

2 Part 2 – Statutory and Planning Requirements

2.1 Legal Framework

2.1.1 Reserves Act 1977 (RA)

Areas are provided and managed as reserves under the Act to protect a range of special features or values, including recreational, historical and community ones (refer also to Section 2.2).

The ODC, as an administering body under the Reserves Act 1977 is required to prepare RMP's for the reserves under its control. The purposes of the RA are summarised as follows;

- Providing for the preservation and management of areas for the enjoyment of the public
- Ensuring, as far as possible, the survival of all indigenous species of flora and fauna
- Ensuring, as far as possible, the preservation of access for the public
- Providing for the preservation of representative samples of all classes of natural ecosystems and landscape
- Promoting the protection of the natural character of the coastal environment and margins of lakes and rivers

The Reserves Act 1977 classifies all public reserves in accordance with their primary purpose. A number of the Ōpōtiki coastal reserves are classified as recreation reserves. In accordance with Section 17 of the Act, the reserves have the primary purpose of:

“... providing areas for recreation and sporting activities and physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.”

The RA also provides for a number of other important management considerations under S17 (2). These are:

- (a) “The public shall have freedom of entry and access to the reserve, subject to the specific powers conferred on the administering body by Sections 53 and 54 of this Act, to any bylaws under this Act applying to the reserve and to such conditions and restrictions as the administering body considers may be necessary for the protection and general wellbeing of the reserve and for the protection and control of public using it.”*
- (b) Where scenic, historic, archaeological, biological, geological, or other scientific features or indigenous flora or fauna or wildlife are present on the reserve, those features or that flora or fauna or wildlife shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve.*

Provided that nothing in this subsection shall authorise the doing of anything with respect to fauna that would contravene any provision of the Wildlife Act 1953 or any Regulations or Proclamation or Notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the Historic Places Act 1954.

- (c) Those qualities of the reserve which contribute to the pleasantness, harmony, and cohesion of the natural environment and to the better use and enjoyment of the reserve shall be conserved.*
- (d) To the extent compatible with the principal or primary purpose of the reserve, its value as a soil, water and forest conservation area shall be maintained.”*

2.1.2 Resource Management Act 1991 (RMA)

The purpose of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources.

Section 6 of the RMA outlines matters of national importance that territorial local authorities must recognise and provide for including:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- (f) The protection of historic heritage from inappropriate subdivision, use, and development.*
- (g) The protection of recognised customary activities.*

The District Plan sets out ODCs objectives, policies and methods to carry out their functions in terms of the RMA.

The RMA also provides for the creation of esplanade reserves on subdivision for the purpose of S299 (among other things):

- (a) To enable public access to or along any sea, river, or lake: or*
- (b) To enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with recreational values.*

Esplanade reserves and esplanade strips provide an opportunity for the protection of the quality of the coastal environment, protection and enhancement of habitats, provision of areas for public recreational use and the provision of public access to the coastal marine area. A number of esplanade areas have been created under this piece of legislation through the subdivision process and are now part of the ODC's reserve network.

2.1.3 Local Government Act 2002 (LGA)

The purpose of the Local Government Act 2002 is to provide for democratic and effective local government that recognises the diversity of New Zealand communities; and, in accordance with the RMA –

- (a) states the purpose of local government; and
- (b) provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them; and
- (c) promotes the accountability of local authorities to their communities; and
- (d) provides for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of communities, taking a sustainable development approach.

Other requirements as they relate to the management of reserves are:

- Creation of bylaws (refer section 145 of the LGA)
- Public consultation (refer in particular section 138 of the LGA as it relates to the disposal of parks not governed under the Reserves Act 1977)

2.1.4 Historic Places Trust Act 1993 (HPTA)

The Historic Places Trust Act 1993 deals with the recognition and registration of historic places, historic areas, and waahi tapu. Methods for protection include creating heritage covenants and registration with the Trust.

This RMP seeks to recognise that some reserves include places of historical, cultural and archaeological significance and there is a need to work in accordance with the provisions of the HPTA (for example when carrying out operational functions or developing facilities).

Where historic places or waahi tapu have been registered under this Act, the relevant territorial local authority is notified. Registration is often supported by listing in the ODC's District Plan. This RMP recognises the importance of these sites within ODC reserves and is consistent with provision of the HPTA.

2.1.5 Conservation Act 1987 (CA)

The Conservation Act 1987 relates specifically to DOC (Department of Conservation) managed land and promotes the conservation of New Zealand's

natural and historic resources. It confers a number of functions on the Department of Conservation such as:

- The management for conservation purposes of all land and natural and historic resources held under the Conservation Act;
- The preservation of indigenous freshwater fisheries (so far as is practicable);
- The protection of recreational freshwater fisheries and freshwater fish habitats;
- Conservation advocacy;
- The provision of educational and promotional conservation information;
- Fostering recreation and allowing tourism on conservation land, providing the use is consistent with the conservation of the resource.

The CA is only relevant in situations where ODC owned reserves adjoin DOC land (including fisheries) and the need arises for a co-operative land management approach. In these situations the policy document recognises the need to promote conservation and historic preservation as appropriate.

