

# PROCEDURES AND INFORMATION REQUIREMENTS

## Part 7

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## 7.1 Introduction

The Resource Management Act 1991 establishes an administrative and statutory framework for the management, use and protection of the natural and physical resources of the District. By virtue of the Act, the Council is required to enforce compliance with this Plan. Reference should be made to the provisions and requirements of this Plan before any activity is undertaken or commenced and before an application for a resource consent is lodged with the Council.

## 7.2 Resource Consents

### 7.2.1 CATEGORIES OF ACTIVITY

In terms of the Act and for the purposes of administering the Plan, activities are classified into five groups. These are:

- (a) Permitted
- (b) Controlled
- (c) Discretionary
- (d) Non-Complying
- (e) Prohibited

#### 7.2.1.1 Permitted Activity

A permitted activity does not require a resource consent provided the activity complies in all respects with the relevant rules/standards of the Plan. A "certificate of compliance" may be issued for a permitted activity on application to the Council, to certify that the activity fully complies with the provisions of the District Plan (refer to Section 7.4.5 below).

#### 7.2.1.2 Controlled Activity

A "controlled activity" requires a resource consent before it can proceed. Consent to a controlled activity application must be granted, but conditions may be imposed as part of the consent. Controlled activities are those which are anticipated to have a minor adverse effect on the environment which is able to be controlled by way of conditions. The Council may only impose conditions in respect of those matters for which it has reserved control as set out in this Plan.

#### 7.2.1.3 Discretionary Activity

A "discretionary activity" can only proceed once a resource consent is granted, with Council having the discretion to refuse its consent to an application, or to grant consent with or without conditions. The Council shall have regard to any matters it considers relevant and reasonably necessary to determine the application, in accordance with section 104 of the Act.

#### 7.2.1.4 Non-complying Activity

A "non-complying activity" is an activity which contravenes a rule in the Plan and is only allowed to proceed if a resource consent is granted. A non-complying activity is

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any activity which is not provided for in the Plan as a permitted, controlled, discretionary or prohibited activity.

### 7.2.1.5 Prohibited Activity

The Resource Management Act 1991 enables the District Plan to specify "prohibited activities" for which no applications for resource consent can be made, and no resource consents can be granted.

## 7.2.2 TYPES OF CONSENT

Reference has been made above (in 7.2.1) to the need to obtain resource consents in respect of certain categories of activity.

The Council is empowered to grant two types of resource consents, namely:

- (a) a land use consent, and
- (b) a subdivision consent.

Other resource consents such as water permits, discharge permits or coastal permits are issued by the Manawatu-Wanganui Regional Council (MWRC) or the Wellington Regional Council (WRC). Where more than one resource consent is required for an activity, this must be stated in the application.

### 7.2.2.1 Land Use Consent

A land use consent is required for the use of any land in a manner which contravenes a rule in this plan unless either:

- (a) a resource consent has been applied for and granted, or
- (b) the activity complies with Section 10 of the Act which provides for certain existing uses to continue.

Activities which may generate adverse effects necessitating the specific formulation of mitigation conditions have been provided for either as controlled activities or as discretionary activities. In either case, a resource consent shall be applied for and an assessment of the effects on the environment must be submitted for the consideration of the Council.

The Council may, in considering applications for resource consents, grant consent in accordance with any criteria specified in the Plan, and shall include conditions in the consent, in accordance with the Plan, as appropriate.

As noted in Section 7.2.1.1, while no resource consent application is necessary for a permitted activity, a request may be made for a Certificate of Compliance. Such a certificate, if granted, will state that the particular proposal or activity complies with the plan in relation to that location on the date of receipt of the request by the Council. It is deemed to be either a land use consent or a subdivision consent, whichever is appropriate, and has a currency of two years.

### **7.2.2.2 Subdivision Consents**

Rules governing the subdivision of land are set out in Section 5.1 of this Plan. Generally, land may not be subdivided unless expressly allowed by a rule in the Plan or a resource consent (subdivision consent) has been applied for and granted.

Section 11 of the Act (which relates to the subdivision of land) also provides for a number of specific instances where subdivisions may be undertaken.

The assessment of the impacts of subdivision is dealt with in the Resource Management Act 1991, and is subject to the provisions of the District Plan.

The definition of subdivision includes cross leases, company leases, and unit title divisions.

The subdivision application will follow the standard process set out in Part VI of the Act. Part X of the Act sets out certain provisions which relate specifically to the subdivision of land.

Section 219 of the Act sets out the information required to accompany applications for subdivision consent.

