



## The designation process

### 2.3



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# Contents

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- Introduction 4
  - About this guide 4
  - About the everyday guides 5
- What is a designation? 6
  - What are requiring authorities? 6
  - What is a notice of requirement? 7
- The designation process 8
  - How can you be involved? 8
  - What happens once the designation is in place? 13
  - What is outline plan approval? 14
  - What happens with proposed works that are outside the scope of the designation? 14
  - What other restrictions apply under a designation? 14
  - What if the works don't occur? 15
  - What happens when there is more than one designation? 16
  - Can designations be transferred to other people or groups? 16
  - Can designations be altered? 16
  - What happens when the full plan is reviewed? 16
  - Can designations be removed? 17
- Glossary 18

# Introduction

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The Resource Management Act 1991 (usually called the RMA) is the main piece of legislation that sets out how we should manage our environment. It's based on the idea of the sustainable management of our resources, and it encourages us (as communities and as individuals) to plan for the future of our environment.

The RMA means that councils set rules and requirements to manage activities ranging from building houses, clearing vegetation, moving earth, or taking water from a stream. The purpose is to ensure activities won't harm our neighbours or communities, or damage the air, water, soil and ecosystems that we and future generations need to survive.

Designations are one of the most powerful tools under the Resource RMA, and can really affect how things happen around you. Once in place, a designation allows a project to go ahead, if it complies with any other rules in a district or regional plan.

## About this guide

This guide is the seventh in a series of 13 guides called An Everyday Guide to the RMA (see more details about the series below).

It aims to help people understand processes and terms used when dealing with RMA planning processes for:

- **requiring authority approval** (the application that enables an organisation or person to apply to designate land)
- **notices of requirement** (the application process for a designation on a piece of land)
- **designations** that may result from those notices.

The guide:

- explains where there may be opportunities to be involved in these processes
- outlines the implications for affected landowners or neighbours.

The guide has a glossary of RMA terms at the end. Words defined in the glossary are coloured **light orange**.

## About the everyday guides

These guides are intended to help people work with their councils. If you're dealing with the Environmental Protection Authority (EPA), a board of inquiry, or the Environment Court (see the glossary to learn more about these), you might need more technical advice from the EPA ([www.epa.govt.nz](http://www.epa.govt.nz)) or the Environment Court ([environmentcourt.govt.nz](http://environmentcourt.govt.nz)).

For more information about specific parts of the RMA process, see the [full set of guides](#) on our website.

# What is a designation?

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The RMA allows for ‘requiring authorities’ (such as a council, Minister or network utility operator) to notify the council that an area of land is to be designated for a public work (such as a road or telecommunications facility, school or prison). The area is identified in the local council’s district plan, and known as a ‘designation’.

Designations allow the requiring authority’s works or project to go ahead on the site or route, without needing a land-use consent from the council, or complying with any rules in the district plan.

If the designation is approved by the requiring authority, the area will be designated in the district plan. This often includes agreement on how works are carried out.

## What are requiring authorities?

All Ministers of the Crown and local authorities are requiring authorities, meaning they can designate land in a district plan for a particular project or work.

The Minister for the Environment can also approve certain persons, businesses or organisations that are responsible for network utilities (such as roads, electricity and telecommunication facilities, or pipelines to distribute gas or water) or certain types of infrastructure (such as airports), as requiring authorities. The Minister’s approval for this status may relate to general functions, or may be for a particular project. The requiring authority has to have financial responsibility for a particular project, work or operation on the designated land.

Examples of current requiring authorities are the Minister of Education (for schools), and the New Zealand Transport Agency (for state highways, cycle ways, and shared paths).

Requiring authorities can notify the district council, under the RMA, for areas of land to be designated in **district plans**. This will allow them to develop and operate activities, regardless of any district plan rules or resource consent requirements. Resource consents may still be required from a regional council or unitary council for regional rules, but not a territorial authority (city or district council).

## What is a notice of requirement?

- A **notice of requirement** is a notice to 'designate' an area of land for a particular purpose. The notice is lodged by a requiring authority, and it outlines the scope or purpose of the designation.
- This is a similar process to applying for a resource consent, except that in most cases the council makes a recommendation, and the decision is made by the requiring authority. When the council is also the requiring authority, it simply makes a decision to confirm, cancel or modify the requirement.
- The exception is when the decision is made by a **board of inquiry** or **Environment Court**. See **Nationally significant proposals**.

The actual physical works cannot start until the approval is granted for the notice, and where required, the **outline plan**. However, from the time the council receives or issues the notice, restrictions apply to any other uses of the land.

