

2013

Plan Development

Making Plans Operative





Making Plan Operative

The Local Government (Auckland Transitional Provisions) Amendment Act 2013 introduces a streamlined plan-making process that only applies to the development of the first Auckland Unitary Plan (AUP). This guidance note has not been amended to include changes to the AUP plan-making process, rather it focuses on plan-making prescribed by the Resource Management Act 1991. For information about the process for the first AUP, refer to the Ministry for the Environment's [Fact Sheets](#)

Making proposed regional policy statements, regional plans and district plans (including plan changes) operative is the final step in the plan-making process established in sections 60, 64, 65, 73 and Schedule 1 of the Resource Management Act 1991 (RMA). While certain actions are specified in the RMA, making a policy statement or plan operative also follows internal processes, such as the specific delegations in a particular council. As well as ensuring the correct process is followed, councils must consider the impact of making a plan operative as it may trigger other actions and have wider implications for the council and the community.

Introduction

Making a policy statement, plan or plan change operative can often take more time than anticipated. The administrative process may also vary for different plans. For example, it may be possible in a plan change to carry out all required actions outlined above concurrently, whereas the process may be more iterative for a whole plan. As a result, the initial operative date may change after you have worked through the process and considered all the implications. An example is provided of the [process](#) for making a plan change operative, as described in the guidance note.

A number of differences in making regional coastal plans operative are covered later in this guidance note.

When reading the following guidance, the term 'plan ' should be taken to include proposed policy statements, plans and plan changes, unless expressed otherwise.

Guidance note

This guidance note on making policy statements or plans operative addresses the following:

Confirm what can be made operative

Steps to follow to determine a possible operative date

Obtaining the appropriate resolutions

Post-operative processes



Confirm what can be made operative

Plans are made operative under section 83 of the RMA on the basis that they have been prepared and approved in accordance with Schedule 1 of the RMA. Once operative, regional councils, territorial authorities and any other consent authorities are required to observe and enforce the provisions of any plan that applies to them.

Clause 17 of Schedule 1 of the RMA allows a council to:

- approve all or part of a plan (excluding a regional coastal plan) when it is beyond challenge by submission or appeal. Under this clause it is not necessary to wait until a variation has been merged with, or withdrawn from, a proposed plan before making it operative
- make a variation become a plan change if it has not already been merged with the plan when the plan is made operative; this means that a variation does not need to be withdrawn.

However, a council can only approve a plan or part of a plan (excluding a regional coastal plan) under clause 17 after it has made amendments or variations, if any, to give effect to any national environmental standard or national policy statement.

When considering making a plan operative, it is important to consider the following options.

- How much of the plan or plan change is beyond challenge?
- How important is it to get part of the plan operative?
- Should you wait for all matters to be finalised?
- Does the plan give effect to any relevant NPS provisions?
- What are the implications for the community or the council if you move to make part of the plan operative?

Whether to make the plan fully operative

Ideally, a council would make the plan fully operative once all appeals and legal proceedings are complete. However, there could be delays associated with resolving any appeals, so seek legal advice first. It may be difficult to estimate a date when council could make a proposed plan fully operative.

Whether to make the plan operative in part

In a case where a proposed plan is largely "untouched" by remaining appeals, it may be appropriate to consider making the plan operative in part. There are risks associated with administering a plan where significant parts of the plan remain subject to appeal, as full weight cannot be given to the provisions of that part of the plan.

Making the plan "operative in part" formalises procedural requirements in relation to section 83 of the RMA.

Remember to review the provisions of the RMA related to transitional plans, as there are important processes triggered if the plan being made operative is a "first generation"



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document. For example, with regional water plans there may be some bylaws or notices under the Water and Soil Conservation Act 1967 that may still be in use and which will have to be withdrawn when the plan is made operative.

Managing pressure

There may be pressure to have the plan made either "operative" or "operative in part" to enable private plan change requests to be considered and processed.

Councils need to bear in mind that, while they are required to consider private plan change requests, they can reject them on grounds set out in clause 25 (4) (e) of Schedule 1 of the RMA. This includes the ability to reject a request where matters have been considered, rejected or given effect by the council or Environment Court within the last two years. Rejecting a request can mean less work pressure on a council and its staff.

However, it may be appropriate, as part of the consideration of making the plan operative in part, for the council to consider developing its own policy or guidance on the circumstances in which private plan change requests are likely to be favourably considered (or not) during the two-year period. This guidance may be useful to manage the expectations of those who are about to request plan changes.