Rule 7.3.3 sets out information requirements for subdivision consent applications. These requirements are additional to the type of information required to accompany applications for other resource consents (e.g. for land use consent).

## 7.3 Resource Consent Process

### 7.3.1 LODGING A RESOURCE CONSENT APPLICATION

The Resource Management Act 1991 sets out the process for applying for resource consents (Section 88). An application for a controlled, discretionary or non-complying activity shall be in the form as set out in Form 5 of the Resource Management (Forms) Regulations 1991. Forms are available from all Council Offices.

### 7.3.2 INFORMATION REQUIREMENTS FOR RESOURCE CONSENT APPLICATIONS

Information requirements for all consents are outlined in Section 88 and the Fourth Schedule to the Act (reproduced below). For applications to subdivide land, additional information requirements apply (refer to 7.3.3 below, and Section 219 of the Act).

Information to be supplied with all resource (land use) consent applications shall be as follows:

- (a) A description of the activity and its location (including, where appropriate, legal description, street address, topographical map reference)
- (b) An Assessment of Effects on the Environment, which is to include all those matters specified in the Fourth Schedule to the Act (refer below).

The assessment is to be in such detail as corresponds with the scale and significance of the actual or potential effects that the activity may have on the environment. For applications involving controlled activities, an environmental assessment covering criteria specified in the Plan over which the Council has retained control shall be prepared by the applicant. Where the application relates to a discretionary activity, the assessment will be required to address those criteria over which discretion is identified. Where a resource consent application will affect any heritage item or significant natural feature which is listed in Appendix 2, 3 or 4 of this Plan, reference should be made to section 5.5 of this Plan for further details of information to be provided.

- (c) A statement specifying all other resource consents required from any consent authority in respect of the activity, and whether or not the application has applied for such consents.

**"FOURTH SCHEDULE**

**ASSESSMENT OF EFFECTS ON THE ENVIRONMENT**

**1. Matters that should be included in an assessment of effects on the environment -**

*Subject to the provisions of any policy statement or plan, an assessment of effects on the environment for the purposes of section 88(6)(b) should include -*

- (a) *A description of the proposal:*
- (b) *Where it is likely that an activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity:*
- (c) *Repealed, as from 7 July 1993, by s 225 Resource Management Amendment Act 1993 (1993 No 65).*
- (d) *An assessment of the actual or potential effect on the environment of the proposed activity:*
- (e) *Where the activity includes the use of hazardous substances and installations, an assessment of any risks to the environment which are likely to arise from such use:*
- (f) *Where the activity includes the discharge of any contaminant, a description of -*
  - (i) *The nature of the discharge and the sensitivity of the proposed receiving environment to adverse effects; and*
  - (ii) *Any possible alternative methods of discharge, including discharge into any other receiving environment:*
- (g) *A description of the mitigation measures (safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect:*
- (h) *An identification of those persons interested in or affected by the proposal, the consultation undertaken, and any response to the views of those consulted:*
- (i) *Where the scale or significance of the activity's effect are such that monitoring is required, a description of how, once the proposal is approved, effects will be monitored and by whom.*

**2. Matters that should be considered when preparing an assessment of effects on the environment -** *Subject to the provisions of any policy statement or plan, any person preparing an assessment of the effects on the environment should consider the following matters:*

- (a) *Any effect on those in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects:*
- (b) *Any physical effect on the locality, including any landscape and visual effects:*
- (c) *Any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity:*
- (d) *Any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural, or other special value for present or future generations:*
- (e) *Any discharge of contaminants into the environment, including any unreasonable emission of noise and options for the treatment and disposal of contaminants:*
- (f) *Any risk to the neighbourhood, the wider community, or the environment through natural hazards or the use of hazardous substances or hazardous installations."*

### 7.3.3 ADDITIONAL INFORMATION FOR SUBDIVISION CONSENT APPLICATIONS

For applications to subdivide land, additional information requirements apply (in accordance with Section 219 of the Act).

The following information and explanation shall be shown on the subdivision plan, or included in an accompanying report, as the case may require. The Council may waive any of the following information requirements where it is satisfied that such information is not necessary in the circumstances.

