 1981, it did state certain
criteria which are considered when assessing an application for subdivision in the Rural Zone. These criteria include:

- the size and shape of the allotment in relation to its intended use;
- the suitability of the land for the intended use determined by reference to its Land Use Capability classification; and
- the compatibility of the intended use with existing neighbouring uses.

By applying these controls on rural subdivision the Council effectively adopted a market led approach to subdivision, whereby a variety of lot sizes may be created as a result of demand for their particular characteristics. However, the protection of high quality land, stated as a prime objective in the Rural Zone, is not automatically assured by these provisions.

In comparison the subdivision standards stated for the Rural Zone in the proposed Hikurangi Plan adopt a minimum lot size of: "... 4000 square metres provided that only one allotment is created within any two year period and leaving a balance area of no less than 4 hectares." (Part 10, p.9). These provisions are consistent with those controls which apply in the wider rural area of the District, which have proven to be relatively successful in allowing the establishment of a range of rural activities, while preventing unnecessary rural subdivision. (Peter Frawley, pers comm.)

Between the Hikurangi District Scheme 1981 and the proposed Hikurangi District Plan, there has been an apparent tightening of the controls on activities in the Rural Zone and of the subdivision standards applying to that Zone. The market led approach which applied under the 1981 District Scheme allowed a flexible approach to rural subdivision which maximised choice and led to the approval of individual subdivisions with the characteristics required for specific uses. This approach was not all that successful, and caused some problems in the administration of the Scheme. With the Council having no stated acceptable minimum area for rural subdivision, smaller subdivisions were approved from time to time, although the overall demand for rural subdivision was small (ibid.).
However, and the Council has now opted for specified minimum area standards in the proposed District Plan. The stated minimum area of 4000m$^2$ with a balance area of 4 ha in the proposed Plan obviously recognises the demand for rural-residential allotments in the Hikurangi rural area. The adoption of this arbitrary standard is a somewhat regressive stance by the Council. It will ensure that a minimum standard area is enforced in the District, and thus may indirectly result in the retention of the productive potential of some areas of rural land. However, the long-term effects of specifying such a small minimum area may result in the loss of much of the rural land from productive uses, and lead to a significant decline in rural activities in the area covered by the Plan. While the proposed Hikurangi Section of the Whangarei District Plan is soon to become operative, it is understood that the Council is reviewing the effectiveness of the minimum standard provisions for subdivision throughout the Whangarei District. This review should determine the suitability of applying these provisions to achieve the sustainable management of rural land resources under the RMA, and may result in a future amendment to the Hikurangi Section of the Plan.

6.5 Conclusion

From the analysis undertaken above, it may be concluded that:

(a) The protection of high quality soil resources, with due recognition of the competing demands for different sized parcels of rural land, has received at least equal recognition under the RMA by local authorities as it did under the TCPA.

(b) While there have been significant changes to the legislative provisions controlling rural activities and subdivision, these changes have continued to recognise the protection of high quality soils as an essential element of the sustainable management of New Zealand's natural resources under the RMA.

(c) The plans examined above have generally shown a tendency to retain tried and tested rural subdivision controls, which are likely to continue to be variably effective in protecting high quality rural land resources.
Protection of High Quality Soils

These conclusions are elaborated in the comparative discussion of district scheme and district plan provisions below.

Each of the four proposed District Plans examined have given some recognition to the need to protect the high quality soil resources in their respective districts. However, the rural subdivision rules in the proposed district plans, if implemented, would result in a wide range of outcomes with varying levels of effectiveness in terms of protecting high quality soil resources, and maintaining a diverse and flexible range of rural lot sizes. Two of the plans examined adopt almost identical approaches - Hikurangi and Kaipara. They both permit subdivision down to a minimum area of 4 hectares as a controlled activity, and also allow the creation of smaller allotments for intensive uses or rural-residential development down to 4000m$^2$ and 5000m$^2$ respectively as discretionary activities.

The likely reason for the adoption of this type of approach in these two proposed Plans is that past experience with subdivision controls of this nature has proven their effectiveness in achieving a balance between the protection of high quality soil resources and enabling the establishment of a wide range of activities. Given the relatively low subdivisional pressures which exist in these areas at present, these controls are not likely to seriously threaten the long term sustainability of high quality soil resources, while allowing for locally desired land use diversification and development.

