

Tāngata Whenua

1.0 Introduction

1.0.1 The Resource Management Act 1991 (RMA) provides for a Māori dimension to be included in resource management decision-making, including Māori culture and traditions, ancestral lands, water, sites, wāhi tapu and other taonga, kaitiakitanga (guardianship/stewardship) and the Treaty of Waitangi.

1.0.2 The RMA contains specific provisions for consulting and working with tāngata whenua¹, as defined. Regional councils are required to consult with iwi authorities when preparing or changing regional policy statements and to engage iwi/tāngata whenua in other resource management decision-making processes in order to fulfil their responsibilities under the Act.

1.0.3 In terms of tāngata whenua, the following sections of the RMA are specifically relevant for the upcoming review of the Southland Regional Policy Statement and Southland District Plan:

- Section 61(2A)(a), which provides that in preparing or changing a Regional Policy Statement, a regional council must “*take into account any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on resource management issues of the region*”.
- Section 62(1)(b)(i), which provides that the contents of a Regional Policy Statement must state “*the resource management issues of significance to iwi authorities in the region*”.

1.0.4

The Region’s tāngata whenua

Ngāi Tahu whānui² are tāngata whenua of most of the South Island/Te Wai Pounamu, including Murihiku and Rakiura. Ngāi Tahu whānui have lived and occupied the area and its natural resources for centuries. The Treaty of Waitangi was signed locally by Ngāi Tahu in 1840 at Ruapuke Island in Foveaux Strait (as well as other places in the South Island/Te Wai Pounamu).

In 1997, Ngāi Tahu reached a historical treaty settlement with the Crown, for various omissions and Treaty of Waitangi breaches that occurred during historical land sales in the 1800’s. The Ngāi Tahu Claims Settlement Act 1998 provides an apology to Ngāi Tahu whānui, as well as various economic, social and cultural redress elements, some of which seek to improve the effectiveness of Ngāi Tahu participation under the RMA (e.g. statutory acknowledgements) and the enhancement of mahinga kai³ activities.

¹ Tāngata whenua, in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area (Section 2 of the RMA 1991).

² Ngāi Tahu whānui means the collective of the individuals who descend from the primary hapū of [Waitaha, Ngāti Mamoe, and Ngāi Tahu,] namely, Kāti Kuri, Kāti Irakehu, Kāti Huirapa, Ngāi Tuahuriri, and Kai Te Ruahikihiki (Section 9 of the Ngāi Tahu Claims Settlement Act 1998).

³ The customary gathering of food and natural materials and the places where those resources are gathered.

Prior to this, the Te Rūnanga o Ngāi Tahu Act 1996 was passed to provide a legal identity for the Ngāi Tahu iwi. Ngāi Tahu whānui are legally represented by the iwi authority Te Rūnanga o Ngāi Tahu (TRONT), which is made up of the 18 Papatipu Rūnanga (traditional marae based communities). The four Murihiku Papatipu Rūnanga are as follows:

- Waihōpai Rūnaka
- Te Rūnanga o Awarua
- Te Rūnanga o Ōraka Aparima
- Hokonui Rūnaka

The Te Tangi a Tauira iwi planning document provides that “*the four Murihiku Papatipu Rūnanga share an interest with Te Rūnanga o Makaawhio in the area between Whakatipu-Waitai (Lake McKerrow) and Piopiotahi (Milford Sound) inland, to the divide*”⁴. The Southland regional (i.e. local government) boundary includes this area and extends north to Awarua Point on the north side of Big Bay.

Furthermore, that “*in the Murihiku Papatipu Rūnanga takivā, they share an interest with the Otago Papatipu Rūnanga located from Waibemo South and the mountains and lakes to the Western Coast between Whakatipu-Waitai (Lake McKerrow) and Tawhititarere*”.

1.0.5 Since the current Southland Regional Policy Statement 1997 and Southland District Plan (formally adopted in 2001) were prepared, a number of new circumstances have occurred in the area of iwi resource management including the following:

- the four Murihiku Papatipu Rūnanga established an entity known as Te Ao Mārama Incorporated, which represents the four Murihiku Papatipu Rūnanga in local resource management matters within Murihiku;
- Te Ao Mārama Inc and the Southland Local Authorities entered into a Charter of Understanding “*He Huarahi mō ngā uri Whakatipu: A pathway for the generations coming through*”. The Charter of Understanding sets out the basis and conduct of the parties under the RMA and Local Government Act 2002.
- a political structure Te Rōpū Taiao was formed to give effect to the Charter of Understanding and setting out the obligations of the parties to the Charter;
- a number of iwi planning documents have been prepared, including the Ngāi Tahu ki Murihiku iwi planning document Te Tangi a Tauira, which was adopted in early 2008.

2.0 Relevance of Existing Regional Policy Statement Issues

2.0.1 One of the purposes of this paper is to assess whether the existing issues relating to tangata whenua contained in the Regional Policy Statement and Southland District Plan are still relevant and whether the objectives and policies and district plan rules address those issues appropriately.

⁴ Te Tangi a Tauira iwi planning document for Murihiku, page 42.

