



## **Regional Coastal Plan for Southland**

### **Plan Change 5 – Section 16 Surface water activities on the internal waters of Fiordland from Yates Point to Puysegur Point**

### **Report and Recommendations**

**Hearing dates:** 26 – 27 June 2023

**Commissioners:** Sharon McGarry (Chair)

Neville Cook

Lyndal Ludlow

Karen Coutts

**Date of decision:** 9 October 2023

Recommendations made under delegation from the Southland Regional Council:



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Sharon McGarry (Chair)



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Karer



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Lyndal Ludlow



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Neville Cook

Dated this 9<sup>th</sup> day of October 2023

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## **List of Abbreviations**

|                |                                                                     |
|----------------|---------------------------------------------------------------------|
| CE             | Coastal Environment                                                 |
| CMA            | Coastal Marine Area                                                 |
| CMS            | Southland Murihiku Conservation Management Strategy 2016            |
| CSWA           | Commercial Surface Water Activities                                 |
| DOC            | Department of Conservation                                          |
| FMG            | Fiordland Marine Guardians                                          |
| FNPMP          | Fiordland National Park Management Plan                             |
| MA             | Marine Area                                                         |
| MHWS           | Mean High Water Springs                                             |
| MPS            | Manapōuri Power Scheme                                              |
| MTADA          | Manapōuri Te Anau Development Act 1963                              |
| NPSET          | National Policy Statement on Electricity Transmission 2008          |
| NPSREG         | National Policy Statement for Renewable Electricity Generation 2011 |
| NZCPS          | New Zealand Coastal Policy Statement 2010                           |
| ONC            | Outstanding Natural Character                                       |
| ONFL           | Outstanding Natural Feature or Landscape                            |
| PC5            | Plan Change 5                                                       |
| RCP            | Regional Coastal Plan for Southland                                 |
| RMA            | Resource Management Act 1991                                        |
| RPS            | Southland Regional Policy Statement                                 |
| SRC/ES/Council | Southland Regional Council/Environment Southland                    |
| TAMI           | Te Ao Marama Incorporated                                           |
| TRoNT          | Te Rūnanga o Ngai Tahu                                              |

## **Introduction**

### **Delegation**

1. Pursuant to the Resource Management Act 1991 (**RMA**), the Southland Regional Council/Environment Southland Te Taio Tonga (**SRC/ES** or ‘the Council’) delegated<sup>1</sup> the necessary powers and functions to the Hearing Panel to hear submissions and make recommendations on Plan Changes 5 (**PC5**) to the Regional Coastal Plan for Southland 2013 (**RCP**). The Council resolved to appoint a hearings panel comprising two councillors, Councillor Lyndal Ludlow and Councillor Neville Cook, and two independent commissioners, Ms Sharon McGarry and Ms Karen Coutts. The Council appointed Commissioner McGarry as Chair of the Hearing Panel. This is the written report and recommendations of the appointed Hearing Panel (‘the Panel’). The recommended changes to PC5 are shown in Attachment 1 of this report.

### **Resource Management Act Schedule 1**

2. Pursuant to clause 8B of Schedule 1 of the RMA, the Council is required to hold a hearing into submissions on PC5.
3. A hearing was held on 26-27 June 2023 at the Distinction Luxmore Hotel in Te Anau. Representations and appearances at the hearing are recorded in Attachment 2 of this recommendation report.
4. Clause 10(1) of the First Schedule of the RMA sets out that a local authority (and therefore the Panel acting under delegation as the Council) shall give a decision (recommendation) on the PC5 provisions and matters raised in submissions. Clause 10(2) states that the decision (recommendations) must include the reasons for accepting or rejecting submissions, and may include consequential alterations and other relevant matters arising from decisions. Clause 10(3) confirms that a local authority (the Panel) is not required to give a decision (recommendation) that addresses each submission individually.
5. Under Schedule 1 of the RMA, the Minister of Conservation is required to approve coastal plans (or changes/variations) and monitor the effect and implementation of the New Zealand Coastal Policy Statement 2010 (**NZCPS**). As noted in legal submissions by Ms Pene Williams representing the Minister of Conservation, the Minister may amend a regional coastal plan when it is approved (following its adoption by the Council) to be consistent with the Minister’s submission on PC5.

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<sup>1</sup> At a meeting held on 3 May 2023, under section 34A of the RMA.

### **Purpose of Plan Change 5**

6. Plan Change 5 was publicly notified on 18 July 2022. The purpose of the plan change is to introduce changes to Section 16 of the RCP to address concerns that increasing pressure from commercial surface water activities (**CSWA**) are impacting the significant environmental values (particularly remoteness and wilderness values) of Fiordland. The PC5 provisions are viewed as an interim step to protect the significant values of the Fiordland coastal environment until such time as the RCP is reviewed in its entirety.
7. In summary, PC5 seeks to:
  - introduce a new policy which requires the avoidance of adverse effects on the Fiordland coastal environment including by not granting resource consent for new or intensifying commercial surface water activities (above that which currently exist);
  - introduce a new policy which requires the avoidance or mitigation of effects from commercial surface water activities on marine mammals;
  - delete an existing policy which places no limit on the amount of commercial surface water activity occurring within Piopiotahi/Milford Sound;
  - provide recognition of the cultural significance to mana whenua of the Fiordland coastal environment by including the use of dual place names;
  - introduce a new policy to manage adverse effects of commercial surface water activities on wilderness, remoteness, and other recreational and visitor values;
  - introduce a new policy to identify the matters which can impact on wilderness and remoteness values;
  - introduce a new policy regarding matters to be considered when determining a resource consent term of consent;
  - amend a rule to change the activity status from discretionary to non-complying, for new or increasing (scale, duration, location and intensity) commercial surface water activities within the internal waters of Fiordland.

### **RMA Section 32**

8. Section 32 of the RMA directs a local authority making a change/variation to a proposed plan to carry out an evaluation, both before it is publicly notified, and before making a decision on submissions. The evaluation is to examine the extent to which each objective is the most appropriate way to achieve the purpose of the Act, and whether, having regard to their

efficacy and effectiveness, the policies, rules and other methods are the best option available; and also to assess the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the policies, rules or other methods. The local authority is required to publish a report summarising the evaluation and giving reasons.

9. The Council carried out a separate evaluation of PC5 in compliance with section 32, before it was publicly notified and published a report titled 'Proposed Plan Change 5 – Surface Water Activities: Section 32 Evaluation Summary Report' (dated June 2022) summarising the results of the evaluation.
10. In legal submissions for Real Journeys Ltd (trading as Realnz), Ms Maree Baker-Galloway submitted the section 32 analysis had omitted to evaluate the option of reviewing the RCP in its entirety. Ms Baker-Galloway claimed this was a 'significant omission', as she considered the most efficient and effective way to update and improve the management and protection of Fiordland's values was holistically, with an integrated review to management of the area. She considered a partial plan change was not appropriate to give effect to the NZCPS.
11. The Panel is satisfied that the Council has fulfilled its obligations under section 32 of the RMA. The Council is able to make changes to parts of the RCP, as it sees fit and is not required to evaluate the option reviewing the entire plan. The Panel accept PC5 is an interim measure to 'hold the line' until the wider RCP can be completed.
12. The Panel's evaluation with respect to the section 32 evaluation is inherent within its consideration of the relief sought by submitters and its decision-making process. The Panel has examined the options available for achieving the objectives through considering the options for activity status, the effectiveness of the policies and rules in achieving the objectives and the efficiency of the policies and rules (including the environmental, social, and economic costs and benefits, and the risks of acting if information is limited).

#### **RMA Section 42A Report**

13. The background to and development of PC5 is set out in the section 42A Report (dated May 2023 prepared for the Council by Ms Rebecca Robertson, a consultant Landscape Architect and Planner with Southern Land & Water Planning Ltd. This 's42A Report' provided an analysis of the relevant legal and statutory framework, other relevant plans and Acts, common submission themes, and an analysis of submission points with recommendations. Appended to the s42A Report were:
  - Appendix A – recommended amendments to Section 16 shown as tracked changes;



- Appendix B – ‘Wilderness and Remoteness Values of Fiordland Waters’ (dated 22 February 2022) by Kay Booth, Lindis Consulting, prepared for ES (‘Lindis Report’);
  - Appendix C – memorandum prepared by Ash Rabel (dated 8 February 2023) providing comment on adverse effects on marine mammals;
  - Appendix D – memorandum prepared by Dr Booth responding to questions; and
  - Appendix E – Section 32AA Evaluation and a report titled ‘An assessment of the Effectiveness and Efficiency of the Regional Coastal Plan for Southland’ (dated June 2019) by Andrew Maclellan and Felicity Durand with Incite.
14. The Panel was also provided with a report titled ‘Fiordland Coastal Waters Context’ (dated July 2022) by Southern Land & Water Planning which summarised the existing information and relevant legislation and policy for the internal waters of Fiordland to inform the Lindis Report by Dr Booth.
15. The s42A Report addressed the points of relief requested in submissions on PC5, evaluated the relief requested and provided recommendations to the Panel on whether to accept or reject the relief requested. The s42A Report was provided more than 15 working days in advance of the hearing to submitters who wished to be heard. This decision does not repeat all the submission points and recommendations set out in the s42A Report.
16. Ms Robertson attended the hearing to present her s42A Report to the Panel; and was available to answer questions and provide clarifications during the hearing. After hearing the evidence presented to the Panel, Ms Robertson prepared a written Rely s42A Report (dated 27 July 2023) addressing matters raised in the hearing and further recommendations for amendments to the provisions. The Panel acknowledges the valuable input of the s42A Report writer to the PC5 hearing process.
17. The s42A Report, evidence presented during the hearing process and the Reply s42A Report should be read in conjunction with this decision.
18. The s42A Report provided the following summary of changes proposed in PC5:

**Table 1 – Summary of the changes proposed in PC5**

| <b>Clause</b>     | <b>Proposed Change</b>                                                | <b>Purpose and impact</b>                                                 |
|-------------------|-----------------------------------------------------------------------|---------------------------------------------------------------------------|
| Add Policy 16.2.2 | Avoid adverse effects on nationally and regionally significant values | Use of the phrase “avoid” sets a high bar of protection for these values. |
|                   | 16.2.2 (b)                                                            | Specifically directs that new consents will not be granted                |

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Plan Change 5 – Section 16 Surface Water Activities*

| <b>Clause</b>                 | <b>Proposed Change</b>                                           | <b>Purpose and impact</b>                                                                                                                                                             |
|-------------------------------|------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                               |                                                                  | where any adverse effects on those values will increase.                                                                                                                              |
|                               | An “end-date”                                                    | Enabling ongoing discussion of this matter through the remainder of the Regional Coastal Plan review.                                                                                 |
| Add Policy 16.2.3             | Avoid or mitigate adverse effects on marine mammals              | Provides additional protection for marine mammals including significant habitat areas for the endangered bottlenose dolphin.                                                          |
| Delete Policy 16.2.4          | Deletion                                                         | Removes “no limits on the SWA in Milford Sound/Piopiotaahi” as the new policies conflict with this.                                                                                   |
| Amend Policy 16.2.6           | Insertion of “including the use of dual place names”             | Clarifies an existing policy, which calls for “fiords correctly referred to”.                                                                                                         |
| Amend Policy 16.2.8 to 16.2.7 | “Manage adverse effects of commercial SWA in Fiordland”          | Specifically provides protection for remote and wilderness values whilst maintaining recreational activities.                                                                         |
| Add Policy 16.2.8             | “Impacts on wilderness and remoteness values”                    | Direction for consent applicants and processing officers of the specific matters that require recognition when considering impacts of activities on wilderness and remoteness values. |
| Amend Policy 16.2.11          | Additional consideration of adverse effects on the National Park | Must “have regard to the Fiordland National Park Management Plan”.                                                                                                                    |
| Add Policy 16.2.15            | Consent term direction                                           | To provide guidance for staff and applicants to ensure consent terms reflect specific nature of the proposed activity and its effects.                                                |
| Rule 16.2.1                   | Increased strengthening of the consent requirements              | Inserts a non-complying activity status new or intensifying activities and aims to ensure no further intensification of CSWA.                                                         |

### **Submissions**

19. The Council received 20 submissions and five further submissions to PC5. The Panel has read each submission and further submissions received and considered the relief sought in relation to PC5 in making its recommendations.
20. The Council provided a ‘Summary of Decisions Requested Report – Provision Order’ outlining the individual submission points and further submission points by provision and submitter. The Panel has considered these decision points in making its recommendations.

### **Submitter Appearances and Representations**

21. The submitters and their expert witnesses who appeared at the hearing to provide evidence to the Panel in support of their submission, are set out in Attachment 2 of this decision.
22. Prior to the hearing, the Council received written correspondence from Meridian Energy and the University of Otago advising that they no longer wished to be heard in relation to their submissions.
23. The Panel acknowledges the contribution of submitters and the constructive manner in which they contributed to PC5. The provision of succinct evidence and legal submissions, and the efficient use of time enable the Panel sufficient time to question and discuss the evidence and submissions with the submitter, their experts and/or their counsel. The Panel found this useful in fully understanding the issues and testing the evidence. The Panel has considered all of the evidence provided in making its recommendations. This decision highlights some of the submitter evidence presented at the hearing, which was provided after provision of the s42A Report.

### **Hearing Panel Minutes**

24. Before the hearing and following the adjournment, the Panel issued three minutes addressing procedural matters, post hearing timeframes and site visits. A record of these minutes and responses received were made available via the Council’s website. The Panel thanks the parties for their prompt responses and their efforts after the adjournment to provide the information requested.

### **Site Visits**

25. Following the adjournment of the hearing and after seeking the input of submitters, the Panel decided not to undertake any site visits given their general familiarity with the Fiordland area, the time of year (winter) and the limited scope of PC5.

## **Structure of Decision**

26. It is important that this report and recommendations are read as a whole together with the tracked change version of the Plan (Attachment 1 of this decision). The tracked change version of PC5 of the RCP forms an integral part of the report and recommendations. Attachment 1 records all recommended amendments (additions and deletions) to the notified PC5 provisions made by the Panel, with underlining indicating additions and ~~striketrough~~ indicating deletions.
27. This written report contains the reasons for the Panel’s recommendation, which comprise either adoption of the reasoning and recommendations of the s42A Report or the Reply s42A Report (dated 27 July 2023), or a specific reasoning by the Panel based on relief sought in submissions and/or evidence presented at the hearing.

## **Statutory Framework**

28. Section 30 of the RMA sets out the functions of regional councils. Those of relevance to this proposed Plan Change include:
- (a) establishing, implementing and reviewing objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region (section 30(1)(a));
  - (b) in respect of any coastal marine area in the region (in conjunction with the Minister of Conservation), discharges of contaminants, and discharges of water into water (section 30(1)(d)(iv)), dumping and incineration (section 30(1)(d)(iva)), noise (section 30(1)(d)(vi)) and activities in relation to the surface of water (section 30(1)(d)(vii));
  - (c) controlling discharges of contaminants, and discharges of water into water (section 30(1)(f));
  - (d) establishing, implementing and reviewing plan provisions for maintaining indigenous biological diversity (section 30(1)(ga)).
29. In making its recommendations, the Panel must be satisfied that PC5 will assist the Council to carry out its functions in order to achieve the purpose of the RMA<sup>2</sup>; and that the preparation of PC5 is in accordance with the provisions of Part 2 of the RMA and any applicable regulations.<sup>3</sup>

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<sup>2</sup> Section 63(1).

<sup>3</sup> Section 66(1).

30. The Panel has been cognisant of the responsibilities and obligations imposed by Part 2 (sections 5, 6, 7 and 8) and Schedule 1 of the RMA in making its recommendations and is satisfied the Council has met the RMA requirements throughout the PC5 process.
31. Pursuant to section 67(3) of the RMA, PC5 must give effect to:
- (a) any applicable national policy statements;
  - (b) the NZCPS;
  - (c) a national planning standard; and
  - (d) the SRPS.
32. The Panel considers these statutory documents below.

### **National Policy Statements**

33. PC5 must give effect to any relevant national policy statements. The Panel accepts the following national policy statements are of relevance to PC5:
- (a) National Policy Statement for Renewable Electricity Generation 2011 (**NPSREG**); and
  - (b) National Policy Statement on Electricity Transmission 2008 (**NPSET**).
34. The NPSREG recognises the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities. Policy A requires decision-makers to ‘recognise and provide for’ the national significance of renewable electricity generation activities. Policy B requires decision-makers to have ‘particular regard to’ three matters relating to: protection of assets; minor reductions can have significant adverse effects on cumulative outputs; and meeting NZ Government’s national target will require significant development of generation activities. Policy C1 requires decision-makers to have ‘particular regard to’ a number of matters including logistical and technical matters. Policy C2 requires decision-makers to offset residual effects. Policy E2 requires regional plans to include objectives, policies and methods to ‘provide for’ the development, operation, maintenance and upgrading of new and existing hydro-electricity generation activities to the extent applicable in the region.
35. The NPSET recognises the national significance of the electricity transmission network (including stations) by facilitating the operation, maintenance and upgrade of the existing transmission network and establishment of new transmission resources while managing environmental effects of the network. Policy 1 of the NPSET requires decision-makers to ‘recognise and provide for’ the national regional and local benefits of sustainable, secure and efficient electricity. Policy 2 require decision-makers to ‘recognise and provide for’ effective

operation, maintenance and upgrading of the network. Policy 3 requires decision-makers to ‘consider’ the constraints of measures to avoid, remedy or mitigate adverse environmental effects of transmission activities.

36. The Panel notes the submission by Meridian Energy relating to potential impacts on the operation and maintenance of the Manapōuri Power Scheme (**MPS**) and tailrace; and has considered the requested amendments proposed to exempt surface water activities associated with the MPS due to the national and regional significance of the MPS.
37. The s42A Report noted that Policy 16.2.9 specifically referred to activities associated with the construction and maintenance of the MPS, and considered surface water activities associated with the MPS were therefore within the scope of Policy 16.2.9 and Rule 16.2.1, if those activities meet the definition of ‘Commercial Surface Water Activities’. The s42A Report concluded that without further information on the nature of the surface water activities associated with the MPS (i.e. frequency, duration, location) it was not possible to recommend an exemption for activities associated with the MPS based on the higher order planning documents.
38. The Panel agrees with the Reporting Officer that without further information on the surface water activities associated with the operation of the MPS, it is not possible to consider these in relation to the RCP definition of a ‘Commercial Surface Water Activity’ or any potential environmental effects of the activity. On this basis, the Panel considers any exemption of any such activities is inappropriate due to the inability to determine whether this would give effect to the provisions of the NZCPS.
39. The Panel considers Policy E2 of the NPSREG is particularly relevant to Policy 16.2.9 of PC5 and to the existing provisions of the RCP in providing for the operation of the MPS. The Panel is satisfied that Policy 16.2.9 provides for use of Patea/Doubtful Sound and Te Awa-o-Tū/Thompson Sound as a thoroughfare to carry out activities associated with the construction and maintenance of the MPS.
40. The Panel accepts it must recognise and provide for the MPS and the electricity network as matters of national significance. However, the Panel agrees with the Reporting Officer that this recognition and provision must occur while giving effect to the provisions of the NZCPS, including the directive avoidance provisions of Policies 11, 13 and 15.
41. Overall, the Panel is satisfied PC5 gives effect to the NPSREG and NPSET.

42. The Panel is aware that the National Policy Statement for Indigenous Biodiversity 2023 was gazetted on 7 July 2023 and came into force from 4 August 2023. However, the Panel has not sought any guidance following the adjournment of the hearing given this national policy statement applies only to terrestrial environments and specifically excludes the coastal marine area.

#### **New Zealand Coastal Policy Statement 2010**

43. The New Zealand Coastal Policy Statement (**NZCPS**) gives effect to Part 2 of the RMA. The PC5 amendments to sustainably manage the effects of commercial surface water activities within the coastal marine area (**CMA**) of Fiordland must give effect to the objectives and policies of the NZCPS. The Panel considers the below objectives and policies are relevant to its recommendations.
44. NZCPS Objective 1 seeks to safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems. Policy 4 seeks integrated management of natural and physical resources in the coastal environment. Policy 11 seeks to avoid adverse effects on threatened or 'at risk' taxa, ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare, and habitats of indigenous species which are at the limit of their natural range or are naturally rare; and avoid significant adverse effects and avoid, remedy and mitigate adverse effects on indigenous vegetation, ecosystems and habitats for indigenous species.
45. NZCPS Objective 2 seeks to preserve the natural character of the coastal environment and to protect natural features and landscape values. Policy 13 seeks to preserve natural character of the coastal environment from inappropriate use and development by avoiding adverse effects on outstanding natural character; and avoiding significant adverse effects and avoiding, remedying or mitigating adverse effects of activities on natural character in all other areas of the coastal environment. Policy 14 seeks to promote restoration and rehabilitation of natural character in the coastal environment by identifying areas and opportunities for restoration or rehabilitation. Policy 15 seeks to protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate use and development by avoiding adverse effects on outstanding natural features and natural landscapes; and avoiding significant adverse effects and avoiding, remedying or mitigating adverse effects of activities on other natural features and natural landscapes in the coastal environment.
46. NZCPS Objective 3 seeks to take into account the principles of Te Tiriti o Waitangi/Treaty of Waitangi and to recognise the role of Southland's tangata whenua in the management of the

coastal environment as kaitiaki. Policy 2 seeks to recognise tangata whenua’s traditional and continuing relationship with areas of the coastal environment, involve iwi authorities and hapū in the preparation of plans, provide opportunities for Māori in decision making, take into account any relevant iwi management plan, provide opportunities for tangata whenua to exercise kaitiakitanga, and recognise in consultation and collaboration with tangata whenua that they have the right not to identify places or values of historic, cultural or spiritual significance.

47. NZCPS Objective 4 seeks to maintain and enhance the public open space qualities and recreation opportunities of the coastal environment. Policy 6 seeks to recognise the need for public open space within the coastal environment for active and passive recreation by ensuring the location and treatment of public open space is compatible with the natural character, natural features and landscape, and amenity values; and taking into account future need for open space within the coastal environment. Policy 18 seeks to recognise the need for public open space and public access to and along the coast.
48. NZCPS Objective 6 seeks to enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits. Policy 6(2) seeks to recognise potential contributions to the social, economic and cultural well-being of communities from use and development of the coastal marine area; recognise the need to maintain and enhance public open space and recreation qualities and values of the coastal marine area; recognise there are activities that have a functional need to be located in the coastal marine area and provide for these activities in appropriate place; and promote the efficient use of occupied space.
49. NZCPS Policy 7(2) directs that in undertaking strategic planning in preparing PC5, the Council must recognise resources or values that are under threat or at significant risk from adverse cumulative effects; and where practicable, set thresholds or specify limits to change to assist in determining when activities causing adverse effects are to be avoided.
50. The Panel considers PC5 will only partly give effect to the NZCPS given the wider RCP provisions predate the NZCPS 2010 and are yet to be reviewed to give effect to the NZCPS. However, the Panel notes the Council is working through a staged process of reviewing the RCP and anticipates public notification by the end of 2024. The Panel accepts PC5 is an



interim step to prevent uncontrolled intensification of commercial surface water activities within the coastal environment of Fiordland.

51. The Panel is satisfied the PC5 amendments give effect to the objectives and policies of the NZCPS to the extent possible outside of the wider review of the RCP. The Panel considers PC5 recognises the environmental values of the coastal environment of Fiordland are currently at risk from the adverse cumulative effects of commercial surface water activities. The Panel acknowledges the Council has worked closely with Te Rūnanga o Ngai Tahu (**TRoNT**), Te Ao Marama Incorporated (**TAMI**) and the Department of Conservation (**DOC**) to achieve integrated management of the coastal environment.

#### **National Environmental Standards**

52. The Panel has had regard to the nine National Environmental Standards set out in the s42A Report and agree with the s42A Report conclusion that PC5 is consistent with these.

