

2013

Plan Development

Private Plan Change Process



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](#).

The Resource Management Act 1991 (RMA) allows anyone to seek changes to district or regional plans through a request for a private plan change. Requests for private plan changes enable innovative proposals to be tested through the RMA process, and allow applicants to initiate change without waiting for a plan review. Part II of the First Schedule of the RMA sets out procedural matters for local authorities to follow in dealing with requests for plan changes.

Because of the costly and often lengthy nature of the private plan change process, it is generally used to provide for large-scale developments on large areas of land. Councils and applicants need to work closely together from the start of the process to reduce delays and minimise costs where possible.

Councils normally require very detailed information, and must consider the cumulative effects of private plan changes when making a decision. The impact of existing activities on the proposed development (reverse sensitivity) is an important area for consideration where the plan change request relates to the rezoning of land.

An applicant can request a private plan change at any time, but a change can only be made to an operative plan. When it receives a request for a plan change, a council must decide whether to adopt a plan change, accept it as a private plan change, convert it to a resource consent, or reject it.

Information for private plan changes called-in as proposals of national significance is available on the [Environmental Protection Authority](#) website.

Guidance note

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Context

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Private plan changes are typically initiated to provide for some type of private benefit (usually in financial terms) but invariably also result in public benefits such as an increased rating base, greater choice in living environments, or economic development opportunities. To date, landowners and developers have been the usual applicants for a private plan change.

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When to use a private plan change



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The private plan change process can be used to change any provision (or introduce new provisions) in any district or regional plan. Some examples of how private plan changes could be used include (but are not limited to):

- the rezoning of land to provide for residential expansion or rural residential development, the creation of a business park or a new town development
- rural zone changes to provide for tourist activities and accommodation
- adding an item to the council's heritage list
- amending rules relating to building design controls
- introducing provisions for new utility structures
- replacing development plans that have become out of date
- amending rules referring to standards or other documents that have become out of date
- in conjunction with a resource consent application when aquaculture is a Prohibited activity.

The age or stage of the plan itself can affect the decision to request a private plan change. A private plan change allows an applicant to start seeking a change to outdated provisions immediately, rather than waiting to make submissions on a proposed plan or a plan review.

A private plan change request can be made to a proposed plan, although the Environment Court has held that if approved it cannot take effect until the plan is operative. An instance where this approach might be utilised is if a person missed making a submission to the proposed plan for the activity/change they wished to pursue. It could also be used to persuade council to promote its own variation to the proposed plan.

In all cases, regardless of the focus of the private plan change there is a need to provide sufficient and adequate information to support the change. This can often require quite detailed material to be supplied and can be costly.

Private plan change or resource consent



A resource consent grants permission for an activity, while a private plan change alters the plan itself. A plan change normally provides greater flexibility in terms of development options and long-term management for the developer. However, any change promoted can be amended and regulated through the submission and hearing process.

The RMA does not have specific requirements concerning whether applicants apply for resource consent or a private plan change. The applicant can choose which to apply for, and can also apply for both. However, case law shows that the courts may decide that one or the other is more appropriate. Early guidance from the council is useful.

Table: Contrasting a resource consent and a private plan change

Resource consent	Private plan change
Allows a site-specific activity	Can be either site specific or district wide
Suitable for contained, one-off activities	Suitable for a range of matters that are not provided for within the current plan provisions
Has a specific 'life' or expiry date	'Life' or expiry date is the same as the life of the plan
Attached conditions; more prescriptive	Sets up a long-term management framework
Generally, cheaper and less time consuming application process	Application process can be very costly and time consuming
Must meet the relevant s104 and s105 criteria	Must meet s32 and Part II tests

Timing and costs

The Environment Court has held that a request for a private plan change can be made at any time, but an actual change can only be made to an operative plan. In exceptional circumstances, a council has made a variation to the proposed plan on behalf of a landowner seeking the rezoning of land. A range of case law demonstrates the legal requirements for when changes are made.

The private plan change process usually takes from six months to one year, but it can take as long as three years. Current costs range from a minimum of \$10,000 to \$1M for large-scale developments. Average costs are around \$30,000 to \$50,000 for a rural residential subdivision with minimal opposition. Such costs and processing times may not be significantly different to those associated with a resource consent application for the same activity.

An applicant might ask the council to contribute to the funding of a private plan change request, on the grounds that the development will have some degree of public benefit or has links to council policy.

