

# Practice and Guidance Note

## Precinct Rules and Standards

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# 1 Contents

Disclaimer .....	1
1 Contents.....	2
2 Introduction .....	3
3 What is a Precinct? .....	3
4 Precinct Rules .....	4
4.1 Determining overall activity status.....	4
4.2 Activity table preamble text .....	5
4.2.1 Example 1.....	5
4.2.2 Example 2.....	6
4.2.3 Example 3.....	7
4.3 When the wording of activities between AUP (OP) chapters is not the same	8
4.4 Determining overall activity status of an application.....	9
4.4.1 Scenario 1 – all activities are addressed in the precinct.....	9
4.4.2 Scenario 2 – not all activities are addressed in the precinct .....	9
4.5 Assessing applications where rules apply under the precinct and zone for the same activity .....	10
4.5.1 Precinct has a more lenient or more restrictive activity status .....	10
4.5.1 Precinct has the same activity status as the underlying zone.....	11
4.6 Notification rules that preclude notification – how they apply .....	12
5 Precinct standards .....	13
5.1 Example 1 .....	14
5.2 Example 2 .....	14
6 Frequently asked questions .....	15
7 Summary/Conclusion .....	16

## 2 Introduction

The Auckland Unitary Plan (Operative in Part) (“**AUP (OP)**”) uses six main types of plan provisions:

- General rules
- Overlays
- Auckland-wide provisions
- Zones
- Precincts
- Standards

This Practice and Guidance Note (“**PGN**”) explains how the rules and standards in Precincts interact with other components of the AUP (OP).

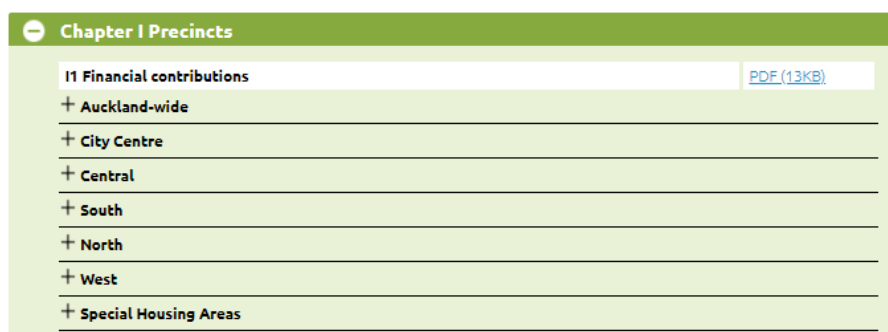
The approach set out in this PGN is consistent with the Court's guidance on AUP (OP) interpretation in the *Budden* series of cases.

## 3 What is a Precinct?

Precincts are described in [Chapter A1.6.5](#) of the AUP (OP):

*Precincts enable local differences to be recognised by providing detailed place-based provisions which can vary the outcomes sought by the zone or Auckland-wide provisions and can be more restrictive or more enabling. In certain limited circumstances the rules in a precinct vary the controls of an overlay, either by being more restrictive or more enabling. However, the general approach is that overlays take precedence over a precinct.*

Precinct provisions are located in Chapter I and grouped according to their location, or whether they are a Special Housing Area (SHA).



The screenshot shows a navigation menu with a green header 'Chapter I Precincts'. Below the header is a list of items, each with a plus sign icon and a horizontal line underneath. The items are: 'I1 Financial contributions' (with a 'PDF (1.3KB)' link to its right), '+ Auckland-wide', '+ City Centre', '+ Central', '+ South', '+ North', '+ West', and '+ Special Housing Areas'.

Precinct areas are also identified on the [planning maps](#) using the following notation (as per the [maps legend](#)):



## 4 Precinct Rules

The overall activity status of a proposal is determined on the basis of all rules which apply to the proposal, including any rule which creates a relevant exception to other rules<sup>1</sup>.

Precinct rules will not ordinarily override corresponding zone rules for the same activity – there is no catch-all rule in the AUP (OP) that has that effect.

An exception to this is where the preamble text preceding the activity table in a precinct chapter describes plan provisions that do not apply to activities within that precinct or has wording to the same effect.