2.0.2 The current Southland Regional Policy Statement contains Section 5.1 “Takata Whenua o Murihiku”. Section 5.1 is a standalone section, focussing on tāngata whenua resource management matters, including statutory requirements under the RMA and the Treaty of Waitangi. Section 5.1 of the existing Regional Policy Statement identifies both:

- “Takata Whenua Issues” (Section 5.1.7); and
- “Resource Management Issues” (Section 5.1.8).

2.0.3 Resource Management Issues contained in Section 5.1.8 of the RPS, are as follows:

1. there is a need to protect wahi tapu adversely affected by resource use activities;
2. the customary use of water and the importance of wahi tapu, wahi taoka, mahika kai to Kai Tahu has not always been recognised;
3. Maori cultural and traditional spiritual values have not been fully considered under the resource management decision-making process;
4. the use, development and protection and natural and physical resources do not always have regard to the concept of kaitiakitanga.

2.0.4 It will largely be up to the tāngata whenua to determine how relevant the issues in the current Regional Policy Statement are, in meeting tāngata whenua needs.

2.0.5 However as an initial starting point, staff have undertaken a brief analysis of the resource management issues contained in Section 5.1 of the current Regional Policy Statement based in part on Te Tangi a Tauira iwi planning document and preliminary discussions with Te Ao Mārama Inc staff. The following initial comments are offered, for discussion:

2.1 **General comments across Section 5.1 “Takata Whenua o Murihiku of current RPS**

- There is a lot of material in the start of Section 5.1, which repeats statutory requirements under the RMA and reference to the principles of the Treaty of Waitangi. This material will need to be reviewed for its accuracy and relevance in terms of the upcoming Regional Policy Statement review.
- The current Regional Policy Statement makes reference to (the then proposed) Te Whakatau Kaupapa o Murihiku iwi planning document. This document has been developed and has since largely been succeeded by Te Tangi Tauira iwi planning document (although Te Whakatau Kaupapa remains a living “historical reference” document), and the Regional Policy Statement should be updated to reflect this.
- The various expressions within Section 5.1 of the current Regional Policy Statement to the various “issues”, “matters” and “concerns” are not required under the RMA (which has been amended several times since 1997). The requirement under Section 62(1)(b)(i) of the RMA is that the Regional Policy Statement must state “the resource management issues of significance to iwi authorities in the region”. Therefore Section 5.1 should be updated to meet the Section 62(1)(b)(i) requirement.

- There is an inconsistent use of terminology throughout the current Regional Policy Statement—for example, “k” versus “ng”.
- There are no macrons in Section 5.1, or throughout the existing Regional Policy Statement. It is suggested that all words throughout could be reviewed, to ensure they have macrons consistent with Te Tangi a Tauira iwi planning document and the Ngāi Tahu Claims Settlement Act 1998 (as an initial starting point).

2.1.1 A detailed analysis of each issue in the Regional Policy Statement and its subsequent objectives, policies and methods is included in Appendix 1.

2.1.2 The Southland District Plan contains Section 3.1 ‘Manawhenua’. As a stand alone section of the Plan the section provides an overview of the District Council’s objectives and policies relating to Maori, including its statutory duties and responsibilities under the Resource Management Act 1991 and the Treaty of Waitangi. Section 3.1 of the existing District Plan includes an accepted translation of the Treaty of Waitangi in English and lists all the relevant provisions of the RMA 1991 at that time that related to Maori. The existing Plan under section 3.1 ‘Manawhenua Issues’ outlines six objectives and under each objective heading a range of policies that relate to that objective. The five objectives listed are:

- Mao.1 kaitiakitanga (guardianship)
- Mao.2 whenua papakaika (ancestral lands)
- Mao.3 waahi tapu (sacred places)
- Mao.4 waahi taoka (treasured resources)
- Mao.5 wai (water)
- Mao.6 mahika kai (places where food is procured).

2.1.3 **Kaitiakitanga**

2.1.3.1 Policy MAO.1 under the Kaitiakitanga objective states the following;

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

2.1.3.2 The explanation related to this objective and policy states;

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.

2.1.3.3 This objective, policy and related explanation are still considered relevant in terms of the second generation Southland District Plan. However the wording of the new Plan and framing of the concept of Kaitiakitanga will need to reflect changes that have occurred since the 1990’s when the existing District Plan was formulated. Formal structures for consultation and reference during policy development have now been created and these are discussed more fully under emerging issues.

- 2.1.3.4 Policy MAO.2 which also sits under the Kaitiakitanga objective identifies the need:

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

Kai Tabu of Murihiku (Southland) have prepared a Resource Management reference document that expresses Kai Tabu 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)

- 2.1.3.5 While Te Whakatau Kaupapa O Murihiku was the relevant resource management reference document at the time the existing District Plan was adopted a new Iwi Management Plan has now been adopted and should be referenced in the second generation District Plan. The adoption of Te Tangi a Tauira (The Cry of the People) Iwi Management Plan 2008 is discussed under emerging issues later in this paper.