2.1.6 Walking Access Act 2008 (WAA)

Section 81 of the Walking Access Act 2008 has replaced the Walkways Act 1990. The aim of section 81 of the WAA is to establish walking tracks over public and private land so that the people of New Zealand have safe, unimpeded foot access to the countryside for the benefit of physical recreation as well as for the enjoyment of the outdoor environment and the natural and pastoral beauty, the historical and cultural qualities of the areas they pass through.

2.2 Management and Control of the Resources

The Council's decision making capability over the reserves covered by the RMP is through vesting by the Crown pursuant to Section 26 of the Reserves Act. Appointments to control and manage are made pursuant to Section 28 of the Reserves Act. The District Council's autonomous powers in respect of the reserves differ according to the form of administrative control. Details of the reserves vested in the Council and those managed under appointment to control and manage are set out in Section 1 of this RMP.

The functions of reserve administering bodies are specified in Section 40 of the Reserves Act 1977. The Council, as the administering body for these coastal reserves, is charged with the duty of administering, managing and controlling them for the purpose for which they are classified, and in accordance with the appropriate provisions of the Reserves Act 1977. In this case all the reserves are classified as recreation reserves. The Council must, within the means at its disposal, ensure the use, enjoyment, development, maintenance, protection and preservation of the reserves for recreation purposes, as set out in Section 17 of the Reserves Act.

2.3 Administration

The Ōpōtiki coastal reserves are currently administered by the Ōpōtiki District Council, with advice provided by the Operations Committee of Council and careful consideration of the policies in this RMP. Day to day management is handled by the Parks and Reserves staff under the supervision of Manager – Parks and Recreation.

2.4 Planning Framework

2.4.1 Reserve Management Plan

It is a requirement of Section 41 of the Reserves Act that the administering body of recreation and other reserves prepares a RMP for individual or groups and categories of reserves. The RMP's are required to be kept under continuous review (Section 41 (4) Reserves Act).

Through the preparation of a RMP for a reserve or reserves, the administering body of the reserve(s) is able to establish the values present and determine policy for the day-to-day administration and use of the reserve or reserves. The objective is to achieve a desirable mix of the values and uses.

The RMP planning process also provides a way of determining community preferences and establishing the best means of providing for community wishes and expectations. A RMP should be treated as a community document. This gives the community certainty and assurance concerning the function and management of each reserve or group of reserves. This is an essential ingredient of good management planning.

In addition the RMP provides the reserve administering body with a framework for decision making concerning the day-to-day management of the reserves. When certain activities are provided for or contemplated in an approved RMP, it is not necessary for such proposals to be publicly notified as it is considered that this has occurred through the RMP notification process. The management planning process affords opportunity for community input at that stage. The process of preparing the management plan will have already established that certain proposals or reserve uses are compatible with the overall purpose of the reserve or reserves.

Reserves must be administered and managed for the purpose for which they are classified under the Reserves Act 1977. Provisions in the RMP's must be consistent with the statutory requirements that apply to the various reserve classifications. For example, any goals or objectives in the RMP which relate to recreation reserves must be consistent with the purposes defined in Section 17 of the Act. Those for local purpose reserves must be consistent with Section 23 of the RA.

Section 41(3) of the Reserves Act requires that a reserve(s) management plan must "provide for and ensure" the following:

- the principles set out in sub-sections 17 to 23 that apply to a reserve of the relevant classification
- compliance with those principles

- use, enjoyment, maintenance, protection, and preservation of the reserve(s) as the case may require
- development (as appropriate) of the reserve(s) to the extent that the administering body's resources permit, for the purpose for which each reserve is classified.

The administering body of a reserve(s) is required to keep the management plan(s) for the reserves administered under continuous review in terms of Section 41(4) of the Reserves Act 1977. The intention is that the plan is adapted to changing circumstances or increased knowledge.

2.4.2 District Plan

Provisions of the Territorial District Plans prepared in accordance with the RMA apply to reserves. Relevant resource consent must be sought under the Resource Management Act for any land use that is not a permitted activity. Where resource consents are required in terms of the District Plan, it may be necessary for a proposal to be publicly notified (in accordance with the requirements of the RMA) notwithstanding that the proposal of activity is provided for in the reserve management plan.

Certain specific activities will however require resource consent under the RMA. Those activities may include any of the factors below where the effects of the activity are deemed to be more than minor:

- Building, including the placement, alteration of construction
- Mining
- Signs
- Subdivision
- Any change of land use within a scheduled feature, including vegetation clearance other than that specifically permitted.
- Any modification to the natural landform, including earthworks, drainage, deposition of fill, or disposal of solid waste.

2.5 Regional Plans and Strategies

The management of the Ōpōtiki coastal reserves may be subject to provisions in the following Environment Bay of Plenty Regional Plans:

- Regional Water and Land Plan
- Regional Coastal Environment Plan
- Ōhiwa Harbour Strategy

2.6 Ōpōtiki District Plan

The Ōpōtiki District Plan has several sections that have relevance to the management of the coastal reserves.

These sections include:

- Section 3 - Landscapes and Habitats.
- Section 4 - Heritage
- Section 7 - Natural Hazards
- Section 17 - Coastal Zone
- Section 19- Ōhiwa Harbour Zone