### 4.1 Determining overall activity status

Determining the overall activity status of an application will require careful consideration of all applicable rules that apply to a proposal, along with activity table preamble text.

The overall activity status of a proposal is ordinarily that of the most restrictive rule which applies to the proposal.<sup>2</sup>

An exception to this is in precincts, per rule C1.6(4):

*Where an activity is subject to a precinct rule<sup>3</sup> and the activity status of that activity in the precinct is different to the activity status in the zone or in the Auckland-wide rules, then the activity status in the precinct takes precedence over the activity status in the zone or Auckland-wide rules, whether that activity status is more or less restrictive.*

This rule is further qualified by rule C1.6(3):

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<sup>1</sup> Rule C1.6(1)

<sup>2</sup> Rule C1.6(2)

<sup>3</sup> See [Section 6.2](#) for more information on where the activity status of the precinct rule is changed by a precinct standard.

*The activity status of an activity in an overlay takes precedence over the activity status of that activity in a precinct, unless otherwise specified by a rule in the precinct applying to the particular activity.*

The combination of these rules can be summarised as:

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Where an activity is covered by a rule in both a precinct and an underlying zone or in the Auckland-wide rules, C1.6(4) results in the activity status of the precinct rule overriding the activity status from the underlying zone or Auckland-wide rule for that same activity, even if the activity status from the precinct is less restrictive than that of the underlying zone or Auckland-wide rule.

If there is an overlay rule that covers the same activity as a precinct rule, then the activity status of the overlay rule will override the activity status of the precinct rule, unless a precinct rule expressly says otherwise.

Unless a plan provision expressly says otherwise, all zone, Auckland-wide and overlay rules will apply to the proposal, including any relevant standards in the zone, irrespective of any change in activity status.

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## **4.2 Activity table preamble text**

The preamble text that sits immediately above the activity tables within the precinct chapters of the AUP (OP) must always be carefully read. This will assist in determining what rules apply to a proposal, and what the overall activity status will be.

The preamble text is often different between precinct chapters. A few examples are illustrated below.

### **4.2.1 Example 1**

The preamble text to the [I405 Big Bay Precinct](#) activity table at I405.4 states (among other things):

*The provisions in any relevant overlays, zone and the Auckland-wide apply in this precinct unless otherwise specified below.*

*A blank in Table I405.4.1 Activity table below means that the provisions of the overlays, zone or Auckland-wide apply.*

The effect of this preamble text is as follows:

- All overlay, zone and Auckland-wide provisions<sup>4</sup> will apply within the precinct, in addition to the precinct provisions.
- A blank in the activity table means that the provisions of the overlay, zone and Auckland-wide provisions apply for that specific activity (example shown below). The activity status in the relevant overlay, zone or Auckland-wide provision will apply to that activity (per rule A1.7.7).

**Table I405.4.1 Activity table**

Activity		Activity status
<b>Use and development</b>		
(A1)	All activities and development provided in <a href="#">H2 Residential - Rural and Coastal Settlement Zone</a>	
<b>Subdivision</b>		
(A2)	Subdivision that is referenced as (A10 to (A6) in <a href="#">E38 Subdivision</a> – Urban under <a href="#">Table E38.4.1</a> – Activity table – subdivision for specific purposes.	

The text ‘unless otherwise specified below’ in the preamble means that there must be an explicit reference either within the preamble or in the activity table that states that a specific rule in the precinct overrides a rule in any relevant overlay, zone and Auckland-wide chapter of the AUP (OP).

For the avoidance of doubt, rules with similar activity names to those in other chapters is not ‘otherwise specifying’ that the relevant overlay, zone and Auckland-wide provisions do not apply. Instead, both sets of rules apply.

