

# 2

## Legislative and Policy Framework



## 2.1 Introduction

The principal statute under which the natural and physical resources of Otago's coastal marine area are managed is the Act. The Act also provides for specific policy statements (i.e. New Zealand Coastal Policy Statement and Regional Policy Statements) which have an impact on the management of the coast. Some activities, such as fishing activities, are also subject to the specific requirements of other statutes. This chapter provides a brief overview of the relevant statutes and their relationship to this Regional Plan: Coast for Otago.

## 2.2 Part II of the Resource Management Act 1991

The Act provides the framework for the management of Otago's coastal marine area. Part II of the Act contains a number of specific provisions which must be taken into account in considering the use, development, or protection of the coastal marine area.

### 2.2.1 Purpose

Section 5 of the Act states:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this 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 well being 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.*

This Plan is to enable the Otago Regional Council to promote the sustainable management of the natural and physical resources of Otago's coastal marine area.

### 2.2.2 Matters of national importance

Section 6 of the Act identifies a number of matters of national importance that the Otago Regional Council must recognise and provide for in managing the use, development, and protection of the natural and physical resources of the coastal marine area:

- (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.*

These matters have been recognised and provided for within the framework of this Plan. The Plan contains a number of areas which identify those matters, and objectives, policies, rules and other methods which recognise and provide for the matters identified.

### **2.2.3 Other matters**

Section 7 of the Act identifies a number of additional matters that the Otago Regional Council must have particular regard to in managing the use, development, and protection of the natural and physical resources of the coastal marine area:

- (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.*

Particular regard has been had to the matters identified and they have been provided for within the framework of this Plan. The Plan contains a number of objectives, policies, rules and other methods which recognise and provide for the matters identified.

### **2.2.4 Treaty of Waitangi**

Section 8 of the Act requires that the Otago Regional Council take into account the principles of the Treaty of Waitangi:

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*

Kai Tahu runanga have been consulted with throughout the development of this Regional Plan: Coast for Otago through a consultative working group established in conjunction with Kai Tahu. The Plan includes a chapter outlining their perspective on the coast, and includes issues, objectives and policies reflecting their concerns.

Appendix 2 attaches to the Plan statutory acknowledgements for the coastal environment of the Otago region, as required by Section 220 of the Ngai Tahu Claims Settlement Act 1998. These acknowledgements

comprise a statement made by Ngai Tahu of the particular cultural, spiritual, historic and traditional association of Ngai Tahu with these areas. The inclusion of Appendix 2 is for the purpose of public information only. It does not form part the Plan.

## 2.3 Relationship to other resource management documents

This Regional Plan: Coast for Otago fits within a framework of national, regional and local resource management plans and other documents as shown in Figure 2-1.