- (a) Existing and proposed easements.
- (b) Existing and proposed amalgamation conditions.
- (c) How the proposed subdivision complies with the subdivision and performance standards specified in this Plan. Where the subdivision does not meet the performance standards specified, evidence as to how the assessment criteria are to be met.
- (d) A plan drawn accurately to a suitable metric scale showing:
  - (i) all the land being subdivided, the legal description and Certificate of Title boundaries of the land, and the area and dimension of all new lots
  - (ii) the position of all new boundaries
  - (iii) the location and areas of new reserves to be created, including esplanade reserves or esplanade strips to be set aside
  - (iv) the location and area of land to vest in Council as road
  - (v) the location and areas of any part of the bed of a river or lake which is required to be shown on a survey plan as land to be vested in the Crown
  - (vi) contours and spot heights to show the general fall of the land and appropriate grade of roads or access.
  - (vii) the location of any significant trees, heritage features or archaeological sites, including any feature that is listed in Appendix 2 or 3 of this Plan. [Note: the undertaking of an archaeological survey would be desirable in some situations but it is not a mandatory requirement]
- (e) Copies of the current Certificate of Title for the land being subdivided.
- (f) The nature and standard of existing and proposed network utility services such as roads, sewage disposal, stormwater, electricity, gas, water and telecommunications.
- (g) Where services are not available, evidence that the following are able to be provided in respect of each and every allotment shown on the plan of the proposed subdivision:
  - (i) A stable building platform
  - (ii) A potable domestic water supply

- (iii) Practical physical access to an existing formed legal road
  - (iv) An area of land large enough for the satisfactory disposal and treatment of sewage and domestic effluent
  - (v) Satisfactory disposal of stormwater, such that erosion, pollution, siltation or flooding of any water course or groundwater is avoided
- (h) A report from a registered engineer with experience in soil mechanics, geotechnical and/or wastewater engineering as appropriate and, if necessary, records of test data, shall be provided as evidence that (g) (i), (iv) and (v) above are satisfied. Information to be provided shall include:
- (i) A detailed soil and, if necessary, a geotechnical assessment;
  - (ii) Identification of relevant topographic and drainage features;
  - (iii) An assessment as to any actual or potential effects of effluent disposal on water supplies from existing bores;
  - (iv) An assessment of actual or potential effects of effluent on surface ground water in the locality of the proposed subdivision;
  - (v) An assessment of the likely volumes of effluent to be treated for a typical site; and
  - (vi) Certification as to an appropriate on-site disposal system which would ensure that any adverse environmental effects are avoided.
- (i) Three copies of the subdivision report and three full scale copies of the plan along with a good quality A4 reduction shall be supplied.

A further full scale copy is required in the following situations:

- Amalgamation of Lots
  - Waiver of Esplanade Reserve
  - Land abutting a Railway or State Highway
  - Land abutting land, that is, or will be, the subject of a Heritage Protection Order.
- (j) Where the subdivision abuts a railway or State Highway, information on consultation undertaken with the responsible agency and the results of that consultation shall be supplied.
- (k) Where an archaeological site has been identified within the site, a report from an archaeologist will be required.

## 7.3.4 FURTHER INFORMATION

Where the Council considers that the information submitted with an application for a resource consent or a notice of requirement is deficient in terms of the requirements of the Act it may require the applicant to provide further

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information (Sections 92 and 169 of the Act). The Council may only require further information to enable it to better understand the nature of the activity in respect of which the application for a resource consent or requirement notice is made, the effect it will have on the environment, or the ways in which any adverse effects may be mitigated.

Section 92 of the Act provides that where the Council considers that a significant adverse effect on the environment may result from an activity to which a resource consent application or requirement notice relates, the Council may require an explanation of:

- (a) Any possible alternative locations or methods for undertaking the activity and the applicant's reasons for making the proposed choice; and
- (b) The consultation undertaken by the applicant.

The Council may also commission a report, at the applicant's expense, on any matters relevant to the application or requirement notice where it is necessary for the Council to better understand the nature of the activity, the effect it will have on the environment, or the ways in which adverse effects may be mitigated. Council shall discuss the commissioning of a report with the applicant prior to engaging persons for its preparation.

### 7.3.5 NOTIFICATION

Section 94 of the Act sets out the provisions regarding notification of applications. Not all applications for land use and subdivision consent need to be notified. Examples of such applications are:

- (a) Any subdivision application which is specified as a controlled activity (provided that where any heritage item listed in Appendix 2 is affected, the written approval of the New Zealand Historic Places Trust is obtained).
- (b) Any application for a controlled activity which the Plan expressly permits consideration without the need to obtain the written approval of affected persons.
- (c) A controlled activity in respect of which the written approval of affected persons has been obtained.
- (d) A discretionary or non-complying activity where Council is satisfied that the adverse effects on the environment of the proposed activity will be minor; and written approval has been obtained from every person Council considers may be adversely affected by the granting of the consent, unless Council considers it is unreasonable in the circumstances to require the obtaining of every such consent.