This means if the notice is over land you own, you would not be able to do anything that would prevent or hinder the works proposed in the notice without the written approval of the requiring authority.

# The designation process

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## How can you be involved?

You can provide input during the notice of requirement process, if it is notified publicly, or if you have been identified as an affected party. This might relate to the proposed development, or the completed project. For example, you may generally support a proposal, but you may request added conditions to address a concern, such as the hours of construction. You can oppose a notice outright.

Once a designation is included in a district plan, a district land-use consent will not be required as long as the work meets the relevant designation.

If you want to use or subdivide land that is subject to a designation you would have to get the prior written consent of the requiring authority. A regional consent will still be required if the work does not meet regional rules.

### MAKING A SUBMISSION

The main way to get involved with a proposed designation is to write a submission if the proposal is notified. This opportunity comes at different stages, depending on the process.

Take care in preparing your submission. Get planning or legal advice if you think you need it.

The basic principles of writing a good submission are the same as for making a submission on a resource consent application or a plan.

### MORE INFORMATION

- [Making a submission about a proposed plan or resource consent](#)



## 1 Before a notice of requirement is lodged

Before a requiring authority gives notice of its requirement for a designation (lodges the application with the council), they must do their background work and prepare the application. This includes considering policies and plans, and the environmental effects, including alternative sites, routes or methods.

### Public consultation

During this process, the authority may consult with the community to gain feedback on the proposal, and to help identify any environmental effects. People who may be consulted include: those whose land is directly affected by the designation, neighbours, local iwi, and possibly other organisations such as the Department of Conservation, Heritage New Zealand Pouhere Taonga, and the New Zealand Fish and Game Council – depending on the site, the issues arising and the likely effects.

It's important to get involved early, during the consultation stage. This will ensure the requiring authority is aware of your position when they prepare the notice of requirement and make decisions about the proposed works. It may influence the design and location of the project.

## 2 During the process for notices of requirement

There are three pathways for processing a notice under the RMA: standard, nationally significant proposals, and direct referral. There may be opportunities for public input (submissions) during each.

### Standard process

There are two options for the standard pathway: for an operative district plan, and for proposed plans about to be notified.

### When the notice is for inclusion in an operative plan

#### Submissions

If the notice is **publicly notified**, anyone can lodge a submission.

If the notice is **limited notified**, only those people notified (**affected persons**) can lodge a **submission**.

If the application is **non-notified**, no one can make a submission. The council will make a recommendation to the requiring authority.

## Hearing

If submitters wish to be heard, the council will hold a **hearing** to determine their recommendations on the notice, which can be heard by the council or **independent commissioners**.

After the hearing, the council makes a recommendation to the requiring authority. This can include putting conditions on the designation, to manage any potential effects of the proposed work or project. The requiring authority will decide whether to accept the recommendation, and make their final decision.

## Decision

If no appeals are received, the council publicly notifies the requiring authority's decision, and makes the designation operative in the district plan.

## Appealing a decision

The council, and any submitters, may **appeal** a decision to the **Environment Court**. Appeals for an operative plan must be served within 15 **working days** of when the decision was issued.

Environment Court decisions can be appealed to the High Court, but on points of law only.

## When the notice is for inclusion in a proposed plan

If the council receives a notice of requirement and is about to publicly notify its proposed plan, it can ask the requiring authority if it wants to include the notice in the plan.

In that case, the notice can follow the **standard plan-making process** rather than the process above.

## Submissions

This process will still allow for submissions, and depending on the plan-making process, could include a hearing.

In most cases, the proposed plan, including the notice of requirement, will be publicly notified. Anyone can lodge a submission within a minimum of 40 working days.

## Hearing

If you wish to be heard and have submitted on the notice of requirement, the council will hold a hearing to determine a recommendation. The hearing can be held by the councillors or independent commissioners.

After the hearing, the council makes a recommendation to the requiring authority. The authority has 30 working days to decide whether to accept it, and make their final decision.

## Decision

If no appeals are received, the council notifies the requiring authority's decision, and makes the designation operative when they make the proposed plan operative.

## Appealing a decision

The council, and any submitters can appeal the requiring authority's decision to the Environment Court. Appeals must be served within 30 working days of when the decision was issued.

### MORE INFORMATION

- [Getting involved in council plans](#)

## Nationally significant proposals (NSPs)

If the Minister for the Environment considers a notice of requirement part of an NSP, he/she can refer it to a [board of inquiry](#) or the [Environment Court](#) for a decision.

