



Department of
Conservation
Te Papa Atawhai

18 November 2016

The Chief Executive
Ōpōtiki District Council
PO Box 44
ŌPŌTIKI 3162

Districtplan@odc.govt.nz; info@odc.govt.nz

Dear Madam,

PROPOSED ŌPŌTIKI DISTRICT PLAN

Please find enclosed the submission by the Director-General of Conservation in respect of the Proposed Ōpōtiki District Plan. The submission identifies the Director-General's concerns.

Please contact me in the first instance if you wish to discuss any of the matters raised in this submission at cstaite@doc.govt.nz or (07) 858 1586.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Staite', with a long horizontal line extending to the right.

Chris Staite
Senior RMA Advisor

RESOURCE MANAGEMENT ACT 1991

SUBMISSION ON THE PROPOSED ŌPŌTIKI DISTRICT PLAN

TO: Opotiki District Council

SUBMISSION ON: Proposed Ōpōtiki District Plan

NAME: Lou Sanson
Director-General of Conservation

ADDRESS: Address for service:
RMA Shared Services
Department of Conservation
Private Bag 3072
Hamilton 3240
Attn: Chris Staite

**STATEMENT OF SUBMISSION BY THE DIRECTOR-GENERAL OF THE
DEPARTMENT OF CONSERVATION**

Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991 (RMA), I, Mike Jones, Operations Manager, Whakatane, acting upon delegation from the Director-General of the Department of Conservation, make the following submission in respect of the Proposed Ōpōtiki District Plan.

1. The specific provisions of the Proposed Plan that my submission relates to are set out in Attachment 1 to this submission. The decisions sought in this submission are required to ensure that the Proposed Ōpōtiki District Plan:
 - a. Gives effect to the New Zealand Coastal Policy Statement.
 - b. Recognises and provides for the matters of national importance listed in section 6 of the Act and to has particular regard to the other matters in section 7 of the Act.
 - c. Promotes the sustainable management of natural and physical resources.
 - d. The changes sought are necessary, appropriate and sound resource management practice.
2. I seek the following decision from the Council:
 - 2.1 That the particular provisions of the Proposed Ōpōtiki District Plan that I support, as identified in Attachment 1, are retained.
 - 2.2 That the amendments, additions and deletions to the Proposed Ōpōtiki District Plan sought in Attachments 1 are made.
 - 2.3 Further or alternative relief to like effect to that sought in 2.1 – 2.2 above.
3. I wish to be heard in support of my submission and if others make a similar submission, I will consider presenting a joint case with them at the hearing.

Mike Jones
Operations Manager
Whakatane

Pursuant to delegated authority, on behalf of Lou Sanson, Director-General of Conservation

Date:

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011.

ATTACHMENT 1:

PROPOSED ŌPŌTIKI DISTRICT PLAN – SUBMISSION BY THE DIRECTOR-GENERAL OF CONSERVATION

My submissions are set out immediately following these headings, together with the reason and the decision I seek from the Council.

The decision that has been requested may suggest new or revised wording for identified sections of the proposed plan. This wording is intended to be helpful but alternative wording of like effect may be equally acceptable. The wording of decisions sought shows new text as underlined and original text to be deleted as ~~strikethrough~~.

Unless specified in each submission point my reasons for supporting are that the provision is consistent with the purposes and principles of the Resource Management Act 1991 (RMA).

PROVISION NUMBER	PROVISION TITLE	SUPPORT/OPOSE	RELIEF SOUGHT	REASONS
General Comments Chapters 5, 7, 9, 10, 11, 13 and 18	Various chapters	Amend	Include policy direction that gives effect to the NZCPS in a consistent manner to the coastal environment of the Opotiki District.	It is unclear how the proposed plan gives effect to the NZCPS, as a number of different zones provide differing direction to the coastal environment of the District, some of it not consistent with the NZCPS. Co-ordination of these to ensure that the proposed plan gives effect to the NZCPS in an appropriate and integrated manner for the entire coastal environment of the District is required.