#### 4.2.2 Example 2

The preamble text to the [I202 Central Wharves Precinct](#) activity table at I202.4 states (among other things):

- (1) *The activities in the Coastal – General Coastal Marine Zone apply to the coastal marine area in the Central Wharves Precinct unless otherwise specified in Table I202.4.1 Activity table.*
- (2) *The activities in the Business – City Centre Zone apply to land in the Central Wharves Precinct unless otherwise specified in Table I202.4.1 Activity table.*
- (3) *Those activities marked with \* have the listed activity status only when that activity is located on a coastal marine area structure (e.g. a new building on an I202 Central Wharves Precinct Auckland Unitary Plan Operative in part 4*

<sup>4</sup> See [Section 6.1](#) for what ‘provisions’ mean for the purposes of this precis text.

*existing wharf). If that activity is located directly in the coastal marine area (e.g. a new wharf) a different activity status will apply.*

- (4) *The temporary activities provisions applying to the use of public places within the Business – City Centre Zone as set out in E40 Temporary Activities apply to existing coastal marine area structures within the Central Wharves Precinct.*

The preamble text above is fairly self-explanatory. A key difference here compared to Scenario 1 is that the words ‘unless otherwise specified below’ have not been used, and the preamble makes a more explicit reference to ‘*unless otherwise specified in Table I202.4.1*’.

This can therefore be interpreted as meaning that if an activity is listed within the table, then that activity rule applies instead of the same activity rule within either the Coastal – General Marine Zone within the coastal marine area under (1), or the Business – City Centre Zone on land under (2).

### 4.2.3 Example 3

The preamble text to the [I304 Auckland Zoo Precinct](#) activity table at I304.4 states (among other things):

*The provisions in any relevant overlays and Auckland-wide apply in this precinct unless otherwise specified below.*

*(1) E40 Temporary activities;*

*(2) E25 Noise and vibration (noise provisions only);*

*(3) E24 Lighting;*

*(4) E27 Transport – Standard E27.6.1 Trip generation; and*

*(5) E27 Transport – Standard E27.6.2 Number of parking and loading spaces.*

Again, the preamble text above is fairly self-explanatory.

The words ‘unless otherwise specified below’ are directly followed by a list of provisions from (1) to (5) that do not apply in this Precinct. Where a whole plan chapter is referred to, all provisions within that chapter do not apply. Where only a specific standard or set of provisions is referred to, it is only that standard or set of provisions that do not apply. The balance of the provisions in that chapter, including the rules and other standards within the rules will still apply.

All other provisions in any relevant overlays and Auckland-wide chapters not listed will continue to apply, even if there is a rule in the activity table that relates to the same activity.

The preamble text does not refer to zone provisions, as for this particular precinct, there are none.

Note that the excluded provisions include the objectives and policies of the plan chapter being referred to. This is even where there is an earlier relationship statement within the precinct objectives and policies that says that the chapter objectives or policies apply. This is because the statement within the activity status text is more specific.

### 4.3 When the wording of activities between AUP (OP) chapters is not the same

It may not always be the case that the activity table description of an activity is the same in the precinct and elsewhere in the AUP (OP), including in overlays and zones.

Where the descriptions of the activity are different, but the activity itself is still captured in a precinct rule and a zone rule, C1.6(4) will continue to operate.

If an overlay is involved, C1.6(3) will also apply.

It is the substance and not the specific wording of the applicable rule frameworks that should be considered and applied. An example is provided below.

A business is proposing a new café in the I308 Central Park Precinct.

Rule I308.4.1(A2) prescribes that food and beverage activities exceeding 250m<sup>2</sup> of gross floor area per building are a discretionary activity.

**Table I308.4.1 Activity table**

**Sub-precinct A**

Activity		Activity status
<b>Use</b>		
<b>Commerce</b>		
(A1)	Food and beverage not exceeding 250m <sup>2</sup> of gross floor area per building	P
(A2)	Food and beverage exceeding 250m <sup>2</sup> of gross floor area per building	D

Sub-precinct A is located within the Business – Business Park Zone.



Rule H15.4.1(A13) is the similar zone rule, although it is worded differently and without reference to floor area.

(A13)	Food and beverage	P
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C1.6(4) applies in this situation despite the different wording. The activity status for a food and beverage activity exceeding 250m<sup>2</sup> of gross floor area per building is discretionary, as the activity status in the precinct overrides the permitted activity status from the Business – Business Park Zone.

