

# 2

## Statutory Framework

## 2.1 Part II of the Resource Management Act 1991

The purpose of the Resource Management Act, as stated in Section 5, is to promote the sustainable management of natural and physical resources.

While waste is not a natural or physical resource, the inappropriate management of waste, at all stages of the waste cycle, can result in adverse effects on the environment. These effects may result in the natural and physical resources of the Otago region not being managed in a sustainable way.

Section 6 of the Resource Management Act requires that in preparing, administering and implementing this Plan, matters of national importance are recognised and provided for, including:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), 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 the coastal marine area, lakes and rivers;*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

Similarly, Section 7 of the Resource Management Act provides that particular regard be had to:

- (a) *Kaitiakitanga;*
- (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.*

Where relevant, the above matters contained within Sections 6 and 7 of the Resource Management Act are included within this Plan. It is also necessary to have regard to these provisions in considering any resource consents that may be required.

Section 8 of the Resource Management Act requires the Otago Regional Council to take into account the principles of the Treaty of Waitangi, and this is particularly relevant in relation to the management of the region's natural and physical resources.

Manawhenua consider that all ancestral taoka contain a mauri (a value which binds the spiritual and physical elements of taoka). When something dies the mauri is no longer able to bind the physical and spiritual elements together and therefore give life - without mauri nothing can survive. Kai Tahu, over many centuries, have developed a set of rules and practices to sustain the mauri of all things - this custom is known as tikanga ("to practice that which is right").

Manawhenua philosophy advocates the non-contamination of areas of mahika kai (food resources) and wahi tapu. This is especially important in terms of human toeka (human wastes). The spiritual nature of wahi tapu requires that they be free from wastes of any kind.

Recognising the requirements of Section 8 of the Resource Management Act this Plan includes a specific chapter on Manawhenua issues.

## 2.2 Restrictions on the use of land

Section 9 of the Resource Management Act provides that:

- 9(3) *No person may use any land in a manner that contravenes a rule in a regional plan or a proposed regional plan unless that activity is -*
- (a) *Expressly allowed by a resource consent granted by the regional council responsible for the plan; or*
  - (b) *Allowed by Section 20 (certain existing lawful uses allowed).*

Within this section the word "use" includes "*any deposit of any substance in, on, or under the land*". Therefore, where this Plan provides for the control of the adverse effects of activities, or of the activities themselves, no use may be undertaken unless a resource consent is granted, or the use has existing use rights.

## 2.3 Discharge of contaminants

Section 15 of the Resource Management Act deals with the discharge of contaminants. It states:

- 15(1) *No person may discharge any -*

- (a) *Contaminant or water into water; or*
- (b) *Contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or*
- (c) *Contaminant from any industrial or trade premises into air; or*
- (d) *Contaminant from any industrial or trade premises onto or into land -*

*unless the discharge is expressly allowed by a rule in a regional plan and in any relevant proposed regional plan, a resource consent, or regulations.*

- (2) *No person may discharge any contaminant into air, or into or onto land, from -*

- (a) *Any place; or*
- (b) *Any other source, whether moveable or not, -*

*in a manner that contravenes a rule in a regional plan or proposed regional plan unless the discharge is expressly allowed by a resource consent or allowed by Section 20 (certain existing lawful activities allowed).*

Contaminant is defined in the Resource Management Act to include:

*any substance (including gases, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy or heat-*

- (a) *When discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or*
- (b) *When discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged.*

The effect of Section 15(1) of the Resource Management Act therefore is to restrict the following, unless provided for by a regional plan, regulations or a resource consent:

- (a) The discharging of any contaminants either into water, or onto or into land in such a way that they could enter water; and
- (b) The discharging of any contaminants into air, or onto or into land, from any industrial or trade premises.

These restrictions would apply to waste being disposed of from urban and rural properties, such as refuse and offal, and to municipal refuse disposal facilities.

Section 15(2) of the Resource Management Act has the effect of restricting those discharges that are contrary to any rules in this Plan, unless they have existing use rights or have been approved by a resource consent.

Section 418 of the Resource Management Act provides for transitional provisions with respect to Section 15. The manner in which they are interpreted by this Plan is outlined in Section 7.1.

