

## UNITARY PLAN UPDATE REQUEST MEMORANDUM

**TO** Celia Davison, Manager Planning, Central South Unit

**FROM** Lee-Ann Lucas, Senior Policy Planner, Central South Unit

**DATE** 6 April 2021





**SUBJECT** **Alteration to a Designation in accordance with s181(3) of the Resource Management Act 1991 to the Auckland Unitary Plan(AUP) Operative in part (15 November 2016)**



This memorandum requests an update to Auckland Unitary Plan Operative in part

<b>Reason for update – Alteration to designation 7100</b>	
<b>Chapter</b>	Chapter K Designations
<b>Section</b>	Schedules and Designations – Prime Minister
<b>Designation #7100</b>	Government House
<b>Locations:</b>	119 Mountain Road and 14 Glenfell Place, Epsom
<b>Lapse Date</b>	Given effect to (i.e. no lapse date)
<b>Purpose</b>	<p>Government House is used for vice regal purposes, as the Auckland residence of the Governor General.</p> <p>The following is a list of activities that fall within in the designation of Government House:</p> <ul style="list-style-type: none"> <li>a. Uses associated with the general functioning of the official residence of the Governor General and their household including staff;</li> <li>b. Official receptions, charity functions and garden parties;</li> <li>c. Accommodation and provision of facilities for official guests;</li> <li>d. Office accommodation of a sufficient nature and scale to ensure the operation of the office of Governor General;</li> <li>e. Garaging and parking of vehicles associated with the operational use of Government House; and</li> <li>f. The conservation of the amenities of the site and the maintenance of the concept of the garden.</li> </ul>
<b>Changes to text (shown in underline and strikethrough)</b>	<p>The following is a list of activities that <u>would</u> fall within <del>in</del> the designation of Government House</p> <p>...</p> <p>Any <del>new</del> buildings, activities or works that are not described in the original notice of requirement will need either:</p> <p>...</p> <p><u>Note</u></p> <p><u>This condition does not restrict the Requiring Authority from undertaking those activities described in the original notice of requirement where in accordance with any required outline plan under section 176A of the Resource Management Act 1991 and any necessary</u></p>

	<u>building and/or resource consents.</u> ... Attachments Site Plan
<b>Changes to diagrams</b>	Removal of Site plan from Designation text
<b>Changes to spatial data</b>	N/A
<b>Attachments</b>	Attachment A: s181 Report Attachment B: Updated Text

<b>Prepared by:</b> Lee-Ann Lucas Senior Policy Planner	<b>Text Entered by:</b> Harry Barnes Planning Technician
<b>Signature:</b> 	<b>Signature:</b> 
<b>Reviewed by:</b> Lee-Ann Lucas Senior Policy Planner	<b>Signed off by:</b> Celia Davison Manager Planning, Central South Unit
<b>Signature:</b> 	<b>Signature:</b> 

## Attachment A: s181 Report

# Notice of requirement for a minor alteration to a designation under Section 181(3) of the Resource Management Act 1991



## Notice of requirement description

Designation number:	Designation 7100 Government House
Requiring authority:	Prime Minister
Site address:	119 Mountain Road (Pt Lot 1 DP 4122, NA404/36), 14 Glenfield Place (Part DP 3025 and Part DP 3789, NA617/238 (Pt Allot 195 Sec 6 Suburbs Auckland) and 2-20 Savannah Street (Allot 164 SO 43625 Sec 6 Suburbs of Auckland), Epsom

## Summary

Auckland Council has received a request from the Department of the Prime Minister and Cabinet under section 181(3) of the Resource Management Act 1991 (RMA), dated 1 February 2021, to alter Designation 7100 Government House. It is considered after undertaking an assessment of the notice, that the proposed alteration meets the statutory tests of section 181(3) of the RMA and can therefore be processed and confirmed as a minor alteration.

## Recommendation

1. That the proposed alteration of Designation 7100 Government House in the Auckland Unitary Plan (Operative in Part) be confirmed, for the following reasons:
  - the alteration involves no changes to the effects on the environment associated with the use of the land
  - the land is owned by the Crown and is managed and occupied by the Department of the Prime Minister and Cabinet (DPMC). DPMC are the requestor for the alteration and as such it is considered that all owners and/or occupiers of the land directly affected by the proposed alteration can be considered to have been given notice and agree with the proposed alteration
  - both the requiring authority and Auckland Council agree with the alteration
2. That Designation 7100 Government House is altered accordingly in Chapter K – Designations in the Auckland Unitary Plan (Operative in Part) (see **Attachment A**).