2.1.4 **Whenua Papakaika**

- 2.1.4.1 This objective is still considered relevant in terms of the second generation Southland District Plan. The management of Maori land needs to be considered in light of its history and significance to Maori and its potential to provide for the economic, social and cultural security of its owners. The wording of some of the policy MAO.5 will need to be amended, currently it as follows:

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

- 2.1.4.2 As is clear in the explanation above the existing Southland District Plan was written prior to a decision on the Ngai Tahu Waitangi Tribunal claim and this policy is now no longer relevant. The second generation District Plan will need to specifically recognise the Ngai Tahu Settlement Act 1998.

2.1.5 **Waahi Tapu, Waahi Taonga and Wai**

- 2.1.5.1 These sections of the existing District Plan are all relevant and Te Tangi a Tauira will be a useful reference document for use in assessing related resource management issues in the second generation District Plan. The importance of water to Ngai Tahu traditions and culture is still a very relevant issue and once again Te Tangi a Tauira will be a useful background document for framing manawhenua issues associated with water.

2.1.6 **Mahinga Kai**

- 2.1.6.1 Recognising the importance of maintaining and enhancing mahinga kai and access to them while minimising adverse effects from adjacent landuses are all issues listed in this section of the existing Plan. These issues are all considered

relevant for inclusion in the second generation Southland District Plan. Te Tangi a Taurira includes a section on Mahinga Kai which provides a useful information resource and the use of Mahinga Kai Cultural Parks is raised in this document. New management tools such as the use of cultural parks that may have been formulated over recent years may need to be included in this section of the second generation District Plan.

2.2 Statutory Acknowledgements

2.2.1 The Ngāi Tahu Claims Settlement Act 1998 introduced the use of Statutory Acknowledgements which are an acknowledgement by the Crown of Ngāi Tahu's special relationship with identified areas. There are 13 statutory acknowledgements identified in an appendix to the existing District Plan. This appendix was added to the District Plan after it had been adopted in 2001. In terms of the second generation District Plan it would be appropriate to identify the statutory acknowledgements in the Manawhenua section of the new Plan. Information on the background of the statutory acknowledgements and their meaning and status would also be appropriate. Listing of the 13 statutory acknowledgements on the planning maps of the second generation District Plan will also be required.

2.3 Amendments to RMA 1991

2.3.1 The existing District Plan in section 3.1 'Manawhenua' lists all the relevant provisions of the RMA 1991 that at the time the Plan was adopted were of relevance to Maori. The following sections 6(e), 7(a), 8, 33(1) (2), 74 (2)(b)(ii)(iii), 93 (1)(f) and clause 3 (1)(d) of the first schedule of the Act are all listed. There have been some changes to the RMA since this time relating to maori and these will need to be addressed in the second generation Southland District Plan.

2.3.2 A change to the RMA that is directly relevant to iwi management plans is the wording of Section 74 (2A) which now states;

(2A) A territorial authority, when preparing or changing a district plan, must –

(a) take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district;

2.3.3 At the time the existing District Plan was written this section of the Act required the Council to 'have regard to' planning documents recognised by iwi authorities as opposed to the new requirement to 'take into account'. The wording of policy MAO.2 will also need to be amended to reflect this change. The second generation Southland District Plan will also need to address matters raised by an addition to section 6 of the Act, section 6g reads as follows;

2.3.4 Section(6g) – requirement to recognise and provide for the protection of recognised customary activities as a matter of national importance.

2.4 Definitions/Terminology

- 2.4.1 The existing District Plan does not include under section 5 'Definitions' Maori words included within the Plans text. In terms of the second generation District Plan including definitions of all the Maori words used in the text would be a useful way of aiding its interpretation. Knowledge of the meaning of many of these Maori words can vary greatly from person to person and the District Plan may also be read by people from outside New Zealand who may have very limited knowledge of Maori language and culture. The existing District Plan does in section 3.1 'Manawhenua' under the different objective headings include a translation of the Maori words being used. This is a useful approach that could be retained along with the inclusion of a more extensive list of Maori words of relevance in the definitions section of the new Plan. The Ngāi Tahu Ki Murihiku Iwi Management Plan 2008 'Te Tangi a Tauira' includes a detailed Papakupu (glossary) of Maori words that provides a useful guide that could be referenced in the formation of a definitions section of the second generation District Plan. It would also be appropriate to ensure that consistent use of Maori words and terminology occurs throughout the new District Plan.

3.0 Emerging Tangata Whenua Issues

- 3.0.1 As identified in the introduction there have been a number of changes that have occurred since the existing Regional Policy Statement and Southland District Plan were formulated and adopted that need to be addressed during the review process. These include:

1. **Ngāi Tahu now have a Treaty settlement, and resulting Settlement Act/TRONT Acts.** Most of the matters falling out of the Ngāi Tahu treaty settlement process are not contained in the current Regional Policy Statement (for example, legal identity/tribal structure of Ngāi Tahu, statutory acknowledgements, pounamu, tribal properties, nohoanga, dual place names, pounamu, taonga species and other matters.

It is considered to be highly relevant for the upcoming review of the RPS to identify matters from the Ngāi Tahu Settlement/TRONT Acts, summarised in the following table:

NTCSA 1998/TRONT Act 1996	Inclusion in upcoming review of the Regional Policy Statement
TRONT legal identity/tribal structure, plus rūnanga takiwā in the Southland region (including Murihiku and Makaawhio rūnanga).	Recommended.
Ngāi Tahu statutory acknowledgements.	Mandatory to attach information recording statutory acknowledgements to Regional Policy Statements.
Other Ngāi Tahu Claims Settlement Act 1998 matters relevant to the Southland region-e.g. tōpuni area, tribal properties, dual place names, taonga species, nohoanga, pounamu etc.	Recommended.

