

## **PART 2**

# **GENERAL PROVISIONS AND PROCEDURES**





## PART 2 - GENERAL PROVISIONS AND PROCEDURES

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## PART 2 - GENERAL PROVISIONS AND PROCEDURES

### 2.0 INTRODUCTION

Resource management is a complex process involving legal obligations and compliance with statutory procedures and practice. 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.

### 2.1 GENERAL DUTY TO COMPLY

The Resource Management Act 1991

Compliance with the Plan and the Act does not remove the need to comply with all other applicable acts, regulations, bylaws and rules of law.

The Building Act 1991

Any activity which does not require a consent under the Building Act 1991 may still require a resource consent in accordance with the provisions of the Plan.

### 2.2 TYPES OF ACTIVITIES AND RESOURCE CONSENTS

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

A permitted activity does not require a resource consent provided the activity complies in all respects with the relevant rules of the Plan.

The Act provides for resource consents to be obtained for activities, other than permitted activities, in accordance with rules and criteria specified in the Plan. These activities are controlled activities and discretionary activities. The Act

also empowers the Council to require that a resource consent be obtained for an activity which contravenes a rule in a plan, but is not a prohibited activity. This type of activity is a non-

complying activity. No application may be made for, nor may the Council grant, a resource consent for a prohibited activity. For the Hauraki Gulf Islands these are listed in Appendix A.

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

- (i) a land use consent, and
- (ii) a subdivision consent

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

#### 2.2.1 LAND USE CONSENTS

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

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

Activities which may generate adverse effects necessitating the specific formulation of mitigation conditions have been included either as a controlled activity or as a discretionary activity. 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 (Refer to Part 6D).

The Council may, in considering applications for resource consents, grant consent in accordance with any criteria specified in the Plan, and will include conditions in the consent in accordance with Part 6G of the Plan as appropriate.

While no resource consent application is necessary for a permitted activity, an application may be made for a Certificate of Compliance. Such a certificate, if granted, will state that the particular proposal was permitted 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 is valid for two years.

### 2.2.2 SUBDIVISION CONSENTS

Rules governing the subdivision of land are set out in Part 8 of this Plan. Except as provided for by Section 11 of the Act, land may not be subdivided unless a resource consent (subdivision consent) has been applied for and granted.

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### 2.2.3 DISTRICT PLAN RULES

All rules in the Plan have the force and effect of regulations. The Council is empowered to include rules in the Plan to enable it to carry out its functions under the Act, and to enable it to achieve the objectives and policies of this Plan. Accordingly, rules have been included for the following purposes:

- To generally achieve the integrated management of land use and development, and in particular, to implement the objectives and policies of the Plan.
- To control and mitigate the effects of land use and development (ie development controls).
- To protect land and the associated natural and physical resources of the district.
- To avoid or mitigate natural hazards.
- To prevent and mitigate adverse effects associated with hazardous substances.
- To control the subdivision of land
- To control the emission of noise and the mitigation of the effects of noise.

Activities will be regulated, prohibited or allowed, as appropriate, to ensure that any actual or potential adverse effects on the environment are mitigated or avoided. In considering the effects of an activity, the Council will take into account positive and adverse effects, temporary and permanent effects, any past, present or future effects and any cumulative effects. Any potential effects of high probability and any potential effect of low probability which has a high potential impact will also be considered.

Any activity which is not controlled by a specific rule in this Plan shall be required to obtain a resource consent for a non-complying activity.

### 2.2.4 ASSESSMENT OF APPLICATIONS

#### 2.2.4.1 General

An application for a resource consent for a discretionary or non-complying activity shall be in the form as set out in Regulation 5 of the Resource Management (Forms) Regulations 1991. Forms are available from all Council Offices. The forms may also be used for an application for a resource consent for controlled activities. Separate forms are used for land use consents, subdivision consents, and for certificates of compliance.

Applications for resource consent shall be accompanied by the information specified in Part 6D of this Plan. An application for a resource consent for a discretionary or non-complying activity will be assessed against the relevant criteria in Parts 6E and 6F of this Plan. Criteria for assessing applications for controlled activities are included in the land unit rules (Part 6A) and in the policy area rules (Part 7).