## 2.4 Content of regional plans

Section 67(1) of the Resource Management Act specifies the content of regional plans. This requires this Plan to state:

- (a) *The issues to be addressed in the plan; and*
- (b) *The objectives sought to be achieved by the plan; and*
- (c) *The policies in regard to the issues and objectives, and an explanation of those policies; and*
- (d) *The methods being or to be used to implement the policies, including any rules; and*
- (e) *The principal reasons for adopting the objectives, policies, and methods of implementation set out in the plan; and*
- (f) *The information to be submitted with an application for a resource consent including the circumstances in which the powers under Section 92 may be used; and*
- (g) *The environmental results anticipated from the implementation of these policies and methods; and*
- (h) *The processes to be used to deal with issues which cross local authority boundaries, and issues between territorial authorities and between regions; and*
- (i) *The procedures to be used to review the matters set out in paragraphs (a) to (h), and to monitor the effectiveness of the plan as a means of achieving its objectives and policies; and*
- (j) *Any other information the regional council considers appropriate; and*
- (k) *Such additional matters as may be appropriate for the purpose of fulfilling the regional council's functions, powers, and duties under this Act.*

These matters have determined the structure and content of the various parts of this Plan. In the context of Section 67 of the Resource Management Act the following terminology has been adopted in this Plan:

- A resource management **issue** occurs when an activity creates an environmental effect requiring some form of intervention. If there is no effect, there is no issue. The extent to which those issues are significant is dependent on the values held by people and

communities in relation to natural and physical resources, activities and the environment.

- An **objective** is the desired result, end state, situation, or condition that is aimed for.
- A **policy** is the course of action to achieve the desired result. It is what needs to be done to achieve the objective.
- A **method** is the practical action by which a policy is implemented. It is what needs to be done to put the policy into effect.
- An **anticipated environmental result** is the intended result or outcome on the environment as a consequence of implementing the policies and methods.

Section 67(2) of the Resource Management Act also specifies that this Plan shall not be inconsistent with:

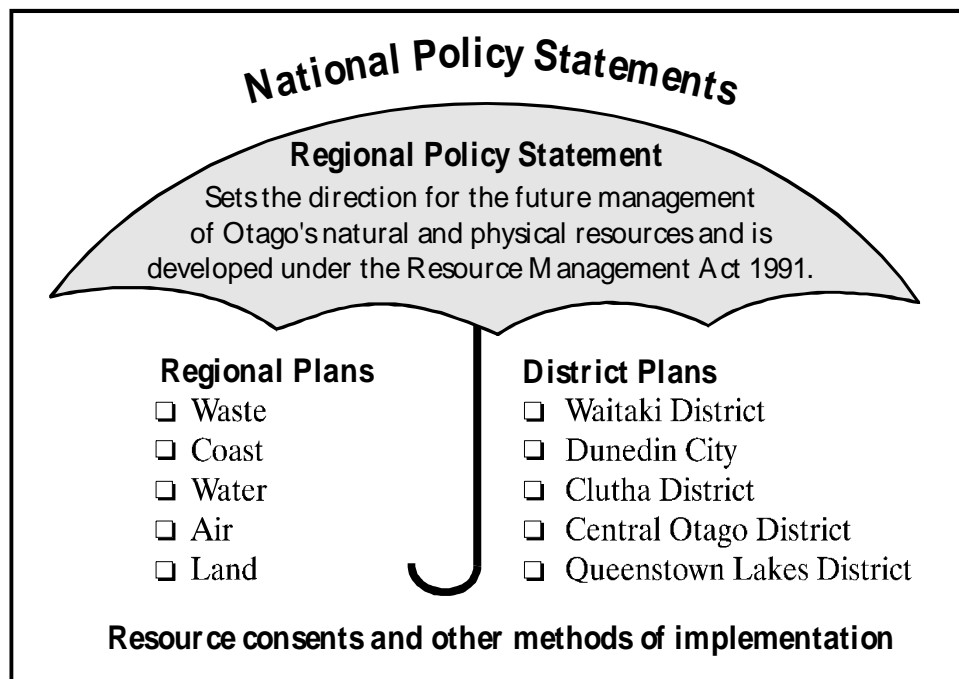
- (a) *Any national policy statement or New Zealand coastal policy statement; or*
- (b) *Any water conservation order; or*
- (c) *The regional policy statement or any other regional plan of the region concerned.*

