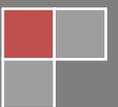


2013

# Plan Components

Designations, notices, of  
requirement and outline plans



## Designations, notices of requirement and outline plans

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This note provides an introduction to designations, notice of requirements and outlines plans under the Resource Management Act 1991 (RMA). It includes an overview of requiring authorities and network utilities operators and the powers that designations provide to these bodies in relation to the use of land, including landownership and the Public Works Act 1981

This note also provides guidance on the following processes:

- preparing a notice of requirement
- processing a notice of requirement, 'rolling over' existing designations and modifying existing designations the territorial authority as the requiring authority
- implementing designations through the outline plan process
- enforcement.

### Overview

**Designations** form a key part of the district plan review process. The plan review process provides an opportunity to 'roll over' existing designations, modify existing designations including a territorial authority's own designations, and also for requiring authorities to introduce new **requirements**. Schedule 1 of the Resource Management Act 1991 (RMA) deals specifically with how new requirements can be included in, and existing designations carried over into, proposed district plans.

New requirements can also occur outside the plan review process when requiring authorities serve a notice of requirement. The notice of requirement is an interim notice that protects land for the designated purpose until the designation is confirmed.

An **outline plan** is a plan or description of works that a requiring authority proposes to carry out works on a designated site. The outline plan often contains more detailed information that was not available when the notice of requirement was prepared. This is intended to allow some flexibility about the future use of land while the protecting the land for a specific purpose.



## Guidance note

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**Designations**

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**Designations versus resource consent and plan changes**

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## Designations

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### What is a designation?

A designation is a planning technique used by Ministers of the Crown, local authorities and network utility operators approved as requiring authorities under s167 of the RMA. Only requiring authorities can seek designations for land.

Historically, designations enabled central and local government to get planning authorisation for public works and protected land for future public works. Requiring authorities can only make a designation where they are financially responsible for the project, work, or operation on the designated land.

A designation is a form of 'spot zoning' over a site, area or route in a district plan. The 'spot zoning' authorises the requiring authority's work and activity on the site, area or route without the need for land use consent from the relevant territorial authority (i.e. s9(3) of the RMA does not apply). A designation has a similar effect to a plan change establishing a permitted activity as it:

- identifies the land affected in the district plan
- enables a requiring authority to undertake the works within the designated area without the need for a land use consent
- sets the parameters under which the activity can occur.

Designations are also similar to a comprehensive land-use resource consent as they enable a requiring authority to undertake the works within the designated area (subject to any conditions applied to it).

The designated area is still subject to any restrictions on land use under s9 (excluding subsection (3)) and in relation to air, water, and the coastal marine area as contained in ss 12 – 15. Relevant regional council resource consents may also be needed in relation to a project or work.

A designation restricts anyone other than the requiring authority from carrying out work on the designated land that will prevent or hinder the project or work to which the designation relates, without first obtaining the requiring authority's permission (refer s176(b)).

Designations have a number of advantages, including providing for activities that might otherwise be difficult to comprehensively provide for in a district plan. For example, designations are often used to provide for networks such as land transport, telecommunications and electricity transmission.

When there is more than one designation on a site, the requiring authority responsible for the later designation must first obtain the written consent of the requiring authority responsible for the earlier designation before undertaking a project or work. However, the requiring authority responsible for the earlier designation may only withhold consent if the proposed activity would prevent or hinder the project or work to which the earlier designation relates.



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Designations apply to district plans and proposed district plans only. The 'underlying zone' of the district plan remains over the site and applies to any other activities that are for a purpose different to the designation purpose (or activities undertaken by a party other than the requiring authority) under s176. Therefore, any activity or works outside the scope of a designation will require resource consent unless the activity or works are a permitted activity within the underlying zone.

Notices of requirement (notices for new designations) can be processed in two main ways, either by themselves in a way similar to a comprehensive resource consent or as part of a proposed district plan. These processes vary different timeframes and requirements. Guidance on both of these processes is provided in this note.

Existing use rights may apply when a designation is removed. Section 10(1)(b) of the RMA recognises existing use rights when either a designation is removed, or a requiring authority loses requiring authority status, or where a designation lapses. These rights apply only if the effects of the existing use are the same or similar in character, intensity and scale as before the designation was removed.

### **The scope of a designation**

The scope of a designation defines the nature of the activity and the works that can be established on the designated site. The scope of a designation is generally what an ordinary reasonable member of the public, examining the scheme, would have taken from the designation. The form and scope of the works can also be controlled through any conditions imposed on the designation.

Operative district plans record a designation in the relevant planning maps, and in a full description of the designated purpose. This description, often called the 'designation notation' or the 'designated purpose', defines the scope of the designation, and what activities the requiring authority may undertake in accordance with s176.

The scope of a designation is a critical determinant of the nature of the activity and associated works that can be established on a designated site. The scope of a designation may be restricted or controlled by detailed descriptions and conditions, including mitigation measures.

### **Do existing designations that are not 'rolled over' still have effect?**

There is a question around whether existing designations have legal effect if they are not 'rolled over' or included in any proposed district plan.

If a designation has not lapsed, it continues to have effect until the proposed district plan (or at least that part of it) is made operative. Designations are 'deemed' rules and s86B provides for rules in district plans to only have legal effect once a decision on submissions in relation to the rule is made and publically notified under clause 10(4) of Schedule 1 (note there are also specified instances in s86B where some rules can have effect either immediately or from a different date).



## Financial responsibility for a designation

It is well-established through case law that land should not be designated for a proposed public work unless there is a requiring authority prepared to take financial responsibility for it.

In addition, in terms of financial responsibility, this is not just limited to the purchase of the land but also extends to the construction of the proposed work.

## Transitional provisions and 'deemed' requiring authorities

Section 420 of the RMA is of fundamental importance for designations included in transitional district plans. It is a 'savings provision', meaning that it temporarily maintains certain rights or responsibilities from the Town and Country Planning Act 1977. Section 420 is still relevant because there are still a number of first generation plans that are not yet operative. The key subsections are (2) and (5).

Subsection (2) means that designations that were included in a district scheme at the time of the commencement of the RMA automatically continue as designations in transitional district plans, and "the person responsible for the designation shall be deemed to be a requiring authority for that designation;...". This means that persons or organisations that were responsible for a designation, but do not fit the s166 criteria to become a requiring authority, are deemed to be requiring authorities for the life of the designations(s) in question.

For example, the multitude of 'port' designations included in transitional district plans continue to have effect, and the 'harbour boards' or their successors (port companies) are requiring authorities, but only for the purpose of those designations.

Subsection (5) defines when the deemed designation and deemed requiring authority status end. It provides that the deemed designation remains in force until the plan is made operative, and then lapses unless the deemed requiring authority has been approved as a requiring authority under s167.

## Historical use of designations

Historically, designations served two purposes. Firstly, they enabled central and local government to get planning authorisation for public works.

For central government, these works included projects in the fields of:

- education (schools)
- defence (army bases, airfields and ammunition depots)
- law and order and emergency services (prisons, police and fire stations, court houses and periodic detention centres)
- energy (power stations, dams and high voltage power lines)
- transportation (state highways, rail corridors and airports)
- communications (post offices, telephone exchanges and radio transmitters/receivers).



