

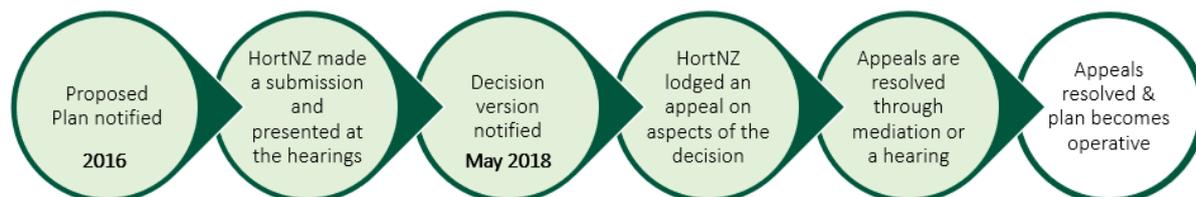
Update on the Opotiki District Plan

Opotiki District | June 2020



The District Plan sets out **policy and rules that manage land use (including activities such as earthworks and vegetation clearance) and subdivision** in the district and is administered by the Opotiki District Council. Matters such as water, air and soil are administered by the Bay of Plenty Regional Council under the Natural Resources Regional Plan.

The District Plan was required to be reviewed by the RMA – the review process is now concluded and the new (“Proposed”) District Plan will replace the existing Opotiki District Plan.



Background to the District Plan review

- Since 2015 HortNZ, in conjunction with NZKGI, has been involved in the development of the new (“Proposed”) Opotiki District Plan, telling the horticulture story and promoting outcomes that enable growing.
- Since the existing plan was developed in the mid 1990’s there have been changes in the industry which needed to be considered in the Plan, such as seasonal worker accommodation and artificial crop protection structures. The new Plan also takes into account the new Regional Coastal Environment Plan, and changes to legislation, such as the National Policy Statement for Electricity Transmission (NPSET) which affords protection to National Grid lines, and changes to the degree of protection afforded to features such as landscapes and biodiversity.
- Throughout the process, HortNZ sought to ensure that growers can reasonably undertake their activities without undue regulation. HortNZ’s involvement included comments at early draft stages, meetings with growers, iwi and post-harvest operators, meetings with Council and other parties, making a submission on the Proposed Plan, making further submissions on changes other parties sought, and presenting at hearings.
- After Council released its decisions, HortNZ lodged an appeal to the Environment Court to ensure that the provisions were consistent across the district. HortNZ also became a ‘party’ to a number of other appeals that sought significant changes to the Plan. Some parties sought a higher level of regulation on grower activities. As a result, HortNZ participated in many mediations on the appeals throughout 2018-2019.
- Agreement has now been reached on all appeals and it is anticipated that **the new District Plan will become fully ‘operative’ later this year – this means that the previous District Plan will no longer apply.** This note outlines the key changes for growers to be aware of.

Key changes to the Opotiki District Plan

The main changes affecting growers relate to:

Zones	
	<ul style="list-style-type: none">• The District Plan divides the district into zones. Most growers are either in the Rural, Coastal, or Ōhiwa Harbour Zones. Some growers may also grow in the Coastal Settlement Zone at Te Kaha.• The zones were largely rolled over into the new District Plan. However additional provisions were included for areas within the ‘coastal environment’ –an area mapped by Bay of Plenty Regional Council.