The provisions of the New Zealand Coastal Policy Statement, which is the only national policy statement at the time of completing the development of this Regional Plan: Waste, have been taken into account in its development. The provisions of the Proposed Regional Policy Statement for Otago, which is subject to appeals at the time of completing this Regional Plan, have also been taken into account. It is noted however that the provisions within the Waste Chapter of the Proposed Regional Policy Statement for Otago are not subject to any appeals.

## 2.5 Relationship to other resource management documents

This Plan fits within a framework of national, regional and local resource management plans and other documents as shown in Figure 2.

As noted above, regional plans must not be inconsistent with those documents prepared at the national level.



**Figure 2: Resource Management Framework**

At the regional level the Regional Policy Statement for Otago provides an overview and the means of achieving integrated sustainable management of the region's natural and physical resources. It is a statement of intent as to how regional resource management issues can be addressed, and while it has statutory power it only describes, rather than prescribes, methods which could be used to attain the stated objectives. This Plan seeks to implement the objectives and policies of the Regional Policy Statement for Otago.

In preparing this Plan the Otago Regional Council is also required to have regard to management plans and strategies prepared under other Acts, Iwi management plans, relevant entries in the Historic Places Register, regulations made under the Resource Management Act and the operative and proposed policy statements and plans of adjoining regional councils.

Discussions have been held with appropriate agencies to ensure that, where appropriate, matters contained in these other documents have been had regard to. To facilitate consistent administration within the Waitaki District, the contents of this Plan and the draft Landfill Regional Plan for the Canterbury Region have been the subject of meetings at a staff level between the councils concerned.

Plans for the Otago region must not be inconsistent with one another or the Regional Policy Statement for Otago. District plans must not be inconsistent with regional plans or the Regional Policy Statement for Otago.

At present, the Otago Regional Council has made a commitment to preparing five regional plans for Otago: the Regional Plan: Land, the Regional Plan: Water, the Regional Plan: Air, the Regional Plan: Coast, and this Plan, the Regional Plan: Waste. This commitment is identified in the methods of the Regional Policy Statement for Otago. Other plans may be prepared from time to time as is considered necessary and appropriate.

Outside of the formal resource management framework, other documents can be prepared, such as accords, guidelines and codes of practice. These can be used to achieve resource management objectives.

## **2.6 Section 32 of the Resource Management Act**

Section 32 of the Resource Management Act requires councils to be objective in preparing regional plans, and in particular in determining objectives, policies and methods, having regard to alternatives that may be available and the reasons for and against options, including their costs and benefits. The Otago Regional Council has considered these matters in preparing this Plan and is satisfied that the selected objectives, policies and methods are necessary in achieving the purpose of the Resource Management Act and are the most appropriate means having regard to their efficiency and effectiveness.

The explanations and reasons for objectives, policies and methods contained in this Plan demonstrate that consideration has been given to the Section 32 requirements of the Resource Management Act and further supporting reports are available from the Otago Regional Council relating to the preparation process and matters that have been considered.

The technology in dealing with waste is changing over time. Knowledge is also expanding in terms of the effects of various methods of disposal. Where the Otago Regional Council becomes aware of other suitable techniques or options that may be applicable to waste management, it will assess those and if appropriate, introduce a change to this Plan.

## **2.7 Other relevant legislation**

There is other legislation which deals with waste management. There are, for example, provisions dealing with waste generally in the following legislation:

- Building Act 1991
- Employment Act 1992
- Health Act 1956
- Health and Safety in Employment Act 1992
- Land Drainage Act 1908



- Litter Act 1982
- Local Government Act 1974
- Public Works Act 1991
- Rivers Board Act 1908
- Soil Conservation and Rivers Control Act 1941

The Resource Management Act, the Regional Policy Statement for Otago and this Plan do not replace, but complement, this other legislation. Some legislation deals specifically with the management of hazardous substances. Organisms designated as pests are dealt with in the Biosecurity Act 1993. The Meat Act 1981 and the Food Act 1981 have waste management implications for the industries governed by these statutes.