In distinct contrast to these provisions are those of the proposed Waikato District Plan, which make all but the smallest subdivisions discretionary activities. The Waikato approach appears to be excessively restrictive on rural subdivisions although it does give recognition to the value of the district’s high quality soil resources. The technique of listing the minimum area standards for each rural activity is likely to be quite effective in protecting the district’s high quality soils. However, it is not only going to be administratively difficult during implementation, but is also likely to be quite restrictive on development in the Rural Zone. In addition, those activities for which subdivision may be desirable, but which are not listed under the plan become non-complying activities, and as such face a significantly more difficult consent process.
in order to gain approval.

While the provisions of the Proposed Waikato District Plan are not contrary to the Act, they are certainly contrary to the intent of the Act to minimise unnecessary controls on land use activities. However, the provisions are relatively well thought out and would probably work well in the District if subdivision of allotments complying with the listed minimum subdivision standards were made controlled activities, rather than discretionary. This would then allow any subdivisions not able to meet the minimum standards, or other criteria, to be considered as discretionary activities. The main reason for these controls being proposed is that the protection of high quality soil resources, given the considerable amounts of Class I and II soils present in the District, is perceived by the Council as a resource management issue of major significance. As a local authority dominated by rural interests, the protection of these rural soil resources, which provide the main reason for particularly high land values in the District, is an issue of considerable local political interest.

Finally, the subdivision provisions in the Proposed Papakura District Plan are considered to represent a good balance between providing for rural activities and protecting high quality soil resources. By applying the flexible approach, the Council will be able to ensure that all rural activities are catered for, while retaining the rural character of the area, and retaining a wide range of allotments on high quality soils, thereby allowing for conversion to future land uses.

The reasons for the adoption of a flexible approach in Papakura relate to the range of soil qualities, existing activities, and range of lot sizes present in the District. While their primary objective is to give recognition to and protect the finite characteristics of high quality soil resources, this is balanced against the need to provide flexibility for the establishment of a wide range of future land uses. A wide range of interest groups would have influenced the preparation of these provisions, reflecting the urban and peri-urban nature of Papakura District, its proximity to the greater Auckland area, and the existence of particular activities in the District, such as the horse training industry.

Overall, these provisions in the recently proposed District Plans demonstrate the
implementation of the sustainable management ideology of the RMA. The protection of high quality soils has taken an equal if not greater emphasis under the RMA than it was given under the TCPA, as verified by the analysis of emerging district plans in this chapter.

Under developing case law we also see continued emphasis on the protection of high quality soil resources under the RMA. This is largely due to the new provisions of the RMA, which while not specifically requiring the protection of high quality soil resources as a purpose of the Act, refer to broader matters such as the need to recognise the finite characteristics of natural and physical resources, and the efficient use and development of natural resources. The Tribunal has continued to support the protection of high quality soil resources as a valid purpose of planning, and has applied various aspects of Part II as justifications for this protection. In particular, the Tribunal has recognised the need to protect high quality soil resources: for the reasonably foreseeable needs of future generations, and as an efficient use of natural resources.

It is likely that many Councils have taken a cautious approach to the development of the format and contents of their district plan rules for the reasons outlined in the previous chapter. The objectives and policies of emerging district plans are generally supportive of protecting high quality soil resources in rural areas, and these attitudes have also been reproduced in the rules to provide for the protection of high quality soil resources.
Chapter 7 - Summary and Conclusions

7.1 The Research Problem Reconsidered
Since the Town and Country Planning Act 1977 was superseded by the Resource Management Act in October 1991, there has been a period of significant change in the practice of land use planning in New Zealand. The purpose of this study has been to examine the effects of the changes resulting from the enactment of the RMA. This has been achieved by focusing on the implementation of the Act's purpose and principles in some of the emerging district plans prepared under the Act.

As the fundamental document for the control of land based activities in New Zealand, the district plan is the most influential planning document from the perspective of the everyday activities of New Zealanders. It applies to the activities of everyone from farmers to urban home owners and resource developers. As such, the district plan represents the logical level at which to study the effects on land use planning practice brought about by the enactment of the RMA.