The private plan change process



1. The applicant lodges a private plan change request with the district or regional council.
2. The council processes the request, can request further information and commission reports if necessary.
3. The council may modify the request with the applicant's permission if appropriate.
4. The council decides whether to adopt, accept, or reject the request, or convert the request to a resource consent.
5. The council publicly notifies a request that it has adopted or accepted allowing submissions and further submissions to then be made.
6. The council holds a hearing where it assesses the request and submissions made and then issues a decision on the request.
7. The council decision is open to appeal to the Environment Court.

The applicant lodges a request for a private plan change

Any person can request a private plan change. The request must:

- be in writing
- explain the purpose of and reasons for the change
- describe any anticipated environmental effects of the proposed change, taking into account the matters listed in the Fourth Schedule of the RMA
- include an evaluation report under s32 for any objectives, policies, and/or rules of other methods proposed.

The applicant can also provide information on:

- the mitigation of adverse environmental effects
- consultation
- site-specific details, including information on services.

Providing this information now can save a lot of time later.

Other steps to consider include:

- Meet with council staff before you lodge the request for a private plan change. Council staff can give you constructive guidance and advice on the following matters:
 - Tell you what information you need to provide to meet council and RMA requirements. Providing this information at the start can reduce delays considerably.
 - Tell you what other plan changes and major resource consent applications have been approved in nearby areas. This will enable you to assess and plan service provision, and identify any issues the community might raise.
 - Refer to other plan changes as a model or example of good practice.
 - Give you contacts and advice on whom to consult.
 - Provide local knowledge on services, constraints and environmental issues.
 - Give you an indication of the likely costs.
- Consult early and consult widely. Make sure you have enough time to work through problems with the parties concerned. Ensure that you document your consultation for the record, including both the process and the outcomes.



- Identify all potential impacts, their causes, and ways to mitigate the impacts.
- Where relevant, make sure that water, sewerage, stormwater disposal, drainage and roading services can be provided for the development, or prepare provisions that will limit development until services are available.
- Prepare a s32 evaluation report in conjunction with advice received from the council, including expert advice to support your analysis.

The council processes the request

After receiving the request for a private plan change, the council can request **further information** from the applicant as per clause 23 of Schedule 1 of the RMA within 20 Working days of lodgement. This additional information can be in relation to the effects and their mitigation, the s32 evaluation report, or consultation, including consultation with tangata whenua. On receipt of the further information the council then has 15 working days to ask for any **additional information** if necessary.

The council can also **commission a report** about the requested private plan change, within 20 working days of receiving the request. The council must inform the applicant about the report. The council would normally pass on the costs of any such report to the applicant and as such it is good practice for the council to liaise with the applicant over the expected cost of the report.

Written reasons must be given for the further or additional information request or for the need to commission a report. The applicant can refuse to provide the information sought, or can refuse to agree to the report being commissioned, and can request that the council proceed with the original request. If the council subsequently considers that there is insufficient information to process the private plan change request, it may reject the request or not approve the plan change sought.

- All additional information or matters of clarification relating to the request should be sought prior to the council making a decision whether to accept the request in whole or in part, convert the request to a resource consent, adopt, or reject the request. The need for further information should be assessed as soon as practicable in the process.

The council may modify the request

The council can modify the request after receiving the further or additional information or commissioning a report. However, the council can only modify the request with the agreement of the applicant.

The council decides on the request

After receiving all the necessary information, the council has 30 working days to decide whether to adopt or accept the request in whole or in part, convert the request to a resource consent, or reject the request.

There are two situations where the Council does not have as much choice in how it deals with a request. One is where the request for a private plan change relates to aquaculture, in this case the council may not adopt the request (s165ZS). The other is when the a private plan change is requested that includes a customary marine title area

in respect of which a planning document has been lodged, in this case the council can only either reject or adopt the request (s93(12)).

At this stage, the council must decide how the request will be dealt with. The decision can be made to process it as a resource consent, or to accept or reject all or part of the request, and if proceeding, determine whether it will continue as a private plan change or adopt it as a council plan change.

1. Accept request

Council has the option of accepting the request in whole or in part and proceeding to notify the request or part of the request.

If the council accepts a private plan change, it agrees that the private plan change can proceed to notification. It remains a private plan change with council administering the legal process and the costs generally borne by the applicant. Once all the submissions and further submissions have been received the council hears the matter and issues a decision.

