



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

A DRAFT GUIDE TO

# Collaborative planning processes for designations, heritage orders, and notices of requirement

UNDER THE RESOURCE MANAGEMENT ACT 1991

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This document may be cited as: Ministry for the Environment. 2017. A draft guide to the *collaborative planning process for designations, heritage orders, and notices of requirement under the Resource Management Act 1991*. Wellington: Ministry for the Environment.

Published in June 2017 by the  
Ministry for the Environment  
Manatū Mō Te Taiao  
PO Box 10362, Wellington 6143, New Zealand

ISBN: 978-1-98-852505-1  
Publication number: ME 1312

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# About this guidance

The Resource Management Act 1991 (RMA) collaborative planning process under Part 4 of Schedule 1 is available for all planning matters. This includes district plan reviews containing designations and/or heritage orders, or any plan change that may consider notices of requirement. For a thorough discussion on designations, heritage orders or notices of requirement, what they are and their processes, see the [Quality Planning website](#).

This document provides guidance on the legislative requirements under section 170 (Part 8); Schedule 1 Part 1 – clause 4, and Schedule 1 Part 4 – clauses 37, 38, 40, 41A, 46, 54, 55, 57, 60, 61 of the Resource Management Act.

This guidance is intended for use by territorial authorities considering, or undertaking, a collaborative planning process to review, prepare or change a proposed plan, which will include addressing designations, heritage orders or notices of requirement. It will also be of use to requiring authorities, where a collaborative planning process is about to begin, when considering whether or not to be part of the collaborative group.

This guidance on designation/heritage orders and notices of requirement should only be read in conjunction with the full [collaborative planning process guidance](#).

Both guides are being released initially as drafts as we welcome your feedback or suggestions. If you would like to provide feedback please email [info@mfe.govt.nz](mailto:info@mfe.govt.nz). The guides will be finalised in June 2018.

# Addressing a notice of requirement through a collaborative planning process

A notice of requirement (an application for a new designation) can now also be done through a collaborative planning process – but only if the requiring authority agrees to be part of the collaborative group.

If the requiring authority does not want to be part of a collaborative group, then the designation cannot be considered through a collaborative planning process and must be addressed using one of the other processes available under the RMA. If the requiring authority does agree to be part of the collaborative group, then the process of considering the notice of requirement (including the decision-making and appeals) will be as provided by the collaborative planning process in Part 4 of Schedule 1 (see figure 1).

There are two possible timings for introducing a notice of requirement into a collaborative planning process. The first is similar to what is currently provided for in section 170 of the RMA, where a territorial authority receives a notice of requirement within 40 days of publicly notifying a proposed plan. In the collaborative planning process case, it would be 40 days before the public notice of the intent to undertake a collaborative planning process. The second timing option is any time in the period following the public announcement to undertake a collaborative planning process but prior to delivery of the collaborative group report – however this must be with the joint agreement of the collaborative group, territorial authority and requiring authority.

The ability for the requiring authority to withdraw the requirement at any time through the process remains (s168(4)).

# Addressing existing designations through a collaborative planning process

If a territorial authority decides to undertake a 10-year plan review using a collaborative planning process, there will be multiple existing designations/heritage orders to be carried over (with or without modification).

The current RMA process for considering designations and/or heritage orders through a planning process provides a unique decision-making role for the requiring authority or heritage protection authority. The legislative framework for consideration of these aspects within a collaborative planning process enables designations to be included and addressed, while providing flexibility on the decision-making and appeals parts of the process. The requiring authority has discretion over the decision-making and appeals process used, which is driven by their choice to be on the collaborative group or not.

To provide flexibility, there are two decision-making pathways for designations/heritage orders, which can occur in conjunction in the same planning process. The pathway used will hinge on whether or not the requiring authority/heritage protection authority agrees to be a member of the collaborative group.

While the requiring authority/heritage protection authority cannot veto a council's decision to use a collaborative planning process that includes their designation or heritage order, they do have discretion as to whether they will participate on the collaborative group.

