

Practice and Guidance notes

Legacy Resource Consents

This Practice and Guidance note provides guidance on how to assess new activities/changes in use on sites that were originally established under a resource consent granted under a legacy district or regional plan.

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1 Introduction

Many provisions in the [Auckland Unitary Plan \(Operative in part\)](#) (AUP (OP)) contain more enabling provisions than were contained in legacy plans. For example, activities that required a resource consent in the past may now be permitted (in whole or in part) under the AUP (OP). This Practice and Guidance note (PGN) covers situations where activities have already been established via a legacy resource consent (granted before the AUP (OP) became operative) and the consent holder now wants to make changes or carrying out a different activity to take advantage of more enabling AUP (OP) provisions.

This PGN addresses three scenarios where a consent holder holds a legacy consent, where:

1. the activity has changed somewhat but remains the same activity, complies with existing conditions and is similar in character, intensity and scale;
2. the consent holder wishes to carry out a different activity and that activity is permitted *in whole* under the AUP (OP); and
3. the consent holder wishes to carry out a different activity and that activity is permitted *in part only* under the AUP (OP).

2 Background

An activity is enabled under the [Resource Management Act 1991](#) (RMA) by one of the following mechanisms:

- It has a resource consent issued under the current district and regional plan (AUP (OP));
- It is a permitted activity under the current district and regional plan (AUP (OP));
- It has a resource consent issued under a legacy district or regional plan; or
- Where a use later contravenes a rule in the AUP (OP), it has existing use rights by reason of having been lawfully established before the AUP (OP) rule became operative or the proposed plan was notified (e.g., permitted under a previous plan (land use activity) or via a legacy resource consent).

3 Legacy resource consent and new activities

New activities on a site may be established provided they are permitted under the new plan or are provided for by an existing legacy consent. If an activity is not provided for by a legacy consent, or is not permitted under the AUP (OP), then the new activity will either require a new resource consent or a s127 variation to the existing consent (if the new activity remains within scope of the original consent).

Existing use rights

Section 10 of the RMA confers a right to continue certain lawfully established uses of land which contravene a district plan rule, which subsequently comes into force. If a district land use activity which now contravenes an AUP(OP) rule was approved by way of a legacy consent, then an applicant may be able to demonstrate under s10 of the RMA that the activity was “lawfully established” because the legacy consent was granted before the relevant AUP (OP) rule became operative. The existing use rights regime under the RMA¹ (i.e., s10 and s10B) provides for some changes in use to happen over time providing the effects of that use remain the same or similar in character, intensity and scale to that which existed before the AUP (OP) rule became operative. Additional requirements must also be satisfied. These are that an activity should comply with the terms of the legacy consent and that the use has not been discontinued for a continuous period of more than 12 months after the AUP (OP) rule became operative. Existing use rights may also be lost if the activity becomes a permitted activity and ceases to rely on the legacy consent. Whether existing use rights apply will need to be determined on a case-by-case basis. Note that the existing use regime for the use of the surface or water in lakes and rivers and regional rules are very different and more limiting than that for district rules.

New activity fully permitted

If the new activity is fully permitted under the AUP (OP) and complies with all relevant activity rules and associated standards, the legacy consent is no longer required and the consent holder may apply to a consent authority to surrender the consent, either in whole or part under s138(1) of the RMA². Note that a consent authority may refuse to accept the surrender of part of a resource consent where it

¹ Existing use rights under s10 do not apply to the contravening of rules in a regional plan (or regional rule identified in the AUP (OP)), national environmental standard or the coastal marine area. However, under certain limited circumstances ss10A and 20A provide for existing uses to operate lawfully until a rule in a proposed plan becomes operative. This provides a ‘window’ during which the operator of an existing activity can take appropriate action to obtain a resource consent or discharge permit. For more information, see the CPM Chapter on “Existing Use Rights”.

² Section 138 Surrender of consent under the RMA. Further information on how to surrender a consent can be found on the Auckland Council website [here](#).

considers that it would affect the integrity of the consent; or affect the ability of the consent holder to meet other conditions of consent; or lead to an adverse effect on the environment. In some cases, there may be one-off or ongoing requirements in the legacy consent that need to be met before that consent can be surrendered. A consent holder remains liable for any breach of conditions of the consent which occurred before the surrender of the consent and to complete any work to give effect to the consent unless the consent authority directs otherwise in its notice of acceptance of the surrender.

