
2. PLAN ADMINISTRATION

2.1 SECTION INTRODUCTION

- 2.1.1 This section gives an overview of District Plan administration. It discusses the sections of the Act that directly relate to the planning and resource consent process. The section contains much of the reference material for users of the Plan, and contains guidance for the assessment criteria for controlled, discretionary, and non-complying activities.

2.2 STATUS OF ACTIVITIES

- 2.2.1 Each zone lists the permitted, controlled, discretionary, and non-complying activities of the zone, and the controls and standards that activities must comply with. There are five types of activities:

Permitted

- A permitted activity is allowed by the plan without a resource consent if it complies in all respects with any conditions specified in the Plan.

Controlled

- A controlled activity is one provided for by a rule in the Plan and which complies with standards and terms specified in the Plan. A resource consent is required and must be granted by Council, but the Council can impose conditions only on matters it has specified in the Plan.

Discretionary

- A discretionary activity is one provided for by a rule in the Plan for which resource consent must be obtained. Standards and terms may be specified in the Plan. The Council may grant or refuse its consent.

Non-complying

- A non-complying activity is one which is provided for as a non-complying activity in the plan and is an activity, not being a prohibited activity, that contravenes a rule in the Plan, and which is allowed only if resource consent is obtained.

Prohibited

- An activity which is expressly prohibited by the Plan and for which a resource consent cannot be granted.

2.2.2 Subdivision is also a responsibility of the Council under the Resource Management Act and is controlled by the District Plan. A subdivision consent is required in all cases.

2.3 **DESIGNATIONS**

2.3.1 Designations identify land required for public works or projects. The inclusion of a designation in the District Plan may be requested by a requiring authority, being either a Minister of the Crown, a local authority, or a network utility operator approved by the Minister for the Environment.

2.3.2 Part VIII of the Act sets out the procedure for requiring authorities to designate activities. Designated land may not be subdivided, used or developed in any way without the written consent of the requiring authority.

2.3.3 Requirements for designations which have been carried over from the Transitional District Plan or new requirements for designations are detailed in **Appendix 1** and are identified on the Planning Maps. **Appendix 1** details the requiring authority, the locality of the designation and the legal description of the designation.

2.3.4 Any new designations lapse after five years from the date of inclusion in the District Plan if substantial progress or effort has not been made towards giving effect to the designation.

Any person concerned with designations or requirements for designations should refer to Part VIII of the Act for more detailed information about the designation process.

2.4 **NETWORK UTILITIES**

2.4.1 Network utilities are essential to servicing the District and include a wide range of infrastructural services which vary significantly in scale and function. Utilities include buildings, overhead lines, masts and other structures associated with communications, electricity networks, water supply, gas, sewerage network, navigation facilities, roading, and waste disposal.

- 2.4.2 With some exceptions network utilities are provided for as permitted activities throughout the District. An exception is in the Coastal Zone and Coastal Settlement Zone where landscape protection is a key objective. In these zones Council requires some control over aspects such as earthworks, location, and consideration of available alternatives.

2.5 PLAN CHANGES

- 2.5.1 Any person may request a change to the District Plan under Part II of the First Schedule to the Act. A request to change a District Plan must be considered by the Council at any time that the Plan is operative.

- 2.5.2 Although the specific requirements are set out in the Act, a request for a plan change must generally be accompanied by a description of:

- (i) An explanation of the purpose, and reasons for, the proposed plan change.
- (ii) A description of the environmental effects anticipated, including an assessment of effects as required by the Fourth Schedule of the Resource Management Act.
- (iii) The ways in which any adverse effects will be mitigated.
- (iv) The benefits and costs, efficiency and effectiveness, and any possible alternatives to the change requested.
- (v) The nature of any consultation to be undertaken.

- 2.5.3 In terms of the Opotiki district when considering requests for a change of residential zoning in the Coastal Zone the Council will have regard to :

- (i) The provision of appropriate services.
- (ii) The relationship to existing settlements.
- (iii) The potential effect on natural character of the coastal environment.
- (iv) The location of Areas Sensitive to Coastal Hazards (ASCH) as stated in the Operative Regional Coastal Environment Plan.

2.6 APPLICATIONS

2.6.1 *Resource Consents*

There are two types of resource consent which may be required under this Plan:

- **Land use consent:** A resource consent (land use) will be required for an activity identified as a controlled or discretionary activity in the Plan and for non-complying activities.
- **Subdivision consent:** A resource consent (subdivision) will be required for any subdivision of land, where the subdivision may be a controlled, discretionary or non-complying activity.

