

The Proposed Auckland Unitary Plan (notified 30 September 2013)

Using Part 7

Designations are shown in the Unitary Plan as:

- A schedule for each requiring authority which summarises the designations and notices of requirement (NoRs) they are responsible for;
- A full text version of each designation and NoR, which includes the purpose of the designation and any conditions; and
- An overlay on the planning maps for each designation and NoR, which shows the extent of the designation boundaries.

1 Schedules

The schedule(s) for each requiring authority are a quick reference list of all the designations a requiring authority is responsible. The schedules do not form part of a designation and the full text version of a designation should be relied upon for information on a designation.

The schedule identifies for each designation (from left to right):

- The number¹ of the designation;
- The purpose² of the designation; and
- The location³ of the designation.

An example of the Auckland Council's schedule of designations is set out below.

Designation Schedule - Auckland Council

Number	Description	Location
500	Auckland City Art Gallery ...	1 Kitchener Street, Auckland Central
501	Public open space	43-45 Viaduct Harbour Avenue to 119-117B and C Custom Street East, Central Auckland
....

Notes

1. The letter "R" at the front of the designation number indicates this is a NoR. Once a NoR is confirmed the letter "R" will be removed.
2. Sometimes the purpose of the designation has been shortened to fit the schedule. The purpose of the designation in the full text version of the designation should always be relied upon for information on a designation.
3. The location is intended to describe where the designation can be found on the planning maps (GIS viewer), which will show the extent of the designation boundaries. The location is normally described as the street address or legal description of the whole or part of the designated site, or the general locality for a designation over a large area. If the location changes (i.e. change of address or legal description in a subdivision), the designation may be updated with these new details without an alteration to the designation using section 181 of the RMA.

The Proposed Auckland Unitary Plan (notified 30 September 2013)

2 Text

The full text version of a designation should be relied on for information on the designation.

The full text version of the designation identifies (from top to bottom):

- The number¹ and name of the designation (in the header);
- The number¹ of the designation (first line of the table);
- The requiring authority responsible for the designation;
- The location³ of the designation;
- Whether it is a rollover designation from the previous district plan;
- The reference number of the rollover designation under the previous district plan;
- The lapse date⁴ which is the date the designation lapses¹ unless it has been given effect (i.e. no not lapse);
- The purpose of the designation (beneath the table);
- The conditions of the designation; and
- Any attachments to the designation such as plans and diagrams.

An example of Auckland Council's full text version of the designation for the Auckland City Art Gallery is set out below.

500 Auckland City Art Gallery

Reference Number	500
Requiring Authority	Auckland Council
Location	1 Kitchener Street, Auckland Central
Rollover Designation	Yes
Legacy Reference Number	Designation 306, Auckland Council District Plan (Central Area) 2005
Lapse Date	Given effect to (i.e. no lapse date)

Purpose

This designation provides for the development, operation and maintenance of Auckland Art Gallery Toi o Tamaki and ancillary activities. The development works encompassed by this designation principally involve ...

Conditions

Plans and Information

1. The height, shape, and bulk of the proposed building works shall be carried out generally in accordance with the plans listed in the table below and which are comprised in Appendix 1 to these conditions (*these plans available on request*): ... etc

Attachments

No attachments.

Notes

1. The letter "R" at the front of a designation number indicates this is a NoR. Once a NoR is confirmed the letter "R" will be removed.
2. The name of a designation in the header is non-statutory and does not form part of the purpose of a designation. If the non-statutory name changes (i.e. a park or road is renamed), the designation may be

The Proposed Auckland Unitary Plan (notified 30 September 2013)

updated with these new details without an alteration to the designation using section 181 of the RMA.

3. The location is intended to describe where the designation can be found on the planning maps (GIS viewer), which will show the extent of the designation boundaries. The location is normally described as the street address or legal description of the whole or part of the designated site, or the general locality for a designation over a large area. If the location changes (i.e. change of address or legal description in a subdivision), the designation may be updated with these new details without an alteration to the designation using section 181 of the RMA.
4. If the lapse date of the designation is changed by giving effect to the designation or through an extension to the lapse date under section 184 or 184A of the RMA, the lapse date of the designation may be updated without an alteration to the designation using section 181 of the RMA.

