

# Proposed Plan Change 78 (PC78)

---

Plan Change to the Auckland Unitary Plan  
(Operative in part)

**SECTION 32 and section 77K / section 77Q alternative process for existing  
qualifying matters**

**EVALUATION REPORT for DESIGNATIONS as a qualifying matter in  
accordance with sections 77I(g) and 77O(g)**

## Table of Contents

Executive Summary.....	3
Introduction .....	4
Integrated evaluation for existing qualifying matters .....	4
Issues.....	5
Objectives and Policies (existing).....	8
Development of Options.....	9
Consequences for development potential .....	10
Evaluation of options .....	11
Overall conclusion.....	12
Information Used .....	13
Consultation.....	13

## **Executive Summary**

This draft report discusses the implications of applying Chapter K - Designations, in the Auckland Unitary Plan (Operative in Part)(AUP), as a 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 draft report discusses the implications of applying Designations 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 (j) 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 Designations 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 the AUP to identify all relevant provisions that apply to this qualifying matter
- an assessment of the identified relevant provisions within the AUP relating to Designations against the Medium Density Residential Standards in accordance with Schedule 3A of the RMA
- development of draft amendments to the operative district plan provisions of the AUP to implement this matter as a Qualifying Matter in accordance with s77I(e) and s77O(e)
- 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 but this will depend on the location of the designation. The development capacity provided by the MDRS and Policy 3 may not also be realised until such time that the designation is removed from the AUP.

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 Designations under the following sections of the RMA:

*Residential zones:*

- 77I(g) – the need to give effect to a designation, but only in relation to the land that is subject to a designation, is identified as a qualifying matter
- 77K – Chapter K Designations are an existing qualifying matter in the district plan section of the AUP. Therefore, Section 77K alternative process for existing qualifying matters is appropriate for the Section 32 assessment.

*Non-residential zones:*

- 77O(g) - the need to give effect to a designation, but only in relation to the land that is subject to a designation, is identified as a qualifying matter
- 77Q - Chapter K Designations are an existing qualifying matter in the district plan section of the AUP. Therefore, Section 77Q alternative process for existing qualifying matters is appropriate for the Section 32 assessment.

*Overview of the qualifying matter*

Part 8 of the RMA requires that territorial authorities make provision in their district plans to give effect to a notice of requirement for a designation lodged by a requiring authority for a public work or project. Requiring authorities include Ministers of the Crown, local authorities, or approved network utility operators.

Designations in the AUP include existing designations rolled over from legacy district plans in the AUP ‘without modification’ or ‘with modification’. And any new notices of requirement for a designation lodged with Auckland Council lodged either as part of the AUP process or since the AUP became operative in 2016.

Designations can:

- enable the use of land for a public work or infrastructure
- restrict land, water, subsoil, or airspace where there is necessary for the safe and efficient functioning or operation of a public work or infrastructure
- enable work that relates to the construction of eligible infrastructure for which the local authority is a responsible infrastructure authority
- enable activities that are exceptions to the district rules in the AUP
- enable acquisition of private land through the Public Works Act 1981.

Each requiring authority’s designation will state the specific purpose of that designation and any conditions which apply. 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. An exception to this is section 77M Effect of incorporation of MDRS in district plan on new applications for resource consents and on some existing designations of the RMA (refer to Consequences for development section for this

qualifying matter for additional discussion). In addition, an Outline Plan of Works<sup>1</sup> may be required and any relevant regional consents required by the Regional Policy Statement (RPS) provisions are still necessary.

Designations can require a third party e.g. affected landowners to seek written approval from the requiring authority responsible for the designation before undertaking an activity within the designation boundary<sup>2</sup>.

A notice of requirement for a designation has an interim effect<sup>3</sup> on the land affected by the proposed designation from when a requiring authority gives notice under Sections 168, 168A and 181 of the RMA.

#### *Location of qualifying matter*

A designation affects a specified area either across a full property, or parts of properties in the case of road widening/route protection designations.

Designations in the AUP, with various purposes, are widely located across Auckland's urban environment. This includes both relevant residential zones, non-residential zones and within areas subject to Policy 3 of the NPS-UD.

#### *Effects the qualifying matter seeks to manage*

As stated above, designations provide the statutory method for requiring authorities to protect land for works or projects for the purpose of the designation.

A notice of requirement has an interim effect on the land affected by the designation until the designation is confirmed and incorporated into the AUP. Confirmed designations retain the effect on the land until a requiring authority either alters the designation in part or removes the designation in its entirety.

This means that affected landowners may need approval from the requiring authority to undertake any activity within the designation boundary that would prevent or hinder a public work, project, or work to which the designation relates including –

- (i) undertaking any use of the land
- (ii) subdividing the land
- (iii) changing the character, intensity, or scale of the use of the land.

Auckland Council considers that the appropriate zoning to apply is one which includes the MDRS and Policy 3 of the NPS-UD, for the following reasons:

- designations protect the land for the purpose of the designation

---

<sup>1</sup> Resource Management Act 1991. Part 8, section 176A.