Goat Farming, including;	The Operative Ōpōtiki District Plan and the Plan identify Goat Management Areas (GMA).	Support; amend	Retain 8.6.14 - Goat Farming Boundary Fences – as notified.	The identification of GMA in Planning Maps and exclusion from Permitted Activities in is supported.
8.6.14 Goat Farming Boundary Fences	Significant resources have been invested over the past decade to manage feral goats in the Ōpōtiki District. This has contributed significantly to the protection of Te Urewera and other significant ecological areas.		Identify additional Goat Management Areas to include new land areas contiguous with conservation lands and to create a buffer on farmland.	Identification of extra GMA to include new land areas contiguous with conservation lands and to create a buffer on farmland to lessen the risk of future escapes from farms is required, to allow a more targeted and effective goat management regime consistent with the PRPM.
Planning Maps	The Regional Pest Management Strategy classifies Feral Goats as a 'Containment Pest' as they have serious impacts and are established in some areas.			
Chapter 5. Marine Services Zone				
5.3.3	Controlled Activity 5.3.3.1(3)	Oppose	Make the development and construction of a marina at least restricted discretionary activity status, with sufficient comprehensive matters of discretion to address the concerns noted.	Allowing the construction of a new marina as a controlled activity is considered inappropriate unless all relevant matters can be assessed and considered.
				The development and construction of a marina as a controlled activity is considered inappropriate as there is insufficient detail on measures to avoid, remedy, mitigate or offset adverse environmental effect. Matters of control do not address potential adverse effects from harmful aquatic organisms, the contamination of coastal waters and ecosystems or public access to and along the CMA.

Chapter 7. Harbour Industrial Zone			
7.3.2	Permitted Activities 2 – 4, 8.	Oppose	Classify these activities as at least controlled activity status, as the assessment criteria for controlled activities (7.4) are considered appropriate to address the concerns.
			Some of the permitted activities may have adverse effects on the ecological values of the adjacent IDBA-B117. An activity status requiring consent is required for those activities that may have adverse effects on the values of this area so that significant adverse effects can be avoided and other adverse effect avoided, remedied or mitigated. Of particular concern are those activities that may affect water quality through trade waste or stormwater or have biosecurity risks.
7.4.1.7	Assessment criteria for controlled activities – Indigenous biodiversity and ecological value	Support	Retain
			These matters are considered appropriate to consider and address concerns with anticipated activities in this zone, including those identified in the preceding submission point.
Chapter 8. Rural Zone			
8.1	Resource Management Issues – Issue 8	Support	Retain
			This identifies the issue appropriately.
8.2.3.4	Policy	Support	Retain
			Separation distances between dwellings and waterbodies is supported as allowing for the maintenance of riparian values.
8.3.3.1.4 and 8.3.4.1.4	Restricted discretionary and discretionary rules for the keeping or farming of goats not provided for as a permitted activity	Support; clarification	Retain
			The difference between these rules is unclear, and it is not certain which applies to goat farming or keeping within a goat management area or not meeting the zone standards. Either clarify the circumstances in which each of these consents is required or replace with one rule requiring consent where it is not provided for as a permitted activity.
8.3.6	Prohibited Activities	Support	Retain these prohibited activities
			These activities are not considered appropriate in the District.

8.4.1.5	Effects on waterbodies, indigenous vegetation, and habitats	Support	Retain	These are appropriate to ensure that these effects will be considered and addressed for controlled activities.
8.5.1.4	Keeping or farming goats that is not provided for as a permitted activity	Support; amend	Retain but incorporate an additional matter of discretion to ensure that the Zone Standards for Goat Farming (8.6.14) will be considered in imposing conditions.	Restricted discretionary activities are not stated as subject to the Zone Standards in 8.6, either in 8.3.3 or in the matters of discretion. Amend the assessment for controlled activities to ensure that the zone standards for goat farming will be imposed as conditions for consents granted.
8.6.4.3	Zone Standards – Building setback from waterbodies	Support	Retain	These setbacks will ensure that the protection of waterbodies and their margins can be considered by decision makers.
8.6.14	Zone Standards – Goat Farming	Support	Retain	These standards are considered appropriate to contain goats, but should be applied to restricted discretionary activities.
8.6.15	Zone Standards – Deer Farming	Support	Retain	These standards are considered appropriate to contain deer.
8.9	Appendix	Support	Retain fencing standards	These fencing standards are considered appropriate.
Chapter 9. Coastal Zone				
General comment	Giving effect to NZCPS	Amend		This coastal zone, although not an exact match to the identified coastal environment in the Regional Policy Statement is considered the appropriate zone to contain a planning framework that gives effect to the NZCPS directive policies concerning natural landscapes and features, natural character and indigenous biodiversity. The management of natural landscapes and features and indigenous vegetation in Chapter 13 does not provide sufficient direction to

