



Ministry for the
Environment
Manatū Mo Te Taiao

AN EVERYDAY GUIDE TO THE RMA → SERIES 4.1

The Designation Process





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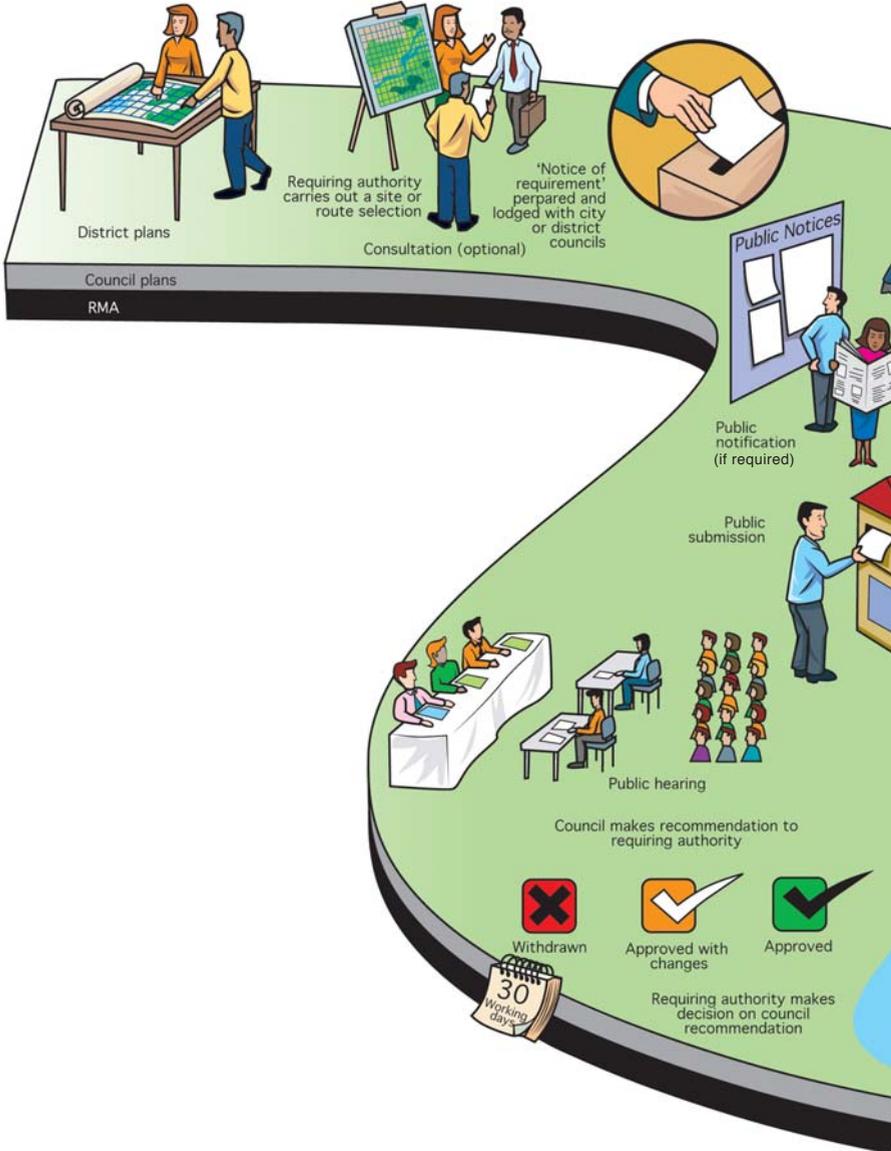
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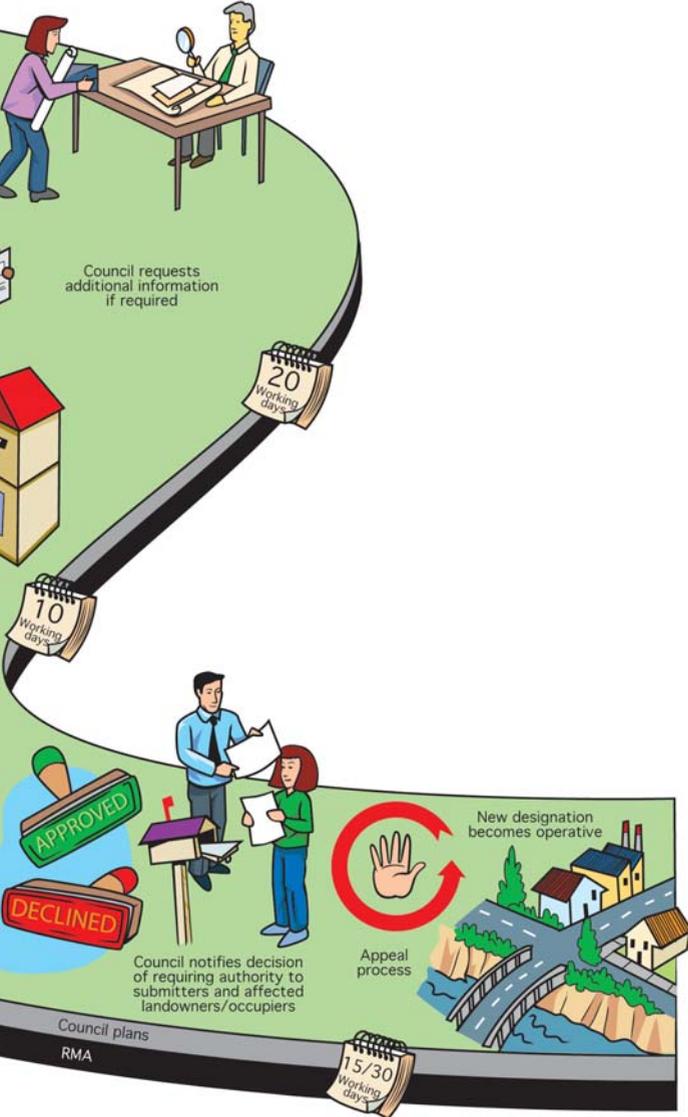
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Introduction

