

1.2 THE RESOURCE MANAGEMENT ACT

1.2.1 The New Era

The Resource Management Act 1991 provides the statutory framework for the preparation of District Plans. This Act replaced or amended the majority of statutes that governed the use and development of resources. Of particular significance to district planning was the replacement of the Town and Country Planning Act 1977 and significant amendments to the Local Government Act 1974.

The Act heralds a new direction for the management of resources. The philosophy of directing and controlling activities evident in the former Town and Country Planning Act has now given way to the promotion of the 'sustainable management' concept which is to be achieved through avoiding, remedying or mitigating the adverse environmental effects of using and developing the natural and physical resources of the District.

The historical techniques of planning, where the emphasis was placed on the control of an **activity**, have been replaced by a requirement under the new legislation to manage the '**effects of an activity**' rather than the activity itself.

Note: The sections of the Act quoted in this plan reflect those existing at the date of public notification. These sections may be changed from time to time and the Act itself should be consulted.

1.2.2 The Purpose and Principles of the Act

Section 5 sets out the Act's purpose which is to promote the sustainable management of natural and physical resources. In the Act, sustainable management means:

"...managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while -

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and,*
- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems, and,*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

In achieving this purpose, the following matters of national importance listed in section 6 of the Act, must be recognised and provide for

- (a) *The preservation of the natural character of ... , 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 ..., lakes, and rivers:*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga."*

Particular regard must also be had to the following matters set out in Section 7 of the Act:

- “(a) Kaitiakitanga:*
- (aa) The ethic of stewardship:*
- (b) The efficient use and development of natural and physical resources:*
- (c) The maintenance and enhancement of amenity values:*
- (d) Intrinsic values of ecosystems:*
- (e) Recognition and protection of the heritage values of sites, buildings, places, or areas:*
- (f) Maintenance and enhancement of the quality of the environment:*
- (g) Any finite characteristics of natural and physical resources:*
- (h) The protection of the habitat of trout and salmon.”*

In addition, the principles of the Treaty of Waitangi must be taken into account (section 8). See also Section 1.1.6 page 1:4 and Note at Section 1.2.1 page 1:7.

It is against this background of the purpose and principles of the Act that the resources of the District and the wellbeing of its people have been assessed to determine the significant resource management issues of the District. The District Plan has been prepared and will be administered in accordance with the purpose and principles of the Act as stated in sections 5-8.

1.2.3 Compliance with the District Plan

No person may use land in a manner that contravenes a rule in the District Plan, unless they have existing use rights or a resource consent granted by Council (sections 9, 10 and 10A of the Act). In the context of the Act “use” includes the use of the surface of lakes and rivers. No person may subdivide land in the District unless expressly allowed by a rule in the District Plan or a resource consent (section 11).

1.2.4 Existing Use Rights

Sections 10 and 10A of the Act specify the circumstances when the existing use of land and the surface of water is permitted to continue in a manner which contravenes a rule in the District Plan.

1.2.5 Relationship with the Building Act 1991

The Building Act establishes the regulatory framework for the control of building works in respect of public health and safety. However, the issue of a building consent does not relieve the owner of the building of any duty or responsibility under the Resource Management Act, or permit the construction, alteration, demolition or removal of a building or proposed building if that would contravene the Resource Management Act.

1.2.6 Types of Activities

PERMITTED ACTIVITIES are allowed by the Plan without a resource consent, providing they comply in all respects with the conditions specified in the Plan (section 2).

CONTROLLED ACTIVITIES require a resource consent. They shall comply with any standards and terms specified in the Plan and will be assessed according to those matters in the District Plan over which the Council has reserved control. The Council must grant its consent to a controlled activity, but in granting its consent the Council may impose conditions relating to those matters specified (section 105(1)(a) & 3).

DISCRETIONARY ACTIVITIES require a resource consent and may be subject to standards and terms specified in the Plan. Activities have been afforded such status where they may not be suitable in all locations in a particular resource area; or where the effects of the activity on the environment are so variable that it is not possible to prescribe appropriate standards and terms to cover all circumstances in advance of an application.

Alternatively, activities that may be listed as permitted activities but cannot meet all relevant standards may have status as discretionary activities.

For some activities, Council has restricted the exercise of its discretion to only certain elements of the activity. These activities in this District Plan are called DISCRETIONARY (RESTRICTED) ACTIVITIES.