## 1. Background

### 1.1. Minor alteration to a designation

Auckland Council has received a notice of requirement (NoR) from the DPMC for an alteration to Designation 7100 Government House under section 181(3) of the RMA.

The existing designation provides for the property to be used for vice-regal purposes as the Auckland residence of the Governor-General of New Zealand. Originally introduced in 1986 by the Minister of Works and Development into the legacy City of Auckland District Scheme the designation was then rolled over into the Auckland City District Plan Isthmus Section 1999 and then the Auckland Unitary Plan (Operative in part) 2016 (AUP). The requestor has explained the journey and the modifications of the designation through these successive stages in their AEE. This is explained in brief below.

The land was originally gifted for the purposes of Vice Regal Residence for New Zealand's Head of State in 1962. The designation was introduced in 1986 to give formal recognition to the operation of the property for these government purposes. The Minister considered it desirable from a public information point of view that such a prominent property and its use be identified in the district scheme. It included the following list of activities as those which would fall within the designation of Government House:

1. *Uses associated with the general functioning of the official residence of the Governor-General and his household, including staff.*
2. *Official receptions, charity/ functions and garden parties.*
3. *Accommodation and provision of facilities for guests of the Governor-General.*
4. *Office accommodation of a sufficient scale and nature to ensure operation of the office of the Governor-General.*
5. *Garaging and parking for vehicles associated with the operational use of Government House.*
6. *The conservation of the amenities of the site, including those trees listed as notable in the Auckland City district scheme and the maintenance of the original garden.*

The designation did not include any conditions.

The designation was rolled over into the Auckland City District Plan Isthmus Section 1999 with the following changes:

1. The requiring authority was amended to be the Prime Minister
2. The addition of the following wording:

Development to be in accordance with the following:

1. *All activities, works and buildings not fully described in the notice of requirement shall be the subject of either:*
  - (a) *A new notice of requirement, which shall be publicly notified, pursuant to Section 168 of the Resource Management Act; or*
  - (b) *a notice to alter the designation, pursuant to Section 181 of the Resource Management Act, which notice shall be publicly notified unless the alteration is minor and affected persons agree in accordance with the provisions of Section 181(3) of the Act.*
2. *The provision of Part 5C – HERITAGE of the Auckland City Isthmus District Plan (with respect to the protection of notable trees and general tree protection) shall be adhere to (and any necessary resource consents obtained) where any work within the vicinity of a protected tree occurs.*
3. *Unless lapsed prior to 15 June 2010, the expiry date of this designation has extended to 1 November 2015, by s78 of the Local Government (Auckland Transitional Provisions) Act 2010.*

In May 2012 the requiring authority requested the designation be rolled over without modification into the Proposed Auckland Unitary Plan (PAUP). At this time a plan was included as an attachment to the designation. According to the requestor this plan appears

to be from an outline plan of works for the Pavilion (2004), prepared by Salmond Reed Architects and referred to as 'Site Plan'.

Between the PAUP and the AUP, edits were made to the text of the designation. The word 'would' was removed from the purpose of the designation and the word 'new' was included in Condition one. These are outlined below. A strike through represents words that were deleted and an underline indicates words that were included.

**Purpose**

*Government House is used for vice regal purposes, as the Auckland residence of the Governor General. The following is a list of activities that ~~would~~ fall within in the designation of Government House:.....*

