

3.6 Land and route protection

3.6.1 Introduction and issues

Coordinating long-term transport provision with land use change

Regional and local growth strategies will typically provide a framework for growth and development over a long time period (20-30 years). A key objective of such strategies is the delivery of transport infrastructure in time to support planned development. The NSHS also adopts a long term view for the development of the state highway network.

This long term approach means that both development and supporting transport infrastructure may be planned many years before they are delivered. This long term planning often extends beyond Transit's 10-year funding framework for major investment in state highways.

Safeguarding

Once the need for and approximate alignment of, a future road or road upgrade are known, it is often important that the required land is "safeguarded" – i.e. protected from incompatible development until the road/upgrade can be built. Development on land required for the road may lead to sub-optimal route choice, reverse sensitivity effects and/or significant increases in cost in order to acquire the land required for the project and provide additional mitigation. It may even make the road project undeliverable, thus compromising the success of integrated planning.

Designation

Designation of the land required for a future road project in a district plan under the RMA provides a mechanism for Transit to safeguard the land, while at the same time securing authorisation to construct the project and assisting the Crown to exercise land acquisition powers if necessary. Designations for future road projects can have a long lapse period (up to 30 years or more), providing long term protection. However, many have much shorter lapse periods and sometimes just the statutory default lapse period of five years. Designations with short lapse periods provide less certainty for all parties.

Stage at which a designation is sought

Normally designations are sought when Transit has developed a project to a significant level of design detail. Having such a level of detail allows the environmental effects of a project to be assessed accurately.

This detail may not be available at an early stage of a project, as funding for detailed design is typically not available until the project is in the State Highway Forecast. However, obtaining a designation early in the project lifecycle may be possible, particularly where the intention to pursue that project is already recognised in regional or territorial authority planning documents. It may be advisable to seek such an "early designation" where there is significant development pressure in the surrounding area.

3.6 – Land and route protection

Land acquisition

Advanced land acquisition provides another mechanism of safeguarding the land required for future road projects. While the Crown can purchase land on the open market it can be more difficult for the Crown to exercise powers to compulsorily acquire land if no designation for the project is in place and Transit generally does not request the Crown to do so.

Planning documents

Once a proposed road project has been identified in consultation with local authorities and the RLTC, embedding it in the relevant regional policy statement, RLTS, district plan and LTCCP will help to safeguard the required land. In particular, regional policy statements and district plans can contain policies and rules that restrict incompatible development on the route and seek to ensure that development adjacent to the required land is compatible with the long term operation of a state highway.

Potential effects of identification of future road projects

When the intention to pursue a road project is recognised in local authority planning documents or the land has been designated:

- the value of land adjacent to the land required for the project may fall due to perceptions of the potential environmental impacts of the project when it is constructed (although land values may rise elsewhere as a result of expectations that the project will be constructed);
- there may be a disincentive for the owners of the land that has been identified for a future road project to invest in improvements; and
- in addition, where the land has been designated, landowners and occupiers require Transit’s prior written consent before doing anything that would prevent or hinder the project.

Reducing uncertainty

Conversely, safeguarding the land required for a road project through the designation process reduces uncertainty over the proposed route and alignment. It is also an indication of Transit’s commitment to a project, which can help to reduce community uncertainty.

Future-proofing

When safeguarding the land required for a future road project it is important that a wide enough strip of land is protected to accommodate uncertainties in alignment, possible future requirements such as the need for additional road space for multi-modal transport (e.g. bus lanes), any land required for the construction of the project and any land required for environmental mitigation measures and safety measures such as clear zones. It may also be appropriate to seek to designate additional land “*where a restriction is reasonably necessary for the safe or efficient functioning or operation*” of the project.¹¹

Limited Access Roads and segregation strips

The future status of a state highway as motorway, Limited Access Road and/or the purchase of additional non-designated land for a segregation strip, are considered in the early stages of planning a new state highway (refer sections 3.2 on motorways and 5.2.4.7 on access management).

¹¹ Section 168(2)(b) RMA.