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For local government, works were usually for utility services, such as water services and sewerage schemes. However, local authorities also often designated their own roads and other assets, including gravel quarries, cemeteries and domains.

Secondly, designations protected land for a given future activity. It was quite common to see proposed designations for activities such as 'proposed intermediate school', 'proposed motorway', and 'proposed telephone exchange'. The proposed designations prevented any incompatible land use on the land until the work was ready to start, and often provided a basis for acquiring land. Property acquisition could be compulsorily undertaken when the work was deemed to be an 'essential work'.

Most of these works were proposed during the 1970s, at the time of district scheme reviews. Some of the proposed designations were fulfilled, but many were either scaled back in size (such as motorways reduced to roads) or were eventually withdrawn completely (such as proposed schools that were never built).

Historically, proposed designations often served little purpose beyond land acquisition and putting the public on notice of the future use of the land. There are few examples of designations for 'proposed works' under the RMA.

The move to state-owned corporations and eventually privatisation in the 1980s and 1990s resulted in fewer proposed designations. Under the RMA, the use of proposed designations has been discontinued by the lapsing requirements of the Act which means that most works are established on designated sites within defined timeframes.



## Notices of requirement and requiring authorities

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To begin the process of designating land, a requiring authority must serve a notice of requirement on the relevant territorial authority (s168 of the RMA) or lodge it with the Environmental Protection Authority (EPA) (s145(3)). A notice of requirement is a proposal for a designation.

The notice of requirement has an interim effect, in that it protects the land for the designated purpose until the designation is confirmed and included in an operative district plan (s178). If the designation is confirmed it overrides the provisions of the district plan so the project or the works may be implemented by the requiring authority in accordance with that designation and any conditions attached to it. However, the underlying plan provisions continue to apply if the land is used for a purpose other than the designated purpose.

When processing a notice of requirement Part 8 of the RMA requires the territorial authority to consider the requirement and any submissions received (if the requirement was notified), and then make a recommendation to the requiring authority. The territorial authority is only able to make a recommendation to the requiring authority and the requiring authority has the final decision on the matter. [Refer to the flowchart for steps in the new designation process.](#)

An alternative process is available under Part 6AA of the RMA for notices of requirement that are for proposals of national significance. Sections 198A – 198M of the RMA also provide for the direct referral of notices of requirement to the Environment Court for a decision. The direct referral provisions under the RMA allow for requiring authorities to request that notified notices of requirement be directly referred to the Environment Court for a decision, instead of a recommendation by a territorial authority and a decision by a requiring authority.

The designation provides for the long-term 'approval' of the work. Because details of the work may not be known at the time of lodging the notice of requirement, s176A provides for further detail or subsequent changes and updates to the work through an outline plan. An outline plan is required to be submitted to the territorial authority, showing details of the work or project to be constructed on the designated land.

As for the notice of requirement process, the territorial authority only has a recommendation role for outline plans. The territorial authority is only able to request changes of the requiring authority and cannot turn down an outline plan.

A notice of requirement and an outline plan describing the works proposed can be served/submitted at the same time. This approach can be helpful to allow the territorial authority to understand the designation, and can speed up the overall process allowing works to begin sooner. Alternatively, the requirement for an outline plan can be waived by the territorial authority if sufficient information was submitted with the notice of requirement.



## What is a requiring authority?

'Requiring authority' is defined in s166 of the RMA. It includes a Minister of the Crown, a local authority, or a network utility operator approved as a requiring authority under s167.

A definition of network utility operator is included in s166. Network utility operators are defined by what activities they undertake, or in some cases, they propose to undertake. They include organisations that distribute gas, petroleum, biofuel, geothermal energy, telecommunications, radiocommunications, electricity, water, wastewater, roads, railway lines, and airport authorities (including approach surfaces). Specific procedural requirements are set out under s167 for a network utility operator to become a requiring authority.

The requiring authority may do anything that is in accordance with the designation, and the usual provisions of the district plan do not apply to activities that fall within the scope of the designation on the designated land. In certain circumstances, the Minister can revoke requiring authority status (s167(5)).

## Becoming a requiring authority

Section 167 of the RMA sets out the procedure for a network utility operator to become a requiring authority. Approval of a requiring authority is at the discretion of the Minister for the Environment, and can include the terms and conditions the Minister considers appropriate (s167(3)).

To become a requiring authority, the network utility operator applies to the Minister for the Environment, using [Form 17](#) or similar.

The Minister may make further inquiries and request any further information (s167(2)). Approval is by way of a notice in the Gazette.

Subsection (4) includes two fundamental tests that the Minister for the Environment must be satisfied with to issue a notice in the Gazette. The tests are that:

- a. *The approval of the applicant as a requiring authority is appropriate for the purposes of carrying on the project, work, or network utility operation; and*
- b. *The applicant is likely to satisfactorily carry out all the responsibilities (including financial responsibilities) of a requiring authority under this Act and will give proper regard to the interests of those affected and to the interests of the environment.*

It is the network utility operator's responsibility to satisfy the Minister that requiring authority status is 'appropriate' and that it is likely to satisfactorily carry out all the responsibilities.

The Ministry for the Environment maintains a [list of all approved requiring authorities on their website](#).

## Revoking requiring authority status

The Minister for the Environment can revoke the requiring authority status of any network utility operator under s167(6). Revocation can occur when a requiring authority (s167(5)):

- is unlikely to undertake or complete a project, work or network utility operation, or
- is unlikely to satisfactorily carry out any responsibility as a requiring authority under the Act, or
- is no longer a network utility operator.

This revocation occurs by notice in the Gazette. All functions, powers and duties of the former requiring authority under the RMA in relation to any designation or any notice of requirement are deemed to be transferred to the Minister for the Environment (under s180).

Section 167(6) does not expressly state that the designation is revoked along with the requiring authority status. It is unlikely that any designation would be automatically revoked by the Minister.

The Ministry for the Environment maintains a [list of all revoked requiring authorities on their website](#).

## Effect of a notice of requirement

Under s178, a notice of requirement has an interim effect of protecting the land for the purposes of the designation, the public work or project, from the time that a requiring authority gives notice to a territorial authority under s168. A notice of requirement from a territorial authority has interim effect on the date a territorial authority resolves to publicly notify its own requirement under s168A. However, the work or project cannot be implemented until after the designation is confirmed and included in an operative plan.

The interim effect of a requirement ends on the earliest of the following days:

- the day on which the requirement is withdrawn by the requiring authority
- the day on which the requirement is cancelled by the Environment Court
- the day on which the designation is included in the district plan.

During this interim period, the land is protected from other activities that may hinder or prevent the works intended under the designation, unless consent for the works is obtained from the requiring authority. It is an offence to undertake work within the proposed designation that would prevent or hinder the use of the land for the designated purpose without the written approval of the requiring authority, unless the person did not know or could not have been reasonably expected to have known of the existence of the notice of requirement.

It is good practice for the requiring authority to liaise with affected land owners at an early stage which will ensure that they are well aware of the notice of requirement.



## Outline plans

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Designations are intended as a long-term planning tool. The designation provides the 'approval' for the work or the project, but often the details of the project or work are not available at the time of the notice of requirement. For instance, many projects take several years before construction begins due to funding procedures or land acquisition processes. The outline plan stage allows details of the project or work to be provided to the territorial authority at a later stage, rather than with the notice of requirement.

