

Recommendation and decision on notification of resource consent application(s) under sections 95-95G of the Resource Management Act 1991 (RMA)

Recommendation and decision

Officer's recommendation

10.1	The application be processed non-notified	<input type="checkbox"/>
10.2	Public notification is recommended	<input checked="" type="checkbox"/>
10.3	The application be placed on hold while the applicant tries to obtain written approvals from the affected persons	<input type="checkbox"/>
10.4	Limited notification is required. Persons to be served notice are those listed in 8.2	<input type="checkbox"/>



Aurora Grant
Team Leader Consents

Date: 22/08/2019

Decision under Delegated Authority

11.1	I agree with the recommendation	<input checked="" type="checkbox"/>
11.2	The application will be processed non-notified	<input type="checkbox"/>
11.3	The application will be publicly notified	<input checked="" type="checkbox"/>
11.4	The application shall be placed on hold while the applicant tries to obtain written approvals from the affected persons	<input type="checkbox"/>
11.5	The application will be limited notified. The parties to be served notice are those listed in section 8.2	<input type="checkbox"/>

This decision is made under delegated authority by:



Michael Durand
Consents Manager

Date: 22/8/2019

Summary

I recommend the application is processed on a publicly notified basis. This is because:

- The farm will include up to 153 bouys on the water surface, as well as connecting ropes, navigational lights and possibly other physical and visible elements
- The site is located in an area that has been determined as an Outstanding Natural Landscape. As effects on ONL are subjective to the person observing them, the effects may be more than minor.
- The application is for the exclusive occupation of the CMA.

The application

Particulars

Applicant:	Suelen Properties Limited
Application reference:	APP-20191484
Site address or location:	Nathan's Island, Stewart Island
New consent(s) for new activity(ies) (s88)	<input type="checkbox"/>
New consent(s) for existing activity(ies) (s88)	<input checked="" type="checkbox"/>
Change to conditions of existing consent(s) (s127)	<input type="checkbox"/>

The proposal

The application is to replace the existing coastal permit AUTH-302167 to farm oysters in the coastal marine area (CMA). This permit covered three sites, one site has been reapplied for under this application, the other two under another application (APP-20191479).

The application will not:

- increase the marine farm sites;
- add more sites to be used for marine farming

The application will:

- increase the number of apparatus used for growing oysters;
- increase the number of bouys used;
- increase the number of anchors and therefore seabed disturbance; and
- increase the occupation of the CMA underneath the surface of the water by apparatus.

The number of bouys used on this site will increase as per the table below. These numbers are projected numbers and do not include the 4 additional bouys used for navigation safety to mark the marine farm site.

Buoys	
	Nathan's Island
Previously used (consented)	34
Apr 2020	20
Apr 2021	71
Apr 2022	89
Apr 2023	153
Apr 2024	153
Apr 2025	153
Percentage increase	350% increase

The consent currently allows 34 cray / coff pots to be used on the site. The proposal is seeking to increase this to 40 by 2023.

The number of baskets proposed is outlined below and these are projected numbers. The baskets will be hung in sets of 10 baskets per 1 set, so the below numbers should be divided by 10 to outline how many sets of baskets there will be.

Baskets	
	Nathan's Island
Apr 2020	57
Apr 2021	426
Apr 2022	625
Apr 2023	1063
Apr 2024	1063
Apr 2025	1063

Resource consent is required under Rule 15.1.7 of the Regional Coastal Plan. Overall, the application is a discretionary activity.