<sup>2</sup> Resource Management Act 1991. Part 8, section 176.

<sup>3</sup> Resource Management Act 1991. Part 8, section 178.

- 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
- 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.

There are designations which have conditions that limit height or where there may be reverse sensitivity issues. This includes the Minister of Defence’s designation for the Whenuapai Airfield Approach and Departure Path Protection (Designation 4311 in the AUP). However, in that case, as the designation takes precedence over district plan provisions, it may be that it can be relied on to manage the effect of land use and subdivision of land within the designation boundary that is in the vicinity of the airbase runways.

## 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 Table 1:

Table 1: relevant AUP objectives and policies

<b>AUP Chapter</b>	<b>Objective/Policy</b>	<b>Summary of matter addressed</b>
Chapter K - Designations	N/A	Each requiring authority’s designation schedule provides for works or projects in accordance with the purpose of its designations and any associated conditions.
E29 Emergency management areas – Hazardous facilities and infrastructure [rcp/dp]	Policy 29.3(3)	Consider the risks to activities sensitive to hazardous facilities and infrastructure within 34 metres of the boundary of Designations 6500 and 6501 (Petroleum Pipeline) where the pipeline is constructed to a “thin wall” specification.

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. As such, other than Chapter E29, there are no district plan specific objectives, policies, or rules related to designations. However, designations are recognised in Chapters E26 Infrastructure, E27 Transport, and H22 Strategic Transport Corridor Zone of the AUP as having the potential to also apply.

The management approach in the AUP, to provide for designations, as required by Part 8 of the RMA, includes through:

- identifying requiring authority's designations in the AUP maps
- Schedules in Chapter K for each requiring authority which provide details of their designations including the purpose of the designation and any associated conditions.

#### *Amendments required to district plan objectives and policies*

No amendments are required to AUP objectives, policies or rules in response to the MDRS or Policy 3 of the NPS-UD.

As stated above, Auckland Council considers that the appropriate zoning to apply is one which includes the MDRS and Policy 3 of the NPS-UD, depending on the location of the designation.

## **Development of Options**

As set above, designations are identified as an existing qualifying matter in terms of sections 77K and 77Q of the RMA, as they are:

- identified as a qualifying matter<sup>4</sup> that is needed to be given effect to, but only in relation to the land that is subject to a designation
- are currently in the AUP and continue to have effect.

A number of options have been considered in regard to the Section 32 assessment of Designations as a qualifying matter. The options included:

1. Do not apply Designations as a qualifying matter i.e. remove designations and only apply MDRS and Policy 3
2. Apply MDRS and Policy 3 in a modified form to support Designation provisions of the AUP
3. Apply Designations as a qualifying matter in full i.e. retain the current Designation Schedules and apply a zone which includes MDRS and Policy 3 of the NPS-UD provisions.

Option 3 is the preferred option, for the application of the MDRS and Policy 3 of the NPS-UD. Therefore the provisions of the MDRS and Policy 3 of the NPS-UD will be applied in full relying on the designation schedules and any associated conditions attached to the designations to manage the land within the boundary of the designation as it does in the AUP.

---

<sup>4</sup> Resource Management Act 1991, ss 77I(g) and 77O(g).

Options 1 and 2 are not feasible options as only a requiring authority can alter a designation, and any conditions attached to that designation, that it is responsible for in the AUP. Part 8 of the RMA provides for alterations<sup>5</sup>, or removals<sup>6</sup>, of a requiring authority's designation.

## **Consequences for development potential**

As designations vary and are located across the urban environment of the Auckland region, it is a challenge to determine the consequences for development potential. Designations protect the land within the designation boundary for the purpose of the designation and any associated conditions attached to that designation. So while it may be appropriate to apply a zone which incorporates the MDRS and Policy 3 of the NPS-UD, the residential development capacity of the land affected may not be realised until the designation is removed, either in part, or in its entirety by the requiring authority responsible for a designation.

There are approximately 1441 designations identified in the AUP maps and Chapter K – Schedules and Designations. A draft map for PC78 has been produced by Auckland Council which reflects the designations identified in Chapter K – Schedules and Designations as shown in the AUP maps.

As stated above, designations are located across the urban environment of the Auckland region. This includes both within relevant residential zones i.e. Residential – Terrace Housing and Apartment Building, Residential – Mixed Housing Urban, Residential – Mixed Housing Suburban, Residential – Single House and urban non-residential zones i.e. Special Purpose, Open Space, Business – Heavy Industry, Business – Light Industry, Business – General Business.

Designations can either affect a full property, or part of a property, and the property is often owned by the requiring authority. However, there are designations, such as for road widening and/or route protection where parcels of land are still to be acquired by the requiring authority. And as stated above, landowners may require approval from the requiring authority to undertake an activity within an area of their land affected by a designation. It also may be that the designation only affects part of private property, such as the road frontage of a property, and that the remainder of the property can be developed in accordance with the MDRS and Policy 3 provisions.