In addition to these assessment criteria, the Hauraki Gulf Marine Park Act 2000 requires the Council, when considering an application for a resource consent for the Hauraki Gulf, its islands, and catchments, to have regard to sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000.

#### 2.2.4.2 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 and Part 6D of the Plan, it may require the applicant to provide further 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:

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



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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.

### 2.2.4.3 Effect of Activities on the Environment

For applications involving discretionary and non-complying activities the Act requires the applicant to prepare an assessment of the effects on the environment in accordance with the Fourth Schedule to the Act. For applications involving controlled activities, an environmental assessment covering matters specified in the Plan is to be prepared by the applicant.

## 2.2.5 NOTIFICATION PROCEDURES

The matter of whether a resource consent application will be notified will be determined in accordance with the provisions of Sections 95A-95F of the Act.

The notification 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
- Historic Places Trust
- Persons likely to be directly affected
- Iwi authorities
- Other persons and authorities

The Council is also required to publish the notice in an appropriate newspaper.

The notice will give details of the application and give the closing date for submissions to be received by the Council. Submissions must be in writing and may be made by any person. They should be sent to the Council Office nominated in the notice.

## 2.2.6 HEARINGS PROCEDURES

### 2.2.6.1 General

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 prehearing meeting may be held by the Council for the purpose of clarifying, mediating or facilitating resolution of any matter or issue.

Where an application involves both a land use consent and a subdivision consent, and the Council is to hear the applications, a combined hearing will be held unless the applications are unrelated and the applicant agrees that a combined hearing need not be held.

Where an application involves the granting of resource consents by both the Council and the Auckland Regional Council (ARC), a joint hearing will be held. The ARC will generally be responsible for notifying the hearing, setting the procedure and for providing the administrative services.

The applicant will be heard by the appropriate Committee of the Council. Evidence may be written or spoken in Maori, and the Maori Language Act 1987 shall apply accordingly. Persons who wish to avail themselves of this opportunity must give the City Secretary five day's notice of their intention, to enable the Council to make appropriate arrangements including the translation of any written evidence.

### 2.2.6.2 Decision on Application

After completion of the hearing, the Committee considers all the evidence submitted and makes its decision on the application. The decision is then conveyed in writing to the applicant and the submitters.

## 2.2.7 CONDITIONS OF CONSENT

Where a resource consent is granted the Council may impose conditions in accordance with the Act and the provisions of the Plan.

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



resource consent for a controlled activity shall only be included in accordance with the criteria specified in this Plan. The matters which the Council may include as conditions on a resource consent are set out in Part 6G of this Plan.

The terms and conditions, if any, forming part of any resource consent, shall be observed and fully complied with.

### **2.2.8 OBJECTIONS AND APPEALS**

The Act provides for objections and appeals to be made against certain decisions made by the Council (Sections 120, 357, 358).

An objection may be made by the applicant in respect of a Council decision concerning:

- a) the extension of an existing use which has been discontinued (Section 10(2)).
- b) where a resource consent is due to expire, the continuation of operation while applying for a new resource consent (Section 124(3)).
- c) the lapsing of a resource consent not given effect to (Section 125).
- d) the cancellation of a resource consent not exercised for a continuous period of 5 years (Section 126).
- e) the lapsing of a designation not given effect to (Section 184).

Except in the case where the Council has refused to grant the resource consent, a person whose application for a resource consent, or change or cancellation of any condition of a resource consent is not notified may make an objection in respect of the Council's decision on that application. Similarly, an objection may be made to the Council's decision in respect of a review of the conditions of a resource consent (Section 128).

A person who has been asked to pay a charge additional to a charge (but with no deposit) made by the Council, pursuant to Section 36 of the Act, also has a right of objection to the Council.

Any objection made to the Council shall be in writing setting out the reasons for the objections, and sent so as to arrive within 15 working days of receipt of the decision or requirements. The Council will meet as soon as practicable to consider the objection. At least 10 working days notice of the meeting will be given to the objector. The Council may discuss the objection, or uphold it wholly or partly. In the case of an objection to an additional charge, the Council may remit the whole or part of the additional charge.

Any person who has made an objection as set out 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).

More generally, 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 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 12).

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

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

The Act permits an application to be made to the Council to the change or cancellation of any condition imposed in respect of a former consent (other than a condition as to the duration of that consent). The 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).

