

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

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**Report to Auckland Council  
Hearing topic 074  
Designations**

**May 2016**

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**Report to Auckland Council - Hearing topic 074  
Designations and Hearing topic 045 Airports (designations  
only)**

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# 1. Hearing topic overview

## 1.1. Topic description

Topic 074 addresses the district plan provisions of the Proposed Auckland Unitary Plan relating to:

Topic	PAUP reference	IHP reference
074 Designations	Part 7 Designations	Chapter K Designations
045 Airports (designations only)	Part 7 Designations	Chapter K Designations

This report summarises the assessment of the notices of requirement (and any submissions lodged in respect of them) from requiring authorities that have sought to have their designations included in the Unitary Plan. Each requiring authority has been reported on separately either in one report or in a series of reports.

These reports contain the Panel's recommendation under section 144(4) of the Local Government (Auckland Transitional Provisions) Act 2010 to Auckland Council on:

- i. notices of requirement for designations that have been included on the operative plan that a requiring authority wishes to be included in the Unitary Plan but with modifications;
- ii. notices of requirement for new designations that a requiring authority wishes to be included in the Unitary Plan;
- iii. submissions by a requiring authority seeking further modifications to a designation in the Proposed Auckland Unitary Plan;
- iv. submissions by other parties on notices of requirement for designations that have been included in the Proposed Auckland Unitary Plan.

As required under section 144(4) of the Local Government (Auckland Transitional Provisions) Act 2010, the Panel has not made recommendations on any existing designations included in the Proposed Auckland Unitary Plan without modification and on which no submissions have been received.

The Panel has not yet made recommendations on a small number of designations as set out below.

- i. The designations and the plan provisions for Auckland International Airport are closely inter-linked. This means that the recommendations on the designations for Auckland International Airport need to be considered in association with the Panel's recommendations that will be reported as part of hearing topic 045 Airports in July 2016.
- ii. A number of KiwiRail designations were subject to late submissions and a reconvened hearing on 2 May 2016. The Panel was unable to finalise its recommendations in time to report to Council on 19 May 2016 as KiwiRail has yet to report back on further discussions with a submitter.

- iii. The New Zealand Transport Agency's Designation 6727 relating to controls on activities adjacent to the Newmarket Viaduct was also considered at the reconvened hearing on 2 May and the Panel was unable to finalise its recommendations in time to report to Council on 19 May 2016.

The above designations will be included in the Panel's recommendations on the Proposed Auckland Unitary Plan to be delivered to Auckland Council on 22 July 2016.

See Attachment 2 for a complete list of section 144 reports on designations and report dates.

The Panel wishes to commend the requiring authorities, and in particular the Minister of Education, who used this process of rolling over existing designations into the Proposed Auckland Unitary Plan as an opportunity to rationalise and update designation conditions. This is particularly important where designations have been given effect and conditions relating to matters such as construction are no longer relevant. Undertaking this rationalisation and updating will reduce the potential for disputes and problems with interpretation or compliance with conditions and will assist the requiring authority, the Council and any parties affected by the designation.

The Panel notes there still some requiring authorities who have yet to undertake this updating and rationalisation process.

## **1.2. Overview**

The planning process for designations differs from the process for other parts of the Plan in that it is the requiring authorities, rather than Council, that make the final decisions on the notices of requirement. Because of these differences, the Panel has applied a different process to designations that has involved preparing independent reports to the Panel under section 142 (1) of the Local Government (Auckland Transitional Provisions) Act 2010. The Panel commissioned experienced independent report writers to prepare the reports. The report writers worked with the requiring authorities and submitters in the development of these reports. These reports were used to refine matters agreed and not agreed prior the formal hearing on 30 November and 1 December 2015.

Following the completion of the hearing and of the Panel's deliberations, these reports were updated to include an assessment of the evidence presented at the hearing and the Panel's recommendations and reasons.

Because of the additional step in the designations process, which requires Council to notify the requiring authorities of the Council's recommendations on the Panel's recommendations, it has been agreed with Council that the Panel will provide its recommendations and report on hearing topic 074 Designations to Auckland Council on 19 May 2016, with the exceptions noted in section 1.1 above.

## **1.3. The Panel's process**

For reporting purposes, the Panel classified designations into three groups according to complexity and scaled the assessment accordingly, as set out below. No designations were assigned to the complex category so all the section 142 reports relate to minor or moderately complex designation matters. Each report provides an explanation of how the classifications have been applied.