	<ul style="list-style-type: none"> The new District plan introduces a ‘Coastal Environment Overlay’ which does not neatly align with the Coastal Zone or the Ōhiwa Harbour Zone. Growers will need to check the new maps to determine if they are within the overlay, as it will affect the rules that will apply, particularly for artificial crop protection structures. There is also an overlay for the Outstanding Natural Landscapes (ONL) that are identified in the Plan. If growers have an ONL over their property more additional rules (such as earthworks and vegetation removal provisions) apply.
National Grid	<ul style="list-style-type: none"> The Plan was required to include provisions for the National Grid lines. The main line is the Edgecumbe – Waiotahi B (EDG-WAI-B) 110kV line which feeds power into Opotiki. The 50kV Te Kaha Waiotahi A (TKH – WAI A) line is no longer owned and operated by Transpower, so is no longer part of the National Grid. There are provisions in the new District Plan for a National Grid Yard for the EDG-WAI-B line which growers will need to consider if the line goes through their property, particularly if undertaking earthworks or installing artificial crop protection structures. <p><i>Note: The National Grid Yard is defined in the District Plan – it is an area either side of the centreline of a National Grid Transmission Line (the distance either side varies depending on the voltage of the line).</i></p>
Artificial Crop Protection Structures	<ul style="list-style-type: none"> The new plan includes specific rules for artificial crop protection structures (ACPS). HortNZ sought to ensure that ACPS could be constructed without need for a resource consent (there was resistance to this from some other parties who sought to limit such structures, particularly in the coastal environment overlay). The new District Plan includes permitted activity standards relating to cloth colour, setbacks and height. If the permitted activity conditions cannot be met, a resource consent is required. Refer to summary table below.
Earthworks	<ul style="list-style-type: none"> The existing District Plan has very few rules for earthworks. There are earthworks rules in the new plan, mainly because of landscape considerations, particularly in Outstanding Natural Landscapes (ONL). The new District Plan introduces area and volume thresholds and revegetation conditions in some areas – however it is important to note that the definition of ‘earthworks’ <u>does not include</u> normal agricultural and horticultural practices. However, there are specific permitted activity provisions when land contours are altered as part of new horticultural planting in the Coastal Zone (some parties wanted this activity to require a resource consent, but agreement was reached through mediation to provide for some such earthworks as a permitted activity). A table below sets out a summary of the provisions in the respective zones. If these requirements cannot be met then a resource consent would be required.
Seasonal worker accommodation	<ul style="list-style-type: none"> Specific rules have been included in the new District Plan to enable some seasonal worker accommodation as a permitted activity in the Rural Zone. Provisions also enable such accommodation in the Industrial Zones adjacent to post harvest facilities. Refer to the table below for a summary of the provisions.
Noise	<ul style="list-style-type: none"> New provisions are included for audible bird scaring devices and frost fans. These are fairly consistent with such provisions in other district plans and should enable

	growers to undertake these activities as a permitted activity unless located close to residential activities. Refer to the table below for a summary of the provisions.
Biosecurity	<ul style="list-style-type: none"> HortNZ sought that the new District Plan include provisions so that in the event of a biosecurity incursion material infected by an unwanted organism can be disposed of without need for a resource consent. These provisions have arisen from the experience of removing and destroying material infected by PSA.

How will this affect existing growing operations?

From May 2018 (when the decisions on submissions on the 'Proposed Plan' were notified) the rules in the Proposed Plan have had legal effect (i.e. they have applied alongside the current District Plan rules). How the new rules apply will vary according to the status and nature of the activity:

Current consented activities:	If you already have a resource consent, the new plan will only become relevant for this activity if, or when, you need to renew your consent.
Current existing uses:	<p>The RMA provides for existing uses to generally continue even if the rules change. You may continue to use land in a way that contravenes a rule in a district plan or proposed district plan, if:</p> <ul style="list-style-type: none"> the activity was lawfully established before the rule became operative or the proposed plan was notified <u>and</u> the effects of the activity are the '<i>same or similar in character, intensity, and scale</i>'. This no longer applies if the activity has been discontinued for a period of more than 12 months.
New activities	<ul style="list-style-type: none"> You will need to determine if your activity meets the permitted activity standards for the activity in the new District Plan. If it doesn't, you will need to apply for a resource consent. The Council will consider the objectives and policies of the District Plan and how adverse effects of the activity can be managed or mitigated.

Overview of the key rules for horticulture

A summary of the rules that are most relevant to horticulture is provided in the table below (however, if you are undertaking an activity it is best to check the district plan on the Council's website).

