

SECTION 1 : STATUTORY BACKGROUND

1.1 INTRODUCTION

1.1.1 Purpose of the District Plan

This is the first District Plan for the Central Otago District prepared under the Resource Management Act 1991 ("the Act"). The purpose of the District Plan is to assist the Council to carry out its functions in order to achieve the purpose of the Act, which is to promote the sustainable management of natural and physical resources (see Section 1.2.2 p.1:7).

To achieve that purpose, Council has been given a number of functions under the Act as follows:

- integrated management of the effects of the use, development, or protection of land and associated natural and physical resources.
- control of any actual or potential effects of the use, development, or protection of land.
- avoidance or mitigation of natural hazards.
- prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.
- control of subdivision.
- control of the emission of noise.
- control of any actual or potential effects of activities in relation to the surface of water.

In general terms, the District Plan is the means by which the effects of using, developing and protecting the District's natural and physical resources will be managed in the future.

1.1.2 Life of the District Plan

Section 73 of the Act requires that there be a District Plan in place at all times. The Council is obliged to commence a full review of the District Plan no later than ten years after this Plan becomes operative. It is therefore envisaged that this document will be in force for the next decade.

There may be occasions, however, where the District Plan or specific provisions forming part of the Plan will need to be reviewed earlier than the maximum ten years. The following circumstances may affect the contents of this Plan and may necessitate a review of the Plan;

- changes in legislation dealing with resource management.
- improved knowledge and understanding of the environment.
- significant changes in technology and market conditions.
- issues arising from the monitoring of the effectiveness and suitability of the Plan.
- the development of national policy statements, regional policy statements and plans, and reviews of these documents.
- the development and reviews of other resource management plans such as lwi planning documents, conservation and reserve management plans.
- requests for plan changes by private individuals.

Any review of the plan or change to the plan must be carried out in accordance with the First Schedule to the Act.

1.1.3 District Plan Layout

Section 1 - Statutory Background explains the purpose of the District Plan and outlines the statutory framework upon which it is based. It also describes the planning process under the Act.

Section 2 - The Resources and Significant Resource Management Issues of the District provides a brief overview of the District's resources and the significant issues arising from the effects of their use, development and protection.

Section 3 - Manawhenua deals with the issues of concern to the Kai Tahu ki Otago in the context of the Act and its implementation in the Central Otago District.

Sections 4 to 10 - Rural, Water Surface and Margin, Residential, Business, Industrial and Rural Settlement Resource Areas deal with resource management issues and objectives, policies and methods of implementation particular to the different environments found throughout the District.

Sections 11 to 17 - deal with Heritage Precincts & Items, Infrastructure, Energy, Utilities, Financial Contributions, Subdivision and Hazards and other issues that apply across the District as a whole.

Section 18 - Definitions lists definitions of terms used throughout the District Plan.

Section 19 - Schedules contains information relevant to the Plan and its interpretation and implementation.

Planning Maps are contained in Volume 2 and identify the location of the various Resource Areas, designations and other provisions that form part of the Plan. The extent of various Resource Areas has been determined on the basis of particular environmental characteristics and shared characteristics of each area and in conjunction with comprehensive land use surveys and consultation, particularly in terms of comments received to the consultative draft of the Proposed District Plan.

1.1.4 Relationships with Other Plans and Policy Documents

In preparing and reviewing the District Plan, the Council is required to consider a range of other plans and policy documents of relevance to resource management in the District. Section 55 of the Act requires Council to implement any national policy statement.

The District Plan must not be inconsistent with:

- any national policy statement
- any water conservation order
- the Regional Policy Statement or any Regional Plan

There are no national policy statements that currently have effect within the context of the Central Otago District. Water Conservation Orders apply to the Pomahaka and to the Kawarau River and its tributaries that are located within the District. Council has had regard to the Otago Regional Policy Statement which was not operative when this District Plan was notified.

Section 74 of the Act also requires Council to have regard to:

- (a) any management plan or strategy prepared under other legislation
- (b) relevant planning documents recognised by iwi authorities
- (c) regulations relating to the conservation or management of taipure or fisheries

to the extent to which they have a bearing on resource management issues.

In preparing this District Plan, Council has had regard to:

- Kai Tahu ki Otago Natural Resource Management Plan (1995)
- The Otago Conservation Management Strategy
- Molyneux Park and Pioneer Park Recreation Reserve management plans
- Highway Planning under the Resource Management Act 1991, Transit New Zealand

and a variety of other plans, documents and practice guidelines produced by statutory authorities and industry groups.

1.1.5 Role of Other Agencies

There are a number of other agencies that have responsibilities under the Act or for the management of the Districts natural and physical resources. These are summarised below:

- ***Minister for the Environment***

The Minister for the Environment has a number of statutory functions, powers and duties under the Act. While the role is generally an overview and monitoring one, there are some areas of direct resource management responsibility. (See Part IV of the Act).

- ***Otago Regional Council***

The Otago Regional Council has several important functions under the Act, particularly in respect of land use in the beds and margins of lakes and rivers, discharges to land, air and water, and the taking, use, damming and diversion of water.

These functions are set out in section 30 of the Act which is presented in part at Schedule 19.5 for the convenience of plan users. The Act itself should also be consulted as this section may be subject to change.

- ***Department of Conservation***

The Department of Conservation was established by the Conservation Act 1987, and is given the role of managing the land administered by the Department and other natural and historic resources entrusted to it. The Department also has an advocacy role in respect of the conservation values of areas which it does not manage.