A number of submitters sought clarification on the extent of assessment where only minor modifications are required, or where the changes are simply ensuring consistency with other parts of the Unitary Plan (e.g. noise rules, or height in relation to boundary controls), or where these are corrections of errors (either mapping errors or errors in legal descriptions, etc). The Panel directed that in the above circumstances:

- i. no substantive statutory assessment is required for the correction of errors;
- ii. any statutory assessment relating to modifications designed to ensure consistency with other parts of the Unitary Plan can be very limited (and where necessary can cross-refer to other evidence or the approach taken in other parts of the Unitary Plan);
- iii. any statutory assessments relating to modifications should be strictly limited only to any effects of the modifications, in a similar manner to which section 127 variations are considered;
- iv. where modifications are being sought, either tracked change should identify the changes or, alternatively, a copy of the existing conditions can be provided.

The Panel also confirmed that any statutory assessment should be against the Proposed Auckland Unitary Plan provisions. The other requirements of section 171 or section 168A would be assessed where relevant.

The preliminary section 142 reports were published on the Panel's website in August 2015. Requiring authorities and submitters were asked to provide the Panel with a response stating whether they agree or disagree with the recommendations in the reports. Matters that were not agreed were largely resolved through further mediation and direct discussion.

A small number of matters progressed to a hearing on 30 November and 1 December 2015. The hearing was reconvened on 2 May 2016 to address the matters as yet unresolved as set out in section 1.1 of this report.

The final section 144 reports presented to Auckland Council in May 2016 and also those to be presented in July 2016, have updated the earlier section 142 reports to reflect the outcome of mediation, any direct discussion between the requiring authority and submitters, and the hearing. The final reports also contain the report writer's final recommendation to the Panel and the Panel's reasons and recommendations to the Council.

## **1.4. Scope**

The Panel considers that its recommendations and the recommended modifications to designations are within scope of the notices of requirement and submissions.

# **2. Amendments to introduction to Chapter 7 of the Proposed Auckland Unitary Plan**

## **2.1. Statement of issue**

Many submitters considered the introductory section unnecessary or requested specific changes. In response to the submitters the Council has made a number of changes and deletions to the section.

## **2.2. Panel recommendation and reasons**

The Panel agrees with Auckland Council's amendments to Chapter G1.3 and Using Part 7 as set out in attachment C to the evidence of Bain Cross dated 22 October 2015. The text recommended by the Panel is set out in Attachment 1 to this report. The Panel has renamed and renumbered these sections of the Plan.

## 3. Lapse dates

### 3.1. Statement of issue

The Panel has concerns about lapse dates that are not date-specific. These can be rolled over at the next review without the need to seek a modification to the date or to justify its extension. Also it can be administratively difficult to determine the actual lapse date of a designation if a specific date is not set.

### 3.2. Panel recommendation and reasons

A significant number of designations that have not been given effect have had their lapse dates rolled over into the PAUP and expressed as:

- i. “XX years from the date the Plan is made operative”;
- ii. “XX from the date the designation is included in the Plan”;
- iii. “XX years”.

The Panel has two key concerns about this practice. The first is that because the lapse date is not expressed as a specific date (e.g. 31 August 2019) the rollover is enabling the lapse date to be extended and in some cases doubled without any scrutiny or the need for the requiring authority to justify the extension. If the lapse date continues to be expressed simply as a period, then this issue will arise again at the next plan review.

The second concern the Panel has is that if the lapse dates are expressed only as a period this could lead to uncertainty and potential disputes over when the designation lapses.

To address these concerns, the Panel’s preference is that the lapse date is expressed as a specific date. This has been discussed with the requiring authorities during the preparation of the reports and during the hearing. The requiring authorities agreed on an assumed date for the Unitary Plan to become operative as being 31 August 2017 and that has become the starting date for setting the lapse periods. For example if the lapse date was previously expressed as “five years from the Plan becoming operative” it is now expressed as “31 August 2022”.

Modifications to the lapse date to express it as a specific date have either been initiated by the requiring authorities or made by the Panel where it has the jurisdiction.