#### **Regulations under RMA section 360**

53. The Panel has had regard to the Resource Management (Marine Pollution) Regulations 1998 and agree with the s42A Report finding that PC5 is consistent with these.

#### **Southland Regional Policy Statement 2017**

54. The Southland Regional Policy Statement (**SRPS**) gives effect to the NZCPS and Part 2 of the RMA. The following provisions are of relevance to the proposed Plan Change:
55. Objective COAST.1 seeks clear direction on appropriate and inappropriate use, the cumulative effect of an activity, and precedent effects of a decision, within the region's coastal environment. The explanation notes the development of a strategic approach, which considers the cumulative effect of activities and precedent effects, will bring these matters to the forefront of decision making.
56. Objective COAST.2 provides for appropriate subdivision, use and development along the coast, while managing the adverse effects of those activities. The explanation notes there is a need to balance development and use within the coastal environment with other potentially conflicting values for example the preservation of the natural character and the protection of significant indigenous biodiversity.
57. Objective COAST.4 seeks the natural character of the coastal environment to be restored, rehabilitated or preserved. The explanation notes the need to recognise and provide for the preservation of the natural character of the coastal environment when managing its use and development.

58. Policy COAST.1 requires the identification of appropriate and inappropriate locations within the coastal environment for particular activities and forms of subdivision, use and development. The explanation notes that matters for consideration include the preservation of natural character and the protection of natural features and natural landscapes.
59. Policy COAST.2 requires adequate measures or methods to be utilised within the coastal environment when making provision for subdivision, use and development to protect natural character and natural features and landscapes and maintain or enhance amenity values, among other matters.
60. Policy COAST.3 requires that subdivision, use and development avoid adverse effects on areas of outstanding natural features and landscapes and outstanding natural character. The policy also requires for 'other' natural features and landscapes and natural character areas that significant adverse effects are avoided and other adverse effects are avoided, remedied or mitigated.
61. Policy COAST.6 requires regional plans to identify areas where preserving natural character requires objectives, policies and rules and include those provisions. It also requires the provision of policies, rules and other methods directed at restoring or rehabilitating the natural character of the coastal environment.
62. Policy COAST.7 requires a framework to avoid or mitigate adverse effects on the coastal environment for, among other matters, commercial activities on the water and on the foreshore and seabed.
63. The s42A Report concluded PC5 was consistent with the relevant objectives and policies of the SRPS and was a step in the right direction to its full implementation.
64. Ms Amy Young's planning evidence for the Minister of Conservation agreed with the s42A Report analysis.
65. The Panel acknowledges the RCP provisions predate the SRPS and do not give effect to its objectives and policies. However, the Panel is satisfied the PC5 amendments will partly give effect to the relevant provisions of the SRPS until the wider review of the RCP is completed.

### **Other Relevant Plans and Legislation**

66. Under Section 66(2)(c)(i) of the RMA, the Council must have regard to any management plan or strategy prepared under another Act, to the extent that its content has a bearing on the resource management issues of the region. The Panel considers the most relevant of these

below to assess whether PC5 is consistent with the direction contained within these plans and strategies.

67. Ms Williams noted the Minister of Conservation and the Department of Conservation's other roles and functions under the Marine Mammals Act 1978, Marine Reserves Act 1971 and Marine Mammals Protection Regulation 1992. She submitted the Minister supported the intent of PC5 as complementary to the Minister's functions and those of the Director-General of Conservation.

#### **Ngāi Tahu Claims Settlement Act 1998**

68. The Ngāi Tahu Claims Settlement Act 1998 applies to the takiwā of Ngāi Tahu and covers the majority of the South Island. The legislation acknowledges Ngāi Tahu as tangata whenua of and holding rangatiratanga within its takiwā. The Crown acknowledged Ngāi Tahu holds cultural, spiritual, historic and traditional association with identified areas detailed in Schedules 14 to 77 of the Ngāi Tahu Claims Settlement Act 1998. The Act also defines statutory acknowledgement areas and taonga species that have cultural, spiritual, historic and traditional association to Ngāi Tahu. The Panel has had regard to these matters in making its decision.

#### **The Cry of the People – Te Tangi a Tauira, Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008**

69. The Panel has taken into account 'The Cry of the People – Te Tangi a Tauira, Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan' in considering PC5. The Panel recognises the significance and value of wai/water (as described in Section 3.5) and the immense importance of Te Atawhenua/Fiordland historically, culturally and spiritually to Ngāi Tahu ki Murihiku.
70. On the basis of the submissions in support received from TRoNT and TAMI, the Panel is satisfied PC5 is consistent with outcomes sought by Te Tangi a Tauira.

#### **Fiordland (Te Moana o Atawhenua) Marine Management Act 2005**

71. The Fiordland (Te Moana o Atawhenua) Marine Management Act 2005 established the Fiordland (Te Moana o Atawhenua) Marine Area<sup>4</sup> in recognition of the areas 'local, national, and international importance, unique marine environment, distinctive biological diversity, and outstanding landscape and cultural heritage'<sup>5</sup>. It established eight new marine reserves<sup>6</sup> and a

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<sup>4</sup> This area encompasses the waters from Awarua Point on the South Island's west coast (40 km north of Milford Sound) to Sandhill Point on the South Island's south coast, and to 12 nautical miles off the coast.

<sup>5</sup> Section 3 Purpose of the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005.

<sup>6</sup> In addition to two existing reserves in Fiordland, bringing the total in Southland to 11, the other marine reserve being in Rakiura/Stewart Island.

number of small, discrete areas containing items of special ecological significance, known as 'china shops'. Both the Marine Reserves and the China Shops aim to protect important species and habitats and are subject to strict rules and regulations. It also established the Fiordland Marine Guardians (**FMG**) to provide advice on fisheries management, biosecurity, sustainable management, and marine preservation and protection. It facilitates and promotes co-operation between the Guardians and management agencies, to assist in achieving the integrated management of the Fiordland (Te Moana o Atawhenua) Marine Area. It acknowledges the importance of kaitiakitanga.

72. The s42A Report noted the FMG had provided input into the Lindis Report and provided feedback on the draft provisions (via clause 3 of Schedule 1 of the RMA). The Panel considers FMG's involvement in the Lindis Report and identifying a range of operators was appropriate given their role under Section 13 of the Fiordland (Te Moana o Atawhenua) Marine Management Act 2005 to advise and make recommendations to management agencies and Ministers who exercise functions under the enactments listed in Schedule 13<sup>7</sup>.
73. The Panel notes the submission by the Fiordland Marine Guardians supported PC5 and raised concerns regarding the level of commercial surface water activity occurring within the Fiordland CMA and adverse environmental effects associated with this activity.

### **Manapōuri Te Anau Development Act 1963**

74. Meridian Energy is empowered under the Manapōuri Te Anau Development Act 1963 (**MTADA**) to undertake certain activities in relation to the Manapōuri hydroelectric generation scheme. Activities enabled by Section 4 of the MTADA include erecting, constructing, providing, using, and operating all works, appliances, and conveniences which may be necessary or requisite for or in relation to '(i) the utilisation of water power... (ii) the generation, transmission, use, supply, and sale of electrical power...; and (iii) the transmission, use, supply, and sale of any other electrical power generated...' (Section 4(1)(a)). Alongside the requirement that these activities are 'necessary or requisite' (Section 4(1)(a)), there is a requirement in Section 5 to preserve natural scenery within the National Park.
75. The Panel accepts the Reporting Officer's view that unless otherwise provided for; the MTADA does not extend to activities requiring resource consent under Sections 12, 14 or 15 of the RMA.
76. The Panel has considered the provisions of the MTADA in conjunction with its consideration of the NPSREG and NPSET in making its recommendations on PC5.

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<sup>7</sup> Schedule 13 includes the Resource Management Act 1991

### **Biosecurity Act 1993**

77. The Biosecurity Act 1993 provides the legal framework for MPI and other government agencies to keep harmful organisms out of New Zealand.
78. Policy 12 of the NZCPS requires the Plan to provide for the control of activities that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or otherwise spread, and include conditions in resource consents, where relevant, to assist with managing the risk of such effects.
79. The Fiordland Marine Regional Pathway Management Plan (2017) has been established pursuant to the Biosecurity Act 1993. It aims to minimise the risk of marine pests being transported into the area within one nautical mile of the landward boundary of the Fiordland Marine Area. It addresses the threat of marine pests and other harmful organisms being transported into that area by vessels and associated gear and equipment.
80. The Panel is satisfied PC5 is consistent with the outcomes sought by the Biosecurity Act, NZCPS and the Fiordland Marine Regional Pathway Management Plan.

### **National Parks Act 1980**

81. The General Policy for National Parks 2005 is approved by the New Zealand Conservation Authority and implements the National Parks Act 1980 by giving direction for administering national parks across Aotearoa New Zealand. The document contains objectives and policies to ensure that consideration will be given to the appropriate balance between the preservation of native plants and animals, the welfare in general of the parks, and the rights of the public to access and enjoy those places. It acknowledges that each park has its own unique characteristics, which are reflected in each National Park Plan.
82. The Fiordland National Park Management Plan 2007 (**FNPMP**) and the Southland Murihiku Conservation Management Strategy 2016 (**CMS**) implement the objectives and policies of the Conservation Act 1987 and National Parks Act 1980. The boundary of Fiordland Rakiura National Park extends to mean high water springs (**MHWS**) and excludes the CMA.
83. Ms William's legal submissions noted the s42A Report had not mentioned the CMS but confirmed that the Minister of Conservation considered PC5 was consistent with both the FNPMP and CMS.
84. Ms Amy Young's planning evidence for the Minister of Conservation provided an analysis of the CMS and concluded PC5 was consistent with the relevant policies. She noted the CMS area extended into the CMA, covering public conservation land and waters including offshore

islands and marine protected areas. She highlighted the CMS seeks to ensure the Fiordland CMA was protected through an integrated approach working closely with Te Rūnanga o Ngāi Tahu.

85. The Panel has had regard to the need for integrated management of the CMA under the RMA and the land within Fiordland National Park to achieve the outcomes sought for the coastal environment. The Panel acknowledges the Council's engagement with DOC and mana whenua mana moana in recognition of the need for consistent and integrated management. The Panel is satisfied PC5 is consistent with management direction of these documents.

#### **Regional Marine Oil Spill Contingency Plan 2018**

86. Prepared under the Maritime Transport Act 1994, the Regional Marine Oil Spill Contingency Plan 2018 establishes operational guidelines to enable the Council, and other organisations listed in it, to respond to a marine oil spill in the CMA. It covers the entire CMA as defined under the RMA through the RCP.
87. The Panel is satisfied PC5 is consistent with the outcomes sought by the Regional Marine Oil Spill Contingency Plan.

#### **Southland Regional Pest Management Plan 2019-2029**

88. The purpose of the Southland Regional Pest Management Strategy 2019-2029 is to provide for the efficient and effective management or eradication of specified organisms in the Southland region. While the Biosecurity Act is the main regulatory tool for managing pests, there are complementary powers within the RMA that can be used to ensure the problem is not exacerbated by activities regulated under the RMA.
89. The Panel is satisfied PC5 is consistent with the outcomes sought by the Southland Regional Pest Management Strategy.

#### **Southland Regional Council Navigational Safety Bylaws 2009**

90. The Southland Regional Council Navigation Safety Bylaws apply to all waters within the Southland region including coastal waters. The Bylaws detail restrictions on vessel use including speed. The Bylaws detail specific requirements for many areas of the CMA. The s42A Report stated the Harbourmaster was consulted during the development of PC5.
91. The Panel is satisfied PC5 is consistent with the outcomes sought by the Southland Regional Council Navigation Safety Bylaws.

## **Key Issues**

### **Evidential basis for PC5**

92. Some submissions and further submissions raised concern regarding the need for and evidential basis supporting PC5; and the preparation and limitations of the Lindis Report. Heritage Expeditions and Bill Chisholm strongly opposed PC5 and the use of the Lindis Report due to a perceived lack of independence of the report, the limited scope of the report, the limited number of operators interviewed and lack of visitor input.
93. The s42A Report acknowledged the limitations of the Lindis Report but highlighted its purpose was to understand the perceptions of wilderness and remoteness values held for the Fiordland CMA. It noted the Lindis Report had been undertaken in 2020 when Fiordland's visitor patterns were dramatically changed and without visitor input on their perceptions due to COVID-19. It highlighted tourism operators had provided views on visitors' motivations and satisfactions, likes and dislikes; other perceptions expressed by visitors; and differences between types of visitors. It acknowledged visitor perceptions and experiences were key considerations that require consideration in the development of a long-term carrying capacity framework for the Fiordland coastal environment. It reiterated the PC5 provisions were temporary in order to manage the adverse effects of further intensification until a long-term management solution (that has taken into account visitor perceptions and experiences) can be developed.
94. The s42A Report acknowledged there was potential for respondents to have a conflict of interest, given the operators all have resource consents to undertake CSWA within Fiordland, but noted the operators were not the only ones interviewed. It highlighted the Report also included a literature review and review of the existing knowledge for the Fiordland coastal environment.
95. The s42A Report highlighted the directive policies of the NZCPS of relevance to PC5, including the need to avoid adverse effects on areas of outstanding natural character, outstanding natural features and landscapes and significant indigenous species; and the requirement to give effect to these policies. It also noted Policy 3 of the NZCPS required the adoption of a precautionary approach towards proposed activities whose effects on the coastal environment were uncertain, unknown, or little understood, but potentially significantly adverse. It highlighted the Fiordland coastal environment contained regional, national and international values, including vast remote and wilderness landscapes and natural features,

marine reserves and endangered species; and that the surrounding land in Fiordland National Park, which forms part of the coastal environment, was recognised as a World Heritage Area.

96. The s42A Report highlighted the lack of direction within the RCP provisions for managing the cumulative effects of surface water activities, evidence of increasing pressure from tourism activities and failure to achieve the plan outcomes were identified through the effectiveness and efficiency review of the RCP by Incite (2019).
97. In legal submissions for Realnz, Ms Baker-Galloway submitted PC5 was well intended but was an ‘over-reaction’ to predictions to pressure and patterns of use post COVID-19 that had not played out. She considered it was more effective and efficient for the Council to focus resources on progressing the overdue RCP review; and that the current regime did not allow for uncontrolled intensification. She submitted that if PC5 was progressed it should:
- Recognise the importance of public access;
  - Recognise the benefits to conservation from public access;
  - Public access should be expressly provided for and enabled in section 16;
  - Provide certainty and clarity;
  - Explicitly state PC5 is a temporary mechanism to ‘hold the line’ until the RCP review was progressed.
98. The evidence of Mr Paul Norris, Acting Chief Executive for Realnz, showed visitor demand within the internal water of Fiordland had largely reverted back to resemble pre-COVID-19 patterns. Mr Norris suggested the previous period had been ‘a blip’ and that demand patterns were trending back to previous patterns of a greater demand for day trips or part day trips. He highlighted the importance of the CSWA to the Fiordland and Queenstown Lakes District.
99. Dr Rebecca McLeod, Chair Guardian for FMG, expressed thanks that the Council had acted to address concerns raised in preparing PC5. She said concerns had been raised about increasing activity in the more remote southern fiords before COVID-19. She noted concern that the existing level of CSWA would become the baseline used in the RCP review. She highlighted the need to both maintain and restore values and to address cumulative effects through the wider RCP review. She supported focusing on robust policies to ‘hold the line’ until this can be completed.
100. Mr Denis Tipene made oral submissions at the hearing supporting PC5 and highlighting the importance of putting the needs of the natural environment of Fiordland first and the needs of people second. He considered PC5 recognised this.



### **Findings**

101. The Panel notes the submissions from TRoNT, TAMI, FMG, Minister of Conservation, CRA8 Rock Lobster Industry Association and Forest & Bird all support the view that there has been an intensification of commercial surface water activities in some of the areas of Fiordland where there are currently no limits in the RCP. The Panel accepts there is a need for the provisions of PC5 to ‘hold the line’ until a full review of the RCP can be completed. The Panel finds this is appropriate and necessary given the international and national significance of the environmental values of the Fiordland coastal environment.
102. The Panel accepts the evidence provided on resource consent applications indicates there has been an increase in commercial surface water activity in some areas, including increasing boat numbers, sizes and increased demand for infrastructure located in the CMA. There is evidence of increased CSWA in the southern fiords, as well as increasing recreational and cruise ship activity.
103. The Panel accepts it is appropriate to take a precautionary approach given the uncertainty and lack of information in relation to adverse effects on ecological and natural character values; and the potential for adverse effects on significant environmental values.
104. The Panel notes the Lindis Report only relates to the perceptions of operators and visitors, and the effects of CSWA on people’s experiences and amenity values; and that this does not address intrinsic environmental values of the coastal environment. The Panel notes the Lindis Report was prepared by Dr Booth, who is an independent researcher, and that the scope of the report was prepared in consultation with the Council, as the client for the report. The Panel is satisfied the scope of the report and the range of operators interviewed was sufficient for its purpose.

### **Cultural values and relationships**

105. Te Mimi o Tū Te Rakiwhānoa/Fiordland is a statutory acknowledgement area in acknowledgement of its particular significance to Ngāi Tahu.
106. The submissions from TRoNT and TAMI reinforce the significance of the Fiordland coastal environment to mana whenua mana moana and the need to recognise and provide for their ongoing relationship and customary practices. The submissions noted particular interest in Te Tiriti o Waitangi/Treaty of Waitangi relationship, kaitiakitanga and whanaungatanga. Both submissions supported PC5 to address the increase in consent applications being lodged before the RCP was reviewed and the urgent need to address cumulative effects. The submissions acknowledged the Council’s approach to PC5 had been based on ‘a true Treaty

partnership’ that recognised and provided for the rights, interests and values of mana whenua mana moana.

107. Mr Dean Whaanga, Kaupapa Taiao Manager for TAMI, provided cultural evidence on behalf of Waihōpai Rūnaka, Te Rūnanga o Ōraka Aparima, Hokōnui Rūnaka and Te Rūnanga o Awarua (collectively ‘Ngāi Tahu ki Murihiku’) explaining:

- Ngāi Tahu Whānui;
- Te Rūnanga o Ngāi Tahu
- Ngāi Tahu ki Murihiku
- Te Ao Marama Incorporated;
- Whakapapa and relationship with Te Mimi o Tū Te Rakiwhānoa;
- Kaitiakitanga;
- Rangatiratanga, right and interests;
- Mātauranga and tikanga; and
- Mauri.

108. Mr Whaanga highlighted the whole area of Fiordland was a culturally significant landscape, as well as many specific sites of cultural significance; and noted this was outlined in the Statutory Acknowledgement, Schedule 2 of the Ngāi Tahu Claims Settlement Act.

109. Mr Whaanga noted support for consistent use of dual place names with Te Reo Māori first and English second, regardless of the earlier gazetted names.

### **Findings**

110. On the basis of the submissions received from TRoNT and TAMI, and the evidence of Mr Whaanga, the Panel is satisfied PC5 gives effect to Objective 3 and Policy 2 of the NZCPS and Part 2 of the RMA; and has taken into account the principles of Te Tiriti o Waitangi/Treaty of Waitangi.

### **Five year expiry of PC5 provisions**

111. At the hearing, Ms Baker-Galloway submitted a new objective and policy (with consequential amendment to Rule 16.2.1(8)) should be included to time bind the new non-complying activity rule for a maximum of five years, to reflect that it was a temporary measure.

112. Mr Norris considered the RCP should be ‘fast tracked’ and the PC5 provision should only be in effect for no more than five years to avoid undue consenting difficulties and in recognition of the temporary period to ‘hold the line’.

113. Other submitters attending the hearing did not support the PC5 provisions being time bound but supported the wider RCP review being completed as soon as possible.

114. The Reply s42A Report acknowledged the importance of business certainty but highlighted the risks of increased adverse effects on significant environmental values if the PC5 provisions lapsed before the RCP review was completed. It noted the Council intended to notify a proposed RCP by the end of 2024 but that it could be some time before it became operative. On this basis, she recommended rejecting the new objective and policy (and consequential changes to Rule 16.2.1).

## **Recommendations**

### **Introduction**

115. FMG and the Minister of Conservation supported the wording of the Introduction.
116. Real Journeys Ltd sought amendments to the Introduction because, although it acknowledged that a change in activity had occurred, it did not consider use of the fiords had become more diverse. The Submitter considered day visitors still represented the bulk of visitors to Fiordland coastal waters and that this statement in the Explanation should be reinstated. The Submitter also requested an explanation as to why Fiordland is considered internationally significant.
117. Meridian Energy sought amendments to the introduction to provide an exception for surface water activities associated with the MPS. This submission was opposed by TAMI.
118. The s42A Report accepted the amendments requested by Real Journeys Ltd except for reference to a potential increase in numbers of day visitors; and rejected the amendments sought by Meridian Energy.

### ***Evaluation***

119. The Panel agrees with the s42A Report that the amendments to the Introduction sought by Real Journeys Ltd are appropriate with amendment to remove reference to a potential increase in numbers of day visitors.
120. The Panel has considered the amendments sought by Meridian Energy to provide exemptions for the operation of the MPS. For the reasons given above, the Panel do not consider this is appropriate.

### ***Recommendation***

121. The Panel accepts the s42A Report recommendation to amend the Introduction, as shown in Appendix A attached to the s42A Report.

**Issue 16.1.1**

122. FMG and the Minister of Conservation supported Issue 16.1.1.

***Recommendation***

123. The Panel accepts the s42A Report recommendation that Issue 16.1.1 is retained as notified.

**Objective 16.1.1 – Maintain essential characteristics**

124. The Minister of Conservation, TRoNT and TAMI supported retention of Objective 16.1.1 as notified.

125. FMG supported the Objective but sought the wording be amended to focus on the restoration of the essential characteristics of Fiordland because it considered many of these characteristics had already been degraded. The Submitter considered focusing on restoration would send a message that the declining state was not acceptable and that the current level of activity should not be the permitted baseline. This submission was opposed by Real Journeys Ltd.

126. At the hearing, Dr McLeod highlighted Policy 14 of the NZCPS to promote the restoration or rehabilitation of the natural character of the coastal environment. She considered it was important the current level of use, particularly in the Dusky/Breaksea Sounds complex, did not form the default baseline in future management under the reviewed RCP.

127. Real Journeys Ltd sought inclusion of an explanation as to why Fiordland was considered to be internationally significant and reference to relevant data or research that justified that assertion.

***Evaluation***

128. The Panel notes FMG's support for Objective 16.1.1 and has considered the amendments sought to focus on restoration of the essential characteristics of Fiordland where these have already been degraded.

129. The Panel agrees with FMG that the current level of activity should not be viewed as a 'permitted baseline' during the wider RCP review process. The Panel considers it will be important to assess the environmental effects of existing levels of use and development to ensure the provisions of the NZCPS are given effect to. This will require the identification of areas where environmental values have been degraded and are required to be restored. The Panel agrees with the s42A Report that including 'restore' shifts the focus from 'maintain' and consider this should be addressed in the RCP review.

130. The Panel has considered the amendments sought by Meridian Energy to provide exemptions for the operation of the MPS. For the reasons given above, the Panel do not consider this is appropriate.

***Recommendations***

131. The Panel accepts the s42A Report recommendation to retain the wording of Objective 16.1.1 as notified.
132. The Panel accepts the s42A Report recommendation to amend the Explanation to Objective 16.1.1, as shown in Appendix A attached to the s42A Report.