Where any heritage item listed in Appendix 2 is affected, the New Zealand Historic Places Trust is considered to be an "affected person" for the purpose of the above rules.

In considering such applications, Council will have regard to:

- the objectives, policies and rules of the District Plan; and
- the requirements of the Act.

Notwithstanding the above, the Council may require any application for resource consent to be notified where special circumstances exist. Such circumstances include (but are not limited to) where there is potential for adverse effects on a matter specified in Part II of the Act (Sections 5, 6, 7, and 8), and where there has been or is likely to be public concern expressed about the effects of the proposed activity.

**Where the above does not apply**, and once the Council is satisfied that it has adequate information, it shall notify the application in accordance with the requirements of Section 93 of the Act.

This procedure involves the Council preparing a notice in the form set out in the Resource Management (Forms) Regulations 1991 (Form 6) and serving copies of it on the following people as appropriate:

- Owners and occupiers of the subject land.
- Minister of Conservation.
- New Zealand Historic Places Trust.
- Minister of Fisheries.
- Persons likely to be directly affected.
- Iwi authorities.
- Other persons and authorities.

The Council is also required to fix the notice to a conspicuous place on the subject site, and to publish the notice in an appropriate newspaper circulating in the District.

The notice will have details of the application and give the closing date for submissions to be received by the Council. Submissions are to be sent to the Council Office nominated in the notice. A copy of any submission lodged with the Council is to be served on the applicant by the person making the submission.

### **7.3.6 TIME FRAMES**

The Act specifies time limits for the processing of applications for resource consents (Sections 95, 97, 101, 115). The Council may extend these time limits in terms of Section 37 of the Act, although the extension cannot have the effect of more than doubling the maximum limits specified, unless requested by, or with the agreement of, the applicant.

### **7.3.7 SUBMISSIONS ON NOTIFIED RESOURCE CONSENT APPLICATIONS**

Any person may make a submission to a resource consent application that is notified. The information to be provided in the written submission and the time limit for lodgement with the Council is specified in the Resource Management (Forms) Regulations 1991 (Form 6), and Section 97.

## 7.3.8 HEARING PROCEDURES

### (a) Pre-hearing Meetings

The Act provides for pre-hearing meetings to clarify, mediate or facilitate resolution of any matter or issue (Section 99).

Circumstances where the application is technically complex, raises a number of issues, has generated significant submission and/or concerns in the community, or is confusing due to more than one consent being sought are examples of where a pre-hearing meeting is beneficial.

The administrative, procedural, time, location arrangements and a meeting agenda shall be agreed by all parties prior to any pre-hearing meeting being held. Council shall not call a pre-hearing meeting unless all parties agree that the benefits of holding a pre-hearing meeting will outweigh the costs, i.e. matters may be clarified, areas of agreement and disagreement identified or a negotiated agreement reached.

Where the outcome of any pre-hearing meeting is reported to the Council it shall be circulated to all parties involved, before the hearing commences, and shall become part of the information which a Council shall have regard to when considering the application.

### (b) Hearings

The Council will hold a hearing to consider an application for a resource consent, unless there are no submissions, or the persons making the submissions have stated that they do not wish to be heard and the applicant does not wish to be heard.

A notice advising all parties of the hearing date will be sent out by the Council within the time limits specified under the Act. The notice will include the location and time of the hearing, the procedural requirements to be followed for the conduct of the hearing, and the information to be provided by the parties involved.

A number of Council functions under the Act have been delegated to staff. The schedule of such delegations is held by Council and available at Council offices.

### (c) Joint Hearings

In order to encourage coherence and consistency in the consideration of consent applications and ensure consistent decision making and reduce delays, joint hearings will generally be held where an application involves the granting of resource consents by both the District Council and either the Manawatu-Wanganui Regional Council or the Wellington Regional Council. This approach shall apply unless the Council and the other consent authority agree that the applications are sufficiently unrelated, and the applicant agrees a combined hearing need not be held.

The Regional Council shall generally be responsible for notifying the hearing, setting the procedure and for providing the administrative services where joint hearings are conducted.

**(d) Combined Hearings**

When an application involves both a land use consent and a subdivision consent in respect of the same land, and the Council is to hear the applications, a combined hearing will generally be held.

## **7.3.9 DECISIONS**

At the completion of the hearing, the Council considers all the evidence submitted and makes its decision on the application. The decision is then conveyed in writing to the applicant and submitters and such other persons or authorities the Council considers appropriate, including the reasons for the decision. Section 104 of the act sets out a range of matters that a Council must consider when making a decision.