Disappointingly Auckland Transport does not support the Panel’s preferred approach to lapse dates. It prefers to retain lapse dates expressed as “XX years from the date the Plan is made operative” with its stated reason being “that it will avoid AT from being disadvantaged if there are delays in making the plan operative i.e. it would have less time to give effect to the designation” (Auckland Transport Closing Statement). The Panel has no jurisdiction to make any recommendation on this approach in respect of designations that have not been modified.

## 4. Designation conditions that reference operative plan provisions or Proposed Auckland Unitary Plan provisions

### 4.1. Statement of issue

Where designation conditions refer to plan provisions (e.g. provisions in the operative plan or the Proposed Auckland Unitary Plan) this makes it difficult to keep track of the provisions that applied when the designation was confirmed because plans change over time.

### 4.2. Panel recommendation and reasons

The Panel's preference is for designation conditions to be self-contained and not reference operative plans or the Proposed Auckland Unitary Plan/Unitary Plan. The Panel has adopted this approach because of its concern about the difficulty of keeping track of the provisions that applied when designation was confirmed.

Accordingly the Panel in its reports on individual designations has recommended changes to conditions that include the wording of the relevant plan provisions.

## 5. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the aupihp website ([www.aupihp.govt.nz](http://www.aupihp.govt.nz)) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the aupihp website.)

### 5.1. General topic documents

#### Panel documents

[Pre Hearing Meeting - outcome of third pre-hearing meeting and next steps](#) (24 September 2015)

[Memorandum from Panel - guidance on evidence](#) (15 October 2015)

[Submission Point Pathway Report - 17 February 2016](#) (17 May 2016)

[Parties and Issues Report - 24 September 2015](#) (24 September 2015)

[Mediation Outcome for AT Designation 1619 - 7 October 2015](#) (7 October 2015)

[Mediation Outcome for AT Designation 1655 - 7 October 2015](#) (7 October 2015)

[Mediation Outcome for Defence Designation - 6 October 2015](#) (6 October 2015)

[Mediation Outcome for Education Designation 4903 - 6 October 2015](#) (6 October 2015)

[Mediation Outcome for KiwiRail Designation 6304 - 7 October 2015](#) (7 October 2015)

The preliminary section 142 reports and the requiring authority responses to these can be viewed on the Document section for hearing topic 074 on the hearings page of the aupihp website.

The final Panel section 144 reports presented to Auckland Council in May 2016 will be available on the Auckland Council website when the Council notifies its decisions on the Panel's recommendations. The final reports have been updated to reflect the outcome of mediation, hearing and any direct discussion between the requiring authority and submitters. The final reports also contain the report writer's final recommendation to the Panel and the Panel's recommendations to the requiring authorities.

## **5.2. Specific evidence**

See the evidence section for hearing topic 074 on the hearings page of the aupihp website.

Evidence referenced in this report is as follows:

[074 - hrg - Auckland Council \(Bain Cross\) - Planning - designations and NOR of other requiring authorities - attachment A](#) (12 November 2015)

[074 - hrg - Auckland Transport - CLOSING STATEMENT](#) (10 February 2016).

# Attachment 1 changes to text of the Proposed Auckland Unitary Plan – G1.3 and Using Part 7

## Part 7 Designations

### Chapter K Designations

#### K1.1 Background ~~4.3 Designations~~

A designation is a provision in the Unitary Plan that gives effect to a notice of requirement for a public work or project by a requiring authority. Requiring authorities include a ~~an~~ Minister of the Crown, local authority or approved network operator. A public work or project could include a school, police station, road, park, ~~transmissions lines or an infrastructure system~~ or a network utility.

Designations in the Unitary Plan include existing designations rolled over from previous district plans into the Unitary Plan either 'without modification' or 'with modification' and any new notices of requirement for a designation lodged with the council.

A designation can:

1. enable the use of land for a public work or infrastructure
2. restrict land, water, subsoil, or airspace where this is necessary for the safe or efficient functioning or operation of a public work or infrastructure
3. require written approval of the requiring authority responsible for the designation before a third party can undertake an activity within the designation.
4. enable activities that are exceptions to the district rules in the Unitary Plan.

Further guidance on designations, requiring authorities and the designations they are responsible for can be found in the designation section of the Unitary Plan.

#### K1.2 Using Chapter K ~~Part 7~~

Designations are shown in the Unitary Plan as:

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

##### K1.2.1 Schedules

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

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

-

- The number<sup>1</sup> of the designation;
- The purpose<sup>2</sup> of the designation; and
- The location<sup>3</sup> of the designation.