**Objective 16.1.2 - Preserve remoteness and wilderness values**

133. TRoNT, TAMI, FMG, the Minister of Conservation and Mr Peter Egerton supported Objective 16.1.2. Mr Egerton noted the subjectivity of wilderness and remoteness values.
134. Real Journeys Ltd opposed the Minister of Conservations submission in support of the Objective. FMG supported the submissions of TRoNT and TAMI.
135. Real Journeys Ltd opposed Objective 16.1.2 and sought amendments to address concern about the shift from use of the term ‘Internal Waters of Fiordland’ to the ‘Fiordland Coastal Environment’. TAMI opposed this submission.
136. The s42A Report did not agree Objective 16.1.2 should refer to only the ‘Internal Waters of Fiordland’ as commercial surface water activities could have adverse effects beyond the CMA boundary. It noted the use of ‘Coastal Environment’ widened the scope and recognised the interconnected nature of Fiordland’s land and sea; and provided for the integrated management of resources, which was consistent with Policy 4 of the NZCPS.
137. The s42A Report acknowledged use of ‘Internal Waters’ was not solely related to Section 16 of the RCP. In reviewing other references within the RCP, the s42A Report concluded use of ‘Coastal Environment’ in Objective 16.1.2 did not have implications for the remainder of the RCP. The s42A Report accepted the amendment sought regarding the use of ‘diverse’ in the Explanation.

***Evaluation***

138. The Panel agrees with the s42A Report that commercial surface water activities can have adverse effects beyond the CMA boundary; and that use of ‘Coastal Environment’ widens the scope of the Objective in recognition of the interconnected nature of Fiordland’s land and provides for the integrated management.

**Recommendation**

139. The Panel accepts the s42A Report recommendation to retain the wording of Objective 16.1.2, as notified.
140. The Panel accepts the s42A Report recommendation to amend the Explanation to Objective 16.1.2, as shown in Appendix A attached to the s42A Report.

**Objective 16.1.3 - Effects of surface water activities on intrinsic values**

141. The Minister of Conservation supported Objective 16.1.3.

**Recommendation**

142. The Panel accepts the s42A Report recommendation to retain the wording of Objective 16.1.3, as notified.

**Policy 16.2.1 – Identify and protect areas at risk of diminished natural character, landscape and amenity values**

143. The Minister of Conservation and FMG supported the amendments to Policy 16.2.1. The Minister of Conservation's submission was opposed by Real Journeys Ltd.
144. Real Journeys Ltd opposed the Policy and sought amendments to identify areas throughout Fiordland that were at risk and not just Patea/Doubtful Sound.
145. The s42A Report highlighted the significant natural character, landscape and amenity values present in Fiordland due to its largely unmodified nature, and remoteness and wilderness values. It noted the values of Fiordland as a whole were at risk from increased or changing commercial surface water activities; and that identification of risk areas through localised assessments supporting resource consent applications would be required.
146. The s42A Report sought further advice from Dr Booth on whether any wilderness and remoteness values in some areas were more at risk than other areas. Dr Booth noted that all areas of Fiordland were valued for their wilderness value, some fiords and some specific sites had experienced greater increases in use (for example Tamatea/Dusky Sound, the Northern Fiords and the Southern Fiords). Dr Booth noted the attributes of the different fiords may affect their resilience to increased and changes in use; including difficulty of access, activity level, remoteness, human-built infrastructure, natural quiet, type of landscape, extent of connected fiord waterways (fiord complex), and proximity to formally protected areas.
147. At the hearing, Mr Gareth Clarke, Concessions and Consent Manager for Realnz, provided a statement of evidence outlining the changes sought to identify areas throughout Fiordland that were at risk (see Appendix 1 of his evidence).

148. The Reply s42A Report responded to the evidence of Mr Clarke for Real Journeys Ltd and considered the removal of the need to identify vulnerable areas from the Policy could result in adverse effects on natural character, landscape and amenity values. It noted that decision makers would be required to identify where vulnerable areas were on a case-by-case basis to give adequate consideration of effects of an application in a resource consent process. On this basis the Reply s42A Report recommended the following amendments:

*'Policy 16.2.1 – Recognise, identify and protect areas at risk of diminished natural character, landscape and amenity values*

*(a) Recognise that natural character, landscape and amenity values are not uniform across all fiords and some areas are more vulnerable than others to the adverse effects of increased use; and*

*(b) Identify areas in the fiords where natural character, landscape and amenity values are more vulnerable to the adverse effects of increased use.'*

### **Evaluation**

149. The Panel agrees with the s42A Report that the natural character, landscape and amenity values present within the Fiordland coastal environment are significant and are at risk from increased or changing commercial surface water use. The Panel consider it is appropriate to give policy direction to identify and protect these areas through localised assessments until this can be achieved through the RCP review process.
150. The Panel consider the proposed amendments in the Reply s42A Report address the evidence of Mr Clarke.
151. The Panel accepts the changes proposed to the Explanation provide more clarity and context to the policy; and more details regarding the level of assessment required and the attributes that can impact on an area's vulnerability risk, as sought by Real Journeys Ltd.

### **Recommendations**

152. The Panel accepts the Reply s42A Report recommendation to amend the wording of Policy 16.2.1.
153. The Panel accepts the s42A Report recommendation to amend the Explanation to Policy 16.2.1, as shown in Appendix A attached to the s42A Report.

### **Policy 16.2.2 – Avoid adverse effects on internationally, nationally, and regionally significant values**

154. TRoNT, TAMI, the Minister of Conservation and Forest & Bird supported Policy 16.2.2 and sought its retention.

155. Milford Sound Tourism and Mr Egerton sought amendments to Policy 16.2.2 to address concerns regarding the length of time it may take to set a carrying capacity for the Fiordland coastal environment and the need to replace vessels with vessels that maybe larger. P. Eggerton suggested amending matter 2 to include a vessel size limit of 40m.
156. The suggested vessel size limit of 40 m was opposed in further submissions by TAMI and FMG; and supported by Real Journeys Ltd.
157. Milford Sound Tourism requested the policy was reviewed to allow for possible intensification as a result of vessel upgrades. This was supported in further submissions by Real Journeys Ltd and opposed by TAMI.
158. FMG supported the policy but sought amendments to the policy to include an additional matter (i) recognising the values in the Fiordland (Te Moana o Atawhenua) Marine Act 2005 and the role of the FMG in regard to this legislation. In addition, FMG requested amendments to the Explanation to highlight there was no habitation from the presence of baches in the Fiordland coastal environment; people would start to seek recreational opportunities in Rakiura due to the loss of values in Fiordland; and to change the last sentence from ‘for some people these values have been eroded’ to ‘in some areas of the Fiordland Coastal Environment these values have been eroded’. The FMG submission was opposed by Real Journeys Ltd.
159. Mr Mark Peychers, Guardian for FMG, gave examples at the hearing of some of the larger vessel sizes currently used and the opportunity for substantial increases in bulk (tonnage) if a maximum length of 40m was permitted. He considered large vessels negatively impacted small anchorages and allowing increases would not maintain the status quo.
160. Totally Tourism supported the intent of the Policy in the short term but sought greater recognition within the Explanation to the policy that there were uncertainties as to the threshold of activity or the carrying capacity of the fiords and a clear need for further research and assessment. This submission was supported by Real Journeys Ltd.
161. Real Journeys Ltd sought amendments to Policy 16.2.2 because it considered it was unrealistic to halt all new commercial surface water activities when the tourism industry was in a state of flux; and was problematic for other commercial surface water activities such as pest control work or maintenance of structures in the CMA. The Submitter sought to replace ‘avoid’ with ‘manage’ and to focus the policy on the ‘Internal Waters’ rather than the ‘Coastal Environment’ for consistency with the other provisions of the RCP. The Submitter requested Policy 16.2.2(2) be reframed to reflect the section 104D non-complying test of the RMA. The



Submitter sought Policy 16.2.2(3) be amended to focus on the maintenance of values rather than their protection to aligns with Objective 16.1.1. The Submitter also sought a change to the Explanation to clearly articulate the issue being addressed. The submission was supported in further submissions by Milford Sound Tourism; and opposed by TAMI.

162. At the hearing, Mr Clarke for Real Journeys Ltd outlined the specific changes sought to Policy 16.2.2 in his Appendix 1.
163. Meridian Energy opposed Policy 16.2.2 and sought an exemption for existing activities associated with the operation of the MPS. This submission was opposed by TAMI.
164. The s42A Report acknowledged new vessels could have new technology that may result in a reduction in adverse effects on the Fiordland coastal environment, as highlighted by submitters. It noted that operators have the option to replace their boats with similar sized vessels (i.e., a replacement vessel does not have to be larger). It highlighted the advice provided by Dr Booth that an increased amount of boat activity was the most common way the interview participants described impacts on wilderness and remoteness values followed by visibility of boats as a secondary factor. Drawing on the advice from Dr Booth, the s42A Report concluded increased vessel size could result in an increase in adverse effects on wilderness and remoteness values, as well as landscape and natural character values, depending on the scale of the increase.
165. The s42A Report noted caution should be exercised when considering whether provision should be made for increases in vessel size; and recommended increases in vessel size should be considered on a case-by-case basis through the resource consent process to allow the individual circumstances of the increase and its effects to be considered in the context of the operating area. It highlighted the provisions of PC5 provide a consenting pathway for increases in vessel size as a non-complying activity provided an applicant can demonstrate the effects of the proposal would be no more than minor or the proposal is not contrary to the objectives and policies of the relevant plans.
166. The s42A Report did not consider an additional matter was required relating to the values in the Fiordland (Te Moana o Atawhenua) Marine Act, as requested by FMG. It stated consideration of these was already provided for under Policy 16.2.2(1)(a), as it related to natural character, and 1(d), as it related to significant habitats of indigenous fauna and indigenous biological diversity; and noted the Explanation to the policy referred to the '*...a number of important marine areas identified as Marine Reserves and china shops*'.

167. The s42A Report noted Policy 16.2.2 was focused on the management of adverse effects from commercial surface water activities and was not focused on process matters. It considered recognising the role of FMG in this policy was not considered appropriate given the requested amendment was a process matter. It highlighted the important role of FMG was clearly stated in Section 13 of the Fiordland (Te Moana o Atawhenua) Marine Act.
168. The s42A Report agreed with FMG that amending the Explanation to make reference to the 'uninhabited nature of Fiordland' would add further context as to its unspoilt wilderness value; and partially agreed with the further submission of Real Journeys Ltd that there were existing areas of habitation for example Kisbee Lodge, as well as accommodation at Patea/Doubtful Sound and Piopiotahi/Milford Sound. It recommended an amendment to reflect Fiordland as being 'generally' free of habitation.
169. In response to a question at the hearing, Ms Robertson agreed use of the term 'generally' could be avoided by including reference to the few existing areas of habitation and considered this would be more certain.
170. The Council's Reply s42A Report recommended amending the following sentence in the Explanation as follows:
- 'The unspoilt nature, which ~~generally~~ has no habitation from the presence of for example bach's with the exception of Kisbee Lodge and limited habitation at discrete development nodes at Deep Cove and Piopiotahi / Milford Sound.'*
171. The s42A Report agreed referencing Rakiura/Stewart Island, as requested by FMG in the Explanation where it discusses displacement of users, would add valuable context as to the consequences of the deterioration of values in the Fiordland coastal environment. It considered it was not appropriate to amend the sentence 'For some people these values have been eroded' to 'In some areas of the Fiordland CE these values have been eroded' because a comprehensive assessment of the values had not yet been completed.
172. The s42A Report partially accepted the submission by Totally Tourism Ltd and agreed further comprehensive assessment was necessary to determine an appropriate threshold or carrying capacity for the Fiordland coastal environment.
173. The s42A Report rejected the Real Journeys Ltd submission to amend the Introduction to the policy by replacing 'avoid' with 'manage' to give clear direction that adverse effects on the significant values must not occur. It noted use of 'avoid' gives effect to Policies 11, 13 and 15 of the NZCPS.

174. The s42A Report rejected Real Journeys Ltd's request to reframe the policy to focus on the section 104D test. It considered the proposed policy framework provided sufficient direction to decision-makers as to the management of adverse effects of activities and the significance of the effects.
175. The s42A Report considered the amendments to Policy 16.2.2(3) sought by Real Journeys Ltd to focus on the maintenance of values rather than their protection should be considered within the context of Objective 16.1.1, which that seeks to maintain essential characteristics. It concluded that in some locations the use of 'protect' was appropriate (i.e., where values have not been degraded) but, that in other instances, the use of 'maintain' would be appropriate (i.e. where activity levels were impacting on values such as Piopiotahi/Milford Sound). It recommended Policy 16.2.2 (3) was amended to reflect both the protection and maintenance of values; and amend the Explanation, as requested by Real Journeys Ltd, to provide further clarity of the issue.
176. The Reply s42A Report rejected Mr Clarke's request to amend Policy 16.2.2 by adding 'inappropriate commercial surface water activities' because it would be less directive and introduces uncertainty as to what is inappropriate. It also rejected Mr Clarke's request to add 'remediate or mitigate' to Policy 16.2.2(2) because this would not give effect to the 'avoid' policies of the NZCPS; and his suggested amendments to Policy 16.2.2(3) because these were unnecessary. In relation to Policy 16.2.2(2)(d), it recommended retaining the wording recommended in Appendix A of the s42A Report.
177. The Reply s42A Report rejected the request by Real Journeys Ltd to focus the policy on the 'Internal Waters' rather than the 'Coastal Environment' for consistency with the other provisions of the RCP. It noted use of 'Coastal Environment' was intentional given CSWA could have adverse effects on the adjoining land and the requirement to give effect to the provisions of the NZCPS. It clarified the PC5 objective and policy direction provided for the consideration of adverse effects on the Coastal Environment, whereas the rule framework limited the scope to the Internal Waters given the focus was on CSWA within the more enclosed waters of Fiordland.

### **Evaluation**

178. The Panel agrees with the s42A Report that increased vessel size can adversely impact on landscape, natural character and amenity values. The Panel considers it is appropriate to assess any increase in vessel size as a non-complying activity given the potential for increased environmental impacts on significant environmental values. Allowing increases in vessel size

up to 40m could result in significant increases in cumulative effects, which will not 'hold the line' as intended until the RCP review is completed.

179. The Panel accepts the s42A Report recommendation that an additional matter is not required relating to the values in the Fiordland (Te Moana o Atawhenua) Marine Act, as requested by FMG, given the wording of Policy 16.2.2(1)(a) and 1(d); and no amendment to the Explanation is required.
180. The Panel agrees with the s42A Report and FMG that amending the Explanation to make reference to the 'uninhabited nature of Fiordland' is appropriate.
181. The Panel considers avoiding use of the term 'generally' in the Explanation and amending the wording as recommended in the Reply s42A Report provides clarity and certainty. However, the Panel considers the wording should be amended to refer to specific locations by using 'Cromarty' instead of 'Kisbee Lodge'.
182. The Panel agrees that referencing Rakiura/Stewart Island in the Explanation where it discusses displacement of users adds valuable context as to the consequences of the deterioration of values in the Fiordland coastal environment. The Panel agree it is not appropriate to amend the sentence 'For some people these values have been eroded' to 'In some areas of the Fiordland CE these values have been eroded' without further assessment.
183. The Panel agree with the s42A Report that replacing 'avoid' with 'manage' in the Introduction to the policy does not give effect to Policies 11, 13 and 15 of the NZCPS and the requirement to 'avoid' adverse effects on significant values.
184. The Panel agree with the Reply s42A Report that use of 'Coastal Environment' instead of 'Internal Waters' is appropriate given CWSA can have adverse effects on the adjacent land and the need to give effect to the provisions of the NZCPS.
185. The Panel agrees with the s42A Report that reframing the policy to focus on the section 104D test will not provide sufficient direction to decision-makers and consider this is unnecessary.
186. In considering Policy 16.2.2 within the context of Objective 16.1.1, the Panel agrees with the s42A Report that it is appropriate to amend Policy 16.2.2 (3) to reflect both the protection and maintenance of values. The Panel also agree with the s42A Report recommendation to amend the Explanation to provide further clarity of the issue.
187. The Panel agree with the Reply s42A Report recommendation not to add reference to 'inappropriate commercial surface water activities'; 'remediate or mitigate' to Policy 16.2.2(2); and amendments to Policy 16.2.2(3), for the reasons given.

188. The Panel has considered the amendments sought by Meridian Energy to provide exemptions for the operation of the MPS. For the reasons given above, the Panel do not consider this is appropriate.

**Recommendations**

189. The Panel accepts the s42A Report recommendation to amend the wording of Policy 16.2.2, as shown in Appendix A attached to the s42A Report.
190. The Panel accepts the s42A Report recommendation to amend the Explanation to Policy 16.2.2, as shown in Appendix A attached to the s42A Report, with the Hearing Panel's further amendment to the wording recommended in the Reply s42A as follows:

*'This unspoilt nature, ~~which generally~~ has no habitation from the presence of for example baches, with the exception of habitation at discrete development nodes at Cromarty, Deep Cove and Piopiotahi/Milford Sound, combined with its dominating and awe-inspiring landscapes and diverse array of indigenous biodiversity results in an area which is internationally, nationally, regionally, and culturally significant.*

**Policy 16.2.3 – Avoid or mitigate adverse effects on marine mammals**

191. TRoNT, TAMI and the Minister of Conservation supported Policy 16.2.3 and sought its retention. These submissions were opposed in the further submission by Real Journeys Ltd. The submissions by TRoNT and TAMI were supported by FMG.
192. Mr Egerton opposed Policy 16.2.3 and requested amendments to capture both commercial and non-commercial surface water activities. The Submitter considered there was a need to educate all users and noted inappropriate behaviour around marine mammals was often the result of a lack of understanding. This submission was supported by FMG.
193. FMG supported Policy 16.2.3 but sought amendments to the Explanation to include the consideration of new research outputs. This was supported by Real Journeys Ltd in further submissions.
194. Real Journeys Ltd opposed Policy 16.2.3 and sought amendments to ensure marine mammal protection was not eroded. It considered it had not been clearly demonstrated that commercial surface water activities were having adverse effects on marine mammals; and DOC should primarily have the role in managing vessel interactions with marine mammals. It noted concern regarding the inclusion of underwater noise as a consideration of effects on marine mammals and considered this was problematic and unwarranted given the effects of anthropogenic noise on marine mammals in Fiordland was poorly understood. It highlighted that in Fiordland vessel noise generally diminishes to an insignificant amount for at least 12 hours every day (overnight) i.e. the engine noise is not continuous like in other locations

around the world. It noted the existing dolphin protection zones were not set in stone and may change. The Submitter concluded the policy had the potential to restrict access, which was unreasonable on the available information. This was opposed in further submissions by TAMI.

195. Forest & Bird supported Policy 16.2.3 but sought to expand its scope by including reference to other marine species such as tawaki/Fiordland crested penguin, which were also susceptible to human disturbance. This submission was opposed in further submission by Real Journeys Ltd.
196. Meridian Energy opposed Policy 16.2.3 and sought amendments to exclude surface activities associated with the MPS. This submission was opposed by TAMI.
197. The s42A Report agreed that there was a need to educate all users (commercial and non-commercial) on methods to avoid and mitigate effects on marine mammals from vessel use. However, it noted the policy was specifically focused on commercial users, as it related to matters that should be considered through the resource consent process to avoid or mitigate effects on marine mammals. It noted education of non-commercial users was captured by Policy 16.2.5, which also discussed marine mammals. It concluded the broadening of Policy 16.2.3 would create duplication within Section 16 of the RCP and recommended no amendments to the policy.
198. The s42A Report agreed the Explanation to Policy 16.2.3 should be amended to capture new research outputs in recognition that research was constantly occurring within the Fiordland coastal environment. It noted mitigations and resource consent conditions should reflect recent research findings, as appropriate, which aligns with the wording of Policy 16.2.3(4).
199. The s42A Report considered it was not necessary to broaden the scope of the policy to include a wide range of marine species given the management of effects on indigenous biological diversity was already captured by Policy 16.2.2(1)(d).
200. The s42A Report noted DOC has specific functions for the management of marine mammals under the Marine Mammal Protection Act 1978 but highlighted the Council's responsibilities under section 30 of the RMA and the requirements of the NZCPS, including Policy 11, which requires the avoidance of adverse effects on threatened species and integrated management.
201. The s42A Report acknowledged surface water activities were only one of a number of factors potentially impacting on marine mammals within the Fiordland coastal environment. It stated there was no single piece of research directly linking stressors from surface water activities to

declining populations. It highlighted the evidence of Mr Rabel (Appendix C of the s42A Report) and the general ecological principle that increased environmental stress on an organism can reduce a species viability through energy loss from their stress response. It noted available research on marine mammals in Fiordland, referenced by Mr Rabel, focused on bottlenose dolphins and showed that dolphin behaviour changed because of vessel interaction and were detrimental stress responses.

202. The s42A Report highlighted Policy 3 of the NZCPS required a precautionary approach towards activities in the coastal environment where effects were little understood but potentially significantly adverse; and that Policy 11 of the NZCPS required adverse effects on indigenous taxa that are threatened and at risk, and their habitats, be avoided. It noted bottlenose dolphins in the Fiordland were listed as nationally threatened (DOC) and critically endangered (IUCN 2013). For these reasons, it concluded it was appropriate that Policy 16.2.3 included direction to enable the consideration of effects on these special species and marine mammals generally.
203. The s42A Report acknowledged there was limited research available relating to the impacts of underwater noise in the Fiordland but that; there was research in progress focused on dolphin acoustics in Fiordland. It noted Policy 16.2.3 seeks to avoid or mitigate adverse effects on marine mammals including by considering the level of underwater noise of a vessel and any methods proposed to minimise noise based on overseas studies, which have shown that vessel noise can adversely affect marine mammals. On this basis, it concluded it was appropriate that Policy 16.2.3 included reference to the consideration of the level of underwater noise generated by the activity and any methods proposed to minimise underwater noise.
204. The s42A Report recommended Policy 16.2.3(3) should be amended to focus on ‘where relevant, including conditions in resource consents focused on avoiding adverse effects on habitats which are particularly significant for marine mammals...’ to address the concern raised by Real Journeys Ltd. It noted the intention of clause 3 was to protect marine mammals and known significant habitats not to exclude surface water activities completely from the Fiordland CMA.
205. At the hearing, Ms Baker-Galloway submitted the management of vessel interactions with marine mammals was more appropriately managed by DOC under the Marine Mammal Protection Act 1978. She considered Policy 16.2.3 would create duplication and confusing with the DOC permitting process. Ms Black considered there was a risk the Council was out of

touch with measures required for marine mammals and with the 'Marine Mammal (and other wildlife) Code of Management Doubtful Sound/Patea'.

206. The Reply s42A Report included a memorandum from Mr Rabel addressing available information on the adverse effects of CSWA on marine mammals. He re-iterated that most information available on marine mammals related to bottlenose dolphin. He outlined the Codes of Practice for Piopiotahi/Milford Sound and Patea/Doubtful Sound had two main components - voluntary measures for tour behaviour around marine mammals; and the establishment of dolphin protection zones. He noted these measures were designed to reduce physical interactions and to protect critical habitats within the Fiordland Marine Area. He stated that survey results since the implementation of the codes suggested populations have stabilised and adverse effects had reduced. He suggested there was a need for further research to understand the extent to which vessel activity changes the acoustic environment of the fiords and the impacts of vessel noise.

#### **Evaluation**

207. The Panel considers management options to address adverse effects on marine mammals from non-commercial use and cruise ships is a matter for the wider RCP review process.
208. The Panel accepts there are scientific studies available that demonstrate adverse effects associated with boat activity and interactions with bottlenose dolphins in Fiordland. This information has been used to support the creation of dolphin protection zones in areas of critical habitat for bottlenose dolphins in Patea/Doubtful Sound. The research highlighted by Mr Rabel indicates implementation of the two existing codes of practice are reducing adverse effects on bottlenose dolphins. The Panel agrees with Mr Rabel that further work is required to understand the magnitude and extent of changes to the underwater acoustic environment.
209. The Panel accepts many of the marine mammals present in Fiordland waters are subject to Policy 11 of the NZCPS, which requires the avoidance of adverse effects on threatened and at risk species and their habitats and the avoidance of significant adverse effects on other indigenous species and their habitats. The Panel finds PC5 will only partly give effect to Policy 11.
210. The Panel agrees that the significance of the marine mammals present, the significance of the habitat, the potential for irreversible adverse effects and the lack of understanding of the effects of CSWA, warrants a precautionary approach to management. The Panel considers PC5 reflects this approach by 'holding the line' until further work is undertaken to inform the RCP review.



