

Proposed Plan Change 78 (PC78)

to the Auckland Unitary Plan (Operative in
part)

**SECTION 32 and sec77K / sec 77Q alternative process for existing
qualifying matters**

**EVALUATION REPORT – STRATEGIC TRANSPORT CORRIDOR ZONE as
a qualifying matter in accordance with sections 77I(e) and 77O(e)**

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Executive Summary

This draft report discusses the implications of applying the 'Strategic Transport Corridor Zone', in the Auckland Unitary Plan (Operative in Part)(AUP), as an existing qualifying matter to the medium density residential standards (MDRS) of Schedule 3A of the Resource Management Act 1991 (RMA). And the implementation of Policy 3 of the National Policy Statement on Urban Development 2020 – updated 2022 (NPS-UD).

Introduction

This draft report is prepared as part of the evaluation required by Section 32 and Sections 77K and 77Q of the Resource Management Act 1991 ('the Act') for proposed Plan Change 78 (PC78) to the Auckland Unitary Plan (Operative in Part) (AUP).

The background to and objectives of PC78 are discussed in the overview report, as is the purpose and required content of section 32 and 77K / 77Q evaluations.

This report discusses the implications of applying the Strategic Transport Corridor Zone (STCZ) as a qualifying matter to the medium density residential standards (MDRS) of Schedule 3A of the RMA and the implementation of policy 3 of the NPS-UD

An existing qualifying matter is a qualifying matter referred to in section 77 I or 77O (a) to (i) that is operative in the relevant district plan when the IPI is notified.

- Sec 77I relates to relevant residential zones.
- Sec 77O relates to urban non-residential zones.

The Council may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone or urban non-residential zone only to the extent necessary to accommodate 1 or more of the qualifying matters listed in 77I or 77O.

Integrated evaluation for existing qualifying matters

For the purposes of plan change 78, evaluation of the STCZ as an existing qualifying matter has been undertaken in an integrated way that combines sec 32 and 77K / 77Q requirements. The draft report follows the evaluation approach described in the table below.

Preparation of this draft report has involved the following:

- a review of AUP processes including Independent Hearing Panel hearing evidence and recommendations for Topics 0423 and 044 Transport
- a review of Chapter H22 – Strategic Transport Corridor in the AUP
- review of the AUP to identify all relevant provisions that require a consequential amendment to integrate the application of this qualifying matter
- review of the AUP Maps to assess the spatial application of this qualifying matter
- section 32 options analysis for this qualifying matter and related amendments

The scale and significance of the issues is assessed to be minor.

This draft section 32 and 77K/77Q evaluation report will continue to be refined in response to any consultation feedback provided to the council, and in response to any new information received.

Table 1 Integrated approach

Standard sec 32 steps	Plus sec 77K / 77Q steps for existing qualifying matter
<p>Issue</p> <p>Define the problem- provide overview/summary providing an analysis of the qualifying matter</p>	<p>Sec 77K or 77Q (1) (a)</p> <p>Describe the qualifying matter.</p> <p>Identify by location (for example, by mapping) where an existing qualifying matter applies</p>
<p>Identify and discuss objectives / outcomes</p>	<p>Sec 77K or 77Q(1) (c)</p> <p>Identify relevant RPS objectives and policies. Describe why the Council considers that 1 or more existing qualifying matters apply to these areas and why the qualifying matter is necessary.</p>
<p>Identify and screen response options</p>	<p>Sec 77k or 77Q (1) (b)</p> <p>Consider a range of alternative density standards for those areas having considered the particular MDRS standards and/or Policy 3 intensification requirements</p>
<p>Collect information on the selected option(s)</p>	<p>Sec 77K or Q (1) (d)</p> <p>Describe in general terms for a typical site the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by the MDRS and policy 3 having regard to the modified zone, with regard to the identified density options</p>
<p>Evaluate option(s) - environmental, social, economic, cultural benefits and costs</p>	<p>Sec 77K or Q (1) (b)</p> <p>Provide a general assessment of the benefits and costs of the options in the light of the new objectives introduced by the NPS-UD and MDRS relating to well-functioning urban environments</p>
<p>Overall judgement as to the better option (taking into account risks of acting or not acting)</p>	<p>Conclusion as to the implications of the qualifying matter for development capacity to be enabled by NPS-UD/MDRS in the areas where the qualifying matter applies</p>

Issues

The qualifying matter being evaluated is the STCZ under the following sections of the RMA:

Non-residential zones:

- 77O(e) - a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure, is identified as a qualifying matter. The definition of 'nationally significant infrastructure' includes (a) state highways and (h) the New Zealand rail network (including light rail).
- 77Q - Chapter H22 Strategic Transport Corridor Zone, which provides for the activity status of land use and development activities in the STCZ, and Chapter K Designations, which applies to the state highway and rail network, are existing qualifying matters in the district plan section of the AUP. Therefore, Section 77K alternative process for existing qualifying matters is appropriate for the Section 32 assessment.