This process below applies if the Minister considers a notice of requirement meets the statutory criteria to be an NSP. The Minister could make this determination following a request from a council, requiring authority; or at their own initiative; or if the requiring authority lodges the notice of requirement directly with the [Environmental Protection Authority \(EPA\)](#).

## **Submissions**

In all cases, the notice will be publicly notified, and you will have the opportunity to be involved by making a submission.

## **Hearing**

The Environment Court or board of inquiry will hold a hearing on the NSP. If you have made a submission, you can speak at that hearing. It will usually be held near the site of the proposal.

The board of inquiry or Environment Court will make the decision on the notice of requirement, rather than the requiring authority.

## **Decision**

If no appeals are received, the requiring authority is notified of the decision, and the council makes the designation operative in the district plan.

## **Appealing a decision**

Submitters, the council, and the requiring authority can only appeal the decision to the High Court on points of law. This is to determine whether the Environment Court acted within its powers, such as applying the correct legal test and taking into account matters which should have been considered.

## **Direct referral to Environment Court**

A notice of requirement may be directly referred to the Environment Court if the requiring authority and the council agree.

In these cases, the notice application is lodged with council, which assesses it and checks if there is enough information. If necessary, the authority will be asked to provide more information.

## **Submissions**

The council then publicly notifies the notice of requirement. This is where the public have the opportunity to be involved, and can make a submission. The council then prepares a report on the submissions.

## **Hearing**

The council hands over the application to the Environment Court, which at this stage takes over the processing. The court holds a hearing for the

notice of requirement. If you have made a submission, you can speak at that hearing. It will usually be held near the site of the proposal.

## Decision

The court makes the decision on the notice of requirement. If no appeals are received, the requiring authority is notified of the decision, and the council makes the designation operative in the district plan.

## Appeals

The decision can only be appealed to the High Court on points of law.

If you do not like the decision of the requiring authority or the Environment Court, you should seek professional advice from a planning consultant or legal expert before you lodge an appeal.

# What happens once the designation is in place?

Once the designation is put in place, the requiring authority can use the designated land for the 'designation notation' or 'designated purpose' as set out in the district plan. This is also known as the 'scope' of the designation.

This means the requiring authority can do anything allowed by the designation without applying for resource consent or meeting any district plan requirements, although approval of the outline plan approval may be required (see [What is outline plan approval?](#)).

### TAKE ACTION EARLY

Once a designation is finalised, there are very limited opportunities for public involvement in any processes or associated works.

This is why the best time for you to be involved and influence the process, is either:

- during consultation before a notice is lodged (if any), or
- if the notice of requirement is notified.

## What is outline plan approval?

The council may still require approval of the outline plan for the project, before work begins. Approval is limited to assessing whether the works are within the scope of the designation.

If an outline plan is required, the council has 20 working days to assess it and request any changes by the requiring authority. If no requests are made, it is assumed that work can start on the site.

If the authority does not accept the council's changes, the council may appeal to the Environment Court.

- Public comment is not sought on outline plans, although the requiring authority can choose to consult.
- The RMA does not provide for public appeals against a decision of a requiring authority on an outline plan.

## What happens with proposed works that are outside the scope of the designation?

If the requiring authority wants to use the land for something not identified in the scope of the designation, normal district plan provisions apply. In other words, the requiring authority would need a resource consent if the district plan does not permit the proposed activity.

Designations only apply to district plans. The requiring authority will still need to get any resource consents that may be required by a regional plan.

## What other restrictions apply under a designation?

A designation also limits what anyone other than the requiring authority can do on the designated land.

If you wish to do anything on designated land that may prevent or hinder the designated work, you must get written consent from the requiring authority. If the authority declines to approve what you wish to do, you can appeal to the Environment Court.

The normal provisions of the district plan apply to your proposed activity, and you may need resource consents. In this case, the council may consider the requiring authority to be an affected party.

## Designations can trigger acquisition powers

Once the designation is finalised, the requiring authority can apply to compulsorily acquire land that is designated under the Public Works Act 1981.

At the same time, someone who owns designated land can ask the Environment Court to direct the requiring authority to acquire or lease (often through easements) all or part of the land if they have tried and are unable to sell it, and either:

- the designation prevents the reasonable use of the land, or
- the person was the owner of the land (or in a legally accepted relationship with the owner) when the designation was created.

## What if the works don't occur?

Each designation has a **lapse date**. A designation has been deemed to be 'given effect to' once work is largely completed. If the work is not largely completed before the lapse date, the designation ceases to exist.

A requiring authority can apply to the council to extend the lapse period under certain conditions. The authority can also lodge an objection if the council refuses to extend the period.