The scope of this study embraced the following interrelated objectives, as stated in chapter one:

• To determine the theoretical basis for land use planning as an activity of local government in the modern capitalist state, and to examine the sources of legitimacy for planning intervention in the 'public interest';
• To examine the traditional ideology and underlying rationale of the land use planning system as a function of local government in New Zealand, through the development of successive town and country planning statutes;
• To examine the international forces leading to a shift in the land use planning ideology towards a new environmental paradigm embodied in the concept of 'sustainable development', and to discuss New Zealand's policy response to these forces, leading to the evolution of the 'sustainable management' concept representing a new land use planning ideology in the RMA; and
• To determine to what extent the practice of planning in New Zealand has
adapted to this change in planning ideology, by embracing and implementing the interrelated principles of 'sustainable management' and the 'effects based' ideology of the RMA, through a comparative analysis of selected key planning policies in district schemes prepared under the TCPA with those of new district plans emerging under the RMA.

The working hypothesis for the study postulated that the change in land use planning ideology embodied in the concept of 'sustainable management' has resulted in significant changes to the practice of land use planning in New Zealand.

7.2 Evolution of Planning as a Local Government Function

The theoretical context for the research problem was reviewed in chapters two, three and four of this study. These chapters established the basis for an understanding of the role of, and rationale for land use planning at the local authority level in New Zealand, and the potential significance of the global paradigm shift towards 'sustainable development' from a New Zealand perspective.

Western democratic capitalist societies depend upon the operation of the market for the allocation of resources. However, state intervention at different levels is required to correct the failings of market mechanisms such as: in the provision of major infrastructure and goods for collective consumption, the recognition of societal values in the allocation of land resources, and to mitigate the effects of market externalities.

The nature of land as a resource fixed in supply but essential as a basic factor of production, means that its availability, management and allocation between competing uses is a prime determinant in the economic performance of a community. Land use planning seeks to promote the orderly development of land, minimise the depletion of its resources, and to anticipate and resolve land use conflicts.

Thus, one of the main roles of land use planning in New Zealand has been to contribute to the processes of social reproduction by maintaining and managing the built environment. In this role, part of the task of planning has been to maintain a
balance between conflicting interests in the built environment with the need to uphold the 'public interest' within the framework of the welfare state.

In the New Zealand experience, land use planning evolved as a role of local government through a series of legislation initiated in 1867, but was not widely applied until the Town and Country Planning Act 1953. The New Zealand experience emulated that of its western peers, although the town and country planning system which resulted reflected New Zealand's social and political context, while drawing heavily on the planning practices of both the United Kingdom and the United States.

Parliament progressively amended and improved the provisions and powers of local government planning through the Town and Country Planning Act 1953 and the Town and Country Planning Act 1977. These Acts firmly established land use planning as a function of local government in New Zealand, reflecting the processes followed by other western capitalist nations.

The Town and Country Planning Act 1977 sought to broaden the objectives of land use planning to achieve the wise use and management of New Zealand's resources, combined with directing and controlling the development of local areas. For the most part, the town and country planning system tended to recognise individual property owners rights, and often gave these priority over broader social and environmental values. Nevertheless, the recognition given to the "Matters of national importance" under the 1977 Act indicated statutory recognition of the changing emphasis of land use planning in the early 1970s. These matters introduced broader environmental concerns into the planning system, which added to and broadened the traditional focus of the planning system on directing the physical form of urban development.

Thus, overall the traditional New Zealand town and country planning process provided for the facilitation of private capital investment, while attempting to mitigate environmental externalities arising from the development process. The incorporation of social, cultural and environmental considerations into the planning process was limited to the extent to which their management was necessary to regulate perceived impacts without compromising the interests of capital. Throughout the evolution of
the land use planning system, the rights of property owners to utilise their land as they desire has been largely protected.

The emergence of the 'sustainable development' paradigm, in response to increasing global recognition of environmental and socio-economic problems, was significant in initiating the process of resource management law reform under the Fourth Labour Government in 1987. However, the reform of resource management legislation was largely based on the government's New Right philosophy that market mechanisms should be the prime determinants of resource allocation.