To determine how the rules will apply:

- Check the **planning maps** to determine which 'zone' the land you are growing on is in and if there are any applicable overlays (e.g. Coastal Environment Overlay) or special features.
 - If your property has an additional overlay or feature - the rules in both the relevant Zone Chapter and the Overlay Chapter will apply.
- Check the **zone and any applicable overlay rules within the Chapters of the Plan.**

If the activity is listed as a Permitted Activity and meets the applicable permitted activity standards (*NB: these are often listed separately, below the rules*) = resource consent is not required.

Resource consent is required if:

- If your activity does not meet the permitted activity standards
- If your activity is listed as a Controlled, Restricted Discretionary, or Discretionary Activity.

If you need assistance reading the plan or understanding whether you need consent, please contact the Opotiki District Council or your local planning consultant. The Council are keen to assist with understanding and implementing the plan – click [here](#) for details on how to contact the planning and resource consents team.

Summary of rules for Artificial Crop Protection Structures (ACPS)

NB: These provisions were subject to appeals which have been resolved and signed off by the Court –however at the time of writing, the Plan was not yet updated to reflect the changes agreed.

Zone/Overlay	Summary of permitted activity rule requirement for ACPS:	Summary of the previous rules
<p>Rural Zone (8.6.5) Coastal Zone (9.6.14) Ōhiwa Harbour Zone (11.8.16)</p>	<p>Cloth colour</p> <ul style="list-style-type: none"> Vertical faces within 30m of the boundary of a property – only dark green or black cloth may be used; Within 30m of a property boundary (including a road boundary), white cloth may only be used if written approval is sought and provided to Council. On horizontal surfaces - green, black or white may be used. <p>Setbacks</p> <ul style="list-style-type: none"> On side or rear boundaries, a 5m setback is required <u>if</u> there is an existing lawfully established residential building (on the adjacent lot) within 5m of the boundary – <u>unless</u> written approval of the owner(s) is sought. If no residential building is near the boundary then the ACPS can be located closer than 5m to the boundary. <p>The maximum height for structures in these zones is 9m (except in the Ōhiwa Harbour Zone – 8m).</p>	<p>There were no ‘artificial crop protection structure’ rules in Opotiki District Plan. The zone standards applicable to buildings and structures for that zone applied. e.g. Max height (9m), daylight recession planes, yard (3-5m depending on zone), road (4.5-9m depending on zone) and coast and waterbody setbacks (25m).</p> <p>In the Ōhiwa Harbour Zone the erection of buildings and structures on ridgelines required consent as Discretionary Activity.</p>
<p>Coastal Settlement Zone</p>	<p>As above – except with regard to setbacks; a setback of 3m from a side or rear boundary is required unless written approval has been provided by the owner(s) of the immediately adjoining property.</p>	
<p>Coastal Environment Overlay (19.5.4) (The conditions are more stringent than the zone rules)</p>	<p>Cloth colour</p> <ul style="list-style-type: none"> Dark green or black cloth is required on <u>all</u> vertical faces Green or black cloth shall be used horizontally where the slope is over 10° Where a continuous cover of white cloth is used horizontally, natural shelter shall be provided to separate blocks so that the maximum continuous cover in any one block is 5 hectares <p>Setbacks</p> <ul style="list-style-type: none"> ACPS must be setback at least 50m from the Mean High Water Springs (i.e. tide level) 5m setback is required from a road boundary, unless screened with natural shelter <p>Maximum height – 7m.</p>	<p>(This is a new overlay)</p>
<p>Outstanding Natural Landscape (additional requirements)</p>	<p>New structures must meet the following:</p> <ul style="list-style-type: none"> The highest point shall be a minimum of 5m below the natural ground level of any ridgeline If located within an established vegetation canopy, the highest point of the building or structure shall not be higher than the existing canopy. 	<p>The location of buildings and structures on the skylines and ridge tops of those landscape features identified in Appendix 3 required consent as a Discretionary Activity.</p>
<p>Outstanding Natural Feature</p>	<p>New structures in an ONF require resource consent</p>	

Summary of rules for Earthworks

NB: These provisions were subject to appeals which have been resolved and signed off by the Court – however at the time of writing, the Plan was not yet updated to reflect the changes agreed.

