

PART B

STATUTORY FRAMEWORK

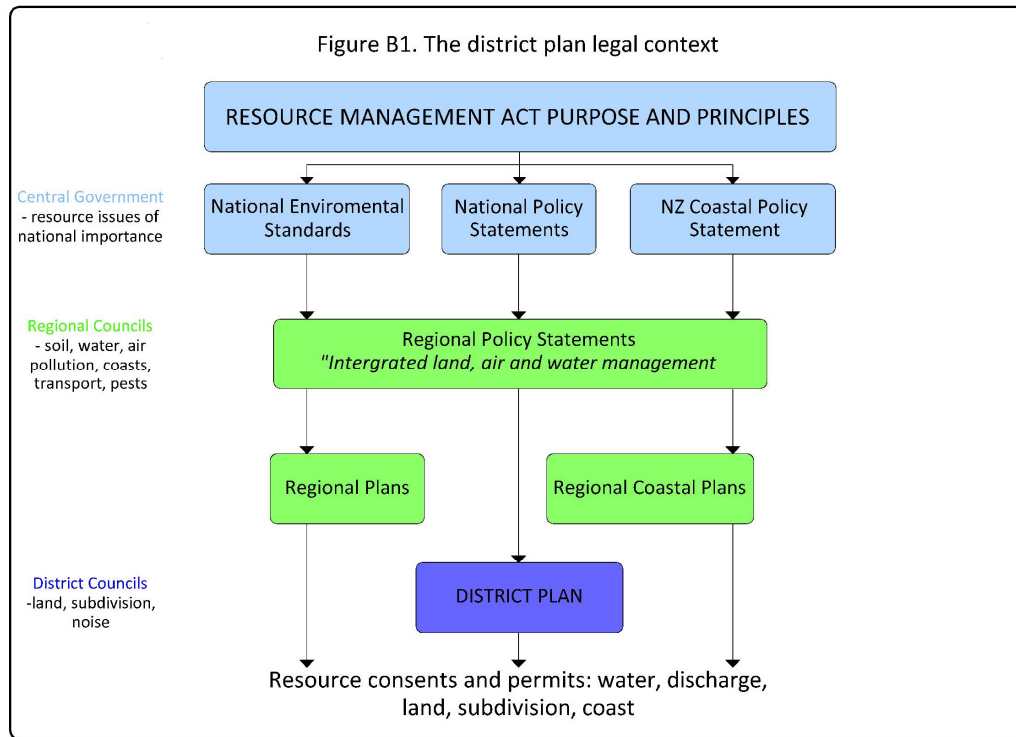
B1 INTRODUCTION

- B1.1 This chapter provides an overview of the key features and functions of the District Plan.
- B1.2 The purpose of a District Plan is to assist Council to carry out functions to achieve the purpose of the Resource Management Act 1991 (the Act). The purpose of the Act is “promote the sustainable management of natural and physical resources”.
- B1.3 The District Plan has the following major functions under the Act:
1. The establishment of objectives, policies and rules to achieve integrated land management;
 2. The control of any actual or potential effects of the use, development or protection of land, including the avoidance or mitigation of natural hazards; and preventing or mitigating any adverse effects of hazardous substances.
 3. The maintenance of indigenous biological diversity.
 4. The control of the subdivision of land.
 5. The setting aside of esplanade reserves and strips around water bodies.

B2 LINKAGES WITH OTHER DOCUMENTS

- B2.1 The District Plan is influenced by a number of other statutory plans that contribute to its content and direction, as shown in figure B1. The District Plan must not be inconsistent with any National Policy Statements and must implement and make changes where directed by these documents. The District Plan must not conflict with, or duplicate National Environmental Standards.
- B2.2 Management plans and strategies prepared under other Acts, such as the New Zealand Biodiversity Strategy, the Conservation Management Strategy, Reserve Management Plans prepared under the Reserves Act also need to be taken into consideration by the District Plan, avoiding where possible significant conflicts in direction.
- B2.3 On a regional level the District Plan must be consistent with the intent of the Regional Plans and give effect to the Regional Policy Statements prepared by Bay of Plenty Regional Council and Environment Waikato. In addition these plans the District Plan needs to be consistent with the Regional Land Transport Strategy. Plans or proposed plans prepared by the adjacent territorial authorities must also be considered when preparing a proposed Plan.
- B2.4 The Rotorua District the surrounded by four territorial authorities with each of these operating under a separate District Plan. Cross boundary issues have the potential to arise in relation to the treatment of such aspects as rural subdivision, important landscapes, multiple landownership, transport and infrastructure. Consultation has been undertaken with each of these authorities to aim for consistency across the plans, however it is advised to consult with each territorial authority with applications that cross district boundaries.
- B2.5 The Council must enforce the relevant National Environment Standards (NES) as required under Sections 43 and 44 of the Act. Presently the following NES are in effect: air quality standards, sources of human drinking water standard, telecommunication facilities and electricity transmission. Others NES are currently being developed.