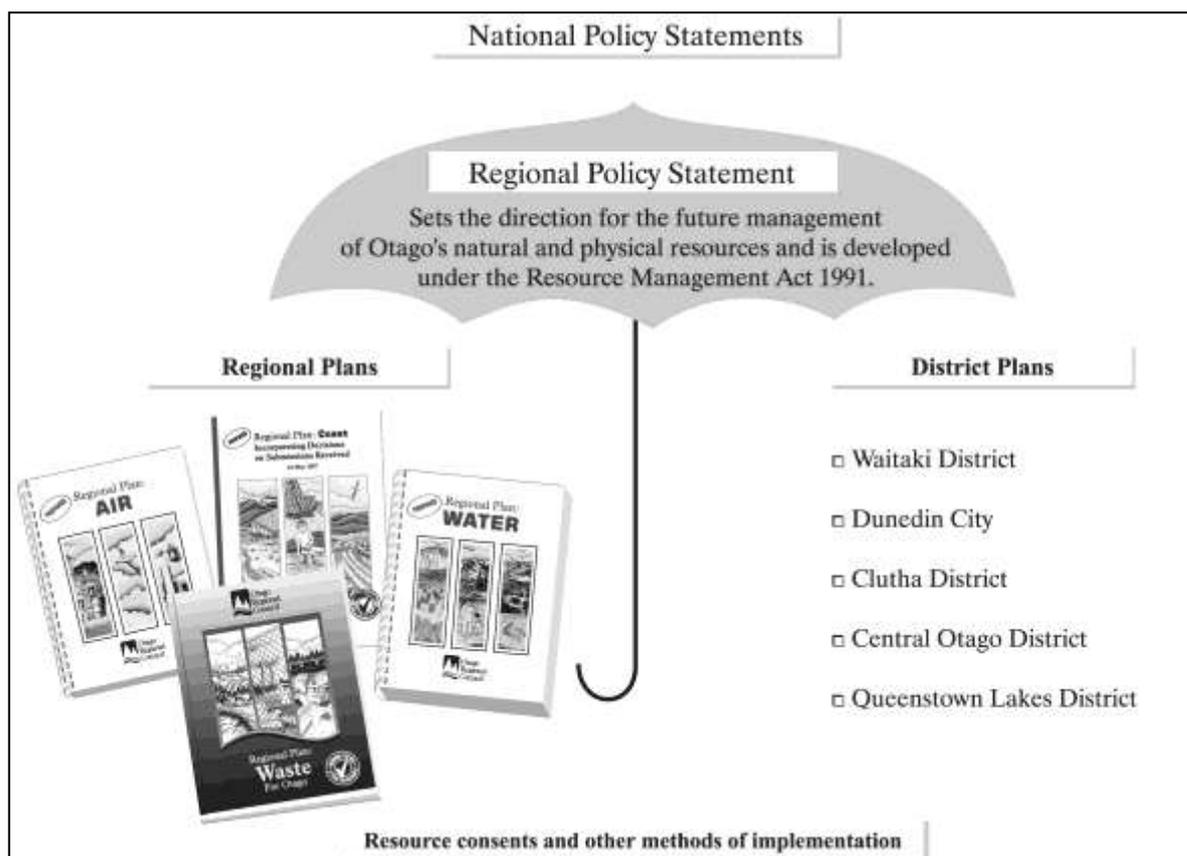


Figure 2.1 Resource management framework

### 2.3.1 New Zealand Coastal Policy Statement

This Regional Plan: Coast for Otago must give effect to the New Zealand Coastal Policy Statement. The contents of the New Zealand Coastal Policy Statement 1994 have been considered and taken into account in the development of this Plan.

### 2.3.2 Regional Policy Statement for Otago

The Regional Policy Statement for Otago became operative on 1 October 1998. The objectives, policies and methods have been taken into account in the development of this Regional Plan: Coast for Otago. It may be necessary to review this Plan when the Regional Policy Statement becomes operative.

**2.3.3 Other regional plans**

This Regional Plan: Coast for Otago is the only plan covering Otago's coastal marine area. Other regional plans developed by the Otago Regional Council will deal with matters related to issues outside of the coastal marine area. There is a need for consistency of objectives, policies, rules and other methods across the line of mean high water springs. This will be achieved through the Otago Regional Council developing measures in both this Regional Plan: Coast for Otago and any other regional plan.

**2.3.4 District plans**

District plans developed by the district or city council with responsibilities for the land areas adjacent to the coastal marine area control land uses on that land. There is a need for consistency between this Regional Plan: Coast for Otago and any district plan for the adjacent land area.

**2.4 Restrictions on use**

There are a number of specific restrictions stated in the Act relating to the use of the coastal marine area. Section 12 provides for restrictions on the use of the coastal marine area. Section 14 provides for restrictions relating to the taking, use, damming or diversion of coastal water. Section 15 provides for restrictions on the discharge of contaminants into the coastal marine area. The rules section of this Plan reflect the specific restrictions contained within Sections 12, 14 and 15 of the Act.

**2.5 Status of activities**

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

**2.5.1 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.

**2.5.2 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 Council has stated that it will exercise its control over.

**2.5.3 Restricted discretionary activity**

A restricted discretionary activity is an activity for which the Otago Regional Council has restricted the exercise of its discretion. This means that the Council limits the range of matters it considers and only sets conditions (if the resource consent is granted) that are relevant to the matters to which it has restricted its discretion. The relevant rules of this Plan list these matters.

**2.5.4 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 Council will, in considering any application for a discretionary activity be guided by the policies contained within the Plan, the Regional Policy Statement for Otago, any policies and requirements of the New Zealand Coastal Policy Statement and the requirements of the Act. Conditions may be included on any resource consent granted.