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

### Designation Schedule - Auckland Council

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

### Notes

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

#### K.1.2.2 Text

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

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

- The number<sup>1</sup> and name of the designation (in the header);
- The number<sup>1</sup> of the designation (first line of the table);
- The requiring authority responsible for the designation;
- The location<sup>3</sup> of the designation;
- Whether it is a rollover designation from the previous district plan;
- The reference number of the rollover designation under the previous district plan;
- The lapse date<sup>4</sup> which is the date the designation lapses<sup>1</sup> unless it has been given effect (i.e. no ~~not~~ lapse date) ;

- The purpose of the designation (beneath the table);
- The conditions of the designation; and
- Any attachments to the designation such as plans and diagrams.

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

### 500 Auckland City Art Gallery

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

#### Purpose

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

#### Conditions

##### Plans and Information

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

#### Attachments

No attachments.

#### Notes

1. The letter "R" at the front of a designation number indicates this is a NoR. Once a NoR is confirmed the letter "R" will be removed.
2. The name of a designation in the header is non-statutory and does not form part of the purpose of a designation. If the non-statutory name changes (i.e. a park or road is renamed), the designation may be updated with these new details without an alteration to the designation using section 181 of the RMA.
3. The location is intended to describe where the designation can be found on the planning maps (GIS viewer), which will show the extent of the designation boundaries. The location is normally described as the street address or legal description of the whole or part of the designated site, or the general locality for a

designation over a large area. If the location changes (i.e. change of address or legal description in a subdivision), the designation may be updated with these new details without an alteration to the designation using section 181 of the RMA.

4. If the lapse date of the designation is changed by giving effect to the designation or through an extension to the lapse date under section 184 or 184A of the RMA, the lapse date of the designation may be updated without an alteration to the designation using section 181 of the RMA.

### K1.2.3 Maps

The planning maps (GIS viewer) should be relied on for the extent of the designation boundaries<sup>1</sup>.

Designations on the planning maps are identified by:

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

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

- The number<sup>2</sup> of the designation(s);
- The name<sup>3</sup> of the designation(s);
- The requiring authority;
- The address; and
- The legal description.

### **Notes**

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

### **4 Guidance**

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

~~Amendments may be made to this section from time to time to recognise legislative changes, and the development of case law and best practise.~~

## **1 Introduction**

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

~~A designation is a provision in the Unitary Plan (district plan section), which gives effect to a NoR for a public work, project or work by a requiring authority. A NoR is the proposal or application for a designation<sup>1</sup>. Only a requiring authority, which is a Minister of the Crown, local authority or approved network utility operator, can give notice of a requirement.~~

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

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

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

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

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

## **2 Requiring Authority Status**

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

- ~~• A Minister of the Crown;~~
- ~~• A local authority; or~~

- An approved network utility operator.

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

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

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

A list of the requiring authorities approved under section 167 or 360 is on the Ministry for the Environment website link below along with links to the related Gazette Notice or regulations:

[www.mfe.govt.nz/rma/central/designations/requiring-authorities-table.html](http://www.mfe.govt.nz/rma/central/designations/requiring-authorities-table.html)

### **3 Effect of a Designation**

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

#### **3.1 Enabling Effect of a Designation**

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

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

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

#### **3.2 Restrictive Effect of a Designation**

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

a designation that would prevent or hinder a public work or project or work to which the designation relates must have written consent from the requiring authority.

This restriction includes:

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

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

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

#### **4. Scope of a Designation**

The scope of a designation is the nature of the activities that a requiring authority may undertake within the designation under section 176 of the RMA. It is what an ordinary member of the public would understand the scope to be when inspecting the designation in the district plan<sup>1</sup>.

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

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

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

The purpose of a designation should provide the public a reasonable idea of what activities could take place within the designation<sup>2</sup>. Some attempt should be made to describe the public work, project or work and provide some boundaries within which the effects would be contained. Stating the general purpose without further explanation is not sufficient<sup>2</sup>.

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

<sup>1</sup> Waimairi County Council v Hogan (1978) 2 NZLR 587

<sup>2</sup> Ngataringa Bay 2000 Inc v Minister of Defence (3) [1992] 2 NZRMA 318

#### **5 Conditions on a Designation**

Designations are not subject to the normal restrictions placed on resource consent

conditions under section 108 of the RMA but they should still conform to legal principles.