Overview of the qualifying matter

The purpose of the STCZ is to provide for Auckland's state highways and rail corridors to be:

- developed and used for a wide range of activities associated with the transportation of people and goods
- used as a single, integrated transport system operated by more than one agency
- used for the interim non-transport related activities that do not undermine the future use of the corridor for transport purposes.

The STCZ provides the flexibility needed for the development of the state highway and rail corridors and for a wide range of activities for transporting people and goods. The zone also provides certainty as to the activities that can be undertaken and assists in planning and investment across transport modes.

The STCZ is applied to land that contains strategic infrastructure, or where a designation provides for such infrastructure. Most of the zone is subject to designations by KiwiRail and the New Zealand Transport Agency in Chapter K Designations. Designations remain the primary means of managing and operating Auckland's state highway and railway corridors. In general terms, the activities carried out under these designations are restricted to the core activities associated with the individual requiring authorities i.e. in accordance with the purpose and conditions of each designation.

By applying a STCZ to these corridors, provisions can be put in place to facilitate the integrated use of the corridors as a single transport network and provide more certainty around services and activities. In some circumstances, such as staged land acquisition for long-term projects or, where space allows, using the land for non-transport activities may be appropriate. The zone provisions will provide for these activities while ensuring the corridor's primary transport function is enabled.

While a designation enables the requiring authority to undertake works or projects in accordance with the purpose and conditions of a designation, restrictions may apply to any third party use of the land affected by the designation¹.

The district plan provisions of the AUP do not apply where a work or project is undertaken in accordance with the purpose and conditions of the designation. Conversely, the district plan provisions will apply for works and projects which are not undertaken in accordance with the purpose of the designation and any conditions attached to the designation. In addition, an Outline Plan of Works² may be required and any relevant regional consents required by the Regional Policy Statement (RPS) provisions are still necessary.

Location of qualifying matter

The location of the STCZ is aligned with the state highway and railway corridors, which extend from south to north, and west and east in the Auckland region.

Effects the qualifying matter seeks to manage

The effects that the AUP sections relevant to the STCZ manage include:

- ensuring safe, efficient and effective infrastructure for the transportation of people and goods in an integrated manner
- that land within the STCZ can be developed and used for non-transport related activities without undermining the future use of the corridors for transport purposes
- reverse sensitivity issues on adjacent activities including location and design of noise mitigation measures
- provision for operation, maintenance, repair, upgrades and renewals of existing infrastructure.

The STCZ is an urban non-residential area zone. Chapter H22 Strategic Transport Corridor Zone and Chapter K Designations are an appropriate method to manage land use and development, within the STCZ, as they:

- provide for the development, operation, maintenance, repair, upgrade and removal of infrastructure
- manage the adverse effects on infrastructure, including reverse sensitivity effects
- manage the adverse effects of infrastructure on adjacent land uses
- designations protect the land for the purpose of the designation
- the underlying district plan provisions do not apply to designations unless works to be undertaken are not in accordance with the purpose of the designation and any associated conditions attached to the designation
- designations enable requiring authorities to undertake works, projects, and ongoing operation, maintenance and upgrades to their infrastructure

¹ Resource Management Act 1991. Part 8, section 176.

² Resource Management Act 1991. Part 8, section 176A.

- requiring authority approvals are required where any activity proposed by an affected landowner may hinder or prevent the requiring authority from undertaking its works, projects, or work to which the designation relates.

Policy 3 of the NPS-UD does not affect the STCZ as while it may traverse through an area subject to Policy 3, the STCZ specifically applies to the state highways and rail corridor.