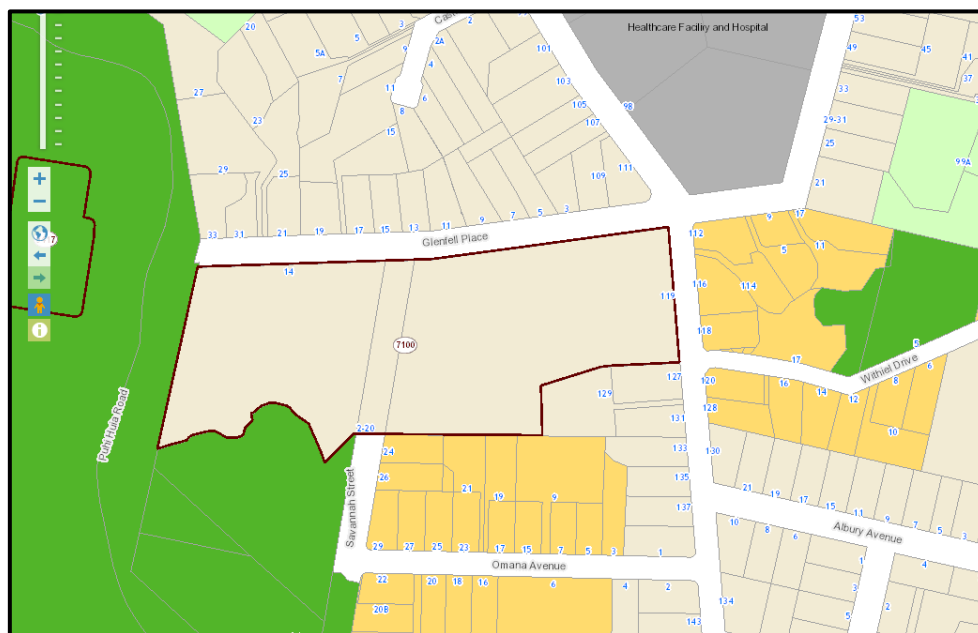
**Conditions**

1. Any new buildings, activities or works that are not described in the original notice of requirement will need either:.....

Furthermore, the wording of condition 2 was altered to reflect the new rules of the AUP regarding protection of vegetation, which superceded the legacy rules of the Auckland Isthmus District Plan, and Condition 3 introduced a reference to the Significant Ecological Area overlay that lies over the property in the AUP. These are shown below.

2. The rules within the Unitary Plan regarding scheduled trees will apply to this designation.
3. The rules within the Unitary Plan regarding significant ecological areas will apply to this designation.

The designation text was included in the AUP on 30 September 2016 as agreed by the requiring authority. On 10 March 2017 in accordance with s.152 of the Local Government (Auckland Transitional Provisions) Act 2010 and Clause 20a of the Resource Management Act 1991, a minor error was corrected regarding the property boundaries of the subject property, as 14 Glenfell Place had been omitted from the boundaries shown in the Council's GIS maps. The complete area of the designation is shown in **Figure 1** below.



**Figure 1: Designation 7100 Government House**

## 1.2. Description of the site and existing environment

The property subject to the designation is 119 Mountain Road, 14 Glenfell Place and 2-20 Savannah Street, Epsom – as shown in **Figure 1** above. The property contains the following buildings:

- Government House Auckland and Pavilion
- custodian cottage
- staff accommodation
- carports and garage
- accessory buildings
- gatehouse

**Figure 2** below provides an aerial view of the subject property (circa 2017) showing where the buildings are located. Government house is located in the centre of the property with other buildings located to the north and south.



**Figure 2: Aerial view of property**

The bulk of the property is covered in vegetation including a number of mature trees. The remaining area consists of gardens and lawns.

The property is subject to a number of other controls. These are listed as:

- Natural Resources: Significant Ecological Area overlay – SEA\_T\_6206, Terrestrial
- Natural Resources: Quality-Sensitive Aquifer Management Areas Overlay [rp] Auckland Isthmus Volcanic
- Natural Heritage: Notable Trees Overlay – 209, Chinese Dove Tree, North Queensland Kauri, Walnut Tree (3), California Big Tree, Halls Totara
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – Mount Eden, Height Sensitive areas

- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E10, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E11, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E12, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E13, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E14, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E16, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E18, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E19, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E20, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E8, Mount Eden, Viewshafts
- Chapter D14 Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay [rcp/dp] – E9, Mount Eden, Viewshafts
- Historic Heritage and Special Character: Special Character Areas - Residential and Business – Residential Isthmus B
- Controls: Macroinvertebrate Community Index – Exotic
- Designation Airspace Restriction Designations – ID 1102, Protection of aeronautical functions – obstacle limitation surface, Auckland International Airport Ltd

The Significant Ecological Area (SEA) overlay and Notable Trees overlay are specifically acknowledged through the conditions of the designation. These overlays are shown in **Figure 3** below. The SEA extends beyond the property to the west and south.

