

SECTION 3

***GENERAL
OBJECTIVES
POLICIES METHODS
AND RULES***

3.1 MANAWHENUA ISSUES

3.1.1 - OVERVIEW

The Resource Management Act imposes statutory duties on Council to recognise the principles of the Treaty of Waitangi, and it also imposes duties in respect of other Maori issues. The following outlines the most significant references to Maori concerns in terms of the District Plan and Council's responsibility under the Resource Management Act;

***Section 6(e)** - requirement to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga as a matter of national importance.*

***Section 7(a)** - requirements to have particular regard to Kaitiakitanga.*

***Section 8** - requirement on Council in undertaking its responsibilities under the Resource Management Act, to recognise the principles of the Treaty of Waitangi.*

***Section 33(1) (2)** - Council may transfer functions to an Iwi authority.*

***Section 74(2)(b)(ii)(iii)** - Council is to have regard to any planning document recognised by an Iwi authority and any regulations in relation to the conservation or management of taiapure fisheries when preparing District Plans.*

***Section 93(1)(f)** - Iwi authorities are to be notified by Council of Resource Consent applications.*

***First Schedule Clause 3(1)(d)** - Council are required to consult with Iwi authorities or tribal runaka when preparing the District Plan.*

This section of the Plan has been developed in consultation with the relevant runaka in the Southland District and addresses the issues raised in Section 6(e) and Section 7(a) of the Act.

3.1.1(a) - THE TREATY OF WAITANGI

To understand the implication of the Treaty of Waitangi an accepted translation is as follows:

The Treaty of Waitangi

HER MAJESTY VICTORIA, Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and

the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions

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.

W HOBSON Lieutenant Governor

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signature, dates etc]

Source: Treaty of Waitangi Act 1975

3.1.2 - KAITIAKITANGA (GUARDIANSHIP)

Kaitiakitanga refers to how people are the guardians and protectors of places, objects and ideas of value to them. It is the traditional method used by Kai Tahu to protect, sustain and preserve resources. Specialised knowledge was kept by certain individuals in relation to a particular resource, this being known as Kaitiaki. Kaitiaki managed the method and time of harvesting to ensure the sustainability of that particular resource.

Kaitiakitanga is part of Maori culture and spiritual belief, rooted in the values of society. In terms of "managing the use, development and protection of natural and physical resources" under the Act an important concept of Kaitiakitanga is the exercise of guardianship, which includes the ethic of stewardship in managing resources.

Section 7 of the Act requires that particular regard is given to Kaitiakitanga. Kai Tahu seek to have the concept and spirit of Kaitiakitanga incorporated into the management of the Southland District's resources.

Objective MAO.1 - Kaitiakitanga

To have particular regard to the concept of Kaitiakitanga in relation to managing the use, development and protection of natural and physical resources.

Policy MAO.1

To consult with the appropriate Runaka on policy development relating to natural and physical resources of the Southland District.

Explanation

Early consultation with the appropriate runaka will ensure that the concept of Kaitiakitanga is given full consideration during the policy development phase of resource management, and will enable its practical implementation where appropriate.

(Refer Methods MAO.1 and 2, and Policy SI.7 and Rules COA.4 and 5)

Policy MAO.2

To recognise the "Te Whakatau Kaupapa O Murihiku" as a Kai Tahu resource management reference planning document for the district.

Explanation

Kai Tahu of Murihiku (Southland) have prepared a Resource Management reference document that expresses Kai Tahu beliefs and values in relation to the District's resources. This document will be had regard to by Council when developing and implementing resource management policy, and forms the basis of consultation between Council and Manawhenua.

(Refer Method MAO.1 and 2)

3.1.3 - WHENUA PAKAIIKA (ANCESTRAL LAND)

Whenua Papakaika is land inherited from ancestors, being places of traditional settlement. Today such land comprises the remnants of land reserved from the land sales in the 1840s and other land and reserves subsequently allocated. Such land was, and is still intended to be available to Kai Tahu to provide for their economic, social and cultural security. Legislation over the years has reduced the extent of the resources and has created a situation where such lands are fragmented, in multiple ownership and unproductive.

It is Kai Tahu's view that such land should be available to achieve the original purpose of the reserve and therefore restrictions should not be imposed that prevent or limit the use of such land and resources according to their cultural preferences.

It should also be noted that the Environment Court has not confined the definition of "ancestral lands" to lands in Maori ownership but considers it may relate to lands in places important to Iwi.

