APPLICATION OF THE PERMITTED BASELINE

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Abstract: *The permitted baseline is a term that has been introduced to the Resource Management Act through case law. It's purpose is to identify what is permitted to occur on a parcel of land without needing consent, in order to quantify the difference in effect of a proposed activity and that which is permitted to occur as of right.*

The interpretation and application of the permitted baseline by practitioners across the transport planning industry varies considerably. This presentation includes research by Abley Transportation Engineers including referenced case-law and discusses a standardised approach to applying the permitted baseline test for assessing the effect of land use activities on the transport environment.

This presentation will interest transportation engineers and local authorities on the appropriate application of the permitted baseline test for transport impact assessments.

INTRODUCTION

Professional engineers involved in transport planning need to have an in-depth understanding of fundamental planning issues beyond those covered in the 'Transport' section of many District Plans. The permitted baseline is just one of many important planning issues that engineers involved in transport planning need to be familiar with and appreciate how to apply the test correctly.

The concept of a permitted baseline was formally introduced into resource management legislation in a 2003 amendment of the Resource Management Act. The permitted baseline is presented in Sections 94A(a) and 104(2) of the Resource Management Act; sections of the Resource Management Act that surround notification and assessment of resource consent applications. These sections of the Resource Management Act specify that consent authorities *"may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect".* [RMA (2003)]

The purpose of the the permitted baseline is to identify what is permitted to occur on a parcel of land without needing consent, in order to quantify the difference in effect of a proposed activity and that which is permitted to occur as of right. Essentially it is a comparison between the effects of what is proposed and those which are permitted. It is a discounting exercise and only those effects above those permitted are assessed against the receiving environment.

In Lloyd v Gisborne District Council, the Court summed up the three categories of activity that needed to be considered as part of the permitted baseline including:

1. What lawfully exists on the site at present,
2. Activities (being non-fanciful activities) which could be conducted on the site as of right; i.e., without having to obtain a resource consent, and
3. Activities which could be carried out under a granted, but as yet unexercised, resource consent [QP (2008)].

Ensuing to this case law, planning opinion provided in relation to a resource consent application on a site occupied with a non-operational activity deemed that an activity that has ceased to operate on the subject parcel of land can also be considered to form the basis of the permitted baseline for that site, but only for a period up to 12 months following the cessation of that activity. Following 12 months of the activity ceasing, the permitted baseline of the site would revert to being those activities that could be carried out as of right on the site.

The Resource Management Act in granting discretion to consent authorities to consider whether to apply the permitted baseline to a resource consent application (via use of the word "may"), effectively makes it mandatory for the consent authority to consider the permitted baseline test. This means that every consent authority should make a clear determination in its assessment of each resource consent application whether it has chosen to apply or not to apply the permitted baseline [QP (2008)]. However, it is still common practice for many resource consent applications and assessments by consent authorities to omit commentary on the permitted baseline for the application site. In cases where it is discussed, the interpretation and application of the permitted baseline concept to transport planning issues varies considerably.

Many District Plans describe upper thresholds on the level of traffic generation that is permitted to occur from a parcel of land for any given zoning. In terms of transport, a permitted activity can occur as of right if the expected level of trip generation is less than the specified upper threshold. However, most resource consent applications of interest to transport planning professionals involve activities that will have a level of trip generation above the prescribed threshold and therefore more likely to have potential adverse effects on the transport environment.

APPLICATION IN TRANSPORT PLANNING

In my experience, the permitted baseline concept is relatively well understood by transport planning professionals however the application of the concept if often poorly executed.

A common misapplication of the permitted baseline surrounds the interpretation of the *"… the plan permits"*. This statement relates to permitted activities only and does not include controlled or restricted discretionary activities. Permitted activities are unregulated because they are deemed to have effects that are no more than minor. This means that any hypothetical non-fanciful activity being considered on the application site for the purpose of establishing the permitted baseline must itself also be permitted. The issue about whether effects are insignificant, no more than minor, more than minor or significant is another discussion in itself. I note that Ian Clark's paper on 'Level of Service F: is it really as bad as it gets?' provides a useful insight into Level of Service targets in a number of regions of New Zealand. It may be that consistent regional parameters need to be developed to help practitioners classify the expected level of effect using RMA terminology.

An approach adopted by some transport planning professionals in determining the permitted baseline of an application site is to firstly establish the number of individual sites that the site could be subdivided into. The maximum traffic generation permitted from each individual site, assuming it is developed in a non-fanciful manner, is then used to calculate the permitted traffic generation baseline for entire site. However, this method is only appropriate if subdivision is specified as a permitted activity on the application site within the applicable District Plan.

After determining the permitted traffic generation baseline for the application site, the effects of that level of traffic generation on the receiving transport environment then requires assessment to establish if applying the permitted baseline is appropriate. As the permitted baseline is to discount those effects permitted by the District Plan, it also requires those effects to not be inconsistent with either Part II of the Resource Management Act or the objectives and policies of the relevant District Plan. This assessment needs to consider both the current state of the receiving environment and also the future state of the receiving environment as it may be modified by permitted activities, unimplemented resource consents and committed infrastructure projects. The future state of the receiving environment is discussed in the next section of this Technical Note.

It is important that where the permitted baseline is developed from activities that could be conducted on site as of right, that these hypothetical activities are non-fanciful is nature, size and form. For example, the Christchurch City Plan permits buildings on Business 4 sites to have a plot ratio of 1 i.e. the building can cover the entire site. However, the average site coverage of all activities established on Business 4 sites in Christchurch is known to only be around 38% hence any hypothetical activity claiming more than 40% plot ratio could be considered fanciful.