211. The Panel agrees with the s42A Report that consideration of adverse effects on other species is addressed in Policy 16.2.2.
212. The Panel agrees with the s42A Report recommendation to make the amendments shown in Appendix A to address the submission points of FMG and Real Journeys Ltd.
213. The Panel disagrees with Ms Baker-Galloway that Policy 16.2.3 will create duplication and confusion; and note this concern was not raised by the Minister of Conservation or DOC. The Panel is confident the Council and DOC will work together to implement the latest mitigation measures available at the time.
214. The Panel has considered the amendments sought by Meridian Energy to provide exemptions for the operation of the MPS. For the reasons given above, the Panel do not consider this is appropriate.

***Recommendations***

215. The Panel accepts the s42A Report recommendation to amend Policy 16.2.3 and the Explanation, as shown in Appendix A of the s42A Report.

**Policy 16.2.4 – Amount of commercial surface water activity in Milford Sound (deleted)**

216. Forest & Bird, the Minister of Conservation and Real Journeys Ltd supported the deletion of existing Policy 16.2.4. Real Journeys Ltd requested additional policy direction for how Piopiotahi/Milford Sound is to be managed.
217. The s42A Report considered policy direction for the management of Piopiotahi/Milford Sound will be addressed through the RCP review process.

***Evaluation***

218. The Panel considers it is appropriate to consider policy direction for the management of Piopiotahi/Milford Sound through the RCP review process given the limited scope of PC5.

***Recommendation***

219. The Panel accepts the s42A Report recommendation to delete Policy 16.2.4, as notified.

**Policy 16.2.4 – Restrictions on Commercial Day-trips in Patea/Doubtful Sound and Arms thereof**

220. The Minister of Conservation supported Policy 16.2.4, as notified. FMG supported the policy but requested reference was made to increasing fly-in-fly-out activities. The further submission by Real Journeys Ltd opposed the submission by FMG.
221. Real Journeys Ltd sought amendments to reflect gazetted place names. This submission was supported in further submissions by Milford Sound Tourism Ltd; and was opposed by TAMI.

222. The s42A Report acknowledged the consistency concerns raised by Real Journeys Ltd relating to some of the gazetted names and the proposal to use dual names with Te Reo Māori first in PC5. It noted dual place names for the fiords were gazetted at different times, which had resulted in some having their Te Reo Māori name before their English name and others are the other way around. It concluded dual place names should be used with Te Reo Māori first in line with guidance from the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa ‘The Standard for New Zealand place names’.
223. The s42A Report noted the focus of Policy 16.2.4 was on managing commercial day-trip vessel activity and that Policy 16.2.8 and Policy 16.2.13 provide for the consideration of activities that were ancillary to the primary surface water activity including helicopter transfers. It concluded there was sufficient scope within Policy 16.2.2, Policy 16.2.8 and Policy 16.2.13 to enable the consideration of helicopter transfers and their associated effects.

#### **Evaluation**

224. The Panel agrees it is appropriate to use dual place names with Te Reo Māori first and English second in accordance with guidelines. The Panel note this is consistent with the submissions received from TRoNT and TAMI.
225. The Panel agrees with the s42A Report that it is not necessary to include helicopter transfers in Policy 16.2.4 given the scope in Policy 16.2.2, Policy 16.2.8 and Policy 16.2.13 to enable the consideration of helicopter transfers and their associated effects.

#### **Recommendation**

226. The Panel accepts the s42A Report recommendation to retain Policy 16.2.4 as notified.

#### **Policy 16.2.5 – Non-commercial users**

227. FMG and the Minister of Conservation supported Policy 16.2.5. FMG sought additional clarification on how the Council would encourage visitors and users to use the Fiordland Marine Guardians Guide<sup>8</sup>. In further submissions, Real Journeys Ltd opposed the submission from the Minister of Conservation.
228. Real Journeys Ltd sought amendments to Policy 16.2.5 to include a requirement to adhere to the Fiordland Marine Regional Pathway Management Plan. In further submissions, TAMI noted this was legislated under the Southland Regional Pest Management Plan.
229. In evidence, Mr Clarke for Real Journeys Ltd proposed an amendment to Policy 16.2.5 to highlight the need for integrated management.

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<sup>8</sup> Fiordland Marine Guardians (2021) ‘Beneath the Reflections: A user’s guide to Fiordland (Te Moana o Atawhenua) Marine Area’

230. The s42A Report considered this Policy was the most appropriate method to address non-commercial users but acknowledged anecdotal information suggested recreational boat use in the Fiordland CMA was increasing and other management options to manage the adverse effects of increasing non-commercial use would be assessed through the wider RCP review process. It agreed with Real Journeys Ltd and recommended amendments to the Explanation to Policy 16.2.5 to the Fiordland Marine Regional Pathway Management Plan and the need for non-commercial users to maintain a Clean Vessel Pass. It acknowledged this was a key management tool in protection of the significant biodiversity values of Fiordland.
231. The s42A Report considered clarification regarding how users would be encouraged to familiarise themselves with the *Beneath the Reflections: Guide to Fiordland* was not appropriate as there were a range of ways in which that can occur, for example, through the Regional Harbourmaster or Council communications.
232. The Reply s42A Report responded to the amendment proposed by Mr Clarke and recommended Policy 16.2.5 was reworded as follows:

*'Using a range of non-regulatory tools, such as Codes of Practice, in collaboration with the Department of Conservation and the Harbour Master actively encourage non-commercial users of the internal waters of Fiordland to avoid or mitigate the adverse effects of their activities on natural character, natural features, landscape and amenity values, as well as areas of significant indigenous vegetation, significant habitats of indigenous fauna and marine mammals.'*

### **Evaluation**

233. The Panel considers concerns relating to non-commercial use and management options to address adverse effects are matters to be addressed in the RCP review process. Consideration of how users will be encouraged to refer to the FMG Guide will be part of this.
234. The Panel agrees the proposed amendments to the Explanation to reference the Fiordland Marine Regional Pathway Management Plan and the need for non-commercial users to maintain a Clean Vessel Pass are appropriate.
235. The Panel agrees the amendments to the Policy proposed in the Reply s42A Report, in response to the evidence of Mr Clarke, clarify that a range of non-regulatory tools will be used in collaboration with DOC and are appropriate.

### **Recommendation**

236. The Panel accepts the Reply s42A Report recommendation to amend the wording of Policy 16.2.5, as shown in Appendix A attached to the s42A Report, with the further amendment recommended in the Reply s42A Report set out above.

237. The Panel accepts the s42A Report recommendation to amend the Explanation to Policy 16.2.5, as shown in Appendix A attached to the s42A Report.

**Policy 16.2.6 – Commercial surface water activities up to and including 15 February 1997 (deleted)**

238. The Minister of Conservation supported the proposed deletion of Policy 16.2.6.

***Recommendation***

239. The Panel accepts the s42A Report recommendation to delete Policy 16.2.4, as notified.

**Policy 16.2.6 – Fiord Terminology**

240. FMG, the Minister of Conservation, TRoNT, TAMI and Forest & Bird supported the changes made to Policy 16.2.6.

241. TRoNT and TAMI sought that Te Reo Māori was consistently used before English to ensure consistency in the order of language. In further submissions, FMG supported these submissions.

242. Real Journeys Ltd supported the changes made to Policy 16.2.6, in principle, but considered not using the fiords gazetted place names created inconsistency. TAMI opposed this submission in further submissions.

243. The s42A Report acknowledged Milford Sound/Piopiotahi and Doubtful Sound/Patea were official gazetted names but considered unofficial names (in this case, Piopiotahi/Milford Sound and Patea/Doubtful Sound) could be used provided this was in accordance with section 32(2) of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008. To comply, it noted that Section 16 of the RCP would need to state that Piopiotahi/Milford Sound and Patea/Doubtful Sound are not the official geographic names.

244. The s42A Report drew on the guidance for dual names in ‘The Standard for New Zealand place names’<sup>9</sup> that the original Māori name should be the first part of a dual name in recognition of the right of first discovery. It recommended the dual names Piopiotahi/Milford Sound and Patea/Doubtful Sound should be used in the list of fiords in the Explanation for Policy 16.2.6.

***Evaluation***

245. The Panel agrees it is appropriate to use dual place names with Te Reo Māori first and English second in accordance with guidelines. The Panel note this is consistent with the submissions received from TRoNT and TAMI.

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<sup>9</sup> New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa (2020) ‘Standard for New Zealand names’

**Recommendation**

246. The Panel accepts the s42A Report recommendation to amend the Explanation to Policy 16.2.6, as shown in Appendix A of the s42A Report; and to update the RCP Glossary using Piopiotahi/Milford Sound and Patea/Doubtful Sound.

**Policy 16.2.7 – Remote and wilderness values in the fiords, inlets and arms**

247. The Minister of Conservation and TAMI supported Policy 16.2.7 and sought its retention. Real Journeys Ltd opposed these submissions in further submissions.

248. FMG supported Policy 16.2.7 but raised concern that Tamatea/Dusky Sound and Te Puitaha/Breaksea Sound had been demoted from providing a wilderness experience to a remote experience; and questioned how the policy aligned with the Cruise Ship Deed of Agreement.

249. Forest & Bird supported Policy 16.2.7, as it provides for management of recreational values, provided recreational activities do not cause adverse effects.

250. Meridian Energy opposed the policy and sought amendments to recognise the practical and locational constraints and the specific circumstances related to the management of the MPS. TAMI opposed this submission in further submissions.

251. Real Journeys Ltd sought amendments to Policy 16.2.7 to address the disconnect between the policy heading and the policy; replace the word ‘experience’ with ‘values’; provided more direction for new or intensifying activities as non-complying activities; and acknowledge the varying characteristics of the more remote fiords compared to the more developed Piopiotahi/Milford Sound and Patea/Doubtful Sound (in particular Taipaririki/Deep Cove). This was supported in further submissions by Milford Sound Tourism Ltd; and opposed by TAMI.

252. The s42A Report noted non-commercial vessel use was currently managed through non-regulatory methods; and non-commercial vessel use would be assessed through the wider RCP review process. It highlighted cruise ships were currently managed under Section 13 of the RCP and the Cruise Ship Deed of Agreement; and that these plan provisions would be reviewed through the wider RCP review.

253. In relation to the proposed management of Tamatea/Dusky Sound and Te Puitaha/Breaksea Sound for a remote experience, the s42A Report noted consideration had been given to the level of use, both recreational and commercial, and aircraft and vessel, as well as the surrounding land management. It highlighted the majority of national park land surrounding

Tamatea/Dusky Sound and Te Puitaha/Breaksea Sound was managed for a remote experience (except for the southern side of Tamatea/Dusky Sound); commercial surface water activity use of Tamatea/Dusky Sound and Te Puitaha/Breaksea Sound was lower than Patea/Doubtful Sound; aircraft can land (in specific locations) in Tamatea/Dusky Sound as a permitted activity; cruise ships can access Tamatea/Dusky Sound and Te Puitaha/Breaksea Sound (in certain locations); and recent information suggested recreational use was increasing in these fiords. On this basis, it concluded the current state of these fiords was more closely aligned with a remote experience than wilderness.

254. The s42A Report agreed with Real Journeys Ltd and recommended 'experience' was replaced with 'values'. It agreed there was a disconnect between the policy heading and the policy and recommended the heading be amended. It agreed that development and activity at Taipaririki/Deep Cove had changed its recreational value compared to Patea/Doubtful Sound more generally; and recommended Taipaririki/Deep Cove was added to clause 5 of Policy 16.2.7, which recognised the similarities in management approaches to maintain the recreational and visitor values present for Taipaririki/Deep Cove and Piopiotahi/Milford Sound. It highlighted this approach recognised, in part, the concerns of Meridian Energy.
255. At the hearing, Ms Black, for Real Journeys Ltd, considered Policy 16.2.7 did not provide sufficient policy direction to address the second limb of the s104D gateway test. She elaborated on the different values, use patterns, carrying capacity and characteristics of the different fiords. She noted the unfettered intensification of cruise ship activity was impacting significant values of the Fiordland CMA. She also noted the proliferation of moorings in recognised anchorages to support surface water activities.
256. Mr Clarke's planning evidence for Realnz proposed six new policies to replace Policy 16.2.7 (shown in Appendix 1 of this statement of evidence). He considered plan users would be better served by more site-specific policies that provided greater direction as to how the values of each of the distinct fiord complexes should be managed.
257. In response to the planning evidence of Ms Young for the Minister of Conservation in relation to the wording of the Policy heading, the Reply s42A Report recommended the following amendments:
- 'Policy 16.2.7 – ~~Remote and wilderness~~ Protection and maintenance of remoteness, wilderness and recreational values in the fiords, inlets and arms'*
258. In response to the evidence of Ms Black and Mr Clarke, the Reply s42A Report concluded the proposed six new policies were less clear, less directive and introduced uncertain terms (e.g.

‘inappropriate activities’ and ‘avoid as far as practicable’); and on this basis recommended the changes sought be rejected.

**Evaluation**

259. The Panel accepts the s42A Report reasoning for managing Tamatea/Dusky Sound and Te Puitaha/Breaksea Sound for a remote experience given to the existing level of use and the surrounding land management. The Panel considers this will be considered further during the RCP review process and acknowledge this Policy is an interim step.
260. The Panel considers the amended wording to the Policy heading set out in the Reply s42A Report addresses the disconnect highlighted and improves the wording.
261. The Panel agrees with the Reply s42A Report that the proposed six new policies to replace Policy 16.2.7 outlined in the evidence of Mr Clarke are less directive and certain.
262. The Panel accepts the s42A Report recommendation to replace ‘experience’ was replaced with ‘values’; and to add Taipaririki/Deep Cove to add clause 5.

**Recommendation**

263. The Panel accepts the Reply s42A Report recommendation to amend the wording of Policy 16.2.7, as shown in Appendix A attached to the s42A Report, with the further amendment recommended in the Reply s42A Report set out above.

**Policy 16.2.8 – Impacts on wilderness and remoteness values**

264. The Minister of Conservation and TAMI supported Policy 16.2.8. Real Journeys Ltd’s further submissions opposed both these submissions.
265. Forest & Bird supported Policy 16.2.8 but requested definitions for ‘wilderness and remoteness values’ within the glossary. This submission was supported in further submissions by Real Journeys Ltd.
266. Mr Egerton opposed Policy 16.2.8 and sought inclusion of permitted increase to a maximum vessel length, for example, 35–40m, and a capping of the number of vessels at present approved levels. This submission was supported in further submissions by Real Journeys Ltd.
267. FMG supported the Policy 16.2.8 but sought the inclusion of two additional matters that decision-makers could consider related to the concentration of consented activity in any particular area and provisions to prevent the continuous operation of any surface water activity consent on a daily basis outside of Piopiotahi/Milford Sound. FMG also sought amendment to clause 5 to include helicopter landings below MHWS and on vessel-based landing platforms. Real Journeys Ltd opposed this submission.

268. At the hearing, FMG sought a further change to the s42A Report's recommended amendment to clause 4 as follows:

*'cumulative effects including increasing numbers of ships and structures such as barges and concentration of these ~~ships-vessels~~.'*

269. Real Journeys Ltd sought amendments to Policy 16.2.8 to increase clarity within the policy; focus on 'Internal Waters' rather than the 'Coastal Environment'; amend clause 3 'the scale, bulk and form of the ship exterior'; and add to the Explanation to Policy 16.2.8 to provide clarity regarding how helicopters are used in Fiordland. This submission was supported in further submissions by Milford Sound Tourism Ltd; and opposed by TAMI, while acknowledging the comments regarding helicopter use may be valid.

270. The s42A Report noted consideration of including a vessel cap or allowing for increases in vessel size had been addressed in relation to Policy 16.2.2. It noted the continuous operation of any surface water activity consent on a daily basis would be captured under clause 2 '*frequency of use*'; helicopter landings and take-offs were captured by clause 5 of Policy 16.2.8, which directs consideration of helicopter landings and take-offs associated with commercial surface water activities; and any concentrations of consented activity in particular areas could be considered under clause 4 '*cumulative effects including increasing number of ships*'. However, for clarity the s42A Report recommend amending clause 4 as follows: '*cumulative effects including increasing number of ships and concentration of ships*'.

271. The s42A Report considered use of 'Internal Water's instead of 'Coastal Environment' narrowed the scope and noted further the analysis of this requested change was provided in relation to Objective 16.1.1. It recommended the reference to increasing vessel size should be retained to ensure increasing vessel size is considered by decision-makers; and agreed clause 1 could be amended to increase clarity for plan users given the intention is to assess any environmental effects from increasing vessel size from the consented baseline in place when PC5 was notified.

272. The s42A Report considered the requested addition of a new clause 'the ability of the landscape to absorb change' by Real Journeys Ltd was unnecessary because this could be considered under clause 6 of Policy 16.2.8 relation to the location of the activity. However, it agreed this could be clarified and recommended adding the '*...of the landscape, including its ability to absorb change.*' to the end of clause 6. In relation to the requested amendments to clause 9, it noted the policy was intended to apply to the consideration of new and existing structures. It agreed the clarity of clause 7 would be increased by replacing 'non-natural' with



‘anthropogenic’ noise and was appropriate. It partially accepted the request in relation to clause 5 was amended to read ‘...*ancillary activity (including helicopters, tender craft and kayaks) associated with the commercial surface water activity proposal in particular increases in ancillary activity levels above those levels lawfully established at 18 July 2022*’. It also accepted the other matters sought by Real Journeys Ltd added clarity to Policy 16.2.8 and recommended amendment to reflect this.

273. The s42A Report noted the inclusion of a definition for ‘wilderness’ and ‘remoteness’ values were addressed in additions to Glossary section.

### **Evaluation**

274. The Panel agrees that effects of an increase in vessel size should be assessed, as a non-complying activity given the intention of PC5 is to prevent any increase of intensification of the effects of CSWA.
275. The Panel agree with the further amendments to Policy 16.2.8(4) proposed at the hearing by FMG are appropriate and improve the clarity. The Panel considers the wording covers both ships/vessels and structures; and it is not necessary to give examples of ‘barges’.
276. The Panel considers the amendments recommended in the s42A Report address the concerns raised by Real Journeys Ltd.
277. The Panel considers inclusion of a definition for ‘wilderness’ and ‘remoteness’ values in the additions to Glossary section below.

### **Recommendation**

278. The Panel accepts the s42A Report recommendation to amend the wording of Policy 16.2.8, as shown in Appendix A attached to the s42A Report; with amendments to clause 4 as follows:

*‘cumulative effects including increasing numbers of ships and structures and concentration of these ships.’*

### **Policy 16.2.9 – Use of Patea/Doubtful Sound and Te Awa-o-Tū/Thompson Sound as Thoroughfares**

279. The Minister of Conservation and TAMI supported the changes made to Policy 16.2.9. Real Journey Ltd opposed the Minister of Conservation’s submission to retain the policy as notified; and FMG supported TAMI’s submission.
280. FMG supported the changes to the policy but sought changes to include reference to ‘vessel refuelling’ in addition to maintenance and repairs in clause 2.
281. Real Journeys Ltd supported the changes but sought the gazetted place name Patea/Doubtful Sound be used; ‘pick up or off-load passengers’ be replaced with ‘embark or disembark passengers’; clause 5 should include ‘waste’ (i.e. in addition to the off-load of ‘cargo’) in

recognition that Taipaririki/Deep Cove was one of only two places in Fiordland where wastewater (sewage) could be discharged ashore.

282. The s42A Report agreed that ‘vessel refuelling’ should be included in clause 2; and ‘waste or wastewater (sewage)’ should be included in clause 5. It considered these changes recognised the use of Patea/Doubtful Sound and Te Awa-o-Tū/Thompson Sound as thoroughfares for services for commercial surface water activities. It noted use of the gazette place names was addressed in relation to Policy 16.2.6 – Fiord Terminology, above. It agreed that the amending the rewording to ‘embark or disembark’ was appropriate because the term ‘pick up’ was only used in Policy 16.2.9 and in the Explanation for the policy and other relevant definitions use ‘embarkation’ and ‘disembarkation’. It agreed the amended wording provided by the Submitter was also considered appropriate for the Explanation for the policy.

### ***Evaluation***

283. The Panel considers the amendments recommended in the s42A Report address the concerns raised in submissions and recognises the use of Patea/Doubtful Sound and Te Awa-o-Tū/Thompson Sound as thoroughfares for services for commercial surface water activities.

### ***Recommendation***

284. The Panel accepts the s42A Report recommendation to amend the wording of Policy 16.2.9, as shown in Appendix A attached to the s42A Report.

### **Policy 16.2.10 – Monitoring surface water activities including ancillary activities and their effects**

285. The Minister of Conservation and Real Journeys Ltd supported Policy 16.2.10 and sought its retention as notified.
286. FMG supported the policy but sought the geographic scope of activities be included within the policy; and requested changes to the Explanation to state that monitoring ‘will’ be undertaken rather than ‘should’ be undertaken.
287. The s42A Report agreed it was appropriate to add ‘geographic scope’, as well as ‘scale’ and ‘distribution’ of surface water activities and to adding further clarity to the policy as sought by FMG. It did not agree the Explanation to the policy should be amended to ‘will’ obtain baseline information from ‘should’ obtain baseline information given monitoring programmes and funding for them occurs through the Long-term Plan process, which sits outside the PC5 process.
288. At the hearing, FMG disagreed with the s42A Report analysis and noted that monitoring was a requirement and not an option.

**Evaluation**

289. The Panel agrees with the s42A Report that ‘geographic scope’ should be added to the policy wording and ‘(including their ancillary activities)’ should be added to the Explanation to provide further clarity.
290. The Panel acknowledges the Council is required to undertake monitoring functions under the RMA but agree with the s42A Report that ‘should’ is appropriate given its use in the Explanation.

**Recommendations**

291. The Panel accepts the s42A Report recommendation to amend the wording of Policy 16.2.10, as shown in Appendix A attached to the s42A Report.

**Policy 16.2.11 – Fiordland National Park Management Plan**

292. TAMI, the Minister of Conservation, Forest & Bird and FGM supported Policy 16.2.11.
293. Mr Egerton noted the Fiordland National Park Management Plan (**FNPMP**) was out of date and not fit for purpose; and considered the FNPMP should take into account the RCP, not the other way around.
294. Real Journeys Ltd sought amendments to Policy 16.2.11 to change the scope of the policy from ‘Coastal Environment’ to ‘Internal Waters’; and to improve clarity given the policy raises two elements. TAMI opposed the requested scope change.
295. The s42A Report acknowledged the FNPMP was an older document that was due for review but noted it was currently the operative plan for Fiordland National Park, Council must have regard to under Section 66(2)(c)(i) of the RMA. It also highlighted Policy 5 of the NZCPS required consideration of effects on lands or waters in the coastal environment held or managed under any Acts for conservation or protection purposes. It concluded it was inappropriate to restrict the scope of this policy to Internal Waters, as requested by Real Journeys Ltd. It agreed separating the policy into two parts would increase clarity for plan users.

**Evaluation**

296. The Panel accepts this policy is focused on integrated management and consideration of effects across jurisdictional boundaries to achieve the integrated management of the Coastal Environment. The Panel agrees with the Reporting Officer that it is not appropriate to restrict the scope of the policy to the Internal Waters.

297. The Panel agrees the policy is improved by separating the two elements into two parts and rewording the second part.

**Recommendation**

298. The Panel accepts the s42A Report recommendation to amend the wording of Policy 16.2.11, as shown in Appendix A attached to the s42A Report.

**Policy 16.2.12 – Research Ships**

299. The Minister of Conservation supported the changes made to Policy 16.2.12 and the additional explanation of how surface water activities for the purpose of research or statutory purposes are provided for in the RCP.