Therefore, it is challenging to provide a description for a typical site (or sites) which is subject to a designation. And development capacity as provided for by the permitted level of development of the MDRS and Policy 3 of the NPS-UD may not be realised until the requiring authority determines that it no longer requires the designation and either removes part of it, or in its entirety.

---

<sup>5</sup> Resource Management Act 1991. Part 8, section 181.

<sup>6</sup> Resource Management Act 1991. Part 8, section 182.

The exception to this is for designations for which the Minister of Education is responsible for. Section 77M(5) of the RMA applies if a designation for which the Minister of Education is the requiring authority –

- (a) *Included in the specified territorial authority’s district plan; and*
- (b) *The designation applies to land that –*
  - (i) *Is in a relevant residential zone; or*
  - (ii) *Adjoins a relevant residential zone*

*Then in accordance with Section 77M(6):*

*Works under a designation of the kind referred to in subsection (5) may rely on the provisions of the relevant residential zone that incorporate the density standards in Part 2 of Schedule 3A if those provisions are more lenient than conditions included in the designation.*

Therefore, section 77M(5) would only apply if there were conditions attached to a designation which were more restrictive than the MDRS. And again, the residential development potential of land subject to the Minister of Education’s designations may not be realised until the Minister of Education considers that the designation is no longer required and removes part of, or the entirety of, a designation.

## Evaluation of options

Qualifying matter	Status Quo	Option 2	Option 3
<b>Costs of applying the QM – broader social, economic, environmental, cultural</b>	<p><b>High/medium cost</b></p> <p>Applying MDRS and Policy 3 fully by not removing designations may enable the density sought.</p> <p>However, this is not a feasible option as only requiring authorities can remove/alter its designations.</p>	<p><b>High/medium cost</b></p> <p>Applying MDRS and Policy 3 in a modified form will not necessarily enable the development capacity of the land affected by a designation. The designation takes precedence over district plan provisions unless works are not in accordance with the designation purpose and any conditions attached to a designation.</p>	<p><b>Low cost</b></p> <p>Designations are provided for through Part 8 of the RMA. Auckland Council is required to recognise and provide for designations in its district plan.</p> <p>Designations are for different purposes and contribute to a well-functioning urban environment through provision of critical and significant social, economic and cultural infrastructure i.e. schools, electrical substations, pump stations, roads, state highways, busways, prisons, airports, regional parks, libraries and art gallery etc.</p>

<b>Costs of applying QM – housing supply / capacity</b>	<b>high/medium cost</b> MDRS and Policy 3 will be applied in full. However, a designation affects the activities that can occur on the land within the boundary of the designation. Therefore, the development capacity of the affected land would not necessarily be realised until the designation was removed.	<b>High/medium cost</b> Amending MDRS and Policy 3 to provide for designations is not a feasible option. Designations take precedence over district plan provisions. Therefore, development capacity may not be realised until a designation is removed..	<b>High/medium cost</b> Designations can only be removed from the AUP by the requiring authority responsible for its designations. The development capacity of the land affected, within the designation boundary, may only be realised when the designation is removed.
<b>Benefits of the QM – broader social, economic, environmental, cultural</b>	<b>No benefit</b> Applying MDRS and Policy 3 will have no effect on designations. And would only apply if the designation was removed or the works were not for the purpose of the designation and its conditions.	<b>No benefit</b> Applying an amended MDRS and Policy 3 will have no effect on designations unless designations are removed. And would only apply if the designation was removed or the works were not for the purpose of the designation and its conditions.	<b>High benefit</b> Designations are for different purposes and contribute to a well-functioning urban environment through provision of critical and significant social, economic and cultural infrastructure i.e. schools, electrical substations, pump stations, roads, state highways, busways, prisons, airports, regional parks, libraries and art gallery etc.

*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 Designations as a qualifying matter, including information about the purpose of each designation, the conditions attached to each designation, and the location of designations is 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 NPS-UD, the need to give effect to designations, but only in relation to the land that is subject to a designation, is identified as a qualifying matter. Designations contribute to a well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

The impact of the qualifying matter on the level of development enabled by Policy 3 and the MDRS are specific to the land subject to a designation, and located across the urban

environment of Auckland. While it is considered appropriate to apply the MDRS and Policy 3 in regard to the underlying zones of designations, the development capacity on land within the designation boundary may not be realised until a designation is removed by the requiring authority.

## Information Used

The following reports, documents, evidence, and plan versions were used to help the development of the plan change and assess the National Grid Corridor Overlay 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 K Designations and Schedules. The AUP maps show the location of the designations listed in Chapter K.
AUP Independent Hearing Panel Evidence and recommendations for Topic 074 Designations.	Recognition of designations as a method used by requiring authorities to protect land for works/projects in accordance with the purpose and conditions of a designation.

## 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 Sheet #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 includes 77I(g) and 77O(g) 'the need to give effect to a designation or heritage order, but only in relation to land that is subject to the designation or heritage order'.

The information sheet also provided a corresponding list of AUP provisions which relate to the specifically identified qualifying matters which included Designations.