

The Hearing Commissioners

10 October 2016
9:00 am

Staff Report for Hearing

The recommendation in the staff report represents the opinion of the writer and it is not binding on the Hearing Commissioners. The report is evidence and has no greater weight than any other evidence that the Hearing Commissioners will hear and consider.

**Hearing of Application – APP-20169132
Island Escape Cruises Limited
Compiled by Matt Hoffman, Consents Officer**

- Hearing: The hearing is scheduled to commence at 9:00 am on Monday, 10 October 2016 at The Distinction Hotel, Te Anau.
- Application: Island Escape Cruises Limited has applied to undertake commercial surface water activities in the coastal marine area adjacent to Fiordland National Park, for one vessel up to 49 metres in length, with up to 34 passengers and 12 crew, for backcountry trips from Febrero Point to Puysegur Point. This consent is to be exercised in conjunction with its existing coastal permit (AUTH-302129-V2) to operate backcountry trips in the northern fiords.
- Notification: The application was publicly notified on 10 June 2016 and 13 submissions were received. Ten submitters wish to be heard.
- Executive Summary: This is an application for a coastal permit to undertake commercial surface water activities in the coastal marine area adjacent to Fiordland National Park. As outlined in this report the key issues and areas of agreement are:
1. the application is for a commercial surface water activity in the Fiordland marine area, an area which borders Fiordland National Park. The Fiordland marine area has an extremely high quality environment and significant natural values;
 2. that submitters are concerned that the application could give rise to significant effects on natural character, remoteness and wilderness values, navigational safety and cumulative effects;

3. that a full assessment of the noise effects of the activity was not provided, and that a determination on the extent of noise effects cannot be made;
4. that some of the anchorages proposed to be used by the applicant may not accommodate a vessel 49 metres in length, and as a result a full determination as to the effect of the application on public safety cannot be made; and
5. that as a result of 3 and 4 above, there is some inconsistency with the provisions of the Regional Coastal Plan and other statutory documents.

1. Introduction

1.1 Status and purpose of this report

This report has been prepared under Section 42A of the Resource Management Act 1991 (RMA) to assist in the hearing of the application for resource consent made by Island Escape Cruises Limited. Section 42A allows local authorities to require the preparation of such a report on an application for resource consent and allows the consent authority to consider the report at any hearing.

The purpose of the report is to assist the Hearing Panel in making a decision on the application.

1.2 About the author

My name is Matt Hoffman. I am a Consents Officer employed by the Southland Regional Council. I have been employed by the Council as a Consents Officer since June 2011.

I hold the qualifications of a Bachelor of Applied Science with a Major in Environmental Management, with Honours and a Masters of Science in Geography (Distinction), both from the University of Otago. I have been the Consent Division's coastal specialist for over three years and have processed numerous coastal permits of varying types over that time.

I have been involved with the application since it was lodged and received by Council. I have not visited the site for this application specifically. However, I attended a compliance trip into the area with the Royal New Zealand Navy aboard the *HMNZ Otago* in February 2016. The purpose of this trip was to undertake inspections of structures and commercial surface water activities in the area to ensure compliance with resource consent conditions. My observations drawn from the trip are detailed in Section 3.3 of this report.

1.3 Information relied on in preparation of this report

In preparation of this report, I have had regard to the following documents:

- resource consent application dated 6 May 2016;
- further information requested under Section 92(1) of the RMA, dated 31 May 2016 and 2 June 2016;
- navigational safety assessment of the application completed by the Southland Regional Harbourmaster;
- Resource Management Act 1991;

- Resource Management (Marine Pollution) Regulations 1998;
- New Zealand Coastal Policy Statement 2010;
- Operative Regional Policy Statement for Southland 1997;
- Proposed Southland Regional Policy Statement 2012 (notified version);
- Regional Coastal Plan for Southland 2010;
- Te Tangi a Tauira (Iwi Management Plan) 2008; and
- Fiordland National Park Management Plan.