2. **Since the mid-1990's, there have been a number of new processes and structures established to facilitate consultation between tāngata whenua and local government in Southland.** For example:

- The Charter of Understanding between tāngata whenua and the four local authorities of Southland, setting out the obligations of both parties under the RMA and Local Government Act 2002 and other matters. The development and use of this charter has been identified by the Ministry for the Environment in a guidance note on the Quality Planning website as a best practice example.
- Formation of Te Ao Mārama Incorporated Society-a consultancy/business unit which represents the four Murihiku Papatipu Rūnanga in day to day resource management matters. The Southland District Council along with Invercargill City Council, Gore District Council and Environment Southland are able to consult with the four Murihiku Rūnanga through Te Ao Marama on resource management matters. This includes consulting with local Rūnanga in regard to resource consent applications as well as in policy formulation and development.
- Formation of Te Rōpū Taiao-a political forum, comprising elected representatives of the Local Authorities and Papatipu Rūnanga which deals with higher level policy issues and consultation, budgets and work programmes. Te Rōpū Taiao is a collaborative structure put in place for the purposes of giving effect to the Charter of Understanding and the obligations of the parties to the charter'. Te Rōpū Taiao sits between Te Ao Mārama and the Southland Councils

3. **Ngāi Tahu ki Murihiku have released their iwi planning document for Murihiku,** Te Tangi a Tauira which was formally recognised by Te Rūnanga o Ngāi Tahu and released in early 2008. The document sets out Ngāi Tahu ki Murihiku resource management values and aspirations for natural resources, including key issues, objectives and policies.

Other Ngāi Tahu iwi planning documents have also been prepared since 1997, including:

- Te Rūnanga o Ngāi Tahu Freshwater Policy
- Te Rūnanga o Ngāi Tahu Pounamu Resource Management Plan, in terms of the Ngāi Tahu (Pounamu Vesting) Act 1997.

As noted above, in preparing or changing a Regional Policy Statement or District Plan, councils are now required under Section 61(2A)(a) to “*take into account any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on resource management issues of the region*”.

Part 1 of the new Iwi Management Plan ‘Te Tangi a Tauira’ notes that there have been a number of legislative changes since the 1997 document was formulated and Ngāi Tahu Ki Murihiku now have an increased

ability to respond and participate in the management of natural and physical resources.

It is noted that not all material from Te Tangi a Tauira iwi planning document has a direct bearing on resource management issues of the Southland region (e.g. the Fisheries Act 1996 and Conservation Act 1987 matters, for example).

4. **Since 1997, there have been a number of changes in Resource Management Act 1991 legislation** including key amendments in 2003 and 2005, which affect tāngata whenua interests in resource management processes. Section 5.1 of the current Regional Policy Statement is accordingly “out of date” in various areas under the RMA. For example:

- the status of iwi planning documents has been elevated with regional councils now required to “take into account” such documents when preparing their RPS (Section 61(2A)(a));
- new matters of national importance have been inserted, under Section 6 of the RMA, being:
 - Section 6(f)-“historic heritage”, with the definition including sites of significance to Māori, including wāhi tapu.
 - Section 6(g)-“the protection of recognised customary activities”, arising from the Resource Management (Foreshore and Seabed) Amendment Act 2004.
- strengthening of the role of RPS (i.e. Sections 67 and 75, which require that regional and district plans are to give effect to Regional Policy Statements);
- RPS’s must now state “the resource management issues of significance to iwi authorities in the region” (Section 62(1)(b)(i));
- local authorities are required to keep records of the contact details of iwi authority/groups representing hapū (Section 35A);
- joint management agreements between local authorities and iwi authority/groups representing hapū (Section 36);
- new functions for regional councils, such as indigenous biodiversity (Section 30);
- new consultation/capacity building requirements between tāngata whenua and local authorities (Clause 3(b) of the First Schedule).

Section 61(2) of the RMA also provides that when preparing a RPS the regional council shall have regard to “*any Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiāpure, mahinga mātaītai, or other non-commercial Māori customary fishing), to the extent that their content has a bearing on resource management issues of the region*”.

Since the current RPS was prepared in 1997, the Fisheries (South Island Customary Fishing) Regulations 1999 have been promulgated by the Crown to provide for customary fishing in the South Island. A number of mātaītai reserves have been gazetted in Southland under the Regulations. The establishment of these reserves involves processes that sit outside the jurisdiction of the Resource Management Act 1991 and the

Southland District Council. The second generation District Plan could recognise mataitai as a customary resource management tool which is in use in different areas of the Southland District.

5. **The development of natural resources in a commercial manner by iwi** was raised by Te Ao Mārama Inc staff as a potential issue for the review of the RPS. This could include:

- opportunities for coastal resource development by iwi, through aquaculture.
- the development of iwi owned resources (e.g. Māori owned land).