Discretionary activities can be granted or refused consent and can have conditions attached to any consent. For discretionary (restricted) activities, consent can only be refused and conditions can only be imposed on the basis of the restrictions imposed by this Plan (section 105(1)(b) & (3A)).

NON-COMPLYING ACTIVITIES are those which contravene a rule in the District Plan or are listed as non-complying activities. A resource consent is required for a non-complying activity. Council may grant or refuse consent to a non-complying activity and, if granting consent, may impose conditions (section 105(1)(c) & (2A)).

PROHIBITED ACTIVITIES are activities that the Act allows Plans to expressly prohibit and describe as an activity for which no resource consent shall be granted (section 105(2)(c)).

1.2.7 Resource Consent Procedure

The District Plan provides for two types of resource consent: land use and subdivision. Discharge and water permits are resource consents issued by the Otago Regional Council.

A resource consent from the Central Otago District Council is required by any person proposing to undertake an activity classified in the District Plan as:

- a controlled activity; or
- a discretionary (restricted) activity; or
- a discretionary activity; or
- a non-complying activity

An application for resource consent must be made in accordance with section 88 of the Resource Management Act. Forms for land use and subdivision consent applications are available from the Council offices. Information to be submitted with any application is set out in Schedule 19.1 of this plan and the Resource Consent Process is illustrated in Figure 1.1.

Section 94 of the Resource Management Act sets out the circumstances when applications for resource consent need not be notified. In most situations this will require the written approval of affected persons. The rules of the Plan specify those resource consents which shall be non-notified and those where the written approval of persons affected by the proposal is not needed. Section 94(5) allows Council in special circumstances to require an application to be notified in accordance with section 93 even if the District Plan expressly provides that it not be notified.

A publicly notified application is open to public submissions in accordance with section 96 of the Act.

Section 104 sets out those matters to which the Council must have regard, in considering a resource consent application:

“(1) Subject to Part II, when considering an application for a resource consent and any submissions received, the consent authority shall have regard to -

(a) Any actual and potential effects on the environment of allowing the activity; and

(b) Any relevant regulations; and

(c) Any relevant national policy statement, New Zealand coastal policy statement, regional policy statement, and proposed regional policy statement; and

(cont'd page 1:11)

- (d) Any relevant objectives, policies, rules or other provisions of a plan or proposed plan; and
(e) [Not relevant]; and
(f) Any relevant regional plan or proposed regional plan, where an application is made in accordance with a district plan; and
(g) Any relevant water conservation order or draft water conservation order; and
(h) Any relevant designations or heritage orders or relevant requirements for designations or heritage orders; and
(i) Any other matters the consent authority considers relevant and reasonably necessary to determine the application.”

[See Note at Section 1.2.1 page 1:7]

Decisions on applications are made in accordance with section 105 of the Act.

Section 106 specifies circumstances in which the Council shall not grant a subdivision consent. These are:

- (a) Any land or any structure on that land is likely to be subject to material damage by erosion, falling debris, subsidence, slippage or inundation from any source.
- (b) Any subsequent use that is likely to be made of the land is likely to accelerate, worsen, or result in material damage to that land, other land or structure by erosion, falling debris, subsidence, slippage or inundation from any source.

Notwithstanding these circumstances, the Council may grant a consent if it is satisfied that these effects will be avoided, remedied or mitigated, by a rule in this Plan, any conditions of the consent, and/or any other matter including works.

The Council may impose conditions on consents in accordance with sections 108 and 220 of the Act.

1.2.8 Designations

A designation is a provision made in the District Plan to give effect to a requirement made by a requiring authority. Requirements are made to provide for public works or to impose restrictions necessary for the safe and efficient functioning or operation of a public work.

Every Minister of the Crown and all local authorities have status as a requiring authority. Other network utility operators (as defined in section 166 of the Act) may apply to the Minister for the Environment for approval as a requiring authority. A requiring authority may give notice to the Council in respect of a requirement. Although the Council has called for such notices in preparing the District Plan, the Act makes provision for notices of requirement to be given throughout the life of the operative District Plan.

Designations and requirements for designations are shown on the Planning Maps, with Schedule 19.2 identifying the requiring authority which has the benefit of the designation or requirement. A designation authorises the requiring authority to do anything that is in accordance with the designation and prevents any other person from subdividing or using the land without the 'prior written consent of the requiring authority' if this would prevent or hinder the public work or project. The underlying resource area identified in Schedule 19.2 indicates the purpose for which the land may be used other than for the designated works should the requiring authority's consent be given or the designation removed. Designations do not preclude requiring authorities from complying with any relevant regional rule stated in a regional plan.

