

## **Part 2**

# **Implementation and Procedure**

## Part 2 - Implementation and Procedure

### 2.1 The Council's Functions and Responsibilities

As stated in Part 1.1, Council is required to have a single resource management document that contains information specified by the Resource Management Act. While the Council is responsible for preparing the document the Minister of Conservation has the function of approving that part of the document relating to a Regional Coastal Plan.

In preparing the document under the Act, the following principles of the Act in Part II (Sections 5 - 8) are to be given effect to. The document recognises and addresses these matters through its provisions.

#### 2.1.1 Purpose of the Act (Section 5)

The purpose of the Act is to promote the sustainable management of natural and physical resources.

Sustainable management as defined by the Act 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.”*

#### 2.1.2 Matters of National Importance (Section 6)

In achieving the purpose of the Act ie. sustainable management, there must be recognition and provision for the following matters of national importance:

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

### **2.1.3 Other Matters (Section 7)**

Matters which the Act requires that particular regard should be given to are:

- (a) *Kaitiakitanga (which is defined as the exercise of guardianship; and in relation to a resource includes the ethic of stewardship based on the nature of the resource itself);*
- (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; and*
- (h) *the protection of the habitat of trout and salmon.*

### **2.1.4 Treaty of Waitangi (Section 8)**

Section 8 requires the principles of the Treaty of Waitangi to be taken into account in achieving the purpose of the Act. The Treaty has now been recognised by the New Zealand Court of Appeal as the founding document of our nation. The incorporation of its principles into the Resource Management Act 1991 is a recognition that it is part of the social, cultural and political fabric of New Zealand society. The principles of the Treaty of Waitangi must permeate all aspects of resource management under the Act, and relate as much to how things are achieved as to what is achieved.

### **2.1.5 Other Documents**

The Council in preparing its document has also taken into account a number of other documents as required by the Act. These include:

- New Zealand Coastal Policy Statement (NZCPS)
- Draft Chatham Islands Conservation Management Strategy (CMS)
- Historic Places Register

The Act requires that the document shall be not inconsistent with the NZCPS.

## **2.2 Involvement of Tangata Whenua**

The Council has a duty to consult with and involve tangata whenua in the implementation of statutory resource management on the Chathams. There are four Iwi groups active on the islands (in alphabetical order): Ngati Mutunga o Wharekauri, Tchakat Henu Society, Te Iwi Moriori Trust Board and Te Runanga o Wharekauri/Rekohu.

The issue of who is tangata whenua on the Chatham Islands has been the subject of a Waitangi Tribunal enquiry. The Tribunal has not yet published its report. For that reason, it is not appropriate for this document to pre-empt any decision of the Tribunal on this delicate

matter. Once the report of the Tribunal and other discussions have clarified the matter, the document will be reviewed to take into account any finding. Until that determination, any matter that is in conflict with the Treaty of Waitangi, or could detrimentally affect any taonga, waahi tapu, kai moana, urupa, historic place or other relevant natural and physical resource, shall be referred by Council in the first instance to the Iwi Liaison Group, comprising Ngati Mutunga o Wharekauri, Te Runanga o Wharekauri/Rekohu and Tchakat Henu Society, and to Te Iwi Moriori Trust Board.

Protocols are being developed between the Council and Iwi to define the involvement of Iwi in the administration of the document. These protocols are likely to evolve and change over time, as experience with them is gained and as circumstances change.

## 2.3 Iwi Statement

It is recognised that Iwi have their own tribal policies and procedures with regard to resource management issues. Council shall, before considering any resource management application, refer the application to Iwi for their comment. When a resource consent hearing is necessary, Council shall ensure that Iwi has representation on the hearing committee. Iwi shall nominate their own appointees to the Council for appointment to the hearing committee. The nominee(s) will be determined by the Iwi Liaison Group and the Te Iwi Moriori Trust Board having regard to the relationship of each Iwi and their culture and traditions with their taonga as it relates to the resource consent application. This process will enhance the regard to be given to Kaitiakitanga. Council shall consult with Iwi regarding other resource management issues.

## 2.4 Duty to Comply

**The Resource Management Act 1991** involves legal obligations and compliance with statutory procedures and practice. The Council is required to enforce the compliance with the Act through the provisions of the document. Accordingly, before commencing any activity relating to the areas Council has functions and powers over, the document should be checked for compliance of that activity. Should compliance not be possible, then an application for a resource consent may be required (see Part 2.6 and 2.7).