If the former consent was a notified application, the application to change or cancel must also be notified. The application may not be notified where the Council is satisfied that (a) either the adverse effect of the activity will continue to be minor, or alternatively is likely to remain unchanged or decreased as a result of the change or cancellation of the condition, and in addition, (b) the written approval has been obtained from every person who made a submission or who lodged an appeal on the original application and every person who may be adversely affected by the change (unless the Council considers it unreasonable in the circumstances to obtain every such approval).

### **2.2.10 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 contemporary issues and concerns. The provisions of the Plan may therefore, be varied as necessary. Such changes may be in response to revised or up-dated national or regional policy statements, regional plans or regional coastal plans. The effectiveness of the Plan will be continuously monitored and the Council will initiate plan changes which address evolving resource management issues and community needs,



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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 the First Schedule of the Act. In conjunction with effective consultation, such proposals may be adopted by the Council as appropriate.

Applicants requesting a change to the Plan must also provide (to the satisfaction of the Council), the following information in support of their proposed plan change:

- The extent to which the change is necessary in achieving the purpose of the Act, and any relevant objective or policy in the Plan;
- Alternative means of achieving the purpose of the Act or any relevant objective or policy in the Plan;
- Reasons for and against the adoption of the Plan change, and the outcome of taking no action;
- An evaluation, of the likely benefits and costs of the principal alternative means and the likely implementation and compliance costs if the Plan change is adopted.

Further information may be requested from an applicant for a Plan change which, at the applicant's request, is to be treated as an application for a resource consent.

### 2.2.11 REASONABLE USE OF LAND

Any person having an interest in land who considers that any provision of the Plan would make that land incapable of reasonable use, may challenge that provision:

either by making a submission under clause 5 of the First Schedule to the Act in respect of a proposed Plan or change to a Plan; or by making an application to change the Plan under Section 73 (2) and Clause 23 of the First Schedule to the Act.

The term “reasonable use” in relation to any land includes the use or potential use of the land for any activity whose actual or potential effects on any aspect of the environment or on any person, other than the applicant, would not be significant.

### 2.2.12 EXISTING LAWFUL ACTIVITIES

The Act provides for certain consents granted under the Town and Country Planning Act 1977 and in place immediately before 1 October 1991 to be deemed to be land use consents granted under the Act, (Section 383).

The Act provides for the existing use of land in a manner which contravenes a rule to continue or to be re-established if in accordance with the provisions of the Act (Section 10). In particular, any building lawfully erected which does not comply with any rule in this Plan may be reconstructed, altered or added to if this work does not increase the degree by which the building fails to comply with this Plan.

## 2.3 BYLAWS

The Council may, from time to time, introduce bylaws on matters provided for by the Local Government Act 1974 and its amendments to assist it to fulfil its obligations under the Act. These bylaws will be complementary to the rules contained in this Plan, and will form part of the Council's comprehensive and integrated approach to its regulatory functions.

Unless the provisions of any rule in this Plan specifically provide to the contrary, in the event of any conflict or inconsistency between the provisions of this Plan and the provisions of any bylaw, the provisions of this Plan shall prevail.

## 2.3A SIGNS

### 2.3A.1 RESOURCE MANAGEMENT STRATEGY

Signs can contribute to the character and vitality of an area and to its economic growth. However without proper control, they can adversely affect the amenity of an area, for example through the overproliferation of signs. The appropriateness of the size, number and type of a sign alters depending on the receiving environment around it. Signs in the Hauraki Gulf Islands should be sympathetic with the essentially rural nature of the Gulf Islands.

### 2.3A.2 OBJECTIVES AND POLICIES

#### 2.3A.2.1 Objective

*To ensure that any adverse effect arising from the content, placement, construction, size and maintenance of signs on the amenity of a particular area or on public safety is avoided or reduced to an acceptable level.*





### 2.3A.2.2 Policies

- (a) By requiring the construction, form and type of sign to meet defined structural and safety standards.
- (b) By applying different controls to the design, content and size of signs in relation to the particular land unit and locality in which they are located.
- (c) By controlling any significant adverse effects arising from signs principally through bylaws made under the Local Government Act 1974.