Land subject to designations are also subject to underlying resource areas. These are listed in Schedule 19.2 on page 19:7 for each site subject to designation or requirement. The provisions of this Plan (including those that apply in the underlying resource area) apply in relation to any land that is subject to a designation only to the extent that the land is used for a purpose other than the designated purpose. All legal roads have been designated and have been given the underlying resource area of the resource area in which they are located (see Schedule 19.2). A resource area boundary shown following the legal road boundary shall be deemed to follow the centreline of that road for the purposes of determining the underlying resource area.

Designations lapse 5 years after the date on which it is included in the Plan unless it is given effect to or, upon application, Council extends that period on the basis that substantial progress has been made towards giving effect to the designation.

Designations are not the only means for providing for public works or utility operations. The District Plan contains general rules for utilities, providing for these in a manner similar to other activities.

1.2.9 Scheduled Activities

The Council has utilised a technique called “scheduling” to provide for some existing or future land use activities which require special recognition and some scope for development but which do not necessarily justify the identification of a special Resource Area. This technique enables activities to go beyond their existing use rights and may, in some circumstances, allow some scope for like activities to locate at the same site. These activities generally retain one or more of the following characteristics:

- they provide an important community facility, service and/or benefit
- they may have a distinctly different character than is normally found in the surrounding environment
- they may have some specific operational requirements that restrict their efficient functioning to particular environments
- they may have been provided for by way of designation or special zoning in previous District Plans and that technique is no longer appropriate and/or available.

The standards applicable to scheduled activities will generally be similar to those applying in the surrounding environment but with some recognition of their unique qualities and/or characteristics. Scheduled activities are listed at Schedule 19.3. It should be noted, however, that scheduled activities are still subject to any relevant regional rules.

1.2.10 Duty to Avoid Unreasonable Noise

Section 16 of the Act imposes a duty on every occupier of land, and every person carrying out an activity in, on, or under a water body to avoid unreasonable noise by adopting the best practicable option (as defined in the Act) to ensure that the emission of noise from that land or water does not exceed a reasonable level.

Where a complaint has been received by Council’s enforcement officer in respect of excessive noise (as defined in the Act) and the enforcement officer, upon investigation, is of the opinion that the noise is excessive, the enforcement officer may direct the occupier, or any other person who appears to be responsible for causing the excessive noise, to immediately reduce the noise to a reasonable level. (See sections 326 to 328.) This power is in addition to the powers to issue abatement notices (sections 322 to 325) and to seek enforcement orders (see section 316, 320).

1.2.11 Duty to Avoid, Remedy or Mitigate Adverse Effects

Section 17 of the Act imposes a duty on every person to avoid, remedy or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of that person, whether or not the activity is in accordance with a rule in a plan, a resource consent, or is an existing use pursuant to sections 10 or 10A.

Pursuant to Part XII of the Act a person may be required to stop doing anything that is, or is likely to be noxious, dangerous, offensive or objectionable to such an extent that it has or is likely to have an adverse effect on the environment OR do something that is considered necessary to avoid, remedy or mitigate any actual or likely adverse effect on the environment. (See sections 314 to 325B of the Act).

1.2.12 Monitoring and Review

Section 35 of the Act requires the Council to gather information and undertake research as is necessary to effectively carry out its functions under the Act. This section also requires Council to monitor:

- (a) the state of the whole or any part of the environment of the district to the extent that is appropriate to enable the Council to effectively carry out its functions under the Act; and
- (b) the suitability and effectiveness of any plan for the district; and
- (c) the exercise of any functions, powers, or duties delegated or transferred by the Council; and
- (d) the exercise of the resource consents that have effect in the district.

The Council must then take appropriate action (having regard to the methods available under the Act) where monitoring shows this to be necessary.

Monitoring provides important feedback and information, and is therefore an important mechanism in enabling the Council to fulfil its responsibilities for the review and/or refinement of the District Plan. It is in effect the process of information collection and recording. This includes gathering information and maintaining records in respect of resource management matters and the state of the environment, and compliance with resource consents granted by the Council.

With the wide range of issues, objectives and policies relating to resource management in the District, the scope for gathering and analysing information is almost endless. However, the Council's financial, staffing and time constraints mean that priorities need to be set for monitoring. Monitoring needs to be targeted at:

- issues which are of most concern to the community;
- objectives and policies which are closely related to the ability of future generations to meet their needs and matters of national importance identified in section 6 of the Act;
- issues, objectives and policies which are new or altered from the transitional District Plans and where the effectiveness of methods to achieve such objectives and policies is less certain; and
- environmental results which provide clear and certain indicators.