Objectives and Policies (existing)

Relevant AUP objectives and policies

The relevant AUP objectives and policies, that support designations as a qualifying matter are as shown in the table below:

AUP Chapter	Objective/Policy	Summary of matter addressed
B3 Infrastructure - Ngā pūnaha hanganga, kawekawe me ngā pūngao - Infrastructure, transport and energy [rps]	Objective B.3.2.1(1)	Infrastructure is resilient, effective and efficient
	Objective B.3.2.1(2)	The benefits of infrastructure are recognised
	Objective B3.2.1(3)	Development, operation, maintenance, and upgrading of infrastructure is enabled, while managing adverse effects.
	Objective B3.2.1(4)	The functional and operational needs of infrastructure are recognised.
	Objective B3.2.1(6)	Infrastructure is protected from reverse sensitivity effects
E26 Infrastructure [rp/dp]	Objective E26.2.1(1) Policy E26.2.2(1)	The benefits of infrastructure are recognised
	Objective E26.2.1(2) Policy E26.2.2(1)	The value of investment in infrastructure is recognised
	Objective E26.2.1(3)	Safe, efficient and secure infrastructure is enabled to service needs of existing and authorised proposed subdivision, use and development
	Objective E26.2.1(4) Policy E26.2.2(2)	Development, operation, maintenance, repair, replacement, renewal, upgrading and removal of infrastructure is enabled
	Objective E26.2.1(5)	The resilience of infrastructure is improved and continuity of service is enabled

	Objective E26.2.1(6) Policy E26.2.2(3)	Infrastructure is appropriately protected from incompatible subdivision, use and development, and reverse sensitivity effects
	Objective E26.2.1(9) Policies E26.2.2(4)-(10)	The adverse effects of infrastructure are avoided, remedied or mitigated
Chapter H – Strategic Transport Corridor Zone	Objective H22.2(1) Policies H22.3(1) and (2)	Railway and state highway corridors are used safely, effectively and efficiently for the transportation of people and goods in an integrated manner
	Objective H22.2(2) and (4) Policy H22.3(3)	Land identified for railway and state highway corridors can be developed and used for non-transport related activities without undermining the future use of the corridor for transport purposes where: <ul style="list-style-type: none"> • buildings and other structures are of a scale and design that is compatible with surrounding land uses • the non-transport activity will not give rise to reverse sensitivity effects that would undermine transport activities in the zone • non-transport related activities do not prevent the land reverting to a transport use when required • effects from non-transport related activities on the adjoining land are managed.
	Objective H22.2(3) Policy H22.2(4)	Potential effects of the location and design of noise mitigation measures on adjacent development are managed.
Chapter K – Designations	N/A	NZTA KiwiRail

		(as per Chapter K Designations and Schedules).
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It should be noted that it is the requiring authority's designations and any associated conditions attached to those designations that provide for the protection, and management of the land within the boundary of the designation. Chapters E26 Infrastructure has a reference within it that states that the STCZ and designations also have the potential to apply.

Designations are also identified as an existing qualifying matter in accordance with sections 77I(g) and 77O(g).

The management approach in the AUP, to provide for the STCZ, includes through:

- provisions in Chapter H Strategic Transport Corridor Zone
- identification of designations for state highway and railway corridors in the AUP maps
- provisions for designations in Chapter K of the AUP.

As stated above, the objectives, policies, activity statuses, and standards of Chapter H22 provide for land use and development activities with the STCZ.

The following activities are permitted activities within the STCZ:

- construction, maintenance, upgrade and use of cycleways and walk ways
- landscaping and artworks
- operation, maintenance of roads, railways and transport equipment
- temporary activities associated with transport activities including temporary materials and machinery storage, temporary ablution facilities and temporary buildings
- new buildings and additions/alterations to existing buildings associated with transport activities and transport storage yards: (a) within 50 metres of a site zoned residential; and (b) up to 10 metres in height (otherwise restricted discretionary activity)
- new buildings and additions/alterations to existing buildings associated with transport activities and transport storage yards: (a) located more than 50 metres of a site zoned residential; and (b) up to 20 metres in height (otherwise restricted discretionary activity)
- noise attenuation walls or fences (otherwise restricted discretionary where it does not comply with the relevant standard)
- any other activity not otherwise listed in H22.4 Activity Table, and provided for within an adjoining zone as a permitted activity.

All permitted, controlled and discretionary activities listed in H22.4 Activity Table must comply with the following standards:

- *H22.6.1 Yards* – requires a 5 metre yard for new buildings and additions associated with transport activities and transport storage yards where they directly adjoin a residential zone.

- *H22.6.2 Height in relation to boundary* – requires that buildings must not exceed of height of 3 metres measured vertically above ground level at side and rear boundaries that adjoin a site in a residential zone. And after that, buildings must be set back 1 metre for every additional metre in height (45 degrees)
- *H22.6.3 Screening* – requires yards for buildings and transport storage yards to be landscape or screened with a 1.8 metre high solid wall. And landscaping must comprise of trees and shrubs, be a minimum width of 2 metres, and be maintained as a visual screen during all seasons
- *H22.6.4 Noise attenuation walls or fences* – requires that walls or fences must comply with height in relation to boundary rules of the Residential-Single House Zone except that a section may project beyond the recession plane if: (i) the wall or fence has maximum height of 3 metres; max. length at 2 metres in height is less than or equal to 5 metres long; and no more than three such projections in 100 metres length of wall or fence.

