

## 2. Policy and Legal Framework

### 2.1 Obligation to Comply with the District Plan

No person may use land in a manner that contravenes a rule in the District Plan or proposed District Plan unless expressly allowed by a resource consent granted by the Council, or under existing use rights if these are applicable (sections 9 and 10 of the Act). In the context of the Resource Management Act "use" applies also to the surface of lakes and rivers. In addition, no person may subdivide land in the District unless expressly allowed by a rule in the District Plan or a resource consent (Section 11).

The rules of the District Plan do not apply to work carried out by the Crown on land held or managed by the Department of Conservation, provided that:

- the work is consistent with a conservation management strategy or plan; and
- the work does not have any significant adverse effect beyond the area of land.

### 2.2 Existing Use Rights

Sections 10 and 10A of the Act provide for the existing use of land and the surface of water in a manner which contravenes any rule in the District Plan, subject to the following:

- the use was lawfully established (including by designation) before the Plan became operative; and
- the effects of the use are of the same or similar character, intensity and scale to those which existed before the Plan became operative or the designation was removed; and
- if the activity involves the use of the surface of water in lakes and rivers where previously no consent was required, the person carrying out the activity applies for a resource consent within 6 months of the Plan becoming operative.

Existing use rights do not apply if:

- the use of land (or the surface of water) has been discontinued for a continuous period of more than 12 months, unless the Council has granted an extension by way of application;
- reconstruction, alteration or extension of any building that contravenes a rule in the District Plan increases its degree of non-compliance.

### 2.3 Status of Activities

Within the context of this District Plan, the term "activity" includes the use of land (and the surface of water), and the erection and use of buildings or structures thereon.

The Plan provides for a broad range of land use activities and subdivision throughout the District. Activities have been grouped according to common characteristics, based on the assumption that there is no need to distinguish between activities which have similar environmental effects. For example the defined term "residential activity" includes a range of uses from detached dwellings to apartments. When a particular activity falls within the definition of more than one activity in the Plan, performance standards relating to those activities shall apply to that activity. Where there is any inconsistency between standards the most stringent of the standards shall apply.

Within each zone activities are classified according to their status under the Act, as being either: permitted, controlled, discretionary, non-complying or prohibited.

Permitted activities are allowed by the Plan without a resource consent, providing that they comply in all respects with the requirements or conditions specified in the Plan. In respect of any particular zone, these requirements include both the relevant rules concerning activities and performance standards, and any requirements of the General Rules which relate to the activity.

Controlled activities require a resource consent. They must comply with standards and terms specified in the Plan and will be assessed according to those matters in the District Plan over which Council has reserved its control. The Council must grant consent to a controlled activity, but may impose conditions relating to those matters specified in the Plan.

Discretionary activities require a resource consent. Activities have been given this status where the effects of the activity have the potential to be more than minor in particular locations and circumstances and where it is not possible to prescribe appropriate standards and terms to cover all circumstances. The Council may grant or refuse consent for a discretionary activity and, if granting consent, may impose conditions.

Where activities are listed as permitted or controlled activities but cannot meet all the site standards for that zone, they are restricted discretionary activities with Council's discretion restricted to those matters of non-compliance. Other restricted discretionary activities are listed in the relevant sections in the plan.

Unrestricted discretionary activities are those activities which are listed as being discretionary, or where Council has not restricted its discretion to any specific matters.

Non-complying activities are activities which are provided for as a non-complying activity by a rule or which contravenes a rule in this plan. Non-complying activities are only allowed if a resource consent is obtained in respect of the activity.

Prohibited activities are activities which may not be undertaken under any circumstances. Resource consent will not be granted, and no resource consent may even be applied for. The only prohibited activities in this Plan relate to activities in the Flood Hazard Areas 1 and 1a and to the number of residential and low density residential allotments allowed in the Ocean Ridge Comprehensive Zone. Refer to section 8 (Natural Hazards), Rule 13.11.4 (Subdivision) and to the Planning Maps (Part 4).

## 2.4 Resource Consents

A land use or subdivision resource consent from the Kaikoura District Council is required by any person proposing to undertake an activity classified in the District Plan as a controlled activity, a discretionary activity or a non-complying activity.