Where considered necessary, the territorial authority can request the requiring authority make changes to the outline plan. If this is done, the requested changes cannot exceed the scope of the confirmed designation and the designation itself cannot be revisited.



## Designation versus resource consent and plan changes

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Designations generally provide for longer-term and more flexible protection than a resource consent or plan change. A designation cannot be altered by anyone else, unlike provisions of a plan (anyone is able to apply for a private plan change). The outline plan process also allows for greater flexibility into the future than a granted resource consent does by allowing some of the details of the project or works to be left to this stage.

Designations are also a way of providing for projects or works that might be difficult to comprehensively provide for in a district plan or through the resource consent process. Many large scale activities, network utilities or public works may be contrary to the objectives and policies of the plan, or may not comply with the tests of s104D relating to resource consents for non-complying activities.

In addition, decisions on designations and outline plans are made by the requiring authority (except in the case of a notice of requirement lodged with the EPA or one which is directly referred to the Environment Court for a decision), rather than the territorial authority (as is the case for plan changes and resource consents). This has the advantage of providing long-term certainty for requiring authorities.

Designations can be used to:

- provide long-term land protection and certainty for large capital works and infrastructure type projects
- identify and protect land in the district plan that is required for a project or work
- provide for the development and operation of projects or works that occur in multiple zones or across several districts, such as high voltage power lines or state highways
- provide certainty and continuity for network type projects such as roads or transmission lines
- protect designated land from uses incompatible with the purpose of the designation
- provide a basis for the subsequent acquisition of land needed for the works (including compulsory acquisition).

Designations override all provisions of the district plan in order to provide for works, projects and network operations. This recognises the fact that:

- are often essential services including public works or infrastructure within national or regional networks
- are often limited to specific sites
- can have more than minor effects and are frequently not provided for by plan provisions
- may have impacts on land that may warrant and involve compensation or property acquisition under the Public Works Act 1981 processes.

The plan change process can also be used to authorise the project or work. However, the Schedule 1 plan change process is lengthier, with greater uncertainty as to the final result. There would always be a risk of subsequent plan changes as anyone can apply for a plan change, therefore providing a less reliable outcome for the requiring authority.



## Land ownership and the Public Works Act 1981

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A requiring authority is not required to own the land before lodging a notice of requirement for a designation over it. In some cases it may be very difficult and take a lengthy period of time to obtain ownership of all land required. For example, large network projects such as transmission lines and roading alignments. However, it is more likely that a requiring authority will own the land for site specific works before it is designated (for example, school sites). As an alternative to owning land, easements can be created where the land owner agrees.

The Public Works Act 1981 (PWA) sets out the process and requirements for the acquisition of land, including compulsory acquisition, by a requiring authority, and the provision of compensation (s186(5) of the RMA). Where the requiring authority is a network utility operator, these provisions provide for compulsory acquisition by the Crown (Minister of Land Information), on behalf of the requiring authority.

A person who owns or leases land subject to a designation or notice of requirement can apply at any time to the Environment Court using [Form 24](#) or similar for an order that requires the requiring authority to acquire or lease all or part of the land (s185). The Environment Court may make such an order if it is satisfied that the owner or lessee has tried but has been unable to sell the land or lease it, and either:

- the designation or requirement prevents the reasonable use of the land, or
- the person was the owner or lessee of the land (or spouse, civil union partner, or de facto partner, or owner or lessee) when the designation or requirement was created.

It is important to note that requiring authorities generally prefer to negotiate property acquisition rather than use their compulsory acquisition powers.



## Preparing a notices of requirement

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Section 168 of the RMA provides for a requiring authority to give notice to the relevant territorial authority of its requirement for a designation. Under s168A, a territorial authority may give notice of a requirement for a designation for works it wants to undertake within its own district.

[Form 18](#) of the Resource Management Forms, Fees and Procedure Regulations 2003, prescribes the content of a notice of requirement under ss168 and 168A. This includes the following information:

- the reasons why the designation or alteration is needed to achieve the objectives of the requiring authority
- the physical and legal descriptions (noting any distinguishing characteristics) of the site
- the nature of the work, and any proposed restrictions
- the effect that the proposed work will have on the environment, and the proposed mitigation measures
- the extent to which alternative sites, routes and methods have been considered
- the associated resource consents which will be required, and those that have been applied for
- the extent of consultation undertaken with parties likely to be affected by the designation, including the reasons why, if no consultation is undertaken
- additional information (if any) as required by regional or district plans or regulations.

When preparing a notice of requirement, the requiring authority should address all matters in ss168A and 171 of the RMA that the territorial authority is required to consider when making a recommendation. This will ensure the relevant matters have been adequately included in the notice of requirement from the outset.

Form 18 relating to a notice of requirement does not require an Assessment of Environmental Effects (AEE) in accordance with the Fourth Schedule but this is common practice for notice of requirements to provide a similar assessment. If an AEE is included, it should also provide information to address the matters under ss168A and 171.

Although Form 18 requires the inclusion of details of any consultation undertaken, the requiring authority has no duty to consult (s36A). However, in many situations consultation should be carried out with affected parties and this is generally accepted as good practice. The first opportunity for formal public comment is if the notice of requirement is notified by the territorial authority.

Pre-lodgement meetings between the territorial authority (or the Environmental Protection Authority) and the requiring authority are often useful to:

- provide an understanding of the scope and scale of the requirement
- determine the level and scope of information required to avoid the need for further information requests
- understand notification requirements
- outline consultation process timetable expectations
- identify the potential for any joint processes or procedures including hearings.



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It is also useful to provide the required information in electronic format which is compatible with council software, particularly for maps of the designated land. This makes incorporating designation boundaries into planning maps much easier. It also assists understanding of the notice of requirement when it is publicly notified.



## Processing a notices of requirement

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There are two main ways that a requirement can be processed, depending on whether the requirement is processed alone, or as part of a proposed district plan process. These processes are described by clicking on the following links:

### Requirements processed on their own:

1. Processing a notice of requirement
2. Notification and submissions
3. Pre-hearing meetings
4. Hearings

### Requirements processed as part of a proposed district plan process:

1. Plan early
2. Establishing a process and time frames
3. Calling for existing designations to be rolled over
4. New requirements
5. Assessing new notices of requirement and rolled-over requirements
6. Notifications and Submissions
7. Hearings

Some parts of the process are similar, particularly those relating to the later stages, such as making decisions, recommendations and appeals. Information on these parts of the process is available by clicking on the following links:

- Notices of requirement for proposals of national significance
- Using commissioners
- Recommendations and decisions

## The process for requirements processed on their own

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The process for a notice of requirement that occurs outside a proposed plan process follows a similar path to that required for resource consents. This includes:

- the need to provide information to support the notice of requirement, which includes an assessment of environmental effects of the proposed work
- the ability of the territorial authority to request further information
- the notification of a requirement if the territorial authority decides this is necessary and subsequent submission and hearing processes.

### 1. Processing a notice of requirement

Generally, processing a notice of requirement is similar to processing a resource consent application.

Where a territorial authority serves a notice of requirement on itself, generally an operational section of a council (acting as the requiring authority) would give notice to the planning section (as territorial authority). It may be appropriate for independent consultants to process a council-initiated notice of requirement.