- B2.6 In addition to this the District Plan must have regard to relevant planning documents recognised by Iwi authorities such as Iwi Management Plans. Rotorua has a high proportion of multiple owned land and the desired direction of future development of this land can be reflected in such documents. It is important to ensure the District Plan reflects the needs of the Rotorua community and therefore such plans are of significance in its development.
- B2.7 The District Plan must have regard to relevant entries in the Historic Places Register, including buildings and archeological sites. Rotorua has about 260 archeological sites, 55 historic buildings and 7 historic sites registered with the Historic Places Trust. Development of land needs to ensure the cultural and historical significance of these sites are considered. The District Plan has a significant role in the management of these sites.



B3 DUTIES AND RESTRICTIONS

- B3.1 Section 9 of the Act specifies restrictions on the use of land. Resource consent is not required unless the proposed use of the land contravenes a rule in a Regional or District Plan and it does not have existing use rights under Section 10 and 10A of the Act.
- B3.2 Section 11 of the Act outlines restrictions on subdivision. Unlike land uses, unless a rule in a plan allows subdivision as of right, resource consent is required. Under this plan all subdivision as defined under section 218 of the Act requires resource consent unless otherwise provided for under Section 11 of the Act.
- B3.3 Under the Act subdivision provisions generally do not apply to the subdivision of Maori land unless land is proposed for sale outside of the hapu. Section 11(2) of the Act exempts Maori land from the subdivision provisions of the Act and Section 108(9)(b) exempts Maori land for the purposes of requiring land (esplanade reserve, reserve or esplanade strip) as a financial contribution. Te Ture Whenua Maori Act provides that any applications for subdivision of Māori land that are to remain within the hapu will be dealt with entirely by the Māori Land Court. Any applications that would involve the transfer of the land outside the hapu are subject to the subdivision provisions of the Act, and therefore the rules in a plan..

B3.3 The District Plan outlines the requirements and assessment criteria for each status of resource consent within each relevant Zone. The ability to gain resource consent approval is based on the level of compliance with these criteria and the level of potential adverse effects created on the environment.

B4 KEY ELEMENTS OF THE DISTRICT PLAN

4.1 This document and the set of maps are the two main components of the District Plan. The main elements of the document are the objectives, policies, and rules for each zone. The planning maps show the location of zones and other information such as designations and special interest areas such as natural hazard, and important landscapes.

B4.2 ZONES

The District Plan has adopted 'zoning' to identify what activities may be carried out in different parts of the district. A zone is created around areas of common uses, issues, qualities and characteristics. The rules provide standards to manage the effects of activities within each zone.

B4.3 ACTIVITIES AND RULES

The Act provides for activities to be classified into several categories, based on the likely effects that an activity may have on the environment. The categories are described in the following table.

Activity Class	Requires Resource Consent	Management Approach
P: Permitted Activities	No	An activity that is specified as being permitted; therefore not requiring resource consent and also complies with the rules and performance standards. A Certificate of Compliance can be applied for to demonstrate compliance with permitted criteria of the District Plan.
C: Controlled Activities	Yes	Council must grant consent, and may impose conditions, but only on the matters which the District Plan has specifically reserved its control.
RD: Restricted Discretionary Activities	Yes	Council may use its discretion to grant or decline consent, or to place conditions on a consent, but is restricted to those matters specified in the District Plan.
D: Discretionary Activities	Yes	Council can exercise its full discretion in deciding to decline or grant consent with or without conditions. This may include any specific or general assessment criteria identified in the District Plan and the provisions of the Act.
NC: Non-Complying Activities	Yes	These are activities that are not anticipated or provided for in the District Plan but are not specifically prohibited. Consent may be granted if the consent authority is satisfied that the adverse effects of the activity proposed are no more than minor or the activity is not contrary to the objectives and policies of the plan. Consent may be granted subject to conditions and in accordance with the Act.
PR: Prohibited Activities	No Application possible	No consent can be applied for.