Designations provide for the construction, operation, maintenance, repair, upgrades and renewals of the state highway and railway corridors in accordance with the purpose and any conditions attached to the designation. There are also normally conditions which mitigate environmental effects associated with construction and operation. And statutory restrictions on third party use of the land affected by the designation.

Amendments required to district plan objectives and policies

No amendments are required to AUP objectives, policies or rules in response to the MDRS other than to replace the reference to the Residential - Single House Zone to the Residential – Low Density Residential Zone.

Chapter H Strategic Transport Corridor Zone, Chapter E26 Infrastructure, and Chapter K Designations are an appropriate method to manage inappropriate land use and development activities for the reasons discussed above in the Issues section. In addition, NZTA and KiwiRail will have other internal requirements both for development within the land adjacent to the corridors and within the corridor itself.

Policy 3 of the NPS-UD does not affect the STCZ as while it may traverse through an area subject to Policy 3, the STCZ specifically applies to the state highways and rail corridor.

Development of Options

As set above, the STCZ is an existing qualifying matter in terms of sections 77K and 77Q of the RMA as:

- it is a matter required for the purpose of ensuring the safe and efficient operation of nationally significant infrastructure³ (as provided for in the definition of ‘nationally significant infrastructure’)

³ Resource Management Act, ss 77I(e) and 77O(e).

- there are designations which need to be given effect to, but only in relation to the land that is subject to the designation⁴
- is currently in the AUP and continue to have effect as part of an operative plan.

While the STCZ is specific to the state highway and railway corridors, a number of options have been considered in regard to the Section 32 assessment of the STCZ.

The options for MDRS and Policy 3 include:

1. Do not apply the STCZ as a qualifying matter i.e. remove provisions which support the STCZ and only apply MDRS and Policy 3.
2. Apply MDRS in a modified form to support the STCZ
3. Apply the STCZ as a qualifying matter in full i.e. retain the current the STCZ provisions and apply a zone on adjacent land which includes MDRS and Policy 3.

Option 3 is the preferred option, for the application of the MDRS and Policy as the provisions in Chapter H are still required to provide, and manage the effects of, the state highway and railways corridors. Requiring authorities are responsible for any designations, that may also be present in the state highway and rail corridors. Designations can only be altered by the relevant requiring authority.

The provisions of the MDRS and Policy 3 will be applied in full relying on AUP provisions (and designations where relevant) to manage inappropriate development and activities. The STCZ is largely unaffected by the MDRS and Policy 3 as the zone specifically applies to the land associated with the state highway and railway corridors.

Consequences for development potential

As identified above in the Issues section, the STCZ is within specific locations within Auckland's urban environment. And traverses through, and adjacent to, various relevant residential zones and non-residential urban zones. It is not unusual for residential activities to be located adjacent to a state highway or rail corridor.

Chapter H22 relates to land use and development within the strategic transport corridor and provides for limited non-transport related activities where it does not restrict the future use of a state highway or railway corridor. And does not limit the level of development potential on sites adjacent to the STCZ.

However, it is recognised there is the potential for an unintended reverse sensitivity issue i.e. noise, vibration arising if the land adjacent to the STCZ is zoned to provide for the permitted level of development provided for by the MDRS and Policy 3 of the NPS-UD.

Chapter E25 Noise and Vibration manages the noise and vibration effects of activities for subdivision, use and development. The objectives of E25 'seek to control the levels of noise and vibration caused by activities to limit the adverse effects of noise and vibration on

⁴ Resource Management Act, ss 77(g) and 77O(g).

amenity values, human health and to protect existing noisy activities from reverse sensitivity effects’.

Objective 25.2(3) and Policy 25.3(7) of E25. Noise and Vibration indicate that some responsibility should be placed on an applicant’s adjoining site. Objective E25.2(3) states:

- (3) *Existing and authorised activities and infrastructure, which by their nature produce high levels of noise, are appropriately protected from reverse sensitivity effects where it is reasonable to do so.*

The corresponding policy. Policy 25.3(7) states:

- (7) *Require activities to be appropriately located and/or designed to avoid where practicable or otherwise remedy or mitigate reverse sensitivity effects on:
existing or authorised infrastructure;*

...

There is no corresponding standard which requires residential zoned sites to mitigate reverse sensitivity effects from the adjacent sites but rather to manage the effects from residential site on adjoining sites. By rezoning the adjacent sites, this places additional noise limits on the STCZ. Standard E25.6.22 All other zone interfaces requires that ‘where noise generated by an activity on a site in one zone is received by any activity on a site in a different zone, the activity generating the noise must comply with the noise limits and standards of the zone at the receiving site’.