3 Maps

The planning maps (GIS viewer) should be relied on for the extent of the designation boundaries¹.

Designations on the planning maps are identified by:

- An overlay with a "red" outline and the number of the designation (in red) inside; or
 - An overlay with a "tan brown" outline, dotted infill and the number of the designation (in tan brown) inside.
- This generally applies to a designation that imposes a restriction over a large area of land, water, subsoil, or airspace. For example a height restriction around an airport flight path.

The following information can be obtained from the planning maps (GIS viewer) on a site to which a designation applies:

- The number² of the designation(s);
- The name³ of the designation(s);
- The requiring authority;
- The address; and
- The legal description.

Notes

1. The planning maps (GIS viewer) introduce a scale and precision of mapping not achieved in previous planning documents. The Council has used its best endeavours (with the assistance of requiring authorities) to accurately map the extent of each designation boundary on the planning maps. Any concerns over the accuracy of any part of the mapping should be raised with the Council.
2. The letter "R" has not been used in the designation number to indicate a NoR on the planning maps (GIS viewer). However, "R" is used in the front of the designation number in the schedules and full text version of the designation to denote a NoR.
3. The name of the designation in the planning maps (GIS viewer) is non-statutory and does not form part of the purpose of a designation. The full text version of a designation should be relied upon for information on a designation.

4 Guidance

This non-statutory section is based on legislative requirements under the RMA, case law and best practise analysis on designations, notices of requirement (NoRs) and outline plans. It is intended to inform the public, practitioners and requiring authorities alike.

Amendments may be made to this section from time to time to recognise legislative changes, and the

The Proposed Auckland Unitary Plan (notified 30 September 2013)

development of case law and best practise.

1 Introduction

Part 8 (sections 166 to 186) of the RMA relates to designations, NoRs and outline plans.

A designation is a provision in the Unitary Plan (district plan section), which gives effect to a NoR for a public work, project or work by a requiring authority. A NoR is the proposal or application for a designation¹. Only a requiring authority, which is a Minister of the Crown, local authority or approved network utility operator, can give notice of a requirement.

Once a NoR has been through the statutory process and been confirmed as a designation it can:

- Enable the use of land for a project or work;
- Restrict the use of land, water, subsoil, or airspace where this is necessary for the safe or efficient functioning or operation of such a project or work; and
- Require written approval from the requiring authority before any third party can undertake any activity within a designation that would prevent or hinder a public work, project or work to which it relates.

Before a requiring authority can construct a public work, project or work within a designation, an outline plan must normally be submitted to provide the Council with an opportunity to request any changes. An outline plan generally provides the detail of the public work, project or work, which may not have been available at the time the NoR was prepared and the designation confirmed.

The Unitary Plan includes those existing designations rolled over from the previous district plans “without” or “with” modification and any NoRs given to the Council by a requiring authority, which if confirmed following the statutory process will then each become a designation in the Unitary Plan.

¹ Hastings v Auckland City Council [2001] A068/01

2 Requiring Authority Status

Section 166 of the RMA defines a “requiring authority” as:

- A Minister of the Crown;
- A local authority; or
- An approved network utility operator.

Ministers of the Crown and local authorities are requiring authorities for public works, projects or works they have financial responsibility for.

Those network utility operators listed under section 166 of the RMA can apply to the Minister for the Environment for requiring authority status under section 167. The Minister can approve requiring authority status for a specific project or an entire network operation. The scope of the requiring authority status approved by the Minister under section 167 will be set out in Gazette Notice. Most eligible network utility operators have already obtained this status.

Network utility operators not listed under section 166 of the RMA cannot apply for requiring authority status under section 167. However, they can apply to the Governor-General to make regulations under section 360 for a project or work to be declared a network utility operation with requiring authority status. The requiring authority status approved by the Governor General will be set out in the regulations. Section 360 has been used sparingly since the enactment of the RMA.