#### 4.4 Determining overall activity status of an application

Rules C1.6(3) and (4) only serve to explain the relationship between rules in a precinct, overlay and zone for activities, and not the proposal as a whole.

This gives rise to different scenarios where the activity status could change depending on the AUP (OP) location of the activities that make up a proposal.

##### 4.4.1 Scenario 1 – all activities are addressed in the precinct

Where all activities forming part of the proposal are addressed in the precinct, you only need to consider C1.6(4) – this is the easiest scenario.

Commercial services are a permitted activity within the I316 Grafton Precinct under rule 1316.4.1(A3).

The precinct has an underlying zoning of Residential - Terrace Housing and Apartment Buildings Zone (THAB).

Under the THAB zoning, commercial activities are not provided for, and would therefore be non-complying under rule H6.4.1(A1). No standards apply to this activity.

C1.6(4) applies in this situation and the activity status for the commercial service activity is permitted, as the permitted status in the precinct overrides the non-complying activity status from the THAB zone.

##### 4.4.2 Scenario 2 – not all activities are addressed in the precinct

Where not all activities that make up the proposal have an applicable rule in the precinct, C1.6(1) will also apply, and the overall activity status for a proposal will be determined on the basis of all applicable rules.

Rule C1.6(4) will however continue to govern the activity status relationship between rules for the same activity in the precinct and in the zone, and C1.6(3) between the precinct and any relevant overlay.

Same proposal as in Scenario 1 – however the commercial services development also requires resource consent for district earthworks under Chapter E12 (i.e., the proposal is for commercial services and associated earthworks).

This means the permitted activity status will change because of rule C1.6(1).

This is because earthworks activities are not addressed in the Grafton Precinct and do not fall within the description or definition of commercial services.

Instead, earthworks are covered by an Auckland-wide rule and have a restricted discretionary activity status. There is no equivalent activity rule within the Grafton Precinct, so the restricted discretionary activity status from Chapter E12 would apply to the earthworks activity.

Under rules C1.6(1) and C1.6(4), the overall activity status for the proposal (being commercial services and associated earthworks) would require consent as a restricted discretionary activity.

#### **4.5 Assessing applications where rules apply under the precinct and zone for the same activity**

Once the activity status for the proposal has been determined in accordance with [section 4.4](#) of this PGN, the council can then assess the proposal against the relevant sections of the Resource Management Act (**'the RMA'**) (sections 104A to 104D, and 87A apply).

##### **4.5.1 Precinct has a more lenient or more restrictive activity status**

If the activity status in the precinct is more lenient or more restrictive than the activity status for the same activity in the underlying zone, then the relevant sections of the RMA that apply to determining notification and the subsequent consideration of the application will be determined on the basis of the activity status derived by rule C1.6(4), e.g., controlled, restricted discretionary, discretionary, or non-complying.

Scenario 1 – Precinct more lenient

A new retail shop of 300m<sup>2</sup> is a restricted discretionary activity under rule I333.4.1(A2) in the I333 Three Kings Precinct.

The same activity is non-complying under the underlying THAB zoning.

While both rules would be listed as a reason for consent in any decision, the council is limited to considering only those effects over which its discretion has been retained for rule I333.4.1(A2) at both the notification and substantive assessment stages.

This is because rule C1.6(4) sets the activity status as restricted discretionary, which does not provide for greater scope than the matters for discretion that are listed in the precinct.

Section 87A(3) and section 104C of the RMA would apply and not section 87A(5) and sections 104B and 104D.

#### Scenario 2 – Precinct more restrictive

Buildings greater than 50m in height are a discretionary activity until rule I336.4.1(A7) in sub-precinct B of the I336 Sylvia Park Precinct.

The same activity is restricted discretionary under the underlying Business – Metropolitan Centre Zone.

While both rules would be listed as a reason for consent in any decision, the council is not restricted in its discretion at either the notification or substantive assessment stages.

All relevant matters across both chapters of the plan can be considered when determining the application.

#### **4.5.1 Precinct has the same activity status as the underlying zone**

If the activity status in the precinct is the same as in the underlying zone, then matters of discretion or control will be able to be considered across both the zone and precinct chapters of the AUP (OP).