However, noise effects are normally managed through resource consents conditions on applications, on sites adjacent to state highways or railway corridors, that relate to acoustic design, use of insulation materials, and ventilation systems that enable habitable rooms to be occupied without the need to open windows or external doors. These conditions are normally applied where new habitable rooms are situated close to significant sources of noise e.g. rail lines, motorways.

Evaluation of options

Qualifying matter	Status Quo	Option 2	Option 3
Costs of applying the QM – broader social, economic, environmental, cultural	Low cost Applying the MDRS and Policy 3 in full contributes to a well-functioning urban environment. However, it may result in increased reverse sensitivity issues where	Low cost Applying an amended MDRS and Policy 3 is not required as the STCZ applies to land within state highway and railway corridors. However, it may	Low cost The STCZ applies to state highways and railway corridors only. The qualifying matter contributes to a well-functioning urban environment through provision of dedicated

	development is adjacent to the STCZ.	result in increased reverse sensitivity issues where development is adjacent to the STCZ.	transport corridors in which non-transport related activities are limited.
Costs of applying QM – housing supply / capacity	Low cost There is no/low cost to housing supply and capacity.	Low cost There is no/low cost to housing supply and capacity.	Low cost There is no/low cost to applying the STCZ as a qualifying matter. The STCZ applies to state highways and railway corridors only. However, there may be an unintended consequence of increased reverse sensitivity effects where development occurs adjacent to the STCZ.
Benefits of the QM – broader social, economic, environmental, cultural	Low/medium benefits? Applying the MDRS and Policy 3 will not result in significant benefits as the STCZ only applies to state highway and railway corridors.	Low/medium benefits Applying a modified MDRS or Policy 3 will not result in significant benefits as the STCZ only applies to state highway and railway corridors.	Low/medium benefits The STCZ applies to state highway and railway corridors. The provisions also do manage development of non-transport related activities and setbacks relating to activities to manage the effects of the STCZ. However, there is a risk that applying MDRS and Policy 3 could result in increased reverse sensitivity effects on properties adjacent to the STCZ.

Risk of acting or not acting

Section 32(2)(c) of the RMA requires this evaluation to assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. The information about the STCZ as a qualifying matter, including information about the purpose of the STCZ, and its location are already provided in the AUP. It is considered that this information is certain and sufficient having been through a thorough statutory process to be included in the AUP.

Overall conclusion

In accordance with the MDRS and Policy 3 of the NPS-UD, the STCZ is a qualifying matter for the purpose of ensuring the safe and efficient operation of nationally significant infrastructure.

The impact of the STCZ on the level of development enabled by the MDRS and Policy 3 is minor in effect. The STCZ applies to state highway and railway corridors and therefore does not affect development capacity. However, there is an increased potential for reverse sensitivity effects to arise where development which provides for greater density occurs adjacent to the STCZ.

Information Used

1. The following reports, documents, evidence, and plan versions were used to help the development of the plan change and assess the STCZ as a qualifying matter.

Name of document, report, plan	How did it inform the development of the plan change
Auckland Unitary Plan (Operative in Part 2016)	Chapter H22 Strategic Transport Corridor Zone applicability to state highway and railway corridors. Also the management of non-transport related development and requirements for setbacks with residential zones. The AUP maps identify the corridors subject to the STCZ.
AUP Independent Hearing Panel Evidence and recommendations for Topics 043 and 044 Transport.	Confirmed the inclusion of the STCZ as an appropriate method to provide for development of, and activities in, the state highway and railway corridors.

Consultation

Schedule 1 of the Act sets out the relevant consultation requirements. Mana whenua have been engaged in the preparation of the IPI plan change at various stages in the process as required by Schedule 1 of the Act.

The Council provided an opportunity to the Auckland community to comment on its 'preliminary response' proposals during the period April 19 to May 9, 2022. The consultation documentation included Information #6: Qualifying matters (Part 1).

This information sheet described what a qualifying matter is and which qualifying matters were specifically identified by the government in the NPS-UD and the RMA. And that these specifically identified qualifying matters may make the MDRS and policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the listed qualifying matters. The government-specified qualifying matters include 77I(b) 'a matter required for the purpose of ensuring the safe and efficient operation of nationally significant infrastructure'.

The information sheet also provided a corresponding list of AUP provisions which relate to the specifically identified qualifying matters which includes H22 Strategic Transport Corridor zone.