A list of the requiring authorities approved under section 167 or 360 is on the Ministry for the Environment

The Proposed Auckland Unitary Plan (notified 30 September 2013)

website link below along with links to the related Gazette Notice or regulations:

www.mfe.govt.nz/rma/central/designations/requiring-authorities-table.html

3 Effect of a Designation

Section 176 of the RMA defines the effect of a designation.

3.1 Enabling Effect of a Designation

Section 176(1)(a) of the RMA states that section 9(3) does not apply to a public work, project or work undertaken by a requiring authority under a designation. This means the normal provisions of the Unitary Plan (district plan provisions) do not apply to a designation and the requiring authority is allowed to use the land for any activity within the scope of the designation.

Activities that fall outside the scope of a designation are subject to the normal provisions of the Unitary Plan.

A designation does not exclude other restrictions or duties under Part 3 of the RMA (i.e. National Environmental Standards or Unitary Plan regional provisions) or the general duties imposed under sections 16 and 17 (i.e. avoiding unreasonable noise and avoiding, remedying and mitigating adverse effects).

3.2 Restrictive Effect of a Designation

Section 176(1)(b) of the RMA states that no person may do anything within a designated site that would prevent or hinder a project or work to which the designation relates. Any person seeking to undertake an activity within a designation that would prevent or hinder a public work or project or work to which the designation relates must have written consent from the requiring authority.

This restriction includes:

- Undertaking any use of the land;
- Subdividing the land; or
- Changing the character, intensity, or scale of the use of the land.

It is best practise to provide a section 176(1)(b) approval with any application for resource consent that is within a designation.

Section 179 relates to the appeal of a person against a requiring authority's refusal to grant consent to undertake work within a designation. If a person (i.e. third party) applies to a requiring authority to do works on a designated site and this is refused, then that person is able to appeal this decision to the Environment Court.

4 Scope of a Designation

The scope of a designation is the nature of the activities that a requiring authority may undertake within the designation under section 176 of the RMA. It is what an ordinary member of the public would understand the scope to be when inspecting the designation in the district plan¹.

In the Unitary Plan the scope of a designation is determined by reference to:

- The purpose of the designation which is the "designated purpose";
- The conditions of the designation;
- Any other relevant plans, diagrams or documents referenced in the designation; and
- The extent of the designation boundaries on the planning maps.

In some cases it may be necessary to refer to the original NoR for guidance where the scope of a designation is unclear.

The Proposed Auckland Unitary Plan (notified 30 September 2013)

The purpose of a designation should provide the public a reasonable idea of what activities could take place within the designation². Some attempt should be made to describe the public work, project or work and provide some boundaries within which the effects would be contained. Stating the general purpose without further explanation is not sufficient².

For a network utility operator, the scope of the designation must also be consistent with the requiring authority status approved by the Minister under section 167 of the RMA or in the case of section 360, the status approved by the Governor General.

¹ Waimairi County Council v Hogan (1978) 2 NZLR 587

² Ngataranga Bay 2000 Inc v Minister of Defence (3) [1992] 2 NZRMA 318

5 Conditions on a Designation

Designations are not subject to the normal restrictions placed on resource consent conditions under section 108 of the RMA but they should still conform to legal principles.

The conditions on a designation can:

- Address a particular aspect of a NoR;
- Limit the extent of the designation; or
- Control the effects of the designation.

The Court of Appeal¹ has held that the Newbury tests² remain relevant to New Zealand courts and should continue to apply in relation to the RMA. According to the Newbury tests, a valid condition should:

- Be for a resource management purpose;
- Be fairly and reasonably related to the proposed work; and
- Not be so unreasonable that a reasonable council could not have recommended it (i.e. should not defeat the designation).

When recommending a condition on a designation, the Council should have regard to the potential effect of the conditions on the future operation of a designation and take care to ensure the conditions do not thwart the intent of the designation process³.