For example, in Scenario 1 above, if the retail shop was also a restricted discretionary activity in the THAB zone, the council would need to consider matters for discretion for that activity as listed within the zone, as well as in the precinct.

If the retail shop was a discretionary or non-complying activity in both the precinct and zone, then all relevant matters across both chapters could be considered when determining notification and making a substantive decision on the application.

## 4.6 Notification rules that preclude notification – how they apply

There are notification rules contained in most chapters of the AUP (OP). These rules are usually located following an activity table.

The notification rules look like this:

### **I329.5. Notification**

- (1) Any application for resource consent for an activity listed in Table I329.4.1 Activity table above will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (2) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in [Rule C1.13\(4\)](#).

There are also general notification rules at C1.13 that apply throughout the AUP (OP).

All relevant notification rules need to be read together to determine whether a preclusion applies. This can be complicated somewhat when notification rules apply in a precinct and also a zone.

For example, in the [I336 Sylvia Park Precinct](#), new buildings up to 27m in height in sub-precinct A are a controlled activity under rule I336.4.1(A2).

Under the underlying zoning, [H9 Business - Metropolitan Centre Zone](#), the same activity has a restricted discretionary status.

On the assumption that these are the only two activities (see [Scenario 1](#) are Section 4.4.1), the council must assess the proposal overall as a controlled activity. However, the application of the notification preclusion for controlled activities in the precinct is less clear.

The notification rule in I336.5 states:

*An application for resource consent for a controlled activity listed in Table I336.4.1 Activity table above will be considered without public or limited notification or the need to obtain written approval from affected parties unless*

*the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991...*

In addition, rule C1.13(1) states:

*An application for resource consent for a controlled activity will be considered without public or limited notification or the need to obtain written approval from affected parties unless:*

*(a) otherwise specified by a rule applying to the particular activity;*

*(b) the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991*

As a restricted discretionary activity in the underlying zoning, the AUP (OP) in C1.13 and in H9.5(2) states that the application will be subject to the normal tests for notification under the RMA.

On that basis, as the zone rule applies even though the activity status does not, the notification preclusion in I336.5 does not apply to the proposal.

In accordance with C1.13(1)(a), the need to apply the normal notification tests is specified in a rule applying to the activity. As notification is otherwise specified in an applicable rule under H9, the notification preclusion from I336 cannot apply.

However, in practice, a notification preclusion will still apply because as the proposal is for an overall controlled activity under rule C1.6(4), section 95A(5)(b)(i) and section 95B(6)(b) of the RMA would result in a notification preclusion applying in any event.

## **5 Precinct standards**

Every activity that is classed as a permitted, controlled and restricted discretionary activity must comply with all the standards applying to that activity.<sup>5</sup>

The preamble text that sits prior to the standards in the precinct chapters of the AUP (OP) must always be carefully read. This will determine what standards apply to an activity.

A few examples are illustrated on the pages that follow.

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<sup>5</sup> Rule C1.9(1)

## 5.1 Example 1

The [I200 Arts, Civic and Entertainment Precinct](#) contains standards at I200.6.

The preamble text says:

*The overlay, zone and Auckland-wide standards apply in Sub-precinct A, except the following:*

- *Standards H8.6.2-H8.6.32 of the Business – City Centre Zone; and*
- *E27 Transport.*

*All permitted and restricted discretionary activities listed in Table I200.4.1 Activity table must comply with the following standards.*

The effect of this text is as follows:

- All overlay, zone and Auckland-wide standards will apply within Sub-precinct A, to activities *within* those overlay, zone and Auckland-wide chapters. However, those standards specifically listed against the bullets above will not apply. This includes very specific standards in the Business City – Centre Zone, and all standards in Chapter E27 Transport.
- The standards listed beneath this preamble text will also apply, but only to those activities listed in Table I200.4.1 Activity table Sub-precinct A - Aotea Square.

## 5.2 Example 2

The [I201 Britomart Precinct](#) contains standards at I201.6.