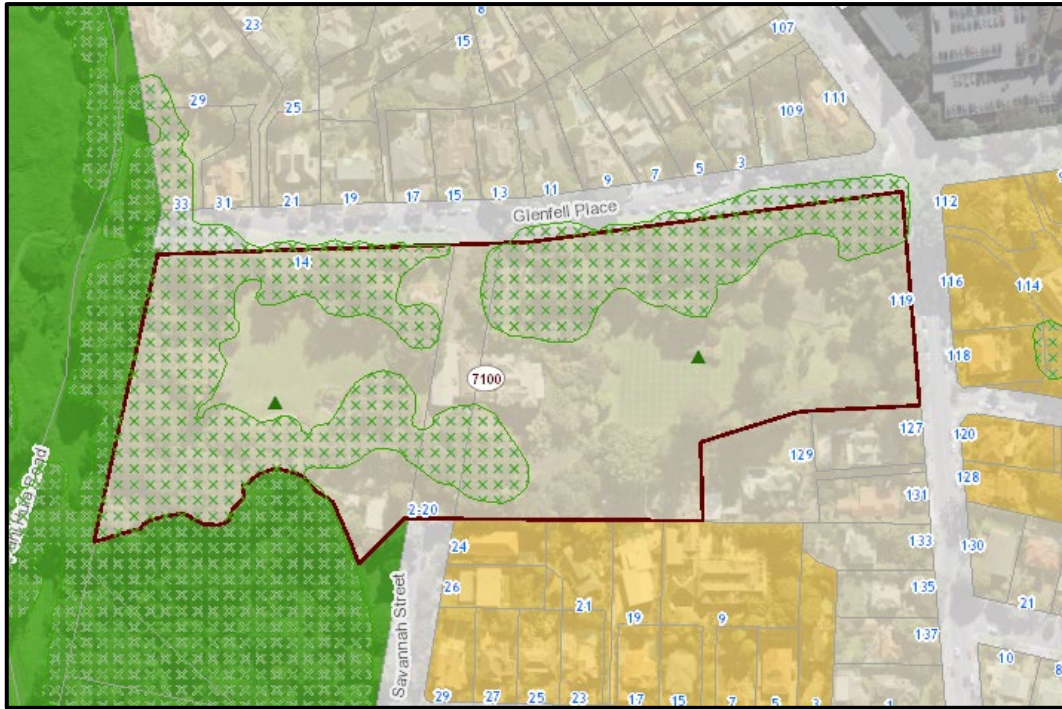
The property is surrounded on three sides by residential zoned properties - of Single House and Mixed Housing Suburban. The property to the west is Maungawhau or Mt Eden and is zoned Open Space Conservation. The property immediately south of the property is known as Eden Gardens and is also zoned Open Space – Conservation.

### **1.3. Delegated authority**

The Team Leader - Planning Central/South has delegated authority, in accordance with Schedule 2A of the Auckland Council Delegations: Chief Executive Officer (updated February 2021), to exercise the council's functions, powers, duties and discretions under the Resource Management Act 1991 in relation to section 181(3).

The Notice of Requirement can therefore be considered by the Team Leader – Planning Central/South and confirmed or declined under section 181(3)(c).





**Figure 3: SEA and notable trees**

#### 1.4. Relevant statutory provisions

Section 181 “Alteration of designation” of the Resource Management Act 1991 states:

- (1) A requiring authority that is responsible for a designation may at any time give notice to the territorial authority of its requirement to alter the designation.
- (2) Subject to subsection (3), sections 168 to 179 and 198AA to 198AD shall, with all necessary modifications, apply to a requirement referred to in subsection (1) as if it were a requirement for a new designation.
- (3) A territorial authority may at any time alter a designation in its district plan or a requirement in its proposed district plan if-
  - (a) The alteration-
    - (i) Involves no more than minor changes to the effects on the environment associated with the use or proposed use of land or any water concerned; or
    - (ii) Involves only minor changes or adjustments to the boundaries of the designation or requirement; and
  - (b) Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and
  - (c) Both the territorial authority and the requiring authority agree with the alteration –

and sections 168 to 179 and 198AA to 198AD shall not apply to any such alteration.

(4) *This section shall apply, with all necessary modifications, to a requirement by a territorial authority to alter its own designation or requirement within its own district.*

## **2. Analysis of the proposed alteration**

The relevant matters to consider are contained in section 181(3) of the RMA as outlined above.

It is not necessary for both the tests s181(3)(a)(i) and (ii) to be passed. It is sufficient to pass one of them. However, it must cumulatively pass all of s181(3)(a), (b) and (c).