Objective MAO.2 - Whenua Papakaika (Ancestral Lands)

To recognise the relationship of Kai Tahu with their ancestral lands and provide for the use of these lands in accordance with appropriate cultural needs.

Policy MAO.3

To enable the development of papakaika housing on appropriate Maori ancestral land provided adverse environmental effects are avoided, remedied, or mitigated.

Explanation

While Maori ancestral land is often fragmented and in multiple ownership it still represents turangawaewae (place of belonging through ancestral rights, linked to land) for many Kai Tahu. The Plan makes provisions for the utilisation of these lands, in a culturally appropriate way, by the relevant Runaka provided there are no adverse environmental effects. Papakaika housing and the ability to live on ancestral land is important to Kai Tahu in providing Turangawaewae. The multiple ownership and eventual fragmentation of land holdings has, in the past, made it difficult for productive uses of such lands. Permitting papakaika housing on such land enables a productive use of the land, reinforces the lands traditional significance, and has positive wider social and community effects. Such development would need to be undertaken in accordance with a management plan which addresses such issues as waste disposal, servicing, native bush preservation, and the like. This policy also complies with Article II of the Treaty of Waitangi.

(Refer Rule MAO.4 and MAO.5)

Policy MAO.4

To consider the effects of development proposals for ancestral land in terms of the status of the land concerned.

Explanation

Not only do these lands provide Turangawaewae, the original purpose was also to provide for the economic security of Kai Tahu. Much of this land today may be suitable for a wide range of activities such as tourism, forestry, land based fish farms, horticulture and the like. Each particular area needs to be considered in light of its history and significance to Iwi and its potential to provide for their economic, social and cultural security.

(Refer Rule MAO.5)

Policy MAO.5

To reassess as appropriate the provisions of the Plan in relation to ancestral land and resources returned to Kai Tahu as part of any Treaty of Waitangi settlement.

Explanation

Kai Tahu, as a result of settlement of the Kai Tahu claim to the Waitangi tribunal in 1987, may be returned lands for the purpose of re-establishing their economic base. It may be necessary that the provisions of the Plan be revisited in respect of such lands. This, of course, would depend on the status of the land returned and its intended purpose. Any such reassessments would have to follow normal plan change procedures.

(Refer Rule MAO.5)

3.1.4 - WAAHI TAPU (SACRED PLACES)

The Act does not define waahi tapu, the reason being that there are subtle differences to its meaning between the various iwi. To Kai Tahu waahi tapu are places held in reverence according to tribal custom and tradition. Some waahi tapu are important to the iwi, while others are important to individual hapu or whanau. Waahi tapu protects the mana of not only ancestors of Maori but of the people to their land and their past, and accordingly, is of great importance. For this reason knowledge of the location of waahi tapu may be limited to a small number of individuals such as in the case of waahi tapu significant to a family who care for the site. These individuals are not always willing to divulge locations of waahi tapu for fear of desecration.

The most significant waahi tapu is Urupa or burial sites. Urupa can be either communal or individual with some communal Urupas still used today eg Tuturau. The location of many Urupa are being discovered because of higher population and settlement densities, and the elements such as erosion. This has led to a need for reinterment.

Kai Tahu's main concern in relation to Waahi Tapu is that such sites are recognised and protected in a culturally sensitive way.

Objective MAO.3 - Waahi Tapu (Sacred Places)

To recognise the traditional spiritual and customary importance of waahi tapu and ensure that all waahi tapu are protected in a culturally appropriate manner.

Policy MAO.6

That waahi tapu be protected from disturbances and interference from unsympathetic works and development.

Explanation

The District Plan, resource consent procedures, and the provisions of the Historic Places Act 1993 are considered the best option to achieve protection of waahi tapu. The major threats to waahi tapu are generally from land disturbance activities. The District Plan will develop a system notifying potential developers that waahi tapu could be affected by their activities.

(Refer Method MAO.3 and 4; and Rule MAO.2)

Policy MAO.7

To establish a process that allows adequate warning of the existence of waahi tapu, while at the same time protecting its exact location.

Explanation

A file is maintained on all recorded archaeological sites in Southland by the New Zealand Archaeological Association Filekeeper. The file is held at the Southland Museum and Art Gallery in Invercargill, along with a 'silent file' of some waahi tapu sites. Where waahi tapu sites are known to exist, they have been indicated on the District Plan Maps, and any developer will consult with the Filekeeper and Kaitiaki Runaka in order to establish an appropriate course of action, prior to commencing any development.