It is a common misconception in the transport planning profession that the zoning of a particular parcel of land means that the effects of developing that land to its theoretical maximum potential are anticipated by the Plan and therefore this can be considered to form

the permitted baseline for the site. This is not the intention nor the correct application of the permitted baseline.

RELEVANCE OF THE RECEIVING ENVIRONMENT

Another relevant consideration in the application of the permitted baseline is that the permitted baseline applies to activities on the subject site. In terms of transportation issues, the effects of activities on any parcel of land are never exclusively confined to that site, as people will travel to or from the site within the transport network (receiving environment). It is therefore relevant to consider the receiving environment upon which the activity may have effects.

The receiving environment upon which effects should be assessed is therefore both the existing and the reasonably foreseeable future environment. In identifying the environment, a consent authority should consider the environment as it is at the time of the application and also consider the likelihood of change to that environment in the future, based upon the activities that could be carried out as of right and under resource consents that have been granted (where it is likely that they will be given effect to) [QP (2008)]. The future state of the receiving environment as it may be modified by the implementation of future resource consents is too speculative.

The receiving environment is often very extensive for high trip generating activities and it is likely to be difficult and onerous to account for the likely future state of the environment as it may be modified by permitted activities, particularly on the periphery of the receiving environment under consideration. A suitable means of accounting for this can simply be to use historic traffic growth as a proxy for additional traffic generated by permitted activities. The effect of granted but unimplemented resource consents should also be considered when assessing the proposal against the future state of the transport network.

Transport professionals and consent authorities should also be aware of committed transport infrastructure projects within the receiving environment and those outside of the receiving environment that will affect traffic flows within the receiving environment. A good example of the latter situation is found in Christchurch where the Christchurch Southern Motorway Extension project is expected to create widespread changes in traffic flows over an extensive area, potentially many kilometres from an application site under consideration. In should be noted that only those projects that are committed should be considered within the assessment of the future state of the environment for resource consent application. It would be far too speculative to consider mooted, but uncommitted, infrastructure projects as part of the future state of the receiving environment.

The author is not aware of there being any case law on how far into the future resource consent applications should look when considering the future state of the receiving environment. The author is fortunate to be involved in the development of the New Zealand Transport Agency research project developing a framework for 'Integrated Transportation Assessments', which builds upon the 'Transport Impact Guidelines for Site Development - Research Report 327' prepared by Beca Infrastructure Ltd for Land Transport New Zealand. The research report under development expands on policy matters that require assessment and the provisional advice presented in this report is that resource consent applications should consider the future state of the transport environment five years from the date of application. This timeframe represents the typical period that resource consents are granted.

PERMITTED BASELINE METHODOLOGY

Abley Transportation Engineers has developed the following application methodology to

determine the permitted baseline for the site and whether the permitted baseline should be applied for the site.

1. Plan permits activity to generation XYZ vehicle trips on a parcel of land.
2. Calculate permitted baseline for the site using either:
    a. Activities lawfully operating on site (or ceased operation within past 12 months);
    b. Hypothetical but non-fanciful activities, permitted to establish on site as of right; or
    c. Activities permitted by a granted, but as yet unimplemented resource consent, where it is likely that effect will be given to that consent.
3. Determine whether to disregard the effects of permitted XYZ vehicle trips by assessing whether the effects of the permitted activity would be inconsistent with Part II of the Resource Management Act or the objectives and policies of the Plan. This assessment needs to consider both the current state of the receiving environment and also the future state of the receiving environment as it may be modified by permitted activities, unimplemented resource consents and committed infrastructure projects.

    For instance, a hypothetical and non-fanciful permitted activity is expected to reduce the Level of Service (LoS) at a nearby intersection from LoS B to LoS C. If LoS C is deemed to be an acceptable level of operation for an intersection of that type, the consent authority would likely be satisfied that the effects of the permitted activity would not be inconsistent with Part II of the Resource Management Act or the objectives and policies of the District Plan.
4. The proposal for the application site is then assessed in the same manner. If the permitted baseline is applied then only those effects above those permitted can be considered by the consent authority.

    For instance, the proposal is expected to reduce the LoS at the same intersection to LoS D, which is deemed an unacceptable level of operation by the consent authority. The applicant would then be required to modify the proposal or propose mitigation measures to improve the intersection performance to LoS C (as permitted) and not LoS B (existing prior to the application).

SUMMARY

The purpose of the permitted baseline is to isolate and make irrelevant those effects on the environment that are permitted by the plan. The concept is always a discounting exercise.

The permitted baseline for an application site can be derived from either those activities lawfully operating on site (or ceased operation within 12 months of the application) hypothetical but non-fanciful permitted activities, or activities permitted by a granted but unimplemented consent. However, the application of the permitted baseline to transport planning is more complex than many other planning aspects as the receiving environment over which the effects of the activity are distributed always extends beyond the application site.

The effects of the permitted baseline on the receiving environment should therefore be assessed to verify that the effects would not be inconsistent with Part II of the Resource Management Act or the objectives and policies of the relevant District Plan. Provided that the effects are not inconsistent with these matters, the application site can be credited those effects. These would typically relate to effects of vehicles on traffic efficiency and safety, or parking on streets surrounding the application site.

REFERENCES

QP (2008). Quality Planning The RMA Planning Resource http://www.qualityplanning.org.nz/
RMA (2003). Resource Management Amendment Act 2003