3.6 – Land and route protection

3.6.2	Land and route protection policy
	<i>Transit will implement the Integrated Planning Policy by giving effect to this supporting policy:</i>
Recognition in planning documents	Transit seeks early identification of proposed new state highways or significant improvements to existing state highways in regional and district planning documents to identify and protect the land.
Designation	<p>All existing and new state highways are to be designated, unless there are exceptional circumstances that make it inappropriate to do so.</p> <p>Transit will obtain statutory authorisation for the land use element of proposed road projects from designations. Designations for limited purposes, such as “investigation” purposes only, will not be pursued.</p> <p>Transit will lodge a notice of requirement for a new designation or to amend an existing designation for the purposes of a proposed road project around five to seven years before the expected start of construction. However, where there is considered to be a significant risk that the land required may be compromised by new development before the project can be constructed, earlier designation will be considered.</p> <p>Transit seeks designation lapse periods long enough to cover the period from inclusion of the designation in the relevant district plan to the project becoming operational. Often this will be longer than the statutory default lapse period of five years.</p> <p>Designations will seek to accommodate foreseeable future improvements to the road as well as those that will be undertaken when the project is first constructed.</p> <p>At each district plan review Transit will review existing designations and seek to designate any part of the state highway network that is currently not designated.</p>
Advanced land acquisition	Transit will typically initiate land acquisition around two to four years before the expected start of construction. However, where the land is considered to be under significant threat from incompatible development earlier land acquisition will be considered.
Minimising uncertainty	Transit will generally only seek to protect land required for a road project where it is confident the project is reasonably likely to proceed to implementation.

3.6 – Land and route protection

3.6.3 Methods

Safeguarding and designation methods

Transit will use the following methods to deliver its land and route protection policy:

1. Safeguarding tests
2. Identification of the land required for road projects in planning documents
3. Designation
4. Land acquisition

3.6.3.1

Method 1 – Safeguarding tests

Reducing uncertainty and providing value for money

Protection of land required for a road project can cause uncertainty for landowners and occupiers particularly where the project is not likely to be constructed for many years. In addition, there may be additional costs when safeguarding land, resulting from earlier design work and land purchase. For these reasons Transit will generally only seek to protect land where the project is reasonably likely to proceed to implementation. Transit will therefore apply the following safeguarding tests:

Before taking action to protect the land required for a particular project:

- 1 Transit will undertake a risk assessment to evaluate the likelihood that the land required for the project will be compromised by incompatible development. The risk assessment will consider development trends and district plan rules relating to development in the area.
- 2 Transit will discuss the proposed project with local authorities, preferably in the context of a district or regional growth strategy or Transit strategic study.
- 3 Community views will be canvassed, normally as part of consultation associated with the RLTS and other planning documents. There will also be preliminary discussions with potentially affected landowners.
- 4 Transit will ensure that the project meets the objectives of the NZTS and LTMA and is likely to do so in the future; and
- 5 Transit will aim to minimise risks to the delivery of proposed projects through adequate early stage scoping and investigation. This will include, in particular, assessment of:
 - geotechnical conditions to identify risk factors;
 - the factors requiring resource consent from the regional council (for example stormwater drainage); and
 - Maori and heritage interests, through early discussions with relevant iwi and hapu and the Historic Places Trust.

3.6 – Land and route protection

3.6.3.2

Method 2 – Identification of routes in planning documents

Multi-agency support for projects

Transit's commitment to integrated planning means some of its proposed road projects evolve from discussions with local authorities and RLTCs over future growth as well as from discussions with developers. Land Transport NZ is also likely to have been engaged in discussions over funding.

Recognition in planning documents

Once the concept of a proposed project has been developed in consultation with such agencies it is important that all agencies do what they can to assist project delivery. In particular, Transit will seek recognition of projects in:

- RLTSs;
- regional policy statements and regional coastal plans;
- district plans;
- structure plans (where developed); and
- LTCCPs and annual plans.

Doing so will demonstrate the multi-agency commitment to seeing the project progress, which should help reduce uncertainty for the local community. Transit will seek inclusion of projects in planning documents even if the likelihood that the required land will be compromised by incompatible development is low.

Planning policies and rules

When seeking recognition of and provision for a proposed road project in regional policy statements, regional and district plans Transit will seek objectives, policies and rules that:

- protect the land required for the project from incompatible development; and
- reduce reverse sensitivity effects by imposing appropriate standards and conditions on development in the vicinity of the required land.