A territorial authority should follow these steps on receipt of a notice of requirement:

1. Check the status of the requiring authority against the definition in the RMA (s166). If the requiring authority is a network utility operator, there will be a Gazette notice approving it as a requiring authority. The Ministry for the Environment



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also holds a [list of current requiring authorities](#). It is common practice for network utility operators to provide a copy of the relevant gazette notice with the notice of requirement. However, if necessary, seek clarification from the requiring authority that they are an approved requiring authority, and are financially responsible for that designation (required for Ministers or local authorities to issue notices of requirement – see s168(1)).

2. Check the notice of requirement includes sufficient information to enable the territorial authority and potential submitters to understand the proposal and be able to ascertain the effects that the proposed work or activity will have on the environment and whether it may impact on them or their land.
3. Send a letter to the requiring authority acknowledging receipt of the notice of requirement.

A territorial authority (or the EPA) can request further information under s92 of the RMA and may delay processing until the information is received (apart from in respect of s168A applications). Sometimes, to expedite the process, the territorial authority and requiring authority may agree a programme for the delivery of further information. For example, in respect of what information is needed before notification and what might be needed before a hearing.

### **2. Notification and submissions**

A territorial authority (or the EPA) must decide whether to notify the notice of requirement under ss95A to 95F. Time limits for notification (s95) do not apply if a notice of requirement is by a territorial authority to the same authority (s168A application). Alternatively, s170 provides territorial authorities with the ability to include a notice of requirement within its proposed plan provided that this is done within 40 working days of receipt of the notice of requirement.

Where public notification does take place, the procedures for a notice of requirement are the same as for a resource consent under ss96 to 103 of the RMA, including requiring that notice is served on every person prescribed in [Regulation 10](#) of the Resource Management (Forms, Fees and Procedures) Regulations 2003. As with a resource consent application, notification must be given in accordance with ss95A to 95F.

The details of the public notices differ depending on the type of requiring authority:

- [Form 19](#) of the Resource Management Forms Fees and Procedure Regulations 2003 is used if the requiring authority is the Minister, local authority or a network utility operator
- [Form 20](#) of the Resource Management Forms Fees and Procedure Regulations 2003 is used when the territorial authority is the requiring authority.

As with notified resource consents, the closing date for serving submissions on the territorial authority is the 20th working day after public notification, in accordance with s97. Submitters are required to serve a copy of their submission on both the territorial authority and the requiring authority. The territorial authority is also required to send a list of all submissions received to the requiring authority.

Given the notice of requirement process is similar to a notified resource consent and results in an amendment to the district plan, it is best practice for an application to be



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dealt with jointly between resource consent and policy planners, with the resource consent planner taking the lead role.

### 3. Pre-hearing meetings

While not mandatory, a pre-hearing meeting can be useful to clarify and resolve as many issues as possible before a hearing.

Pre-hearing meetings provide an opportunity to outline the notice of requirement process and decision-making powers to submitters, provide details of the proposed works, and explain how the process differs from the resource consent process, and clarify any submissions received.

### 4. Hearings

As with any notified resource consent application, a territorial authority is not required to hold a hearing unless the territorial authority considers that a hearing is necessary or a hearing is requested by either the requiring authority or a submitter. A territorial authority should consider appointing an independent commissioner or commissioners to sit on the hearing panel, especially when it is making a decision on its own notice of requirement or making a recommendation on a notice of requirement that is particularly controversial.

All the powers and duties in relation to hearings contained in ss39 – 42A apply to hearings for notices of requirement. Section 103A which provides time limits for completion of adjourned hearings does not apply.

If the requiring authority also requires resource consents from the regional council, a joint hearing can be held. However, a territorial authority cannot delay the processing of a notice of requirement while waiting for the outcome of any resource consent applications.

## **The process for requirements processed as part of a proposed district plan**

Schedule 1 of the RMA specifies how requirements and designations are dealt with in proposed plans. This includes roll-over designations and requirements that are intended to be notified through the proposed district plan in accordance with s170. [Refer to the flowchart for including notices of requirement in a proposed plan.](#)

A rolled-over designation is a designation that was in the operative district plan and that the requiring authority requests to have included (rolled over) into the proposed district plan.

As with any plan review or preparation process, there can be considerable delays until a requirement is included in a proposed district plan through the 1st Schedule process. A requirement can only be relied upon once it is included in an operative district plan as a designation. However, s178 provides for a proposed designation to have interim effect so that no person may do anything that would prevent or hinder the public work, project, or work to which the designation relates unless that person has the prior written consent of the requiring authority.

## 1. Plan early

Rolling over designations and requirements that are intended to be notified through the proposed district plan requires early and thorough forward planning in the plan preparation process.

Requiring authorities should be provided with an extended period of time to prepare and ensure better planning outcomes are achieved. This helps to avoid the council dealing with a flood of requests from requiring authorities at the last minute and to enable better planning through adequate review.

Requiring authorities should also be provided guidance about what the council expects, including:

- the council's process and time frames
- any additional steps the council will take (such as getting requiring authorities to check their designations in the proposed plan schedules before notification)
- the level of detail required in the notice, including any proposed conditions
- details of the size, scope, precision, and format required for maps.

## 2. Establishing a process and time frames

Sufficient time and council resources should be allocated to allow for including designations as a separate process component of the overall plan review process.

The following steps may help to manage the process as part of the plan review:

- Appoint one person as a 'Designations Project Manager' or with overall responsibility for managing the roll over of existing designations and introducing new requirements. The Designations Project Manager should be part of the plan review project team or have input into that team so that overall plan review time frames are achieved.
- The plan review project team will need to provide advice and assistance to the Designations Project Manager. They should be experienced in processing notices of requirement and roll overs.
- Legal overview and input can also be critically important during this process, particularly when dealing with the adequacy of information or the notification process.
- Clearly define the process, timelines, responsibilities, and resources of the plan review project team required throughout the process. Consider contracting work out to consultants if the resources are not available within the council. The council will still retain responsibility for the outcome.
- A good administration and filing system from the outset is essential. Set up an appropriate file management system so that the multitude of requests can be safely handled. Many councils set up master files for each requiring authority, and a second tier of files for each rollover request or new requirement.

It is important to ensure that the decision makers and council officers are fully informed on the differences between new, rolled over and modified designations, what the council makes decisions on and what it makes a recommendation on. This should occur early on

in the process, as it will help to avoid any problems or issues raised throughout the process.

### **3. Calling for existing designations to be rolled over**

Before notifying a proposed district plan, clause 4(1) of Schedule 1 of the RMA requires a council to invite all requiring authorities that have designations in the operative district plan (which have not expired) to give written notice stating whether they require the designation to be included in the proposed plan, with or without modification. This letter must state a final date by which the requiring authority is to provide its written notice to the council. The council must give the requiring authorities at least 30 working days to respond. However this time frame may not be a realistic time frame for larger councils and requiring authorities to achieve quality results.

If a requiring authority wishes to roll over an existing designation into a proposed district plan it must send the council a notice of this within the specified time frame. At this stage the requiring authority's notice must also specify whether any modifications to the designation are proposed. If modifications are sought, the requiring authority is to include in its notice the nature of and reasons for the modifications.