3.1 **Coastal resource development through aquaculture**

3.1.1 The Māori Commercial Aquaculture Claims Settlement Act 2004 provides for iwi access to coastal marine space to develop their marine farming interests. The Act makes the Crown responsible for providing the iwi with:

- 20% of existing aquaculture space created on or after 21 September 1992; and
- 20% of new aquaculture space.

3.1.2 The process for iwi to apply for coastal permits are subject to general RMA requirements. Appropriate provision for coastal resource use of a commercial nature by tāngata whenua may need to be provided for in the RPS, where necessary and appropriate.

3.2 **The development of iwi-owned resources**

3.2.1 The development of iwi owned resources may include Māori land.

3.2.2 The development of multiple owned Māori land can be difficult, in terms of issues around multiple ownership and the provisions of the Te Ture Whenua Māori Land Act 1993.

3.2.3 Providing for the development of Māori land can be an appropriate way to achieve the purpose of the RMA because it:

- can enable Māori land owners to provide for their social, economic, and cultural wellbeing (e.g. papakainga housing);
- provides for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (Part 2 of the RMA); and
- recognise aspects of the principles of the Treaty of Waitangi.

3.2.4 The RPS could encourage and facilitate the sustainable management of Māori owned land (including the development of Māori land) when and where Māori desire it is appropriate.

3.2.5 Specific issues to the review of the Southland District Council Plan

3.3 Coastal Resource Area

- 3.3.1 Section 4.6 'Coastal Resource Area' of the existing District Plan identifies lack of recognition in the past of the significance the coast to Maori. The development and use of Iwi Management Plans since the existing Plan was formulated may help rectify this problem. The existing District Plan under Rule COA.1 'Consultation with Iwi' requires applicants to consult with iwi prior to making a resource consent application and a similar rule could be used in the second generation District Plan. A large number of findspots and other archaeological sites of importance to Maori are found along the District's coastline and within the CRA. During the lifetime of the existing District Plan there has been a considerable increase in the amount of development occurring within the CRA. These increased levels of development within the District's coastal areas can give rise to issues and concerns regarding the protection and conservation of these sites. There is an increased likelihood of these sites which are recognised as an important part of the Southland district heritage from being damaged or lost through the subdivision, use and development of coastal areas. The second generation District plan needs to address this issue and should seek to ensure that the potential impact of proposals on these sites is assessed and where appropriate mitigation measures and/or conservation measures are put in place.

3.4 Biodiversity

- 3.4.1 As identified in the biodiversity issues and options paper following recent legislative changes and other central government guidance there is a need in the second generation Southland District Plan for a focus on biodiversity issues. Te Tangi a Tauira under section 3.5.17 'Nga Pononga a Tane a Tangaroa – Biodiversity' states that an important focus for Ngāi Tahu ki Murihiku is finding ways to protect, maintain and improve habitat for all biodiversity, be it in water, riparian margins, native bush or wetlands'. Appropriate objectives and policy relating to biodiversity may therefore need to be formulated for inclusion in the Manawhenua section of the second generation District Plan.

3.5 SILNA Lands

- 3.5.1 Within the Southland District there is a large amount of indigenous forest that is located on Maori owned land. A list of the forested areas of the District in the existing District Plan provides an estimate of 33720 ha of indigenous forest on Maori Land. These indigenous forests are likely in many instances to have high bio-diversity values associated with them. The history of these forested areas is relevant to the approach the Council should take towards their management. Maori ownership of many of these areas came about as a result of the South Island Landless Natives Act 1906 (SILNA). The Act followed a review of the outcomes associated with the settlement of Te Waipounamu (the South Island) by Europeans. The Crown agreed to make certain areas of land available to Maori in the South Island and a number of these areas contain indigenous forests in the Southland District. This is a complex issue with Treaty of Waitangi obligations/expectations attached to the areas of land which were provided for wrongdoings elsewhere. The original purpose of these areas

was to provide for the economic security of Maori and some Maori owners may now wish to extract native timber from their land for commercial return.

- 3.5.2 The Council recognises the concept of Kaitiakitanga in respect to these areas of indigenous vegetation. Kaitiakitanga is defined under section 2 of the RMA 1991 as “...*the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources, and includes the ethic of stewardship*”. Given the history of these areas and the principals of kaitiakitanga the Southland District Council seeks to assist and encourage owners towards a sustainable management regime. This would enable owners to obtain some financial returns from these landholdings while also recognising the national importance of the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna under Section 6 (c) of the RMA 1991.

4.0 Options for Addressing Issues

- 4.0.1 The proposed approach is to work with tāngata whenua to clarify issues and provide ongoing consultation in the development of the Regional Policy Statement.

- 4.0.2 It is envisaged that Papatipu Rūnanga, Te Ao Mārama Inc, Te Rōpū Taiao and Te Rūnanga o Ngāi Tahu will be consulted during the development of the tāngata whenua section/chapter of the Regional Policy Statement, as appropriate. Their involvement from the earliest stages of the Plan development and review processes will provide guidance on the formation of the various sections/chapters of the Regional Policy Statement and Southland District Council Plan and also in terms of the other Plan provisions that are of relevance to Tangata Whenua. Processes and structures, many of formed since these Plans became operative, will facilitate this process.