Other hazardous substances are the subject of specific legislation such as the Atomic Energy Act 1945, the Animal Remedies Act 1967, the Asbestos Regulations 1983, the Dangerous Goods Act 1974, the Medicines Act 1981, the Pesticides Act 1979, and the Radiation Protection Act 1965.

The Marine Pollution Act 1974 covers pollution of coastal and internal navigable waters. It gives particular emphasis to the control of oil spills.

The Electricity Act 1992 and Gas Act 1992 deal with energy production and distribution including safety, storage and reticulation.

Firearms and explosives are dealt with by the Arms Act 1983 and Explosives Act 1957, and regulations made under those Acts.

Most legislation contains offence provisions. In some cases the Crimes Act 1961 or Summary Offences Act 1981 may also apply. Major pollution events may create an emergency requiring action under the Civil Defence Act 1983.

Reserves and other conservation land are protected by specific legislation such as the Reserves Act 1977, Conservation Act 1987, Historic Places Act 1983, National Parks Act 1980, the Wild Animals Control Act 1977 and the Wildlife Act 1953.

## **2.8 Roles of different agencies in waste management**

### **2.8.1 Under the Resource Management Act**

The Otago Regional Council and Otago territorial authorities have waste management responsibilities under the Resource Management Act. The Otago Regional Council has adopted a

regionally coordinated approach to waste minimisation, contaminated sites, the collection, storage, treatment and disposal of hazardous substances and hazardous wastes, and the disposal of waste to landfills.

As a consequence of the provisions of the Regional Policy Statement for Otago, district councils and the Dunedin City Council have responsibility within their own areas for the preparation of objectives, policies and methods relating to the control of the use of land for the purpose of the prevention or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances and hazardous wastes. As appropriate, through this Plan and other regional plans, the Otago Regional Council will develop objectives, policies, rules and other methods relating to the use of land for the purpose of the prevention or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances and hazardous wastes regarding:

- (a) The location of hazardous facilities or pipelines for the bulk conveyance of hazardous substances in relation to groundwater infiltration areas, or in close proximity to surface water resources, or in close proximity to the coastal marine area, or on soils particularly valued for their primary productive capability; or
- (b) Situations where the actual or potential effects may be of regional significance.

The Ministry for the Environment, regional councils and territorial authorities also have waste management functions under other legislation. Other agencies also have a waste management role. Nothing in the Resource Management Act, the Regional Policy Statement for Otago or this Plan can impinge on the responsibilities of those agencies outside of the Resource Management Act. Reference is only included to them here to improve knowledge and understanding of the roles of the respective agencies.

Under the Resource Management Act, the Minister for the Environment is able to set national policy guidelines and standards. The Minister also monitors the achievements of regional and territorial authorities under the Resource Management Act, and provides advice and information.

The Otago Regional Council is responsible for the control and management of the effects from the discharge or disposal of waste. The Otago Regional Council considers applications for discharges of contaminants into water and air, and onto land. The Otago

Regional Council also administers aspects of waste management through General Authorisations, notified under Section 22 of the Water and Soil Conservation Act 1967 which are provided for as permitted activities within the Transitional Regional Plan. These include discharges from septic tanks, swimming pools, stormwater, and in certain circumstances, farm wastes.

The Otago Regional Council also monitors the effects of waste treatment and disposal within Otago, and provides advice and information. As part of its regional role in environmental issues, the Otago Regional Council operates a 24 hour Pollution Hotline, to initiate responses to pollution events as they occur. The Otago Regional Council manages and coordinates the clean-up of pollution spills.

The functions of territorial authorities relevant to waste management under Section 31 of the Resource Management Act include:

*The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;*

*The control of any actual or potential effects of the use, development, or protection of land, including ... the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances and hazardous wastes;*

These functions can be achieved through the preparation of district plans, which includes an ability to make rules.