1.4 List of abbreviations

CMA	Coastal marine area (as defined in the Glossary to the Regional Coastal Plan)
CSWA	Commercial surface water activities (as defined in the Glossary to the Regional Coastal Plan)
DOC	Department of Conservation
FMA	Fiordland marine area (as defined in the Glossary to the Regional Coastal Plan)
FMG	Fiordland Marine Guardians
FNPMP	Fiordland National Park Management Plan
Forest & Bird	Royal Forest and Bird Society
IECL	Island Escape Cruises Ltd, the applicant
MNZ	Maritime New Zealand
MPI	Ministry for Primary Industries
MPR	Resource Management (Marine Pollution) Regulations 1998
MTA	Maritime Transport Act 1994
NES	National Environmental Standard
NZCPS	New Zealand Coastal Policy Statement 2010
PRPS	Proposed Southland Regional Policy Statement 2012 (notified version)
RCP	Regional Coastal Plan for Southland 2013
RHIB	Rigid-hulled inflatable boat
RPS	Operative Regional Policy Statement for Southland 1997
TAMI	Te Ao Marama Inc
TRONT	Te Rūnanga O Ngāi Tahu

2. The application and procedural matters

2.1 The proposed activities

Applicant:	Island Escape Cruises Limited
Application:	Undertake commercial surface water activities in the CMA adjacent to Fiordland National Park, for one vessel up to 49 metres in length, with up to 34 passengers and 12 crew, for backcountry trips.
Site address or location:	Within the CMA from Febrero Point to Puysegur Point
Legal description:	Marine and coastal area
Map Reference:	NZTM 2000: 1099142E 4935456N

Island Escape Cruises Limited (IECL) has applied to undertake commercial surface water activities (CSWAs) in the coastal marine area (CMA) adjacent to Fiordland National Park, for one vessel up to 49 metres in length, with up to 34 passengers and 12 crew, for backcountry trips¹ from Febrero Point to Puysegur Point.

Figure 1 (pg 7) shows the applicant's proposed operational area, which incorporates Dagg Sound, Breaksea Sound, Dusky Sound, Chalky Inlet and Preservation Inlet.

A smaller vessel with a lesser passenger capacity may be used from time-to-time. Only one vessel will be operated at a time pursuant to this consent.

The proposed expiry date for this consent is 9 September 2033, to align with the expiry date of applicant's existing consent (Coastal Permit AUTH-302129-V2).

The applicant will largely undertake backcountry trips from October to May each year, but trips may occur at any time of the year. Each trip will be of about 5-6 nights duration, and will occur back-to-back, though the frequency and duration may vary.

Passengers and freight will arrive and depart the vessel via helicopter. A helipad is on-board the vessel to facilitate this.

The applicant is not intending to seek a concession from the Department of Conservation for on-shore activities.

It should be noted that the applicant also has an application in progress to undertake CSWAs within Doubtful Sound, for the sole purpose of loading and off-loading passengers and supplies from the vessel by helicopter.

Use of Tender Vessels, Kayaking, Fishing and Diving

The applicant carries three alloy tender boats aboard the main vessel for survey purposes, but only two will be operated pursuant to this consent. One is available for dropping passengers ashore for visits, as well as diving and sea fishing activities. The other is available for supervising kayaking activities. A maximum of three kayaks will be used at any one time.

The applicant states that Ministry for Primary Industries (MPI) recreational catch limits and equipment requirements are enforced on-board the vessel. Guests are able to have their daily catch prepared by the chef, but are unable to store chilled or otherwise-preserved fish and take them off the vessel at the end of their trip.

Use of tender vessels, kayaking, fishing and diving are managed under the applicant's Safe Ship Management Manual.

Rubbish, Sewage, Oil Spills and Hazardous Chemicals

The vessel will have a modern on-board sewage treatment plant and storage facility. On the 'MV Island Passage' all wastewater, including black water and greywater, flows into two holding tanks with a combined capacity of 28 m³. The further information supplied by the applicant at

¹ A backcountry trip or activity is a commercial surface water activity that involves the use of a motorised or wind powered ship from a point of embarkation and back, or from a point of embarkation to a different point for disembarkation where the activities of embarkation and disembarkation do not occur on the same calendar day.

the request of the Council provides details of the treatment of wastewater. Any new vessel will have a similar wastewater storage and treatment system.

Treated wastewater is then discharged to coastal waters in accordance with Regulations 11 and 12 of the Resource Management (Marine Pollution) Regulations 1998 (MPR).