(Refer Method MAO.3 and 4 and Rule MAO.2)

Policy MAO.8

Adopt appropriate procedures for the management of Koiwi Takata (Maori bone remains) finds, and for notifying Kai Tahu of Koiwi Takata finds.

Explanation

Kai Tahu Koiwi Takata policy states a clear preference that wherever possible Koiwi Takata in situ should not be disturbed and that the integrity of the burial remain intact (Foundation Principle). Kai Tahu request that they be informed at the earliest instant of any Koiwi Takata remains being unearthed. It is considered inappropriate to be involved after such remains have been removed from their burial site and/or been subject to scientific investigation or storage for a period of time.

The District Plan recognises the prior right of Kai Tahu whanau, runaka, or kaitaki to manage the removal (if required or deemed appropriate), reburial or storage of unearthed Koiwi Takata.

(Refer Rule MAO.3)

3.1.5 - WAAHI TAOKA (TREASURED RESOURCES)

Waahi Taoka are a range of resources and places that are important to Iwi and Runaka. Taoka signifies the whakapapa (genealogical) tree of the Maori world; Waahi Taoka are the various parts of it, the branches of that tree. Waahi Taoka are those resources that sustain life and are culturally and historically important to Kai Tahu. While having a more holistic meaning to Waahi Tapu, consultation with appropriate Kai Tahu Runaka is required before any action is taken involving such sites. Waahi Taoka include -

Wai	-	water
Noho kaika	-	pa sites
Tauraka waka	-	landing sites (canoes)
Tuhituhi nehera	-	rock drawings
Mahika kai	-	places where food was gathered, procured or produced
Mauka	-	mountains
Awa	-	rivers
Wahi rakau	-	areas of important trees
Mahika mataitai	-	fishing areas
Wahi kohatu	-	rock areas
Kohaka	-	nesting areas (that is, shellfish seeding)
Raraka maitaitai	-	cultural materials
Tetoi aka	-	middens
Tauraka ika	-	historic tribal fishing grounds

(Refer also to Policy HER.9 in Section 3.4 - Heritage)

Objective MAO.4 - Waahi Taoka (Treasured Resources)

To recognise and provide for the special significance that all Taoka play in the culture of Kai Tahu.

Policy MAO.9

In consultation with relevant Kai Tahu Runaka, record and list appropriate waahi taoka on the heritage register.

Explanation

Those waahi taoka of significance to Kai Tahu will be identified in consultation with appropriate runaka. Where deemed appropriate, there will be an initial inspection of new sites, on foot by a qualified person. At an appropriate time the District Plan will be amended to update new sites but at all times a record of known sites will be made available through the Filekeeper at the Southland Museum.

(Refer Method MAO.3)

Policy MAO.10

To consult with appropriate Kai Tahu Runaka before any action is taken that will effect or impact on waahi taoka.

Explanation

Where a proposed development may have an effect on waahi taoka, consultation will need to take place between the developer and the appropriate runaka. (Refer Method MAO.2)

Policy MAO.11

To provide appropriate protection for waahi taoka sites of significance.

Explanation

Protection of significant waahi taoka can be applied through either conditions attached to resource consent or via heritage order procedure instigated by the appropriate heritage protection authority. Sites on public land can also be noted on planning maps and given protection via rules in the Plan. (Refer Rule MAO.1)

3.1.6 - WAI (WATER)

Of all natural resources, water is possibly the most important to Kai Tahu. Water is seen as the provider and sustainer of life and therefore water flow, water quality, the integrity of various traditional categories of water, and the Mauri (life force) of waterways is extremely important to Kai Tahu. Mahika kai resources that are of value to Kai Tahu are in turn reliant on water quality and quantity.

The loss and degradation of this resource through drainage, pollution and damming is a major resource management issue to Kai Tahu and is considered to have resulted in material and cultural deprivation of Kai Tahu.

Water also plays a significant part in Kai Tahu traditions and culture. It is Kai Tahu traditional belief that all life began with the mating of Maku and Mahoranuiatia who are both forms of water. Traditional values and controls relating to water are included in Kai Tahu traditional spiritual beliefs and practices thereby recognising and reinforcing the importance of water quality in all aspects of life. The condition of water is seen as a reflection on the health of Papatuanuku (the earth mother).

Objective MAO.5 - Wai (Water)

To recognise the significance of water to Kai Tahu traditions and culture and to provide for such traditions and culture.

Policy MAO.12

To promote and encourage appropriate land management practices adjacent to water bodies in order to reduce and where possible avoid the runoff of contaminants into water.