The Resource Management Act 1991 (RMA) allows for areas of land to be designated for use as network utilities (such as roads and telecommunications facilities) or large public works (such as schools and prisons). These designated areas (or ‘designations’) are identified in district plans, usually in the maps. Once a designation is in the plan, the proposed works can be carried out there at any time: the authority responsible does not have to comply with district plan rules.

If an authority wants land designated for a particular purpose, it must submit a notice of requirement. This is similar to applying for a resource consent. There are three ways in which a designation can be processed:

- » it may be heard by the local council, which makes a recommendation on the application
- » it may be lodged with the Environmental Protection Authority (EPA) – if the Minister for the Environment considers that the designation is part of a matter of national importance, it will be referred to a board of inquiry or the Environment Court to make a decision
- » it may be directly referred to the Environment Court if the requiring authority requests it and with the agreement of council – unless the value of the investment meets or exceeds the threshold set out in regulations, in which case the council is required to grant the request for direct referral, unless exceptional circumstances exist – in these cases, the Environment Court will make a decision on the designation.

Anyone can be involved in the notice of requirement and designation process. This guide is for people who want to know more, especially those dealing with notices of requirement that are processed by a local council. If you would like more information about those processed by the Environmental Protection Authority and heard by either the Environment Court or a board of inquiry, refer to ‘An Everyday Guide to the RMA’ booklets *1.4 National Level Guidance and Procedures* and *6.1 Your Guide to the Environment Court*. The Environmental Protection Authority also has a website with additional information about the process: see www.epa.govt.nz.

This guide outlines:

- » which authorities can require a designation
- » what a designation is and what designated land can be used for
- » what’s involved in the notice of requirement process and how you can be part of it

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- » what happens while a notice of requirement is being processed
- » the outline plan process for carrying out the designated works
- » how a designation can be varied.

What are requiring authorities?

Under the RMA, land can be designated for public works or network utilities only by ‘requiring authorities’. These can be:

- » a Minister of the Crown
- » a local authority
- » a network utility operator approved under the RMA.

The requiring authority has to have financial responsibility for a project, work or operation on the designated land. Ministers of the Crown and local authorities are automatically requiring authorities. Network utility operators (organisations that distribute gas, petroleum, geothermal energy, telecommunications, electricity, water, wastewater, or which construct or operate roads, railway lines and airports) have to apply for requiring authority status from the Minister for the Environment.

Regional plans, created by regional councils, manage water, air, soil, the coast and discharges. **District plans**, created by city or district councils, manage the use and subdivision of land. A **designation** applies to district plans only. If a requiring authority wants to do something that requires a resource consent from the regional council, it must apply for a resource consent like anyone else.

What is a designation?