Rubbish is stored on-board the vessel and is flown off the vessel to be disposed of in a sanitary landfill outside the FMA and Fiordland National Park altogether. The proposed vessel has the capacity to store rubbish generated over a period of three weeks. The further information supplied by the applicant at the request of the Council outlines rubbish management procedures on-board the vessel.

In the event that a spill takes place on-board the vessel, the contingency plan requires crew to minimise, contain and recover the spill on-board the vessel. Steps are also taken to prevent the recurrence of spills.

Hazardous chemicals are stored on-board the vessel in banded compartments to prevent them from escaping the vessel.

Marine Fauna and Flora/Biosecurity

The application does not include marine mammal, penguin or other sea bird viewing or interaction in any way. The applicant voluntarily maintains a record of cetacean sightings, which is available on request.

The application states that the hull of the proposed vessel is checked prior to entering the FMA on each occasion, and again six weeks thereafter. The vessel hull is inspected in Auckland, immediately prior to travelling to the Fiordland marine area (FMA). The vessel hull is re-inspected in Nelson if necessary, before proceeding to the FMA. The vessel hull will be scraped clean of any fouling organisms by an experienced diver, during these inspections.

The applicant is also aware of the Fiordland Marine Pathways Plan initiative currently being developed by Council (among others), and will comply with the new Plan once it is operative.

Anchoring

The applicant has identified a number of anchorages that will be used in the course of its CSWA. These are as follows:

- Dagg Sound – Anchorage Cove;
- Breaksea Sound – Sunday Cove, Stevens Cove, Second Cove, Beach Harbour and Stick Cove;
- Dusky Sound – Luncheon Cove, Cascade Cove and Duck Cove;
- Chalky Inlet – North Port and Cliff Cove; and
- Preservation Inlet – Weka Island, Cemetery Island, Useless Bay and Isthmus Sound.

Most proposed anchoring sites are within anchorages recognised in Appendix 6 to the RCP, though North Port is listed as either Watering Cove or Shoal Point. Cemetery Island is not listed as a recognised anchorage, nor can I find it mentioned on any maps.



Figure 1: Proposed operational area (within red line)

2.2 Regional Planning framework

Resource consents are required under the Regional Coastal Plan for Southland (RCP).

Rule 16.2.1(7) of the RCP states:

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 in the internal waters of Fiordland from Yates Point to Puysegur Point.

An application for resource consents was lodged with Environment Southland in accordance with these requirements (attached).

Overall, the application is considered to be a **discretionary** activity.

Under Section 104B the Council may grant or refuse consent for a **discretionary activity**, and if it grants the application, may impose conditions under Section 108 of the RMA.

2.3 Further information request

Further information was requested from the applicant on 20 May 2016. The requested information included:

- additional information on the scale and nature of the activity;
- further information about the features of the environment in which the applicant intends to operate;
- an assessment of the visual effects of the proposed activity;
- an assessment of the effects on amenity values, natural character, and remoteness and wilderness values;
- further information about the biosecurity procedures aboard the applicant's vessel;
- further information about the rubbish and sewage management procedures aboard the applicant's vessel;
- an assessment of the noise generated by the vessel and tender boats;
- an assessment of safety procedures aboard the applicant's vessel, including for fishing, kayaking and diving;
- further information about oil and chemical spill procedures aboard the applicant's vessel; and
- a complete policy assessment of Part 2 of the RMA.

Each point raised above was responded to by the applicant, though the noise assessment was not provided in full (the applicant's responses to further information requests are attached).

2.4 Notification and Submissions

The application was publicly notified on 10 June 2016, for the following reasons:

- the proposed activity is a highly mobile activity that traverses a large area. The effect of the activity is largely created by the vessel that the applicant intends to use, meaning that the greater portion of the effects generated by that activity are mobile;

- the mobility of the proposed activity, and hence the mobility of the activity's effects created difficulties in identifying affected parties, as the Consent Authority cannot reasonably predict where the effect of the activity will occur at any one time, except that it will occur within a broadly-defined operational area;
- the applicant's proposed operational area within the FMA is public space, with minimal restrictions on access. Under Section 95E(1), the consent authority must decide that a person is an affected party, if the effects of the activity are minor or more than minor. Therefore, it is possible that there are parties in the area who may be affected by the proposed activity to a minor or more than minor degree, but whom the Consent Authority could not identify.