Resource consents may also be required from Bay of Plenty Regional Council for some activities, particularly those within coastal areas, and those activities that discharge contaminants into the environment.

2.7 INFORMATION IN RELATION TO APPLICATIONS

The Council will require information to be provided by an applicant as appropriate to the status, scale and potential effects of the activity and will include written information, plans, and floor plans. An application is incomplete unless it contains all information required to enable a proper assessment of the application. Information required for any application must meet Council's requirements, including but not limited to, the following.

All of this information may not be required for every application. It is recommended that confirmation about the information required for any application be sought from Council Officers as early as possible in the planning process, and certainly before the application is lodged.

2.7.1

Written information

- (i) An assessment of effects on the environment as stated in the Fourth Schedule of the RMA.
- (ii) A description of the activity site including existing uses, buildings, services, topography and vegetation, a description of any habitats and indigenous vegetation areas, wetlands and streams, fill or excavations, and the legal description of the site.
- (iii) A description of the activity for which consent is being sought, including the nature of the activity, effects from the activity, the number of people who will use the site, proposed hours of operation, and the affect of the activity on traffic flow in the area.
- (iv) A statement specifying other resource consents that the applicant may require from any consent authority, and whether or not the applicant has applied and/or received such consents.
- (v) An analysis of the suitability of the site for the proposed activity, having regard to topography, natural drainage networks, services on the site and service provision, access, indigenous vegetation areas, habitats of indigenous fauna, cultural heritage resources, physical features, and susceptibility of the site to natural hazards.
- (vi) An analysis of any actual or potential effects that the activity may have on the environment and the ways that these effects may be avoided, remedied, or mitigated.
- (vii) The type, volume and nature of any hazardous substances to be stored, use, disposed of, or transported off or onto the site. The facilities where the substances are to be stored and/or used, the volume and frequency and route for transporting the substances to the site, procedures for transferring, handling, and disposing of the substances, and procedures for containing any spillages of the substances on the site.
- (viii) Any known information about archaeological sites, heritage sites, and places and sites of significance to tangata whenua, and information on the effects that the activity may have on these sites of significance.
- (ix) An assessment of the effect on the road is to be submitted with the application for resource consent. This assessment is likely to be referred to the relevant road controlling authority for their written comments and recommendations unless these are provided with the application. This assessment should propose measures to avoid, remedy or mitigate any identified adverse effects.
- (x) Where an application is for plantation forestry activities a harvesting plan must be submitted to Council no less than 5 years prior to the date of harvesting commencement.
- (xi) The location of tracking and roading networks within the activity site. Including whether these sites will be visible from State Highways and significant landscapes.
- (xii) Effects of activities on landscapes of significance within the district, particularly coastal landscapes.

2.7.1.1 Additional information for sites within the Mixed Activity Zone

Included in the assessment of effects for activities within the Mixed Activity Zone, Council shall require information in regard to the following:

- (i) An indication of the stages of development, if applicable.
- (ii) The location of access to and within the site, manoeuvrability areas, and an indication of on-site parking to be provided.
- (iii) Any on-site landscaping to be undertaken.
- (iv) The location and layout of buildings, and distances of buildings to adjoining residential activities.
- (v) The location of services within the site.
- (vi) The location of areas for the use, storage, or disposal of hazardous substances.

2.7.2 Plans

Indicating the following at an appropriate scale:

- (i) A drawing showing the location of the site, with road names, property numbers and north point.
- (ii) A current Certificate of Title for all subdivision consent applications.
- (iii) A site plan of the activity site at a scale of not less than 1:200 showing :
 - (a) Site boundary lengths and dimensions in metres.
 - (b) Location with distances to site boundaries, of all existing structures which are to remain on the site, and all proposed structures, including where applicable balconies, verandahs, service courts, and residential courts.
 - (c) Proposed use of each building.
 - (d) The position of any easements over the site.
 - (e) Position, location, and dimensions of every off-street parking and loading space, and the proposed access and manoeuvring areas including the location and width of footpath crossings necessary to serve the site.
 - (f) Any proposed retaining walls, earthworks, and landfill.
 - (g) Existing trees and proposed landscaping. Areas of the landscaping should be shown together with all existing and proposed sealed areas.
 - (h) The location of any exterior lighting and diagrams, or models, showing areas of potential lightspill.
 - (i) Natural watercourses and drainage patterns, and sewerage pipes within and adjacent to the site.
 - (j) The location, distances to site boundaries, and dimensions of any signage to be placed on the site.
 - (k) The means proposed to deal with all stormwater and sanitary drainage.
 - (l) The location of any septic tank system including drainage fields.
 - (m) The location of indigenous vegetation and habitats of indigenous fauna, and wetlands.
 - (n) Contours of the site
 - (o) Existing and proposed esplanade reserves or strips
 - (p) Existing and proposed protection covenant areas.