A number of tools are available and currently used for achieving this, including:

- lines on plan maps indicating the possible alignment of proposed roads;
- specific zoning of proposed roads;
- rules that limit development on the protected land, or restrict it to temporary activities; and
- appropriate zoning of land in the vicinity of proposed roads.

Appendix 4B contains suggested policies and rules for use in regional policy statements, regional coastal plans, other regional plans (where appropriate) and district plans.

3.6 – Land and route protection

Plan reviews Policy statement and plan provisions that recognise and provide for proposed road projects will be reviewed as the policy statements/plans themselves are reviewed. As part of this process, Transit will reassess the likelihood of the project proceeding with particular reference to the safeguarding tests set out in Method 1.

3.6.3.3 Method 3 – Designation

Designations Transit's preferred tool for protecting the land required for a proposed road is designation under the RMA. Designation performs a number of very important functions for Transit, including:

- 1 it prevents any person from doing anything in relation to the designated land that would prevent or hinder the project without first obtaining Transit's written consent;
 - 2 it provides the RMA land use authorisation for Transit to construct, operate and maintain the state highway;
 - 3 it assists the Crown, on request from Transit, to exercise powers under the Public Works Act 1981 to compulsorily acquire land required for the project if needed;
 - 4 it triggers the provisions in s185 of the RMA whereby owners of designated land (or land that is subject to a notice of requirement for a designation) can apply for an Environment Court order requiring the Crown to purchase their land;
 - 5 it provides the opportunity to manage or avoid reverse sensitivity issues by signalling Transit's intention to undertake the proposed project to landowners/developers; and
 - 6 it informs the local community of Transit's intentions in a transparent way.
-

RMA requirements

The requirements of the RMA and the procedures that Transit, as a requiring authority, follows in order to secure and maintain designations are set out in Appendix 3F. Further information is also available on the Quality Planning website www.qualityplanning.org.nz.

Designation lapse period

Transit will seek designation lapse periods long enough to cover the period of time from inclusion of the designation in the relevant district plan to the project becoming operational.

The default lapse period of five years provided for in section 184 of the RMA will not normally be sufficient, even for projects where early designation is not being pursued. This is because the lapse period needs to cover the period prior to construction, the construction period (sometimes several years) and a buffer period to allow for delayed commencement or completion of the construction works.

3.6 – Land and route protection

Level of detail Where early designation is sought, Transit may not be in a position to provide the level of detail typically provided to support a notice of requirement. Under these circumstances, Transit will discuss with the territorial authority the level of detail that can reasonably be provided to support a notice of requirement and that which may be reserved for the outline plan process.

Lapsing Where it becomes apparent that a designation for a proposed project is likely to lapse before the project has been completed Transit will aim to secure an extension of the lapse period from the territorial authority and will need to demonstrate that “*substantial progress or effort has been made towards giving effect to the designation and is continuing to be made*”¹². Whether “*substantial progress or effort*” has been made will be decided on a broad common sense review of all the circumstances and is a matter of fact and degree.¹³

Rollover and updating When a district plan is reviewed Transit must advise the territorial authority whether it requires the state highway designations in that district plan to be included in the proposed plan, with or without modification. Further, if a territorial authority proposes to publicly notify a proposed plan within 40 working days of receipt of a new notice of requirement for a state highway designation it can, with Transit’s consent, include that requirement in the proposed district plan.

In general, the district plan review process provides an opportunity for Transit to review the existing and proposed state highway network in that district and seek the most appropriate method of protection for the network and land required for any proposed road projects. Transit will aim to designate any parts of the state highway network that are not designated through the district plan review process, including roads that have recently been declared state highways, unless there are exceptional circumstances that justify not doing so.

Outline plans When required under the RMA, Transit will submit outline plans of its proposed projects to the relevant territorial authority prior to commencement of construction. Section 176A(3) RMA specifies what information must be shown in an outline plan. The amount of information needed depends on the amount of detail that was incorporated in the original notice of requirement and assessment of environmental effects.