9.2.1	Objective	Partially support; Amend	Amend as follows; <u>Retain and protect</u> Preserve and restore, where appropriate, the distinctive natural character of the Ōpōtiki coastal environment for the enjoyment of the community and visitors to the District	ensure that the NZCPS can be given effect to in the coastal environment.
9.2.1	New Objectives	Amend	Include objectives and policies in the Coastal Zone that allows the Plan to give effect to the NZCPS, specifically Policies 11 and 15.	Although the intent of this objective is supported, it requires amendment to give effect to the NZCPS, Policies 13 and 14, and to be consistent with Section 6(a) of the Act. As stated earlier in this submission, the proposed plan must give effect to the NZCPS. One method of this is establishing new provisions in the Coastal Zone Chapter to reflect the NZCPS direction for indigenous biodiversity and natural features and landscapes.
9.2.1.1 & 9.2.2.3	Policies	Amend	Combine the two policies as follows or similar; <u>Require the setback of structures and buildings from MHWS to; ensure the maintenance of coastal ecosystems and the natural character of the coastal environment; enable esplanade reserves or esplanade strips to be set aside for the future, and; avoid an increase in the risk of adverse effects from coastal hazards.</u>	These two policies both require development to be setback from the coast in order to achieve certain outcomes. Combining them would provide one comprehensive policy containing all reasons for a setback from the coastal end. The reference to coastal hazard risks requires amendment to give effect to the NZCPS, by requiring avoidance of an increase in the risk of adverse effects from coastal hazards.
9.2.1.2	Policy	Oppose	Amend as follows, or similar; To, in the coastal environment: avoid adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna (as identified by Appendix 13.9.4), and; avoid significant adverse effects, and avoid, remedy and mitigate other adverse effects on other indigenous biodiversity.	The NZCPS contains specific direction on the management of indigenous biodiversity in the coastal environment to avoid adverse effects on particular ecological values. This must be given effect to, in either this Chapter or a more applicable location.

9.2.2.1	Policy	Amend	Amend as follows; The location of Residential activities within the zone <u>need to be managed</u> are <u>located</u> to ensure that adverse effects on amenity values, the quality of the environment and the natural and physical resources of the district are managed <u>avoided, remedied or mitigated.</u>	The policy is unclear as it uses the term 'managed' twice. Redraft using more directive language consistent with the Act.
9.2.2.5	Policy	Oppose	Redraft to give effect to Policy 13 NZCPS.	This does not provide any clear policy direction to achieve the objective
9.3.5.1.1	Goat farming within a Goat Management Area	Support	Retain	Discretionary activity status is considered appropriate to fully consider the adverse effects and probability and consequences of any escapes; reference the Goat Farming Boundary Fence Standards so that these are clearly a matter for consideration.
9.3.5.1.20	Buildings within 50m of MHWS.	Support	Retain	Discretionary activity status is considered appropriate to fully consider the adverse effects of buildings within 50m of MHWS.
9.4	Assessment criteria for matters of control	Support	Retain	These are considered appropriate to ensure that adverse effects can be considered and addressed.
9.5.1.1.4	Assessment criteria for restricted discretionary activities #4	Support; amend	Amend as follows; The extent to which the activity avoids significant adverse effects, and avoids, remedies or mitigates other adverse effects, on the natural character of the coastal environment.	While the assessment allows consideration of the avoidance of significant adverse effects, partially consistent with Policy 13(1)(b) NZCPS, it must include the other part of this Policy 'to avoid, remedy or mitigate other adverse effects of activities on natural character...'
9.6	Zone Standards 9.6.2.3; 9.6.8.1; 9.6.12.1;	Support	Retain	These standards address building setbacks from the coast and waterbodies, spillage containment and coastal hazard assessment appropriately.