Earthworks rules (across all zones and overlays) will be in **Chapter 13** (refer to 13.3.3) of the Plan – not in the Zone chapters (however there are also rules in Chapter 17 for earthworks within the National Grid Yard).

The definition of earthworks in the Plan does not include ‘*normal agricultural and horticultural practices, such as ploughing, cultivation and harvesting crops, planting trees, root ripping, digging post holes, and installation of water pipes to troughs*’ – so these activities are not subject to the earthworks rules.

Zone or overlay	Summary of rule requirement	Summary of the previous plan rule(s)
Rural Zone Coastal Settlement Zone	Earthworks are permitted (subject to any applicable overlay specific rules below).	There were no earthworks rules in the Rural Zone or Coastal Settlement Zone.
Coastal Zone (These rules have priority over zone rules)	<p>Many horticultural practices are excluded from the earthworks definition (refer above) or included as normal farming practices listed as permitted (refer 13.3.3.2).</p> <p>There is a specific rule permitting earthworks altering land contours for horticultural planting where the land is already in rural production, subject to compliance with the following standards:</p> <ul style="list-style-type: none"> • <u>If visible from a public place</u> (public road, public reserve, coastal marine area or foreshore): bare surfaces must be stabilised by with mulch, hydroseeding or similar stabilisation mechanism • <u>Or, if not visible</u>: bare surfaces must be revegetated within 6 months of earthworks commencing. • <u>And</u>, ensure the retention of natural overland flows exiting the site. <p>For all other earthworks– area (400m²) and volume thresholds (200m³) apply if the earthworks is visible from a public place.</p>	There were no earthworks rules in the Coastal Zone (however earthworks in estuarine areas, required consent as a Discretionary Activity).
Ōhiwa Harbour Zone Coastal Environment Overlay (These rules have priority over zone rules)	<p>Many horticultural practices are excluded from the earthworks definition (refer above) or included as normal farming practices listed as permitted (refer 13.3.3.2).</p> <p>For all other earthworks - area (400m²) and volume thresholds (200m³) in any 12 month period apply (otherwise a resource consent is required).</p>	<p>In the Ōhiwa Harbour Zone – land disturbance and excavation activities that may generate siltation and sedimentation effects on the Ōhiwa Harbour, required consent as a Discretionary Activity.</p> <p>(The Coastal Environment is a new overlay).</p>
Outstanding Natural Landscape (ONL)	<p>Many horticultural practices are excluded from the earthworks definition (refer above) or included as normal farming practices listed as permitted (refer 13.3.3.2).</p> <p>All other earthworks must meet the following conditions, otherwise a resource consent is required:</p>	In Outstanding Natural Features and Landscapes; structural alteration where this includes excavation, tunnelling, drilling, and

(These rules have priority over zone rules)	<ul style="list-style-type: none"> The <u>area</u> must not exceed 400m² and <u>volume</u> must not exceed 200m³ Maximum <u>cut and/or fill face</u> shall not exceed 3m <u>If visible from a public place</u> (public road, public reserve, coastal marine area or foreshore): bare surfaces must be stabilised by with mulch, hydroseeding or similar stabilisation mechanism <u>Or if not visible</u>: bare surfaces must be revegetated in the next growing season 	earthworks, required consent as a Discretionary Activity.
Outstanding Natural Feature (ONF) (These rules have priority over zone rules)	Many horticultural practices are excluded from the earthworks definition (refer above) or included as normal farming practices listed as permitted (refer 13.3.3.2). Resource consent is required for any other earthworks.	

