

BEFORE THE ENVIRONMENT COURT

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AUCKLAND

IN THE MATTER

of an appeal under
Clause 14 of the First
Schedule of the Resource
Management Act 1991

BETWEEN

**DIRECTOR-
GENERAL OF
CONSERVATION**
Appellant

AND

**Opotiki District
Council**
Respondent

**NOTICE OF APPEAL BY THE DIRECTOR-GENERAL OF
CONSERVATION**

Dated: 12 June 2018

Department of Conservation
Solicitor acting: Katherine Anton
Email: kanton@doc.govt.nz
Telephone: 0274275900

**Notice of appeal to Environment Court against decision on Proposed
Opotiki District Plan**

Clause 14(1) of Schedule 1, Resource Management Act 1991 (the Act)

To: The Registrar
Environment Court
WELLINGTON

1. I, Lewis Sanson, Director-General of Conservation appeal against part of a decision of the Opotiki District Council on the following:
 - 1.1. Proposed Opotiki District Plan (Proposed Plan).
2. I made a submission on the Proposed Plan.
3. I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. I received notice of the decision on 1 May 2018.
5. The decision was made by the Opotiki District Council.
6. The part of the decision that I am appealing is the Opotiki District Council's decision to:
 - 6.1. Not include a policy in the coastal environment to:
 - (i) avoid adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna (as identified by Appendix 13.9.4, or alternatively that meet the criteria in Policy 11(a) of the New Zealand Coastal Policy Statement "NZCPS"), and;
 - (ii) avoid significant adverse effects, and avoid, remedy and mitigate other adverse effects on other indigenous biodiversity.
 - 6.2. Not include a policy in the coastal environment to avoid adverse effects of activities on outstanding natural landscapes.
 - 6.3. Not include any objective or policy to avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment.
 - 6.4. Include new policy 17.2.2.3 in the Proposed Plan.
 - 6.5. Not include a rule that protects areas of significant indigenous vegetation and significant habitats of indigenous fauna.

7. The reasons for the appeal are as follows:
- 7.1. The New Zealand Coastal Policy Statement 2010 (“NZCPS”) gives cascading policy direction for protection of indigenous biological diversity in the coastal environment in Policy 11. Councils are required give effect to this policy in their plans. The Proposed Plan only partially gives effect to Policy 11 of the NZCPS through policy 9.2.1.2 and thus leaves a gap in the management of indigenous biodiversity in the coastal environment
 - 7.2. The NZCPS through Policy 15(a) requires adverse effects on outstanding natural landscapes in the coastal environment to be avoided. Policy 13.2.1.2 in the Proposed Plan also enables those effects to be remedied or mitigated and is accordingly contrary to Policy 15(a) of the NZCPS insofar as it applies in the coastal environment.
 - 7.3. There are no objectives or policies that implement NZCPS Policy 15(b) which, in relation to natural features and natural landscapes in the coastal environment that are not outstanding, requires significant adverse effects to be avoided, and other adverse effects to be avoided, remedied or mitigated.
 - 7.4. New policy 17.2.2.3 in the Proposed Plan requires new national grid infrastructure within the Coastal Environment and outstanding natural landscapes and features to avoid, remedy or mitigate adverse effects by route, site and method selection as far as practicable given the constraints imposed by the technical, locational or operational requirements of the network. This policy appears to give an exemption to the requirement to avoid adverse effects on outstanding landscapes and features in the coastal environment for new national grid infrastructure and as such does not give effect to NZCPS Policy 15.
 - 7.5. There is no rule that implements section 6(c) of the RMA and the objectives and policies in the proposed plan that relate to protecting significant indigenous vegetation and significant habitats of indigenous fauna unless such areas coincide spatially with outstanding natural landscapes or outstanding natural features.
 - 7.6. The decision does not promote the sustainable management of natural and physical resources as required by Part 2 of the Act. In particular, the decision is:
 - 7.6.1. Contrary to section 5 of the Act;
 - 7.6.2. Contrary to section 6(b) of the Act by failing to recognise and provide for the protection of outstanding natural features and

landscapes from inappropriate subdivision, use, and development;
and

7.6.3. Contrary to section 6(c) of the Act by failing to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

7.7. The decision does not give effect to the New Zealand Coastal Policy Statement 2010.

8. I seek the following relief:

8.1. Inclusion of a policy in the coastal environment (by way of amendment to policy 9.2.1.2 or otherwise) to:

- (i) avoid adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna (as identified by Appendix 13.9.4 in the Proposed Plan or as identified in policy 11(a) of the NZCPS), and;
- (ii) avoid significant adverse effects, and avoid, remedy and mitigate other adverse effects on other indigenous biodiversity;

8.2. Inclusion of a policy in the coastal environment to avoid adverse effects of activities on outstanding natural landscapes (by way of amendment to policy 13.2.1.2 or otherwise);

8.3. Inclusion of an objective and policy to avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;

8.4. Amendment of new policy 17.2.2.3 in the Proposed Plan so it no longer gives an exemption to the requirement to avoid adverse effects on outstanding landscapes and features in the coastal environment for new national grid infrastructure;

8.5. Consequential relief (including to rules) to implement the inclusion of new policies sought above;

8.6. Inclusion of a rule that protects areas of significant indigenous vegetation and significant habitats of indigenous fauna.

8.7. Further, consequential or alternative relief to like effect, that the Court considers fit to address my concerns; and

8.8. Costs.

9. I attach the following documents to this notice:

- 9.1 a copy of my submission
- 9.2 a copy of the decision
- 9.3 a list of names and addresses of persons to be served with a copy of this notice.



Helen Neale
Acting Director, Operations Central North Island
Department of Conservation

Acting pursuant to delegated authority on behalf of the Director-General of Conservation

12 June 2017

Address for service of appellant:
Department of Conservation
Level 4, 73 Rostrevor Street
Hamilton 3204
Telephone: 027 564 5767
Email: gsilver@doc.govt.nz
Contact person: Graeme Silver

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (**see** form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland as below:

Street address:

Specialist Courts and Tribunals Centre
Level 2
41 Federal Street
Auckland 1010

Postal address:

CX10086
Auckland

or

PO Box 7147
Wellesley Street
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