Chapter 10: Coastal Settlement Zone			
Objective	Partially support	Retain reference to the preservation of natural character	The reference to the preservation of natural character is consistent with the NZCPS and Section 6(a) of the Act.
10.2	Oppose; new policy	Include policy direction to ensure that the scale, design and colour of buildings avoids significant adverse effects on natural character in this zone	Although the objective requires the preservation of natural character, the only policy direction to achieve this is requiring setback and sufficient size for effluent disposal. Include policy direction to ensure that the scale, design and colour of buildings avoids significant adverse effects on natural character in this zone.
10.3.1.1.1	Support	Retain	A residential building requiring consent within 50m of MHWS or within an identified coastal hazard area is supported.
Chapter 11: Ōhiwa Harbour Zone			
Resource management issues 1, 4, 5 and 9	Support	Retain	These are appropriate for this Zone.
11.2.1	Oppose; amend	Amend as follows; The adverse effects of land use activities are managed to protect and enhance the outstanding natural and landscape values and the natural character of the Ōhiwa Harbour environment.	An objective should describe the outcome that is being sought, rather than how to achieve it. The policies of this Chapter should describe how the adverse effects of activities are to be managed to achieve the objective.
11.2.1.1	Partially oppose	Amend as follows; To avoid as far as practicable, and, where this cannot be achieved, remedy or mitigate the adverse effects of activities such as buildings, earthworks and tracking, especially on skylines and ridges, that will adversely affect the qualities and characteristics of the Ōhiwa Harbour landscape.	Although the intent of this policy is supported, it should also specify that, should avoidance not be practicable, remediation and mitigation of adverse effects should be required.
11.2.2	Support	Retain	This objective is considered consistent with Section 6(c) of the Act.

11.2.2.1	Policy	Support	Retain	This objective is considered consistent with Section 6(c) of the Act.
11.2.2.2	Policy	Support	Retain	This objective is considered consistent with Section 6(c) of the Act.
11.2.2.3	Policy	Support; Amend	Amend as follows; Protect the Ōhiwa Harbour saltmarsh from modification and destruction by managing the adverse effects of activities on adjacent land	Although the intent of the policy is supported, it should be clarified as requested, as it is the protection of the saltmarsh from adverse effects that is the policy direction rather than merely managing these effects.
11.3.2.1	Permitted Activities 2 – 4.	Support	Retain	These activities are considered appropriate providing they comply with the zone standards.
11.3.3.1.1	Controlled activity – two dwellings per site	Support	Retain	A residential building requiring consent within 50m of MHWS or within an identified coastal hazard area is supported. Relate to hazard assessments.
11.3.4.1	Restricted discretionary activity 2 – keeping or farming of goats	Support	Retain	Restricted discretionary activity status is considered appropriate for goat keeping or farming in this Zone.
11.3.5	Discretionary activities 1 – 5.	Support	Retain	It is considered appropriate that all effects of these activities are able to be considered
11.4.1	Assessment criteria for controlled activities 11.4.1.1 and 11.4.1.3	Support	Retain	These are considered appropriate for these matters.
11.5.1.2	Assessment criteria for restricted discretionary activities – goat farming	Support	Retain	These are considered appropriate for goat farming in GMA.
11.6.1	Assessment criteria for discretionary activities	Support	Retain	These assessment criteria are considered appropriate for consideration of buildings near ridgelines.