**2.5.5** *[Repealed]***2.5.6 Non-complying activity**

A resource consent is also required for any activity that would otherwise not comply with this Regional Plan: Coast for Otago (a non-complying activity). A resource consent may either be granted or declined.

**2.5.7 Prohibited activity**

In some cases, the Plan specifies certain activities as being prohibited activities. These are activities which can not occur within Otago's coastal marine area, and are activities for which no resource consent will be issued.

**2.6 Notification of resource consents**

Any resource consent application received by the Otago Regional Council must be **publicly notified** under Section 93 of the Act, unless provided for by Section 93(1), 94(1) or 94D. Public notification allows the community to be involved in assessing whether the proposed activity may cause adverse effects.

Some rules in this Plan expressly permit consideration of a resource consent application **without public notification** in accordance with Section 94D. An application may be notified even when rules in this Plan state that it may be non-notified, if the Council considers special circumstances exist, or if the applicant requests.

If the Council is satisfied that:

- The adverse effects of the proposed activity on the environment will be minor; and
- Every person who may be adversely affected by the activity has given written approval to the activity,

the application **may not be notified**. An application will be notified if the applicant requests, or the Council considers there are special circumstances.

If the Council is satisfied that:

- The adverse effects of the proposed activity on the environment will be minor; but
- All persons who may, in the opinion of the Council, be adversely affected by the activity have not given their written approval,

then notice of the application **may be served** on all persons who may be adversely affected, whether they have given their written approval or not. The application may not be publicly notified. However, the rules in this Plan may provide that notice for an application for resource consent for a controlled or restricted discretionary activity may not need to be served on affected persons.

## 2.7 Information requirements

Applications for consents must comply with the requirements of Section 88 of the Act. Additional information may be required by the Council in order to be able to assess the effects of any application. These general requirements are contained in Chapter 15 of this Plan.

## 2.8 Financial contributions

A financial contribution may be required as a condition on a resource consent. A financial contribution is defined by Section 108(9) of the Act as:

- (a) *Money; or*
- (b) *Land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Maori land within the meaning of the Maori Land Act 1993 unless that Act provides otherwise; or*
- (c) *A combination of money and land.*

Chapter 16 of this Regional Plan: Coast for Otago outlines the circumstances in which a financial contribution may be required and the matters that will be taken into account when determining the nature and extent of any such contribution.

## 2.9 Section 32

Section 32 of the 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 Act and the most appropriate means having regard to their efficiency and effectiveness.

The principal reasons for adopting the objectives, policies, rules and other methods explain why those objectives, policies, rules and other methods have been included in this Plan.

A separate Section 32 report provides further information on the alternatives that were considered in the development of this Regional Plan: Coast for Otago. There is also a Section 32 report for Proposed Plan Change 1 (Harbourside) to this Plan.

## **2.10 Other legislation**

While this Plan considers the use, development and protection of Otago's coastal marine area pursuant to the Act, there are a number of other statutes which can affect activities occurring in the coastal marine area. These statutes, briefly described below, may themselves require authorisations in addition to any required by this Plan for an activity.

### **2.10.1 Harbours Act 1950**

The Harbours Act 1950 provides for safety and navigation matters, and the standards for ships operating commercially within the coastal marine area. The Harbours Act is administered by the Ministry of Transport.

### **2.10.2 Fisheries Act 1983**

The Fisheries Act 1983 provides for the management and conservation of fisheries and fishery resources within New Zealand and New Zealand fisheries waters. The Ministry of Fisheries is the Crown agency responsible, under the Fisheries Act, for that management and conservation. The Otago Regional Council and the Minister of Conservation are specifically excluded, under the Act, from having any functions relating to the control of the harvesting or enhancement of populations of aquatic organisms, where the purpose of that control is to conserve, enhance, protect, allocate, or manage any fishery controlled by the Fisheries Act. The Fisheries Act also makes provision for the establishment of Taiapure and Mahinga Mataitai areas within the coastal marine area, being areas set aside for Maori customary fishing purposes.

This Regional Plan: Coast for Otago does not contain any provisions relating to the management or allocation of the fishery resource within Otago's coastal marine area.

### **2.10.3 Building Act 1991**

The Building Act 1991 and the Building Regulations 1992 provide a performance based building control system which applies to the construction, alteration, demolition and maintenance of most structures within the coastal marine area. The Otago Regional Council transferred its functions for the administration of the Building Act 1991 and regulations for structures within the coastal marine area to Otago's territorial authorities.