Explanation

Inappropriate land use practises such as vegetation clearance in riparian margins and catchment heads, poor control on fertiliser application, and so forth have greatly contributed to significant increases in sediment and nutrient loads in the District's waterways. Such runoff greatly undermines the sustainability of the District's water resource. (Refer Section 3.5 Water and 4.1 Rural Resource Area)

Policy MAO.13

To liaise with Southland Regional Council on water quality issues, particularly in regard to reducing human sewage discharges into waterways.

Explanation

The Regional Council is the Body with primary responsibility for water quality and consequently Council must act in co-ordination with them to achieve the desired outcomes in relation to water quality. (Refer Method MAO.2)

3.1.7 - MAHIKA KAI (PLACES WHERE FOOD IS PRODUCED OR PROCURED)

Mahika Kai is the custom of procuring or producing food resources, and is the cornerstone of Kai Tahu existence and culture. Highly organised seasonal timetables were defined to best utilise the resources available, which developed into a sustainable resource management ethic. It was through Kaitiakitanga that the balance between resource use and resource protection was achieved.

The management of Titi (Muttonbird) Islands is a prime example of the effectiveness of this ethic. The number of persons permitted to harvest the resource is limited to only those persons who have a proven right by Whakapapa, thus ensuring the sustainability of the resource.

The loss to Kai Tahu of much of their mahika kai is subject to the Waitangi Tribunal hearing. Kai Tahu expect their rights and expectations in respect of what little customary mahika kai remains in Southland, to be recognised and understood by Local Authorities. Kai Tahu see that maintenance and enhancement of access to mahika kai resources is of extreme importance, as is protecting the resource from wetland drainage, pollution discharge and the like.

Objective MAO.6 - Mahika Kai (Places Where Food Is Procured)

To recognise the importance of mahika kai to Kai Tahu by, where possible, maintaining and enhancing mahika kai, and access to those traditional resources.

Policy MAO.14

To consult with Kai Tahu in order to identify areas of significance in terms of mahika kai resources.
(Refer Method MAO.3 and Rule MAO.6)

Explanation

Consultation will be held with Iwi on all facets of resource management, and part of that will obviously involve the identifying of mahika kai resources.

Policy MAO.15

To maintain and enhance access to mahika kai, where possible, through Council's esplanade reserve provisions.

Explanation

*Council has the ability to develop access to water bodies and reserves through the use of esplanade reserves, esplanade strips, and access strip provisions of the Resource Management Act. Access to mahika kai is an appropriate consideration when assessing the need for access to any particular waterbody or reserve. Council's policy in respect of the provision of esplanade reserves is found in Section 3.6 Subdivision. Where access to traditional sources of mahika kai has gradually been eroded, this process may once again open the access that was guaranteed under the Treaty of Waitangi.
(Refer Section 3.6 Subdivision)*

Policy MAO.16

To minimise or avoid adverse effects of land use adjacent to Mahika kai.

Explanation

*To achieve the purpose of the Act and Council's functions under that Act, performance standards for land use activities will be developed in order to sustain the water and soil resource, thereby protecting Mahika kai.
(Refer Sections 3.5 Water and 4.1 Rural Resource Area)*

3.1.8 - METHODS AND RULES

Method MAO.1 - Kai Tahu Resource Management Document

"Te Whakatau Kaupapa O Murihiku" shall be recognised as a Kai Tahu Resource Management reference planning document for the District, and as a basis for consultation.

Reason

'Te Whakatau Kaupapa O Murihiku' is a document prepared by the Kai Tahu of Southland, and expresses their views and beliefs in relation to the use, development and protection of Southlands natural and physical resources. This document will greatly assist in the consultation process and assist in identifying the resource values sought by Kai Tahu in the District.

Method MAO.2 - Consultation

Consultation with relevant Kai Tahu Runaka on policy development relating to natural and physical resources to the District.

Reason

Consultation with Iwi is required by the Act. Ongoing consultation with Iwi is essential in future policy development to ensure Iwi values are represented and Council fulfils its duty under the Act.

Method MAO.3 - Listing Of Important Sites And Resources

Schedule 6.8 identifies archaeological sites which contain some sites of significance to manawhenua. Waahi tapu, waahi taoka, and mahika kai sites will not generally be identified unless their exact location is currently known to the public.

The procedures and rules of this plan will apply to these identified sites, and also to other unrecorded sites that are known but are not shown on this schedule, but are identified on silent files held by the Filekeeper in the Southland Museum.