(Note: The Bay of Plenty Regional Plan also includes earthworks rules in some areas.)

Summary of rules of other relevant provisions to note

There are permitted rules in the Rural Zone for Audible Bird Scaring Devices, Frost Fans and Seasonal Worker Accommodation (refer table below).

	Summary of rule requirement	Summary of previous plan rule(s)
Audible Bird Scaring Devices 8.3.1.1 (24) and standards 8.4.7 (1)	To be a permitted activity: <ul style="list-style-type: none"> Must only be operated from half an hour before sunrise to half an hour after sunset. Must not exceed 65dB at any point within the notional boundary of any dwelling on another site in the Rural Zone or at any point within a Residential Zone (excluding any dwelling/s located on the same site as the device is being operated), unless the adjacent landowner has provided written approval to the activity and a copy has been provided to the Council. Must only be operated when the horticultural crop is at risk from bird damage. 	There were no specific 'audible bird scaring device' rules– the zone standards for noise applied. E.g. in the Rural Zone (16.4.4 NG1) <i>All activities on a site shall be designed and conducted so as to ensure that the following noise limits are not exceeded at the notional boundary of any residential site in the Rural Zone, Coastal Zone, Coastal Settlement Zone or Residential Zone:</i> <ul style="list-style-type: none"> Monday to Friday (7.00 am to 10.00 pm) - 50 dBA (L 10) Saturday (9.00 am to 6.00 pm) - 50 dBA (L10) At all other times including Sundays and Public Holidays - 40 dBA (L10) On any day between 10.00 pm and 7.00 am on the following day - 65 dBA (L max)
Frost Fans	To be a permitted activity: <ul style="list-style-type: none"> The height of frost fans must not exceed 12m 	There were no specific 'frost fan' rules,– the zone standards for structures and noise applied. <ul style="list-style-type: none"> Noise standards – refer above.

8.3.1.1 (25) and standards 8.4.2 (1), 8.4.7 (2)	<ul style="list-style-type: none"> Noise generated by frost fans shall not exceed 60dB LAeq 10mins when assessed at the notional boundary of any other rural zoned site (excluding any dwelling/s located on the same site as the device is being operated) or at the boundary of a residential zone. 	<ul style="list-style-type: none"> Maximum height for structures – 9m (16.4 SR2)
<p>Seasonal worker accommodation (SWA)</p> <p>8.3.1.1 (22) and standards 8.4.9.1(2), 8.4.17.</p>	<p>In the Rural Zone - SWA (up to 12 people per night) is permitted, provided the following standards are met:</p> <ul style="list-style-type: none"> Yard, height, daylight protection and parking standards apply (e.g. There is a requirement for 1 parking space for every 6 people accommodated on site) and no new vehicle access shall be required to a State Highway The accommodation shall be used solely for part of the year to meet labour requirements in the horticulture sector and provide a combination of communal kitchen and eating areas and sleeping and ablution facilities The Code of Practice for Able Bodied Seasonal Workers, published by Dept of Building and Housing 2008 shall be complied with. <p>There are also Seasonal Worker Accommodation provisions in Residential, Town Centre, Coastal Zone chapters and in the Industrial Zone in relation to post-harvest activities.</p> <p>HortNZ achieved changes, through appeal, to various provisions across the Town Centre, Industrial and Coastal Zones to provide greater flexibility for seasonal worker accommodation; including increasing the permitted threshold in the Industrial Zone from 12 to 24, widening the applicability to also provide for SWA associated with orchard operations associated with a post-harvest facility and reduced restrictions relating to providing accommodation above ground level.</p>	<p>There were no specific 'Seasonal Worker Accommodation' rules – the zone standards applied. Typically SWA would have required consent (depending on the number of 'dwellings' on the site).</p>

- Screening and landscaping requirements within the Industrial Zone (impacting Post Harvest facilities).
- Rules for clearance of indigenous vegetation and vegetation, earthworks and development controls apply within significant natural areas.