A designation is like a ‘spot zoning’ over a site or route in a district or city plan. This ‘spot zoning’ allows the requiring authority’s works or project to go ahead on the site or route, without the authority needing to get a land-use consent from the relevant council. Once the designation is put in place, the requiring authority may do anything allowed by the designation, and the usual provisions of the district plan do not apply to the designated site. The requiring authority will still need to get any resource consents required from the regional council.



A designation also places restrictions on what anyone other than the requiring authority can do on the designated land, without first getting the requiring authority's permission or necessary approvals from the district (or city) council.

What can designated land be used for?

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. If the requiring authority wants to use the land for something outside that scope, normal district plan provisions apply. In other words, the requiring authority would need a resource consent, unless the activity they propose is permitted in the district plan.

If you wish to do anything on designated land that may prevent or hinder the designated work, **written consent** must be obtained from the **requiring authority**. If the requiring 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 to obtain resource consents. In this case, the council may consider the requiring authority to be an **affected party**.

For example, a designation might be granted for a Telecom New Zealand network utility site. In this case, the notation on the district plan might be: 'radiocommunications, telecommunications and ancillary purposes'. If Telecom (or any other party) wanted to carry out an activity on the site that didn't come within that definition, it might need to obtain a resource consent from the district or city council.

A designation can only be relied upon once it is included in an operative district plan. For a new designation proposed in an operative district plan, this is when the designation is confirmed by the requiring authority. Appeals can be made to the Environment Court on designations where the decision is made by the requiring authority. For designations where the decision is made by either a board of inquiry or the Environment Court, appeals can be made to the High Court on points of law only. If you wish to do anything on land which is in the process of being designated, and which may prevent or hinder the proposed designation, written consent must be obtained from the requiring authority.

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A designation that is processed through a proposed district plan cannot be relied upon until the plan (or that part of the plan) is made operative.

When the financial responsibility for a designation transfers from one requiring authority to another, responsibility for the designation itself also transfers. Transfers are only possible between requiring authorities. The authority that transfers responsibility for the designation must advise the Minister for the Environment and the relevant council. The transfer is then noted in the district plan.

What is a notice of requirement?

A notice of requirement is the way a requiring authority gives notice to a council that it is seeking to designate land. Until it has been included in a district plan, a designation is referred to as a notice of requirement. A notice of requirement for a new designation must go through one of the following decision-making processes before it becomes a designation:

Process 1: Local council process

- » The requiring authority usually carries out a site or route selection and consultation process.
- » The notice of requirement is prepared and lodged with the district or city council.
- » The council decides if the designation should be publicly or limited notified. If so, people and groups are able to lodge submissions with council.
- » If the notice of requirement is notified, a public hearing is held where the requiring authority and all submitters are able to be heard.
- » The council recommends to the requiring authority whether it thinks the designation should be confirmed in the district plan (with or without modification and conditions) or withdrawn.
- » The requiring authority decides whether to confirm or withdraw the notice (in other words, to accept or reject the council's recommendation in part or full).
- » The opportunity exists for the council or any submitter to appeal the decision of the requiring authority (the appeal is lodged with the Environment Court).

- » Where the council is also the requiring authority, it does not make a recommendation but a decision to confirm, cancel or modify the requirement. Submitters can appeal to the Environment Court.

Process 2:

Notices of requirement that are (or are part of) a matter of national significance

The first part of the process is the same as Process 1. However, in this case, the Environmental Protection Authority (EPA) carries out the administration and notification tasks that would otherwise be carried out by the local council.

Most notices of requirement processed by the EPA will be publicly notified and anyone can make submissions.

The main difference in the way the EPA processes notices of requirement lies in how the decision is issued. A board of inquiry or the Environment Court (whichever the Minister for the Environment decides to refer the decision to) will make a final decision, rather than making a recommendation only to the requiring authority. Once the decision is issued, appeals can be made to the High Court only on points of law.

Process 3:

Notices of requirement that are directly referred to the Environment Court

The first part of the process is the same as Process 1. However, the requiring authority must request that the notice of requirement be referred directly to the Environment Court and the council agrees – unless the value of the investment meets or exceeds the threshold set out in regulations, in which case the council is required to grant the request for direct referral, unless exceptional circumstances exist. If the notice of requirement has already been notified and submissions received, then the Environment Court will take over the processing of the notice of requirement from that point on. If the notice of requirement has not yet been notified, the council must notify it and receive submissions, which the council then provides to the Environment Court.

Again, the main difference in this process lies in how the decision is issued. The Environment Court makes the final decision on the notice of requirement instead of making a recommendation only to the requiring authority. Once the decision is issued, appeals can be made to the High Court, but again, only on points of law.