### 2.3A.3 IMPLEMENTATION

The Council has considered the available methods for achieving the above objective and policies and has concluded that in general the most appropriate form of control is by means of bylaw rather than rules in the District Plan. In 1998 the Council reviewed and adopted changes to Part 27 of the Auckland City Consolidated Bylaw. Part 27 provides comprehensive controls on the size, location, content, construction and maintenance of signs in terms of the above strategy. Part 27 also incorporates specific provisions relating to signs in the Hauraki Gulf Islands.

### 2.3A.4 RULES

In general the Plan leaves control of signs in the Hauraki Gulf to the provisions of the Bylaw. However there are exceptions to this:

- Any sign which is part of an activity or development requiring resource consent under this Plan will be assessed, considered and either approved or declined as part of that resource consent process. No separate application under the Bylaw will be required if the resource consent is granted.
- Any sign on a scheduled item, except a tree, and subject to the provisions of Part 10 - Heritage, will be controlled by the provisions of that Part. (Note: No sign may be attached to a tree.)
- Any sign erected pursuant to any other statute or regulation will be required to comply with those provisions (eg storage of dangerous goods).

Where a structure required to support a sign falls within the definition of "building" as defined in Part 11 of the Plan, then the structure must meet the permitted activity standards (Part 6B) applicable to the land unit in which it is located or alternatively resource consent must be applied for. In addition, a building consent may be required.

For provisions on all other signs refer to the Consolidated Bylaw.

## 2.3B ARTIFICIAL LIGHTING

### 2.3B.1 RESOURCE MANAGEMENT STRATEGY

Artificial lighting is used to provide for personal safety and security to sites and activities. It is also used to enable work, recreational and entertainment activities to occur beyond normal daylight hours. However, unless artificial lighting is used with care it can adversely affect adjacent properties and traffic safety, through light spill and glare. It can also affect night sky viewing particularly in areas where floodlighting is concentrated. This issue requires particular consideration in the Hauraki Gulf Islands given the existing pattern of low density development and the general character of the natural environment. The Plan provisions set levels on illuminance produced in order to avoid, remedy or mitigate the adverse effects of artificial lighting. Where the level is exceeded a resource consent will be required.

### 2.3B.2 OBJECTIVES AND POLICIES

#### 2.3B.2.1 Objective

*To ensure that artificial lighting does not have a significant adverse effect on the environment and on the amenity values of the surrounding area.*

#### 2.3B.2.2 Policies

- a) By controlling the intensity, location and direction of artificial lighting so as to avoid or mitigate any significant light spill and glare onto adjacent sites and loss of night sky viewing.
- b) By controlling where appropriate the use of artificial lighting for the operation of outdoor activities into night-time hours.
- c) By controlling the spill of artificial lighting onto residential land and roads through Bylaws made under the Local Government Act 1974.

### 2.3B.3 IMPLEMENTATION

The Council has considered the available methods for achieving the above objective and policies and has concluded that in general the most appropriate control is by means of both District Plan rules and Bylaws. In 1998 the Council



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adopted the updated Auckland City Consolidated Bylaw. Part 13 of the Bylaw contains rules to limit the amount of light falling on land and buildings with a residential use.

### 2.3B.4 RULES

In general the Plan leaves the control of artificial lighting to the provisions of the Bylaw. The exceptions to this are:

Any outdoor artificial lighting:

- (a) with an illuminance over a defined lux; or
- (b) that is not shielded in accordance with defined parameters,

is a discretionary activity (refer Part 6C).

Any artificial lighting which is part of an activity or development requiring resource consent will be assessed, considered and either approved or declined as part of that resource consent process.

## 2.4 DESIGNATIONS

### 2.4.1 GENERAL

A designation is a form of land use control which is available to a requiring authority. A requiring authority is a Minister of the Crown, a local authority or a network utility operator approved by the Minister for the Environment for a particular project or work.

Sites for existing or proposed public works, project or works described by an Order in Council under Section 167 of the Act, and any associated restrictions in respect of any land, water, subsoil or airspace are specifically designated in this Plan.

Designations are illustrated on the Planning Maps by means of distinctive notation and reference number. The reference number applies to information describing the designation in Appendix G. The effect of designating land is to give notice of the designated purpose and generally to limit the use of land to that purpose.