For this reason, achieving the 'sustainable management' of New Zealand's natural and physical resources, rather than 'sustainable development', is the single and overriding purpose of the RMA. The Act seeks to achieve only one of the goals of sustainable development because it focuses on the sustainability of natural and physical resources. It is considered that the provisions of the Act were influenced by sustained political pressure from two principle interest groups: the New Right lobby and the environmental movement.

The environmental movement strongly advocated for more recognition of bio-physical values in planning legislation, while New Right interests advocated for the minimisation of government intervention and market based resource allocation. The New Right were concerned about the delays and high costs of the planning system, and generally viewed planning as an unwarranted intervention in the market place. It is considered that the Act attempts to achieve a balance between the views of these two opposing interest groups. Ecological principles have clearly been incorporated into the sustainable management purpose and principles of the Act. However, the influence of the New Right was credited in achieving the exclusion of socio-economic objectives from the provisions of the RMA which were apparent under the TCPA.

As a consequence, under the RMA the land use planning functions of local authorities are focused on controlling the adverse effects of activities. In retrospect, local authority planing has moved away from the "wise use and management" of resources and the "direction and control of development" provisions under the town and country
planning legislation, to that of promoting the "sustainable management of natural and physical resources" under the RMA.

Thus, in certain respects, the RMA is a significant departure from the recent historical trends of land use planning in New Zealand. The RMA was heralded as the first piece of planning legislation in the world to incorporate elements of the emerging sustainable development paradigm. But, by limiting the Act to achieving the sustainable management of natural and physical resources, the need for social equity as a prerequisite of a sustainable society has been overlooked. In this way, Parliament has emasculated the concept of sustainable development, and has sought to limit the scope of land use planning under the RMA to that of controlling the adverse effects of development.

Thus, it may be argued that as the RMA provides for the facilitation of private capital investment, while attempting to mitigate environmental externalities arising from the development process. In this respect, it is little different from the old town and country planning system. The major change in emphasis is a movement away from a role of planning to direct and control development, towards a more *laissez-faire* economic approach to planning, whereby the market is the prime determinant of the location of land uses, subject only to the mitigation of adverse effects.

Thus, in conclusion, the RMA reflects the historic role of the state in capitalist society, whereby state intervention in the market is seen to be justified in order to protect elements of the public interest, such as mitigating the adverse environmental effects (externalities) of development for the benefit of society as a whole. The freedom of private property owners to exercise the right to utilise their land resources as they see fit is relatively even more secure under the RMA, when compared to the TCPA, so long as the effects of their land use activities do not adversely affect others or impact on the life supporting capacity of natural and physical resources.

### 7.3 Case Studies of Planning Issues

The analysis of the two planning issues examined in this study provides further insight into the recent evolution of planning in New Zealand and the impact of the RMA on
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planning practice.

A. Protection of Residential Amenities

From the introduction of zoning in early district schemes, the areas defined by residential zones have been subject to relatively strict controls in order to protect the residential character and amenities of residential neighbourhoods. The reasons for the traditional emphasis which has been placed on the protection of residential amenities through the planning system relate to New Zealand's status as a property owning democracy. Strong interest groups such as homeowners tend to pursue their common interest in the protection of residential amenities, and of their property values, by collectively resisting unwanted land uses in their neighbourhoods.

"Amenities" were defined under the TCPA, and "amenity values" are similarly defined, under the RMA. Both definitions include common values which contribute to amenity standards, such as: pleasantness, harmony, and aesthetic coherence. In reality, residential amenities are defined by the character of a particular residential area. There are a wide range of factors which combine to determine residential amenity, including: density, residential development and servicing standards, landscaping, traffic levels, and proximity to conflicting land uses.

However, there are certain non-residential activities, ranging from crafts to professional uses, which it may be argued contribute to the vitality of residential areas. These activities have usually been strictly controlled in residential areas, although some were permitted under the definition of a 'home occupation'. In general, only a limited range of non-commercial activities in residential areas, including home occupations, have been considered to be acceptable as long as their potential adverse effects are controlled, and the existing standards of residential amenity are maintained.