Steps to follow to determine a possible operative date

Identify an appropriate date to make the plan operative

Once it has been decided that all or part of the plan is free of challenge, you can begin to determine a date for making the plan operative in whole or in part. Determining the operative date can be an iterative process and may depend on a number of actions or decisions such as:

- how long it will take to review and prepare the operative version of the plan (including the web version)
- what time has to be allowed for printing the document and preparing a web version
- what processes need to be put in place within council as a result of the plan being made operative
- what council meeting will make the decision, and whether you need to report to a committee first on the issues
- when you can get the public notice in the newspaper.

Remember to find out whether there are any other significant council announcements or projects, such as the Long Term Plan, Annual Plan, development projects or local elections, that may affect the council at or around the same time as your possible operative date. Depending on their impact, you may need to reconsider your timing.

Prepare an 'operative' version of the document

Once the proposed plan is beyond challenge, you can start preparing the operative version of the document. This is when you verify the contents of the final version.

Council staff need to ensure that the plan accurately reflects:

- all of the Council's decisions
- relevant consent orders
- Environment Court decisions
- section 292 of the RMA - directives to remedy defects
- includes provisions introduced via variations for both text and maps
- gives effect to any relevant national policy statement provisions.

You should take the opportunity under clause 16 of Schedule 1 of the RMA to correct errors and to identify any minor matters that need to be addressed. In particular, check internal plan numbering and the use of cross-references. Make sure that these are still correct.

Record the matters that you are changing under clause 16 with reasons, as there may be questions in the future. Take time for a fresh look at the format of the plan: check page numbers, chapter numbers and titles, look at the headings, fonts and other format issues to make the plan easier to read and more web- and printer-friendly.



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Where a plan is made operative in part, ensure you make a schedule of any matters that are still subject to challenge, and consider including a reference to this on the title page at the front of the operative document.

For web documents, the operational nature of a document should be made clear in any text accompanying a link to a plan, as well as it being clear in the document itself. The document should also include a schedule of unresolved matters. Annotations should also be made throughout the document to indicate what is operative and what is unresolved to avoid any confusion, especially where documents are viewed separately by policy or section.

Identify the 'production' tasks and issues

The extent of this work depends on the size of the document. Complex tasks and issues may increase your lead-in time. The tasks and issues may include the following.

Printing sufficient numbers of the document

Clause 20 (4) of Schedule 1 of the RMA requires a copy of the plan to be sent to specific parties (some councils call these parties the 'statutory bodies') and a copy to be placed in every council library in the area. Remember to print sufficient hard copies for your council's own records, as required under section 35 of the RMA, and any other internal requirements, for example providing up-to-date copies of district plans for staff, ensuring up-to-date copies are in hearing or meeting rooms and providing additional stock for sale to the public.

The ability to provide electronic documentation should be considered as part of fulfilling any notification requirements.

Also remember to make arrangements for a storage area and develop a distribution process, as you may need to hold on to the documents for a month or two around the operative date. Alternatively, your printer may be able to manage this process for you.

One of the last steps you must take is to print the title page or frontispiece for the plan which must wait until you have the council resolution, as this page carries the:

- title of the plan
- seal to show that the plan is officially operative
- date the plan was made operative.

It is important as it establishes the legal status of the plan. See the example frontispiece text for [full or part](#) operative plans.

The production process is generally less problematic for a plan change, as it is usually a smaller document. The lead-in time for printing or copying runs will also be shorter, particularly where they can be managed in-house. In the case of a plan change, it may be necessary to prepare a replacement version of the relevant pages or sections of the operative plan and to circulate them, along with the copies of the operative plan change, to all plan holders.



Inserting the public notice in a newspaper

You are required to publicly notify the date on which the plan will become operative, before the plan is made operative. This may involve circulating a public notice in the entire area. You will need to book a space for the public notice in the newspaper used by your council, and allow for the required five working days' notice under clause 20 (2) of Schedule 1 of the RMA. For example, if the plan is to become operative on 3 October 2008, the public notice must be published in the paper by 25 September 2008.

Consider allowing a few extra working days between the public notice and the date it becomes operative to cover any unforeseeable delay. See [Form of public notice](#).

Updating the web content

If the council has a website where the plan is published, allow sufficient time for the web version to be updated or upgraded. If you don't have a web version of the plan, this may be the opportunity to develop and publish an electronic version of the plan.