Public notification consideration

1. Is notification mandatory?

1.1	Has the applicant requested that the application be publicly notified? (s95(3)(a))	<input type="checkbox"/> Yes	Application must be publicly notified. Go to 10.2
		<input checked="" type="checkbox"/> No	Go to 1.2
1.2	Was further information, or commissioning of a report, requested under s92?	<input checked="" type="checkbox"/> Yes	Go to 1.3
		<input type="checkbox"/> No	Go to step 2.1
1.3	If yes, was the request refused, or did the applicant fail to respond or fail to provide the information by the deadline?	<input type="checkbox"/> Yes	Public notification is required by s95C. Go to 10.2

No Go to step 2.1

2. Is notification precluded?

2.1	Is each activity subject to a rule or NES that precludes public notification?	<input type="checkbox"/> Yes	Rule(s): <input type="text" value="enter rule"/> Go to 4.1
		<input checked="" type="checkbox"/> No	Go to step 2.2
2.2	Is each activity a controlled activity?	<input type="checkbox"/> Yes	Application must not be publically notified unless there are special circumstances. Go to 4.1
		<input checked="" type="checkbox"/> No	Go to 2.3
2.3	Is each activity a residential activity <u>and</u> a discretionary activity or a restricted discretionary activity?	<input type="checkbox"/> Yes	Application must not be publically notified unless there are special circumstances. Go to 4.1
		<input checked="" type="checkbox"/> No	Got to 3.1

3. Is notification required?

3.1	Are any of the activities subject to a rule or NES that requires notification?	<input type="checkbox"/> Yes	Application must be publicly notified. Go to 10.2
		<input checked="" type="checkbox"/> No	Go to 3.2
3.2	Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor?	<input checked="" type="checkbox"/> Yes	Application must be publicly notified. Complete 3.3 and go to 10.2
		<input type="checkbox"/> No	Complete 3.3 and go to 4.1.

Note: In forming this opinion (a) to (e) apply:

- (a) we must disregard any effects on persons who own or occupy the land on which the activity will occur or any land adjacent to that land (section 95D(a));
- (b) we may disregard an adverse effect of the activity if a rule or NES permits an activity with that effect (subject to Policy 36 of the pSWLP) (95D(b));
- (c) in the case of a restricted discretionary activity, we must disregard any adverse effects that do not relate to the matters over which the rule or NES restricts discretion (95D(c));
- (d) we must disregard trade competition and the effects of trade competition - 95D(d); and
- (e) we must disregard any effect on a person who has given written approval - 95D(e)

3.3 Reasons adverse effects on the environment are less than minor / minor / more than minor

The existing environment

The marine farm site is located near Nathan's Island, to the north of Horseshoe Bay, Stewart Island.

There are no other man-made structures that can be seen from a vessel in the vicinity of this site, neither in the sea nor on land.

The hills surrounding this site are cloaked with native vegetation with some patches of regenerating forest and exotic grasses.

The site is within an area identified as an area with significant values by the Regional Coastal Plan and an area with outstanding natural character as described in the Boffa Miskell report¹. That report defines that an area of outstanding natural character must:

'exhibit a combination of natural elements, patterns and processes that are exceptional in their extent, intactness, integrity and lack of built structures (the 'clutter' factor) and other modifications compared to other areas in the Southland Region'

The Boffa Miskell study concluded, as a consequence, that the site is within an Outstanding Natural Landscape.

The applicant disagrees with this because:

- the areas have been modified by farming practises;
- there are inconsistencies in the Boffa Miskell report which identify some areas with buildings / man-made structures as "outstanding"
- the study details that although anything less than pristine is not devoid of natural values, just that they're of lesser value. The applicant believes anything of lesser value is not "outstanding" and should be "very high" value instead
- the methodology in the study identifies that Boffa Miskell used a fixed-wing aircraft. The applicant believes this would not give the level of detail needed to definitively identify landscape values. In addition, the authors of the study admit that there was a significant level of judgement made by the team undertaking the study.

The site is presently occupied by the applicant's existing oyster farm, which is consented to remain there within the terms of AUTH-302167 until 10/10/2019. After that date the farm will cease to be part of the existing environment.

Adverse effects of the proposed activities on the environment

Adverse effects on landscape

The farm will include up to 153 bouys on the water surface, as well as connecting ropes, navigational lights and possibly other physical and visible elements.