Site selection and consultation

When a requiring authority identifies the need to designate land to carry out works, it usually starts by selecting the site (and/or route and/or method, as appropriate). This may not be necessary if the requiring authority already has sufficient interest in the site it wants to use; for example, if it owns it.

During this process, the requiring authority is likely to consult with the community to gain feedback on what is proposed, and to help identify what environmental effects are likely to be caused by the works. People likely to 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, the New Zealand Historic Places Trust, and the New Zealand Fish and Game Council (depending on the site, the issues arising and the likely effects).

Getting involved in the **consultation process** before a notice of requirement is lodged will ensure the requiring authority is aware of your position when the notice of requirement is prepared and decisions are made regarding the proposed works.

Preparing and lodging the notice of requirement

Once the requiring authority is satisfied it has identified the appropriate site, route and/or method to achieve its objectives, and has carried out all the consultation it wants to at this stage, a notice of requirement is prepared. The RMA sets out what needs to be included in a notice of requirement. In summary, it needs to include:

- » the site location
- » the nature of the proposed work
- » the nature of proposed restrictions that would apply
- » the effects that the work will have on the environment and the ways in which any adverse effects will be mitigated
- » the extent to which alternative sites, routes and methods have been considered

- » why the work and designation are reasonably necessary for achieving the objectives of the requiring authority
- » details of any resource consents that are needed and whether they have been applied for
- » details of any consultation that has been carried out with parties likely to be affected.

Once the notice of requirement has been lodged, the council (or the EPA, a board of inquiry, or the Environment Court) can ask the requiring authority for further information, and can stop processing the notice of requirement until the information is received. Further information might be needed to help the council understand the impacts of a designation.

The submission process for notified notices of requirement

Once the council thinks there is enough information to process the notice of requirement, they must decide whether to notify the notice of requirement. Like a resource consent, the notice of requirement may be non-notified, limited notified or publicly notified. If it is publicly notified, anyone can lodge a submission within 20 working days. If the notice of requirement 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.

Take care in preparing your submission. The decision-maker will hold a full copy of the notice of requirement, including associated background reports. You should view the whole notice of requirement and read through it before you prepare your submission. Obtain 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. For more information on how to make good written submissions to your local council see 'An Everyday Guide to the RMA' booklet *3.2 Making a Submission about a Resource Consent Application*.



Council hearings

When a council is processing a notice of requirement, if any submitters state in their submission that they wish to be heard, the council will hold a hearing to consider the notice of requirement.

Councillors or independent commissioners will conduct the hearing, and the parties involved with the notice of requirement – including the requiring authority and submitters – can take part. The hearings committee will usually have a report containing recommendations from a council planner (possibly a planning consultant employed by the council) to assist them in their assessment.

As a submitter, you can speak to your submission at the hearing, or you can bring along someone to represent you and/or present evidence on your behalf. The requiring authority is likely to have someone representing it, who will present evidence relating to what the authority proposes to do. The authority may also have representatives giving expert evidence about the likely effects.

The hearing process will be similar to a hearing held for an application for resource consent. For more information, see 'An Everyday Guide to the RMA' booklet *3.3 Appearing at a Council Resource Consent Hearing*.

Board of inquiry or Environment Court hearings

The hearing for a notice of requirement may be conducted by a board of inquiry or the Environment Court if:

- » the notice of requirement is directly referred to the Environment Court
- » the Minister for the Environment thinks the notice of requirement relates to a matter of national significance and refers the application to a board of inquiry or the Environment Court.

A board of inquiry or the Environment Court will consider the notice of requirement in accordance with the RMA, much like a local council. However, the hearing process may be more formal and involve more lawyers and technical people. For more on these hearings, see 'An Everyday Guide to the RMA' booklets *1.4 National Level Guidance and Processes* and *6.1 Your Guide to the Environment Court*.

Council recommendation and requiring authority decision

Once a council hearing ends, the council will recommend to the requiring authority whether it thinks the notice of requirement should be confirmed (ie, the site should be designated for the proposed purpose); should be confirmed with modifications and/or conditions; or should be withdrawn. This differs from a resource consent hearing, where the council is the decision-maker. In making its recommendation, the council will take into account the notice of requirement; the planner's recommendations in his/her report; the relevant planning documents; and information presented at the hearing (both by submitters and the requiring authority).