As a private plan change can only be made to an operative plan, it will not have effect until the plan is operative.

2. Adopt request

If the council adopts a private plan change, it continues through the process as if it was a council initiated plan change. This implies that the council generally supports the change proposal and it will bear the cost of managing the plan change from the date that it adopts it. If the council adopts the plan change, it is notified, heard and decided in the same way as a plan change.

The request must be notified within four months of the local authority adopting the request.

Rules in proposed plans do not have legal effect until after decisions have been made on submission (s86B). The exception to this, where rules have legal effect as soon as the proposed plan is notified, is when:

- an Environment Court order allows a rule in a plan to have legal effect on a different date
- the local authority resolves that a plan rule will have no legal effect until it becomes operative
- the rule protects or relates to water, air, soil (or soil conservation purposes); protects areas of significant indigenous vegetation or significant habitats of indigenous fauna; protects historic heritage or relates to aquaculture activities.

Adopting the plan change proposal:

- gives the council greater control over what is notified
- recognises the extensive work already undertaken by the applicant
- allows the council to work with the applicant to achieve the best outcome
- implies that the council generally supports the proposal

- implies the council will bear the cost of managing the plan change from the date that it adopts it.

Adopting the request can have both advantages and disadvantages associated with it. For example, an advantage is that people may be able to get the council to adopt the change and thereby become responsible for the processing costs. One disadvantage is that if the council adopts the change it then gains complete control of the process, and it is possible that the council could modify or withdraw the request at a later stage without the original applicant having any say in the matter.

Table illustrating differences between adopting and accepting the request

Adopting the request	Accepting the request
The council 'adopts ' the plan change, in whole or in part, as if plan made by local authority	The council accepts the plan change, in whole or in part, as a private plan change
The council bears the costs, although some agreement about cost-sharing may occur	The applicant bears the costs, although there may be some agreement (or council policy) about cost sharing where there is a public benefit/interest
The change is publicly notified, and the procedures set out in Part I of the First Schedule of the RMA are followed	The change is publicly notified, and the procedures set out in Part II of the First Schedule of the RMA are followed
The council is not required to: <ul style="list-style-type: none"> • consult with the applicant when preparing the change for notification • send the applicant copies of submissions • send the applicant a copy of its final decision 	The council is required to: <ul style="list-style-type: none"> • consult with the applicant when preparing the change for notification send the applicant copies of all submissions • send the applicant a copy of the final decision
Unless an Environment Court order or local authority resolution says otherwise - rules protecting or relating to water, air, soil (or soil conservation purposes); areas of significant indigenous vegetation; significant habitats of indigenous fauna; historic heritage; or aquaculture activities have effect on notification s86B.	<input type="checkbox"/> Rules do not have effect until the plan is operative.

3. Convert request to a resource consent

This means that the application goes through the usual resource consent procedures of notification, submissions, hearing, decision, and appeal.

4. Reject request

This decision means that the application does not go ahead in any form. This decision can be appealed to the Environment Court. Furthermore, if the council rejects the notification of the plan change request the applicant could separately make an application for a resource consent. The applicant can also appeal the council's decision if the council converts or rejects the request, or adopts or accepts only a part of the change.

Councils can reject a request for a private plan change, in whole or in part, if:

- the request is frivolous or vexatious
- the council or the Environment Court has dealt with the substance of the change within the last two years
- the change is not in accordance with sound resource management practice, or would make the plan inconsistent with Part 5 of the RMA
- services can't be provided in a sustainable manner
- the plan to which the change is being made has been operative for less than two years.

Case law illustrates that a private plan change request can also be rejected if services cannot be provided at a rate that the community can physically and economically cope with.

5. Withdrawal of request

The applicant can withdraw the request any time before the council makes its final decision. If there is a withdrawal, this must be publicly notified and the reasons for the withdrawal sent out.

Matters for Council to Consider

When deciding whether to adopt, accept, convert, or reject a private plan change, the council needs to consider the integrated effects of the change, how the private plan change impacts on the operative plan's approach to sustainable management, what parties need to be notified of the private plan change and the cumulative effects of all private plan changes in the area. It also needs to assess the environmental effects of the proposal, including reverse sensitivity, and the infrastructure services available.