The decision to publicly notify the application was made under Section 95A(4) of the RMA. This section means that the consent authority considered that the above reasons amounted to special circumstances.

... Thirteen submissions were received. These are included in the appendices, and are summarised as follows:

➤ ***Deep Cove Charters Limited***

Chris Lemin submitted on behalf of Deep Cove Charters Limited, in opposition to the application.

Deep Cove Charters made the following comments:

- ◆ that the FMA is overrun by legal and illegal charter vessels and private vessels which diminish wilderness values; and
- ◆ that a vessel the size of the one proposed for use by the applicant would further diminish these values.

Deep Cove Charters sought that the Council decline the application for the reasons outlined above.

Deep Cove Charters Limited does wish to be heard in support of its submission.

➤ ***Fiordland Expeditions Limited***

Richard Abernethy submitted on behalf of Fiordland Expeditions Limited, in opposition to the application.

Fiordland Expeditions made the following comments:

- ◆ that it was unclear as to whether the application was for an additional vessel or for an extension of the applicant's current operational area;
- ◆ that the applicant had applied for resource consent to operate in the northern fiords on the basis that it did not want to impinge on the experience of the clients of existing operators in the southern fiords;
- ◆ that there has been an increase in use of the proposed area by commercial and recreational vessels, and that the value to Fiordland Expeditions' clients was further eroded with each approval;
- ◆ that increases in traffic to the proposed operational area have had adverse impacts on:
 - visits to historic sites due to crowding;
 - effects on fisheries, such as reductions of most species except rock lobster and reduced scallop populations;
 - less instances where wilderness and isolation can be experienced;
 - increase in potential for catastrophic events to occur;

- increased pressure on amenities such as wharves, fuel supplies and watering facilities;
- increased pressure on anchorages;
- ◆ that the application was unclear as to the port facilities to be used by the applicant's vessel for the purposes of replenishing supplies and removing rubbish;
- ◆ that it was unclear as to where the applicant's vessel would be refuelled;
- ◆ that the activity would place additional pressure on fisheries in the internal waters of Fiordland;
- ◆ that increasing the number of operators does not give effect to Policy 16.2.8 of the RCP, which requires Council to '*Protect the opportunity for remoteness and wilderness experiences*' in this area;
- ◆ that the Council need not set a maximum number of operators, but rather manage the increase in operators in line with demand;
- ◆ that there were other operators in the area that already offered the same experiences to clients; and
- ◆ that many of the anchorages proposed to be used by the applicant were unacceptable due to the size of the applicant's vessel, leaving few anchorage sites suitable for a vessel of the size proposed by the applicant.

Fiordland Expeditions sought that the Council decline the application for the following reasons:

- ◆ that existing operators already have capacity to cater for the activities offered by the applicant, and that the introduction of more operators will have detrimental effects on the experiences of clients of existing operators;
- ◆ that the vessel the applicant proposes to use is significantly larger than other vessels operating in the area;
- ◆ that the proposal will have significant adverse effects on fisheries in the proposed operational area;
- ◆ that the applicant has in the past recognised that undertaking the proposed activity in the proposed operational area would have adverse effects on existing operators and their clients, and that the objections of submitters were withdrawn in the past on the basis that this area would be avoided;
- ◆ that the report from John Henderson did not identify which anchorages are suitable, and that his comments were made in relation to a smaller vessel than that now proposed; and
- ◆ that no oil spill equipment is carried on-board the applicant's vessel.

Fiordland Expeditions Limited does wish to be heard in support of its submission.

➤ ***Gendy Fishburn***

Gendy Fishburn submitted, in opposition to the application.

Mrs Fishburn made the following comments:

- ◆ that cumulative effects of another operator should be taken into consideration; and
- ◆ that safe anchorages during adverse weather conditions in Dusky Sound are at a premium and the introduction of a larger vessel will jeopardise the safety of other vessels in the area.