## 2.5 Methods

A variety of methods are available to implement the objectives and policies of Council. As indicated in Part 1.4, there has been a general absence of regulatory methods on the Chathams. There are also difficulties in monitoring regulations. In light of this, Council will continue to rely on non-regulatory methods. These methods can include:

(i) **Promotion of Guidelines, Standards and Good Management Practices.**

There are a number of guidelines and codes of practice available, such as New Zealand Forest Code of Practice, Growsafe programmes for the use of sprays and poisons and the Code of Practice for the Safe Use of Timber Preservatives and Antisapstain and Chemicals. Council encourages their use by practitioners. Council will also work with groups such as Iwi, Federated Farmers, community organisations, and environmental and landholder groups to develop codes of practice for activities such as water margin management, burning and track development, that are applicable to the Chatham Islands.

**(ii) Encouraging Use of Covenants**

The Chathams already has a very high rate of covenanted land particularly as it relates to indigenous areas of vegetation. Council believes methods such as these should be encouraged given the acceptance and commitment of landowners. Due to the economic situation at the time of preparing this document, Council was not in a position to offer rates relief on covenanted land. However, should the economic situation significantly improve, the Council will consider the matter and will give consideration to it as part of the annual plan process.

**(iii) Co-operation With Other Parties**

Favourable outcomes can be achieved by co-operation with other groups and agencies. For example, co-operation with parties such as Iwi and the Department of Conservation in respect of strategies and works and programmes can give practical effect to achieving sustainable management.

**(iv) Consultation/Information**

As referred to in Part 1.4 the Chathams Community is a relatively small one with strong networks. Potential problems arising from resource management can be solved within the community by consultation and ultimately agreement. Dissemination of information (eg. location of bird nesting sites and rare plants) is part of this process.

**(v) Land Purchase**

This particularly refers to areas of flora and fauna that are threatened, areas that will be of benefit to the public, and heritage sites.

**(vi) Monitoring**

See Part 2.20.

In some instances regulatory methods are necessary to achieve the objectives and policies of the document. These are likely to relate to “bottom line” matters and are primarily related to:

**(i) Use of Rules in the Document**

Rules may allow, restrict and regulate activities. Refer to Parts 2.6 and 2.7.

**(ii) Designations in the Document**

These generally provide for existing or future public works. Refer to Part 2.16.

**(iii) Conditions of Resource Consents**

Council can impose conditions on resource consents, including financial contributions, to avoid, remedy or mitigate adverse effects.

**(iv) Enforcement and Abatement Notices**

Council and in some cases, other parties, can initiate an enforcement or abatement notice if the Act or a rule is contravened or if an activity is likely to have an adverse effect on the environment.

While all of the above methods will be utilised, specific methods are set out under Part 4 of the document. Council may well use a variety of methods to achieve an objective and/or carry out a policy.

## 2.6 Categories of Activities

For the purposes of administering the document, activities are classified in accordance with the following categories. These are:

### (a) Permitted

A permitted activity does not require resource consent provided the activity complies in all respects with the relevant rules and standards of the document.

### (b) Controlled

A controlled activity is one which is identified as such in the rules of the document. An application must be made for consent for a controlled activity. Controlled activities must comply with the relevant standards set out in the document. Applications will be assessed according to those matters that control has been reserved over by the document. Council must grant consent to a controlled activity but conditions may be imposed in respect of those matters over which the Council has reserved control.

### (c) Discretionary

A discretionary activity is one which is identified as such in the rules of the document. An application must be made for the consent to a discretionary activity and Council has the discretion to refuse or grant consent.

### (d) Non-Complying

A non-complying activity is one which is identified as such in the rules of the document. An application must be made for a resource consent and Council has the discretion to refuse or grant consent. Generally the tests for obtaining consent to a non-complying activity are greater than for a discretionary activity.

### (e) Restricted Coastal Activity

A restricted coastal activity applies to the Coastal Marine Area only and is allowed only if a resource consent is obtained. Application for a resource consent is made to the Council and heard by a convened hearing committee. The committee makes a recommendation to the Minister of Conservation who then decides whether to grant or refuse consent.

Also refer to Part 5.2 Rules.