While I respect the applicant's view on ONL, in my view there are sufficient grounds to conclude that these surface features may create adverse effects on the character of the landscape that are more than minor. In my consideration, adverse effects on the natural character of the landscape are likely to be

¹ Stewart Island / Rakiura: Landscape and Coastal Natural Character Study. Boffa Miskell. 1 April 2019.

more than minor whether or not the site is deemed to be an ONL or a landscape of 'very high' natural character.

Adverse effects on birds and mammals

Man-made noise from the vessels to be used will deter and perhaps displace some seabirds and mammals from the sites and surrounds. It is not uncommon to see other vessels in this area.

Birds have begun to associate vessels with food because of other industries discarding fish waste over the sides of vessels. This alters their food-foraging behaviour, which is not 'natural' or 'normal'.

The additional anchors on the seafloor will cause disturbance when they're installed and when they're removed. This is likely to reduce the habitat on the seafloor where the anchors are placed.

Adverse effects on other users of the CMA

The increase in the number of buoys will diminish the visual amenity of the area and will make the area seem busier. It will also reduce the area where public can recreate, however, the ropes and lines will be deep enough so that vessels will be able to manoeuvre between the buoys safely if needed.

The increase in anchors on the seafloor will cause an increase in occupation and members of the public won't be able to use the area. Others won't be able to use the seabed for mooring or anchoring. The marine farm site is not increasing, so the actual effect of the occupation is likely to be minimal.

Noise from the vessels used for the operation will disrupt the sense of open space and naturalness of the area. It is not unusual for other vessels to be in this area.

Other matters

The application is to exclusively occupy the CMA, which has an effect on public access that may be more than minor.

Adverse effects that have been disregarded

N/A

Planning provisions (policies and objectives) relevant to adverse effects

Policies of the Regional Coastal Plan in Chapter 15 are relevant. The provisions in Chapter 15 were approved by Council in September 2008, and approval by the minister of Conservation was granted in February 2013. The plan became fully operative on 16 March 2013.

The Regional Coastal Plan provisions were written prior to the New Zealand Coastal Policy Statement (NZCPS) and prior to the Southland Regional Policy Statement (RPS). For this reason more weight has been put on the NZCPS and the RPS.

Regional Coastal Plan

Objective 11.2.1 To ensure that structures are located in the most appropriate site so as to avoid, remedy or mitigate adverse effects of their presence.

Objective 11.2.2	To recognise the social, economic, cultural and safety benefits of structures in the coastal marine area.
Policy 15.1.4	Require monitoring of individual marine farm sites.
Policy 11.2.16	Avoid, remedy or mitigate the adverse effects on structures on the natural character, amenity, landscape, seascape and open space value of the coastal marine area.
Policy 11.2.17	Encourage structures... to be located, finished, and be of a form, profile, extent and alignment that is not incompatible with the visual amenity, natural character and physical landscape of the area in which it is located.
Policy 11.7.6.1	Provide for navigation safety aids in the coastal marine area.
Policy 11.7.9.1	Discourage the ... use of storage pots in locations where they could damage significant vegetation and fauna, be a hazard to navigation safety, anchorages, recreational activities, or have an adverse effect on visual amenity.
Policy 11.8.1	Preserve existing navigation routes around the coast and to and from launching places, ports and anchorages.
Policy 9.1.4	Limit the area of exclusive occupation to that necessary to undertake the activity for which the right to occupy is needed.
Policy 9.1.6	Limit occupation right to a period that will satisfy the immediate foreseeable needs of the activity.

New Zealand Coastal Policy Statement

Objective 2	<p>To preserve the natural character of the coastal environment and protect natural features and landscape values through:</p> <ul style="list-style-type: none"> • recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution; • identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and • encouraging restoration of the coastal environment.
Objective 4	<p>To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by:</p> <ul style="list-style-type: none"> • recognising that the coastal marine area is an extensive area of public space for the public to use and enjoy; • maintaining and enhancing public walkway access to and along the coastal marine area without charge.
Objective 6	<p>To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through ... use and development, recognising that:</p> <ul style="list-style-type: none"> • the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms;

- some uses and development which depend upon the use of natural and physical resources are important to the wellbeing of communities.

Policy 3 Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.