11.7.13.1	Coastal Hazard Assessment	Support	Retain	The potential requirement for a coastal hazard assessment is supported.
11.7.15	Goat Farming	Support	Retain	These standards are considered appropriate to contain goats.
Chapter 12. Surface of Water Activities				
12.2.2.	Objective	Support	Retain	The maintenance or enhancement required by this objective on the listed values is considered appropriate.
12.5.1.2; 12.6.1.1.2(a) & (b)	Assessment criteria for controlled/restricted discretionary activities	Support	Retain	These matching assessment criteria will allow adverse effects of the activities on waterbody margins, indigenous fauna and habitats, and bank erosion to be considered and addressed.
Chapter 13. Landscapes and Vegetation				
13.1	Resource Management Issues	Support	Retain	These issues are considered appropriate for the District.
13.2.1	Objective - ONFLs	Support	Retain	This objective is consistent with s6(b) of the RMA.
13.2.1.1 – 13.2.1.2	Policies – ONFs and ONLS	Oppose in part; Support in part	Retain these two policies for the non-coastal area of the District, but include new policies giving effect to Policy 15(a) and (b) NZCPS in the coastal environment if not addressed in the Coastal Zone.	In non-coastal area of the District, these policies are considered appropriate and provide appropriate protection to ONFLs However, the OPD is required to give effect to the NZCPS, and Policy 15 contains a tiered hierarchy to achieve this within the coastal environment, where adverse effects are avoided on outstanding natural features and outstanding natural landscapes (15(a)), and significant adverse effects are avoided, and other adverse effects are avoided, remedied or mitigated on other natural features and natural landscapes in the coastal environment.
13.2.1.4	Policy	Support	Retain.	This policy seeks to maintain or enhance the values of natural features and landscapes.

13.2.2	Objective – indigenous vegetation and habitats	Support; New Objective	<p>Include new objective providing for s6(c) of the Act, as follows;</p> <p><u>To protect areas of significant indigenous vegetation and significant habitats of indigenous fauna.</u></p>	<p>While the proposed objective provides for the maintenance and enhancement of biodiversity, there is no clear objective reflecting the requirement of Section 6(c) and the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.</p> <p>This objective is partially addressed by policy 13.2.2.1.</p>
13.2.2.1	Policy	Amend	<p>Amend as follows;</p> <p>To, in the coastal environment:</p> <p>avoid adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna (as identified by Appendix 13.9.4), and;</p> <p>avoid significant adverse effects, and avoid, remedy and mitigate other adverse effects on other indigenous biodiversity.</p> <p>To, outside of the coastal environment:</p> <p>avoid adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna (as identified by Appendix 13.9.4), or, where avoidance is not practicable, adverse effects are avoided, remedied, mitigated or offset, and;</p> <p>avoid, or where this is not practicable, remedy, mitigate or offset adverse effects, including by protecting priority ecosystems and habitats for protection (as described in Appendix 13.9.4) and at-risk and threatened indigenous species.</p>	<p>Section 6(c) RMA refers to the protection of significant indigenous vegetation and the habitats of indigenous fauna, and does not refer to inappropriate development.</p> <p>This policy should be combined with policy 13.2.2.5, as they both address the management of indigenous biodiversity.</p> <p>Also, ensure the Policy framework gives effect to Policy 11 NZCPS when addressing activities within the coastal environment.</p>
13.3.2.1.6 (a)	Permitted Activity – clearance and disturbance of up to 100m ² of coastal dune vegetation	Oppose	<p>Ensure that this rule does not allow significant adverse effects on identified IBDA-B in the Regional Coastal Environment Plan.</p>	<p>The clearance of up to 100m² of coastal dune vegetation as a permitted activity outside of the sites listed in 13.9.2 is not considered appropriate if it affects any of the dune areas</p>