With the introduction of the RMA and the preparation of new district plans under this Act, there is the potential for the implementation of a wider range of approaches to the control of non-commercial activities in residential areas. Given the ideology of the RMA, with its strong focus on effects, it was thought that some of the tight controls on home occupations would be relaxed, and that a wider range of commercial and
light industrial activities may be able to be established in residential areas, as long as they have no adverse effect on residential amenities. This issue was examined in selected district schemes and plans in order to determine how the effects based ideology of the RMA is influencing the practice of local authority land use planning in emerging district plans.

The five proposed district plans analysed in this chapter revealed that not only does the protection of amenity values remain an important consideration under the RMA, but also that local authorities are showing resistance to the adoption of an effects based approach to the control of non-residential activities in residential areas.

From the analysis of district plans with respect to this issue, it was concluded that while there has been some relaxation in the provisions controlling non-residential activities in residential areas, these changes have been small and have not gone as far as possible towards the implementation of the effects based approach of the RMA. In addition, the protection of residential amenities has been accorded an equal if not greater emphasis in emerging district plans under the RMA than it was accorded under the TCPA.

Three of the plans examined made no provision for those non-residential activities which would comply with the development standards of the plan, to be approved as either controlled or discretionary activities in residential areas. As such, it could be argued that each of the provisions in these plans are contrary to the Act's effects based ideology, as they do not provide for the establishment of all compatible activities within residential areas.

In contrast to the proposed district plans for Hikurangi, Papakura and Waikato, only the proposed Kaipara District Plan has put forward more liberal controls with respect to non-residential activities in residential areas. The Kaipara Plan incorporates a three tiered approach to activities of a commercial nature, allowing certain land uses within the definition of a 'home occupation' as permitted activities, those land uses which do not meet the strict terms of this definition as controlled activities, and finally for a wide range of other commercial uses to be approved as discretionary activities. Thus,
it may be considered that the provisions of this proposed Plan are more in accord with the effects based focus of district planning under the Act than the other plans examined.

It is under developing case law that the greatest relaxation of controls is evident. While the Tribunal is continuing to have regard to the protection of residential amenities as a valid consideration under the Act, they have given a clear indication that they are applying an effects based approach to the consideration of non-residential activities under the RMA. By applying this effects based approach, the Tribunal has supported the establishment of particular developments compatible with residential amenities in residential areas, and in accord with this view they appear to have considered applications primarily on the basis of their adverse effects.

B. Protection of High Quality Rural Soils
The need to protect high quality soils for their food producing potential has long been recognised as a valid purpose of land use planning in New Zealand. The expansion of urban land uses into prime rural land has long been recognised as an undesirable result of urbanisation and urban development, but it was not until the "Matters of national importance" were added to the 1953 Town and Country Planning Act in 1973 that this planning principle was recognised by statute. This principle was reinforced by the TCPA, which stated as matters of national importance the need to control the spread of urban development into rural areas, or onto land with a high actual or potential value for the production of food. The way local authorities interpreted these matters of national importance led to the adoption of a wide range of planning objectives and policies addressing these matters in various district schemes.

The primary reason for the protection of high quality soil resources being such an important planning principle relates to New Zealand’s traditional dependence on exports of primary agricultural produce for vital export earnings. It may be argued that New Zealand’s continued social and economic wellbeing has been strongly linked to the ability for productive use to be made of the country’s high quality soil resources. Therefore, it is not surprising that Parliament considered it expedient to make the
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protection of these resources an objective of the town and country planning system. Most district schemes recognise the versatility of high quality soils and their ability to be adapted to a wide range of productive uses.

In contrast to the TCPA, the RMA does not specifically refer to the protection of high quality soils as a planning objective. However, it is widely interpreted by local authorities that the protection of natural resources for use by present and future generations is fundamental to achieving sustainable management. Therefore, by recognising the need to protect high quality soil resources, district councils consider they are recognising what may be considered as one of the fundamental principles of sustainable management. This issue was verified in the case studies in order to determine the extent to which local authorities are embracing and implementing the sustainable management purpose and principles of the RMA through their emerging district plans.

The analysis of four proposed district plans revealed how district councils are responding to the challenge of implementing the purpose of the RMA. From this analysis it was evident that the protection of high quality soil resources had been retained as a valid policy objective under the RMA. However, the subdivision rules designed to implement these policies showed varying potential to achieve the protection of high quality soil resources, as discussed below.