Policy 8 Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by the measures listed.

Policy 13 To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use and development:

- avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character;
- avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;

Including by:

- assessing the natural character of the coastal environment of the region by mapping or identifying the areas of high natural character;
- ensuring that regional policy statements, and plans, identify where preserving natural character requires objectives, policies and rules, and include those provisions.

Recognise that natural character is not the same as natural features or landscapes or amenity values and may include matters such as:

- natural elements, processes and patterns;
- biophysical, ecological, geological and geomorphological aspects;
- natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;
- the natural movement of water and sediment;
- the natural darkness of the night sky;
- places or areas that are wild or scenic;
- a range of natural character from pristine to modified; and
- experiential attributes, including the sounds and smell of the sea; and their context or setting

Policy 15 To protect the natural features and landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use and development:

- avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes;
- avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment.

Including by:

- identifying and assessing the natural features and natural landscapes of the coastal environment of the region, at a minimum by land typing, soil characterisation and landscape characterisation and having regard to:
 - natural science factors
 - the presence of water

- legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes
 - aesthetic values including memorability and naturalness
 - vegetation (native and exotic)
 - transient values including presence of wildlife at certain times of the day
 - whether values are shared and recognised
 - cultural and spiritual values including their expression as cultural landscapes and features
 - historical and heritage associations
 - wild or scenic values.
- Ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules.

Southland Regional Policy Statement

- Objective COAST.1 Provide clear direction on appropriate and inappropriate subdivision, use and development activities, the cumulative effects of an activity, and precedent effects of a decision.
- Objective COAST.2 Infrastructure, ports, energy projects, aquaculture... use and development in the coastal environment are provided for and able to expand, where appropriate, while managing the adverse effects of those activities.
- Objective COAST.4 The natural character of the coastal environment is restored, rehabilitated or preserved.
- Objective COAST.5 Recognise the contribution of aquaculture to the well-being of people and communities by making provision for aquaculture in appropriate locations while:
- Protecting coastal indigenous biodiversity
 - Protecting outstanding natural features, landscapes and natural character in accordance with Policy COAST.3
 - Avoiding, remedying or mitigating other adverse effects.
- Policy COAST.1 Identify in regional plans locations within the coastal environment where particular activities and forms of subdivision, use and development are appropriate, are inappropriate, and may be appropriate without the consideration of effects through a resource consent application.
- Policy COAST.2 Ensure adequate measures or methods are utilised within the coastal environment when making provision for subdivision, use and development to:
- Protect indigenous biodiversity, historic heritage, natural character, and natural features and landscape values;
 - Maintain or enhance amenity, social, intrinsic, ecological and cultural values, landscapes of cultural significance to tangata whenua and coastal dune systems;
 - Maintain or enhance public access; and
 - Avoid or mitigate the impacts of natural hazards
- Policy COAST.3 Ensure that subdivision, use and development activities:

- Avoid adverse effects on areas of outstanding natural features and landscapes, and / or outstanding natural character;
- Avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects on other natural features and landscapes and / or natural character in the coastal environment;
- Protect and provide for nationally significant, regionally significant, and critical infrastructure

Policy COAST.4 Recognise and make provision for nationally significant, regionally significant or critical infrastructure that has a functional, operational or technical need to be located within the coastal environment, and appropriate port, aquaculture, mineral extraction activities and energy projects that must be located within the coastal environment.

Policy COAST.6 In regional plans:

- Assess the natural character of the coastal environment by identifying areas of high and outstanding natural character using the attributes outlined in policy 13(2) of the NZCPS;
- Identify areas where preserving natural character requires objectives, policies and rules and include those provisions;
- Identify areas and opportunities for restoration and rehabilitation of natural character; and
- Provide policies, rules and other methods directed at restoration or rehabilitation of the natural character of the coastal environment.

Policy COAST.7 Within the coastal marine area, provide a framework to avoid or mitigate adverse effects on the coastal environment for the following activities:

- The allocation, use and occupation of coastal space;
- The use and development of the natural and physical resources;
- The emission of noise;
- Commercial activities on the water and on the foreshore and seabed.