If the requiring authority fails to notify the council within the specified time, the designation must not be included in the proposed plan. However, where appropriate, the council could choose to waive the time frame under s37(1)(b) to provide for a longer period of time, up until when the plan is notified. Once the proposed plan is notified, no further designations can be rolled over. A new notice of requirement would have to be issued by the requiring authority (essentially, starting the designation process from scratch).

While rolling over of designations does not oblige a requiring authority (including a council) to review its designations, it is timely for reviewing them for accuracy, relevance, and the appropriateness of any conditions. It also opens designations to public submissions through the plan notification process. This is important as a designation, once confirmed has essentially the same effect as a rule in the Plan.

Requiring authorities should review the wording of their designations carefully, and where necessary request modifications to address inadequate wording. The need for modifications may arise from changing land uses, technology, and public understanding.

It is also possible that the purpose of historical designations is described by a single phrase such as 'defence purposes'. Such designations contain little guidance to the requiring authority, council or public as to what activities are authorised and how they are to be regulated. The clarity of the wording describing the 'designated purpose' should provide sufficient clarity for the potential uses of the land. When dealing with a rolled-over designation, the council may consider liaising with the requiring authority to seek conditions that provide more certainty. If necessary, councils have the option of making a submission on the designation through the plan review process which may seek clarification of designated purpose or further conditions.



## THE RMA QUALITY PLANNING RESOURCE

When calling for existing designations to be rolled over the council should:

- Ensure designations to be rolled over have not lapsed (although this should have already been done).
- Check the status of the requiring authority and seek clarification if necessary.
- Refer the [list of current requiring authorities](#)
- Ensure requiring authorities are responsible for specific designations.
- Remind requiring authorities of the five-year expiry timeframe under s184. Requiring authorities need to specify and justify a longer timeframe for a rolled over, modified, or new designation, if they do not envisage 'giving effect to the designation' within five years of the plan becoming operative.

[http://qualityplanning.org.nz/images/documents/plan\\_components/designations/Process/Processing\\_a\\_notice\\_of\\_requirement/rolling-over-designation-flowchart21.pdf](http://qualityplanning.org.nz/images/documents/plan_components/designations/Process/Processing_a_notice_of_requirement/rolling-over-designation-flowchart21.pdf) in the plan review process sets out the steps involved, including calling for existing designations to be rolled over, notification of the proposed plan, submissions, hearings, decisions and recommendations and appeals.

#### **4. New requirements**

Where a council has received a notice of requirement under s168 and proposes to notify a proposed plan under clause 5 of the Schedule 1 of the RMA within the following 40 working days, the council may, with the consent of the requiring authority, include the requirement within its proposed plan instead of using the process under s169.

A requiring authority must submit a notice of requirement to the council for any new designation to be incorporated into the proposed plan.

The council should advise requiring authorities who have lodged new notices of requirement of any likely changes to the date of public notification of the proposed district plan, so that they can choose whether to re-lodge them for inclusion within the proposed district plan.

#### **5. Assessing new notices of requirement and rolled-over and modified designations**

Councils should ensure that new notices of requirement received at the time of plan review are subject to the same robust assessment that they would receive if lodged at any other time. Any requests for further information on new notices of requirement must be made prior to the notification of the proposed district plan. While a council can not lawfully request any further information on rolled over or modified designations, if necessary, the council should negotiate with the requiring authority to provide additional information prior to notification of the proposed district plan. This may avoid the need for the council, and other parties, to subsequently make submissions on these.

Receiving adequate information from the requiring authority for rolled-over designations and new requirements is necessary for robust review and assessment. The public needs good information on which to base submissions, and the council or commissioner needs good information on which to base any recommendation.

## 6. Notifications and submissions

Until this point, the process for rolled-over designations and inclusion of (new) requirements in a proposed plan should have run as a separate (often parallel) process to the overall plan review. The two processes integrate when the roll-over designations and requirements are put into the proposed plan for public notification.

In addition to the general notification of the proposed district plan, councils are required under clause 5(1B) of the Schedule 1 to individually notify landowners or occupiers who are likely to be 'directly affected' by the requirement. The term 'directly affected' is unique to notification of notices of requirement (and Heritage Orders). It contrasts with the term 'adversely affected' used in relation to resource consent notification.

Public notices must include:

- where the proposed policy statement or plan may be inspected
- a statement that any person may make a submission on the proposed plan
- the process for public participation in consideration of the proposed plan
- the closing date for submissions
- the address for service of the local authority.

A council may lodge submissions on any rolled-over designation or new requirement contained in its own plan. This can occur where the council considers that a designation is insufficiently described or requires (more) conditions.

Councils should carefully consider whether to make a submission on a rolled-over designation or new requirement. It may be the only opportunity to request changes to a designation as part of the plan making process. It also provides the basis for any subsequent issues to be raised and arbitrated through the Environment Court. If no submissions are made then the council must, at the request of a requiring authority, include the designation as is, in its plan at the end of the plan review process. [Refer to the flowchart for including notices of requirement in a proposed plan.](#)

The council will then summarise any submissions on designations, along with submissions on other provisions of the proposed district plan, and publicly notify the availability of the submission summary and the closing date for further submissions.

## 7. Hearings

The council will then hold a hearing if requested or necessary. Hearings are required on any submissions received on notices of requirement notified in the proposed district plan. If no submitters wish to be heard, or requests to be heard are withdrawn, a hearing may not be required.

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## Notices of requirement for proposals of national significance

If the 'national significance' criteria in s142(3) are met, s145(3) allows a requiring authority to lodge a notice of requirement for a designation or to alter a designation directly with the Environmental Protection Authority (EPA). The Minister may also, at his/her own initiative, decide to 'call in' a proposal of national significance.



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The EPA is required to make a recommendation to the Minister within 20 working days of receiving the notice of requirement, requesting a direction from the Minister to either refer the matter to a board of inquiry, the Environment Court, or the local authority.

In deciding on making a direction, the Minister must have regard to the views of the applicant and the local authority, the capacity of the local authority to process the matter and the recommendations of the EPA.

If the notice of requirement is referred to a board of inquiry or the Environment Court, these bodies make a final decision on the notice of requirement, and not a recommendation to the requiring authority, as would be the case if the local authority processed the designation and they were not the requiring authority.

### Using commissioners

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Independent commissioners may be used to make decisions or recommendations on a notice of requirement. An independent commissioner must also be delegated the decision-making duties where requested by the applicant or a submitter under section 100A of the RMA.

The use of commissioners can also be beneficial where:

- the notice of requirement raises matters that are very complex and/or technical in nature
- a territorial authority may be perceived as having a conflict of interest (such as considering its own notice of requirement)
- a territorial authority has other commitments (such as the review of the long term plan or district plan)
- the requiring authority requests the use of commissioners.

If using independent commissioners, it is important to ensure that any commissioners have the correct delegated authority to consider notices of requirement and make decisions or recommendations on behalf of the territorial authority.

### Recommendations and decisions

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Under s171 a territorial authority can only make a recommendation on a notice of requirement (where the notice of requirement is not council initiated) to a requiring authority to:

- confirm the requirement
- modify the requirement
- impose conditions
- withdraw the requirement.

Where a territorial authority serves a notice of requirement on itself (s168A) the territorial authority **decides** on the application, on the basis listed above (as the territorial authority is also the requiring authority).