### **2.1. Assessment of Environmental effects (s181(3)(a)(i))**

The requiring authority has provided an assessment of environmental effects (AEE) with the Notice of Requirement. Initially they sought the following:

- (a) Remove the word ' would' from the purpose of the designation
- (b) Delete the word 'in' from the second sentence of the purpose of the designation – “the following is a list of activities that would fall within in the designation of Government House”
- (c) Delete condition 1
- (d) Replace condition 1 with the following –
  - 1. *Any works, including new buildings, will be subject to an outline plan in accordance with Section 176A of the Resource Management Act 1991, with the exception of a) below:*
    - a) *Maintenance and repair of buildings, utility services, fences, walls and vehicle and pedestrian access.*
- (e) Remove the attached plan and reference to it

The requiring authority considered the proposed alterations to the designation to have no adverse effects. It was their view that there would be no change to the original purpose of the designation, the land included in the designation or to conditions applying to scheduled trees and significant ecological areas within the site as a result of the proposal.

They also considered it unnecessary to consider alternative sites instead relying on an exchange of letters between Auckland Council and the requiring authority to confirm the interpretation of the wording in Designation 7100 prior to lodgement of the request.

I agree with the following matters from the original request:

- a) The removal of the word 'in' from the second sentence of the Purpose. This word is an error.
- b) Removal of the attached plan and reference to it. The plan is not relevant to the designation and is not current.
- c) The restatement of the word 'would' in the purpose of the designation. This word has the effect of limiting the scope of any future activities to the list as prescribed.
- d) Removal of the word 'new' from Condition one. In my opinion this word confused the designation in that it was unclear if the proposed works, buildings or activities could be undertaken in accordance with the designation and an outline plan of works.

With regard to the replacement of Condition one, I considered that the proposed condition expanded the scope of the designation in that it did not limit the works, activities or buildings to those listed in the purpose section of the original designation. Given this I considered that

the attached AEE did not provide a sufficient level of detail as to the adverse effects on the environment. To this end I sought the advice of council specialists regarding the various controls and overlays applying to the property. A section 92 request was made seeking additional information to enable a full and proper assessment of the request with regard to the finding on scope expansion.

In my opinion the wording of the operative condition did not merely restate the requirements of the RMA but instead provided parameters under which the requiring authority could operate within, on the property. It is fundamental to keeping the buildings, activities and works confined to those set out in the purpose section.

It is important to note that designations are interpreted according to what an ordinary, reasonable member of the public, examining a district plan, would take from the designation (Waimariri City Council v Hogan [1978] 2 NZLR 587 – attached as **Attachment B**). The purpose of a designation must be ascertained having regard to the whole of the designation. Conditions on the designation are also relevant to the extent that they anticipate further works in reliance on the designation (*Titirangi Protection Group Incorporated v Watercare Services Ltd* [2018] NZHC 1026 – attached as **Attachment B**). In this case the condition tells us that no further works other than those set out in the purpose section are anticipated.

Furthermore, the Titirangi case notes that broadly worded designations can create issues with interpretation. In my opinion the proposed wording of the designation (including the inclusion of the word 'would') broadens the scope of the designation to include any building, work or activity.

Following further discussions and a second s.92 request (8 March 2021) the requester agreed to restate the original condition one, supported by an advice note that refers to the requirements under s176A of the RMA. In conclusion the proposed alteration to the designation reads in complete form as:

### **Purpose**

Government House is used for vice regal purposes, as the Auckland residence of the Governor General.

The following is a list of activities that would fall within ~~in~~ the designation of Government House:

- a. Uses associated with the general functioning of the official residence of the Governor General and their household including staff;
- b. Official receptions, charity functions and garden parties;
- c. Accommodation and provision of facilities for official guests;
- d. Office accommodation of a sufficient nature and scale to ensure the operation of the office of Governor General;
- e. Garaging and parking of vehicles associated with the operational use of Government House; and
- f. The conservation of the amenities of the site and the maintenance of the concept of the garden.

### **Conditions**

1. Any ~~new~~ buildings, activities or works that are not described in the original notice of requirement will need either:
  - a. A new notice of requirement; notified to the public under section 168 of the RMA; or
  - b. A notice to alter the designation, under section 181 of the RMA.

#### Note

This condition does not restrict the Requiring Authority from undertaking those activities described in the original notice of requirement where in accordance with any required outline plan under section 176A of the Resource Management Act 1991 and any necessary building and/or resource consents.

2. The rules within the Unitary Plan regarding scheduled trees will apply to this designation.
3. The rules within the Unitary Plan regarding significant ecological areas will apply to this designation.