The preamble text says:

*The overlay, zone and Auckland-wide standards apply in this precinct unless otherwise specified below.*

*All permitted and restricted discretionary activities listed in Table I201.4.1 Activity table - Britomart and Table I201.4.2. Activity table - Britomart precinct (identified public open spaces shown on Britomart Precinct: Precinct plan 4) must comply with the following standards.*

The effect of this text is as follows:

- All overlay, zone and Auckland-wide standards will apply within Sub-precinct A, to activities listed *within* those overlay, zone and Auckland-wide chapters.

- The standards listed beneath this preamble text will also apply, but only to permitted and restricted discretionary activities listed in Table I201.4.1 Activity table - Britomart and Table I201.4.2. Activity table - Britomart precinct (identified public open spaces shown on Britomart Precinct: Precinct plan 4).

The text 'unless otherwise specified below' in the first part of the preamble should be read that there must be an explicit reference either within the preamble or within one of the standards that states that a specific standard in the precinct overrides a standard in any relevant overlay, zone or Auckland-wide chapter of the AUP (OP).

For the avoidance of doubt, simply including standards with similar names to those in other chapters is not 'otherwise specifying' that a similarly worded overlay, zone or Auckland-wide standard does not apply.

## 6 Frequently asked questions

### 6.1 What does 'provisions' mean for the purposes of the activity table precis text?

Generally, 'provisions' are inclusive of objectives, policies, rules or other methods. It is a broad description that extends beyond just rules. The exception to this is where something is otherwise clearly stated, i.e., a set of AUP (OP) chapters, rules or standards that do not apply.

### 6.2 Some precinct standards prescribe an activity status that is different from that listed for the relevant rule in the activity table. Is this the relevant precinct activity status for that rule for the purposes of rule C1.6(4)?

Some precinct standards prescribe an activity status of their own, usually where there is an infringement to a specific part of, or all of the standard.

Normally, standards form part of the activity table rules and set the parameters of the specific rule - i.e., the activity must comply with the requirements of the rule and the standards for that rule to apply. If the standards aren't complied with, then that rule either may not apply (if the activity table prescribes a different rule where the standard(s) is not met), or consent will be required under rule C1.9(2) for the non-compliance.

Here, the standards in question operate in a dual way. They set the parameters of the rule which must be complied with (for example, in order to maintain the activity

status in the activity table rule). The standard then also attempts to be a different rule as well by changing the activity status in certain situations, such as where the standard is not complied with.

For the purposes of rule C1.6(4), and its reference to the activity status of a 'precinct rule', this should be read as the activity status of that activity table rule as set by the standard.

### **6.3 D17 Historic Heritage Overlay contains a specific rule regarding the interaction between precinct and overlay rules. How does it work?**

D17.1 Background includes specific reference to the interaction between precinct and overlay rules:

*Some precincts contain more detailed information and specific rules relating to a scheduled historic heritage place/s. Where this is the case the more specific precinct rules will replace the rules in D.17.4 in this section.*

This is a more specific rule that can result in a different outcome than directed by rule C1.6(3), which applies generally throughout the plan.

For example, if there is a specific rule in a precinct that applies to a scheduled historic heritage place, this rule will replace the applicable D17 rule. This means that only the precinct rule and activity status will apply. The D17 rule would not apply at all in this scenario.

This is different from rule C1.6(3), where both rules would apply, with the overlay activity status overriding the precinct activity status.

## **7 Summary/Conclusion**

- Both the provisions of the precinct and the underlying zoning will apply to applications for resource consent, although the activity status will be determined by the precinct where an activity is covered by both sets of provisions per rule C1.6(4). Further, where there is an overlay, rule C1.6(3) governs the activity status relationship between the overlay and precinct.
- The preamble text to activity tables and standards in all chapters of the AUP (OP) must always be carefully read, as how the rules and standards apply across each chapter will often differ. There is no 'one size fits all' approach.



- References to ‘unless otherwise specified below’ must be followed by something clear and definite that creates an exception to the starting principle that all relevant rules will apply to a proposal.
- The approach set out in this PGN is consistent with the Court's guidance on AUP (OP) interpretation in the *Budden* series of cases.