4.1 Specific Recommendations

1. **That Section 5.1 Takata Whenua o Murihiku of the current Regional Policy Statement be reviewed/updated, based on:**
 - ongoing consultation with tāngata whenua, to further clarify any issues of concern, and in particular to determine the resource management issues of significance to iwi authorities in the region and relevant material from iwi planning documents.
 - the comments in Part 2 of this issues and options paper (i.e. how relevant are the issues in the current Regional Policy Statement), based in part on Te Tangi a Tauira iwi planning document and preliminary discussions with Te Ao Mārama Inc staff
 - the comments in Part 3 of this issues and options paper (i.e. what has changed-current/future issues). These include:
 1. reference to relevant matters from the Ngāi Tahu Claims Settlement/ Te Rūnanga o Ngāi Tahu Acts;
 2. reference to new iwi resource management structures/processes in Murihiku-e.g. Charter of Understanding;

3. incorporating relevant material from the iwi planning documents (e.g. Te Tangi a Tauira iwi planning document and others),
 4. update with current RMA legislation.
 5. appropriate provision for the development of natural resources in a commercial manner by iwi
2. **That there is ongoing consultation with tāngata whenua during the development of other sections/chapters, as they are developed.**

Te Tangi a Tauira iwi planning document could assist in the drafting of the individual sections of the Regional Policy Statement and Southland District Council District Plan, as part of the review process.

3. **The existing District plan has a total of five existing rules within its Manawhenua section and these rules are:**

- MAO.1 - Protection Of Waahi Taoka And Mahika Kai
- MAO.2 - Protection Of Waahi Tapu
- MAO.3 - Koiwi Takata
- MAO.4 - Papakaika Housing
- MAO.5 - Land Use

All of these rules relate to resource management issues that are still relevant and need to be addressed in the second generation Southland District Plan. The use of regulatory rules within the manawhenua section of the new Plan is likely to be required.

5.0 Questions for Discussion

5.0.1 The Regional Policy Statement “sets the tone” for resource management across the Southland region. The Regional Policy Statement review process therefore provides tāngata whenua the opportunity to:

- reflect on how iwi resource management currently occurs in Murihiku, and whether the existing Regional Policy Statement adds value to resource management practice by tāngata whenua;
- think about new issues, gaps and linkages (e.g. with Te Tangi Tauira iwi planning document).

5.0.2 Questions

1. Do tāngata whenua have enough involvement in resource management decision-making in Southland?
2. Is a separate tāngata whenua section needed in the Regional Policy Statement, or should the themes be woven throughout the various sections of the document (or a combination of both, which is the approach in the current Regional Policy Statement)?

3. Is the use of a separate Manawhenua section in the existing Southland District Plan a helpful approach and one that should be retained?
4. Has the existing Southland District Plan approach to manawhenua issues been successful? What areas if any need to be re-examined? In which ways can the second generation Southland District Plan best meet its obligations and duties towards Maori under the RMA 1991?
5. Are all the issues in the existing Regional Policy Statement and Southland District Council Plan relevant, or have new/higher priority issues emerged for tāngata whenua of the Southland region? How might these review processes address these new/higher priority issues?
6. Does the existing Regional Policy Statement add value to tāngata whenua aspirations for managing natural resources, or does it just repeat legislation and Treaty principals? (i.e. are more specific/measurable plan provisions needed?)
7. Which material from the Ngāi Tahu iwi planning documents (i.e. Te Tangi a Taurira, and others) is specifically relevant for inclusion in the Regional Policy Statement and Southland District Council Plan?
8. How can councils and tāngata whenua approach capacity building? Are these details best dealt with through the Charter of Understanding, which is much easier to change/update?
9. What is the relevance of Ngāi Tahu's Treaty Settlement with the Crown, in the Regional Policy Statement (e.g. Settlement/TRONT Acts)?
10. To what extent, if any, should the Regional Policy Statement make appropriate provision for iwi to develop natural resources in a commercial manner (i.e. aquaculture coastal development and Māori owned land).

Appendix 1

1.1 **Specific comments on each of the Issues contained in Section 5.1.8 of the current Regional Policy Statement**

1.2 **Issue 1:**

There is a need to protect wāhi tapu adversely affected by resource use activities.

1.2.1 The issue of wāhi tapu protection is considered to be very relevant for the upcoming review of the RPS.

1.2.2 Wāhi tapu is specifically identified in Section 6(e) of the RMA and the term also falls within the definition of “historic heritage”, provided for under Section 6(f) of the RMA. The existing wording in Issue 1 to “protect wāhi tapu” could possibly be replaced with the phrase “recognise and provide for the protection of Māori historic heritage, including wāhi tapu”. This would more appropriately reflect the new obligation on the Council in relation to addressing Māori historic heritage generally within the RPS.

1.2.3 The reference in Issue 1 to “resource use activities” could also be replaced by the term “inappropriate subdivision, use and development activities”, to better clarify the nature of RMA activities in question that can affect wāhi tapu.

1.2.4 **Objective 1.1:**

To protect wāhi tapu from the adverse effects of resource use activities

1.2.4.1 The objective links directly to Issue 1. The comments under Issue 1 above, are equally applicable to the wording of Objective 1.1.