2.7.3 *Floor Plans*

For each **proposed** structure at a scale of not less than 1 : 100 illustrating :

- (i) Use of all parts of the structure including basements, parking, storage and service areas. Where several floors are of the same area and use, a standard floor plan may be shown.
- (ii) Elevations of each building at a scale not less than 1 : 100 showing :
 - (a) external appearance of the building including doors and windows.
 - (b) number of floors and their proposed usage.
 - (c) structure heights and height in relation to any boundary.
 - (d) maximum permitted height marked.
 - (e) any additional height requested.

The information requirements stated in the Plan are not exhaustive. Council may require additional information to clarify matters of concern relating to applications. A guide to Resource Consent Information Requirements is available from the Opotiki District Council

No application for a resource consent will be processed until Council is in receipt of the resource consent application fees.

2.8 NOTIFICATION OF APPLICATIONS

The notification of resource consent applications is managed in accordance with Sections 93, 94 and 95 of the Act. Appendix 2 contains a flow chart that illustrates the notification process under the Act. The following discusses notified and non-notified applications.

2.8.1 *Notified applications*

Section 93 of the Resource Management Act 1991 presumes that all resource consent applications must be notified unless the application is for a controlled activity or Council is satisfied that the adverse effects on the environment will be minor. If notification is not required, under Section 94 Council must serve notice of the application on all persons who, in the opinion of the Council, may be adversely affected by the activity, even if some of those persons have given their written approval to the activity.

Section 94A of the Act sets out how Council determines whether the effects of an application are minor or more than minor. This includes the ability to disregard adverse effects if the District Plan permits an activity with that effect.

Section 94B of the Act outlines how Council determines who may be adversely affected by an application.

Under Section 94C Council must also notify an application if an applicant requests it. Also if Council considers that special circumstances exist, it may notify an application subject to the requirements of the Act. Special circumstances may include:

- (i) Where the circumstances are unusual or exceptional.
- (ii) Where the proposal is contentious.
- (iii) Where the proposal is contrary to that envisaged by the plan.

Appendix 2 illustrates the notification process.

2.8.1.2 Applications which include sufficient information must be notified within 10 working days of receipt of the application by Council. Council can require further information on a resource consent application if the supporting documentation is deemed to be insufficient. The ability for Council to request further information comes from Section 92 of the Act.

2.8.1.3 Notice of the application must be sent to all persons likely to be affected by the proposal, and also to those persons prescribed in The Resource Management Act Regulations.

2.8.2 ***Non-notified applications***

2.8.2.1 Resource consent applications received by Council that can be managed pursuant to Section 94 of the Act will be processed as non-notified applications.

2.8.2.2 These include, but are not limited to, the following:

1. Applications for subdivision consent where the subdivision activity is stated as a controlled activity in the District Plan.
2. Applications for controlled activities where the written approval is obtained from those persons whom the Council considers may be adversely affected by the granting of the resource consent application, except as otherwise stated in the District Plan.
3. Applications for a discretionary or non-complying activity where any adverse effect on the environment will be no more than minor and where written approval is obtained from those persons whom the Council considers may be adversely affected by granting the resource consent application.
4. Relocation of a dwelling or building. Where relocation of a dwelling or building is a controlled activity, then subject to there being no special circumstances as provided for in Section 94(5) of the Act, the written approval of affected persons will not be necessary, and the application need not be notified.

The following are the Section 94 matters that are to be considered.

Affected parties

S94 of the Act determines who may be regarded as an adversely affected person or party and in exercising its judgment the following matters will be given consideration by Council:

1. Persons whether owning or occupying neighbouring properties adjacent to the application site.
2. Any Minister of the Crown with statutory responsibility in respect of land adjoining or adjacent to the application site.
3. Any network utility operator with responsibility in respect of land adjoining or adjacent to the application site.
4. The tangata whenua of an area who may be affected by the proposed activity.
5. Any relevant local authority, being a territorial authority or a regional authority.
6. Any other person or party who Council considers likely to be affected by the application.

Effects of Activities less than minor

In assessing an application for non-notification Council must be satisfied that the effects arising from an activity are 'less than minor' in nature. In determining whether the adverse effects on the environment resulting from a discretionary activity or a non complying activity are less than minor, the following are a guideline to assist consent applicants and interested parties:

1. Degree of non-compliance with the rules of the Plan such that the objectives and policies of the Plan will not be compromised.
2. Scale, intensity, duration, and frequency of non-compliance and the scale of these effects on affected parties.
3. The magnitude of the effect on the receiving environment, and the potential absorption of the effects by the environment.
4. Cumulative outcome of the degree of non-compliance.
5. Methods to be implemented to avoid, remedy, and mitigate any potential adverse effect, and the degree to which these reduce non-compliance with the Plan rules.