The lead-in time for this work will generally relate to the size of the document being published and the number of staff required to do the work. Remember to advise the website manager of the date by which the website has to be updated ie, the operative date.

It would be sensible to have a 'test site' available in advance and to get staff to use it to ensure things are well linked.

Check, as part of this exercise, for any other procedures or actions that are linked to the online version of the plan. There may be automated FAQ's and forms, regulatory processing systems for tracking consents, and automated LIM reports that are linked to the current version of the plan. These links will need to be amended. Once again, get a sense of the lead-in time for this part of the process, as getting it right is critical for ensuring good customer service as well as managing council's risk and reputation.

Advising your consent processing staff of the operative date

Consent processing staff will need to know the operational date of a plan to enable them to clarify the status of policy and to make appropriate changes to forms and reporting templates. In many cases, draft policy will have legal weight applied to its consideration in the period leading up to it becoming operative. Because of this, the need for training or supporting processes is likely to have been addressed earlier in the policy development process. It is important that consent staff are given progress updates of plan change timetables throughout the plan's evolution to enable appropriate considerations and support processes to be in place ahead of policy becoming operative.

In the case of a private plan change, related resource consents may be waiting to be lodged, or may be substantially through the assessment process and waiting for the plan change to be made operative before a decision is issued. Where a private plan change is involved, consider advising the applicant of the operative date. Ensure that you also advise consent processing staff.



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When making a plan operative, it is also important to raise any implications and relevant background material with the consent team. This includes any prohibited activities in the plan if such activities were unable to be given effect under section 77C (1) (c) of the RMA and the operative plan changes this situation.

Check to see whether the council had resolved under section 20 of the RMA that any rule in the plan should not have effect until the plan became operative. There may be new processes that need to be in place to address this rule. In these cases, there may be a need for training or supporting processes for consent processing staff.

If you already have part of the plan operative, you can use clause 20A of Schedule 1 of the RMA to correct any cross-reference issues in the operative plan.

Also remember that any designations from the 'old' operative plan not provided for in the 'soon to become ' operative plan will lapse. To ensure this is recognised, it will be essential to update designation files, relevant site files and files on GIS or corporate mapping systems linked to land information memoranda (LIMs) or project information memoranda (PIMs).

Check with your consents team to see whether any crucial processes are linked to an 'operative plan'. For those plans that have financial contributions provisions, it needs to be remembered that financial contributions in terms of section 108 (9) of the RMA can only be imposed pursuant to an operative plan, and not by a proposed plan or plan change. This is because of the statutory definition of the words 'policy statement' and 'district plan' in section 2, which relates only to an operative plan. Specific processes may need to be put in place to capture such contributions once a plan is made operative.

In the case of a regional council, specific consent condition review provisions on water, coastal and discharge permits are triggered when a regional plan becomes operative (section 128 (1) (b) of the RMA).

Advising your stakeholders and the community

- Making a plan or policy statement operative is a significant milestone for the council and community, so start arranging the communications around the process as early as possible.
- You may provide plan-updating services to a large list of plan holders. Give them early advice of what is about to happen. Think of other forums through which this message would be usefully delivered. Making a plan operative has a significant impact on workloads both in council and externally, so it is good to give those involved in regulatory processes early warning of a change in status.
- As well as fulfilling the statutory requirement of publicly notifying the operative date, it is also useful to consider what other forms of communication need to be developed or may be affected by the plan being made operative. For example, there may be information pamphlets that need to be removed and updated, or new ones may need to be prepared. The council may also have standard forms used for other processes that are affected by reference to the plan or provisions in the plan.



Organise internal recognition of achieving this milestone

If it was a new bridge, you would arrange an opening ceremony and cut the ribbon! You, your councillors, staff and advisers will have invested a huge amount of energy and resources over many years to get the plan to this point. Take the time to recognise the achievement, the work of those involved, and the significant changes in the policy framework that have been introduced and that can now be given full weight. If possible, include those who may no longer be in council with you. You could have a chat with your printer and arrange 'certificates of recognition'.