New activities not fully permitted

Sometimes the AUP (OP) has changed the activity status of an activity so that it is now permitted, but the legacy consent is still required for other reasons under the AUP (OP); for example, building height, landscaping shortfall, stormwater etc. In these cases, the applicant will need to rely on their legacy consent for these parts of the activity unless a new consent under the AUP (OP) is sought. Whether or not they can rely on that consent for the new activity will depend on the nature of the consented activity, its compliance with the legacy consent conditions and whether the effects of the new activity are the same or similar in character, intensity and scale to the original activities approved by the legacy consent.

For example, consider the following scenario: A legacy consent was granted for a retail activity in a business zone. The reasons for consent related to the retail activity itself, the building height and landscaping shortfall. The consent holder wants to change the activity to an office, which is now permitted in the AUP (OP). There are no changes to the physical layout of the site, including the building, car parks or landscaping. However, the activity is not fully permitted under the AUP (OP) as resource consent is still required for the over height building and for the shortfall in landscaping. Provided the effects on the use of the existing building for offices are the same or similar, then the owner could rely on the resource consent for the building and landscaping shortfall. The office activity is permitted, and the effects associated with the landscaping shortfall and building have already been considered and been approved under the legacy resource consent. Hence a new consent or variation to legacy consent is not required.

If however the new business activity (in this case the office activity) requires a consent under the AUP (OP), along with some of the components of the activity (for example landscaping and building height), then in this scenario the new activity may not be able to rely on the legacy consent as the new “office” activity is different to that of the consented “retail” activity.

4 Process for checking if a new or changed activity is allowed when a legacy consent exists

Step A - Check the legacy resource consent

- Is the new/changed activity provided for in the legacy consent?
- Does the new/changed activity comply with legacy consent conditions and can it be undertaken without any changes to conditions?
- Are the effects of the new activity the same or similar in character, intensity and scale to the activity approved under the legacy consent?

If the answer to all the above is yes, then the new activity can be undertaken under the legacy consent and there is no need to proceed to Step B below.

Step B - Check the AUP (OP)

- Is the new/changed activity permitted in the AUP (OP) - including all relevant standards (e.g., building height, yards etc) and other relevant plan provisions (e.g., access, noise etc) that relate to the new activity? If yes, then the new activity can proceed as a permitted activity. If the land use covers multiple activities and ownership units (e.g., unit titles) other matters may need to be considered. See the note below ³.
- If the new/changed activity is permitted but associated components such as landscaping still require a consent under the AUP (OP), does the new/changed activity comply in all respects with the consent conditions and are the effects of the new activity the same or similar in character, intensity and scale to the activity approved under the legacy consent? If yes, then the new activity can proceed being authorised under the AUP (OP) (in part) and the legacy consent (in part).
- If the new/changed activity requires a consent under the AUP (OP), (i.e., the new/changed activity does not comply with the terms of the legacy consent) then either a new consent or a s127 (if in scope) to the legacy consent will be required.

³ Note that the activity needs to be considered in the whole – not just that portion of the site/building that is for the new activity. Look at the other components related to the change, for example the existing building, landscaping, parking and access etc – do any of these matters require a consent under the AUP (OP)? If there are multiple tenancies, units or activities on the site, these activities may need to be considered as well unless the new activity and its associated components can be completely separated from the other activities on site. Are the other activities on site permitted now by the AUP (OP) or do they still require consent? If they do require consent, is it appropriate that the new permitted activity and effects associated with it can be separated from the other activities?

5 What information is required to check if a new activity is allowed?

The following information will be required to check if the new activity is allowed:

Legacy consent

- The approved plans
- The resource consent and conditions
- Further reference may also be required to the planner's report, and other application material.

The new activity

- A new plan showing the new activity including any associated activities e.g., parking, access etc.
- A description of the new activity
- An assessment done by the consent holder on how the new activity is allowed (i.e., permitted under the AUP (OP), allowed by the legacy consent, or was a permitted activity under the legacy plan).
- Record of Title (previously referred to as certificates of title) and any other legal arrangements that govern the use of the site and are required for that new activity to take place (for example parking areas, access, loading bays etc).