An application for resource consent must be made in accordance with the Resource Management Act (section 88). The Kaikoura District Council's information requirements for resource consent applications are outlined in Section 3 of this Plan.

When the District Council has received a completed application, it must consider whether the application should be notified or non-notified. This is decided using the provisions of section 94 of the Act which gives criteria for applications not requiring public notification. The criteria for notification under the Act is generally dependent on whether the consent of affected parties has been obtained and whether the effects of the activity are minor.

Following the close of the submission period for notified applications or when non-notified applications are complete, the Council must consider each application. Sections 104 and 105 of the Act set out those matters which the Council must have regard to in considering a resource consent

application. The Council may impose conditions on consents it grants in accordance with Sections 108 and 220 of the Act in order to ensure that the effects of the activity can be avoided or mitigated.

## 2.5 Designations

A designation, as outlined in section 166 of the Act, is a provision made in the District Plan to give effect to a requirement made by a requiring authority, and relating to a public work, a particular project or public utility operation. Any Minister of the Crown or local authority is automatically a requiring authority. Network Utility Operators (as defined in Section 166 of the Resource Management Act) may apply to the Minister for the Environment for approval as a requiring authority. A requiring authority may give the Council a notice of requirement (prepared under section 168 of the Act) for inclusion in the District Plan either before the Plan is written or after it becomes operative. The Council will call for such notices when preparing the Proposed District Plan.

Designations are shown on the Planning Maps. These designations limit the use of the land, overriding the provisions of the Plan and any resource consent in favour of the designated purpose. The underlying zone indicates the purposes for which the land may be used if not for the designated work. Appendix B of the Plan sets out the list of designations within the Kaikoura District, the requiring authority responsible for the works and the provisions relating to each of these designations. Under the Act, designations do not need to comply with the rules of the underlying zone. However, the zone rules provide a useful indication of the expected level of amenity for each zone. As such, the zone rules will be used as a guide for any works on a designated site.

Designations are not the only means of providing for public works or public utility operations. The Proposed District Plan also contains general rules for public utilities which are not designated.

## 2.6 Heritage Orders

A heritage order is a provision in the District Plan to give effect to a requirement made by a heritage protection authority. A Heritage Order is issued to protect any place (and areas of land surrounding that place) of; special interest, character, intrinsic or amenity value or visual appeal or of special significance to Te Runanga o Ngai Tahu for spiritual, cultural or historical reasons (section 189).

The Act establishes several Heritage Protection Authorities (section 187) which include; any Minister of the Crown, the Minister of Conservation, the Minister of Maori Development, a Local Authority such as the Kaikoura District Council and the New Zealand Historic Places Trust. Any body corporate having an interest in the protection of any place can apply to the Minister of Conservation to become a heritage protection authority under section 188 of the Act. Once issued, no person may undertake any use of the land or subdivision which would nullify the effect of the Heritage Order.

## 2.7 Section 32 Assessment

Section 32 of the Resource Management Act requires that certain duties be performed before adopting any objective, policy, rule or other method in the District Plan. There are three main components to Section 32:

- to address the extent to which the regulation is needed at all, to explore other possible means, and to provide reasons for and against the proposed and principal alternative means;
- to evaluate the benefits and costs of the proposed option and the principal alternative means; and

- to decide whether the proposed means is needed to achieve the purpose of the Act and is the most appropriate in terms of efficiency and effectiveness.

The basis of section 32 is that each provision in the plan must be justified in terms of the above components. In this regard, the Kaikoura District Council has undertaken research and consulted with the community and relevant professional experts, where necessary, in respect of all provisions in this plan.

Consideration under section 32 has ranged from a basic analysis of alternatives for the more straight forward provisions, to commissioned reports for major issues. Examples of such reports include the 1999 Kaikoura Landscape Study, which was commissioned to assist the Council in recognising and providing for significant landscapes in the district, and a review of the Archaeological sites by two prominent archaeologists and Te Runanga o Ngai Tahu.