300. FMG supported the changes to the Policy, with amendments to acknowledge the role of such vessels and institutions in increasing knowledge and understanding of the Fiordland marine environment; and rewording '*...be provided for*' to be less ambiguous.

301. The University of Otago opposed the changes to the policy as the Plan Change would significantly limit any future research by Rule 16.2.2 deeming the University's research is not 'genuine research' and the policy and rule conflating research for compliance.

302. The s42A Report acknowledged that building a solid scientific base was crucial. It agreed an acknowledgement of the value of research activity carried out by research organisations such as universities and Crown Research Institutes within the coastal environment of Fiordland should be included in the Explanation; and to recognise other organisations, such as industry bodies and private companies, that are funding or have internal capability for carrying out research in Fiordland should be referenced in the Explanation to the policy.

303. The s42A Report disagreed that the wording '*...be provided for*' was ambiguous given the policy stated - '*Provide for ships that facilitate monitoring and research on the coastal marine area of Fiordland*' and rules implement that.

304. The s42A Report highlighted Rule 16.2.1 permitted CSWA within the internal waters of Fiordland for the purpose of performing a statutory function of a central or local government agency, or statutory body, which would include the utilisation of ships by central or local government agencies, statutory bodies or their contractors, undertaking a statutory function of the agency or body, such as monitoring the state of the environment. It acknowledged Rule 16.2.1 would not apply to the utilisation of ships by universities, private research institutions and crown research institutions undertaking research. It noted research activities

where the primary purpose is for other purposes (such as individual research or university thesis) were subject to Rule 16.2.2, as stated in the Explanation for Rule 16.2.1.

305. The s42A Report highlighted Rule 16.2.2 specially related to research ships and provided for use of a ship for the purposes of assessing the effect of activities within the internal waters of Fiordland; and that all other activities undertaken for research purposes require resource consent as a discretionary activity. It noted the University of Otago held a resource consent to undertake commercial surface water activities within the Fiordland CMA and could continue current research levels at current consent levels. It noted that despite the benefits and value of research activities, research activities that use vessels have the potential to impact on the significant values of the Fiordland coastal environment the same as other CSWA and it was important potential adverse effects of these activities can be considered to ensure the objectives of the NZCPS, SRPS and the RCP were achieved. On this basis, it concluded the provisions of PC5 were appropriate as they provided for research activities within the scope of Policy 16.2.2.
306. The s42A Report considered it was appropriate to amend the Explanation to Rule 16.2.2 to clarify that Rule 16.2.1 did not apply to the utilisation of ships by universities, private research institutions and crown research institutions undertaking research and was provided for as a discretionary activity under Rule 16.2.2 – Research ships.

### ***Evaluation***

307. The Panel acknowledges the critical importance of research and scientific studies in informing the management of activities within the Fiordland coastal environment and protecting its significant values.
308. The Panel agrees with the s42A Report that wording of the policy is sufficient in terms of the reference to '*... be provided for*' given the wording of the policy as a whole.
309. The Panel accepts the Policy and associated Rules provide an appropriate consent pathway for activities undertaken by universities, private research institutions and crown research institutions undertaking research as a discretionary activity under Rule 16.2.2 – Research ships. The Panel agrees it is important that any adverse effects of such activity (including cumulative effects) on significant environmental values can be considered and managed appropriately to achieve the outcomes sought by the NZCPS, SRPS and RCP.
310. The Panel agrees the recommended addition to the Explanation of Rule 16.2.2 improves clarity for plan users.

**Recommendation**

311. The Panel accepts the s42A Report recommendation to amend the wording of Policy 16.2.12, as shown in Appendix A attached to the s42A Report.

**Policy 16.2.13 – Activities that are ancillary to a principal commercial surface water activity**

312. TRoNT, TAMI, FMG and the Minister of Conservation supported Policy 16.2.13.

313. Real Journeys Ltd sought amendments to clarify that the policy was focused on commercial ancillary activities rather than all ancillary activities that take place for example pest control activities. TAMI opposed this amendment in further submissions and FMG supported the requested amendment.

314. The s42A Report noted Policy 16.2.13 was intended to capture all ancillary activities associated with the use of a ship being used to undertake CSWA. It acknowledged many commercial operators were involved in extremely beneficial volunteer work for the environment through their pest control and maintenance work. However, it noted the definition of ‘Commercial Surface Water Activities’ intentionally included ships offered or used for hire or reward which would include some pest control activities (and their ancillary activities). It highlighted Rule 16.2.1(6) provided for CSWA performing a statutory function of a central or local government agency or statutory body as a permitted activity, which may include activities such as pest control or track maintenance occurring on public conservation land.

**Evaluation**

315. The Panel accepts Policy 16.2.13 was intended to capture all ancillary activities associated with the use of a ship being used to undertake CSWA. The Panel considers the provisions appropriately provide for CSWA performing a statutory function of a central or local government agency or statutory body.

**Recommendation**

316. The Panel accepts the s42A Report recommendation to retain Policy 16.2.13, as notified.

**Policy 16.2.14 – Statutory function and environmental clean-up activities**

317. The Minister of Conservation supported the changes made to Policy 16.2.14.

318. FMG supported the changes made to Policy 16.2.14 with the following addition: ‘...or *environmental clean-up work such as that carried out by the Southern Coastal Charitable Trust...*’ to improve the clarity.

319. TRoNT and TAMI supported the changes made to Policy 16.2.14 but did not support inclusion of companies into Policy 16.2.14 because a consent should be required to ensure there was oversight of the scope and nature of the activities and prevent ‘incremental creep’ of activities. These submissions were supported in further submission by FMG.
320. The s42A Report acknowledged the contribution made by businesses and organisations towards clean-ups in the Fiordland coastal environment. It considered Policy 16.2.14(b) appropriately provided for the use of ships in the internal waters of Fiordland that are undertaking environmental clean-up work in accordance with any statutory, regulatory or contractual obligation, or as part of an organised clean-up programme. It acknowledged the clean-ups of the Fiordland coast undertaken by Southern Coastal Charitable Trust but considered the policy provided for utilisation of ships in the internal waters of Fiordland for that purpose. It concluded it was not necessary to make specific reference to the Trust in the Policy given it was undertaken ‘...as part of an organised clean-up programme’.

***Evaluation***

321. The Panel agrees with the s42A Report that it is not necessary to make specific references to any company or organisation in the Policy or its Explanation given organised clean-up programmes are provided.

***Recommendation***

322. The Panel accepts the s42A Report recommendation to retain Policy 16.2.14, as notified.

**Policy 16.2.15 – Consent term**

323. CRA8 Rock Lobster Industry, the Minister of Conservation and Forest & Bird supported Policy 16.2.15. Real Journeys Ltd opposed the submission by the Minister of Conservation in further submissions.
324. FMG supported the policy but sought inclusion of a maximum consent term to better enable visitor pressure to be managed. This submission was opposed in further submissions by Real Journeys Ltd.
325. TRoNT and TAMI supported the policy but sought amendments to the Explanation to:
- expand the scope on engagement of cultural values from CMA values to CE values;
  - reference Iwi Management Plans and successors to Te Tangi a Tauira;
  - expand scope of engagement for consent applicants to include engagement with papatipu rūnanga in addition to Te Ao Marama Inc.
326. Real Journeys Ltd opposed both these submissions in further submission; and FMG supported both these submissions.

327. Real Journeys Ltd opposed Policy 16.2.15 because it was not warranted and created unjustified uncertainty regarding surety of tenure for consent holders. The Submitter sought deletion of clause (b) that relates to shorter consent terms where there was uncertainty regarding adverse effects; deletion of ‘permanence, and economic life’; and deletion of clause (e) that relates to common expiry dates for resource consents. In further submissions, TAMI opposed this submission.
328. The s42A Report recommend Policy 16.2.15 should not be amended to include a maximum consent term given this was a matter for decision-makers when determining resource consents for commercial surface water activities and their associated effects on a case-by-case basis. It highlighted section 123 of the RMA provided direction regarding consent terms.
329. The s42A Report considered the intensity and impact of a proposal would be considered through the resource consent process and whether or not to grant a resource consent and was not a matter that should determine the duration of a resource consent.
330. The s42A Report disagreed that Policy 16.2.15 was not warranted and created unjustified uncertainty. It noted that when determining the appropriate consent term, a decision-makers’ discretion was not limited; and a reduced duration from the maximum limits set out in section 123 of the RMA could be appropriate provided those reasons were detailed in the resource consent decision. It highlighted values of the Fiordland coastal environment were of international, national, and regional significance and the clear national policy direction for the management of the coastal environment in the NZCPS provision. It considered inclusion of Policy 16.2.15 provided transparency for applicants and provides opportunity for applicants to address those matters identified in their resource consent applications. It recommended Policy 16.2.15 be retained to ensure the consent term imposed is commensurate with the activity and its associated adverse effects.
331. The s42A Report recommended Policy 16.2.15(b) was retained and clarified by including ‘*for proposals that did not lawfully exist as at 18 July 2022*’ at the beginning of the clause. It considered that this was an efficient and effective way to achieve the objectives of the RCP; and temporary measures until a carrying capacity framework was developed through the wider RCP review. It noted shorter consent terms for intensification proposals may be appropriate to align resource consent expiry dates with timeframes for the RCP review.
332. The s42A Report clarified that assessment of the value, permanence, and economic life of the proposal under Policy 16.2.15(d) was a matter for an applicant to address in a resource consent application. It noted the assessment provided by an applicant would be considered by



the Consent Authority through the resource consent process. It considered the permanence and economic life of commercial surface water vessels and/or infrastructure supporting the vessels would allow, if appropriate, the consent term to match that of expected life of the vessel or its supporting infrastructure. On this basis, the s42A Report recommended to retain clause (d) of Policy 16.2.15.

333. The s42A Report noted Policy 16.2.15(e) does not require the implementation of a common expiry date; it directs decision-makers to consider whether imposing a common expiry date is desirable. It highlighted a common expiry date may be desirable to assist in managing the cumulative effects of surface water activities in a particular area of the Fiordland coastal environment. It considered clause (e) was an effective and efficient option to manage the cumulative effects of surface water activities; and recommend clause (e) was retained.
334. The s42A Report recommended reference to ‘codes’ in Policy 16.2.15(g), would narrow the scope of the clause to only codes of practices whereas the clause was focused on the adoption of any practices, which may include mitigations that sit outside of codes of practice documents.
335. The s42A Report recommended the amendments requested by TAMI and TRoNT have requested the Explanation to the policy to provide further clarity with respect to cultural values, who consent applicants are encouraged to discuss their applications with and future proofing the section by including any successors to Te Tangi a Tauira – the Cry of the People.

### ***Evaluation***

336. The Panel considers Policy 16.2.15 is warranted to provide guidance for decision-makers on appropriate consent terms for CSWA. The Panel agrees this should be considered on a case-by-case basis and that a decision-maker’s discretion should not be limited to a maximum consent term.
337. The Panel agrees that recommended Policy 16.2.15(b) should be retained and clarified by including ‘...for proposals that did not lawfully exist as at 18 July 2022’ at the beginning of the clause; and Policy 16.2.15(d), (e) and (g) should be retained as notified for the reasons outlined in the s42A Report.
338. The Panel agrees with the s42A Report that the amendments to the Explanation requested by TAMI and TRoNT are appropriate.

**Recommendation**

339. The Panel accepts the s42A Report recommendation to amend the wording of Policy 16.2.15, as shown in Appendix A attached to the s42A Report.

**Rule 16.2.1 – Commercial surface water activities**

340. TRoNT, TAMI and the Minister of Conservation supported Rule 16.2.1 and sought it be retained as notified. TRoNT and TAMI sought there was no exclusion from this requirement for commercial operators undertaking important environmental activities to ensure there is oversight of the scope and nature of the activities.

341. Meridian Energy considered the proposed changes to Rule 16.2.1 had the potential to impact on the ability to undertake existing surface water activities associated with the MPS due to the intermittent nature of the activities. The Submitter requested a new clause is included that provides for activities associated with the MPS to be a discretionary activity. This submission was opposed in the further submission from TAMI.

342. Real Journeys Ltd provisionally supported Rule 16.2.1 provided the Council quickly progressed the review of the RCP, as well as a number of other amendments sought. This submission is opposed by TAMI in further submissions.

343. Ms Baker-Galloway's legal submissions clarified Real Journey Ltd sought to change the activity status of Rule 16.2.1 from non-complying to discretionary to allow for diversification of experiences and new competition.

344. Totally Tourism requested allowance be made within the rule to enable the replacement of vessels with more fuel-efficient vessels that may carry more passengers but do less trips. This submission was supported in further submissions by Real Journeys Ltd.

345. The s42A Report noted some surface water activities associated within the MPS may fall within the definition of commercial surface water activities and may require resource consent. It considered that further information on the scope, nature and frequency of surface water activities associated with the MPS was needed to make recommendations on amendments.

346. The s42A Report agreed reference to 'overnight' should be deleted from clause 5 of Rule 16.2.1, as requested. It considered making activities such as undertaking pest control, structure maintenance/repairs and hull inspections permitted activities risked increasing activity and adverse effects, which would be inconsistent with the objectives and policies PC5 and the NZCPS. It rejected including new proposed clause 6(c) to retain the status quo. It noted that under the definition of CSWA operators charging more than operating costs

required resource consent, whereas vessel operators only recovering operating costs would fall outside the definition.

347. The s42A Report recommended no changes to Rule 16.2.1 (6)(b) to include inspection activities (e.g. structures) because the vessels should be subject to the same requirements as other vessels operating in the area. It agreed the scope of clause 6(b) should be expanded to include unwanted organism removal. It agreed the use of commercial surface water ships for the removal of 'unwanted organisms' in accordance with statutory or regulatory requirements or as part of an organised clean up should be permitted within the Fiordland coastal environment; but did not agree the scope of clause 6(b) needed to be widened to provide for pest removal activities generally. It noted that 'pest species' captured a range of organisms as defined in the Biosecurity Act 1993 and would significantly widen the scope of the permitted activity rule and had the potential to result in increased adverse effects on the significant values of the Fiordland coastal environment.
348. The s42A Report recommended minor changes to the Explanation, as requested by Real Journeys Ltd; but did not recommend reinstating reference to discharges of rubbish and sewage because it creates confusion regarding what was appropriate and can occur and what was not appropriate. It noted that the discharge of rubbish and sewage within the Fiordland CMA was not considered appropriate and was managed under the Resource Management (Marine Pollutions) Regulations.
349. The s42A Report considered it was inappropriate to provide an easier consenting pathway for increasing vessel size given vessel size affects visibility, which was directly related to adverse effects on wilderness and remoteness values as well as adverse effects on landscape and natural character values. It highlighted Rule 16.2.1 provided a consenting pathway for considering the appropriateness of any changes to the existing activity and the effects of increasing vessel or number of trips as a non-complying activity.

### ***Evaluation***

350. The Panel agrees with the s42A Report that without further information from Meridian Energy regarding the scope, nature and frequency of surface water activities associated with the MPS it is not possible to provide a new rule.
351. The Panel considers any increases in vessel size or changes in trip numbers should be considered under Rule 16.2.1 as a non-complying activity to enable an assessment of environmental effects. The Panel considers a non-complying activity status is appropriate

given the significant values at risk and the uncertainties related to existing adverse effects on these values.

352. The Panel accepts the s42A Report recommendation to delete 'overnight' from clause 5 of Rule 16.2.1, as requested.
353. The Panel agrees with the s42A Report that permitting activities such as undertaking pest control, structure maintenance/repairs and hull inspections permitted activities risks increasing activity and adverse effects, and would be inconsistent with the objectives and policies PC5 and the NZCPS.
354. The Panel agrees with the s42A Report that a new proposed clause 6(c) to retain the status quo is not necessary.
355. The Panel accepts the s42A Report recommendation to make minor changes to the Explanation, including not reinstating reference to discharges of rubbish and sewage.

***Recommendation***

356. The Panel accepts the s42A Report recommendation to amend the wording of Rule 16.2.1, as shown in Appendix A attached to the s42A Report.

**Rule 16.2.2 – Research Ships**

357. The Minister of Conservation supported Rule 16.2.2 and sought it be retained as notified.
358. FMG noted concern the Explanation to the rule did not describe the value of research that had collectively informed management of the Fiordland marine area and the support of FMG for the continuation of this research. The Submitter expected management agencies to encourage research by removing barriers to entry, whilst also striking a balance with respect to management of effects. The Submitter supported the amendments to the Explanation relating to effects on significant values, backcountry trips and the non-complying activity status.
359. The University of Otago opposed the proposed changes due to concern Rule 16.2.2 deemed the University's research as not 'genuine research' but a commercial surface water activity.
360. The s42A Report agreed that the Explanation to Rule 16.2.2 did not sufficiently discuss the benefits of research being undertaken within the Fiordland coastal environment. Consistent with the analysis for Policy 16.2.12, it recommended that the Explanation be expanded to recognise the important role research plays in the Fiordland coastal environment. It highlighted the national bottom lines in the NZCPS do not provide for 'balancing' access and adverse effects where these must be avoided. It recommended that the Explanation to Rule

16.2.2 be expanded to acknowledge the importance of the valuable research undertaken by the University of Otago in Fiordland.

### **Evaluation**

361. The Panel agrees the amendments to the Explanation are appropriate to acknowledge the valuable contribution of universities, private research organisations and crown research institutions to increasing the knowledge and understanding of the Fiordland coastal environment; and in informing its management by statutory bodies.
362. The Panel considers it is appropriate to include additional wording in the Additional Explanation to Rules 16.2.1 and 16.2.2 to clarify the consenting pathways provided for by the rules.

### **Recommendation**

363. The Panel accepts the s42A Report recommendation to amend the wording of Rule 16.2.2, the Explanation and the Additional Explanation, as shown in Appendix A attached to the s42A Report.

### **Glossary**

364. TRoNT, TAMI and the Minister of Conservation supported the proposed definition for 'Ancillary activities' and sought it's be retained.
365. FMG requested the definition be amended to include '...or aircraft including helicopters, which utilise vessel-based landing pads'.
366. Forest & Bird supports the definition of Ancillary activities.
367. The s42A Report did not consider it necessary to amend the definition because the definition already captured aircraft whether they were landing on a vessel-based landing pad or not.
368. Forest & Bird and Real Journeys Ltd have requested definitions be included for Wilderness and Remoteness Values. This was supported by Real Journey Ltd in further submissions.
369. The s42A Report acknowledged that there were differing interpretations of wilderness and remoteness values and agreed the provisions would be better understood if a definition of 'wilderness' was included within the wider RCP and needed to be clear it refers to Fiordland specific wilderness attributes. It highlighted the Lindis Report discussed wilderness and noted the most common definition was 'the absence of people and human modification'; and included the following elements: remoteness, naturalness, minimal human presence, scale, natural quiet, aesthetic appreciation, conservation-related activity, personal experience.

370. The s42A Report noted remoteness was found to be a key element of wilderness. It highlighted the Introduction to Section 16 of the RCP states *‘Remoteness is a similar condition [to wilderness], but the probability of experiencing complete isolation from the sights, sounds and activities of humans is reduced from extremely high to high.’* It therefore recommended a definition be included for wilderness that recognised wilderness generally and then identified specific attributes for the Fiordland coastal environment, drawing on the conclusions from Lindis Report.
371. The s42A Report acknowledged the differences between western concepts of ‘wilderness’ and indigenous concepts of ‘wilderness’, with humans being viewed as separate from nature (western concept) and people and their sustainable customary use being part of nature (indigenous concept). However, it noted reference in the RCP relating to the management of activities to protect ‘wilderness’ values were not focused on the management of customary use but rather aircraft landings/take-offs, ship use, and structures etc. For these reasons, it concluded the western definition of ‘wilderness’ was appropriate and could be further reviewed through the wider RCP review process.
372. Ms Black considered the proposed s42A Report definition for ‘wilderness’ was overly complex compared to other published definitions. She noted wilderness can just ‘exist’ and did not need to be experienced. She considered ‘natural quiet’ was misleading given noises of bird and natural elements. She considered ‘aesthetic appreciation’ was too subjective.
373. Following the adjournment of the hearing, Mr Whaanga highlighted a passage from Te Tangi a Taura addressing the European concept of wilderness and the Ngāi Tahu ki Murihiku concept of wilderness. He noted these differing world views were acknowledged in the Lindis Report. He noted some discomfort with the wording in the definition proposed in the s42A Report but acknowledged what it was trying to achieve. He requested recognition of Ngāi Tahu’s presence in the landscape and their values rights and interests.
374. The Reply s42A Report considered discussions during the hearing and the further advice of Mr Whaanga regarding the use of the western definition of ‘wilderness’. It recommended the following amendments to the definition included in Appendix A of the s42A Report: *‘Wilderness: Is an environment that is predominantly absent of people and human modification but recognises mana whenua presence through sustainable customary use. The following conditions are generally experienced in Fiordland’s wilderness environments:*
- *an extremely high probability of experiencing remoteness;*
  - *an extremely high probability of experiencing naturalness;*

- minimal human presence;
- expansive landform scale;
- ~~- natural quiet;~~
- ~~- aesthetic appreciation; and~~
- ~~- conservation related activity.<sup>6</sup>~~
- an extremely low probability of experiencing anthropogenic noise;
- outstanding natural features and landscapes; and
- extremely high conservation values.<sup>7</sup>

375. The s42A Report did not recommend a definition for remoteness should be included within the glossary for the RCP given the Introduction to Section 16 clearly identified that remoteness is a similar condition to wilderness; and the Lindis Report concluded that remoteness values are a key element of wilderness environments. It noted that once a comprehensive assessment was undertaken through the review of the RCP, fiord specific descriptions may be able to be included within the policy framework.

#### **Evaluation**

376. The Panel agrees with the s42A Report recommendation that the definition for ‘Ancillary activities’ includes aircraft movements associated with CSWA regardless of whether the landings are on vessels, structures or land.
377. The Panel accepts the amended wording to the proposed definition of ‘Wilderness’, as set out in the Reply s42A Report, as an interim measure. However, the Panel finds this will require further analysis in the context of the wider RCP review.
378. The Panel considers minor amendments are appropriate to add ‘...and practice’ to reflect the advice of Mr Whaanga; to remove reference to ‘extremely’, which is unnecessarily subjective.

#### **Recommendation**

379. The Panel accepts the s42A Report recommendation to retain the definition for Ancillary Activities, as notified.
380. The Panel accepts the Reply s42A Report amendments to the recommended definition of ‘Wilderness’, with amendments follows:

*‘Wilderness: Is an environment that is predominantly absent of people and human modification but recognises mana whenua presence through sustainable customary use and practice. The following conditions are generally experienced in Fiordland’s wilderness environments:*

- ~~an extremely~~ high probability of experiencing remoteness;

- ~~an extremely~~ high probability of experiencing naturalness;
- minimal human presence;
- expansive landform scale;
- ~~an extremely~~ low probability of experiencing anthropogenic noise;
- outstanding natural features and landscapes; and
- ~~extremely~~ high conservation values.'

### **Submissions – Other definitions**

381. Real Journeys Ltd requested definitions be included within PC5 to increase understanding of the concepts in PC5, including definitions for:

- Taonga species;
- Outstanding Natural Character Values;
- Outstanding Landscape and Natural Feature Values;
- Tranquillity Values;
- Intensification; and
- Statutory Functions.

382. The s42A Report considered it was not necessary to include a definition of 'Taonga Species' within the RCP, as taonga species is defined in section 287 of the Ngāi Tahu Claims Settlement Act. However, it noted this matter would be considered through the wider RCP review. In relation to the inclusion of definitions of Outstanding Natural Character and Outstanding Landscape and Natural Feature Values, it considered PC5 could not be viewed in isolation from the remaining sections of the RCP and noted this would occur as part of the wider review of the RCP. It noted the SRPS and the NZCPS provided direction on outstanding natural features and landscapes and outstanding natural character and that these documents would inform interpretation of the PC5 provisions until the RCP review is completed. For the remaining words which definitions were requested, the s42A Report considered use of the ordinary from the New Zealand Oxford Dictionary was sufficient.