In conclusion, I consider the above amendments to be in keeping with the original intent of the designation and do not consider them to expand the scope of the designation. With regard to s181(3)(a)(i) the proposed alteration to the designation does not result in any changes to the effects on the environment. The alteration is administrative and does not affect the regulatory and legal requirements of the requiring authority when seeking future undertakings of those activities described in the original notice of requirement.

#### **2.2. Assessment of minor changes or adjustments to the boundary (s181(3)(a)(ii))**

The alteration does not propose any alterations or adjustments to the boundary of any designation.

#### **2.3. Written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners and occupiers agree with the alteration (s181(3)(b))**

The land affected by designation is owned and occupied by the requiring authority (being the DPMC). DPMC are the requestor for the alteration and as such it is considered that all owners and/or occupiers of the land directly affected by the proposed alteration can be considered to have been given notice and agree with the proposed alteration.

#### **2.4. Agreement of both the territorial authority and the requiring authority (181(3)(c))**

The alteration to the designation has been requested by the requiring authority, and therefore it agrees to the alteration. Auckland Council can agree with the proposed alteration for the following reasons:

- The alteration involves no changes to the environmental effects associated with the use of the land
- The owners and/or occupiers of all land directly affected by the proposed alteration can be considered to have been given notice and agree with the proposed alteration

### **3. Conclusions and Recommendations**

#### **3.1. Conclusions**

The proposed alteration meets the statutory tests of Section 181(3) of the Resource Management Act 1991, in that:

- The alteration involves no changes to the environmental effects

- The owners and/or occupiers of all land directly affected agree with the alteration
- The council and the requiring authority can agree with the alteration.

### 3.2 Recommendation

1. That pursuant to Section 181(3) of the Resource Management Act 1991, the Department of the Prime Minister and Cabinet's notice of requirement for an alteration to Designation 7100 Government House is confirmed as described in **Attachment A**, to this report.
2. That Designation 7100 Government House is amended in the Schedule of Designations in the Auckland Unitary Plan (Operative in part) as recommended in Section 4 of this report.

Report Prepared by:

Date: 1 April 2021



Lee-Ann Lucas

Senior Policy Planner - Central/South

### 4. Section 181(3) Determination

Having read the council planner's report and recommendations on the notice or requirement, I am satisfied I have adequate information to consider the matters required by the Resource Management Act 1991 (the RMA) and to make a decision under delegated authority.

Accordingly, the notice of requirement for an alteration to Designation 7100 Government House is confirmed under section 181(3) of the RMA as agreed and set out in section 3 of this report.

Name: Fiona Sprott

Title: Team Leader – Planning Central South

Signed:



Date: 1 April 2021

### **SCHEDULE OF ATTACHMENTS**

**Attachment A:** Proposed wording of designation

**Attachment B:** Legal cases referred to –  
[Titiranqi](#) and [Waimariri](#)

Attachment B: Updated Text

## 7100 Government House

Designation Number	7100
Requiring Authority	Prime Minister
Location	119 Mountain Road and 14 Glenfell Place, Epsom
Rollover Designation	Yes
Legacy Reference	Designation D08-24, Auckland Council District Plan (Isthmus Section) 1999
Lapse Date	Given effect to (i.e. no lapse date)

## Purpose

Government House is used for vice regal purposes, as the Auckland residence of the Governor General.

The following is a list of activities that would fall within the designation of Government House:

- a. Uses associated with the general functioning of the official residence of the Governor General and their household including staff;
- b. Official receptions, charity functions and garden parties;
- c. Accommodation and provision of facilities for official guests;
- d. Office accommodation of a sufficient nature and scale to ensure the operation of the office of Governor General;
- e. Garaging and parking of vehicles associated with the operational use of Government House; and
- f. The conservation of the amenities of the site and the maintenance of the concept of the garden.

## Conditions

1. Any buildings, activities or works that are not described in the original notice of requirement will need either:

- a. A new notice of requirement; notified to the public under section 168 of the RMA; or
- b. A notice to alter the designation, under section 181 of the RMA.

### *Note*

This condition does not restrict the Requiring Authority from undertaking those activities described in the original notice of requirement where in accordance with any required outline plan under section 176A of the Resource Management Act 1991 and any necessary building and/or resource consents.

2. The rules within the Unitary Plan regarding scheduled trees will apply to this designation.
3. The rules within the Unitary Plan regarding significant ecological areas will apply to this designation.