From the analysis of district plans with respect to this issue, it may be concluded that changes made to the provisions controlling rural activities and subdivisions have continued to recognise the protection of high quality soils as an essential element of the sustainable management of New Zealand's natural resources under the RMA.

Each of the four district plans examined gave recognition to the need to protect the high quality soil resources of their districts. However, it was found that the rules on rural subdivision in the proposed district plans would have variable levels of effectiveness in terms of protecting high quality soils, and in maintaining a diverse and flexible range of rural lot sizes. Two of the plans examined adopt almost identical approaches by permitting subdivision down to a minimum area of 4 hectares as a
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controlled activity, and also allowing the creation of smaller allotments for intensive uses and permitting rural-residential development as discretionary activities.

In contrast, the proposed Waikato District Plan makes all but the smallest subdivisions discretionary activities. That approach appears to be excessively restrictive on rural subdivisions although the Plan does give recognition to the value of the district's high quality soil resources. The Plan's technique of listing the minimum area standards for each rural activity is likely to be quite effective in protecting the district's high quality soils. The provisions are relatively well thought out and would probably work well in the District, but would be more in accord with the Act if the subdivisions complying with the prescribed minimum subdivision standards were made controlled activities, rather than discretionary.

Finally, the subdivision provisions in the proposed Papakura District Plan (Rural Section) are considered to represent a good balance between providing for rural activities and protecting high quality soil resources. By applying a flexible approach to rural subdivision under the Plan it should ensure that all rural activities are catered for, while retaining the rural character of the area, and providing for a wide range of allotment sizes and rural activities on the high quality soils of the area.

Under developing case law the continued emphasis on the protection of high quality soils resources under the RMA is seen. This is largely due to the new provisions of the RMA, which while not actually stating the protection of high quality soil resources as a purpose of the Act, refer to other matters under which the protection of high quality soils may be considered as a valid objective, as discussed earlier.

7.4 Conclusions

To enable the determination of whether the emerging district plans analysed in this study have embraced the purpose and principles of the RMA the results of the comparative study of emerging district plans and district schemes above has been inconclusive.
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With respect to the issue of restricting non-residential activities in residential areas for the protection of residential amenities, it would be expected that the adoption of an effects based approach under the RMA should have resulted in a relaxation of restrictive controls on home occupations and other similar activities. However, in many ways the reverse is the case and the analysis revealed that in only one plan out of the five examined was there any relaxation of controls, and an attempt to apply an effects based approach to non-residential activities.

Similarly, with respect to the issue of controlling rural subdivision to retain the productive potential of high quality soils resources, the analysis of emerging district plans revealed mixed results. As a result of this analysis, it was concluded that only one of the four plans examined would be likely to achieve a balance between protecting areas of high quality soils from extensive subdivision, and from falling into unproductive use, while allowing for a wide range of appropriate rural activities on a range of allotment sizes.

Thus, with respect to the overall hypothesis of the study that:

the change in land use planning ideology embodied in the concept of 'sustainable management' has resulted in significant changes to the practice of land use planning in New Zealand,

it can be concluded that, while the purposes and principles of the Act represent a significant change in the statutory ideology of land use planning, and the contents of the emerging district plans examined in this study have recognised these changes, it has been found that in many local authorities the tried and tested planning controls of the past have been retained in their new district plans.

In a minority of the proposed district plans examined in this study, significant steps have been made to incorporate the purpose and principles of the Act, and to adopt the intended focus of the Act on controlling the effects of activities. However, at this early stage, these "progressive" plans are the exception and certainly not the norm.
Overall, in many ways coming to terms with the changes to the land use planning system and the sustainable management ideology of the RMA has been a major challenge for New Zealand's planning practitioners. While many may agree with the purpose and principles of the new Act, they may have been restricted in their ability to embrace these by limitations such as local government political inertia and budgetary constraints, and by their own limited understanding of the changes that Parliament envisaged would follow from the implementation of the RMA.