The land unit within which the designated land lies is identified to indicate the purposes for which, and the conditions subject to which, the land could be used if it were not designated. The rules for the relevant land unit will apply to the construction of any building or to any activity which is not part of the designated work but which is undertaken by, or is approved by, the requiring authority.

The information to accompany a notice of requirement is set out in Section 168A(3) of the Act. In addition to this the Council will require the information set out in Part 6D to be included in any notice of requirement.

When a requirement for a work has been received by the Council, any work or change of use or subdivision which would prevent or hinder the work may not be carried out without the consent of the authority responsible for the work concerned. Once the designation becomes operative, Section 176 of the Act prohibits the carrying out of any work on the land or its subdivision without the requiring authority's consent.

A designation lapses on the expiry of 5 years after the date on which it is included in the District Plan, unless it has been given effect to or a different period applies under Section 184 of the Act.

### 2.4.2 ROADS

For the purpose of the Plan, where existing formed or designated (and dedicated) roads are not included on the Planning maps within the boundaries of any land unit, such roads shall be deemed to be included within the adjacent land unit(s). Where there are different land units on either side of the road, the stricter of the standards for those land units outlined in Parts 6B and 6C of the Plan shall apply.

## 2.5 HERITAGE PROTECTION ORDERS

A heritage protection order is issued to protect features and places of national and local importance, or which are significant to the tangata whenua. When a requirement has been issued on the Council by a heritage protection authority in terms of Part VIII of the Act, no person may do anything that would nullify its effect. A heritage order is expressed in the Plan by way of map identification and description (see also Part 10 ) The site and land unit within which the heritage order lies is identified to indicate the purposes for which, and the conditions subject to which, any unaffected land within the site can be used. The rules for the relevant land unit will apply to the construction of any building or to any activity which is not part of the heritage order but which is undertaken by or is approved by the heritage protection authority.



## 2.6 TEMPORARY ACTIVITIES

Any activity involving the temporary use of land or buildings necessary and incidental to an authorised building or development project shall be deemed to be a permitted activity, subject to any conditions the Council deems necessary. Such temporary activity shall be subject to a time limit to be determined by the Council.

## 2.7 UNREASONABLE NOISE AND ADVERSE EFFECTS

Every person has a duty to avoid, remedy or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of the person, whether or not the activity is in accordance with a rule in this Plan, a resource consent, or a lawful existing use (Section 17 of the Act).

The Council considers that the making of unreasonable and excessive noise is a major factor in the degradation of the environment. Excessive noise may include noise emitted by any musical instrument, electrical appliance, machine (however powered), explosion, vibration or noise made by any person or group of persons. Complaints made to the Council about excessive noise will be dealt with by an enforcement officer who may issue directions or an abatement notice as appropriate. The Council is also empowered to seek an enforcement order under Section 316 of the Act. Failure to comply with an excessive noise direction can result in the equipment producing or contributing to the excessive noise being seized or rendered inoperable as provided for under Section 328 of the Act.

Every occupier of land (including premises) shall adopt the best practical method to ensure that the emission of noise from that land does not exceed a reasonable level.

## 2.8 ISSUES AFFECTING LAND AND WATER OUTSIDE THE DISTRICT

The Act requires that the Plan outline the processes to be used to deal with issues which cross territorial boundaries.

For the Hauraki Gulf Islands section of the City, the effect of this requirement is mainly related to issues which may affect the surrounding waters of the Hauraki Gulf.

The Council will address those matters in the following manner:

1. The Council will monitor applications for resource consents in the coastal marine area and liaise with the A.R.C. and/or lodge submissions as necessary to any application. The intent of such action is to ensure integrated resource management at the interface of land and water and to ensure that the wider impacts of land and water use are adequately assessed.
2. The Council will seek joint hearings for applications where the effects of activities in the jurisdiction of one territorial authority may affect the district of another such authority.
3. The Council will ensure that any persons outside of the district likely to be affected by any application for a resource consent are notified where necessary and appropriate, in terms of the provisions of the Act.
4. The District Plan places emphasis upon the limitation of the effects of any activity to the site on which it will occur. In this manner the likelihood of cross territorial impacts arising from activities will be minimised.