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When making the recommendation (or a decision in the case of s168A notices of requirement), a territorial authority must have regard to matters listed in [s171\(1\)](#) (for s168 notices of requirement) and [s168A\(3\)](#) (for s168A notices of requirement). Unlike resource consents, a territorial authority is not required to consider the matters in s104.

### **Territorial authority recommendation**

Section 171 sets out what a territorial authority must and must not have regard to when considering a requirement and any submissions, and making a recommendation on the requirement.

Section 171(1A) requires territorial authorities to not have regard to trade competition or the effects of trade competition.

Section 171(1) requires the territorial authority to, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to:

- a. any relevant provisions of a national policy statement, the New Zealand Coastal Policy Statement, a regional policy statement or proposed regional policy statement and a plan or proposed
- b. whether adequate consideration has been given to alternative sites (discussed further below), routes, or methods of undertaking the work if the requiring authority does not have an interest in the land (i.e. does not own or lease the land) or it is likely that the work will have a significant adverse effect on the
- c. whether the work or designation is reasonably necessary for achieving the objectives of the requiring authority for which the designation is
- d. any other matter it considers necessary to make a recommendation on the requirement.

Territorial authorities also need to carefully consider the wording of the recommendation. Any recommendation on a notice of requirement must be accompanied by reasons for that recommendation as required by s171(3).

Territorial authorities must also take national environmental standards into account when making a decision on a notice of requirement. Section 43D(4) states that national environmental standards prevail over a designation where the standard exists before the designation is made.

### **Consideration of alternatives**

The Environment Court has determined that the Court only needed to consider whether the requiring authority had acted arbitrarily or given cursory consideration to alternatives or whether it had carried out sufficient investigations of alternatives to satisfy itself as to the site put forward. The relative merits of each alternative do not need to be assessed or compared.

Section 171(1) is 'subject to Part 2' of the RMA. In terms of the consideration of alternatives under s171(1)(b) being subject to Part 2, a requiring authority does not have to show it has selected the best of all available alternatives, just that a careful assessment has been made of the relevant proposal to determine whether it achieves the



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RMA's purpose. The 'subject to Part 2' does not allow the Court to decide whether some other project alignment or design would better meet Part 2 requirements.

### **Rolled-over designations**

If a rolled-over designation is included in the proposed plan without modification and no submissions are received, the council cannot make a recommendation or decision. The council must simply include the rolled-over designation in the proposed district plan.

### **Requiring authority decision**

Within 30 working days of receiving the territorial authority's recommendation, the requiring authority must advise the territorial authority of whether it accepts or rejects the recommendation, in whole or in part. The requiring authority can only modify a requirement if the territorial authority has recommended the modification, or if the modification is not inconsistent with the notice of requirement as notified.

If the requiring authority rejects the territorial authority's recommendation in whole or in part, or modifies the requirement, the requiring authority must give reasons for its decision and must advise the territorial authority of its decision.

### **Wording of designations**

Requiring authorities should consider the wording of their designations carefully, particularly when they are being rolled over into a proposed district plan, i.e. is the purpose of the designation (the nature of the works to which it relates) clearly explained? Changing land uses, technology, and public understanding may gradually make the original wording inadequate.

Territorial authorities should also consider the designation description carefully, particularly when assessing whether a proposed activity or proposed work falls within the designated purpose of a site. The territorial authority also needs to look at the requiring authority's decision and any conditions imposed to determine the scope of the designation.

### **Conditions on designations**

The territorial authority can recommend that conditions be imposed on a new requirement or a rolled over designation, where it considers that conditions are necessary (or impose conditions where it is both the requiring authority and 'recommending authority').

They cannot be imposed on rolled-over designations where these are not being modified and no submissions have been made.

Conditions provide clarity and certainty in setting the parameters within which a designation may give effect to the public work or project to which it relates. If accepted by the requiring authority, conditions become an integral part of the designation and cannot be removed from the activities undertaken on it. Where conditions are attached to



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a designation, it is good practice for those specific conditions are listed in the relevant plan, alongside the designation reference.

When recommending a condition, the territorial authority should have regard to the potential effect of the condition on the designations future operation. There is no restriction on the type of conditions that can be imposed on a designation, unlike the restrictions placed on resource consent conditions in s108. However, placing conditions on a designation that cannot be met and require a (land use) consent can compromise the intent of the designation process is not appropriate (and are therefore unlikely to be accepted by the requiring authority).

A valid condition for a designation should:

- be for a resource management purpose
- be fairly and reasonably related to the proposed work
- not be so unreasonable that a reasonable territorial authority could not have be certain
- be enforceable
- not require third party action
- not be discretionary and/or delegate power to make or colour further recommendations
- not defeat the designation.

If the requiring authority wishes to undertake works that are within the scope of a designation, but are in conflict with a condition, it can seek to remove or modify the condition by lodging a notice of requirement to alter the designation. This situation should be avoided if the condition are in accordance with the purpose of the designation.

If a territorial authority recommends that conditions be imposed or modifications made to a rolled-over designation or a new requirement, it should set out full reasons in the recommendation. The recommendation should be clear and transparent. This is important to reduce the risk of the requiring authority rejecting the recommendation, and any subsequent appeals by the territorial authority.

When proposing to recommend conditions on the notice of requirement, it is useful to discuss these with the requiring authority before the hearing (if the notice of requirement is notified). Many conditions can be mutually acceptable in the interests of providing clarity or certainty for the territorial authority, the public and requiring authority.

Conditions may need to be revised to take into account matters raised during the hearing. The hearings panel may add additional conditions or depart from the recommended conditions in the officer's report or those offered by the requiring authority.

In some cases, designations may have no conditions or it may not be appropriate to impose conditions. Instead, s176A provides for an outline plan to be provided at the construction stage, when additional information is available. However, it must be understood that territorial authorities cannot impose conditions on an outline plan. A territorial authority can only request changes to the outline plan. Thus, it is normally more appropriate to attach conditions to a designation to provide a framework for preparing and considering an outline plan of works.

## When a decision is made

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### Notification of decision

When a territorial authority has received the decision of a requiring authority, or made a decision on its own notice of requirement, it must notify the decision as follows:

- the territorial authority must serve a copy of the decision on all submitters within 15 working days of the territorial authority making its decision and
- serve notice on any directly affected land owners or occupiers.

Alternatively, the territorial authority can give notice that provides a summary of the decision (for example if the decision is lengthy) and also state where copies of the decision are available for inspection (which may be electronically and/or physically). The decision should be provided within three working days of receipt of a request for provision of a copy.

The notice must include a statement of the time within which an appeal against the decision may be lodged which is 15 working days after the date on which the notice of the decision is given.

### Appeals

The territorial authority or any submitter may lodge an appeal of the requiring authority's decision to the Environment Court (s174). For a new designation to an operative plan, this must be done within 15 working days of when the decision was served. For a designation that is included in a proposed plan, this must be done within 30 working days of when the decision was sent out.

Practice has demonstrated that good relationships between territorial authorities and requiring authorities are key to reducing misunderstandings and the potential for appeals. Discussions between territorial authorities and requiring authorities, and/or with submitters, following release of the territorial authority's recommendation are beneficial.

