

Development Rights and Rules

Why do I have to comply with two sets of rules?

Changing plans is a complex legal process and always involves a transition period. When it is released, the PAUP Decisions Version does not replace any of the legacy plans. While all the PAUP Decisions Version rules have 'legal effect' from the time the Council's decisions on the Panel's recommendations are notified, some of these rules may be the subject of legal challenge. It is not until any appeals are resolved, that legacy plans are fully replaced by the PAUP Decisions Version. Until this happens, the provisions of the operative legacy plans will continue to have operative status and consents will still be required to be obtained under them. As a result, two sets of rules will need to be complied with from 19 August onwards until the PAUP Decisions Version rules are 'deemed', or 'made', operative.

What is the difference between a rule having 'legal effect' and being 'operative'?

The RMA sets out when rules have 'legal effect', which is when a decision on a proposed plan is made (i.e. the PAUP Decisions Version). Exceptions to this include when certain rules have immediate legal effect from the date of a proposed plan being first notified (this occurred, for instance, with rules relating to historic heritage, earthworks, stormwater management and mana whenua values).

When a rule in a *proposed* plan has legal effect, this means you need to comply with that rule, or seek consent to breach / infringe it. Consent will also need to be obtained under any rule in a legacy *operative* plan.

Under the RMA, a rule in a proposed plan is treated as 'operative' when it is 'beyond challenge', and then when council makes it operative by way of a public notice. When that happens, any previous rule in an operative plan is treated as inoperative, and consent will no longer be required under the former operative plan rule.

When will the PAUP Decisions Version become operative?

There may be legal challenges (i.e. appeals) to some of the provisions within the PAUP Decisions Version. If there are any outstanding challenges to the PAUP Decisions Version (or parts), those affected provisions cannot be considered operative, and any relevant legacy plan provisions will remain.

Once all appeals against the Council's decisions have been resolved (if any), the PAUP Decisions Version can be:

- potentially 'deemed operative' under the RMA if provisions are beyond challenge; and,
- subsequently, 'made operative' on a date to be determined by the Council, by way of public notice, under the RMA.

The PAUP Decisions Version will not become the "Auckland Unitary Plan" until it has been made operative through a public notification process in accordance with the RMA.

How can I retain my rights to develop under a current legacy district plan?

Some activities and developments can currently be carried out 'as of right', i.e. without the need for resource consent. The best way to protect these rights is to request a Certificate of Compliance under the legacy district plan rules. This has to be made prior to **19 August 2016** (or when the decision on the PAUP is released, if later).

Please note that compliance will also need to be achieved with any other relevant rule in legacy regional plans, as well as rules with immediate legal effect in the PAUP Notified Version. If the request is accepted and a certificate issued by the Council, then the activity that is the subject of the certificate can be carried out without the need for any resource consent.

Alternatively, if you wish to seek resource consent under the legacy plan provisions (and PAUP Notified Version rules with immediate legal effect) only, then you will need to apply for, **and obtain**, resource consent prior to 19 August 2016.

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Resource Consents

If I lodge my resource consent application before 19 August 2016, will it only be assessed against the operative legacy plan rules?

The key factor is if your application is decided **before 19 August 2016**. In that case, it will be assessed against legacy plan rules (and those rules in the PAUP Notified Version with immediate legal effect). Any resource consent that is decided on, and issued, **after 19 August 2016** will need to be assessed against the provisions in legacy plans **and** any PAUP Decisions Version provisions relevant to the proposal.

Legally, the Council, as consent authority, must have regard to relevant provisions of legacy plans and proposed plans, when making decisions on applications, in accordance with the RMA.

If I apply for a resource consent before the PAUP Decisions Version is released, but the consent hasn't been decided on and issued, will I need to apply for other consents?

You may do. As a result of certain provisions in the RMA, the Council is required to also have regard to any relevant provisions of a proposed plan when considering an application for resource consent. This may trigger a need to apply for consent under rules that form part of the PAUP Decisions Version, as they have legal effect from the date of their release.

However, the 'activity status' of your consent is protected to what applied at the time of the application being accepted for processing. For example, if at the time of your application being lodged, the overall activity status was 'discretionary' and the PAUP Decisions Version introduced a relevant rule that the proposal was considered 'non-complying', the overall status would remain as 'discretionary'. You will still need to apply for the additional infringement / reason for consent, but the overall activity status would not be altered.

How will council seek additional information from applicants for undetermined applications (those that not yet assessed and decided)?

Council planners will explicitly seek additional information from you, through written and, where possible, verbal communication. Depending on the scale of the application, the processing planner will make contact with applicants on the following basis:

- Simple applications / 'non-professional' applicants: the processing planner will identify what additional information (including any additional consent requirements) is needed, advise this to you in writing and seek confirmation of the same by return correspondence; or
- Other applications (i.e. complex in scale, professional agents): the processing planner will indicate what types of provisions in the PAUP Decisions Version need to be addressed, and request the applicant/agent to confirm what added consents are required, by way of return correspondence (including any Assessment of Environmental Effects (AEE) amendments / addendums).

And depending on what stage the application is at in the consenting process, the processing planner may seek to use any of the following tools to secure the provision of information:

- Accepting / rejecting applications under s88 of the RMA: over the initial period where both operative and proposed rules have effect, planners will endeavour to adopt a pragmatic approach to ensuring applications can be accepted for processing;
- Request for further information under s92 of the RMA: this can be a request that stops the working day "clock" of the statutory timeframe of 20 days to process a consent (this can only be completed once for any application), or may not stop the clock;
- Timeframe extensions under s37-37A of the RMA: the RMA allows councils to extend timeframes to a maximum of double the standard timeframe without the applicant's agreement but only where special circumstances (including scale and complexity of a particular matter) exist; the RMA also allows for an applicant and council to agree to specific extensions of specific statutory timeframes;
- Seeking additional types of consent under s91 of the RMA: the RMA allows for resource consent applications to cease processing where additional consents (i.e. types of consent, not reasons for consent) are required to better understand an application.

The Department endeavours to ensure that the use of any of these tools is communicated clearly and in advance of their use.

Can I obtain a resource consent under the PAUP Decisions Version only?

Yes, this is possible, but you will need to consider the timeframe within which you wish to carry out your proposed activity. You may not be able to begin any works under such a consent until the PAUP Decisions Version has become 'operative' and the legacy plan rules have fallen away, which will depend on the nature of any appeals lodged against the Council's decisions (if any appeals are lodged).

If I have an existing resource consent, and I need to apply for a variation of that consent, will that application be subject to any rules in the PAUP Decisions Version?

It may do. The provisions in the PAUP Decisions Version may apply to any application to vary a resource consent. In assessing an application to vary a condition of consent, the Council will review the operative plan provisions at the time the consent was granted and will then consider whether any additional consenting requirements exist under the PAUP Decisions Version.