### ***Evaluation***

383. The Panel agrees with the s42A Report that no specific definitions are required given use of the ordinary meaning of these words and guidance from the section 287 of the Ngāi Tahu Claims Settlement Act for 'taonga species'. The Panel agrees that definitions for 'Outstanding Natural Character' and 'Outstanding Landscape and Natural Feature Values', should not be viewed in isolation from other sections of the RCP. The Panel considers definition of these terms should occur as part of the wider review of the RCP.



**Recommendation**

384. The Panel accepts the s42A Report recommendation that no further definitions are added to the RCP Glossary.

**Appendix 4 Coastal Landscape Assessment**

385. No changes were proposed to Appendix 4 Coastal Landscape Assessment.

386. One submission was received from Real Journeys Ltd on Appendix 4 Coastal Landscape Assessment. The submission requested that the landscape assessment for the fiords be updated to provide more detail to enable applicants to adequately address the provisions of the RCP in relation to PC5.

387. The s42A Report acknowledged Appendix 4 Coastal Landscape Assessment was out of date but noted the limited scope of PC5. It highlighted Appendix 4 was relevant to the entire RCP and that amendments would therefore have implications for other activities (i.e. outside of surface water activities). It concluded such an amendment was out of scope and would create natural justice issues for other users of the coastal environment. It recommended Appendix 4 Coastal Landscape Assessment be reviewed through the wider RCP review process.

**Evaluation**

388. The Panel agrees with the s42A Report that no changes should be made to Appendix 4 Coastal Landscape Assessment until the wider RCP is reviewed. The Panel agrees that until such time case-by-case assessment will be required to assess the adverse effects of an activity and its consistency with the NZCPS, SRPS and RCP.

389. The Panel accepts the s42A Report recommendation to retain Appendix 4 of the RCP.

**Conclusion and Recommendations**

390. The Panel acknowledges the significant level of support for PC5, particularly by mana whenua mana moana and government agencies.

391. The Panel is satisfied the preparation of PC5 is in accordance with Schedule 1 and the provisions of Part 2 of the RMA, and any applicable regulations.

392. The Panel is satisfied PC5 will assist the Council in carrying out its function under the RMA; and in achieving the purpose and principles of the RMA by providing interim policy guidance to protect the environmental values of Fiordland.

393. The Panel finds the recommended PC5 provisions set out in Attachment 1 of this report will, in part, give effect to the NZCPS and Part 2 of the RMA.

## **Panel observations to inform the RCP Review**

### **Existing CSWA resource consents**

394. The Reply s42A Report provided an updated table of existing resource consents for CSWA in Fiordland. The Panel notes there are a number of CSWA that have been exercised but are not being utilised. Some submitters are concerned that this consented level of activity is much greater than actual levels of activity occurring and that the adverse effects are unknown and not experienced in the receiving environment. Further concern is raised that this consented level of activity and any existing limits should not be used as a baseline for the RCP review.
395. The Panel consider this is a critical issue for the RCP review. The Panel agree that existing consented levels need to be assessed by considering the receiving environment without consent activity as well as the effects of consented levels of CSWA. Where the effects of CSWA either individually or cumulatively are not consistent with the environmental bottom-lines of the NZCPS (Policies 11, 13 and 15), this will need to be addressed and any overallocation phased out overtime. The Panel agrees that where significant values have been degraded, this will need to be addressed to give effect to Policy 14 of the NZCPS.
396. The Panel consider the RCP review should investigate use of a 'use it or lose it' policy to address the 'latent' consent allocations.
397. Where effects on significant values are complex, unknown, poorly understood and are potentially irreversible, the RCP will need to take a precautionary approach, as required by Policy 3 of the NZCPS.

### **Terminology**

398. The Panel considers careful consideration needs to be given to use of terms such as 'vessel', 'ship', 'barge', 'pontoon' and 'structure'. The Panel considered managing mooring and coastal infrastructure is critical to avoiding adverse effects on significant environmental values.
399. Further consideration of the use of 'Internal Water' versus 'Coastal Environment' is also required.

### **Integrated Management**

400. The Panel considers the RCP review would benefit from further work with DOC in relation to reducing the impacts of increased recreational activity through limiting access via the Wilmot Pass and facilities at Piopiotahi/Milford Sound; and aircraft access and landings to protect significant environmental values.

**SRPS, NZCPS and Part 2**

401. The Panel considers it is important to clearly link the objectives and policies of the RCP to the objectives and policies of the SRPS and NZCPS, and Part 2 of the Act. The focus of the RCP review is to give effect to the NZCPS and Part 2.
402. The Panel agrees with the Minister of Conservation and FMG that it is not appropriate to 'balance' the avoidance of adverse effects on significant values with human use and public access. Concepts such as 'social carrying capacity' relate to protecting human use and experiences and amenity values. The Panel considers the RCP review must focus on protecting the intrinsic values of the natural environment, as well as the human use values.

# ATTACHMENT 1

## Recommended Amendments

Plan Change 5 – Section 16 Surface water activities on the internal waters of Fiordland from Yates Point to Puysegur Point

9 October 2023

# 16 SURFACE WATER ACTIVITIES ON THE INTERNAL WATERS OF FIORDLAND FROM YATES POINT TO PUYSEGUR POINT<sup>1</sup>

See also Figure 7.3.2.1 and Section 4.7

## Introduction

The internal waters of Fiordland constitute a marine environment, which is largely unmodified by use of adjacent land use or contributing catchments. The values of the Fiordland coastal environment are valued internationally, nationally and regionally. The surrounding Fiordland National Park, that forms part of the Fiordland coastal environment, is internationally recognised as a UNESCO World Heritage Site. The coastal waters and seabed of Fiordland (Te Moana o Atawhenua) have been submitted for the tentative list for World Heritage recognition. There are also ten marine reserves present within the Fiordland coastal marine area that together encompass over 10,000 hectares of inner fiord marine habitat.<sup>1</sup>

The pristine state of ~~these~~ Fiordland's<sup>2</sup> waters complements the natural state of the adjoining Fiordland National Park. Being very deep, and relatively sheltered compared with the open coast, the fiords are navigable to almost any ship. As such, they provide a ready means of experiencing this unique high quality coastal environment. In fact, boat and floatplane access and helicopter access directly to ships is a popular means of getting about in Fiordland National Park, especially its western and seaward boundary to which there are only two points of road access. State Highway 94 to Piopiotahi / Milford Sound is the only public road access to any of the fiords.

The value of wilderness or remoteness is therefore an important additional value to all the other natural values of the area. Wilderness is a condition in which there is an extremely high probability of experiencing complete isolation from the sights, sounds and activities of humans. Remoteness is a similar condition, but the probability of experiencing complete isolation from the sights, sounds and activities of humans is reduced from extremely high-to-high.

Wilderness and remoteness are becoming increasingly rare values both nationally and internationally. They are values, which can either be managed or allowed to establish a new equilibrium in the face of increasing population and access. In the latter process, there is a strong possibility that natural character, landscape, natural feature; wilderness and remoteness values will be significantly diminished if not lost.

Given the use of Fiordland's internal waters for access to port facilities, and given that much of these waters are used for commercial rock lobster fishing, it is unreasonable to expect a true wilderness condition to continually exist. However, there are areas such as Hāwea / Bligh Sound, which is surrounded by land zoned in the Fiordland National Park Management Plan 2007 for wilderness experiences, and the upper reaches of fiords, which can only be reached via the air or open coastal water, where wilderness conditions are more probable than remoteness conditions. The existence of adjoining land managed for wilderness does not necessarily contribute to such values on the water, for example, most of the northern side of Piopiotahi / Milford Sound is zoned as a wilderness area. Access is the key influence on isolation. Lack of access contributes to remoteness and for people seeking this experience it is a value in itself.

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<sup>1</sup> Tourism NZ 1089/00 withdrew all references concerning Section 16 - 20 March 2002

<sup>1</sup> *Real Journeys LTD 12.2*

<sup>2</sup> *Consqential amendment to Real Journeys LTD 12.2*

In managing recreational activities, the Department of Conservation published a *Visitor Strategy* (1996) which recognises seven different visitor groups, those being:

- short stop travellers;
- day visitors;
- overnighers;
- backcountry comfort seekers;
- backcountry adventurers;
- remoteness seekers;
- thrill seekers.

Generally, the internal waters of Fiordland, with the exception of Piopiotahi / Milford Sound, potentially provide for all such experiences. The reality is, however, that because the area is not highly accessible, short stop travellers are few in number. Similarly, thrill seeking activities are almost non-existent and given that backcountry comfort seeker and adventure experiences by definition usually involve overnighing, the overnighing classification is virtually superfluous. Lack of access however, contributes to remoteness, and for people seeking this experience, it is a value in itself.

That reduces the visitor categorisation to day visitors, backcountry comfort seekers, backcountry adventurers and remoteness seekers. In Fiordland, where for the most part there is not intense visitor use, backcountry users are likely to experience conditions of remoteness, which enhance their experience of a natural environment. Day visitors may also experience feelings of remoteness depending on the location and time of year, their expectations and previous experiences. Day visitors are concentrated at Piopiotahi / Milford Sound and Patea / Doubtful Sound. Generally, they rely on commercial tourism operators to facilitate their experience. Day visitors represent the bulk of visitors to Fiordland's waters.<sup>3</sup>

Increasingly, there is demand for backcountry comfort seeker experiences facilitated by commercial tourist operators. These operators provide comfort in the form of ships, showers, food and facilities, operational knowledge sufficient to reduce risk to comfortable levels, and knowledge of the environment and its vegetation and fauna. Some of the private ships entering, or based in, Fiordland are also providing backcountry comfort seeker experiences.

While backcountry adventurers may undertake many of the same activities as backcountry comfort seekers, their experience places more emphasis on self-reliance and is based more on hope and discovery, rather than expectation and learning. Their desire for remoteness or "to get away from it all" is generally stronger than that of the comfort seeker. Generally, backcountry adventurers seek a diving, fishing, boating, exploring, or hunting experience in the "great outdoors". They are a moderate use group compared to the comfort seekers. Typically, they are New Zealanders in "kayaks" or motorised pleasure craft. The diffuse nature of these activities and of the size of the craft involved means that they have minor effects on the values of the area.

Remoteness seekers desire a setting containing remote to wilderness conditions. They desire little interaction with other visitors and seek the challenge, freedom and risk associated with meeting nature on its own terms. They are unlikely to fulfil that experience solely within the coastal marine area. In fact, they are more likely to want to use that area as a means of access to the wilderness. This group represents very low usage relative to other groups. However, the values that attract those people are also an important element of the visitor experience enjoyed by all visitors to Fiordland, including day-trip visitors.

Over time, recreational and commercial use of the internal waters of Fiordland has increased and has ~~changed become more diverse.~~<sup>4</sup> A 2021 study (*Wilderness and Remoteness Values of Fiordland Waters* by Lindis Consulting) found that for some people the wilderness values of the fiords have been lost; whilst others believe they remain unaffected by changes in use.

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<sup>3</sup> *Real Journeys LTD 12.2*

<sup>4</sup> *Real Journeys LTD 12.2*

Visitor categorisations are not definitive, but they do provide a broad understanding of the experiences and values sought by visitors. Relative visitor numbers give an indication of the level of use by the various categories of recreational users. However, visitor numbers should not be regarded as the sole measure of the importance of that use.

From a sustainable management point of view, preserving the opportunity for future generations to partake in any of the four categories, and maintaining that opportunity so that people and communities of the current generation can provide for their social, economic and cultural well-being are key principles. In doing so, it is also necessary to avoid, remedy or mitigate any adverse effects of activities to preserve the quality of the environment. The fiords are probably the most significant coastal landform in this region and are outstanding natural features. They are valued internationally, nationally, and regionally. The majority of the fiords are incorrectly referred to as sounds.

This section seeks to avoid further adverse effects on the significant values of the Fiordland coastal environment until a long-term carrying capacity is developed through the review of the Regional Coastal Plan. Ongoing monitoring will be required to assess the impacts of surface water activities on visitor experiences and the physical characteristics of environment itself.

## ISSUE

**Issue 16.1.1 - The increasing frequency, scale and/or duration of commercial and non-commercial surface water activities on coastal waters within Fiordland, has the potential to diminish the values that attract people to these waters and adjoining land**

Objectives 16.1.1, 16.1.2, 16.1.3 Policies  
16.2.1, 16.2.2, 16.2.3, 16.2.4, 16.2.5,  
16.2.6, 16.2.7, 16.2.8, 16.2.9, 16.2.10,  
16.2.11, 16.2.12, 16.2.13, 16.2.15,  
16.3.1, 16.3.2, 16.3.3, 16.3.4, 16.3.5,  
16.4.1, 16.4.2, 16.4.3, 16.4.4, 16.4.6,  
16.4.7, 16.4.8, 16.4.9  
Rules 16.2.1, 16.2.2, 16.3.1, 16.3.2,  
16.3.3 and 16.3.4

## OBJECTIVES

**Objective 16.1.1 - Maintain essential characteristics**

**To maintain the essential characteristics, including the internationally, nationally and regionally significant values, of the pristine Fiordland coastal environment that contribute to a range of high quality experiences in a natural coastal environment.**

Policies 16.2.1, 16.2.2, 16.2.3, 16.2.4,  
16.2.5, 16.2.7, 16.2.8, 16.2.9, 16.2.10,  
16.2.11, 16.2.12, 16.2.13, 16.2.14,  
16.2.15, 16.3.1, 16.3.2, 16.3.3, 16.3.4  
and 16.3.5  
Rules 16.2.1, 16.2.2, 16.3.1, 16.3.2,  
16.3.3 and 16.3.4

**Explanation** – Commercial surface water activities allow people to experience the unique and significant values of Fiordland. Since 2007, there has been an increase in the use of the Fiordland coastal marine area by commercial and recreational ships. Use was previously largely focused in Piopiotahi / Milford Sound, and to a lesser extent in Patea / Doubtful Sound. However, more recently use has increased in Southern Fiordland. Surface water activity, individually and cumulatively, can impact on the essential characteristics of the Fiordland coastal environment. For some people the intensity of activity within some areas (for example Piopiotahi / Milford Sound, Patea / Doubtful Sound and to a lesser extent Tamatea / Dusky Sound) has already eroded, to varying degrees, the intrinsic values of these places. These values largely stem from the very high natural character and the physical and perceptual characteristics of the landscape. Landscape as a human experience combines both aesthetic values and other values, which people attribute to landscape such as tranquility, remoteness and lack of intrusion. The essential characteristics of the coastal environment of Fiordland that contribute to a range of high quality visitor experiences include outstanding natural character, natural features, landscape and amenity values, fauna and vegetation values, finite character and wilderness/remoteness values. These values are internationally, nationally and regionally significant. The surrounding Fiordland National Park, that forms part of the Fiordland coastal environment, is internationally recognised as a UNESCO World Heritage Site. The coastal waters and seabed of Fiordland (Te Moana o Atawhenua) have been submitted for the tentative list for World Heritage recognition. There are also ten marine reserves present within Fiordland's coastal waters.<sup>5</sup> These significant<sup>6</sup> values need to be maintained so that people can continue to enjoy a range of high quality experiences. Failure

<sup>5</sup> Real Journeys LTD 12.2

<sup>6</sup> Consequential amendment to Real Journeys LTD 12.2

to maintain these values will result in people feeling the need to travel elsewhere to experience the values they once experienced in a particular locality. The increase in use in Southern Fiordland indicates this has already occurred in the Fiordland coastal marine area.

A sustainable "carrying capacity" that maintains the essential characteristics of the area needs to be determined. This will maintain the internationally, nationally and regionally significant values of the Fiordland coastal environment for future generations.

## **Objective 16.1.2 - Preserve remoteness and wilderness values**

Policies 16.2.1, 16.2.2, 16.2.4, 16.2.5, 16.2.7, 16.2.8, 16.2.9, 16.2.10, 16.2.11, 16.2.12, 16.3.1, 16.3.2, 16.3.3, 16.3.4 and 16.3.5  
Rules 16.2.1, 16.2.2, 16.3.1, 16.3.2, 16.3.3 and 16.3.4

**To preserve the remoteness and wilderness values of the Fiordland coastal environment.**

**Explanation** - The internal waters of Fiordland offer a range of experiences, as does the adjoining Fiordland National Park. The Fiordland National Park Management Plan 2007 zones the western parts of the Park as "Wilderness" or "Remote" areas. Notwithstanding this, there are areas of the coastal marine area, which provide these values, whether or not the National Park Plan zones adjoining areas that way. The boundary of the National Park is the mean high water mark. The experience of the coastal environment, however, integrates the contribution of the qualities of the land and the sea. It does not recognise administrative boundaries.

In order to achieve a wilderness or remote experience in the coastal marine area that is compatible with that of the adjoining land, the coastal management regime will need to differ from that applied elsewhere in the coastal marine area.

Over time, recreational and commercial use of the internal waters of Fiordland has increased and has ~~changed become more diverse~~<sup>7</sup>. A 2021 study (*Wilderness and Remoteness Values of Fiordland Waters* by Lindis Consulting) found that for some people the wilderness values of the fiords have already been lost; whilst others believe they remain unaffected by changes in use. Management of increasing levels of use is required, to preserve the wilderness and remoteness values of the internal waters of Fiordland and to manage impacts on the recreational experience of Fiordland National Park.

## **Objective 16.1.3 - Effects of surface water activities on intrinsic values**

Policies 5.5.1, 5.5.2, 5.5.9, 5.5.10, 16.2.1, 16.2.2, 16.2.3, 16.2.4, 16.2.5, 16.2.6, 16.2.7, 16.2.8, 16.2.9, 16.2.10, 16.2.11, 16.2.12, 16.2.13, 16.2.15, 16.3.1, 16.3.2, 16.3.3, 16.3.4, 16.3.5, 16.4.1, 16.4.2, 16.4.3 and 16.4.4  
Rules 16.2.1, 16.2.2, 16.3.1, 16.3.2, 16.3.3 and 16.3.4

**To ensure that commercial and private recreational surface water activities do not adversely affect the intrinsic values of the Fiordland coastal environment.**

**Explanation** - Recreational activities, whether privately organised or facilitated by a commercial operator, can adversely affect the natural and physical environment and the enjoyment and pleasantness of other people's recreational experience.

To protect the environment and the quality of experience people gain from it, users should conduct their activities in a manner that avoids adverse effects on each other and the environmental conditions that attract them to the area.

## **Surface Water Activities**

### **POLICIES**

#### **Policy 16.2.1 – Recognise, identify<sup>8</sup> and protect areas at risk of diminished natural character, landscape and amenity values**

Rules 16.2.1, 16.2.2

- (a) **Recognise that natural character, landscape and amenity values are not uniform across all fiords and some areas are more vulnerable than others to the adverse effects of**

<sup>7</sup> Real Journeys LTD 12.4

<sup>8</sup> Reply s42A Report, pg. 8



increased use; and<sup>9</sup>

- (b) **Identify areas in the fiords where natural character, landscape and amenity values are vulnerable to the adverse effects of increased use.**

**Explanation** - This section adopts a precautionary approach to the management of adverse effects of commercial surface water activities on the values of the Fiordland coastal environment. All areas of Fiordland are valued for their natural character, landscape and amenity values. The attributes of different fiords can affect their resilience to increased and change in use and Some<sup>10</sup> areas are more at risk than others. These attributes include difficulty of access, activity level, remoteness, human-built infrastructure, natural quiet, type of landscape, extent of connected fiord waterways and proximity to formally protected areas.<sup>11</sup> Patea / Doubtful Sound, in particular, is seen as offering an alternative or complementary experience to Piopiotahi / Milford Sound. Patea / Doubtful Sound is particularly vulnerable because it is directly accessible by a combination of boat and road access. Hall Arm and Kaikiekie / Bradshaw Sound have been identified as highly valued areas of Patea / Doubtful Sound.

Access to other areas is either by air or by boat around open coast. Such access is generally relatively expensive or difficult and consequently less popular. However, recently this use has been increasing also for example within Southern Fiordland. Intensification of use needs to be managed if the current values of these areas are to be maintained for future generations.

Amenity values are defined by the Resource Management Act as those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence and cultural and recreational attributes. They are a subset of landscape values.

Landscape values include the environment's visual appeal and attributes of the environment that are pleasing to the mind, feelings or senses. These values pertain directly to the quality of the human perceptual experience evoked by phenomena or elements or configurations of elements in the environment as perceived by sight, sound, feel, touch and taste.

While such values are inherently subjective, many are widely shared and supported by research already formally recognised by the community, particularly by those who have studied the relationship of people to the natural and physical environment.

This policy requires case-by-case consideration, for example through the resource consent process, of the vulnerability of an area's values to the adverse effects of commercial surface water activities.<sup>12</sup>

## **Policy 16.2.2 – Avoid adverse effects on internationally, nationally, and regionally significant values**

Rules 16.2.1, 16.2.2

**Avoid adverse effects on the international, national, and regionally significant values of the Fiordland coastal environment, by:**

- 1 recognising that the international, national, and regionally significant values of the Fiordland coastal environment include:**
  - a outstanding natural character values, including wild and scenic values and outstanding naturalness;**
  - b outstanding landscape and natural feature values;**

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<sup>9</sup> Reply s42A Report, pg.8

<sup>10</sup> *Real Journeys LTD 12.5*

<sup>11</sup> *Real Journeys LTD 12.5*

<sup>12</sup> *Real Journeys LTD 12.5*

- c amenity values;
  - d significant habitats of indigenous fauna, significant indigenous vegetation and indigenous biological diversity (including marine reserves and habitat of the protected black coral, marine mammals and sea birds);
  - e spiritual and cultural values, relationships, and beliefs of tangata whenua;
  - f Ngāi Tahu customary use;
  - g taonga species present; and
  - h wilderness, remoteness and tranquility values;
- 2 not granting resource consent for new or intensifying (above that which lawfully existed at 18 July 2022) commercial surface water activities, including ancillary activities, where adverse effects on those matters identified in Policy - 16.2.2(1) will increase; and
  - 3 using a precautionary approach in the consideration of resource consents for commercial surface water activities, including ancillary activities, to ensure the international, national and regional values of the Fiordland coastal environment are protected, or maintained where values have been degraded<sup>13</sup>;

until allocation, limits are established through the Regional Coastal Plan Review process.

**Explanation** – The Fiordland coastal environment is largely unspoilt. It is an area that is known nationally and internationally as one of the last remote vestiges in the world. This unspoilt nature, which generally<sup>14</sup> has no habitation from the presence of for example bach's<sup>15</sup>, with the exception of habitation at discrete development nodes at Cromarty, Deep Cove and Piopiotahi/Milford Sound,<sup>16</sup> combined with its dominating and awe-inspiring landscapes and diverse array of indigenous biodiversity results in an area which is internationally, nationally, regionally, and culturally significant. The surrounding Fiordland National Park, that forms part of the Fiordland coastal environment, is internationally recognised as a UNESCO World Heritage Site. The coastal waters and seabed of Fiordland (Te Moana o Atawhenua) have been submitted for the tentative list for World Heritage recognition.<sup>17</sup> Tangata whenua have a long association with Te Mimi o Tū Te Rakiwhānoa (Fiordland coastal marine area). Ngāi Tahu have extensively visited Te Mimi o Tū Te Rakiwhānoa for example for the gathering of mahinga kai and taonga. The traditional routes followed are of significance, as are the places they journeyed to and the uses.

