

Private Plan Changes

The Resource Management Act 1991 (RMA) allows anyone to seek changes to the district plan through a request for a private plan change. Requests for private plan changes enable proposals to be tested through the RMA process, and allow applicants to initiate change without waiting for a plan review.

An applicant can request a private plan change at any time, but a change can only be made to an operative plan. A council can decide to adopt a plan change as their own, accept it as a private plan change, convert it to a resource consent, or reject it for a number of reasons including the proposed plan having been operative for less than two years.

Changes to district plans allow any plan provisions to be replaced and/or new provisions introduced. Requests for private plan changes potentially enable a wide range of changes.

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.

The main advantage of a private plan change, as opposed to a Council-initiated plan change, is that a private individual can set the agenda and the start time. In all other respects, a private plan change is much like any other change to a plan.

When to use a private plan change

The private plan change process should be used when wanting to change the zoning of a specific site or area, or change any provision (or introduce new provisions) in any district plan. It allows an applicant to start seeking a change immediately, rather than waiting to make submissions on a proposed plan or a plan review. A plan change request can be made to a proposed plan, although if approved it cannot take effect until the plan is operative. 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 a specific proposal, while a private plan change may provide for a range of activities or alter specific provisions within the plan itself. A plan change may provide

greater flexibility in terms of development options over the life of the District Plan, whereas a resource consent is normally for a specific proposal to be given effect to within a specific period (normally five years). 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.

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, large scale or district wide
Suitable for contained, one-off activities	Suitable for a range of activities, or that may affect more than one site (have a wider scope)
Has to be given effect to within a set period of time	"Life" or expiry date is the same as the life of the plan, although can be subject to plan review, or other plan changes
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 comply with s105 and other criteria	Must meet s32 and Part II tests

Table: Commonalities between a resource consent and a private plan change

Resource consent and Private plan change
Require assessment of effects
Applicant needs to meet the costs of the process, except where the private plan change is adopted by Council
Both processes may be subject to submissions and/or appeals

Timing and costs

The private plan change process usually takes from six months to one year, but it can take as long as three years. The Ministry for the Environment's *Private Plan Change Report (2000)* indicated that costs range from a minimum of \$10,000 to \$1M for large-scale developments, and \$30,000 to \$50,000 for a rural residential subdivision with minimal opposition.

The Private Plan Change Process

Request lodged (clauses 21 and 22)

- Must be in writing
- With purpose and reasons for change
- Environmental effects where anticipated must be described
- S. 32 report required
- Can be withdrawn (clause 28)

Local authority can require **further information** by written notice under clause 23(1) on:

- Nature of request including environmental effects
 - Mitigation of adverse effects
 - Benefits and costs
 - Efficiency and effectiveness
 - Alternatives
 - Nature of consultation
- 20 days*

No additional information required

Local authority may request **additional information** (clause 23(2))

15 days

Local authority can **commission a report** (clause 23(3)) (must notify the applicant that the report has been commissioned)

15 days

Local authority may **modify the request** (clause 24) (needs the applicant's agreement)

Local authority **considers the request** (clause 25)

30 days

Rejects the request (clause 25(4)) if:

- Frivolous or vexatious
- Substance dealt with by Environment Court within last two years
- Not in accordance with sound resource management practice
- Request would make plan inconsistent with Part V
- Proposed plan has been operative for less than two years

Adopts the request in whole or in part
Part I of the First Schedule applies (preparation and change of plans by local authorities)

- Change must be notified within four months of adopting the request
- Request has effect once publicly notified
- Follows normal plan change procedures

Accepts the request in whole or in part
Local authority prepares the change in consultation with the requester

- Change must be notified within four months (clause 26)
- Clause 29 sets out the procedures that apply

Can **convert to a resource consent Part VI of the Act applies** (resource consents)

- Normal resource consent process applies:
- Notifications
 - Submissions
 - Hearing
 - Decision
 - Appeal

Local authority can **decline, approve, approve with modifications** the change and must give reasons

Can **appeal** to Environment Court within 15 days, or High Court on matters of law

NB: All clause references relate to the First Schedule of the RMA