The conditions on a designation can:

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

The Court of Appeal<sup>1</sup> has held that the Newbury tests<sup>2</sup> remain relevant to New Zealand courts and should continue to apply in relation to the RMA. According to the Newbury tests, a valid condition should:

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

When recommending a condition on a designation, the Council should have regard to the potential effect of the conditions on the future operation of a designation and take care to ensure the conditions do not thwart the intent of the designation process<sup>3</sup>.

<sup>1</sup> Housing New Zealand Ltd v Waitakere City Council [2001] NZRMA 202

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

<sup>3</sup> A Guide to Designations under the Resource Management Act 1991, Ministry for the Environment

## **6 Lapsing of a Designation**

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

A designation lapses:

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

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

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

## **7 Notices of Requirement**

A notice of requirement (NoR) is a proposal or application for a designation, which may or may not survive the statutory process of submissions and appeals<sup>1</sup>.

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

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

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

<sup>1</sup> *Hastings v Auckland City Council* [2001] A068/01

## **7.1 Information to be provided with a Notice of Requirement**

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

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

Form 18 is available at the Ministry of the Environment website: <http://www.mfe.govt.nz/rma/forms/form18.rtf>

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

1. A fee for processing;
2. Sufficient information to understand the nature of the public, work, project or work, preferably including drawings or plans;

- ~~3. Details of current ownership of the land and the proposed land acquisition program;~~
- ~~4. The proposed sequence and timing of implementation of the public, work, project or work;~~
- ~~5. An assessment against the relevant provisions of any national policy statement, New Zealand coastal policy statement, regional policy statement, proposed regional policy statement, plan and proposed plan;~~
- ~~6. An assessment against any relevant non-statutory strategies or plan documents; and~~
- ~~7. An assessment of those parties considered to be affected by the NoR.~~

## **~~7.2 Interim Effect of a Notice of Requirement~~**

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

~~This restriction includes:~~

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

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

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

## **~~7.3 Notification of and Consultation on a Notice of Requirement~~**

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

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

~~It is not mandatory for a requiring authority to undertake consultation on a NoR<sup>4</sup>. However, consultation can be invaluable when considering alternatives and undertaking an assessment of effects on the environment, particularly if there are~~

significant social effects that need consideration.

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

#### **7.4 Recommendation and Decision on a Notice of Requirement**

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

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

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

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

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

#### **7.5 Alteration to a Designation**

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

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

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

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

#### **8 Outline Plans**

~~Section 176A of the RMA relates to outline plans.~~

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

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

~~Section 176A does not envisage that the Council will recommend that the proposal not proceed<sup>4</sup>. In this context the word “change” means make different, alter, or modify the proposal, without denying it altogether. The changes requested should not be so extensive as to negate the implementation of the designation<sup>4</sup>.~~

~~4 Waitakere City Council v Minister of Defence [2006] NZRMA 253~~

## **8.1 Consultation on an Outline Plan**

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

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

## **8.2 Information to be Provided with an Outline Plan**

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

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

~~In addition to this the Council considers that the following information should also be~~

included in an outline plan:

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

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

### **8.3 Outline Plan Waivers and Exceptions**

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

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

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

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

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

## **9 Other Matters<sup>1</sup>**

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

### **9.1 Resource Consents**

With the exception of section 9(3) of the RMA, a designation does not exclude other

~~restrictions or duties under Part 3 of the RMA. A resource consent may still be required for:~~

- ~~• Any activity outside the scope of the designation;~~
- ~~• Any activity that does not comply with a regional rule; or~~
- ~~• Any activity that does not comply with a National Environment Standard.~~