Where a requiring authority/heritage protection authority **agrees** to be a member of the collaborative group, then the decision-making and appeals process of the collaborative planning process will apply (see figure 2).

But where a requiring authority/heritage protection authority (or authorities) **declines** to be part of a collaborative group, the requiring authority/heritage protection authority would retain their final decision-making role, as is currently provided for under Part 1 of Schedule 1 (on those parts of the plan).

In this situation the collaborative group could still consider the designation/heritage protections order (if the territorial authority includes it in the terms of reference (clause 4(2B)(a)). The review panel may recommend changes but only if there are modifications and submissions. If changes are recommended the review panel must seek comment from the requiring authority/heritage protection authority indicating whether or not they support the changes. These comments must be included in the review panel report with recommendations to the council (clause 54).

At this point, in accordance with clause 4(2B)(d) of Part 1 Schedule 1, the council decision on the review panel recommendations must go to the requiring authority/heritage protection authority for a final decision (clause 9) and it is this decision that would go in the plan (clause 13). Merit appeals on the designations would be available under Part 1 of Schedule 1 (see figure 3).

Note that both decision-making processes could occur together within a collaborative planning process.

## Inclusion on a collaborative group

It is compulsory for the territorial authority to invite relevant requiring authorities or heritage protection authorities to be part of the collaborative group (clause 40(1)(e)); however, participation by the requiring authority/heritage protection authority is optional (except for a notice of requirement– where if they are not members of the collaborative group the notice of requirement must be considered via another avenue other than a collaborative planning process). If they wish to be represented on the collaborative group, a requiring authority/heritage protection authority must nominate a member and this person must be appointed to the group and adhere to the terms of reference (clause 4).

A requiring authority/heritage protection authority may withdraw from a collaborative group (at any time up to delivery of the collaborative group report). For existing designations or heritage orders, withdrawal from the collaborative group means the decision-making process on the designation will revert from that of the collaborative planning process (Part 4 of Schedule 1) to the requiring authority/heritage protection authority making the final decision with full merit appeals (Part 1 of Schedule 1). For new requirements, withdrawal from the collaborative group means the designation or heritage order can no longer be considered under the collaborative planning process.

The territorial authority is also required to invite representatives of land owners and occupiers likely to be affected by a designation, or any other affected persons they identify to be involved. But the council has discretion on the final membership – including who and how many are appointed to the collaborative group. This will apply to both existing designations and a notice of requirement (clause 40(2)).

# Consensus vs no consensus for a notice of requirement

For a notice of requirement to be considered by a collaborative group, a requiring authority representative **must** be a member of the collaborative group. By agreeing to be a member of the collaborative group the requiring authority accepts that the process and decision-making in Part 4 of Schedule 1 will apply to consideration of the notice of requirement.

## Consensus

Where consensus recommendations are reached that vary the notice of requirement, these must be “given effect to” in the proposed plan. Note that the consensus position might be to include the notice of requirement as notified by the requiring authority (ie, unchanged). The proposed plan is notified and submissions received. The review panel can hear submissions and consider the notice of requirement. The review panel can recommend changes; however, these would have to go back to the collaborative group (which includes a requiring authority member) for comment, and whether they agree, disagree, or agree with modifications, and this would be recorded in the review panel report.

In reality, the requiring authority and the collaborative group might confer together to moderate the final recommendation from the review panel so consensus recommendations can be reached between the review panel and the collaborative group for inclusion in the review panel report.

The review panel then provides their report to the council, and the council’s decision coupled with the collaborative group’s view on any changes by the review panel will influence what appeals are available (see below for the three possible scenarios, and figure 1).

1. Consensus – review panel recommends changes – collaborative group and requiring authority agree – council accepts recommendations – appeals on points of law only.
2. Consensus – review panel recommends changes – collaborative group and requiring authority agree – council declines recommendations – appeals by way of rehearing and points of law.
3. Consensus – review panel recommends changes – collaborative group disagrees – no matter whether council accepts recommendations of the review panel or not, there will be rehearing appeals on the notice of requirement.