2.9 ASSESSMENT CRITERIA FOR APPLICATIONS

2.9.1 *Controlled activities*

Controlled activities are stated in the Plan. They are activities that require a resource consent from Council. Council can not decline a resource consent application for a controlled activity but reserves control over certain matters, and can impose conditions on the consent accordingly.

When assessing an application for a controlled activity the Council has regard to a number of matters. These include, but are not limited to, the following:

- (i) Design and appearance of the activity.
- (ii) Effects of the activity on adjoining property.
- (iii) Vehicle access and site manoeuvrability.
- (iv) Effects on pedestrian access.
- (v) Historical, archaeological, and cultural resources.
- (vi) Natural hazard occurrence.
- (vii) Hazardous substances.
- (viii) Temporary buildings.
- (ix) Disposal of effluent and solid waste.
- (x) Treatment of wastes produced on the site.
- (xi) Effects on water bodies, indigenous vegetation and habitats.
- (xii) Effects on the coast resource.
- (xiii) Effects of earthworks on the natural character of the coastal environment.

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- (xiv) The degree to which the existing flow and type of traffic on, and the existing character of the road, will be affected by the traffic generated by the activity.
 - (xv) Whether the road can be upgraded to cater for increased traffic and what proportion of the costs associated with upgrading should be borne by the applicant.
 - (xvi) The scale and intensity of the activity in relation to the surrounding environment.
 - (xvii) Effects on outstanding natural feature and landscapes, wetlands and heritage resources.

The Zone sections of the District Plan give more detail on the matters to be considered by Council.

2.9.2 *Discretionary activities*

Discretionary activities are stated in the Plan. They are activities that require a resource consent from Council. Council can choose to decline an application for a discretionary activity. Council can also apply conditions on consent for discretionary activities.

When considering an application for a discretionary activity the Council shall have regard to those matters stated in Section 104(1) of the Act and may grant or refuse a resource consent and, if the consent is granted, may impose conditions pursuant to Section 108 of the Act.

Sections 2.9.1 and 2.9.2 provide Plan users with an indication of the matters Council may have regard to when assessing resource consent applications.

Consent applicants should examine those assessment criteria detailed in each of the Sections of the Plan. The criteria stated in the Sections provide a more detailed account of matters that will be considered by Council when assessing resource consent applications.

2.10 CONDITIONS OF CONSENT

2.10.1 In granting a consent to an application for a controlled, discretionary, or non-complying activity the Council may impose conditions as stated in Sections 108, 220, or 221 of the Act. Conditions that Council may choose to impose can include, but are not limited to, the following matters.

1. Hours of operation.
2. Compliance with more stringent standards for building setback, than generally required in the zone.

3. Planting, landscaping, fencing, or the retention of existing vegetation, trees or natural features.
4. The protection or maintenance of buildings and structures of heritage value.
5. The provision of such matters as parking and access or additional open space or landscaping to maintain amenity levels.
6. The imposition of bonds to ensure completion of required works.
7. Payment of a financial contribution where this is required by the District Plan.
8. Setting aside reserves and/or esplanade reserves or strips.
9. Consent notices to be registered on Certificates of Title.
10. Maintenance of coastal values.
11. Provision of engineering reports.
12. Demarcation of building platforms.
13. Monitoring requirements.
14. Protective covenant mechanisms.
15. Pest management provisions.
16. Protection of existing network structures and facilities.

The list above is not exhaustive. It provides an indication of possible conditions that may be attached to a consent application.

2.11 MONITORING

2.11.1 The Council is required to monitor to ensure that its functions under the Act are being effective in promoting the purpose of sustainable management of natural and physical resources. **Section 20** of the District Plan further details Council's monitoring programme. Under Section 35 of the Act there are four requirements on Council to monitor, these are:

- State of the environment monitoring.
- Suitability and effectiveness of the District Plan.
- Monitoring of delegated or transferred powers, functions, or duties.
- Resource consent compliance monitoring.

2.11.2 There is an opportunity to seek the assistance of local Iwi and Hapu in the monitoring process where rahui can be used. Council may also seek a fee from some resource consent holders, to help with the monitoring of resource consent compliance. This additional fee will not be required in all cases, only in relation to those resource consents where additional monitoring is required throughout the duration of the consent.