## 2.7 Types of Resource Consent

The type of resource consent will depend on the type of activity they relate to. The types of resource consents that are applicable under this document are:

Consent Type	Activity Type
Landuse Consent	Use of land and beds of lakes and rivers
Subdivision Consent	Subdivision of land
Coastal Permit	Use or occupation of the coastal marine area
Water Permit	Taking, using, damming or diverting water
Discharge Permit	Discharge of contaminants into land, water and air

## 2.8 Scheduled Activities

Some activities are located in management areas where they do not comply with the ordinary area standards. These activities are provided for by scheduling and regulating them specifically on their identified site. Effectively they become permitted activities subject to any relevant restriction and in this document applies to quarries in the Rural Management Area. The intention of this is to ensure the continuation of a service to the community and to protect the investment. Opportunity to expand on site may be provided for such activities, which is a more liberal regime than existing use rights provided for under Section 10 of the Act.

## 2.9 Existing Uses

Activities requiring resource consents under the document should be checked for existing use rights. Under Section 10 of the Act, land use activities which contravene a rule in the document can continue to be used if the activity was lawfully established and the effects of the use are the same or similar in character, intensity and scale. Under Section 20 of the Act, activities relating to water, air and the coastal marine area which contravene a rule are allowed to continue for a limited period.

## 2.10 Information to be Supplied

The information to be supplied with an application for a resource consent shall be to the extent specified on the prescribed forms available from Council Offices.

In accordance with Section 92 of the Act, the Council can also require that further information be supplied by the applicant after receipt of the application.

## 2.11 Notification

The matter of whether a resource consent application will be notified will be determined in accordance with the provisions of Sections 93, 94 and 95 of the Act, notwithstanding any other provision of the document.

Subject to the provisions of the Act, an application for a resource consent is not required to be notified in accordance with Section 93 of the Act, if:

- (i) The application is for a subdivision consent which is a controlled activity.
- (ii) The application relates to a controlled activity, or a discretionary activity over which the Council has restricted the exercise of its discretion, and the document expressly permits consideration of the application without the need to obtain the written approval of affected persons.
- (iii) The application relates to a controlled activity and written approval has been obtained from every person who in the opinion of the Council may be adversely affected by the granting of the resource consent; unless in the Council's opinion it is unreasonable, in the circumstances, to require the obtaining of every such approval.
- (iv) The application relates to a discretionary activity or non-complying activity and the Council is satisfied that the adverse effect on the environment of the activity of which consent is sought will be minor; and

- (v) Written approval has been obtained from every person whom the Council is satisfied may be adversely affected by the granting of the resource consent, unless the Council considers it is unreasonable in the circumstances to require the obtaining of every such approval.

Within the requirements of the Act, Council will generally endeavour to process applications without notification in order to reduce costs and delays. Council encourages applicants to consult with affected persons to assist in the facilitation of this process. Normally affected persons will at the least include adjoining owners and occupiers. Persons beyond this will depend on the scale of the activity.

Notwithstanding (i) to (v) above however, Council may require any application to be notified if the Council considers special circumstances exist in relation to the application (Section 94(5)).

## **2.12 Notification Procedure**

The notification process is carried out in accordance with the requirements of Section 93 of the Act. This procedure involves preparing a notice in the forms set out in the Resource Management (Forms) Regulations 1991 (Form 6) and serving copies of it on the following people:

- Owners and occupiers of the site.
- Persons likely to be directly affected, including adjacent owners and occupiers of land.
- Ministry of the Crown, Iwi, interested groups and community groups and others as the Council considers appropriate.

The notice is also required to be fixed in a conspicuous place on the site and to be advertised on television and radio and notice boards at Waitangi, Kaingaroa, Owenga and Pitt Island.

The notice will give details of the application and give the closing date for submissions to be received by the Council. Submissions must be in writing and may be made by any person. They must be sent to the Council Offices with a copy served on the applicant.

## **2.13 Submissions**

Submissions on a resource consent application that is notified may be made by any person or body. The information required in a submission should include:

- the reasons for making the submission
- the decision the person making the submission wishes the Council to make
- whether or not the person making the submission wishes to be heard by the Council

## **2.14 Hearings**

A hearing need not be held by the Council to consider the application for a resource consent (except for a restricted coastal activity) unless the consent authority considers that a hearing is necessary; or the applicant or a person who has made a submission has requested to be heard and has not subsequently advised that he or she does not wish to be heard. The Act provides for pre-hearing meetings to be held for the purposes of clarifying, mediating, or facilitating the resolution of any issues raised by submitters.

On completion of the hearing, the Council makes its decision on the application which is circulated to the applicant and submitters. A right of appeal to the Environment Court exists for all parties involved.