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

## **9.2 National Environmental Standards**

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

## **9.3 Duty to Avoid, Remedy and Mitigate**

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

## **9.4 Underlying Zone**

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

## **9.5 Public Works Act 1981**

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

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

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

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

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

## Attachment 2 Section 144 report list

Requiring authority	Report date
<b>Airways Corporation</b>	18 May 2016
<b>Ardmore Airport</b>	18 May 2016
<b>Auckland Council</b>	
Moderately Complex	18 May 2016
Regional Parks (minor)	18 May 2016
Minor matters	18 May 2016
Cemeteries (minor)	18 May 2016
Community Facilities (minor)	18 May 2016
Local Parks (minor)	18 May 2016
Mt Wellington Highway Carpark (minor)	18 May 2016
Ormiston Rd Stormwater Management	18 May 2016
Whitford Landfill (minor)	18 May 2016
<b>Auckland International Airport</b>	<b>22 July 2016</b>
<b>Auckland Transport</b>	
Moderately	18 May 2016
Minor matters	18 May 2016
<b>Chorus</b>	
Minor matters	18 May 2016
Designations 2600/2603/2606	18 May 2016
Designations 2623-2631	18 May 2016
Designations 2644-2654	18 May 2016
<b>Counties Power</b>	
Designations 3004/3005	18 May 2016
Minor matters	18 May 2016
R3038	18 May 2016
<b>Kiwirail</b>	
Minor matters	<b>22 July 2016</b>
Designations 6300-6305, R6307	<b>22 July 2016</b>
<b>Kordia</b>	
Designations 3300/ 3302	18 May 2016
Designations 3301/3304	18 May 2016
<b>Maritime New Zealand</b>	
Moderately complex	18 May 2016
Designation 4313	18 May 2016
<b>Minister for Courts</b>	
Designation 4100	18 May 2016
Designation 4101	18 May 2016
Designation 4104	18 May 2016
Minor matters	18 May 2016
R4103	18 May 2016
<b>Minister for Tertiary Education</b>	
Designation 6100	18 May 2016
Designation 6101	18 May 2016

<b>Minister of Corrections</b>	
Minor matters	18 May 2016
Mount Eden	18 May 2016
Wiri Comprehensive Corrections Facilities	18 May 2016
<b>Minister of Defence</b>	
Designation 4310	18 May 2016
Designation 4311	18 May 2016
Designations 4300/4301/430/4303/4312	18 May 2016
Designation 4305	18 May 2016
Designation 4306	18 May 2016
Designation 4307	18 May 2016
Designation 4308	18 May 2016
Designation 4309	18 May 2016
<b>Minister of Education</b>	
Moderately complex (general submissions)	18 May 2016
Moderately complex (no submissions)	18 May 2016
Submissions (Minister and Auckland Council)	18 May 2016
<b>Minister of Police</b>	
Designations 5700/5710/5713/5720/5723/5736	18 May 2016
Designations 5703/5705-5707	18 May 2016
Designations 5714/5717-5723/5725-5727/5729-5731/5733-5737	18 May 2016
Designations 5701, 5712,6704/5709/5724/5732/5738	18 May 2016
Designations 5716/5728	18 May 2016
<b>Minister of Social Development</b>	
Designation 5902	18 May 2016
Minor matters	18 May 2016
<b>New Zealand Refining Company</b>	
Designation 6500	18 May 2016
Designation 6501	18 May 2016
<b>New Zealand Transport Agency</b>	
Designation 6727	<b>22 July 2016</b>
Designations 6741/6756/6757/6758/6761/6764	18 May 2016
Designation 6768	18 May 2016
Designation 6769	18 May 2016
Auckland Council submissions	18 May 2016
Lapse dates (minor)	18 May 2016
Designation 8502 (Transpower)	18 May 2016
<b>Radio New Zealand</b>	18 May 2016
<b>Telecom NZ Ltd (Spark)</b>	
Minor matters	18 May 2016
Designations 7524 -7527	18 May 2016
Designations 7511/7512/7536-7542	18 May 2016
<b>Transpower</b>	
Designations 8500/8502/8504-8506/8508/8509/8512/8513	18 May 2016
Designations 8501/8503/8510/8511/8514/8520/8522/8523/8525/8526	18 May 2016
Designations 8521/8524	18 May 2016
R8529/R8530/R8531	18 May 2016
Designations 8527/8528	18 May 2016

Designations 8507/8515/8516/8517/8519	18 May 2016
<b>Television New Zealand</b>	18 May 2016
<b>Vector Gas Ltd</b>	
Designations 9100/9104	18 May 2016
Designations 9101/9102	18 May 2016
<b>Vector Ltd</b>	
Designations 8826/8830/8853	18 May 2016
Designations 8831/8841/8842	18 May 2016
Designations 8864/ 8905	18 May 2016
Designations 8868/8873/8874/8879/8885/8891/8897/8903	18 May 2016
R8906-R8911	18 May 2016
<b>Watercare</b>	18 May 2016
<b>Wiri Oil</b>	18 May 2016