Obtaining the appropriate resolutions

There are a number of important internal actions to follow to get the appropriate council resolutions before making a plan operative. Remember that this is a key procedural step and, at this late stage in the process, you do not want to overlook something that can later undermine the process. The actions include the following:

1. Confirm where the internal delegation of authority to approve a plan sits. This is probably specified in your Council's delegation register or manual. Be aware that delegations may change from time to time (usually following local government elections) so it pays to recheck, especially if it's been a while since anything was made operative. While under section 34 (1) of the RMA a local authority can delegate anything to a committee of the council, including making plans operative, they can't delegate making a plan operative to anyone else, such as staff or commissioners.
2. Identify when the next meeting of the appropriate committee and the following council meeting is going to occur, and arrange to have a report on the agenda to get the approval to make the plan operative. As part of this process, it may be necessary to brief the committee chair. It may have been some time since the committee or councillors saw the plan. This could be because appeals may have been before the Environment Court for some while and there may have been significant amendments made by the Court. It may also be that elections have resulted in changes to the composition of the committee and you have new councillors with little knowledge of the plan.
3. Understand what it means to affix the council seal as required under clause 17 (3) of Schedule 1 of the RMA for a plan other than a regional coastal plan or clause 18 (2) for a regional coastal plan. In most councils, standing orders state that the seal can be fixed only with a resolution of the full council. You need to check your standing orders to confirm the process.
4. Prepare a report seeking that the appropriate staff member be authorised to complete the statutory processes required to make the plan operative or operative in part. Identify variations to the plan or any plan changes still being processed and note that, under clause 17 of Schedule 1 of the RMA, any variation now has the status of a plan change and can continue in its own right.



Post-operative processes

Even when the plan becomes operative, there are a number of important processes that need to be followed. Some can be carried out at the same time as making the plan operative. They include the following:

Variations

Consider the impact of any live plan variations (i.e. those that have been notified) or any plan changes that have not yet been merged, to your proposed plan. While clause 17 of Schedule 1 of the RMA allows you to make the proposed plan operative with any variation continuing through the statutory process as a plan change, there may be effects that need to be managed. Most will be addressed when you consider the option of making the plan operative. You will need to consider whether to advise those affected by variations; don't forget submitters as well as any affected parties. And don't forget that there may be property transactions and resource consent decisions that may be affected. Variations that affect individual sites may be of no consequence, but variations that impact on large areas of the district or create the need for a large number of consents may justify the preparation of explanatory information to advise the general public and inform any submitters who may not understand the process.

Archives

Ensure you have full copies of all the relevant documents for archiving as required under section 35 (5) of the RMA, which requires you to keep copies of all documents. This should include both hard and electronic copies of the relevant documents. In the case of a plan, this means:

- a copy of the proposed plan as notified
- the proposed plan as amended by submissions
- the proposed plan as amended by decisions and appeals
- full copies of all submissions and further submissions, and the summary of submissions
- full copies of all hearing and decision reports
- full copies of all appeals and related documents, such as consent orders and decisions
- full copies of any variations incorporated into the proposed plan.

Given the size of the collection you will need to archive, you may be best to ensure the documents are kept together in one secure place. Keep a sealed copy of the plan (multiple if necessary) for those instances when it is required to be provided, for example at court for prosecutions.

It can pay to keep a separate collection of operative plan changes from your operative plan, so you can bind them as a single record document at a milestone in the life of the plan, for example at the 25th plan change.

The documents are used to establish existing use rights and may be necessary for a range of other purposes, so controlling public access to the documents is critical. Lamenting over the misplacing or loss of a key document is avoidable, so make sure you seek the right advice about handling these important documents.



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Make sure you put an operative version of a plan change on the plan change file and check the paper and/or electronic file to ensure there are copies of all relevant documents, consent orders, Environment Court decisions, council reports and resolutions included.

It can also pay, in the case of plan changes or variations for individual sites or small areas, to place a copy of the change on site files.

Future projects

Record the lessons learnt from the project. Often people move quickly from one project into a new project and the lessons learnt are not documented and used to enhance future processes or to educate others. It is good practice to make sure you have arranged for those involved in the process to 'debrief' (internal and external team members, and especially your legal advisers).

It is also helpful to find out from the team what worked well, where the problems arose and where process-related information can be found.

Task someone with the role of creating a process and information file on the project. In the case of a whole plan, this could be a large task if there have not been good records taken during the process. This information could be useful as an internal training resource in the short term for new plan changes and in the longer term for the next review.

Assess the issues identified and consider whether there is any benefit in raising them with other council staff. It may be that new systems or new or amended processes could be developed to address the issues. In addition, consider sharing the lessons with others through an article in a professional journal or magazine such as Planning Quarterly.