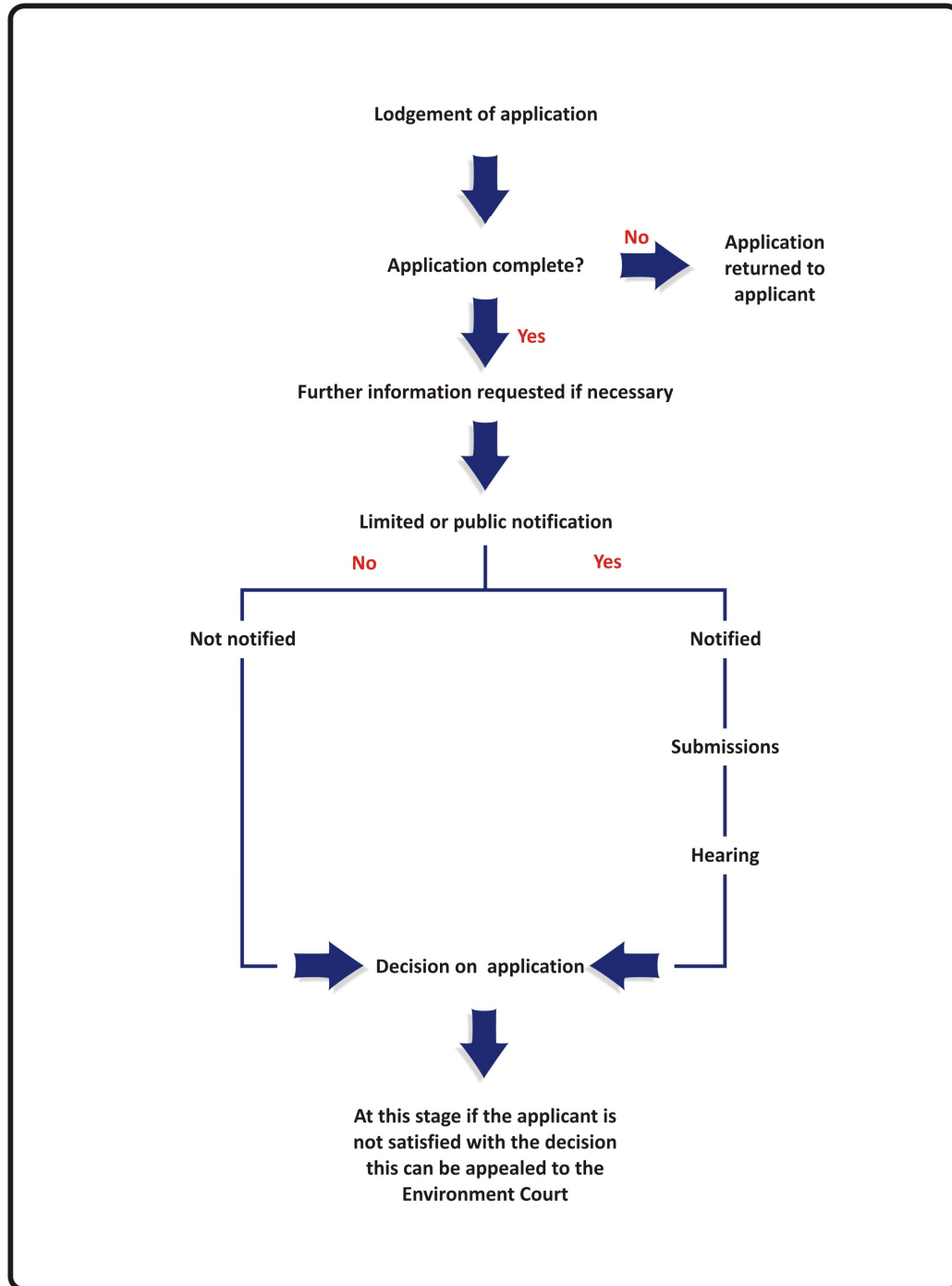
B4.4 MAPS

There are three map series within the map book, The 100 series a special interest series that allows for easy reference to features such as the city centre and the service lane network, Rotorua airport clearance to obstacle limitation surface and noise contours, key notice of requirements, designations and location of fault lines. The urban zones of the district are mapped within the 300 series and the rural zones of the district are within the 500 series.