The process for a restricted coastal activity differs in that a hearing committee of Council is established which includes a person appointed by the Minister of Conservation. The hearing committee makes a recommendation to the Minister of Conservation. There is a right of appeal to the Environment Court in respect of the recommendation. The Minister of Conservation makes a decision after receiving the recommendation or the report of the Environment Court.

## **2.15 Fees**

The Council shall from time to time set any fees or schedule of fees, that it considers necessary in order to recover the reasonable costs of the items described in Section 36 of the Act. These include the costs incurred in the processing and monitoring of resource consent applications and preparation of private plan changes. (The schedule of fees will be available from Council offices and will be fixed in accordance with the Act and the special consultative procedure set out under the Local Government Act 1974.)

## **2.16 Designations**

Designations are provisions made in the document for public works or for projects or works of requiring authorities. A requiring authority is a Minister of the Crown, a local authority or an approved network utility operator and includes the Chatham Islands Council. The requiring authority must serve a notice of requirement on the Council with the appropriate information. The Council then publicly notifies the proposal and after considering the proposal makes a recommendation to the requiring authority that the requirement is either confirmed or withdrawn. The recommendation can be either accepted or rejected, subject to rights of appeal by the requiring authority, Council or submitters. Once confirmed, the Council must identify the land to be designated and state the purpose for which the land is to be used without further formality. The process for Council designating its own sites is similar to the above although no recommendation is made.

Where a designation is included in the document, then, notwithstanding anything contrary in the Plan and regardless of any resource consent (but subject to Sections 9(3) and 11 to 15 of the Act):

- (a) The requiring authority responsible for the designation may do anything that is in accordance with the designation, and
- (b) No person may, without the prior written consent of that requiring authority, do anything in relation to the land that is the subject of the designation that would prevent or hinder the work.

As Council has not had a previous planning document, all the designations shown in the document are proposed and open to submission. The designations will be confirmed or rejected as part of the document approval process.

The sites designated are listed in Appendix 2 and shown on the Planning Maps.

## **2.17 Heritage Orders**

Heritage orders may be made by Heritage Protection Authorities. The orders have the effect of protecting places or areas of special interest, character, intrinsic or amenity value or visual appeal, or of significance to Iwi. The use of land in the area subject to the order may be restricted in a manner that ensures the effect of the heritage order is not wholly or partly nullified.

Currently there are no sites identified in the Chatham Islands as subject to a heritage order.

## **2.18 Changes to the Document**

The document may be changed from time to time by the Council, either on its own initiative or at the request of any person or organisation in accordance with the provisions of the first Schedule, Part II of the Act. The Council will consider whether to proceed with the plan change request and can either adopt it in whole or in part as its own change, or process the application as a private request. Changes may come about as a result of monitoring procedures as detailed below in Part 2.20.

The Council may charge applicants for the costs of change to the document or for the carrying out of its functions in relation to such applications.

Given that there are situations in the Chatham Islands which currently do not require intervention or rules by Council, but which could conceivably change in the future as a result of development trends, the plan change technique is a useful tool to accommodate such a scenario.

## **2.19 Review of the Document**

The Act requires that a full review of the document be commenced within 10 years of it becoming operative. The review of the document will generally take into account the information collected under the territory's monitoring procedures and other changes and trends. If changes to the document are deemed necessary as a result of any review, they shall be carried out in the manner set out in the First Schedule of the Act.

## 2.20 Monitoring

The Act requires the document to state the procedures to be used to review the matters contained in the document and to monitor the effectiveness of the document as a means of achieving its objectives and policies. As indicated in Part 2.18 monitoring may lead to a change to the document if necessary.

Council will carry out its responsibilities to administer the plan and any consents, although Council itself has limited resources to carry out extensive monitoring. It does not have access to sophisticated monitoring regimes or staff to carry out extensive checking of resource consents.

The most valuable tool in review and monitoring is likely to be the community itself which is relatively small with extensive networks, as well as key groups such as Chatham Islands Enterprise Trust, Iwi groups, Fisheries Association, Federated Farmers, Department of Conservation and Conservation Board and the Ministry of Fisheries.

This kind of informal contact and feedback is likely to give Council an indication of the necessity to review matters in the document and its effectiveness. Other procedures used to indicate performance include:

- Documentation of complaints received by Council
- Site inspections
- Enforcement action and abatement notices undertaken by Council and/or other parties.
- Areas covenanted and protected.
- Record of the number and type of resource consents
- Monitoring of and compliance with resource consent conditions
- Records from other organisations such as the Department of Conservation, Ministry of Fisheries etc.