## No consensus

Where consensus recommendations are **not** reached on the notice of requirement, then the notice of requirement, *as sought by the requiring authority*, is included in the proposed plan. The proposed plan is then notified, submissions and further submissions are called for. The review panel can hear submissions and consider the notice of requirement, and could recommend changes. However, these would have to go back to the collaborative group and requiring authority for comment. Whether the group agrees, disagree, or agree with modifications would be recorded in the review panel report.

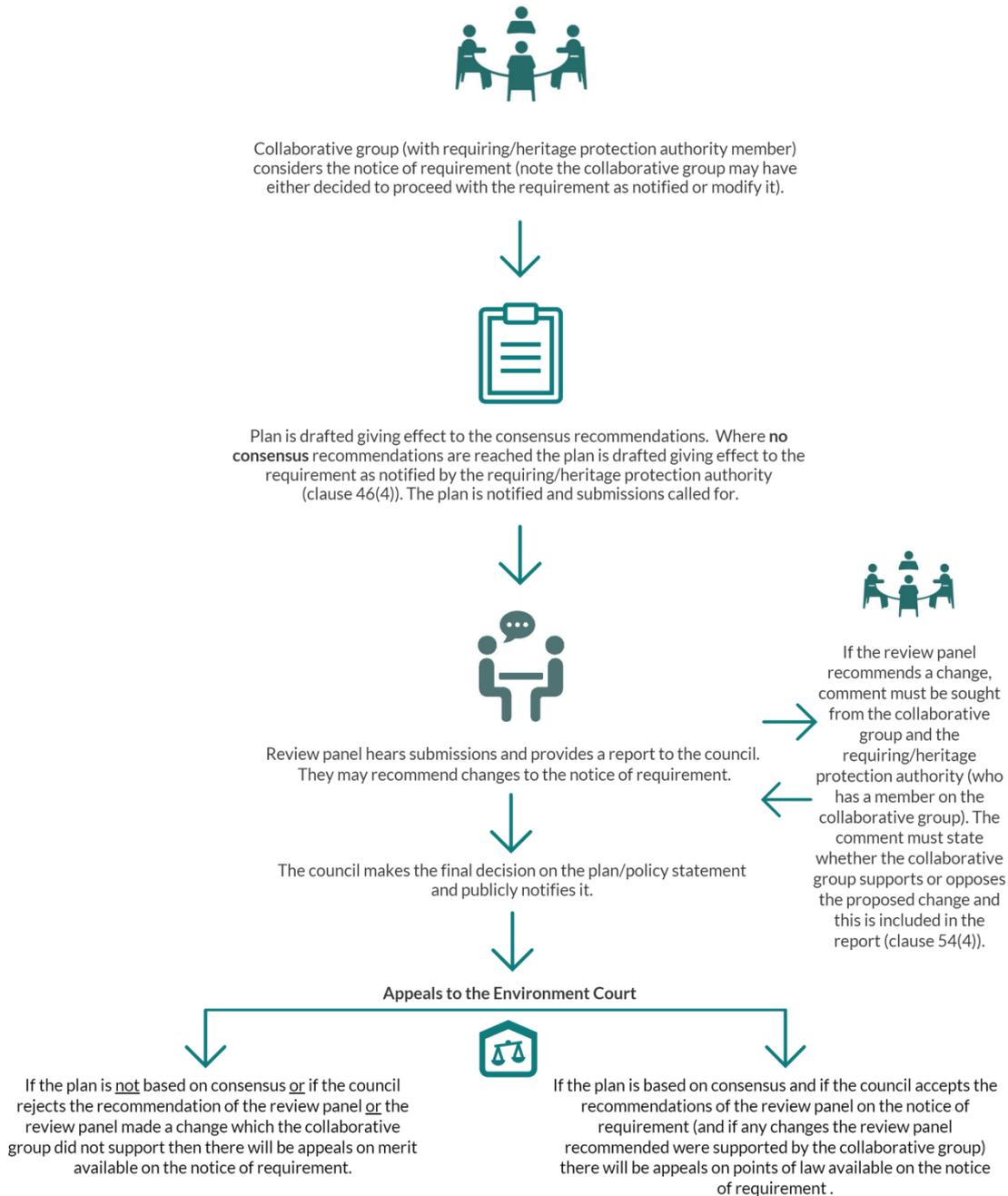
Where the collaborative group or requiring authority disagrees with the changes recommended by the review panel, then no matter what the council chooses, appeals by way of rehearing will be available. Where the collaborative group and requiring authority agree with the changes then appeals on points of law will be available.