The rules related to the granting of consents are set out in Section 105, together with other matters related to the granting of consents. Restrictions on the granting of subdivision consent are set out in Section 106.

The Act provides for resource consents to include conditions relating to matters set out in the Act (Sections 108, 220). A resource consent may also include any other condition that the Council considers appropriate.

## **7.3.10 RESOURCE CONSENT PROCEDURES**

**(a) Criteria for Assessing Discretionary Activities**

The criteria for assessing discretionary activities are specified in Part 4 of this Plan (for each Management Area) and, in some instances, additional criteria for assessment are included in Part 5 of the Plan in relation to specific standards.

**(b) Conditions of Consent that may be imposed**

In granting a consent for a proposed land use or subdivision, Council may impose any conditions of consent that it considers appropriate. Appropriate conditions are those which:

- (i) are for a resource management purpose; and
- (ii) are fairly and reasonably related to the development or subdivision authorised by the consent to which the condition is attached; and
- (iii) are not ultra vires.

As specified in Section 108 of the Act, conditions of a resource consent may include (but are not limited to) one or more of the following matters:

- financial contribution, of:
  - money; or
  - land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent) but excluding Maori land; or

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- works, including (but not limited to) the protection, planting, or replanting of any tree or other vegetation or the protection, restoration, or enhancement of any natural or physical resource; or
- services;
- or a combination of the above.
- bonds, in respect of the performance of any one or more conditions of the consent, including the alteration or the removal of structures on the expiry of the consent;
- covenants, in favour of the consent authority in respect of the performance of any condition of the resource consent (being a condition which relates to the use of land to which the consent relates);
- administrative charges (pursuant to Section 36 of the Act or any regulations);
- information to be supplied relating to the exercise of the resource consent. Such a condition may required the holder of the resource consent:
  - to make and record measurements;
  - to take and supply samples;
  - to carry out analyses, surveys, investigations, inspections, or other specified tests;
  - to carry out measurements, samples, analyses, surveys, investigations, inspections, or other specified tests in a specified manner;
  - to provide information to the consent authority at a specified time or times;
  - to provide information to the consent authority in a specified manner;
  - to comply with the condition at the holder of the resource consent's expense.

In terms of a subdivision consent, the Council may impose any condition specified under Section 220 of the Act.

### **7.3.11 CHANGES TO OR CANCELLATIONS OF CONDITIONS**

The Act permits an application to be made to the Council for the change or cancellation of any condition imposed in respect of a consent (other than a condition as to the duration of that consent). An application may be made at any time specified for that purpose in the consent, or on the grounds that a change in circumstances has caused the condition to become inappropriate or unnecessary (Section 127 of the Act).

The Act provides for applications to change or cancel resource consents to be non notified in some circumstances notwithstanding the originating application may have been notified (Section 127 of the Act).

## 7.3.12 OBJECTIONS TO THE COUNCIL AND APPEALS TO THE ENVIRONMENT COURT

The Act provides for objections and appeals to be made against certain decisions made by the Council (Sections 120, 357, 358 of the Act). Objections are made to the Council responsible for the decision. Appeals are made to the Environment Court.

### (a) Objections

An **objection** to the Council may be made by the applicant in respect of a Council decision concerning (section references refer to the Act):

- (i) the extension of an existing use which has been discontinued (Section 10(2))
- (ii) where a resource consent is due to expire, the continuing the operation while applying for a new resource consent (Section 124(b))
- (iii) the lapsing of a resource consent not given effect to (Section 125)
- (iv) the cancellation of a resource consent not exercised for a continuous period of 2 years (Section 126)
- (v) a certificate of compliance application (Section 139)
- (vi) the removal of a designation (Section 182)
- (vii) the lapsing of a designation not given effect to (Section 184)
- (viii) the following non notified applications:
  - a resource consent (except where Council refuses to grant a consent - exception, see 7.3.12(a)(x). below)
  - change or cancellation of any condition of a resource consent (Section 127)
  - a consent authority review of the conditions of a resource consent (Sections 128 to 132)
- (ix) a notified application in respect of which no submissions were made, or all submissions lodged have been withdrawn.
- (x) the refusal of a resource consent by an officer of the consent authority acting under delegated authority
- (xi) the making of an additional charge by Council pursuant to Section 36(3).

The procedure for lodging an objection, the time limits to be met and the Council's obligations in considering any objection are set out in Section 357 of the Act.

### (b) Appeals

An appeal to the Environment Court may be made against the whole or any part of a decision of the Council on a resource consent application, or an application for a

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change or review of consent conditions by the applicant, consent holder or by any person who made a submission on the application or review of consent conditions (Section 120).