1.2.5 **Policy 1.2:**

Recognise Te Whakatau Kaupapa o Murihiku as a Kai Tapu resource management reference planning document for the Region.

1.2.5.1 The policy remains relevant and links to Issue 1, given that iwi planning documents are a means of protecting wāhi tapu.

1.2.5.2 As noted above, Te Whakatau Kaupapa o Murihiku has now largely been succeeded by the more recent Te Tangi Tauira iwi planning document. Therefore reference to “Te Whakatau Kaupapa o Murihiku” should be replaced with “Te Tangi a Tauira and other relevant planning documents recognised by the iwi authority”. This highlights Te Tangi a Tauira as the primary iwi planning document for Murihiku, whilst also making provision for other relevant iwi planning document such as the historical (but living) Te Whakatau Kaupapa o Murihiku document and the Te Rūnanga o Ngāi Tahu freshwater policy, and others that may potentially follow.

1.2.5.3 The requirement under Section 61(2A)(a) of the RMA now requires that iwi planning documents be “taken into account”. Therefore the existing reference

to “recognise” should be replaced with “take into account” to reflect the new requirement under the RMA and the greater obligation on the Council.

1.2.6 **Methods 1.1 to 1.8**

1.2.6.1 A number of the methods identified in Section 5.1 of the current RPS remain relevant to the protection of heritage sites/wāhi tapu.

1.2.6.2 Other methods identified in Te Tangi a Tauita iwi planning document that may also be specifically relevant to iwi resource management include:

- Cultural impact/value assessments
- Kanohi ki te kanohi (face to face) consultation
- Accidental discovery protocols
- Wānanga
- Preparing/updating iwi planning documents
- Memorandum of Understanding
- Ngāi Tahu Claims Settlement Act 1991 implementation
- Joint management
- Advocacy

1.3 **Issue 2:**

The customary use of water and the importance of wahi tapu, wahi taoka, mahika kai to Kai Tahu has not always been recognised.

1.3.1 This issue remains relevant.

1.3.2 The issue probably intends to link to Section 6(e) of the RMA, which covers “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga”. Issue 2 could be amended to include “the relationship of Māori and their culture and traditions with their ancestral lands”.

1.3.3 The protection of “recognised customary activities” (which is now a matter of national importance under Section 6(g) of the RMA) could likewise be included in Issue 2, if tāngata whenua consider this is relevant.

1.3.4 The term “...recognised...” should be replaced with the term “...recognised and provided for...”, to better reflect the obligation under Section 6 of the RMA.

1.3.5 Objective 1.2: To recognise the importance of wahi tapu, wahi taoka, mahika kai and the customary use of water to Kai Tahu

1.3.6 The objective links to Issue 2.

1.3.7 The comments under Issue 2 (above) are relevant to this objective.

1.3.8 **Policy 1.2:**

Recognise Te Whakatau Kaupapa o Muribikū as a Kai Tahu resource management reference planning document for the Region.

- 1.3.8.1 The policy links to Issue 2.
- 1.3.8.2 The comments provided under Issue 1 (Policy 1.2) above are of equal relevance here.
- 1.3.9 **Methods 1.1 to 1.8**
- 1.3.9.1 The comments provided under Issue 1 (Methods 1.1 to 1.8) above are of equal relevance here.
- 1.4 **Issue 3:**
Maori cultural and traditional spiritual values have not been fully considered under the resource management decision-making process.
- 1.4.1 Tāngata whenua involvement in decision-making remains a very relevant issue for the RPS.
- 1.4.2 The word “Māori” could be replaced with “tāngata whenua”.
- 1.4.3 **Objective 1.3:**
To incorporate Māori cultural and traditional spiritual values where appropriate into resource management decision making processes
- 1.4.3.1 The objective links to Issue 3, and is a key one which directly provides for the incorporation of Māori/tāngata whenua values into decision-making.
- 1.4.3.2 The objective has likely assisted with the Māori values being incorporated into decision-making processes by Southland Councils to some extent (for example, tāngata whenua are consulted on relevant resource consent proposals and iwi planning documents are commonly used in Council decision-making processes).
- 1.4.3.3 However, it is questionable as to how much value the objective is actually adding. For example, how should Māori values actually be incorporated into resource management decision-making and what specific guidance and direction is there for Councils in preparing their statutory RMA planning documents?. It may therefore be necessary to strengthen the objective (and/or add an associated new policy) by:
- imbedding specific Treaty of Waitangi provisions (including linkages to the Ngāi Tahu Claims Settlement Act 1998, such as statutory acknowledgements, tōpuni, species, nohoanga, dual place names, taonga species, tribal properties, pounamu etc).
 - specifying the resource management decision-making processes tāngata whenua wish to be part of (e.g. joint management, transfer of powers, appoint tāngata whenua on hearing panels, consult tāngata whenua on resource consent proposals).
 - linking the RPS objective/policy to Section 4.6-4.9 of Te Tangi a Tauira iwi planning document (e.g. tāngata whenua aspirations for planning processes and implementation projects).