However, one could also argue that there are more deep seated reasons why planning practitioners are reluctant to embrace the New Right ideology of the RMA. The current generation of planning practitioners was trained during a period when public intervention was regarded as a positive and desirable societal role. Thus, there may be a cognitive dissonance between the perspectives of local authority planners as to the role of planning in society, and of the views of those who framed the RMA. This is identified as an important research question for further investigation.
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Appendices
Appendix A - Land Use/ Activity Categories

A. Land Use Categories under the Town and Country Planning Act 1977

The TCPA defined three principle land use categories, these were as follows:

(a) Predominant uses - those activities permitted "as of right", provided that they met the relevant development or performance standards in the scheme.

(b) Discretionary uses - those activities which were generally permitted subject to a non-notified application being made to the council, and which complied with the relevant policies and development standards in the scheme.

(c) Conditional uses - those activities which may be permitted subject to a publicly notified application being made to the council, and which were required to meet the general objectives and policies in the scheme.

In addition to the above categories, flexibility was built into the Act by allowing applications to be made for the granting of a dispensation or waiver, or a specified departure from any provision of a district scheme. Councils could grant a dispensation from their site development standards up to a stated maximum limit, such as the relaxation of yard standards, provided that the following criteria under section 76 of the TCPA were satisfied:

(a) The dispensation or waiver would have encouraged better development of the site, or that it was not reasonable to enforce the provision in respect of that particular site; and

(b) The dispensation or waiver would not detract from the amenities of the neighbourhood, and had little planning significance beyond the immediate vicinity of the land in respect of which the dispensation or waiver was sought.

In granting a dispensation, a council could impose appropriate conditions in order to meet the planning objectives and policies of the district scheme. Similarly, a council had powers to grant a specified departure, which in effect was an exemption from any provision of its district scheme. This procedure could be applied to any proposal that did not qualify for a dispensation. For a specified departure application to be
approved the Council had to be satisfied that the proposal met a series of planning
criteria stated in section 72(2) of the Act.

B. Activity Categories under the Resource Management Act 1991

The RMA prescribes five different activity categories which may be specified in district
plans. These activity categories and their implications are as follows:

(a) Permitted Activities - are those for which no land use consent is required. However, certain standards required to be met by permitted activities may be stated in the plan.

(b) Controlled Activities - are those for which consent will be granted, but may be subject at the Council's discretion to conditions specified in the plan.

(c) Discretionary Activities - are those for which the Council will exercise its discretion to the granting of a resource consent, subject to the criteria set out in the plan. Council may limit its discretion to certain aspects of the activity, or may retain discretion over the entire activity.

(d) Non-complying Activities - are those which contravene a rule in the plan and are not expressly provided for under another activity category, or are not prohibited by the plan.

(e) Prohibited Activities - are those which are expressly prohibited by a rule in a plan.

Therefore, under the RMA a resource consent must be obtained for any activity classified in a district plan as either a controlled, discretionary or non-complying activity. Only those land uses listed as permitted activities are able to be carried out 'as of right' under the Act. However, in many circumstances permitted activities will also be required to comply with a set of stated conditions in a district plan. Under the RMA there is no mechanism for obtaining consent for a prohibited activity, other than going through the process of a plan change.
Appendix B - Land Use Capability

Land Use Capability

New Zealand's land resources were assessed in the early 1970s as part of a capability survey carried out by the former Ministry of Works and Development. This survey produced a series of maps known as the New Zealand Land Resource Inventory (NZLRI) worksheets. They divided land into units for which information was recorded regarding physical facts on: rock type, soils, erosion, and vegetation. From this information an interpretation of potential land productivity was made, known as the "land use capability". The classes of land use capability are based on a two tier system of areal units, as follows:

(a) Capability class - ranging from Class I through to Class VIII, with a decreasing capability for sustained agricultural production. Classes I - IV are considered suitable for cultivation or cropping, Classes V - VII are considered suitable for pastoral farming or forestry, while Class VIII was considered suitable only for protection forestry.

(b) Capability subclasses - which grouped area units by the same kind of limitation or hazard. The four types of limitation recognised under the system are: erosion, wetness, soil limitations, and climate.

The capability classes were based on land management practices in the early 1970s. Accordingly, they do not take account of new farming techniques or the introduction of new land uses since this time. While the information contained in the NZLRI remains a valuable planning tool, the applicability of the land use capability classes is potentially limited, and should be refined by further site specific investigation.