In addition, any person who has made an objection as set out in (a) above, or any person who is affected by the Council's decision on the objection, may subsequently **appeal** to the Environment Court against the decision (Section 358).

The procedure for lodging an appeal with the Environment Court is set out in Sections 121 and 358 of the Act.

## 7.4 Miscellaneous Provisions

### 7.4.1 CHANGES TO THE DISTRICT PLAN

Changes to the Plan may be made in accordance with the procedures outlined in the First Schedule of the Act. The Council has a commitment to maintain a District Plan which is current and relevant and which addresses resource management issues and concerns of significance to the District. The provisions of the Plan may therefore, be changed as necessary. Such changes may be in response to revised or updated national or regional policy statements, regional plans or regional coastal plans. The effectiveness of the Plan will be continuously monitored and the Council shall initiate plan changes which address evolving resource management issues and community needs, improve environmental conditions and enable the Council to better meet its obligations under the Act.

The process of change is not limited to the initiatives of the Council. Any person may request the Council to change the Plan in accordance with the procedures set out in Part II of the First Schedule of the Act.

Applicants requesting a change to the Plan must:

- (i) Explain the purpose of and reasons for the proposed change.
- (ii) Describe the environmental effects anticipated to result from the implementation of the change.

### 7.4.2 EXISTING USE RIGHTS

In Section 10, of the Act, provision is made for existing land uses and activities which do not comply with the rules of the operative or proposed District Plan. Generally speaking, such a use has existing use rights and can continue if:

- (i) The use was lawfully established before the rule became operative or the proposed plan was notified; and
- (ii) The effects of the use are the same or similar in character, intensity and scale to those which existed before the rule became operative or the proposed plan was notified.

Provision is also made for existing use rights to be established by way of a designation.

Existing use rights do not apply in some situations as specified in Section 10, such as:

- If the work proposed would increase the degree of non compliance of a building.
- Where the activity is in the Coastal Marine Area or relates to certain other land use matters which are the responsibility of a Regional Council.

## 7.4.3 DESIGNATIONS

A 'designation' is a provision made in a district plan to provide for public works and certain types of network utilities, such as electricity substations. A designation provides land use consent for the work, places restrictions on the kinds of activities that can be carried out within the area of that work (Section 176 and 178), and also allows network utility operators access to the compulsory acquisition process.

Land can be designated only by requiring authorities. A requiring authority is a Minister of the Crown, a regional or territorial authority or a network utility operator who has been approved by the Minister for the Environment for a particular project. It should be noted that a territorial authority may issue requirements within its own area or jurisdiction. That is, it may serve a requirement to designate land upon itself.

To designate land, the requiring authority issues a 'requirement' to a Council. The information to accompany a notice of requirement is set out in Section 168 of the Act. Generally the information requirements are the same as for a notified application for land use consent. The Council's specific information requirements are set out in section 7.4.3.1 below. The Council must notify the requirement, hear submissions from the public and make a recommendation to the requiring authority as to whether it accepts or rejects the requirement. If accepted, it may recommend conditions (refer section 7.4.3.2 below). The requiring authority then decides whether to confirm, withdraw, or modify the requirement. The decision is publicly notified and can be appealed to the Environment Court.

A requirement that is confirmed becomes a designation. Designated sites within the Tararua District are detailed in Appendix 4 of this Plan and are shown on the Planning Maps by a notation. A designation means that the requiring authority can do anything on the land that is consistent with the designated purpose, and that everybody else must have the permission of the requiring authority to do anything that would prevent or hinder the designated work within the designated area.

Affected landowners can apply to the Environment Court for an order making the requiring authority acquire the land, or an interest in it, if the designation means that they are unable to sell their land at a market rate.

The Act aims to make it easier for affected landowners to obtain compensation. Landowners will not be required to show evidence of financial hardship to require the designating authority to purchase the designated land. Once approved as a requiring authority for a project, a network utility operator may apply to the Minister of Lands to have the land or an interest in it acquired under the Public Works Act 1981.

A designation lapses after five years unless it has been given effect to or substantial progress is being made towards giving effect to the designation (Section 184, 184A).