### Updating the plan

A territorial authority must update its district plan to include the designation once the time for appealing a requiring authority's decision has passed without appeal, or any appeal has been withdrawn by the territorial authority, or dismissed or resolved by the Environment Court.

If the requirement was part of a proposed plan and after the council has made decisions on the plan as a whole, the proposed plan is typically updated and reprinted. The timing of the requiring authority decision-making processes can mean that it may not be possible to include all the decisions on designations when the plan is first updated and reprinted with decisions. However, given that decisions on plan appeals will most likely require further updates to the plan, decisions on requirements will be able to be included in further reprints.



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Councils should discuss time frames and processes with requiring authorities so they are aware of how their decision fits in with the rest of the plan process, and they have a clear understanding about printing deadlines.

### **The territorial authority as requiring authority**

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When processing a new notice of requirement, calling for existing designations to be rolled over, or including a new requirement in a proposed plan, councils should act and be treated like any other requiring authority, and should receive and provide the same standard of communication and co-operation.

As a requiring authority, the territorial authority needs to carefully consider whether the use of a designation is preferred, given the costs and benefits, against other available planning mechanisms. Territorial authorities also need to determine the appropriate balance between their rights as a requiring authority and decision maker, and the use of designations as a planning instrument to identify, protect and undertake a public work.

Internal council departments often have differing views on how the district plan should provide for their activities. These differing views can become very apparent when territorial authority notices of requirement are lodged.

As with any requiring authority, councils should be given sufficient advance notice for designations in the plan review process, to ensure good timely information and adequate resources. It is also helpful to learn the needs and requirements of the council departments and to advise them of the RMA requirements including the plan review process. They should be aware of resourcing and time frames and must. They must also be prepared to defend their requirement through the submissions and appeal process.

### **Mapping and scheduling requirements**

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Designations in a district plan are usually included in a schedule, with the designated area also shown on the planning maps. Clear formatting and layout is essential to aid understanding by the public. An important consideration in including designations in district plans generally is the drafting and referencing. Clarity and easy linking is important as the information is often separated by volume. A designations schedule should clearly identify the map reference and the location of any relevant text, such as conditions, associated with a designation.

When including a designation in a district plan and depicting it on the relevant planning map it is important to indicate the provisions that would apply to the designated land in the event that:

- a. all or part of the designation is uplifted; or
- b. an activity is proposed (subject to the requiring authority 's agreement) which is not associated with the purpose of the

This is often referred to as the 'underlying zoning' (usually consistent with the surrounding area). For certainty, it is important to be explicit when more than one underlying zoning could be interpreted to apply (e.g. where different zones about a road designation the district plan may state the underlying zoning extends to the road centre



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line). Techniques such as overlays indicating designations and other limitations are useful to depict this.

### Schedules

As good practice, a schedule of designations should include the following information in a proposed plan in respect of each designation or notice of requirement:

- the name of the requiring authority
- the purpose of the designation or proposed designation (sometimes known as the notation)
- the name, address and legal description of the site
- a cross reference to the relevant map
- any conditions of the designation.

To improve understanding by the public and for ease of plan administration, councils should also consider adding to the schedule of designations the lapse period of the designation (default of five years but this may be extended when the designation is sought).

### Maps

Designation maps must be precise. The requiring authority and the council should provide adequate and compatible mapping systems.

Large-scale district plan maps can make it difficult to determine the extent of designations in relation to property boundaries which can result in errors when interpreting the plan. This is particularly important when the designation only applies to part of a site.

Councils should work with requiring authorities at an early stage to ensure accurate, high-quality detail and maps are provided with notices of requirement.

The council should decide what the required size, scope, and standard of precision is required for the planning maps. Large-scale designations (such as those in the rural area) and complex designations such as airport approach paths often require specific maps and explanations.



## Processes applying to existing designations

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### Altering an existing designation

A requiring authority can serve a notice of requirement on a territorial authority to alter an existing designation in an operative plan. Section 181 sets out the process for altering a designation. The alteration may be to the physical boundaries of the designation, the scope/purpose of the designation, or the conditions on the designation. [Refer to the flowchart for the steps to alter an existing designation.](#)

When altering a designation, consideration must also be given to relevant national environmental standards, pursuant to s43D.

The process for altering a designation involves:

1. The requiring authority, responsible for a designation, giving notice to the relevant territorial authority of its requirement to alter the designation together with the required fee and information contained [Form 18](#). It is important to note that some designations may extend over different territorial authority jurisdictions and or district plans and a notice of requirement for each district plan is required.
2. The territorial authority acknowledging the application and checking that the designation has not lapsed.

Generally, a notice of requirement altering a designation is treated in the same way as a notice of requirement served under ss168 or 168A. That is, the territorial authority is able to request further information, must make a decision on notification, and can only make recommendations to the requiring authority. However, s181(3) provides an exception to this standard process. A territorial authority may, at any time, alter a designation in its district plan or a requirement in a proposed plan if:

- 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 a minor change or adjustment 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 they agree with the alteration (in decisions under s181 the Court has relied on a definition of 'directly affected' as an appreciable effect that is more than minimal, and is one that is felt by the person in particular not the public in general); and
- The territorial authority and the requiring authority agree with the alteration.

If any of the above requirements are not met, then the standard process for new designations must be followed.

As with new notices of requirement, once the designation has been altered, the district plan or proposed district plan must be amended to reflect the changes.

## Transferring designations

Section 180 provides for a requiring authority to transfer the rights and responsibilities for designations to another requiring authority.

Where the financial responsibility for a project or work or network utility operation has transferred from one requiring authority to another, the responsibility for any designations is also transferred. This is a straight forward process and involves the requiring authority that is transferring responsibility for the designation to advise the Minister for the Environment and the relevant territorial authority of the transfer. This transfer of responsibility includes financial responsibility.

The territorial authority must then update the district plan and any proposed plans, without using the Schedule 1 process.

If the network utility operator or organisation is not a requiring authority, they must become one under s167 before the transfer of the designation can occur.

## Removal of designations

Section 182 provides for a requiring authority, including a territorial authority as a requiring authority, to initiate the removal of a designation from a district plan.

If a requiring authority no longer wants the designation or part of the designation, it must give notice to the territorial authority using [Form 23](#) of the Resource Management Forms Fees and Procedure Regulations 2003 and notify:

- anyone the requiring authority thinks is likely to be affected by the removal of the designation
- anyone the requiring authority knows is the owner or occupier of land the designation relates to.

The designation is then removed from the district plan without using the Schedule 1 process.

Where a territorial authority considers that the effect of the removal of part of a designation on the remaining part of the designation is more than minor, it may, within 20 working days of receiving notice, decline to remove part of the designation.

A requiring authority can object under s357 of the RMA to a territorial authority's decision to decline the removal of part of a designation. It can then appeal the territorial authority's decision on the objection.

## Lapsed designations

Sections 184 and 184A state that designations will lapse if they are not used within a reasonable timeframe. This is important because a designation imposes restrictions on any private owners or occupiers of that property while it is in place.



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'Lapse' is not defined in the RMA so it has its ordinary meaning in a legal context specific to sections 184 and 184A of the RMA: termination of a right or privilege through disuse.

A lapsed designation is not capable of revival. However, a requiring authority can seek an extension of the time to give effect to a designation in accordance with s184, or it may lodge a new notice of requirement.