B5 RESOURCE CONSENTS

B5.1 The Act sets out a standard process for applying for resource consents, this includes assessment of the application against a number of specific provisions of the Act and the district plan. The resource consent process is illustrated in Figure B2.

Figure B2. The Resource Consent Process



B5.2 NOTIFICATION OF APPLICATIONS

The notification process is set out in the Act. Council has produced brochures and web-based information on consent processes, as does the Ministry for the Environment.

- B5.2.1 Briefly, Council has the important role in determining the environmental effects of the activity as well as determining the level of consultation that is required as part of the resource consent application process. The process of determining the level of effects and who is affected by a proposal is outlined in the Act. There are two separate notification processes that can result from this assessment with each having differing levels of consultation. Each of these are outlined below.

B5.3 PUBLIC NOTIFICATION

An application must be publically notified if a proposed activity has the potential to create adverse effects that are more than minor or the application does not provide further information before a deadline and the council has not yet made its notification decision. Alternatively a rule or national environmental standard may require public notification, or public notification can be requested by the applicant. Council may also publically notify an application if it is considered that there are special circumstances. Public notification involves public notice and service (in writing) to all parties as required under the Act. Any person is able to make a submission on the application.

- B5.3.1 With applications that have been or are to be notified the applicant is able to request the decision to be determined by the Environment Court instead of Council.

B5.4 LIMITED NOTIFICATION

If the Council determines that any potential adverse effects will be minor and public notification is not required, it must then determine if there are any affected persons or order holders in relation to the activity. All parties must be served notice of the application unless a rule or national environmental statement precludes this, in which case only order holders shall be provided with limited notification. Only those parties who have been served notice are able to make a submission on the application.

B5.5 NON- NOTIFICATION

Upon assessment of the application, if the Council determines that the potential level of adverse effects are minor or less than minor and there are no affected persons in relation to the proposal, or all affected parties have provided written consent, the application can be approved without proceeding through a notification process.

B5.6 SPECIAL CIRCUMSTANCES

A council may decide to publically notify an application if it considers that special circumstances exist, even if the relevant plan or national environmental standard expressly provides that the application need not be publically or limited notified (S95A(4)).

B5.7 MINISTERIAL CALL INS AND DIRECT REFERRAL

If an application has been lodged with a consent authority and this involves, or is part of, a matter of national significance the Minister of the Environment has the discretion to call the consent in and refer the application to a Board of Inquiry or the Environment Court for a decision.

- B5.7.1 The process for calling in an application and determining what is a matter of national importance is stated in the Act.

B5.8 ENVIRONMENTAL PROTECTION AGENCY

Applicants have the ability to submit a resource consent with the Environmental Protection Agency (EPA) rather than the consent authority, if it relates to a matter of national importance, however notice of the application and its submission to the EPA must also be provided to the Council.

- B5.8.1 No application may be lodged with the EPA if this application has been lodged with the Council or the Minister has been requested to call in the matter.
- B5.8.2 Within 20 working days the EPA must recommended to the minister that a direction is made to refer the matter to a board of inquiry, environment court or to the local authority (council). if the matter is not a matter of national importance a direction to the environment court or board of inquiry cannot be made.