### 7.4.3.1 Information Requirements for Designations

The following information shall be included with a notice of requirement for a designation:

- (i) The reasons why the designation is needed;
- (ii) The physical and legal descriptions (noting any distinguishing characteristics) of the site to which the requirement applies;

- (iii) The nature of the work and any proposed restrictions;
- (iv) The effect that the proposed work will have on the environment and the proposed mitigation measures;
- (v) What alternative sites, routes, and methods have been considered;
- (vi) What resource consents will be required in relation to the activity to which the application relates, and whether these have been applied for;
- (vii) A summary of the consultation that has been undertaken with parties likely to be affected by the designation, public work, project, or work. If no consultation has been undertaken the notice must give reasons as to why no consultation has taken place.
- (viii) Site Plans and Locality plans showing the proposed works, the surrounding land uses, and the proximity of the subject site to any item listed in Appendix 2, 3 or 4 of this Plan.
- (ix) Whether the work is a public work in respect of any land, water, subsoil, or airspace for protecting the safe or efficient functioning of a public work, or if the requirement is for a proposed project or work by a network utility operator approved as a requiring authority under Section 167 of the Act (if an approved network utility, details of the Gazette Notice empowering the body as a requiring authority must also be supplied, including any specified terms and provisions).
- (x) Details of the current ownership of the subject site. Where the requiring authority does not own the land in question it should provide the following information:
  - the proposed land acquisition programme and site clearance proposals; and
  - if the subject land is currently owned by the Crown or Council, the likely extent of restrictions to the general public for the use and/or access to the land.
- (xi) A 'Project Plan' outlining the programme of works, including whether works will be completed within 5 years or whether the requiring authority requires a longer period over which the designation is to remain operative.
- (xii) Details of the proposed use of the site prior to works commencing, or details of the maintenance of the site once it has been designated for the purpose of protecting the safe or efficient functioning of a public work (e.g. underground pipelines).

#### **7.4.3.2 Recommendations to Requiring Authorities**

After considering a notice of requirement Council may recommend to the requiring authority that it amend the requirement to ensure that the purpose and principles of the Act are not compromised. Such amendment shall be recommended on a case by case basis, and may relate to matters such as:

- the operation and design of the public work;

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- public access;
- maintenance of the designated area;
- the use of the designated area in terms of compliance with relevant district or regional rules or regulations where the designated use may compromise the particular values that those other rules and regulations are designed to maintain, protect or enhance;
- adherence to a management plan, or programme or works, to be submitted prior to any works commencing. (This provision does not apply to emergency works).

### 7.4.4 HERITAGE PROTECTION ORDERS

The Act provides for a system of heritage protection orders for features and places of national or local significance from a broad range of perspectives including sites of special significance to the tangata whenua. It is to be noted that such orders can be applied to features, areas, or the whole or part of any structure, and are not intended to be applied only to historic sites/buildings.

A heritage protection order is similar to a designation, except that its purpose is to protect features and places of national or local importance, or which are significant to tangata whenua. The process followed is essentially the same as for designations and it takes effect through the provisions of the district plan.

An important feature of these provisions is the interim protection offered by issuing a requirement for a heritage protection order. Once a requirement is issued, no person can do anything that would nullify the effect of the order.

Under the Resource Management Act 1991, Councils are heritage protection authorities and, therefore, have the power to issue heritage protection orders. So also does any Minister of the Crown, the New Zealand Historic Places Trust and any heritage protection authority approved under the Act (Section 188).

The criteria for the assessment of areas and places of significance to tangata whenua will be in terms of their historical, spiritual, or cultural significance.

The Historic Places Trust must be advised by the Council of resource consent applications where the land is subject to a heritage protection order or the proposed activity may affect any historic place, historic area, waahi tapu, or waahi tapu area registered under the Historic Places Act 1993.

#### 7.4.4.1 Information Requirements for Heritage Protection Orders

The following information shall be included with a notice of requirement for a heritage protection order:

- (i) The reasons why the heritage protection order is needed;
- (ii) The physical and legal descriptions (noting any distinguishing characteristics) of the place to which the requirement applies, and the surrounding area;
- (iii) Restrictive conditions applying to the place or surrounding area;

- (iv) The effect that the heritage order will, or may, have on the lawful use of the place and surrounding area;
- (v) The extent to which other uses may be continued without nullifying the effect of the heritage order;
- (vi) A summary of the consultation that has been undertaken with parties likely to be affected by the designation, public work, project, or work (including any arrangement made in respect of the place's maintenance). If no consultation has been undertaken the notice must give reasons as to why no consultation has taken place.
- (vii) Site Plans and/or Locality plans.
- (viii) Details of the current ownership of the subject site. Where the heritage protection authority does not own the land in question it should provide the following information:
  - details of any proposed acquisition; and
  - if the place is currently owned by the Crown or Council, the likely extent of access restrictions to the general public.
- (ix) Details of the maintenance of the place.