**2.10.4 Marine Reserves Act 1971**

The Marine Reserves Act 1971 provides for the setting up and management of areas of the sea and foreshore as marine reserves for the purpose of preserving them in their natural state as the habitat of marine life for scientific study. The Marine Reserves Act is administered by the Department of Conservation.

**2.10.5 Marine Pollution Act 1974**

The Marine Pollution Act 1974 makes provision for preventing and dealing with pollution of the sea. Under this Act, the Otago Regional Council is responsible for the coordination of the response to contain and deal with spills of oil within the coastal marine area. This Act is currently under review.

**2.10.6 Marine Mammal Protection Act 1978**

The Marine Mammal Protection Act 1978 makes provision for the protection, conservation and management of marine mammals within New Zealand and within New Zealand fisheries waters. This Act is administered by the Department of Conservation.

**2.10.7 Historic Places Act 1993**

The Historic Places Act 1993 promotes the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand. The provisions of this Act apply in the coastal marine area. Section 10 of the Historic Places Act 1993 makes it illegal to damage, destroy or modify historic sites unless permission has been granted pursuant to the requirements of Sections 11 and 12 of the Historic Places Act 1993. Schedule 2 of the Plan includes historic sites known to exist in Otago's coastal marine area.

**2.10.8 Local Government Act 1974**

There is an ability under the Local Government Act 1974 to extend the territorial local authority boundaries down to mean low water springs. This would enable territorial local authorities to make bylaws controlling animals, vehicles, fires and litter amongst other things, down to this new boundary.

**2.10.9 Maritime Transport Act 1994**

The Maritime Transport Act 1994 has an important role to play in the management of the marine environment. This Act is concerned with the protection of the marine environment from hazardous ships, structures and offshore operations, and is also concerned with the protection of the marine environment from dumping, incineration and the storing of wastes. The Maritime Transport Act also establishes the framework for responding to marine oil spills through the development of the Marine Oil Spill Contingency Plan. It is central government who has the responsibility of implementing this Act.

**2.10.10 Foreshore and Seabed Endowment Revesting Act 1991**

The Foreshore and Seabed Endowment Revesting Act 1991 revoked certain endowments of foreshore and seabed and re vested those endowments with the Crown. The Minister of Conservation administers the land.

**2.10.11 Conservation Act 1987**

The Conservation Act 1987, part of which applies to the coastal marine area, is administered by the Department of Conservation. This Act's purpose is the conservation of New Zealand's natural and historic resources. Within parts of the coastal marine area this Act is used to protect foreshore conservation. The Department also administers coastal marine areas under the Marine Reserves Act 1971, the Reserves Act 1977 and the Wildlife Act 1953. Section 39 of the Conservation Act 1987 details what is construed as an offence in a conservation area, and other Acts have their offence provisions. When people are using this Plan they need to be aware that their proposed use of the coastal marine area might contravene these offence provisions of the Conservation Act 1987.

**2.10.12 Defence Act 1990**

The Defence Act 1990 identifies the purposes for which the New Zealand Defence Force has been raised and maintained, and defines defence areas. The Act also provides for access to defence areas, including areas utilised for temporary military training activities, to be restricted.

**Note:** Otago's Coastal Marine Area contains one New Zealand Defence Force Danger Area. This area is off Cape Saunders and is shown on the second map of Schedule 2.

**2.11 International obligations**

New Zealand is a party to many international obligations concerning environmental management. Where the Government has accepted international obligations which affect the coastal environment, the intention is that guidelines shall be issued from time to time by the Government outlining the manner in which these obligations can best be carried out and implemented. Some examples of New Zealand's international obligations which relate directly to the coastal marine area are:

- The London Convention which seeks to prevent and control pollution of the sea caused by the dumping of waste and other matter. To achieve this the Government will promote effective control of pollution of the marine environment and take all practicable steps to prevent pollution of the sea by the dumping of wastes and other matter that is harmful to people, marine life, amenity or legitimate uses of the sea.
- The Marpol Convention which seeks to prevent pollution of the marine environment by oil and other harmful substances and the minimisation of accidental discharge of these substances.