B6 DESIGNATIONS AND HERITAGE ORDERS

- B6.1 A Minister of the Crown, a Requiring Authority or Council can initiate a designation process under the Act in order to provide for public works or projects to be undertaken on an area of land. The designation must be provided for in the District Plan and authorises the relevant authority to work on the land without the need for a land use consent from the territorial authority, as long as the proposed work is within the designated purpose of the land.
- B6.2 The level of information provided in a notice of requirement needs to be sufficient in order to allow the District Council to complete the required assessment as outlined in the Act. Such information includes details and drawings of the proposal and overall site, alternatives considered, results of consultation, and assessment against the relevant provisions of the Plan.
- B6.3 Assessment of the proposal will also be undertaken to determine if notification is required. Upon assessment of the application Council may make recommendations to the requiring authority to confirm, modify, impose conditions or withdraw the notice of requirements. The requiring authority must within 30 working days advise Council of its decision.

B6.4 ALTERATION OF DESIGNATIONS

An existing designation may be altered via an application from the requiring authority to the District Council if this involves:

- no more than a minor change to the effects on the environment, and
- only involves a minor change or adjustment to the boundaries of the designation, and
- the owners and occupiers of the directly affected land have been given notice and agree to the alteration.

B6.5 OUTLINE PLANS

For any designated site an outline plan detailing the proposed works to be constructed onsite must be submitted by the requiring authority to the District Council to allow for the Council to request changes if required to ensure that the proposal is in line with the intent of the District Plan and designation.

The requirements to be included in an outline plan and the processes involved are detailed in the Act.

B6.6 HERITAGE ORDERS

Heritage Orders are provisions made in a District Plan to protect the heritage characteristics of a place with special interest, character, or visual appeal. Heritage Orders impose specific restrictions on the use of land around the feature being protected.⁷

B7 PLAN CHANGES

- B7.1 A plan change can be initiated by Council or by any person, subject to the provisions of the Act. A plan change can be used to update a District Plan so that it accords with new national and regional policies, or where individuals or organisations propose to do something that sits outside what the

District Plan provides for. The Council is required to publicly notify a plan change, and the community then has an opportunity to make submissions.

B8 MONITORING AND REVIEW

- B8.1 Council has an obligation under the Act to monitor the efficiency and effectiveness of its District Plan. The purpose is to gather information in order to assess whether the District Plan is promoting the sustainable management of district's natural and physical resources. This information helps develop an improved plan and decision making process through plan changes and other methods. Council is required to maintain records of the information gathered and ensure that it is available for the public to view, as it relates to the district.

B9 RELATIONSHIP WITH OTHER AGENCIES AND STAKEHOLDERS

- B9.1 Upon receiving any application for a resource consent, Plan Change or Designation, depending on the scale, location and nature of the proposal, Council may require consultation with other statutory organisations. The New Zealand Transport Agency will be consulted with applications that adjoin a State Highway, or may adversely impact the efficient operation of the state highway network. Consultation will be undertaken with the Department of Conservation (DoC) where a proposal may impact DoC reserve, or native species and/or their habitat. Where an application impacts a site that contains an archaeological site or historic building as identified under Appendix 1 consultation with New Zealand Historic Places Trust will be required. The Regional Council will be consulted with on all rural subdivisions and any applications that may impact Rotorua on a regional level and may need assessment under the relevant regional plan or policy.

On a smaller scale Council recognises the operating easements held by Mighty River Power located along the sides of the Waikato River, these having the intent of reducing reverse sensitivity and flooding risk. Applications impacting these easements will require consultation to be undertaken with Mighty River Power.

B9.2 MEMORANDUM OF UNDERSTANDING WITH IWI

- B9.2.1 Memoranda of Understanding with Iwi are agreements between Council and Iwi that provide the platform for the fostering of a relationship. These agreements provide for open communication and assistance between the two parties and provide an important initial step in the consultative process of policy making and resource management consultation.

B9.3 STATUTORY ACKNOWLEDGEMENTS

- B9.3.1 Statutory acknowledgements are statements in Treaty of Waitangi settlements between Crown and Iwi that are intended to recognise the mana of tangata whenua groups in relation to identified sites and areas. They are an acknowledgement by the Crown of the particular cultural, spiritual, historic, and traditional association of an iwi with each statutory site and area. Council is required to include a schedule and maps in the District Plan identifying these statutory acknowledgements.

- B9.3.2 The Act has a number of provisions specifically directed at the management and protection of significant features of importance to Maori, and also has clear statements on providing Maori a significant role in resource management. Maori are also part of the wider community and are therefore encompassed by the overarching purpose and principles of the Act, which is to promote the sustainable management of natural and physical resources.