A major part of the section 32 process was the release of a Draft District Plan in 1998. While not a legal requirement, the Kaikoura District Council made a conscious policy of seeking input from all interested parties on the District Plan. The Council recognised the benefits of releasing a draft plan for consultation prior to the notification of the legal document. Accordingly, the Draft District Plan went through a full consultation process including:

- public notification and an invitation for comments;
- an opportunity for any person who made comments to present their comments in person to the District Plan Committee;
- five months of intensive consultation with interested parties, including public meetings;
- regular press releases and opportunity to further comment on various provisions (such as a proposed Business Zone in South Bay);
- questionnaires in the local paper;
- full consideration of ALL comments received;
- release of a summary of decisions on comments received on the Draft Plan

Being one of the last local authorities to notify its Proposed District Plan, the Kaikoura District Council has also had the benefit of learning valuable lessons from the Environment Court and other local authorities who have already been through the process. In this respect, the Council would like to formally acknowledge the advice and assistance of staff from many other local authorities, the Christchurch Office of the Ministry for the Environment and various consultants.

Having spent more than two years of consultation on the Draft document, the Council is now satisfied that the provisions contained within this Proposed Plan are well researched and justified in terms of section 32.

## 2.8 Enforcement

The Kaikoura District Council has powers under Part XII of the Resource Management Act to require persons to cease or not commence activity which is or is likely to:

- contravene the Act, any regulations, a rule in the District Plan, or any resource consent; or
- be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment.

In addition no person may use or subdivide land in the Kaikoura District in a manner that contravenes a rule in the District Plan, unless they have existing use rights or are expressly allowed by a resource consent granted by the Council.

Under Section 38 of the Resource Management Act the Council may authorise persons to carry out the functions and powers of an enforcement officer. Such officers may serve abatement notices against persons who are breaching the Act, a rule in the District Plan or a resource consent, or operating in a manner which is having an adverse effect on the environment. In relation to noise, the Act makes special provision for dealing with “excessive noise” (section 326 & 327) by way of an “excessive noise direction”. The Act also makes provision for dealing with “unreasonable” noise (section 16) by way of an abatement notice (section 322) to require the adoption of the best practicable option of ensuring that the emission of noise from land or water does not exceed a reasonable level. If abatement notices are not acted on, the Environment Court may issue an enforcement order requiring compliance.

## 2.9 Monitoring and Review

Monitoring is an important mechanism for assessing how this Plan and the Council are fulfilling the purpose of the Resource Management Act i.e. promoting the sustainable management of the natural and physical resources of the District. Monitoring and review involves information collection, recording, analysis and comparison. This process includes gathering information and maintaining records in respect of specific resources, the state of the environment and the compliance with conditions of resource consents.

The processes of monitoring and review are integral to the Council's responsibilities under the Resource Management Act 1991.

The Council's monitoring functions are prescribed in sections 31(1)(a), 35 and 75 of the Act. Generally, these functions include:

### **Plan Achievement Monitoring**

Assessing the effectiveness of the objectives, policies and methods of the District Plan in promoting the sustainable resource management.

### **State of the Environment Monitoring**

Assessing the existing state of the environment and establishing existing levels of environmental quality against which future changes can be measured.

### **Consent Compliance Monitoring**

Monitoring the compliance with conditions placed on resource consents.

The Council has a statutory obligation to undertake a complete Review of its District Plan at least every ten years (Section 79). However, monitoring procedures may indicate a necessity to refine the provisions of the District Plan prior to a full Review. Should the Council decide to take action on the basis of monitoring and review of the District Plan it may do so by way of a Plan Change, undertaken in accordance with the First Schedule of the Resource Management Act.

Monitoring should be undertaken through ongoing consultation with the community in order to better promote sustainable management. The First Schedule to the Act can be used to involve the community in the review process.

### **Monitoring Procedures**

Financial, staffing and time constraints mean that the scope for gathering information for monitoring purposes is limited. Notwithstanding these constraints, monitoring will address:

- the significant issues which are identified in the Plan;
- objectives and policies which are closely related to the ability of future generations to meet their needs;
- matters of national importance in Section 6, or other matters in Section 7 of the Resource Management Act 1991;
- issues, objectives and policies which are new or altered from the Transitional District Plan;
- the extent to which the anticipated environmental results are being met.