¹ Housing New Zealand Ltd v Waitakere City Council [2001] NZRMA 202

² Newbury District Council v Secretary of State for the Environment [1981] AC 578

³ A Guide to Designations under the Resource Management Act 1991, Ministry for the Environment

6 Lapsing of a Designation

Section 184 and 184A of the RMA relate to the lapsing of designations and extensions to the lapse date of a designation.

A designation lapses:

- Five years after inclusion in a district plan; unless
- It has been given effect to (i.e. implemented); or
- The designation specifies a longer lapse date.

Lapse dates are applied to designations to provide some certainty to those who may be affected by a designation. For a designation to be "given effect to" it would need to be able to be used for the designated purpose by the lapse date. If the requiring authority has not given effect to the designation by the lapse date, the designation lapses and can no longer be used.

The Proposed Auckland Unitary Plan (notified 30 September 2013)

The Council can approve an extension to the lapse period of a designation within three months of the expiry of the lapse date for the designation. The Council must be satisfied that the requiring authority has made, and is continuing to make, substantial progress or effort towards giving effect to the designation.

7 Notices of Requirement

A notice of requirement (NoR) is a proposal or application for a designation, which may or may not survive the statutory process of submissions and appeals¹.

A NoR can be made by a requiring authority under sections 168 or by the Council as a requiring authority under section 168A for:

- A public work, project or work; or
- In respect of any land, water, subsoil, or airspace where a restriction is necessary for the safe or efficient functioning or operation of a public work, project or work.

Most NoRs enable a public work, project or work such as a school, road, park, airport or network utility. NoRs that restrict activities (on land, water, subsoil, or airspace) for the safe or efficient function or operation of a public work, project or work are less common but include height restrictions to protect a satellite path or airplane approach flight path to an airport.

¹ Hastings v Auckland City Council [2001] A068/01

7.1 Information to be provided with a Notice of Requirement

Form 18 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 sets out the information required in a NoR. This includes:

- The name of territorial authority being given the NoR;
- The name of the requiring authority;
- A description of the site to which the NoR applies;
- The nature of the proposed public work, project or work;
- The nature of the proposed restrictions that would apply;
- The effects that the public work, project or work would have on the environment, and the ways in which any adverse effects will be mitigated;
- The alternative sites, routes, and methods have been considered;
- The public work, project or work and designation or alteration are reasonably necessary for achieving the objectives of the requiring authority;
- Any resource consents needed for the proposed activity and whether these have been applied for;
- The consultation undertaken with those parties that are likely to be affected;
- The information required to be included in the NoR by the district plan, regional plan, or any regulations made under the RMA; and
- A list of the documents attached to the NoR.

Form 18 is available at the Ministry of the Environment website:

<http://www.mfe.govt.nz/rma/forms/form18.rtf>

In addition to this the Council considers that the following information should also be included with a NoR:

1. A fee for processing;
2. Sufficient information to understand the nature of the public, work, project or work, preferably including drawings or plans;
3. Details of current ownership of the land and the proposed land acquisition program;
4. The proposed sequence and timing of implementation of the public, work, project or work;

The Proposed Auckland Unitary Plan (notified 30 September 2013)

5. An assessment against the relevant provisions of any national policy statement, New Zealand coastal policy statement, regional policy statement, proposed regional policy statement, plan and proposed plan;
6. An assessment against any relevant non-statutory strategies or plan documents; and
7. An assessment of those parties considered to be affected by the NoR.

7.2 Interim Effect of a Notice of Requirement

Section 178 of the RMA sets out the interim effect of a NoR, which is similar to the restrictive effect of a designation under section 176. Upon the requiring authority giving notice to the Council, no person may do anything that would prevent or hinder the proposal to which a NoR relates unless that person has the prior written consent of the requiring authority.

This restriction includes:

- Undertaking any use of the land;
- Subdividing the land; or
- Changing the character, intensity, or scale of the use of the land.

It is best practise to provide section 178 approval with any application for resource consent that is lodged with the Council after it has been given a NoR affecting the same site.