- B9.3.3 A number of settlement Acts need to be recognised in the development of the District Plan, and in the application and assessment of resource consent applications. A brief outline of each Act and their implications is provided below.

B9.4 TE ARAWA LAKES SETTLEMENT ACT

- B9.4.1 This Settlement affected the Te Arawa lakes within the Rotorua District with thirteen titles to the lakes bed and subsoil being transferred back to Te Arawa ownership. Lake Okaro was subject to a request by the Crown to Rotorua District Council to establish an agreement regarding its ownership, status and management.
- B9.4.2 The Crown continues to own the water column and the airspace above the lakes. The water itself is not owned by either Te Arawa or the Crown and continues to be subject to management under the Act. Spelling of some of the names will change, with some sites having dual English and Maori names. A full list of place name changes is available in the Deed of Settlement. Public access to the lakes are provided for and protected by this Settlement.
- B9.4.3 Individuals or businesses that wish to build new structures or modify existing structures on the lakebeds will need the consent of both Te Arawa and the Crown. Any land use consent or subdivision that may adversely effect the above-mentioned lakes will require consultation to be undertaken with Te Arawa Lakes Trust.

B9.5 NGATI TUWHARETOA, RAUKAWA AND TE ARAWA RIVER IWI WAIKATO RIVER ACT 2010

- B9.5.1 The purpose of this Act is to restore and protect the health and wellbeing of the Waikato River for future generations. The scope of the Acts vision is;
- 1. The Waikato River and its contribution of New Zealand's cultural social, environmental and economic wellbeing are of national importance*
 - 2. The vision and strategy applies to the Waikato River and activities within its catchment affecting the Waikato River.*
 - 3. The vision is Te Ture Whaimana O Te Awa O Waikato.*
- B9.5.2 This vision is required to form part of the Waikato Regional Policy Statement. Due to the Waikato Region forming part of the Rotorua District the District Plan must be in line with this document and in turn reflect the vision of the Settlement Act.
- B9.5.3 The vision prevails over any inconsistencies in any National Policy Statement and any rule listed in a District Plan that intends to give effect to this vision. The Settlement Act also prevails over any relevant water conservation order.
- B9.5.4 The Settlement Act provides for authorised customary activities as detailed under Sections 56 to 63 of the Act, despite any rule to the contrary stated in the District Plan. The development of the Plan needs to take this Act into account to avoid inaccuracies within the Plan and to avoid any conflicts between the documents in regard to permitted water and land activities from being created.

B9.6 NGATI AWA SETTLEMENT ACT

- B9.6.1 This Act provides for the establishment of protocols to promote good working relationships between Ngati Awa and particular government agencies such as the Department of Conservation, and the Ministry of Culture and Heritage on matters of cultural importance to Ngati Awa. This in turn requires the Crown to consult with Ngati Awa and have regard to Ngati Awa's special association with particular Crown owned sites.
- B9.6.2 The Crown has written to a number of third parties each as Bay of Plenty Regional Council to discuss matters of importance to Ngati Awa. Any resultant agreement from these meetings and its subsequent impact on regional documents will impact what Council must consider when assessing resource consent applications.

B9.7 TE ARAWA AFFILIATES ACT

- B9.7.1 This Settlement provides for the protection and enhancement of conservation values associated with Crown owned sites and recognises the traditional, historical, cultural and spiritual association with these places and sites.
- B9.7.2 Consent authorities are required to provide Te Arawa Affiliates - with a summary of the resource consent applications that may affect the areas named in the acknowledgements of the Settlement.
- B9.7.3 A total of nineteen sites listed within the Deed of Settlement have been returned to ownership of Te Arawa Affiliates. Public access to these sites is retained with the exception of three which include burial sites and ancient rock art.

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B9.7.4 Three statutory acknowledgements exist over three sites being the Matahana Ecological Area, Otari Pa and parts of the Whakarewarewa Forest known as the Lake Rotokakahi/Lake Tikitapu Covenant Areas), four waterways (parts of the Kaituna and Tarawera Rivers and the Waiteti and Ngongotaha Streams) and the Rotorua region geothermal system.

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