- 1.4.4 **Policy 1.1:**
Prepare and implement an Accord between the local authorities and the takata whenua o Muribiku which sets out a process for consultation.
- 1.4.4.1 The policy has largely been achieved, in the form of the Charter of Understanding between Te Ao Mārama Inc and the Southland Local Authorities.
- 1.4.4.2 The Charter of Understanding could be identified in the RPS, in a broad way. The focus of the policy could change from “Prepare and implement an Accord” to “Implement, review/update the Charter of Understanding between tāngata whenua and Local Authorities, including provision for capacity building”.
- 1.4.5 **Policy 1.2:**
Recognise Te Whakatau Kaupapa o Muribiku as a Kai Tabu resource management reference planning document for the Region.
- 1.4.5.1 The policy links to Issue 3. The current iwi planning document Te Tangi a Tauira highlights iwi aspirations for natural resource management, including input into Council decision-making processes.
- 1.4.5.2 The comments provided under Issue 1 (Policy 1.2) above are of equal relevance here.
- 1.4.6 **Methods 1.1 to 1.8**
- 1.4.6.1 The comments provided under Issue 1 (Methods 1.1 to 1.8) above are of equal relevance here.
- 1.5 **Issue 4:**
The use, development and protection and natural and physical resources do not always have regard to the concept of kaitiakitanga.
- 1.5.1 The issue of kaitiakitanga remains a very relevant matter for the RPS.
- 1.5.2 The issue may need to be reworded from “have regard to”, to “have particular regard to” kaitiakitanga, as required under Section 7(a) of the RMA, to properly reflect the obligation.
- 1.5.3 **Objective 1.4:**
To have particular regard to the concept of kaitiakitanga in relation to managing the use, development and protection of natural and physical resources.
- 1.5.3.1 The objective relates to the kaitiakitanga role of tāngata whenua, as identified in Section 7(a) of the RMA.
- 1.5.3.2 Southland Local Authorities identify Ngāi Tahu whānui as the kaitiaki/tāngata whenua of the entire Southland region. It may be relevant to embed the Te Rūnanga o Ngāi Tahu Act 1996 (TRONT Act) into this objective/policy, so it

is clear that Ngāi Tahu whānui are the kaitiaki/tāngata whenua of the Southland region, as well as appending Schedule 1 of the TRONT Act which identifies the takiwa (areas) of each of the respective Papatipu Runanga. This is also a means of addressing the “shared interest area” in the area between Whakatipu-Waitai (Lake McKerrow) and Piopiotahi (Milford Sound) inland, to the divide between the four Murihiku Papatipu Rūnanga and Te Rūnanga o Makaawhio.

1.5.3.3 Tāngata whenua as kaitiaki need to be provided with the opportunity to exercise guardianship of the natural and physical resources of the area in accordance with tikanga Māori. It may therefore be appropriate to specify some of the kaitiakitanga outcomes contained in Section 4.8. of Te Tangi a Tauria iwi planning document, which identifies iwi aspirations and direction on kaitiakitanga matters.

1.5.4 **Policy 1.2:**

Recognise Te Whakatau Kaupapa o Murihiku as a Kai Tabu resource management reference planning document for the Region.

1.5.4.1 The policy links to Issue 4. The current iwi planning document Te Tangi a Tauria highlights iwi aspirations for natural resource management, including kaitiakitanga.

1.5.4.2 The comments provided under Issue 3 (Policy 1.2) above are of equal relevance here.

1.5.5 **Methods 1.1 to 1.8**

1.5.5.1 The comments provided under Issue 1 (Methods 1.1 to 1.8) above are of equal relevance here.

1.5.5.2 Further methods relevant to kaitiakitanga may include:

- Māori place names
- Implementation of the Fisheries (South Island Customary Fishing) Regulations 1999
- Implementation of the Ngāi Tahu (Pounamu Vesting) Act 1997

Topic: Tāngata Whenua				
Issue	Relevance Y/N	Relevant Objective	Relevant Policy	Relevant Method
1-Wāhi tapu	Y	1.1	1.2	1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7
2-Water, wāhi tapu, wāhi taoka and mahika kai	Y	1.2	1.2	1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7
3-Decision making	Y	1.3	1.1, 1.2	1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8
4-Kaitiakitanga	Y	1.4	1.2	1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7

1.5.5.3 In addition to the above issues contained in Section 5.1 Takata Whenua o Murihiku, resource management issues relating specifically to tāngata whenua are scattered throughout a number of other sections of the current RPS (see pages 63 and 64), as follows:

- Section 5.2: Biodiversity
- Section 5.6: Lakes, Rivers and Wetlands
- Section 5.8: Soils
- Section 5.9: Landscapes and Natural Features
- Section 5.12: Air Quality
- Section 5.13: Coast
- Section 5.14: Mineral and Energy Resources
- Section 5.16: Solid Waste Management
- Section 5.18: Cross-boundary Issues

1.5.5.4 Although not identified in pages 63 and 64 of the current RPS, the following sections also contain provisions that relate specifically to tāngata whenua:

- Section 5.4: Water Quantity
- Section 5.5: Water Quality
- Section 5.10 Built Environment
- Section 5.15 Natural Hazards

1.5.5.5 The following sections of the current RPS do not contain provisions that relate specifically to tāngata whenua:

- Section 5.11 Transportation
- Section 5.17 Hazardous Substances