Councils should:

- Consider the cumulative effect on the surrounding area from the request.
- Examine the proposed change's consistency with the operative plan's direction and framework.
- Examine the proposed change's consistency with any relevant national environmental standards or policy statements, the regional policy statement,



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regional plans, the district plans or proposed plans of neighbouring authorities and regulations made under the [Exclusive Economic Zone and Continental Shelf \(Environmental Effects\) Act 2012](#).

- Determine whether the proposed change is consistent with regulations relating to taiapure or fisheries conservation or management, and planning documents recognised by iwi authorities.
- Take into account any relevant planning document recognised by an iwi authority, and lodged with the council.
- Recognise and provide for the matters in a planning document prepared by a customary marine title group under [section 85](#) of the Marine and Coastal Area (Takutai Moana) Act 2011 to the extent that they relate to the relevant customary marine title area; and take into account the matters in the document to the extent that they relate to a part of the common marine and coastal area outside of the customary marine title area of the relevant group.
- Assess whether the services required to support the change can be provided at a rate that the community can cope with economically and physically.
- Consider if further information is required under s92 including other relevant reports, modification of the private plan change request with permission from the applicant.
- Take a broader view and assess all relevant matters including the potential for reverse sensitivity, impact on amenity, traffic impacts, ecological values, earthworks, runoff effects of the proposal.
- Determine which parties, if any need to be notified of the proposed private plan change.

A council must also assess the private plan change under Part II, including:

- Assessing whether the private plan change will meet the purpose of the RMA (s5)
- Considering matters of national importance under the RMA (s6)
- Having regard to matters listed at s7 of the RMA
- Taking into account the principles of the Treaty of Waitangi (s8)
- Analysing the necessity, effectiveness and efficiency of, and alternatives to, the proposed change (s32).

A council does not need to take transitional plans into account (although it might be prudent to do so).

A council must not have regard to trade competition or the effects of trade competition (s66(3) and 74(3)).

Identification of affected parties by council

Affected parties must be identified when considering the notification of private plan changes.

- A site visit should be undertaken to assist with identifying who may be directly affected.

The process taken to identify affected parties should be a wider approach than that that would be undertaken for a resource consent. In particular, the policy implications and potential impacts on the surrounding community, including interest groups should be taken into account.

Notification decision by council

When making a decision on notification, the council should ensure that:

- the provisions as set out under clause 5(1A) of the First Schedule have been met (clause 5(1C) for regional councils)
- adequate reasoning and conclusions are provided - including the reasoning as to why and why not persons/parties have been identified as being directly affected or not directly affected
- all relevant effects have been taken into account
- all parties identified as being affected by the proposal have been directly notified, and that there is no reliance on indirect notification e.g. via the local newspaper (refer to clause 5(1A) where there is a requirement on the council to send a copy of the public notice to any other person who, in the territorial authority's opinion, is directly affected by the (request) (or clause 5(1C) for regional councils)).

Record keeping and documentation by council

Record keeping and documentation of all decisions and steps is critical in all plan change processes, including the private plan change process.

- Keep file notes or other written records of all conversations and meetings relating to a private plan change application (prior to and after receipt of a private plan change application).
- Keep file notes or other written records of the reasons why the decision was made as to whether to adopt, reject, or accept the proposed plan change.
- Maintain written documentation of the reasoning and conclusions for the notification decision associated with the private plan change application.

The applicant should also maintain good records and documentation, as it is likely that the applicant will hold meetings with other parties that do not always include the council.

Working with the private plan change process

Councils can enable, or facilitate, the private plan change process, and reduce its complexity and length. Councils should work closely with the applicant at all stages.

- Be receptive to private plan changes as a legitimate tool under the RMA. Provide information for applicants and for the general public on how the private plan change process works. The community needs to understand how councils make decisions about private plan changes.
- Involve developers in district growth strategy discussions, to help identify the potential for private plan changes for rezoning.
- Provide training and education for council staff on the private plan change process, and ensure staff are up to date with relevant case law.
- Create a project group or a support team to deal with applications. Applicants will benefit from meeting with all the necessary council staff to share ideas and information. Early guidance can greatly increase the efficiency of the process.
- Deal with requests for private plan changes quickly. Remember that their purpose is to avoid 'plan paralysis'.
- Monitor the time frames and costs of processing the private plan changes, and compare with the time frames and costs in other districts and regions.
- Map all private plan changes for rezoning, to get an idea of where and what development pressures are occurring.
- Monitor the cumulative effects of private plan changes, what kind of changes are being sought, and the overall use of private plan changes in the district or region.