National policy statements

Section 55 and Clause 16 of Schedule 1 of the RMA require councils to give effect to national policy statements (NPS) in one of several ways.

An NPS can direct that specific provisions are included in a plan without the need for the formality of notifications and hearings, or changes can be made to a plan where they are minor. Alternatively, councils are required to amend their plan or policy statement to give effect to the NPS as soon as practicable (or by any time or event prescribed in the NPS) following the RMA 's Schedule 1 process.

Having consideration to the above, councils will need to consider whether there are any changes from a recently published or soon to be published NPS that should or could be included in the plan before it is approved. Where they are not a direction or minor changes, they can be addressed in a plan change.

Regional coastal plans

Processes for regional coastal plans are generally similar to those for other regional plans. However, there are a number of specific differences that need to be considered.

A proposed regional coastal plan is adopted in full or part under clause 18 of Schedule 1 of the RMA. A regional council can only adopt all or part of a proposed regional coastal plan when the plan is beyond challenge by submission or appeal and the council has made amendments or variations, if any, to give effect to any national environmental standard or national policy statement. A regional council adopts a regional coastal plan by affixing their seal to the plan.

The plan is then sent to the Minister of Conservation for final approval. Under clause 19 (1) of Schedule 1 of the RMA, the Minister can require the regional council to make amendments to the plan before it becomes operative. When all submissions or inquiries to all or part of a regional coastal plan have been disposed of, the Minister of Conservation provides approval to all or part of the plan by signing it.

Once approved by the Minister, a regional council can notify its operative regional coastal plan in line with clause 20 of Schedule 1 of the RMA.

In the case of a regional council, specific consent condition review provisions on water, coastal and discharge permits are triggered when a regional plan (including a regional coastal plan) becomes operative (section 128 (1) (b) of the RMA).

Possible wording of frontispiece for operative plan

The following example is for a district plan but is interchangeable for a regional policy statement or regional plan (excluding regional coastal plan). Regional coastal plans are adopted by a regional council and approved by the Minister of Conservation under Clause 18 and 19 of Schedule 1 of the RMA. Wording for a notification for a regional coastal plan will need to reflect these differences in process.

(TA name). [District] [Plan] - Operative

At its meeting of (insert date of council meeting) the (insert name of council) [District] Council resolved to declare the (insert name of council) [District] [Plan] 'Operative' pursuant to clause 17 (2) of Schedule 1 of the Resource Management Act 1991 (RMA). In accordance with clause 20 (1) of Schedule 1 of the RMA, the (insert name of council) [District] [Plan] becomes 'operative ' on (insert date at least 5 working days after public notice).

Public notification of the availability of the (insert name of council) [District] [Plan] - Operative was given on (insert date of public notice).

Date of council resolution ...

Date of public notice...

'Operative in part' date....

Possible wording of frontispiece for operative-in-part plan

The following example is for a district plan but is interchangeable for a regional policy statement or regional plan (excluding regional coastal plan).

(TA name) [District] [Plan] - Operative in Part

At its meeting of (insert date of council meeting) the (insert name of council) [District] Council resolved to declare the (insert name of council) [District] [Plan] 'Operative in Part' subject to the exclusions defined in the following schedule pursuant to clause 17 (2) of Schedule 1 of the Resource Management Act 1991 (RMA). In accordance with clause 20 (1) of Schedule 1 of the RMA the (insert name of council) [District] [Plan] becomes 'Operative in Part ' on (insert date at least 5 working days after public notice).

Public notification of the availability of the (insert name of council) [District] [Plan] - Operative in Part was given on (insert date of public notice).

Date of council resolution ...

Date of public notice...

'Operative in part' date....

Schedule

The provisions of the plan excluded from approval are:

Possible wording of public notice for operative plan change

The following example is for a district plan but is interchangeable for a regional policy statement or regional plan (excluding regional coastal plan).