Monitoring will be undertaken using the following methods:

**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 buildings consents, a register of complaints received and a record of enforcement and abatement actions. Analysis of these will provide information regarding development within the District and any adverse effects of that development. Monitoring of compliance with resource consent conditions will assist in assessing the adequacy and appropriateness of Plan objectives, policies and rules.

**Demographic and Economic Information:** The Council will continue to acquire demographic, building, agricultural, tourism and business information.

**Council Surveys and Research:** The Council holds a variety of survey and research reports which provide a benchmark against which to measure the effectiveness of the District Plan. Due to limited resources, the Council will consider further surveys and research only where necessary or obligatory, or where funding in the annual plan process provides for such studies.

**Regional Council Monitoring Programme:** The Canterbury Regional Council undertakes a monitoring programme in relation to its own functions. Many of these are relevant to the District Plan, such as ground and surface water quality and availability, soil erosion and soil health, vegetation cover, coastal erosion rates and flooding risks. The Regional Council's Annual Monitoring Report provides an important source of information. The Kaikoura District Council also relies on Regional Council studies and research specific to the Kaikoura District, such as flood risk modelling. The Kaikoura District Council will continue to liaise with the Regional Council in respect of monitoring.

**Liaison with Te Runanga o Ngai Tahu and Te Runanga o Kaikoura:** Te Runanga o Kaikoura and Te Runanga o Ngai Tahu hold information about the state of resources significant to tangata whenua. The Council has a good working relationship with Te Runanga o Kaikoura and Te Runanga o Ngai Tahu, which facilitates information sharing.

**Annual Plan Process:** The District's Annual Plan Process provides the opportunity for public comment on Council's expenditure priorities. Comments from this process can be relevant to resource management issues. This information assists identification of new or changing issues for the District Plan, and trends between the state and health of the environment and land use activities.

**Liaison With Other Councils:** Other councils share many resource management issues. The Kaikoura District Council will encourage liaison and co-operation between other councils to facilitate information sharing and co-operative research for common issues.

**Scientific Organisations:** The Kaikoura District is frequently targeted as a study area for scientific studies. While these are mainly marine studies, land-based studies such as those undertaken by the Department of Conservation provide valuable information. The Council will

consider opportunities to support and provide assistance to research organisations undertaking relevant monitoring and research investigations, and will continue to monitor the outcomes of any relevant research.

**Land Owners / Occupiers:** In many instances, the most effective monitoring, such as monitoring of vegetation, can be undertaken by land owners themselves. The Council will take an active role in providing support and assistance to landholders and landholder representative groups undertaking their own monitoring, and in facilitating the provision of information regarding monitoring techniques to such groups. The Council will seek a partnership approach with landholder groups where their information can be usefully integrated into the Council's own monitoring programme.

**Monitoring Strategy:** Through its Monitoring Strategy, the Council will identify a process for monitoring District Plan effectiveness and for fulfilling its other monitoring obligations. The monitoring strategy will be developed in consultation with the public. The Monitoring Strategy will be used as the benchmark to periodically assess its monitoring process.

## 2.10 Changes to the Plan

The Council is committed to a Plan that is current and relevant and which addresses issues and concerns as they arise. Therefore, the provisions of the Plan may be varied as necessary. Such changes may be in response to revised or up-dated National or Regional Policy Statements or Regional Plans, changes to significant resource management issues, the results of monitoring the state of the environment or the outcomes of monitoring the objectives and policies of the District Plan (once operative).

Further, as the development of the District takes place, the Plan will be subject to continuous review by the Council, so that on-going and evolving resource management requirements of the community may be acknowledged and provided for.

In addition to Council initiated plan changes, any person may formally request that the Council change the Plan. The procedure for applications for plan changes is set out in the First Schedule of the Act. Applications must clearly define the proposed change, so that it can be readily understood, and describe the environmental results anticipated from the implementation of the change.

Applicants must also provide the following information in support of their Plan Change, to the satisfaction of the Council:

- The extent to which the change is necessary in achieving the purposes of the Act and any relevant objective or policy in this Plan;
- Alternative means of achieving the purpose of the Act or any objective or policy in this Plan;
- Reasons for and against the adoption of the Plan Change and the outcome of taking no action;
- An evaluation of the likely benefits and costs of the principal alternative means and the likely implementation and compliance costs if the Plan Change is adopted.

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