## **2.8.2 Other legislation and agencies**

Outside of the Resource Management Act regional council functions relevant to waste include:

- (a) Management of organisms designated as pests under the Biosecurity Act 1993;
- (b) Civil defence; and
- (c) Powers to establish regional waste disposal facilities for hazardous substances and hazardous wastes, and to contribute to territorial authority works of regional benefit under the Local Government Act 1974.

Outside of the Resource Management Act the functions of territorial authorities relevant to waste include:

- (a) Local Government Act 1974 powers relating to:
  - Any works of benefit to the district
  - Sewage disposal and stormwater drainage
  - Regulation of trade waste
  - Refuse collection and disposal
  - Public health and welfare powers
  - Fire prevention
  - By-law making powers; and
- (b) The Building Act 1991 with particular emphasis on ensuring that buildings are safe and sanitary;
- (c) Civil defence;
- (d) Dangerous goods;
- (e) Dog Control and Hydatids Act 1982; and
- (f) Litter Act 1979.

Other agencies with functions relevant to waste include:

- (a) The Department of Conservation, particularly in the coastal marine area and conservation estate.
- (b) The Occupational Safety and Health Service of the Department of Labour, administering legislation dealing with explosives, dangerous goods, and health and safety in employment.
- (c) The Ministry of Health, with a policy making and monitoring role in public health issues.
- (d) The Public Health Commission, which is charged with improving and protecting public health and with purchasing public health services. These may be acquired under purchase agreements with the Regional Health Authorities or directly with health providers. The administration of health legislation such as the Health Act 1956, Medicines Act 1981, Toxic Substances Act 1979, and Food Act 1981 is shared by territorial authorities with medical officers of health and health protection officers appointed by the Director General of Health, but employed by

health providers under contract to the Public Health Commission or Regional Health Authorities.

- (e) The Ministry of Agriculture administering the Biosecurity Act 1993 and national pest management strategies.
- (f) The Fire Service and Police who deal with emergencies involving hazardous substances, dangerous goods and toxic substances. The Police may assist other regulatory agencies in the discharge of their duties and has a law enforcement role which complements the regulatory agencies.
- (g) Civil aviation, maritime and land transport authorities are responsible for overseeing and enforcing legislation governing the transport of hazardous substances and hazardous wastes.

This list is not exhaustive, but serves to indicate the range of organisations with an interest in waste issues. It can be expected too, that in the near future, changes will occur in the range of functions carried out by these organisations. For example, the government developed the Hazardous Substances and New Organisms Act 1996 which superseded, in whole or in part, the Animal Remedies Act 1967, Animals Act 1967, Dangerous Goods Act 1974, Explosives Act 1957, Pesticides Act 1979, Plant Variety Rights Act 1987 and Toxic Substances Act 1979. The Hazardous Substances and New Organisms Act 1996 has resource management implications which affects the roles and powers of agencies involved in hazardous substances and hazardous waste management.

## 2.9 Review and changes

The Resource Management Act provides for this Plan to stay operative for up to 10 years. At the end of that period the Resource Management Act requires a review of this Plan.

Like the environment, resource management is dynamic. Changes will occur. Some of these will be foreseen and intended. Others will not be foreseen and will be unexpected. Some will happen as a consequence of policy decisions and actions contained in this Plan. Others will occur despite the best endeavours of this Plan, and those who seek to administer and implement it.

As changes occur to the environment it will be desirable to make amendments to this Plan in order to respond to new issues and conditions. This can be done either in part by introducing a change to the document, or in full by way of a total review. Any person may apply for a change to a regional plan, or the Otago Regional Council itself may initiate a change to this Plan. Situations which may give rise to the Otago Regional Council initiating a change to this Plan include:

- (a) Changes to the law (such as the Hazardous Substances and New Organisms Act);
- (b) The results of monitoring the environment;
- (c) The results of monitoring the effectiveness of this Plan;
- (d) Advances in technology or techniques in the production, recycling, reuse and recovery of wastes; and
- (e) Greater knowledge of the effects of waste management practices.