1. No consensus – review panel recommendations that change the notice of requirement – collaborative group or requiring authority **disagrees** – no matter whether council accepts recommendations of the review panel or not, there will be rehearing appeals on the notice of requirement (see figure 1).
2. No consensus – review panel recommendations that change the NOR – collaborative group and requiring authority **agrees** – if the council accepts recommendations of the review panel there will be appeals on points of law available on the notice of requirement (see figure 1 below)

Figure 1: Notice of requirement

## Collaborative Planning Process - Notice of Requirement

A requiring/heritage protection authority member must be on the collaborative group (consideration of the requirement follows the collaborative planning process outlined in Part 4 Schedule 1 of the RMA).



# Consensus vs no consensus for designations and heritage orders

A plan will have multiple existing designations and heritage orders in it. Where a plan change is occurring as part of a 10-year review, a requiring authority must signal that it wants the designation to be 'rolled over' and included in the plan review if it wants the designation to continue (it is automatic for a heritage order), but participation by the requiring authority/ heritage protection authority in the collaborative planning process is optional. This allows for a situation where some requiring authorities/ heritage protection authorities may be involved and others not. The final decision-making and appeals process is determined by whether or not the requiring authority/ heritage protection authority is part of the collaborative group.

Where the requiring authority/ heritage protection authority is on the collaborative group, the collaborative planning process applies to the whole process of consideration of the designation. Where they are not, then the review, submissions and hearing stages of the collaborative planning process in Part 4 applies, but after the review panel hearing, Part 1 of Schedule 1 processes take over. This means the requiring authority/ heritage protection authority maintains the final decision-making role and merit appeals are available on the designation.

