

Resource Consent Holder - FAQs

Planning rule background

The Auckland Unitary Plan has different sets of rules for properties located in special character areas.

Under the Unitary Plan, all land in Auckland (residential, business, coastal) has a zone with rules to manage how these different areas are used, developed or protected, including what you can build and how high.

Examples of zones include Single House, Mixed Housing Urban, Terrace Housing and Apartment.

In addition to the zone rules, some areas have unique features where an additional set of rules apply, over the top of zoning rules, to retain and manage these features. These are called Overlays and there are seven different types. Examples include overlaying rules for volcanic view shafts, significant ecological areas and special character.

The rules for properties located within both Special Character Overlays and Single House Zones have different standards. For example, yard, height-in-relation to boundary and building coverage requirements. The Special Character Overlay provides more generous building envelopes for special character properties which traditionally have narrow sections with houses built close to the boundaries.

When the Auckland Unitary Plan became operative in part in November 2016, the final wording of these two sets of rules created some uncertainty about which should take precedence, given that the rules were, in places, inconsistent.

The council's approach was that the Special Character Areas Overlay rules took precedence over the underlying zone rules. As a result, only streetscape and special character effects were considered but not wider amenity effects on the environment which include different height, bulk and setback controls.

This approach was consistent with external legal advice obtained by the council on which rules should apply when determining resource consent applications in Special Character Overlay and Single House Zone areas between December 2016 and December 2017. Even with that legal advice, the council received a number of queries and concerns about how to apply the rules.

What further steps were taken to resolve the issue?

To provide certainty to applicants around which rules should take precedence, Auckland Council sought a declaration from the Environment Court to clarify the correct rule interpretation

In December 2017, the Environment Court agreed that the relevant Unitary Plan rules were not clear and thanked the council for seeking a declaration to clarify the issue.

However, the Environment Court did not agree with Auckland Council's approach and ruled that both the Special Character Areas Overlay rules and the underlying zoning controls must apply when considering resource consent applications.

What does this mean for my property?

Because Auckland Council did not consider the underlying Single House Zone rules when determining your resource consent application, there is a risk that your resource consent could be cancelled by the High Court.

This could occur if an application to the High Court is made by an interested party (for example, a neighbour), for a judicial review of your existing resource consent.

Your resource consent remains valid, but it is at risk of legal challenge.

The council is also legally required to place a note on the Land Information Memorandum (LIM) report for your property. This will remain until you have obtained a new resource consent that has considered all the relevant Auckland Unitary Plan rules. A copy of the wording of the LIM notice is attached.

Does this mean my resource consent is wrong?

There is no simple answer to this question and each case will depend on its particular facts. All we can say at this stage is that your consent could be cancelled by the High Court should a judicial review application be made (say by a neighbour) as the council did not follow the correct process when granting the consent.

It is important to note that our analysis indicates that for the majority of consent holders, updating their resource consent should be relatively straight-forward.

Who is affected by this issue?

In total 423 resource consents are potentially affected.

As one of these resource consent applicants, Auckland Council is urging you to apply for a new resource consent that will address all relevant Unitary Plan rules regarding your property, including the underlying residential zone rules. The council will waive all processing and pre-application fees when you apply for a new resource consent.

If you have begun building works then Auckland Council strongly recommends that, after making the building safe and weathertight, you cease work on the property until you have obtained independent legal advice and discussed your consent with us.

Why did the council not contact me sooner?

The Environment Court issued its interim decisions on 19 December 2017, from which time Auckland Council implemented the correct approach. The Court's final decision was in March 2018.

Auckland Council began addressing affected resource consents on an individual case-by-case basis. The council also obtained external legal advice on the legal status of existing consents and the correct approach to managing the issue and carried out a detailed analysis of the affected consents cross-referenced with building control records to prioritise those for urgent action.

In addition, the council needed to prepare a detailed report for the Environment Court that required a detailed review of the Auckland Unitary Plan to understand what Plan changes are required following the Court's declaration.

Will other consents be affected in the future?

No, because Auckland Council immediately changed its resource consents practice in December 2017 once the Environment Court issued its decision.

What should you do now?

Auckland Council strongly recommends that you:

- Contact the council's planning team to discuss the specific issues related to your consent (see contact details below).
- Seek independent legal advice.
- Apply for a new resource consent as soon as possible. Auckland Council can then address all of the relevant planning matters, including consideration of the underlying zoning rules for your property.
- Do not progress with your Building Consent application or begin work on the property until you have a new resource consent. You must instruct Auckland Council to stop processing your Building Consent application otherwise we are legally required to process it.
- If you have begun work on the site, make the building safe and weathertight and cease work on the property until you have obtained independent legal advice.

All resource consents are different and must be assessed on an individual case-by-case basis. How this issue affects you and the course of action that may be required will depend on a variety of factors, such as the scale of works, the extent of any effects, and whether you have written approval from your neighbours.

How can the council help?

Auckland Council will help you manage this issue as best as we can, this may include:

- All processing and pre-application fees waived for your new resource consent application.
- Working with you to amend your design to reduce any amenity impacts of your proposed development, and then re-apply for a new resource consent.
- If needed, the council will facilitate mediation between you and neighbouring property owners which may involve modifications to designs and new resource consent applications.
- Reducing the effort of obtaining a new resource consent.

Please contact us on our dedicated phone number on 021 507 546 or email overlay@aucklandcouncil.govt.nz with any questions you may have about your current resource consent.

If I choose not to update my resource consent, will the council sign off the existing resource consent when my development activity is complete?

Your existing resource consent does remain valid and it will be signed off once conditions of that consent are completed. The council is legally obliged to do this.

However, the attached LIM notice would still apply on the property. The LIM is a summary of all information that is held about your property and is publicly available upon request.

The council strongly recommends that you apply to have your existing resource consent updated with a new resource consent application so that the LIM notice can be removed and so that your resource consent is no longer at risk of being cancelled by the Court.

Will the council be held responsible if my development is affected?

Every resource consent is unique in what it seeks to do on an individual property and the impacts of this issue vary substantially across all affected resource contents. Auckland Council will assess each resource consent on an individual case-by-case basis.

We acknowledge that both the applicant and any affected neighbours are in a difficult situation. We will help you manage this issue as best as we can, including through facilitating mediation or providing planning guidance.

Why is information being included on the LIM report of my property?

A LIM report is a summary of all information that a local authority has about a property. Under the Local Government Official Information and Meetings Act 1987 the council must ensure the LIM report accurately reflects the consent position and notices relating to a property.