In addition, as the Otago Regional Council prepares other regional plans, on resources such as water and air, matters will likely arise which will result in the need to amend some of the provisions of this Plan. Similarly, as district plans are prepared it may be appropriate to reconsider some of the matters contained within the Regional Policy Statement for Otago and this Plan. Where assessment indicates that alterations are required to the document this will be achieved by introducing a formal change, and adopting the consultative procedures set out in the First Schedule of the Resource Management Act.

## **2.10 Enforcement**

The provisions of this Plan became operative on 1 April 1997, following the consideration of submissions lodged to the Plan, and the resolution of any appeals lodged in response to the decisions of the Council on those submissions.

The Otago Regional Council is responsible for the enforcement and administration of this Plan. This will be achieved through education and by adopting the statutory procedures set out in the Resource Management Act.

Where appropriate the Otago Regional Council is able to enforce the provisions of this Plan by way of abatement notices, enforcement orders and prosecutions.

## **2.11 Status of activities**

The rules within this Plan determine the status of any particular activity and determine whether a resource consent is required before that activity can be carried out. A resource consent is required for any activity which the Plan specifies as being a controlled activity, a discretionary activity or an activity which does not comply with the provisions of the Plan, this being a non-complying activity. The Plan also specifies permitted activities.

### **2.11.1 Permitted activity**

Activities which are specified as permitted activities can occur without the need to obtain a resource consent, if they are able to comply with the conditions stated within the Rule.

### **2.11.2 Controlled activity**

A controlled activity is an activity which the Otago Regional Council will grant a resource consent for. That consent may include conditions relating to the matters which the Otago Regional Council has stated that it will exercise its control over.

### **2.11.3 Discretionary activity**

A discretionary activity is an activity over which the Otago Regional Council has retained its discretion as to whether it will grant the resource consent or not. The Otago Regional Council will, in considering any application for a discretionary activity, be guided by the policies contained within the Plan, the Proposed Regional Policy Statement for Otago and the requirements of the Resource Management Act. Conditions may be included on any resource consent granted.

### **2.11.4 Non-Complying activity**

A resource consent is also required for any activity that would otherwise not comply with this Plan, this being termed a non-complying activity. A resource consent may either be granted or declined.

## **2.12 Information requirements**

Applications for resource consents must comply with the requirements of Section 88 of the Resource Management Act. Additional information may

be required by the Otago Regional Council in order to be able to assess the effects of an application. These general requirements are identified in the rules of this Plan.

### **2.13 Provision of further information**

Pursuant to Section 92 of the Resource Management Act, the Otago Regional Council may at any reasonable time before the hearing of a resource consent application, by written notice to the applicant, require the applicant to provide further information. Due to the variable nature and site-specific aspects of activities associated with waste management it is difficult to define all of the required information until closer investigation of a specific application has been conducted. Accordingly, the applicant may be required to supply further information where it is necessary to enable the Otago Regional Council to better understand the nature of the activity in respect of which the application for a resource consent is made, the effect it will have on the environment, or the ways in which any adverse effects may be mitigated.

### **2.14 Notification of consents**

Whether an application for a resource consent required by the rules of this Plan will be notified or not will be determined by the Council in accordance with Section 94 of the Act. Notification will be in the manner prescribed by Section 93 of the Act.

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The Ngai Tahu Claims Settlement Act 1998 (NTCSA) contains statements, called statutory acknowledgements, by Te Runanga o Ngai Tahu, of the particular cultural, spiritual, historic and traditional association of Ngai Tahu with specific areas in the Otago region.

The statutory acknowledgements and the areas to which they relate are set out in the Schedules of the NTCSA.

The effect of the statutory acknowledgements is set out in Part 12 of the NTCSA.

Under Section 208 of the NTCSA, local authorities must have regard to the statutory acknowledgements in deciding whether Te Runanga o Ngai Tahu is an affected person whose written approval must be obtained for a non-notified resource consent application, or must be served with a notified application for a resource consent.

Section 211 of the NTCSA enables Ngai Tahu to cite these acknowledgements in submissions or in proceedings before consent authorities or the Environment Court. A statutory acknowledgement is not binding on the consent authority or Court, but may be taken into account.

*This note is for the purpose of public information only and does not form part of the Plan. It is required by Section 220 of the Ngai Tahu Claims Settlement Act 1998.*