A designation lapses five years after the date it is included in the district plan, unless:

- it is 'given effect to before the end of that period', or
- the territorial authority determines on an application made within three months of the end of the five-year period, that 'substantial progress or effort' has been made, and is continuing to be made toward giving effect to the designation, or
- the designation specifies a different lapse period, at the time it was incorporated into the plan.

If any one of the above provisions is met and lapsing of the designation is avoided, the territorial authority must fix a longer period for the requiring authority to give effect to the designation. The 'continuing substantial progress or effort' test is similar to that for resource consents under s125 of the RMA, and does not require completion or near completion of the works. This does not necessarily always mean that physical works must be underway.

The five-year period is calculated from the date the designation is included in the plan. The requiring authority can apply for more than one extension of the five-year period.

For territorial authority designations, the territorial authority itself must resolve that it is making and is continuing to make substantial progress or effort towards giving effect to the designation.

Once given effect to, a designation remains until the requiring authority removes or alters the designation. A designation can also be rolled over into a new district plan. If an existing designation is not 'rolled over' into a new district plan it continues to have effect until the proposed district plan is made operative.



## Outline plan processes

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

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

Subsection (f) provides for a territorial authority to consider other unspecified matters such as noise, dust, lighting, glare and odour as necessary. These 'other matters' will be limited if the requiring authority provided details on mitigation of effects as part of the notice of requirement, or relevant conditions were imposed on the notice of requirement. Mitigation measures should not frustrate the reasonable implementation of the proposed works in accordance with the designation (the requiring authority is likely to reject any such conditions).

When preparing an outline plan, a requiring authority should also consider:

- the purpose of the designation
- any conditions that may have been placed on the designation
- the implications of these conditions on the proposed works
- whether to hold pre-application meetings with the territorial authority to clarify any areas of uncertainty such as the interpretation of designation conditions or planning maps
- any relevant national environmental standard (s43D).

An emerging approach to effective use of the outline plan stage is an 'effects envelope' approach. This approach makes better use of the outline plan stage. An effects envelope can be set through the use of conditions on the notice of requirement. These conditions require the mitigation of effects through the use of management plans, which are supplied at the outline plan stage, when construction details are known. In some circumstances, the territorial authority may agree to waive the requirement for an outline plan if a management plan is submitted instead.

Territorial authorities should encourage requiring authorities to consult closely with them in preparation of outline plans for significance developments or works, including providing drafts of a proposed outline plan for comment. From a territorial authority perspective, the time allowed for processing outline plans (20 working days) is very short, particularly for assessing what can be a highly complex, technical document. From a requiring authority perspective, the potential for a territorial authority to appeal a requiring authority's refusal to make changes to an outline plan provides a significant incentive to 'get it right first time'.

## Waiver of outline plans

An outline plan is not always necessary for works within a designation. Under s176A(2) an outline plan is not necessary if:

- a. the proposed public work, project, or work has been otherwise approved under the RMA, or
- b. the details of the proposed public work, project or work, are already incorporated into the designation, or
- c. the territorial authority waives the requirement for an outline plan.

Other than waiving the requirement for an outline plan, a territorial authority does not have any decision-making power under s176A(2). The decision that an outline plan is not necessary under sub-clauses (a) and (b), rests with the requiring authority (subject to potential judicial review). Waiving the outline plan requirement removes any right to a subsequent appeal by a territorial authority.

A requiring authority should request that the territorial authority waive the requirement for an outline plan if it does not believe one to be necessary. It is good practice to discuss the potential for a waiver with the territorial authority initially before making the request in writing.

While there are no criteria within s176A(2)(c) for determining whether to waive the need for an outline plan, a territorial authority should consider:

- the level of effects that the proposed work or project may have
- whether the proposal or work would otherwise be a permitted activity and would meet any relevant performance standards of the underlying zone
- whether the effects of the works are addressed through a regional resource consent process
- whether the information has already been provided to the territorial authority as part of the designation,
- whether meeting the conditions of the designation provides adequate control and certainty.

Where a territorial authority determines that it is appropriate to waive the requirement for an outline plan, it should advise the requiring authority in writing.

## Processing an outline plan

On receipt of an outline plan, a territorial authority should check:

- that the outline plan has been submitted by the requiring authority, or that the agent submitting the outline plan has delegated responsibility to act on behalf of the requiring authority
- the status of the requiring authority is valid and that the designation has not lapsed
- whether the project or work falls fully within the purpose of the designation and meets any conditions related to the designation
- that the outline plan contains all the information required under s176A(3).



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A territorial authority has 20 working days to assess an outline plan and to make any requests for changes. If no changes are requested within 20 working days, the requiring authority can legally start work.

As with all timeframes stipulated by the RMA, where a territorial authority cannot meet the 20 working day time period, but does wish to request changes, s37 allows the territorial authority to extend the time limit in certain circumstances. If doing so, this extension should be communicated to the requiring authority at the earliest opportunity and within the initial 20 working days. With particularly complex projects, it is possible that a longer timeframe can be mutually agreed between the requiring authority and the territorial authority (s37A).

Unlike a notice of requirement, the resource consent processes in Part 6 of the RMA do not apply to outline plans. In particular, a territorial authority:

- cannot request further information on an outline plan
- cannot place an outline plan on hold under s88B
- does not consider whether anyone is adversely affected
- cannot notify an outline plan.

The only parties legally involved in the outline plan process are the requiring authority and the territorial authority.

### **Requesting changes to outline plans**

Where a territorial authority is proposing to request changes to an outline plan, it is good practice to discuss these changes with the requiring authority as soon as practical within the 20 working day period. This provides an opportunity for the requiring authority to comment informally on the proposed changes, before they are issued as a formal request for change. This process may minimise the risk of the requiring authority rejecting the territorial authority's requested changes and any potential appeals by the territorial authority to the Environment Court.

Where the territorial authority does request changes, it is good practice for such requests to be made in writing and be supported by clear reasons. For example, the territorial authority could include a copy of any relevant report that sets out the evaluation of the outline plan.

The requiring authority then decides whether to accept or reject the changes requested and advises the territorial authority of its decision. There is no specified timeframe for the requiring authority to make its decision.

### **Accepting an outline plan without changes**

Even when a territorial authority does not wish to request changes to an outline plan, it should advise the requiring authority in writing of this, and that the outline plan is accepted.

A territorial authority could also include a copy of its assessment report with the letter advising that the outline plan has been accepted without changes.



## THE RMA QUALITY PLANNING RESOURCE

### Appeals on outline plans

If the requiring authority rejects a territorial authority request for changes, the territorial authority can appeal the requiring authority's decision to the Environment Court within 15 working days of being notified of the requiring authority's decision (s176A). When considering such an appeal, s176A(5) states that the Environment Court must consider whether the changes requested by the territorial authority will give effect to the purpose of the Act.

### Enforcement

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The general duty under s17 to avoid, remedy or mitigate any adverse effects on the environment applies to any activity carried out by or on behalf of a requiring authority under a designation. Section 322 provides for an enforcement officer to serve an abatement notice on persons who undertake unauthorised works on designated land. Alternatively, under s316 any person may apply to the Environment Court for an enforcement order to be made against persons who are undertaking unauthorised works on designated land.