Mrs Fishburn sought that the Council decline the application for the following reasons:

- ◆ there are existing consents available for purchase in the proposed operational area; and
- ◆ the public use and enjoyment of the space is affected and/or significant cumulative effects may occur as a result of this proposal if the Regional Coastal Plan is not reflective of the New Zealand Coastal Policy Statement, particularly Policy 4.

Mrs Fishburn does wish to be heard in support of her submission.

➤ ***Puysegur Holdings Limited of Kisbee Lodge***

Colin Stevenson submitted on behalf of Puysegur Holdings Limited, in opposition to the application.

Mr Stevenson made the following comments:

- ◆ that waterways could become contaminated due to sewage and waste from the boat;
- ◆ that the proposed activity could cause overfishing in accessible areas; and
- ◆ that scuba divers could cause damage to the fragile ecosystem.

Puysegur Holdings Limited sought that the Council decline the application for the reasons outlined above.

Puysegur Holdings Limited does wish to be heard in support of its submission.

➤ ***Thomas Albert Fishburn***

Thomas Fishburn submitted in opposition to the application.

Mr Fishburn made the following comments:

- ◆ that there is already overcrowding in the proposed operational area;
- ◆ that it was difficult to find a safe anchorage in Breaksea or Dusky Sound in March and April 2016, due to the large number of CSWA and recreational vessels in the area; and
- ◆ that his clients experienced diminished remoteness and tranquillity values because there were no unoccupied anchorages.

Mr Fishburn sought that the Council decline the application for the following reasons:

- ◆ that there are existing consents available for purchase in the proposed operational area.

Mr Fishburn does wish to be heard in support of his submission.

➤ ***Legacy Fishing Charters Limited***

Leanne and Stephen Fishburn submitted on behalf of Legacy Fishing Charters Limited, in opposition to the application.

Legacy Fishing Charters made the following comments:

- ◆ that the increase in the number of commercial and recreational vessel in the FMA has a detrimental effect on the ecology of the area, and its reputation as a remote wilderness;
- ◆ that anchorages within the applicant's operational area are not suitable for a large vessel like the one the applicant proposes to use;
- ◆ that use of anchorages by a large vessel excludes the use of those anchorages by other vessels, creating safety issues;
- ◆ that there are a number of consents that are currently under-utilised;

- ◆ that it has been difficult for the submitter to avoid other vessels, particularly recreational vessels, this past year;
- ◆ that another large vessel operating in the area may have adverse effects on the experiences of current consent holders' customers; and
- ◆ that the application is in direct contrast to Objectives 16.1.1, 16.1.2 and 16.2.2 of the RCP.

Legacy Fishing Charters sought that the Council decline the application for the following reasons:

- ◆ that the FMA will not sustain an additional CSWA;
- ◆ that public use and enjoyment of the CMA will be directly affected; and
- ◆ that significant adverse cumulative effects are occurring and can be anticipated.

Legacy Fishing Charters Limited does wish to be heard in support of its submission.

➤ ***Real Journeys Limited***

Paul Norris submitted on behalf of Real Journeys Limited, in opposition to the application.

Real Journeys made the following comments:

- ◆ that the application is inadequate to meet the requirements of Schedule 4 of the RMA;
- ◆ that the application is unclear as to whether the application is for the existing vessel 'MV *Island Passage*' or an additional vessel;
- ◆ that the increasing scale and frequency of CSWAs has the potential to adversely affect the natural values of the FMA, as referred to in Issue 16.1.1 and Policy 16.2.2 of the RCP;
- ◆ that a large vessel with multiple tender vessels will be intrusive and may reduce remoteness and tranquillity values;
- ◆ that the application does not adequately address Policy 16.2.8 of the RCP;
- ◆ that the applicant has not adequately addressed cumulative effects in accordance with Objective 4.7.1 and Policy 4.7.1 of the RCP;
- ◆ that the applicant should have been able to supply noise data to Council upon request;
- ◆ that Real Journeys is concerned that the applicant does not carry fuel/oil spill equipment on-board its proposed vessel;
- ◆ that the applicant has not supplied sufficient detail as to how their vessel will be refuelled while operating in the proposed operational area;
- ◆ that several of the anchorages identified for use by the applicant are unsuitable for a vessel 49 metres in length, demonstrating a lack of local knowledge, which is essential to operate safely in Fiordland as required by Objective 5.3.6 of the RCP;
- ◆ that the applicant's claim that it offers a CSWA service not offered by other operators is invalid;
- ◆ that the additional safety claims made by the applicant are invalid;
- ◆ that the applicant must comply with the Marine Mammals Protection Regulations 1992, and has not addressed this;
- ◆ that vessels of similar size to that proposed to be used by the applicant do not operate regularly in the proposed operational area, and that most vessels used by existing operators are much smaller; and
- ◆ that it is unsure of what the reference to plantings in the application refers to.