Reason

Identifying and recording important sites enables effects of development to be mitigated, minimised or avoided. It should, however, be noted that not all sites of importance can be publicly identified for fear of desecration.

Method MAO.4 - Maori Archaeological Site Protection

Archaeological sites are protected under the Historic Places Act 1993, and the procedure relating to any activity that may have the effect of destroying, damaging or modifying such sites is set out in Section 9 to 21 of that Act.

Council would advise that this process involves consultation with the appropriate runaka and to avoid lengthy delays and the need for appeals, any applicant should first consult with, and receive the consent of, the relevant runaka to whom the site is important. Any applicant should also discuss their proposal with the New Zealand Historic Places Trust and the New Zealand Archaeological Association Filekeeper at the Southland Museum.

Reason

The protection of these sites is adequately provided for in the Historic Places Act and this plan cannot override that Act.

Rule MAO.1 - Protection Of Waahi Taoka And Mahika Kai

Where any development or disturbance of land is proposed that may destroy, damage, or modify or otherwise effect or disturb any of these sites, the following shall apply.

- (a) Where the site is an archaeological site Method MAO.4 shall apply.
- (b) Where the site is not an archaeological site, the developer/applicant must first consult the Kaitiaki runaka as to an appropriate course of action.
- (c) Where no settlement under (b) above can be reached, the proposal shall be dealt with as a discretionary activity, and shall be assessed in accordance with the following:
 - the significance of the resource to the relevant runaka
 - the alternatives available to the applicant
 - the public benefit of the proposed development
 - the objectives and policies of this plan
 - the purpose and principles of the Act.

Reason

Where no agreement can be reached between the parties, discretionary resource consent status will allow all the effects of the proposal to be considered. Any decision also allows both parties the right to appeal to the Environment Court.

Rule MAO.2 - Protection Of Waahi Tapu

The Planning Maps show the general locations of the various Waahi Tapu silent files.

Where any development or disturbance of land is proposed in these areas, the following shall apply:

- (a) The applicant/developer shall first contact the “file keeper” at the Southland Museum, who will then advise on the appropriate runaka with whom to consult.
- (b) Where waahi tapu is an archaeological site, Method MAO.4 shall apply.
- (c) Where waahi tapu is not an archaeological site, the following applies:
 - (i) where consent of the relevant runaka is received, the activity shall be considered as the rules of the Plan provides, (ie controlled, discretionary or otherwise) subject to any condition imposed by runaka.
 - (ii) where consent of the relevant runaka is not received, or agreement cannot be reached, the activity shall be considered as a non-complying activity.

Reason

Waahi Tapu are of extreme importance to Iwi and consequently their wishes should be paramount. In determining any resource consent application, Council will have regard to the views of the relevant runaka and any suggested conditions promoted by them. The procedure outlined in this Rule is intended to establish a mechanism to resolve specific site problems.

Rule MAO.3 - Koiwi Takata

Where Koiwi Takata (Maori bone remains) are found, disturbed or unearthed, Kai Tahu Runaka and the New Zealand Archaeological Association Southland Filekeeper shall be notified immediately, and procedure for the management of such finds shall be in accordance with Kai Tahu protocol.

Reason

Kai Tahu have a strict protocol for dealing with the remains of their ancestors and this should clearly prevail. Close liaison is maintained between the Kai Tahu Runaka and the Southland Museum, which provides formal identification of such remains.

Rule MAO.4 - Papakaika Housing

Residential occupancy by Maori Landowners (Papakaika) of land in multiple ownership is a controlled activity, subject to the preparation and approval of a Management Plan which avoids, remedies, or mitigates the actual or potential adverse effects of the activity. This activity is controlled in respect of the following aspects:

- density of development
- mitigation of landscape and visual effects
- effluent and stormwater management and disposal
- road access and any effect on the roading network
- provision of other services
- public access to rivers, lakes and coastal margins
- preservation of significant vegetation and heritage features.

Reason

Permitting papakaika housing on Maori ancestral land strengthens turangawaewae, and enables a productive use of land that has often been difficult in the past because of its multiple ownership. Any adverse effects on the environment would be mitigated through its controlled activity status and the requirement of a Management Plan. It should be noted that the rules of adjacent areas in respect of dwellings also applies to Maori land.

Rule MAO.5 - Land Use

Unless otherwise stated by this Plan, the rules and performance standards of Section 3 General Provisions, and the rules and performance standards of adjacent areas apply in all respects to Maori land.

Reason

In terms of effects, the use of Maori land is no different to freehold land. However the status of any Maori land will be a relevant consideration in any resource consent application.