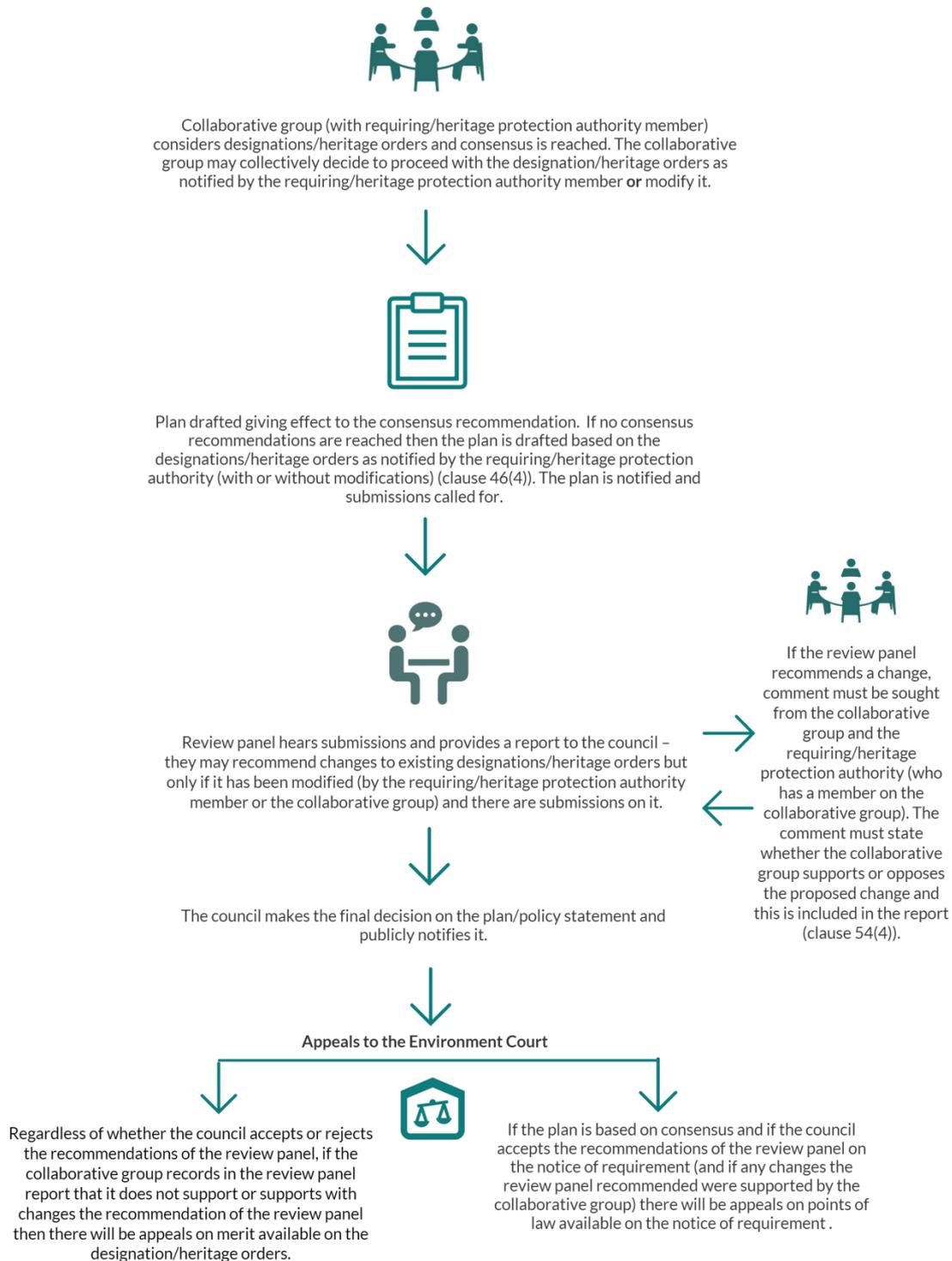
See figure 2 for where the requiring authority is **on the collaborative group**, and the process for both consensus and non-consensus recommendations.

See figure 3 for where the requiring authority is **not on the collaborative group**, and the process for both consensus and no consensus recommendations.

**Figure 2: Designations/heritage orders: a requiring authority member is on the collaborative group**

## Collaborative Planning Process

Designations/heritage orders when a requiring authority member is on the collaborative group



  
 If the review panel recommends a change, comment must be sought from the collaborative group and the requiring/heritage protection authority (who has a member on the collaborative group). The comment must state whether the collaborative group supports or opposes the proposed change and this is included in the report (clause 54(4)).



**Figure 3: Designations/heritage orders: a requiring authority member is not on the collaborative group**

## Collaborative Planning Process

Designations/heritage orders when a requiring/heritage protection authority member is not on the collaborative group



Collaborative group may still consider designations/heritage orders if it is within the terms of reference. Where consensus is reached the collaborative group may have either decided to proceed with the designations/heritage orders as notified or modify it.



Plan drafted giving effect to the consensus recommendation. If no consensus recommendations are reached then the plan is drafted based on the designation/heritage order as notified by the requiring/heritage protection authority (with or without modifications) (clause 46(4)). The plan is notified and submissions called for.



Review panel hears submissions and provides a report to the council – they may recommend changes to an existing designations/heritage orders but only if it has been modified (by the requiring/heritage protection authority member or consensus recommendations of the collaborative group) and there are submissions on it (clause 54(5)).



The review panel must seek comment from the requiring/heritage protection authority and include this in their report (clause 54(4)).

Part 4 Schedule 1



Part 1 Schedule 1

**The decision-making process and appeals for designations/heritage orders in Part 1 Schedule 1 now applies on those parts of the plan .**



The council provides the review panel report and recommendations on the designations/heritage orders to the requiring/heritage protection authority and they make the final decision (clause 55).



Appeals on merit are available on those parts of the plan (clause 60(1)(c)).