Conclusion: significance of adverse effects on the environment

When the application is examined through the lens of the regional coastal plan and the NZCPS, I consider that the effects are likely to be more than minor, especially in regards to effects on landscape.

Of significance is that the regional coastal plan pre-dates the NZCSP, and *RJ Davidson* case law directs that if a regional plan is outdated, I am required to go to higher order documents (in this case the NZCPS) when assessing effects of a proposed activity.

The NZCPS directs that effects on ONL are avoided, and other effects on natural character are avoided, remedied or mitigated. There is disagreement about the classification of the site location in regards to ONL, however as the Boffa Miskell study has determined that it is ONL, I consider that the effects will be more than minor and notification on these grounds is required.

4. Special circumstances and public notification

4.1 Do special circumstances exist in relation to the application that warrant the application being publicly notified?	<input type="checkbox"/> Yes	Application must be publicly notified. Explain reasons in 4.2 and go to 10.2
	<input type="checkbox"/> No	Explain reasons in 4.2.

If each activity is a controlled activity go to 10.1. Otherwise go to 5.1

4.2 Reasons why special circumstances do or do not exist

Include an explanation that is commensurate with the level of risk.

Affected Parties and Limited Notification

5. Protected Customary Rights Group or Customary Marine Title group

5.1 Is the activity in the coastal environment, within an area where it may adversely affect a protected customary rights group(s) or a customary marine title group(s) (see s95G)?	<input type="checkbox"/> Yes	Go to 5.2
	<input type="checkbox"/> No	Go to 6.1
5.2 May the activity have adverse effects on a protected customary right carried out in accordance with the requirements of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011?	<input type="checkbox"/> Yes	The customary rights group(s) is an affected customary rights group(s). Application must be limited notified on them. Record in 5.3 and go to 6.1
	<input checked="" type="checkbox"/> No	Go to 6.1

5.3 Adversely affect a protected customary rights group(s) or a customary marine title group(s):

To my knowledge there are no groups which have been granted this title. The Resource Management Act is silent on whether to consider applicants.

6. Statutory Acknowledgement Areas

6.1 Is the activity on or adjacent to, or may it affect, a statutory acknowledgement area?	<input type="checkbox"/> Yes	Go to 6.2
	<input type="checkbox"/> No	Go to 7.1
6.2 Are the adverse effects on Te Rūnanga o Ngāi Tahu minor or more than minor?	<input type="checkbox"/> Yes	Include TRONT in 8.2 and go to 6.3
	<input type="checkbox"/> No	Go to 6.3

6.3 Reasons why adverse effects on Te Rūnanga o Ngāi Tahu are less than minor, minor or more than minor:

The sites are within the Rakiura Coastal Marine Area, which is a Statutory Acknowledgment area.

7. Is limited notification precluded?

7.1 Is each activity subject to a rule, NES or regulation that precludes limited notification?	<input type="checkbox"/> Yes	Go to 9.1
	<input type="checkbox"/> No	Go to 8.1

8. Are any people adversely affected?

-
- 8.1 Are the adverse effects on a person minor or more than minor (but not less than minor)?
- Yes Go to 8.2
- No Go to 8.3
-

8.2 Person(s) considered to be adversely affected (complete and go to 8.3)

Person	Effect on person (see Note)	Reasons why effect is minor or more than minor	Has written approval been provided?

Note: In forming this opinion (a) to (c) apply:

- (a) We may disregard an adverse effect of the activity on the person if a rule or an NES permits an activity with that effect; and
- (b) We must, if the activity is a controlled activity or a restricted discretionary activity, disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and
- (c) Must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.

8.3 Reasons why no other person is considered to be adversely affected

9. Special Circumstances – Limited Notification

-
- 9.1 Are there special circumstances that warrant limited notification of any other persons?
- Yes Application must be limited notified to those persons and any other affected persons. Go to 9.2
- No Go to 10
-

9.2 Reasons special circumstances exist and persons to be notified