The unique climate, terrestrial vegetation and topography in this area has resulted in distinctive marine and terrestrial ecosystems. The pristine, forested catchments of the fiords are recognised through their National Park and World Heritage status, with a number of important marine areas identified as Marine Reserves and china shops. The Fiordland coastal environment is highly valued for its outstanding natural character and recreational experiences offered, such as wilderness and remoteness values. It is home to a wide variety of coral, seaweed, fish and marine mammals. The fiords provide important habitat for protected species such as bottlenose dolphins (terehu), New Zealand fur seals (kekeno), Fiordland crested penguins (tawaki) and blue penguins (kororā). The latter three are recognised under the Ngāi Tahu Claims Settlement Act 1998 as taonga species. Taonga species are more than just those, which are protected in the Act however, including marine mammals, birds, plants and all indigenous species. The significant values of Fiordland are sensitive to increasing activity, which can, if not managed appropriately, result in a degradation of these values.

Too much activity can diminish the values that initially attracted people to an area. People then start seeking areas elsewhere, for example Rakiura / Stewart Island,<sup>18</sup> which still offer the values

<sup>13</sup> *Real Journeys LTD 12.2*

<sup>14</sup> Reply s42A Report

<sup>15</sup> *Fiordland Marine Guardians 8.7*

<sup>16</sup> Reply s42A Report, pg. 9, with Hearing Panel amendments.

<sup>17</sup> *Real Journeys LTD 12.2*

<sup>18</sup> *Fiordland Marine Guardians 8.7*

they originally found in the now more popular area. The growth in activity can be both commercial and private. Over the last decade, there has been growth in the level of commercial and recreational activity that is occurring within the Fiordland coastal environment. To ensure the significant values of the Fiordland coastal environment are maintained for future generations, it is imperative that increasing levels of activity do not compromise Fiordland's intrinsic values, such as outstanding natural character values, indigenous biological diversity, and wilderness and remoteness values, and values held by mana whenua. The capacity of the Fiordland coastal environment to absorb human use including commercial surface water activities is limited if Fiordland's intrinsic values are to be retained<sup>19</sup>. If use continues to increase, for example from an increased frequency of vessel trips, larger vessels, more vessels, and/or more ancillary activities, eventually the intrinsic values of the Fiordland coastal environment will be eroded. For some people these values have already been eroded. As such, this policy limits the effects of commercial activities across the Fiordland coastal marine area to consented levels that existed at [insert date of notification] until such a time as a comprehensive assessment is completed through the Regional Coastal Plan Review. This comprehensive review should take into account the natural values of the Fiordland CE and users experiences and perceptions.<sup>20</sup> Given the international, national, and regionally significant values present and their sensitivity, this approach is appropriate to ensure these values are preserved and protected for future generations.

### **Policy 16.2.3 – Avoid or mitigate adverse effects on marine mammals**

Rules 16.2.1, 16.2.2

**Avoid or mitigate adverse effects from commercial surface water activities on marine mammals including by:**

- 1 considering the level of underwater noise of the vessel, including ancillary activities, and methods proposed to minimise underwater noise (for example speed restrictions);**
- 2 considering speed restriction where this could minimise potential effects on marine mammals;**
- 3 where relevant, including conditions in resource consents focused on avoiding adverse effects on habitats that are particularly significant excluding activities from areas which are significant habitat<sup>21</sup> for marine mammals including whales, seals and the endangered bottlenose dolphin populations; and**
- 4 advocating for the use and understanding of current measures to avoid or mitigate potential adverse effects on marine mammals as appropriate.**

**Explanation** - Fiordland is home to a number of marine mammals and is also an important area for migratory marine mammals including humpback whales. Surface water activities can adversely affect marine mammals and their habitats. In particular, the bottlenose dolphins of Fiordland are thought to be the world's most southern dolphins. There are three separate populations present: one in Patea / Doubtful Sound and Te Awa-o-Tū / Thompson Sound, one in Tamatea / Dusky Sound and one in the northern fiords. Bottlenose dolphins are nationally endangered. The bottlenose dolphins of Fiordland are significant in their own right. However, they also contribute to the natural character of Fiordland. Research has shown that vessels, including both recreational and commercial, can adversely affect bottlenose dolphins primarily through behaviour disruption, such as vessel noise masking dolphin communications, and increased dive times, and vessel strikes. Calves are particularly vulnerable to the effects of vessels.

The Patea / Doubtful Sound marine mammal (and other wildlife) code of management has been prepared by the Department of Conservation. The code is a voluntary measure, and its focus is to protect and ensure the long-term sustainability of marine mammals and other wildlife in the Patea / Doubtful Sound complex and should be taken into consideration by all users of the area. The code established dolphin protection zones where motorised vessels are only permitted if dolphins are not present, and access is required such as to access an anchorage or view a shore feature. In

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<sup>19</sup> *Real Journeys 12.6*

<sup>20</sup> *Totally Tourism 18.2*

<sup>21</sup> *Real Journeys LTD 12.7*

terms of adverse effects on marine mammals, it is intended that this policy have the flexibility to apply current research and/or guidelines but also to be informed by new research outputs<sup>22</sup>, which may then be taken into consideration in the consenting process as well as in the advocacy of additional measures to avoid or mitigate potential adverse effects on marine mammals.

## **Policy 16.2.4 - Restrictions on Commercial Day-trips in Patea / Doubtful Sound and Arms thereof**

**Exclude commercial day-trip activities from Kaikiekie / Bradshaw Sound, Gaer Arm, First Arm and Crooked Arm west of Turn Point**

Rule 16.2.1

**Explanation** - The reason for this Policy is to provide areas where people who are actively experiencing the environment or seeking a backcountry experience, can do so without interruption from people who are there for mainly scenic reasons. While both groups of visitors will experience elements of both the physical and perceptual aspects of the landscape, the intensity of perceptual experience will be stronger, and most probably more important, to those people who seek to live within it rather than visit.

It is the people in the environment, not the physical environment that are principally affected by day trip activities. These activities principally affect values people place on these areas, and although many of the values are subjective, they are widely shared, supported by research or already formally recognised by the community. These values are usually some form of landscape or amenity value that contribute to the pleasantness or beauty of the area, such as a lack of unnatural noise, feelings of peace and quiet, stillness, remoteness, inspiration, lack of commercialisation or a lack of smoke and odour. It is often these values that are the key to providing for people's social and cultural and spiritual well-being. Too many intrusions by day trip ships, and to some extent ships providing backcountry experiences, can damage the aesthetic coherence of the landscape.

The effect of this policy is to restrict the use of Kaikiekie / Bradshaw Sound, Gaer and First Arms, Precipice Cove and Crooked Arm west of Turn Point to commercial activities that share an element of active participation with the environment, whether that be exploring, vegetation and fauna observation, fishing, diving, interpretation, etc.

Such activities often involve overnighting in the area on ships or in huts and camps close to the coastal marine area or stopping and visiting the adjoining land and rivers. This policy effectively prevents the use of these areas by ships undertaking predominantly scenic trips on a daily basis. Such trips out of Deep Cove will be confined to Patea / Doubtful Sound including Deep Cove, Hall Arm, Te Awa-o-Tū / Thompson Sound and Crooked Arm east of Turn Point.

One of the values of Patea / Doubtful Sound is the contribution it makes to the remote educational experience of school children who visit the Deep Cove Hostel at the head of the Sound. Annually, over 2,500 children stay at this facility for a few nights whilst on class camps. As part of that educational experience and as a means of appreciating their natural heritage, the children usually take a launch trip on commercial ships based at Deep Cove, as well as engaging in tramping, fishing and nature study activities in, on and around Deep Cove. Such trips are considered appropriate.

## **Policy 16.2.5 - Non-commercial users**

Rules 16.2.1, 16.2.2

**Using a range of non-regulatory tools, such as codes of practice, in collaboration with the Department of Conservation and the Harbour Master actively encourage**<sup>23</sup> **non-commercial users of the internal waters of Fiordland to avoid or mitigate the adverse effects of their activities on natural character, natural features, landscape and amenity values, as well as areas of significant indigenous vegetation, significant habitats of indigenous fauna and marine mammals.**

**Explanation** - Non-commercial users refer to those accessing the internal waters of Fiordland

<sup>22</sup> *Fiordland Marine Guardians 9.4*

<sup>23</sup> Reply s42A Report, pg. 11

for activities, which are not undertaken for the purpose of generating profit and are not. Commercial Surface Water Activities as defined in this Plan. They include, but are not limited to, people engaging in recreational activities, undertaking statutory functions and cleaning up activities. The activities of non-commercial users can also adversely impact on natural character, the landscape and amenity values and areas of significant indigenous vegetation, significant habits of indigenous fauna and marine mammals of Fiordland.

It is felt that the most effective means of addressing the effects of such users is a code of practice. In some respects, this may overlap with similar codes for fishers and the "environmental care code". The code could also address other matters such as the effect of diving activities on indigenous vegetation and fauna.

Through a code, users can be made aware of the potential effects of their activities on the experience of others and the environment. Codes of practice need to be developed in conjunction with users groups and other organisations with a management role in the coastal marine area to ensure consistency and avoid overlap. Other methods can be used in conjunction with, or independently of, a code of practice. Examples include provision of a suitable guideline, increasing the monitoring role of the Harbourmaster, and undertaking educational promotions at various public events.

The Fiordland Marine Guardians' *'Beneath the Reflections: Guide to Fiordland'* (2021) is a comprehensive guideline developed in cooperation with multiple agencies representing users' groups and government. It contains detailed guidance relating to a number of themes including pest management, protection of marine mammals, diving and recreational fishing. All visitors to Fiordland are strongly encouraged to familiarise themselves with the rules contained within it before visiting. In addition, the Patea / Doubtful Sound marine mammal (and other wildlife) code of management has been prepared by the Department of Conservation. The code is a voluntary measure, and its focus is to protect and ensure the long-term sustainability of marine mammals and other wildlife in the Patea / Doubtful Sound complex and should be taken into consideration by all users of the area.

The Fiordland Marine Regional Pathway Management Plan (FMRPMP) sets out several rules and standards that must be met by all vessels (including recreational vessels) entering within one nautical mile of the landward boundary of the Fiordland Marine Area (as defined in the FMRPMP). It requires all vessel operators to obtain a Fiordland Clean Vessel Pass.<sup>24</sup>

## Policy 16.2.6 - Fiord terminology

**Advocate that the fiords in Fiordland be correctly referred to including the use of dual place names.**

**Explanation** - Historically, many of the fiords of Fiordland have been referred to as sounds, for example Piopiotahi / Milford Sound. The reference to 'Sound' within this terminology is incorrect. Given that the fiords are probably the most significant coastal landform in the Southland region and are outstanding natural features, it is appropriate that they be correctly referred to. The fiords have dual place names, which recognise the cultural significance of Te Mimi o Tū Te Rakiwhānoa (Fiordland coastal marine area) to tangata whenua. Place names along the Fiordland coast record Ngāi Tahu history and point to the landscape features, which are significant to people for a range of reasons. The dual place names are:

- Piopiotahi / Milford Sound
- Patea / Doubtful Sound
- Hāwea / Bligh Sound
- Hinenui / Nancy Sound
- Kaikiekie / Bradshaw Sound
- Moana-whenua-pōuri / Edwardson Sound
- Rakituma / Preservation Inlet
- Taiari / Chalky Inlet

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<sup>24</sup> *Real Journeys LTD 12.10*

- Taiporoporo / Charles Sound
- Taitetimu / Caswell Sound
- Tamatea / Dusky Sound
- Te Awa-o-Tū / Thompson Sound
- Te Awaroa / Long Sound
- Te Hāpua / Sutherland Sound
- Te Houhou / George Sound
- Te Korowhakaunu / Cunaris Sound
- Te Puaitaha / Breaksea Sound
- Te Rā / Dagg Sound

Piopiotaahi / Milford Sound and Patea / Doubtful Sound are not the official geographic names of the geographic features to which they apply, respectively. The official geographic names of those features are Milford Sound / Piopiotaahi and Doubtful Sound / Patea, respectively.<sup>25</sup>

It is interesting to note that the Fiordland National Park was originally named the "Sounds National Park" when it was gazetted as a national park in 1905. The name was changed by Section 3 of the National Parks Amendment Act 1955 to what was described at the time as "the more correct descriptive name, Fiordland National Park". The Southland Regional Council will therefore advocate to the NZ Geographical Board and other Crown agencies that the official name of these fiords referred to as sounds be amended.

**Policy 16.2.7 - Remote and wilderness Protection and maintenance of remoteness, wilderness<sup>26</sup> and recreational<sup>27</sup> values in the fiords, inlets and arms**

Rules 16.2.1, 16.2.2

**Manage adverse effects of commercial surface water activities, including ancillary activities, in the Fiordland coastal marine area:**

- 1 to protect wilderness ~~experiences~~ values<sup>28</sup> of Rakituma / Preservation Inlet and Taiari / Chalky Inlet;
- 2 to protect the wilderness ~~experiences~~ values<sup>29</sup> of the northern fiords, between (but not including) Piopiotaahi / Milford Sound and Te Awa-o-Tū / Thompson Sound;
- 3 to protect remoteness ~~experiences~~ values<sup>30</sup> of the Tamatea / Dusky Sound complex (including Tamatea / Dusky Sound, Te Puaitaha / Breaksea Sound, Te Rā / Dagg Sound and all associated 'arms') and wilderness ~~experiences~~ values<sup>31</sup> of the Cook and Bowen channels within the Tamatea / Dusky Sound complex;
- 4 to maintain the predominantly remote ~~experiences~~ values<sup>32</sup> of the Patea / Doubtful Sound complex (including all 'arms', Te Awa-o-Tū / Thompson Sound and Kaikiekie / Bradshaw Sound); and
- 5 to maintain the recreational and visitor ~~experiences~~ values<sup>33</sup> of Piopiotaahi / Milford Sound and Deep Cove<sup>34</sup>.

**Explanation** - Apart from Piopiotaahi / Milford Sound and Patea / Doubtful Sound, all of the principal arms, inlets and fiords in Fiordland offer significant remoteness and wilderness values. These wilderness and remoteness values are largely contingent on the naturalness of the Fiordland coastal environment, noting that access to the fiords is primarily through mechanical means such as ship or aircraft.

Remoteness and wilderness values are similar, with remote areas being a less strict version of

<sup>25</sup> *Real Journeys LTD 12.11*  
<sup>26</sup> Reply s42A Report, pg. 12  
<sup>27</sup> *Real Journeys LTD 12.12*  
<sup>28</sup> *Real Journeys LTD 12.12*  
<sup>29</sup> *Real Journeys LTD 12.12*  
<sup>30</sup> *Real Journeys LTD 12.12*  
<sup>31</sup> *Real Journeys LTD 12.12*  
<sup>32</sup> *Real Journeys LTD 12.12*  
<sup>33</sup> *Real Journeys LTD 12.12*  
<sup>34</sup> *Real Journeys LTD 12.12*

wilderness and having better access. Key elements of wilderness values for Fiordland's coastal waters are remoteness, naturalness, minimal human presence, natural quiet, aesthetic appreciation/scenery, conservation-related activity, personal experience, and scale. In remote and wilderness areas, there is an expectation of a greater degree of isolation than can be expected in Piopiotahi / Milford Sound and Patea / Doubtful Sound, principally because they are difficult to get to. The northern fiords are those fiords between Piopiotahi / Milford Sound and Te Awa-o-Tū / Thompson Sound; they generally have the lowest level of use of all the fiords. The southern fiords of Rakituma / Preservation Inlet and Taiari / Chalky Inlet generally have the next lowest level of activity. The southern fiords are also surrounded by land, which is managed by the Department of Conservation for a wilderness experience.

Notwithstanding the access difficulties, the amount of activity in the Fiordland coastal marine area is increasing, some being attributable to people utilising more remote areas in an effort to find a place that offers the same degree of isolation once found in what are now more frequently visited areas. The effect of such activity is a matter of concern to people who value the remoteness of these parts of Fiordland.

Landform plays an important role in a fiord's ability to accommodate activity. In fiords with limited landform variation (i.e., open 'corridor' in nature), there is generally less ability for the fiord to absorb the adverse effects of vessels than a fiord which is highly indented. The length of different reaches of the fiords also plays an important role in a fiord's ability to accommodate vessel activity. Long reaches mean vessels will be visible and audible for extended periods of time. This Plan describes wilderness as a condition in which there is an extremely high probability of experiencing complete isolation from the sights, sounds and activities of people. Remoteness is a similar condition, but the probability of experiencing complete isolation from the sights, sounds and activities of people is reduced from extremely high-to-high (Section 16.1 Introduction).

Effects of individual ships on wilderness and remote values are generally transient and are unlikely to permanently reduce the naturalness of the area. However, the number, duration and frequency of vessels in one area, particularly if consistently maintained, can make a transitory and temporary effect more permanent, which can lead to greater levels of adverse effects.

## **Policy 16.2.8 - Impacts on wilderness and remoteness values**

Rules 16.2.1, 16.2.2

**When considering a resource consent for a commercial surface water activity, recognise and take into account matters that can impact on the international, national, and regionally significant wilderness and remoteness values of the Fiordland coastal environment including:**

- 1 increasing ship size including increases in ship size from those lawfully established at 18 July 2022<sup>35</sup>;**
- 2 frequency of ship<sup>36</sup> use and type of use (including day trips or backcountry trips)<sup>37</sup>;**
- 3 vessel appearance, including scale, bulk and form of the ship exterior<sup>38</sup>;**
- 4 cumulative effects including increasing number of ships and structures and concentration of these ships<sup>39</sup>;**
- 5 increased ancillary activity (including helicopters, tenders craft<sup>40</sup> and kayaks) associated with the commercial surface water activity proposal, in particular increases in ancillary activity levels above those levels lawfully established at 18 July 2022<sup>41</sup>;**

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<sup>35</sup> *Real Journeys LTD 12.13*

<sup>36</sup> *Real Journeys LTD 12.13*

<sup>37</sup> *Fiordland Marine Guardians 8.13*

<sup>38</sup> *Real Journeys LTD 12.13*

<sup>39</sup> *Fiordland Marine Guardians 8.13*

<sup>40</sup> *Real Journeys LTD 12.13*

<sup>41</sup> *Real Journeys Ltd 12.13*

- 6 location, landform and scale of the landscape, including its ability to absorb change<sup>42</sup>;
- 7 ~~non-natural~~ anthropogenic<sup>43</sup> noise; and
- 8 presence and use of structures, including moorings, ~~related to~~ required for<sup>44</sup> the commercial surface water activity proposal.

**Explanation** – Generally, descriptions for wilderness and remoteness values are focused on natural environments with little evidence of human modification. This Plan describes wilderness as a condition in which there is an extremely high probability of experiencing complete isolation from the sights, sounds and activities of people. Remoteness is a similar condition, but the probability of experiencing complete isolation from the sights, sounds and activities of people is reduced from extremely high-to-high (Section 16.1 Introduction).

It is challenging to place a limit on the amount of activity, which can be accommodated within the internal waters of Fiordland for a number of reasons including: each fiord is different in terms of landform and values and access to the Fiordland coastal marine area is largely motorised. However, increasing activity and changing use patterns (both recreational and commercial) in the internal waters of Fiordland has raised concerns that the international, national and regionally significant wilderness and remoteness values of the Fiordland coastal environment are at risk of being eroded and for some users have already been eroded. Policy 3 of the New Zealand Coastal Policy Statement requires the adoption of a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood but potentially significant. Given the international, national and regional significance of the Fiordland coastal environment a precautionary approach towards the consideration of commercial surface water activities is appropriate. The matters identified in this policy can adversely affect the wilderness and remoteness values of the Fiordland coastal environment. A 2021 report *The Wilderness and Remoteness Values of Fiordland Waters* (Lindis Consulting) has identified that for some people wilderness and remoteness values have already been eroded and any further increase in activity will exacerbate adverse effects on wilderness and remoteness values. As such, careful consideration needs to be given to each matter to ensure the wilderness and remoteness values of Fiordland are maintained for future generations. This policy should be considered in conjunction with Policy 16.2.2 and Policy 16.2.7.

## **Policy 16.2.9 - Use of Patea / Doubtful Sound and Te Awa-o-Tū / Thompson Sound as a Thoroughfares**

Rules 16.2.1, 16.2.2

**Provide for commercial surface water activities to use Patea / Doubtful Sound and Te Awa-o-Tū / Thompson Sound as thoroughfares where it is necessary to:**

- 1 ~~pick up~~ embark or off-load ~~disembark~~<sup>45</sup> passengers to or from shore;
- 2 access services including maintenance, ~~and repairs~~ and vessel refueling<sup>46</sup>;
- 3 access wharves, moorings, launching areas or slipway;
- 4 travel from one arm of Patea / Doubtful Sound to another in the case of commercial backcountry activities and day trip activities;
- 5 off-load cargo, waste or wastewater (sewage)<sup>47</sup> and uplift supplies; and
- 6 carry out activities associated with the construction and maintenance of the Manapouri Power Scheme and tailrace.

**Explanation** – Patea / Doubtful Sound and Te Awa-o-Tū / Thompson Sounds are important thoroughfares for a range of ships wanting access to facilities or the road end at Deep Cove. They also provide access to anchorages or bases within the sounds

<sup>42</sup> *Real Journeys LTD 12.13*

<sup>43</sup> *Real Journeys LTD 12.13*

<sup>44</sup> *Real Journeys LTD 12.13*

<sup>45</sup> *Real Journeys LTD 12.14*

<sup>46</sup> *Fiordland Marine Guardians 8.14*

<sup>47</sup> *Real Journeys LTD 12.14*



themselves, for example, Blanket Bay and Deep Cove. Such access is necessary, but is largely incidental to the principal surface water activity of the ship. Access is also required for ~~pick-up and off-loading~~ embarking and disembarking<sup>48</sup> passengers, and for activities associated with the Manapouri power scheme.

This policy seeks to minimise the presence of other commercial vessels in Patea / Doubtful Sound and Te Awa-o-Tū / Thompson Sound so as to protect the amenity of the area.

## **Policy 16.2.10 - Monitoring of surface water activities including ancillary activities and their effects**

**Monitor the scale, geographic scope<sup>49</sup> and distribution of surface water activities, including ancillary activities, and their effects on visitor perceptions and the physical environment.**

**Explanation** - Surface water activities in a remote and pristine area like Fiordland have more significant effects than they would elsewhere, both in terms of their impact on the physical environment and visitor experiences. However, they are difficult to readily quantify. Consequently, it is necessary to gather information on the nature of the use and the effects of that use in a structured, repeatable, rigorous manner. Where possible, the opportunity should be taken to obtain baseline information in advance of activities (including their ancillary activities)<sup>50</sup> becoming an issue. Monitoring needs to be repeatable and representative to provide a sound basis for future management. As such, a large proportion of the monitoring will be part of the Council's general environmental monitoring pursuant to Section 35 of the Resource Management Act 1991 rather than consent monitoring, although the latter still has a role.

## **Policy 16.2.11 - Fiordland National Park Management Plan**

- 1 ~~To~~ Use the Fiordland National Park Management Plan review process as a means of achieving the sustainable integrated management of the coastal environment; and**
- 2 Require resource consent applications to consider adverse effects on Fiordland National Park by having regard to the Fiordland National Park Management Plan ~~through the consideration of resource consent applications.~~<sup>51</sup>**

**Explanation** - Nearly all of the land adjoining the coastal marine area of Fiordland is gazetted National Park. Under Section 66(2)(c) of the Resource Management Act 1991, the Southland Regional Council is required to have regard to management plans prepared under other legislation, and that includes the Fiordland National Park Management Plan. Policy 5 of the New Zealand Coastal Policy Statement 2010 requires the consideration of adverse effects on lands or waters in the coastal environment held under the Conservation Act 1987 and the National Parks Act 1980.

Activities taking place in the Fiordland coastal marine area can adversely impact the values of Fiordland National Park. Increasing levels of surface water activities can result in increases of unnatural noise, air emissions (smoke and odour) and visual amenity effects. The land surrounding the Fiordland coastal marine area is predominantly managed for remote and wilderness experiences. It is therefore sensitive to increased activity. Likewise, activities taking place within the Fiordland National Park can also impact upon the coastal marine area, for example, activities and structures allowed on land adjoining the coast can adversely affect amenity values. Such development can also enhance the use of the coastal areas.