Section 179 relates to the appeal of a person against a requiring authority's refusal to grant consent to undertake work within a designation. If a person (i.e. third party) applies to a requiring authority to do works on a designated site and this is refused, then that person is able to appeal this decision to the Environment Court.

7.3 Notification of and Consultation on a Notice of Requirement

Sections 95 to 95F of the RMA relate to the notification of a NoR. If the Council is given a NoR, it must decide whether to process it on a non-notified, limited notified or full notified basis.

If a NoR is fully notified in a proposed plan or plan change the notification tests under Schedule 1 are slightly different. In addition to the full notification, the Council must pursuant to Schedule 1, clause 5(1B) also notify those landowners and occupiers it considers are likely to be directly affected by the NoR.

It is not mandatory for a requiring authority to undertake consultation on a NoR¹. However, consultation can be invaluable when considering alternatives and undertaking an assessment of effects on the environment, particularly if there are significant social effects that need consideration.

¹ Malfroy Area Residents Action Group v Rotorua District Council A 92/98

7.4 Recommendation and Decision on a Notice of Requirement

Section 168 and 172 of the RMA relate to the recommendation and decision on a NoR.

For NoRs by a requiring authority other than the Council, the Council makes a recommendation on the NoR to the requiring authority. The requiring authority will review the Council's recommendation and make its decision to accept or reject the recommendation in whole or in part. For NoRs by the Council as a requiring authority, the Council will make its own and final decision on the NoR.

The Council's recommendation on another requiring authority's NoR or its decision on its own NoR can either:

- Confirm the requirement;
- Modify the requirement;
- Impose conditions; or
- Withdraw the requirement.

The Proposed Auckland Unitary Plan (notified 30 September 2013)

If a NoR is limited notified or fully notified, the decision will be notified to any submitters. If there are no appeals to the Environment Court against the decision or once any appeals have been resolved, the designation will be included in the Unitary Plan.

7.5 Alteration to a Designation

Section 181 of the RMA relates to the alteration of an existing designation.

A requiring authority that is responsible for a designation may give notice of a requirement to the Council to alter an existing designation. The process is subject to sections 168 to 179, as if it were a new notice of requirement.

However, the Council may alter a designation in an operative district plan or a notice of requirement in the proposed district plan without sections 168 to 179 applying in the following circumstances:

- The alteration involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned, or involves only minor changes or adjustments to the boundaries of the designation or requirement; and
- Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and
- Both the territorial authority and the requiring authority agree with the alteration.

8 Outline Plans

Section 176A of the RMA relates to outline plans.

Before the public work, project or work is constructed within a designation, a requiring authority is normally required to submit an outline plan to the Council to request any changes. An outline plan generally provides the detail of the public work, project or work, which was not available at the time the NoR was prepared and confirmed as a designation.

Upon receipt of an outline plan, the Council has 20 working days to review the information and request any changes. The Council can only request changes and cannot impose conditions. The requiring authority must then decide whether to accept the changes requested by the Council. If the requiring authority decides not to make the changes, the Council may appeal against the decision to the Environment Court.

Section 176A does not envisage that the Council will recommend that the proposal not proceed¹. In this context the word “change” means make different, alter, or modify the proposal, without denying it altogether. The changes requested should not be so extensive as to negate the implementation of the designation¹.

¹ Waitakere City Council v Minister of Defence [2006] NZRMA 253

8.1 Consultation on an Outline Plan

There is no statutory requirement for consultation to be undertaken by a requiring authority during the preparation of an outline plan or for it to be notified under the RMA. Although a condition on a designation can require a requiring authority to undertake consultation during the preparation of an outline plan or the detailed design of a public work, project or works.

Requiring authorities should consult closely with the Council during the preparation of an outline plan, practically where this is for a significant proposal on older designation with a broad scope. There have been examples where requiring authorities has undertaken consultation with the public during the preparation of outline plans and also where a territorial authority has notified an outline plan.