For each Section of the District Plan that contains issues, objectives and policies, a set of "Environmental Results Anticipated" has been specified. These "results" will form the basis for the monitoring specified below, targeted according to the above priorities.

The annual monitoring programme will be specified each year in the Annual Plan. Changes in funding available, work priorities and particular circumstances will influence the specific nature of the monitoring programme each year. On-going analysis of monitoring data collected will also enable an assessment of the nature of the monitoring being undertaken to determine whether it is providing appropriate information to assess the achievement of the Plan's objectives and policies.

Monitoring will be undertaken through several different procedures:

1. **Council Records:** The Council is required under the Act to keep and monitor information collected through its regulatory and other responsibilities, such as resource and building consents and a register of complaints received. Analysis of these will provide information regarding development within the District and attitudes to any adverse effects of that development. Monitoring of compliance with resource consent conditions will assist in assessing the adequacy and appropriateness of Plan policies and rules.
2. **Statistics New Zealand and Valuation Information:** The Council will continue to obtain updated data from these and other important sources of demographic, building, agriculture and business information.
3. **Surveys:** Every 3-5 years the Council may conduct a survey of the District's community regarding its attitudes towards particular resource management issues, such as landscape values and residential amenity.
4. **Annual Planning Process:** The District's Annual Planning Process provides the opportunity for the public to comment on the draft annual plan each year. Comments from this process are sometimes relevant to resource management issues, which can be included within the District Plan. The Council will also establish a separate programme to monitor the state of the environment generally (section 35). Information for this programme will help identify new or changing issues of relevance to the District Plan, and trends between the state and health of the environment and land use activities.

5. **Regional Council Monitoring Programme:** The Otago Regional Council undertakes a comprehensive monitoring programme in relation to its own areas of responsibility. Many of these are of relevance to the Council's District Plan, such as ground and surface water quality and availability, soil erosion and soil health, vegetation cover, air quality and flooding risks. The Regional Council's Annual Monitoring Report provides an important source of information. The Council will continue to liaise with the Otago Regional Council regarding the mutual benefits of monitoring the environment.
6. **Liaison with Other Councils:** Other Districts share many of the same resource management issues as the Central Otago District. The Council will seek to encourage liaison and co-operation between Councils of other Districts, and where possible pool resources to undertake particular jointly-funded monitoring and research. The Ministry for the Environment has an important role to play in collecting and disseminating information gathered from local authorities throughout New Zealand.
7. **Scientific Organisations:** The Council will maintain liaison with scientific organisations, particularly those undertaking research relating to resource management issues in the high country. The Council will encourage research organisations to undertake relevant monitoring and research investigations; and will continue to monitor the outcomes of such research.
8. **Landholders:** In many instances, the most effective monitoring can be undertaken by landholders themselves, such as the monitoring of climate, vegetation, and soil condition. The Council will take an active role in encouraging landholder groups undertaking their own monitoring and in facilitating the provision of information regarding monitoring techniques to such groups. Large organisations owning land and/or facilities within the District are also likely to be undertaking their own environmental monitoring programmes. The Council will seek a co-operative approach with these organisations where information can be usefully integrated into the Council's own monitoring programme.

1.2.13 Duty to Consider Alternatives

Section 32 of the Act imposes a duty on the Council before adopting any objective, policy, rule or method to have regard to alternatives, evaluate benefits and costs and be satisfied that the provision is necessary in achieving the purpose of the Act, and is the most appropriate means of exercising the functions having regard to its efficiency and effectiveness relative to other means.

The Council produced a document entitled "Section 32 Record of Action During Preparation of the Central Otago District Plan" that was publicly available at the time of public notification of the Proposed Plan. That document was prepared in terms of section 32(4) of the Resource Management Act 1991 which requires that a record be prepared, in such form as the Council considers appropriate, of the action taken and documentation prepared in the discharge of duties under section 32 of the Act. The record of action document provides a description of six distinct phases in the section 32 process which has involved a progressive and wide ranging consultation process. The reasons/explanations for selecting particular options are generally well documented in the Plan and alternatives are also discussed.

The Council also notes that section 32(2)(c) imposes a duty on the Council to consider alternatives, to assess benefits and costs, and so forth, at the time when decisions are made on the Proposed District Plan in terms of Clause 10 of the First Schedule to the Act. This action has also been taken.