The requiring authority then has 30 working days to decide whether to accept the council's recommendation. Most designations have conditions attached to them, which limit what can be carried out under the designation and are intended to mitigate any adverse environmental effects. Once the council has received the requiring authority's decision, it must provide a copy to all submitters as well as landowners and occupiers whose land is directly affected by the decision.

Appeal options for decisions made by a requiring authority

Once the requiring authority has made its decision, both submitters and the council can appeal the decision (or any part of it) to the Environment Court. For a new designation to an operative plan, this must be done within 15 working days of when the decision was served. For a designation that is included in a proposed plan, this must be done within 30 working days of when the decision was served.

A **working day** means any day except for a weekend day, public holiday, and those days between 20 December and 10 January. If Waitangi Day or Anzac Day falls on a Saturday or a Sunday, it also means the following Monday.

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



Appeal options for decisions made by a board of inquiry or the Environment Court

If a notice of requirement is referred to a board of inquiry or the Environment Court, they will make the final decision on the notice instead of making a recommendation only to the requiring authority. Once their decision is issued, it can only be appealed to the High Court on points of law.

For more information on appeals and the Environment Court, see 'An Everyday Guide to the RMA' booklet *6.1 Your Guide to the Environment Court*. Refer to booklet *1.4 National Level Guidance and Processes* for information about decisions and appeal options for decisions made by a board of inquiry of the Environment Court.

Once the designation is in place

Outline plan of works

This is the plan or description of works that a requiring authority submits to the council when it intends to carry out works on the designated site, usually before any work starts. Outline plans often contain details that were not available when the site was first designated in the district plan.

An outline plan need not be submitted if:

- » the council waives the requirement for an outline plan
- » the works were incorporated into the designation
- » the works have been otherwise approved under the RMA.

The council may also decide to waive the requirement for an outline plan after considering:

- » the nature and level of the proposed works
- » the likely effects of the proposed work or project.

A council has 20 working days to assess the outline plan and request any changes by the requiring authority. If no requests are made within that timeframe (and the timeframe has not been formally extended by the council), it is assumed that the requiring authority can start work on

the site. If the requiring authority does not accept the changes sought by the council, the council may appeal to the Environment Court within 15 working days of being notified of the requiring authority's decision.

An example of where a requiring authority might lodge an outline plan is where the Minister of Education has a designation for a school on a site, but at the time the designation was confirmed there were no final building plans. Once the Minister of Education wishes to begin construction, he or she (or their representative – eg, the Ministry of Education) would lodge outline plans of the proposed buildings (and associated car parking and landscaping) with the council for comment.

Public comment is not sought on outline plans, although the requiring authority can choose to consult.

There is no provision in the RMA for public appeals against a decision of a requiring authority on an outline plan.

Lapsing, time limits

A designation has been 'given effect to' once work is largely completed within the stipulated time. A designation that hasn't been 'given effect to' lapses five years after the date it was included in the district plan, unless the lapsing period has been extended.

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

Rollovers

A designation can be 'rolled over' from an operative district plan into a proposed district plan. Before notifying a proposed district plan, a council must invite all requiring authorities with a designation in the existing district plan to advise whether they want to have the existing designation 'rolled over' into the

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proposed plan. The requiring authority can elect to do so with or without modifying the purpose of the designation or any limits or conditions.

If a designation (that has not lapsed) is not rolled over to the proposed plan, it continues to have effect until the proposed plan (or at least that part of it) is made operative.

More than one designation

When there is more than one designation on a site, as a general rule, the designation first included in the district plan takes priority. When the requiring authority responsible for the second designation wants to start designated works on the site, it must obtain written consent from the requiring authority of the earlier designation. Consent can only be withheld if the new activity would prevent or hinder the works that are authorised by the earlier designation.

Designation alterations

An existing designation can be altered by the requiring authority. 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 involves only minor alterations 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).



Removal of designations from district plans

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, including the owners and occupiers of land directly affected by the removal of the designation. The council then removes the designation from the district plan (including the planning maps).

Purchasing/acquisition of land

Anyone who owns designated land can ask the Environment Court to direct the requiring authority to acquire/lease 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
- » the person was the owner of the land (or in a legally accepted relationship with the owner) when the designation was created.

The requiring authority can compulsorily acquire land that is designated (or that it wishes to designate) under the Public Works Act 1981.



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Disclaimer

Although every effort has been made to ensure that this guide is as accurate as possible, the Ministry for the Environment will not be held responsible for any action arising out of its use. This includes the diagram on page 2 which is a very generalised overview of the designation process. The diagram is intended to be indicative only and should not be relied upon. Direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

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