Operative [plan] change

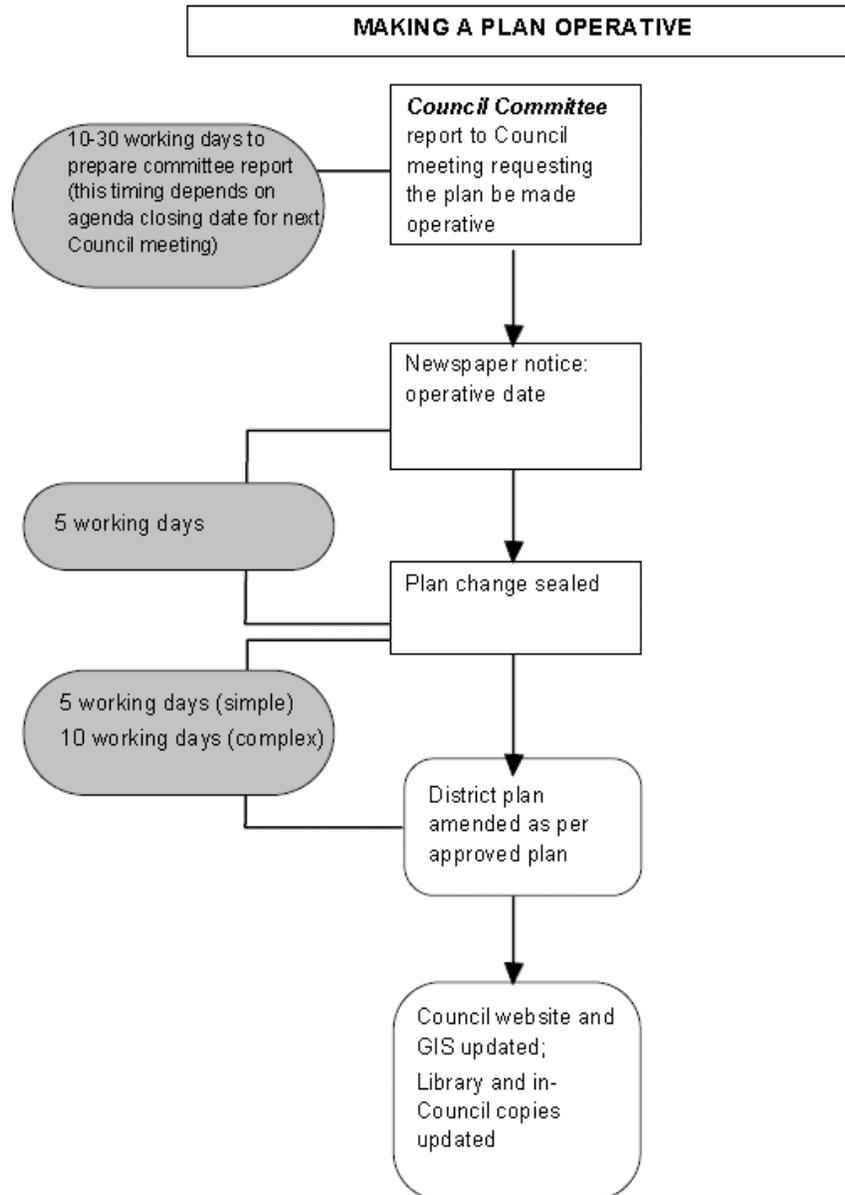
At its meeting on (insert date of council meeting) the council resolved to adopt the following [plan] change to the (insert name of [district]) [district] [plan] following the completion of the statutory processes. This [plan] change will become operative on (insert date at least 5 working days after notice).

[Plan] change (insert number) is a plan change that (provide description of the changes that result from the [plan] change).

Example process and flow chart - making a plan change operative

This example is part of the process that could be followed for making a plan operative. The same process applies in making a whole plan or part of a plan operative. Regional coastal plans have a number of differences.

Step	Contact	Activity	Timeframe
4	Planner	Prepares Committee report to Council meeting requesting plan change be made operative	10-30 working days (depends on agenda closing date for next Council meeting)
5.1		The Council resolves to make the plan change operative. The appropriate council department sends out a minute following the meeting	
5.1.1	Planner	Discuss with manager whether a pamphlet is required to be prepared on the content of the plan change	
5.2	Planner	Prepare public notice for appropriate newspapers advising that the plan change is operative on a particular date	Note: Operative date must be at least 5 working days after the notice is published
	Planning technician	Notice in appropriate newspapers stating the operative date of plan change	
	Planning technician	Arranging for Plan change to be sealed	5 working days (simple) 10 working days (complex)
5.3	Planning technician	Final version of the plan change sealed by the Mayor	
5.4		District Plan is amended as per approved plan change	
5.4.1	Planner	Provide the planning technician with the updated pages of the District Plan as amended by the approved plan change	
5.4.2	Planning technician	Council website and GIS updated as necessary, paper copies of replacement pages and operative plan change distributed	
5.4.2	Planner	Organises and culls plan change file(s) and forwards to the records team	





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