Once 'given effect to', a designation remains valid for the life of the district plan, or until the requiring authority removes or alters the designation. Designations can be carried into new versions of the district plan.

## What happens when there is more than one designation?

Some designations may overlap, so that there is more than one on a site. If this occurs on your land, you will require written approval from each of the requiring authorities for any activity that could hinder the designated work or project.

## Can designations be transferred to other people or groups?

Yes, but transfers are only possible between requiring authorities. If the financial responsibility for a designation transfers from one requiring authority to another (eg, the assets are sold), responsibility for the designation itself also transfers. The requiring authorities must advise the council and the Minister for the Environment of this. The transfer is then noted in the district plan.

## Can designations be altered?

A designation can be altered by the requiring authority, using any of the notice pathways above. If the alteration meets the following criteria, it can be processed without notification by the council:

- it involves no more than a minor alteration to the effects on the environment associated with the use or proposed use of land or adjustments to the boundaries of the designation or requirement
- written notice is given to every owner or occupier of the land directly affected, and they agree with the alteration
- both the council and the requiring authority agree with the alteration.

The process is much the same as for a new designation (discussed above).

## What happens when the full plan is reviewed?

A designation can be rolled over from an operative district plan into a proposed district plan. If a designation (that has not lapsed) is not rolled over, it continues to have effect until the plan (or at least that part of it) becomes operative.



## Can designations be removed?

If a requiring authority no longer wishes to designate a site in a district plan, they must advise the council and anyone else they think is likely to be affected by the designation. The council then removes the designation from the district plan (including the planning maps).

# Glossary

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The purpose of this glossary is to help you understand the meaning of terms used in this guide. Some of these terms have specific legislative definitions in section 2 of the RMA.

<b>Affected person</b>	Is someone identified by the consent authority (usually the council) as likely to experience adverse effects of a proposal which are at least minor.
<b>Appeal</b>	Request for a decision to be changed, predominately to the Environment Court.
<b>Board of inquiry</b>	A special board appointed by the Minister(s) to hear and decide proposals of national significance .
<b>Designation</b>	Provisions in a district plan that provide notice to the community of an intention by the council or a requiring authority to use land in the future for a particular work or project.
<b>District plan</b>	A plan prepared by city or district councils to help them carry out their functions under the RMA.
<b>Environment Court</b>	A specialist court where people can appeal decisions made by councils on a policy statement or plan, or on a resource consent application; or where they can apply for an enforcement order, or seek a declaration.
<b>Environmental Protection Authority (EPA)</b>	Receives and processes applications for proposals of national significance under the RMA and can have a role in RMA compliance and enforcement.
<b>Hearing</b>	Gives people who have already written submissions the chance to speak to the decision-maker, about what the requiring authority is proposing.
<b>Independent commissioner</b>	A person appointed to carry out decision-making duties who are not a member of the council (appointed from outside the elected members or staff of a council).
<b>Lapse date</b>	The termination of a resource consent or notice of requirement through disuse.
<b>Limited notification</b>	A council only notifies people who are adversely affected by a proposal, and only those people can make a submission.

<b>Nationally significant proposal</b>	A proposal that has been deemed to be nationally significant for one or more reasons by the Minister for the Environment (or Minister of Conservation). If a proposal is deemed nationally significant it may then be referral to a board of inquiry or the Environment Court for hearing and determination.
<b>Non-notified</b>	When a council decides it does not require submissions on a proposal (see publicly notified and limited notification).
<b>Notice of requirement</b>	A proposal for a designation, which may be notified or non-notified.
<b>Outline plan</b>	A plan or description of works that a requiring authority proposes to carry out works on a designated site.
<b>Publicly notified</b>	Means that any person can make a submission on the notice of requirement.
<b>Requiring authority</b>	An authority (such as a Minister of the Crown, a local authority or approved network utility operator) with the power to designate a particular piece of land for certain works or projects.
<b>Requiring authority approval</b>	Approval by the Minister for the Environment for a network utility operator to have the powers of a requiring authority (including the power to designate land).
<b>Standard plan-making process</b>	The regular process for a council to develop a plan or plan change, involving notifying the public, receiving submissions and holding hearings.
<b>Submission</b>	Written comments, opinions, concerns, support or opposition about a proposed development, a designation, or a proposed policy statement or plan.
<b>Working day</b>	Any day except for a weekend day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday and Labour Day, and those days between (and including) 20 December and 10 January. Note: If Waitangi Day or Anzac Day falls on a weekend day, the following Monday is excluded.