#### **7.4.4.2 Recommendations to Requiring Authorities**

After considering a notice of requirement the Council may recommend to the heritage protection authority that it amend the requirement to ensure that the purpose and principles of the Act are met and that the property rights of the owner are not impinged upon. Such amendments shall be recommended on a case by case basis, and may relate to matters such as:

- the heritage protection authority reimburse the owner of the place for any additional costs of upkeep of the place required as a result of the making of the heritage order;
- public access will be allowed, maintained, or upgraded.

#### **7.4.5 CERTIFICATE OF COMPLIANCE**

Any person proposing to undertake any land use or subdivision which is provided for in the District Plan as a permitted activity, may request from the Council a certificate stating that the particular proposal complies with the District Plan. A Certificate of Compliance will allow the enjoyment of the same rights as apply to resource consents. This thereby ensures that if the district plan changes, the activity may continue.

Any person requesting a Certificate of Compliance must provide sufficient information for the Council to understand the proposal. Once all the necessary information is at hand, Council will issue a Certificate in accordance with the requirements of Section 139 of the Act. Certificates of Compliance lapse after two years if the proposal is not undertaken within that period.

## 7.4.6 ENFORCEMENT MEASURES

The Act provides for a range of enforcement measures, aimed at ensuring compliance with the rules of the District Plan and conditions of resource consents, so as to enable Council to achieve its anticipated environmental results. It is the intention of the Act that persons other than the Council be able to play a direct part in enforcement matters.

There are three different enforcement mechanisms:

### (a) Declarations (Sections 310 - 313)

Any person can seek a declaration by the Environment Court on almost any matter related to the Act. This includes interpreting District Plan provisions and whether the Council is performing in accordance with its resource management obligations under the Act.

### (b) Enforcement Orders (Sections 314 - 321)

Any person, whether or not directly affected by an offending activity, can apply to the Environment Court seeking an order to restrain (among other things) unlawful activity, restore the environment and/or claim reimbursement, to change/cancel a resource consent, to dispensation from the provisions of the Plan, suspend all or part of a Plan. Failure to comply with the order is an offence. The Act also provides for interim enforcement orders as a means of dealing with emergency situations where significant environmental damage is occurring or is imminent. Interim enforcement orders do not involve the notification procedures required of enforcement orders.

### (c) Abatement Notices (Sections 322 - 325)

The Council can issue written abatement notices requiring environmental nuisances to be remedied within a stated period (not less than seven days from when the notice is served). Abatement notices may also be served to require compliance with the District Plan or a resource consent. These are a "first aid" measure aimed at achieving immediate action in relation to such problems as noxious discharges. Failure to act on an abatement notice constitutes an offence, however any person(s) served with an abatement notice has the right of appeal to the Environment Court.

In addition to these enforcement mechanisms there are separate enforcement mechanisms for **excessive noise**. The Act empowers the Council's enforcement officers and the Police to direct that noise judged to be excessive, be reduced (Sections 326 - 328).

## 7.4.7 EMERGENCY WORKS (SECTIONS 330 - 331)

In emergency situations, or where an adverse environmental effect requires immediate action, remedial actions may be taken by the following:

- The person financially responsible for a public work affected.
- The Council or other consent authority.
- A Network Utility Operator approved as a requiring authority for the work concerned.

Reimbursement or compensation for emergency works may be payable in certain circumstances.

## **7.4.8 MONITORING (SECTION 35)**

Council is required under the Act to monitor the whole or any part of the District, with particular attention given to the state of the environment, the effectiveness of the District Plan, the exercise of resource consents and any of the Council's functions, powers or duties. On the basis of this monitoring, The Council is required to take action as appropriate and necessary and keep to information relevant to such monitoring and action. (Refer to Part 8 - Monitoring and Review).

## **7.4.9 COUNCIL CHARGES FOR DISTRICT PLAN ADMINISTRATION**

The Council shall recover reasonable costs incurred by the Council in undertaking various administrative functions with regard to the District Plan. The authority to make such charges is contained in the Act (Section 36) and the procedures to be followed in establishing charges is as set out in the Resource Management Act and the Local Government Act 1974. The types of services for which the Council will impose charges include (but are not limited to):

- Costs associated with applications for plan changes including costs of plan change preparation.
- Receiving, assessing and determining applications for resource consent (including Certificates of Compliance).
- Administration, monitoring and supervision of resource consents.
- Costs associated with receipt, assessment and determination of requirements to designate land.
- Provision of information, plans, and documents.

Current charges for carrying out activities are available from the Council. Where the Council has adopted a fixed charge for a particular matter and this is inadequate to recover actual and reasonable costs, an additional charge may be made by the Council.