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Being a good neighbour

The other side of the fence: Councils as land owners.

COUNCILS SHOULD ALWAYS BE MINDFUL OF THE RISKS THE ACTIVITIES ON THEIR LAND POSE TO THEIR NEIGHBOURS.

Councils own large tracts of land. Intrinsic with land ownership is risk that something done on your land might cause harm to your neighbour. This article touches on situations where councils have come unstuck due to their ownership of land.

If something escapes from council land that is an unreasonable interference with its neighbour's right to use or enjoy their land, the council is exposed to a claim in nuisance.

The classic case of nuisance is when something dangerous or offensive is emitted continuously or intermittently from the land such as fumes, smells, noise or vibrations.

In these types of situations the neighbour will seek an injunction to stop the nuisance and an award of damages to compensate them for past interference.

In *French v Auckland City Corporation* [1974] 1 NZLR 340 (SC), council was found liable for failing to take steps to control or eradicate variegated thistles on its land which spread to its neighbour's land.

The neighbour was awarded damages. An injunction was withheld by the court on the basis that the council, as a public body, would voluntarily cease the nuisance for which it had been found liable.

In the case of *Greenfield v Rodney District Council* HC Auckland, CP2762/88, council was found liable for removing support to land when it cut banks to build a road, which in a heavy rainfall event, slipped onto its neighbour's land.

The neighbour was awarded damages for loss in value and for the cost of providing support for its land still at risk from slipping.

Our final nuisance example concerns the escape of fire from a council-owned rubbish tip that destroyed a neighbour's house. In *Hill v Waimea County Council* HC Nelson, A8/84, the court found the council both caused and continued a nuisance by allowing the build-up of rubbish and therefore increasing combustibility in the area.

There was a foreseeable risk to its neighbour which the council could have stopped but it chose not to. It had to pay damages for the lost house and contents.

In situations where a nuisance proceeds from the council's land by the unauthorised act of a third party over whom the council has no control, the council is not strictly liable. However, if the council "adopts" or "continues" the nuisance it will be liable.

The duty is known as the "Goldman duty" after a Privy Council decision in which it was created: *Goldman v Hargrave* [1967] 1 AC 645 (PC).

This is viewed by legal academics as creating a special fault-based liability that overlaps the boundaries of nuisance and negligence, and looks at reasonableness between neighbours which may require the cost of remedial work to be shared.

In the United Kingdom a council has been found liable for failing to take reasonable steps to prevent gypsies trespassing on its land causing damage to its neighbour's land: *Page Motors Ltd v Epsom and Ewell Borough Council* (1981) 80 LGR 337 (CA).

Recently in New Zealand a council has been found liable for continuing a nuisance by failing to remove pampas grass from its land: *Double J Smallwoods v Gisborne District Council* [2017] NZAR 1167.

The pampas caught fire and spread to a neighbouring timber yard.

There had been frequent previous pampas fires in the area and the council had insisted upon Railways removing pampas, but had not done so itself.

The court considered both the council and the timber yard to be liable and the loss was shared.

Councils should always be mindful of the risks the activities on their land pose to their neighbours and take steps to eliminate or mitigate those risks. **LG**