Where a designation for a project was obtained early in the project’s lifecycle, the outline plan may need to contain significantly more information than it would have if the designation had been obtained later. Where a project has changed considerably since a designation was obtained Transit may need to seek an alteration to that designation or possibly a new designation. Throughout the lifecycle of a project Transit reviews whether the designation needs to be amended or replaced and whether an outline plan is needed.

¹² Section 184(1)(b) of the RMA

¹³ *Ashburton BC v Clifford* [1969] NZLR 927;

3.6 – Land and route protection

Designation width

In determining the width of the area of land to be designated, Transit will consider a range of issues, including:

- the width required for the proposed carriageway and shoulder, verges, clear zones, embankments and cuttings, bridges and other structures;
- the extent of any land required for the implementation of environmental mitigation measures such as noise bunds or setbacks, landscaping or stormwater treatment facilities;
- uncertainties over the final alignment of the road;
- the possibility that the road will need to be widened in the foreseeable future or that additional facilities will be required such as passing lanes, slow vehicle bays, priority lanes, cycleways and footpaths; and
- the extent of any additional land required for the construction of the project.

Seeking to designate a large area of land can increase project costs and create uncertainty for landowners and the community. It may also require acquisition of land that is not ultimately needed for the project. A balance is therefore required in determining the optimum area of land to be designated. However, if land is available at little additional cost wider designations are preferred to future-proof the route.

Guidance on selecting designation width is provided in Appendix 3F.

Designation of additional land for limited purposes

It is also appropriate to consider designation of additional land “*where a restriction is reasonably necessary for the safe or efficient functioning or operation*”¹⁴ of the project, such as clear zones.

Designation of additional land for limited purposes will usually not impose significant limitations on the use of the land. The use of “limited” designations is common for such purposes as maintaining safe airspace around commercial airports. Transit may use such limited designations to enhance safety and provide for environmental mitigation. Designating land adjacent to a state highway to prevent non-frangible structures, fences and vegetation establishing, or to protect sight lines are examples. The SHGDM gives detail on the need for and size of clear zones.

Transit will not normally purchase land subject to a limited designation, as use of the land will not normally be unduly restricted.

Removal of designations

Where all or part of a designation becomes redundant, either because the route has changed or the project will not be built or because part of the land designated was solely required for construction purposes, Transit will generally remove the redundant part(s) of the designation. However, the decision to remove all or part of a designation will be based on the safeguarding test in Method 1.

¹⁴ Section 168(2)(b) RMA.

3.6 – Land and route protection

3.6.3.4

Method 4 – Land acquisition

“Just in time” land acquisition

Transit’s policy on land acquisition is set out in its Property Policy and Information Manual. The policy is to normally request the Crown to acquire land for a project approximately four years in advance of construction. This allows sufficient time for a voluntary acquisition process to be pursued and for compulsory acquisition powers to be used if necessary. This “just in time” approach reduces uncertainty for landowners and occupiers.

“Early” land acquisition

Where the land required for a project is considered to be at risk from incompatible development, it may be in Transit’s interests to consider requesting the Crown to acquire the land earlier in the project life cycle. “Early” acquisition can have a number of benefits:

- the land comes under Transit’s control earlier, which protects it from incompatible development;
- purchase of land demonstrates Transit’s commitment to a project, which can assist Transit in obtaining a designation/resource consents for the project;
- under RMA provisions, ownership of all land to be designated can assist the designation process; and
- there may be cost savings in areas where land value is likely to escalate rapidly.

Transit will consider early land acquisition, as part of a wider strategy to protect the land required for a particular project, where it is affordable and one or more of these circumstances exist.

Land acquisition by territorial authorities

There are circumstances where a territorial authority owns or is in a position to acquire land required for a proposed state highway project or a component of the local road network that supports the project. In particular, the territorial authority may acquire land required to connect a proposed state highway project to the local road network or for a multi-modal facility such as a park and ride facility or cycle path. Transit encourages such acquisition where it protects the required land and will seek a written agreement with the territorial authority outlining respective obligations.

Land acquisition prior to designation

Where acquisition of land required for a proposed project is pursued prior to a designation being obtained, it is best obtained by voluntary agreement as it is more difficult for the Crown to exercise compulsory acquisition powers. Even where land required for a project is available by voluntary agreement, Transit may not be in a position to request the Crown to purchase that land due to funding constraints.