The Proposed Auckland Unitary Plan (notified 30 September 2013)

8.2 Information to be Provided with an Outline Plan

Section 176A(3) states that an outline plan must show:

- The height, shape, and bulk of the public work, project, or work; and
- The location on the site of the public work, project, or work; and
- The likely finished contour of the site; and
- The vehicular access, circulation, and the provision for parking; and
- The landscaping proposed; and
- Any other matters to avoid, remedy, or mitigate any adverse effects on the environment.

In addition to this the Council considers that the following information should also be included in an outline plan:

1. Drawings or plans of the works to be constructed;
2. Explanation as to how an outline plan is within the scope of a designation including any conditions;
3. Information on any relevant national environmental standard that apply;
4. Information on any resource consents that are required (regional or otherwise); and
5. Information on how section 16 (Duty to avoid unreasonable noise) and section 17 (Duty to avoid, remedy or mitigate adverse effects) have been addressed.

Where an outline plan includes a significant proposal within a designation that has a broad scope and no or few conditions, the outline plan may need to be more comprehensive and address matters such as building height, bulk and location, noise and lighting, heritage and infrastructure etc. The underlying zones and overlays in the Unitary Plan provide a useful guide for such outline plans.

8.3 Outline Plan Waivers and Exceptions

Section 176A(2) of the RMA sets out when a requiring authority does not need to submit an outline plan to the Council. This is when:

- The project or work has otherwise been approved under the RMA (i.e. resource consent);
- The details of the project or work are incorporated into the designation; or
- The Council waives the requirement for an outline plan (in writing).

An outline plans cannot generally be sought for the removal or demolition of a building or tree on their own because this is not construction within the intent of section 176A1. The normal provisions of the Unitary Plan will continue to apply and, if necessary, a resource consent may need to be obtained.

The removal or demolition of a building or tree may only be included in an outline plan where they are either clearly associated with a proposal or where it is hindering the implementation of a designation (i.e. encroaching on a height restriction for a satellite path or airplane approach flight path to an airport).

1 Waitakere City Council v Minister of Defence [2006] NZRMA 253

9 Other Matters

This sections covers other matters that relate to designations, notices of requirement and outline plans.

9.1 Resource Consents

With the exception of section 9(3) of the RMA, a designation does not exclude other restrictions or duties under Part 3 of the RMA. A resource consent may still be required for:

- Any activity outside the scope of the designation;
- Any activity that does not comply with a regional rule; or

The Proposed Auckland Unitary Plan (notified 30 September 2013)

- Any activity that does not comply with a National Environment Standard.

A designation only applies to land above mean high water springs and therefore cannot apply to the coastal marine area. A designation is also subject to the regional provisions rules in the Unitary Plan.

9.2 National Environmental Standards

An existing designation takes precedence over a National Environmental Standard unless it lapses or the extent of the designation altered. There are specific instances where this is not the case and section 43D and 176A of the RMA should be referred to.

9.3 Duty to Avoid, Remedy and Mitigate

The general duties in sections 16 and 17 of the RMA relating to avoiding unreasonable noise and avoiding, remedying and mitigating adverse effects apply to designations.

9.4 Underlying Zone

The underlying zone applies to the land within a designation but only to those activities that are outside the scope of the designation. When an activity is proposed that is not within the scope of a designation it will be assessed under the underlying zoning. The zone also indicates what the land could be used if it were not designated.

9.5 Public Works Act 1981

The Public Works Act 1991 ("PWA") provides the Crown with the statutory authority to acquire land for a public work. The acquisition process normally takes place after any resource consents have been obtained or a designation confirmed an involved compulsory acquisition if a settlement cannot be reached between the landowner and the Crown.

Because a designation can restrict the use of the land, in the event that the requiring authority does not own the site and has presumably not started negotiations, the landowner can apply to the Environment Court for the requiring authority to acquire or lease all or part of the land if:

- The landowner tried and were unable to sell the land, and either
- The designation prevents the reasonable use of land, or
- The person was the owner of the land when the designation was created.

More information on the PWA can be found at the Land information New Zealand website:

<http://www.linz.govt.nz>