The Department also has direct involvement in the management of natural and physical resources through its duties and functions under the following Acts:

- Wildlife Act 1953
- Fisheries Act 1983
- New Zealand Walkway Act 1990
- Reserves Act 1977
- Wild Animal Control Act 1977
- National Park Act 1980

- ***Otago Fish & Game Council***

The Otago Fish and Game Council is the statutory agency responsible for the management of sports fish (trout and salmon) and gamebirds (water fowl and upland game) in the Central Otago District. The Conservation Act assigns the following functions to the Fish and Game Council:

- * Assessing and monitoring sports fish and game populations, and the condition of ecosystems
- * Maintaining and improving access to the sports fish and game resource
- * Undertaking such works as may be necessary to maintain and enhance the habitat of sports fish and game
- * Promoting and educating on sports fish and game matters
- * Preparing and maintaining sports fish and game management plans
- * Representing the interests and aspirations of anglers and hunters in the statutory planning process.

- ***New Zealand Historic Places Trust***

The New Zealand Historic Places Trust has a role in respect of the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand. The Trust is required to compile and maintain a register of historic places, areas, waahi tapu, and waahi tapu areas, and is to supply this to Council to assist in protection of these areas under the Act.

The Trust also has an advocacy role in respect of heritage issues, and may give Council notice of a requirement for a heritage order where it considers appropriate.

1.1.6 The Treaty of Waitangi

Section 8 of the Act requires that Council take into account the principles of the Treaty of Waitangi when exercising its functions and powers under the Act.

The Treaty of Waitangi is considered the foundation document of New Zealand society as it is today, the basis on which the partnership between Maori and the Crown was established.

The Kai Tahu raketira Karetai and Korako signed the Treaty on behalf of the Otago members of the tribe at Pukekura (Tairaroa Heads) on 13 June 1840. The Treaty was also signed by Kai Tahu at three other locations in Te Waipounamu : at Akaroa, Ruapuke and Cloudy Bay.

The use of the expression “The principles of the Treaty” is designed to overcome the inherent difficulties of relying upon a literal interpretation of the words of the Treaty. Central to the issue is that the Maori and English texts are not exact translations of one another, and do not convey precisely the same meaning. Both the Courts and the Waitangi Tribunal have expressed the view that in interpreting the principles of the Treaty, the spirit of the Treaty is to be applied, not a literal interpretation of the words.

In the context of the District Plan, the most significant principles are those of “partnership” and the “active protection” of resources important to Maori in accordance with their cultural and spiritual values.

The partnership principle encompasses process duties such as:

- reasonableness and good faith
- obligations to inform and involve Kai Tahu Ki Otago in decision-making, and
- recognition that the Council is not to be unreasonably restricted in forming and implementing policy for public good purposes.

The partnership principle also implies mutuality and balance, and frank communication on matters of mutual interest that leads to decision making that reflects good faith on both sides in promoting common objectives and working to resolve conflicts.

A robust partnership requires an honest and forward-thinking exchange between the parties leading to policies and working arrangements that further both partner’s interests.

Consultation is a crucial element of this working relationship however the principles of the Treaty encompass much more than addressing matters of process.

There must be a reasonable expectation on both sides that proposed policies and programmes will be modified to accommodate issues raised by Kai Tahu Ki Otago through the consultation process to the fullest possible extent, consistent with achieving sustainable management of natural and physical resources.

Sections 6 and 7 of the Act also recognise matters of importance to iwi. The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga are matters of national importance that must be recognised and provided for (section 6(e)). Kaitiakitanga (guardianship) must also be had regard to when managing the use, development, or protection of natural and physical resources (section 7(a)).

Effective implementation of sections 6(e), 7(a) and 8 of the Act can be measured in terms of effective partnership and tangible results including the implementation of policies that achieve environmental, cultural and social outcomes sought by Kai Tahu ki Otago.

To assist in the understanding of the Treaty, the two versions are set out below.

Maori Version of Treaty

Ko te tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua Wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua

Ko te tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga Hapu ki nga tangata katoa o Nui Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona

Ko te tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nui Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani

A literal English translation of the Maori text (NZ Court of Appeal, 29 June 1987, credited to Professor I H Kawharu)

The First

The Chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

The Second

The Queen of England agrees to protect the chiefs, subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the chiefs will sell and to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The Third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

Maori version signed by 512 Chiefs and by William Hobson, Consul and Lieutenant Governor.

English Version

Article The First

The chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article The Second

Her majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession: but the Chiefs of the United Tribes and the individual Chiefs yield to her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article The Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her Royal protection and imparts to them all the rights and Privileges of British Subjects.

English Text version signed by 30 Chiefs and by William Hobson, Consul and Lieutenant Governor.

Statutory Acknowledgements

Statutory acknowledgements are recorded in the Ngai Tahu Claims Settlement Act 1998 for several water bodies in the District. The statutory acknowledgements are provided for in Part 12 of the Ngai Tahu Claims Settlement Act 1998 and relevant Schedules to that Act (as identified below). Statutory acknowledgements relate to the following –

Kā Moana Haehae (Lake Roxburgh)	:	Schedule 22
Mata-au (Clutha River)	:	Schedule 40
Pomahaka River	:	Schedule 52
Te Wairere (Lake Dunstan)	:	Schedule 61

This information relating to statutory acknowledgements is for the purpose of public information only, and is attached to the Plan pursuant to section 220 of the Ngai Tahu Claims Settlement Act 1998.