					identified as IBDA in the BOP Proposed Regional Coastal Environment Plan, as it does not give effect to the NZCPS.
13.9.1	Outstanding Natural Landscapes	Support	Retain		These identification of these natural landscapes is considered appropriate.
13.9.2	Outstanding Natural Features	Support/amend		Change the description so that it matches the name of the ONF correctly for all features, ensure all features identified on the maps are included in this appendix, and identify the features on the maps	The name of the ONF for many of these do not match the description. Identification of the features on the maps, and reference in this Appendix of the map number it is on is also required, for plan usability.
13.9.3	Criteria for Assessing Significant Indigenous Vegetation and Habitats of Indigenous Fauna	Support/amend		Retain, but change 3 rd criteria of Rarity or distinctive features as follows; Indigenous vegetation or habitat of indigenous fauna is one of the largest remaining examples of its type within the region District or any relevant ecological district	These criteria are supported as consistent with the criteria in the RPS. However, the reference to 'region' in the 3 rd criteria of Rarity or distinctive features should be replaced with 'District' to reflect the scope of the OPD.
Chapter 15. Subdivision					
15.4.3 and 15.5.12	Relationship between protection lot allowances and protection and fencing of indigenous vegetation	Support; clarify		Retain but clarify relationship.	Although using protection lots in the rural, coastal and Ōhiwa Zones to encourage the protection of significant natural areas and habitats is supported, it is unclear how this works with the requirement to protect and fence these significant areas in 15.5.12.
15.4.3.2	Protection or incentive lots	Amend		Clarify reference.	13.9.3 is not a rule. Clarify and replace with a reference to Appendix 13.9, if that is intended.
15.5.12	Protection and fencing of indigenous vegetation	Support		Retain, and add 'significant habitats of indigenous fauna' to the list of areas to be protected.	A requirement for legal protection and fencing of these sites of significance will ensure the maintenance of indigenous biodiversity in the District. However, the protection of significant habitats of indigenous fauna is also required by S6(c) of

					the Act and it may be appropriate for these to be protected upon subdivision as well as indigenous vegetation.
15.6.1.2, 15.6.1.3, 15.6.1.7	Assessment criteria for controlled activities	Support	Retain	Retain	Along with the requirements in Chapters 13, 14 and 18, these are considered appropriate to address the adverse effects of controlled activity subdivisions.
15.8.1.1.1 – 15.8.1.1.8; 15.8.1.1.13	General assessment criteria for discretionary activities	Support	Retain	Retain	These are considered appropriate matters to have particular regard to when considering discretionary activities.
15.8.2.1.2 – 15.8.2.1.6	Assessment criteria for discretionary activities – Ohiwa Harbour	Support	Retain	Retain	These are considered appropriate matters to have particular regard to when considering discretionary activities.
Chapter 18. Natural Hazards					
Introduction		Amend	Insert text accurately reflecting Policy 25(a) and (b) of the NZCPS in relation to coastal hazards.	Amend	As well as the RPS, this Plan must also give effect to the NZCPS. Policy 25 provides direction to avoid increasing the risk of social, environment and economic harm from coastal hazards.
18.1	Resource management issue 4	Amend	Amend as follows; There is a need for <u>avoidance or mitigation</u> measures...	Amend	Methods of avoiding increasing the risk of adverse effects from coastal hazards include both avoidance and mitigation measures, and the issue should reflect this.
18.2	New objective	Amend	Include objective requiring that the risk of adverse effects from coastal hazards is not increased.	Amend	Although policies 18.2.2.2 and 18.2.2.3 provide direction on avoiding increasing the risk of adverse effects from coastal hazards, there is no objective requiring this. This objective is required to ensure the Plan gives effect to the NZCPS in relation to coastal hazards.
18.2.2.2; 18.2.2.3	Policies relating specifically to coastal hazards	Amend structure	Include these two policies under the new objective requested above.	Amend	These policies are related to coastal hazards rather than sustainable land use practices and should be connected to the new objective sought in this submission for coastal hazard management.

18.2.2.2; 18.2.2.3	Policies relating specifically to coastal hazards	Clarify	Clarify but retain the direction in policy 18.2.2.2.	Policy 18.2.2.2 requires that new subdivision avoids the need for hazard protection works, while policy 18.2.2.3 allows the consideration of protection works where they are the best practicable option.
18.3.3.2	Discretionary activities – coastal hazard risk	Support; amend	Retain approach, amend 18.3.3.2.6(b) as follows; Where the outcome of the report indicates that <u>the activity will not result in an increase in the risk of adverse effects from coastal hazards</u> there will be no significant effects from the activity , then the activity shall be a controlled activity	This approach of determining activity status through an assessment of the risk from coastal hazards is supported, in appropriate circumstances. The criteria to determine whether the activity is a controlled activity or a discretionary activity should be based on the direction given in the NZCPS, as this will ensure it can give effect to the NZCPS.
18.4	Assessment criteria for controlled activities	Support	Retain this section.	These matters are considered appropriate matters of consideration.