The Fiordland National Park Management Plan is reviewed every 10 years, and any person may make submissions to that review process. The Southland Regional Council

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<sup>48</sup> *Real Journeys LTD 12.14*

<sup>49</sup> *Fiordland Marine Guardians 8.14*

<sup>50</sup> *Fiordland Marine Guardians 8.15*

<sup>51</sup> *Real Journeys LTD 12.16*

will take such opportunity that it considers appropriate in order to achieve integrated management of the coastal environment.

See also Section 20.2.

### **Policy 16.2.12 - Research ships**

Rule 16.2.2

**Provide for ships that facilitate monitoring and research on the coastal marine area of Fiordland.**

**Explanation** - The future management of the coastal marine area in Fiordland will necessitate monitoring and research. Given the remoteness of the area and the predominance of the sea, ships will be required to either undertake research or accommodate researchers. It is unlikely that research ships will represent a significant proportion of overall use. Nevertheless, the amount of activity associated with research should also be properly managed especially given the recent increase in surface water activities taking place in the internal waters of Fiordland. Ships undertaking an assessment of the adverse effects of activities within the internal waters of Fiordland and ships performing statutory monitoring for a central or local government agency or statutory body should be provided for. This policy does not provide for the expansion of commercial surface water activities in any way.

Research conducted by universities, private research institutions and crown research institutions from research vessels has been valuable not only for growing knowledge and understanding of the FMA, but also for informing management, and it is expected that such research will continue to provide value in the future.<sup>52</sup>

### **Policy 16.2.13 - Activities that are ancillary to a principal commercial surface water activity**

Rule 16.2.1

**Consider the cumulative effect of commercial surface water activities by ensuring the adverse effects of activities that are “spawned” by or ancillary to the principal surface water activity are considered and if necessary restricted when assessing resource consent applications.**

Many commercial surface water activities include ancillary activities, which support the main commercial surface water activity. For example, charter boat or scenic cruise operators may also offer kayaks, tender craft, dinghies, paddleboards or helicopter transfers to their clients. These activities generally allow visitors to get off the main vessel and become more immersed in the Fiordland coastal environment. However, these activities individually and cumulatively can adversely affect the significant international, national, and regional values of the Fiordland coastal environment due to, for example, more activity or ‘busyness’ occurring in remote and wilderness areas. This policy seeks to ensure the cumulative adverse effects of commercial surface water activities and their ancillary activities are considered. This policy should be read in conjunction with Policy 16.2.2, Policy 16.2.7 and Policy 16.2.8.

### **Policy 16.2.14 - Statutory function and environmental cleanup activities**

Rules 16.2.1, 16.2.2

**Provide for the use of ships in the internal waters of Fiordland that are:**

- a performing the statutory function of a central or local government agency or statutory body in those waters or on adjacent land practically accessible from the coastal marine area only; or**
- b undertaking salvage, recovery or environmental cleanup work in accordance with any statutory, regulatory or contractual obligation, or as part of an organised cleanup program.**

**Explanation** - The management of the coastal marine area in Fiordland necessitates enforcement activities, eradication work, management programmes, monitoring the

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<sup>52</sup> *Fiordland Marine Guardians 8.17, University of Otago 19.1*

state of the environment (including research for that purpose), environmental cleanup and undertaking installation of navigational aids. Given the remoteness of the area and the predominance of the sea, ships will be required either to undertake these activities, or to accommodate people employed in these roles. It is unlikely that ships utilised for these activities will represent a significant proportion of overall use.

## Policy 16.2.15 – Consent term

Rules 16.2.1, 16.2.2

To protect the intrinsic values of the Fiordland coastal marine area when considering the term of consent for commercial surface water activities consideration will be given (but not limited) to:

- a the duration sought by the applicant and reasons for the duration sought;
- b **for proposals that did not lawfully exist as at [insert date of notification]**<sup>53</sup> whether uncertainty regarding effects / capacity could be addressed through shorter duration;
- c relevant Ngāi Tahu, mana whenua and mana moana values;
- d the value, permanence, and economic life of any capital investment and any related **infrastructure, of relevance to their application**<sup>54</sup>;
- e the desirability of applying a common expiry date;
- f the applicant's compliance with conditions of any previous resource consent and requirements to hold a Fiordland Clean Vessel Pass; or
- g the applicant's adoption, particularly voluntary, of practices, which avoid or if avoidance is not possible adequately mitigate adverse effects.

**Explanation** – This policy provides guidance for Council staff, decision makers, applicants, and other key stakeholders to ensure the consent term for resource consents for commercial surface water activities are appropriate. The focus of this policy is to achieve consent terms that reflect the specific nature of the proposed commercial surface water activity and understanding of the activity's adverse effects, and the national and regional significance of the Fiordland coastal marine area. The Regional Coastal Plan is in the process of being reviewed. It is anticipated through this review allocation limits, or other management methodologies will be developed to sustainably manage the Fiordland coastal marine area.

With respect to Ngāi Tahu, mana whenua and mana moana values it is recommended resource consent applicants engage with Te Ao Marama Incorporated and/or papatipu rūnanga<sup>55</sup> to understand values within the Fiordland coastal environment marine area<sup>56</sup>. Te Tangi a Taurira – the Cry of the People (Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008) and other future Iwi Management Plans also provides<sup>57</sup> direction on resource management issues for Ngāi Tahu, mana whenua and mana moana.

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<sup>53</sup> *Real Journeys LTD 12.18*

<sup>54</sup> *Real Journeys LTD 12.18*

<sup>55</sup> *Te Rūnanga o Ngāi Tahu 15.9, Te Ao Marama Inc 14.13*

<sup>56</sup> *Te Rūnanga o Ngāi Tahu 15.9, Te Ao Marama Inc 14.13*

<sup>57</sup> *Te Rūnanga o Ngāi Tahu 15.9, Te Ao Marama Inc 14.13*

## RULES

### Rule 16.2.1<sup>4</sup> - Commercial surface water activity

- 1 Except as provided for by (6) below, it is a prohibited activity to undertake commercial day trips on Crooked Arm west of Turn Point, Kaikiekie / Bradshaw Sound or First Arm.
- 2 Except as provided for by (4) or (6) below, it is a non-complying activity to undertake commercial day trips:
  - a on Hall Arm;
  - b on P a t e a / Doubtful Sound, Te Awa-o-Tū / Thompson Sound or Crooked Arm east of Turn Point.
- 3 Except as provided for by (5) or (6) below, it is a non-complying activity to undertake commercial backcountry activities:
  - a on Crooked Arm west of Turn Point;
  - b on Hall Arm;
  - c on First Arm;
  - d on Kaikiekie / Bradshaw Sound.
- 4 Except as provided for by (6) below, it is a discretionary activity to undertake commercial day trips:
  - a on Hall Arm, provided that within this area the total number of commercial day trips undertaken by all operators does not exceed five on any day;
  - b on P a t e a / Doubtful Sound, Te Awa-o-Tū / Thompson Sound or Crooked Arm east of Turn Point, provided that within this area the total number of commercial day trips undertaken by all operators does not exceed five on any day.
- 5 Except as provided for by (6) below, it is a discretionary activity to undertake commercial backcountry activities:
  - a on Crooked Arm west of Turn Point, provided that within this area the total number of commercial backcountry trips undertaken by all operators does not exceed an average of three per day, measured over the period of each calendar month;
  - b on Hall Arm, provided that within this area the total number of commercial backcountry trips undertaken by all operators does not exceed an average of three per day, measured over the period of each calendar month;
  - c on First Arm, provided that within this area the total number of commercial backcountry trips undertaken by all operators does not exceed an average of two per day, measured over the period of each calendar month;
  - d on Kaikiekie / Bradshaw Sound, provided that within this area the total number of commercial backcountry trips undertaken by all operators does not exceed an average of four per day, measured over the period of each calendar month;  
provided that no overnight<sup>58</sup> mooring occurs in Hall Arm.

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- a) Changed by Environment Court Consent Order - Judge Jackson, 20 May 2004.
- b) Ship operators are still required to comply with the Biosecurity Act 1993 and the Council's Regional Pest Management Strategy. This is to ensure the risk of introducing any unwanted organism or pest, as defined in either the Act or the Strategy, to the Fiordland Marine Area is minimised.

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<sup>58</sup> *Real Journeys LTD 12.19*

**6 It is a permitted activity to undertake any commercial surface water activities within the internal waters of Fiordland from Yates Point to Puysegur Point for the purposes of:**

- a performing a statutory function of a central or local government agency, or statutory body. The statutory function work may occur within the internal waters of Fiordland itself or on adjacent land that is necessary to be accessed from the coastal marine area.**
- b undertaking the cleanup, removal and disposal of any oil/diesel spill, contaminants, unwanted organisms,<sup>59</sup> rubbish and unlawful structures in or adjacent to the coastal marine area, including wrecks and sunken ships, in accordance with any statutory or regulatory obligation, contract of insurance or as part of any organised cleanup program.**

Notwithstanding 6a and 6b above, the commercial surface water activity shall operate in accordance with the other provisions specified in this Plan, except (1)-(5) above.

**7 Unless provided for by Rules 16.2.1(1)-(6) above or otherwise specified in this Plan, it is a discretionary activity to undertake any commercial surface water activities (including ancillary activities) in the internal waters of Fiordland from Yates Point to Puysegur Point provided the following conditions can be met:**

- a the commercial surface water activity (including ancillary activities) lawfully existed as at [date of notification]; and**
- b the frequency, location, scale and/or duration of the lawfully established commercial surface water activity (including ancillary activities) is not increasing.**

**8 Unless provided for by Rules 16.2.1(1)-(7) above or otherwise specified in this Plan, it is a non-complying activity to undertake any commercial surface water activity (including ancillary activities) in the internal waters of Fiordland from Yates Point to Puysegur Point.**

**For the purpose of this rule:**

- Patea / Doubtful Sound means all that part of the coastal marine area bounded to the west by an imaginary line drawn from Febrero Point to the western extremity of the Hares Ears thence to the western extremity of Secretary Island, and bounded to the south and east by an imaginary line from Brig Point to the southern extremity of Elizabeth Island and the extension thereto excluding Te Awa-o-Tū / Thompson Sound, Kaikiekie / Bradshaw Sound, First Arm and Crooked Arm.**

**Explanation** - Surface water activities adversely affect the values of the Fiordland coastal environment. Recent information suggests surface water activity use has been increasing. The above rule along with the preceding policies provides strong direction whilst retaining sufficient flexibility to provide for unusual or unanticipated activities or any other activity with minor effects.

The effects of these activities are on both the physical environment and the people interacting with it, including other commercial users. These effects result from activities such as the discharge of contaminants, the creation of noise, the occupation and use of space, and the creation of wakes. The specific effects include diminished water quality, disturbance of the seabed or foreshore, loss of public opportunity, habitat depletion and loss of natural

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<sup>59</sup> *Real Journeys LTD 12.19*

character, landscape and amenity values. Loss of natural character, landscape and amenity includes, but is not limited to, the adverse effects of noise and rubbish and the loss of remoteness values.

Commercial surface water activities include commercial day trips and commercial backcountry activities. These activities are defined more particularly in the glossary. Generally, however, commercial day trips involve the use of motorised boats that commence and complete a trip on the same day and commercial backcountry activities involve the use of motorised boats, which commence a trip on one day and complete that trip on another day. Not all commercial activities will fit neatly into the definitions of backcountry or day trip activities. This rule enables all commercial surface water activity to be managed within the wider policy framework.

The effect of the rule is to make any commercial surface water activity (including ancillary activities) in the internal waters of Fiordland, which did not exist at the [insert date of notification] a non-complying activity.

In parts of Patea / Doubtful and Te Awa-o-Tū / Thompson Sounds and the arms thereof, commercial backcountry activities are discretionary activities up to a certain level of use after which they become non-complying activities. Similarly, commercial day trip activities in Hall Arm, Patea / Doubtful Sound and Crooked Arm east of Turn Point are discretionary activities up to a certain level of use after which they become non-complying activities. Commercial day trip activities in Crooked Arm west of Turn Point, First Arm and Kaikiekie / Bradshaw Sound are prohibited activities. The rule status of each activity is dependent upon the ability of the environment to absorb those activities while protecting the natural character and amenity and providing for administrative flexibility and a range of different experiences within Fiordland.

The Fiordland coastal environment is internationally, nationally and regionally significant for a range of reasons, including its landscapes, natural character, remoteness and wilderness experiences, cultural associations and values and marine biodiversity. In recognition of the Fiordland coastal environment's international value, Fiordland National, which adjoins the Fiordland coastal marine area, is a UNESCO World Heritage site. Commercial surface water activity operators facilitate access to the Fiordland coastal environment for those who may not otherwise be able to experience this special place. However, the ability of the Fiordland coastal marine area to absorb the effects of surface water activities on its values is limited. Rule 16.2.1 manages the expansion of commercial surface water activities to protect the significant values of the Fiordland coastal environment. In addition, by controlling commercial surface water activity intensification there will remain a balance of users within the Fiordland coastal environment (for example protection of values enjoyed by recreational boaties). As a result of increasing use, it is appropriate to carefully consider applications for further increases in use and adopt a precautionary approach to ensure that commercial surface water activity use does not erode the significant values of Fiordland. As such, any increase in activity is a non-complying activity.

Despite the controls imposed on commercial surface water activity within the internal waters of Fiordland from Yates Point to Puysegur Point it is appropriate to permit the utilisation of ships by central or local government agencies, statutory bodies or their contractors, undertaking a statutory function of the agency or body, such as enforcement activities, eradication work, management programme, monitoring the state of the environment, environmental cleanup, undertaking installation of navigational aids, or any other function. Central or local government agencies include Environment Southland, Department of Conservation, Ministry for Primary Industries, New Zealand Customs, Land Information New Zealand, Ministry for the Environment, Ministry of Health, Maritime New Zealand, Ministry of Commerce, New Zealand Police, New Zealand Defence Force, Fiordland Marine Guardians, and Ngāi Tahu recipients pursuant to the Ngāi Tahu Claims Settlement Act 1998, or their contractors. This includes where the ship utilised has been offered to, or used for hire or reward by, an agency, statutory body or its contractor. It is also appropriate to permit the utilisation of ships for environmental cleanup by entities/people/insurers or their contractors.

Enforcement activities range from surveillance, inspections, collecting evidence on an unlawful activity, to taking action to stop an unlawful activity. Environmental cleanup involves cleaning up contaminants, rubbish and unlawful structures, and is required in instances such as an oil/diesel spill, when a ship sinks or when a beach is littered with rubbish. Monitoring the state of the environment covers monitoring and research activities for the primary purpose of ensuring the management documents (i.e. plans, regulations, acts, bylaws etc.) the respective agencies have statutory responsibility for are effective in sustainably managing the coastal environment. This includes monitoring to ensure all the activities within

a particular area are compatible with the area's carrying capacity or overall sustainable limit. It does not cover research activities where the primary purpose is for other purposes, such as individual research or university theses, whereby Rule 16.2.2(3) applies.

### **Rule 16.2.2<sup>5</sup> - Research ships**

**1 It is a permitted activity to use a ship for the purposes of assessing the effects of activities within the internal waters of Fiordland, where such assessment is required as a condition of a resource consent or a rule in this Plan.**

**2 It is a permitted activity to use a ship within the internal waters of Fiordland from Yates Point to Puysegur Point for the purposes of performing statutory function monitoring of the state of the environment for a central or local government agency, or statutory body. The statutory function work may occur within the internal waters of Fiordland itself or on adjacent land that is necessary to be accessed from the coastal marine area.**

**Notwithstanding this provision, the research ship shall operate in accordance with the other provisions specified in this Plan, except Rule 16.2.1(1)-(5) and (7)-(8).**

**3 Except as provided for in (1) or (2) above, it is a discretionary activity to use a ship for research purposes within the internal waters of Fiordland.**

**In considering any application for consent lodged in terms of Rule 16.2.2(3), Council shall have regard to the effects of:**

- 1 the ship to be used;**
- 2 the times of the day and year for which consent is sought;**
- 3 the duration or period during which research will be undertaken;**
- 4 any effects on the vegetation, fauna and physical environment from the research activity.**

**Explanation -** Generally, research undertaken by universities, private research institutions and crown research institutions from research vessels is valuable for increasing knowledge and understanding of the Fiordland coastal environment. This research can also be used to inform management of statutory bodies within the Fiordland coastal environment.<sup>60</sup> Genuine research is generally supported and should be provided for provided the research activities do not adversely affect other users or natural and physical resources. The effects of any research activity required as a condition of consent will be considered as part of the resource consent and, as such, no other consent should be required for that research. Other research could be very similar in nature to commercial surface water activities and, as such, should be considered in a like manner.

Despite the controls imposed on research ships within the internal waters of Fiordland from Yates Point to Puysegur Point it is appropriate to permit the utilisation of ships for monitoring the state of the environment by central or local government agencies and statutory bodies, such as Environment Southland, Department of Conservation, Ministry for Primary Industries, New Zealand Customs, Land Information New Zealand, Ministry for the Environment, Ministry of Health, Maritime New Zealand, Ministry of Commerce, New Zealand Police, New Zealand Defence Force, Fiordland Marine Guardians, and Ngai Tahu recipients pursuant to the Ngai Tahu Claims Settlement Act 1998, or their contractors.

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<sup>5</sup> Ship operators are still required to comply with the Biosecurity Act 1993 and the Council's Regional Pest Management Strategy. This is to ensure the risk of introducing any unwanted organism or pest, as defined in either the Act or the Strategy, to the Fiordland Marine Area is minimised.

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<sup>60</sup> *Fiordland Marine Guardians* 8.22

Monitoring the state of the environment covers monitoring and research activities for the primary purpose of ensuring the management documents (i.e. plans, regulations, acts, bylaws etc.) the respective agencies have statutory responsibility for are effective in sustainably managing the coastal environment. This includes monitoring to ensure all the activities within a particular area are compatible with the area's carrying capacity or overall sustainable limit. It does not cover research activities where the primary purpose is for other purposes, such as individual research or university theses, whereby Rule 16.2.2(3) applies.

**Additional Explanation to Rules 16.2.1 and 16.2.2**<sup>61</sup> - Commercial surface water activities can adversely affect the international, national, and regionally significant values of the Fiordland coastal environment. Such uses are also recognised as having the greatest potential to expand and in most instances, it is appropriate to assess the effects of such activities by way of resource consent.

The effects of these activities are on both the physical environment and the people interacting with it, including other commercial users. Specifically, these effects result from activities such as the discharge of contaminants, the creation of noise, the occupation of space, and the creation of wakes. The specific effects also include diminished water quality, disturbance of the seabed or foreshore, loss of public opportunity, habitat depletion and loss of landscape and amenity values. Loss of landscape and amenity includes, but is not limited to, the adverse effects of noise and rubbish and the loss of remoteness values.

Commercial day trips involve the use of motorised ships that commence and complete a trip on the same day. Commercial backcountry activities involve the use of motorised ships, which commence a trip on one day and complete that trip on another day. The type of rule managing such activities is related to the ability of the environment to absorb those activities while protecting the natural character and amenity of those areas, and providing for a range of different experiences within Fiordland. Surface water activities within the Fiordland coastal marine area have been increasing, therefore any further increases in commercial surface water activity (excluding for research purposes)<sup>62</sup> including new consents ~~are~~<sup>is</sup><sup>63</sup> to be considered a non-complying activity until a sustainable carrying capacity is developed through the review of the Regional Coastal Plan. A resource consent for a non-complying activity needs to be carefully considered and can only be granted if the adverse effects on the environment will be minor or the application is not contrary to the relevant objectives and policies. As such, an application for any increase in activity, which did not exist at [insert date of notification], will face a rigorous test to ensure these significant values are protected for future generations.

The references to a non-complying activity are to an activity that is provided for as a non-complying activity in Rule 16.2.1 – Commercial surface water activity. Rule 16.2.1 does not apply to the utilisation of ships by universities, private research institutions and crown research institutions undertaking research. Rule 16.2.1(8) states that unless provided for by Rules 16.2.1(1)-(7) or otherwise specified in the RCP it is a non-complying activity to undertake any commercial surface water activity (including ancillary activities) in the internal waters of Fiordland from Yates Point to Puysegur Point, and under Rule 16.2.2 – Research ships the utilisation of ships by research organisations such as universities and CRIs undertaking research is provided for as a discretionary activity. With reference to Rule 16.2.1(8), research ships are, therefore, “otherwise specified”. Similarly, under Rule 13.2(2)(b), it is a discretionary activity for any ship over 1,000 gross registered tons, which is not a cruise ship, to be within the internal waters of Fiordland to undertake research activity (i.e., with reference to Rule 16.2.1(8) they are also “otherwise specified”).<sup>64</sup>

Not all commercial activities will fit neatly into the definitions of backcountry or day trip activities. Rule 16.2.1(6) enables all commercial surface water activity to be managed within the wider policy framework. No threshold has been placed in any of the above rules on the number of ‘standalone’ commercial non-motorised boats, such as kayaks, that are able to operate in the Fiordland area because, by themselves, their effects are considered to be no more than minor. As with any commercial surface water activity, however, resource consent is required so that cumulative effects can be managed.<sup>65</sup>

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<sup>61</sup> University of Otago 19.1

<sup>62</sup> University of Otago 19.1

<sup>63</sup> Real Journeys LTD 12.19

<sup>64</sup> University of Otago 19.1

<sup>65</sup> Real Journeys LTD 12.19



## Addition to the Glossary

**Ancillary activities (to a commercial surface water activity):** Means activities, which are part of the overall commercial surface water activity, but is not the main ship. For example, the use of kayaks, tender craft, or aircraft and paddleboards, which are secondary to the main surface water activity.

**Wilderness:** Is an environment that is predominantly absent of people and human modification but recognises mana whenua presence through sustainable customary use and practice. The following conditions are generally experienced in Fiordland's wilderness environments:

- a high probability of experiencing remoteness;
- a high probability of experiencing naturalness;
- minimal human presence;
- expansive landform scale;
- a low probability of experiencing anthropogenic noise;
- outstanding natural features and landscapes; and
- high conservation values.<sup>66</sup>

**Piopiotaahi / Milford Sound:** Means the geographic feature Milford Sound / Piopiotaahi, as in the New Zealand Gazetteer (Piopiotaahi / Milford Sound is not the official geographic name of the geographic features to which it applies).<sup>67</sup>

**Patea / Doubtful Sound:** Means the geographic feature Doubtful Sound / Patea, as in the New Zealand Gazetteer (Patea / Doubtful Sound is not the official geographic name of the geographic features to which it applies).<sup>68</sup>

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<sup>66</sup> Reply s42A Report, pg. 14 with Hearing Panel amendments.

<sup>67</sup> *Real Journeys Ltd 12.11*

<sup>68</sup> *Real Journeys Ltd 12.11*

# ATTACHMENT 2

## Hearing Appearances and Representations

### **Southland Regional Council Reporting Officer**

- Rebecca Robertson, Director, Southland Land & Water Planning Ltd
- Ash Rabel, Team Leader Aquatic Ecosystems, Environment Southland

### **Real Journeys Ltd (trading as 'Realnz')**

- Marie Baker-Galloway, Counsel, Anderson Lloyd
- Paul Norris, Acting Chief Executive Officer, Realnz
- Fiona Black, Manager, Realnz
- Gareth Clarke, Concession & Consents Manager, Realnz

### **Minister of Conservation**

- Pene Williams, Solicitor Rōia, Department of Conservation Te Papa Atawhai
- Amy Young, RMA Planner, Department of Conservation Te Papa Atawhai
- Richard Kinsey, Technical Advisor, Department of Conservation Te Papa Atawhai

### **Denis Tipene**

### **Te Ao Marama Incorporated**

- Dean Whaanga, Kaupapa Taiao Manager, Te Ao Marama Incorporated

### **Fiordland Marine Guardians**

- Dr Rebecca McLeod, Chair Guardian
- Mark Peychers, Guardian