Real Journeys did not identify in its submission whether it wishes Council to approve or decline the application.

Real Journeys Limited does wish to be heard in support of its submission.

➤ ***Royal Forest and Bird Society – Southland Branch***

Ruth Dalley submitted on behalf of the Royal Forest and Bird Society – Southland Branch (Forest & Bird), in opposition to the application.

Forest & Bird made the following comments:

- ◆ that the proposed consent duration be corrected;
- ◆ that affected parties were not correctly identified, and that consultation be undertaken;
- ◆ that it was concerning that the applicant was not seeking a concession from DOC;
- ◆ that the application is unclear as to the size of the vessel to be used;
- ◆ that the following be clarified:
 - the size of tender vessels and the engine noise generated by the tender vessels;
 - the number of trips carried out daily by tender vessels;
 - the impacts on marine mammals and penguins; and
 - degradation of fish stocks;
- ◆ that the nature and extent of helicopter landings is unclear;
- ◆ that there is a risk of congestion of anchorage by a vessel of 49 metres in length and two tender vessels;
- ◆ that the anchorages suggested in the application are unsuitable, and that the applicant provide a list of safe, suitable anchorages;
- ◆ that the applicant clarify details about sewage management aboard the vessel;
- ◆ that the applicant clarify how the proposed vessel will be refuelled;
- ◆ that the proposed activity will generate cumulative effects, which will degrade natural character and remoteness; and
- ◆ that an error on Coastal Permit AUTH-302129-V2 be corrected.

Forest & Bird sought that the Council decline the application if the issues raised above were not addressed.

After discussions with the applicant, Forest & Bird advised that it does not wish to be heard in support of its submission.

➤ ***Fiordland Tours Limited***

Raymond Horrell submitted on behalf of Fiordland Tours Limited, in support of the application.

Fiordland Tours made the following comments:

- ◆ that the applicant's operation had benefited the local economy as all supplies were obtained in Te Anau; and
- ◆ that the environmental impacts of the proposed activity were minimal.

Fiordland Tours did not identify in its submission whether it wishes Council to approve or decline the application.

Fiordland Tours Limited does wish to be heard in support of its submission.

➤ ***Southern Lakes Helicopters Limited***

Lloyd Matheson submitted on behalf of Southern Lakes Helicopters Limited, in support of the application.

Southern Lakes Helicopters made the following comments:

- ◆ that the applicant should be allowed to operate in the proposed operational area for safety reasons;
- ◆ that the existing consented operation has run smoothly; and
- ◆ that there appears to be no significant adverse effects, while the activity provides a boost to the local economy.

Southern Lakes Helicopters did not identify in its submission whether it wishes Council to approve or decline the application.

Southern Lakes Helicopters Limited does wish to be heard in support of its submission.

➤ ***Department of Conservation***

Richard Kinsey submitted on behalf of the Department of Conservation (DOC), making a neutral submission on the application.

DOC made the following comments:

- ◆ that the applicant should identify who inspects the hull when the vessel leaves Auckland and what qualifications it has for identifying any fouling that is found, particularly with regard to *Styela clava* (clubbed tunicate/sea squirt), *Sabella spallanzanii* (Mediterranean fanworm) and *Undaria pinnatifida* (edible seaweed);
- ◆ that if the vessel remains in Auckland, even for a short time after inspection, it is highly possible that it could become re-infested before departing for Fiordland;
- ◆ that the applicant should identify who inspects the hull after its presence in the FMA after six weeks, including the qualifications of that person and what the hull inspection entails;
- ◆ that if the applicant travels to and from Auckland more than once per year, it would be prudent for it to undertake a biosecurity check each time it comes to the fiords;
- ◆ that the applicant should consider placing more than one bait station on-board the vessel to control rodent incursions;
- ◆ that some of the anchorages listed in the application would not be suitable for a vessel 49 metres in length;
- ◆ that it is unclear as to whether the applicant will avoid anchoring in marine reserves altogether or just avoid china shops, as the application states that marine reserves will not be anchored in, while listing anchorages within marine reserves;
- ◆ that it acknowledges that the applicant does not let clients take fish home, but that a large vessel with 34 passengers and staff operating 52 weeks per year could result in a significant recreational catch being taken;
- ◆ that the applicant should provide further information on the amount of fishing that occurs on their trips, and that it should provide an assessment of the impacts that the fishing activity will have;
- ◆ that dive gear should be treated for marine pests before being used in the fiords;
- ◆ that care should be taken to avoid breaking fragile species, such as black coral, while diving;

- ◆ that the applicant should provide information about the noise the proposed vessel is likely to generate in order to assess the effects of noise on wilderness values and marine mammals;
- ◆ that effects resulting from its operation in the northern fiords are not comparable to those resulting from operations in the proposed operational area, as a greater number of vessels operate in this area and hence have a greater degree of cumulative effect;
- ◆ that the applicant should clarify whether it consulted with the Oraka Aparima rūnanga, as they are considered to be the lead rūnanga for everywhere in Fiordland south of Milford Sound;
- ◆ that without limits on activity, DOC is uncertain how Council will manage CSWAs in the medium to long-term; and
- ◆ that there is a risk of proliferation of CSWA consents as a result of this uncertainty, which will put pressure on wilderness values and historic sites.

DOC has not identified in its submission whether it wishes Council to approve or decline the application. However, it stated that its submission should give the Council guidance on DOC's key points of consideration.

DOC does not wish to be heard in support of its submission.

➤ ***Fiordland Marine Guardians***

Rebecca McLeod submitted on behalf of the Fiordland Marine Guardians (FMG), making a neutral submission on the application.

FMG made the following comments:

- ◆ that two of the anchorages listed in the application, specifically Stevens Cove in Breaksea Sound and Stick Cove at the entrance to Wet Jacket Arm, will not fit a vessel up to 49 metres in length;
- ◆ that the increase in the number of large vessels in the proposed operational area places pressure on anchorages in Fiordland, as there are a small number of all-weather anchorages;
- ◆ that the increased pressure on anchorages has implications for health and safety; and
- ◆ that the Council carefully consider these cumulative effects of the activity.

FMG has not identified in its submission whether its wishes Council to approve or decline the application.

FMG does not wish to be heard in support of its submission.

➤ ***Fiordland Marine Limited***

Nigel David Lamb submitted on behalf of Fiordland Marine Limited, making a neutral submission on the application.

Fiordland Marine made the following comments:

- ◆ that Council consider the cumulative and visual effects, in particular the point at which the effects arising from the number and size of vessels become more than minor; and
- ◆ that some of the overnight anchorages stated in the application would be unsuitable for a vessel 49 metres in length.

Fiordland Marine has not identified in its submission whether it wishes Council to approve or decline the application, but asked that the decision-maker carefully consider their comments before making a decision.

Fiordland Marine Limited does wish to be heard in support of its submission.

2.5 Section 99 pre-hearing meeting

No pre-hearing meeting was held for this application, at the applicant's request.

3. Assessment

3.1 Statutory Considerations

Section 104 of the Act sets out the matters to be considered when assessing an application for a resource consent. Section 104(1) of the Resource Management Act, 1991, states:

- (1) *When considering an application for a resource consent and any submission received, the consent authority must, subject to Part 2, have regard to:*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *any relevant provisions of:*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (v) *a regional or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

Those matters which are relevant for this application are discussed in the following sections as follows:

- description of the receiving environment;
- assessment of the actual and potential effect of the activity on the environment;
- relevant provisions of the Regional Coastal Plan;
- relevant provisions of both the operative and proposed Southland Regional Policy Statements;
- relevant provisions of the National Policy Statements and National Environmental Standards;
- Part 2 of the RMA.

Sections 108 and 220 provide for consent to be granted subject to conditions and sets out the kind of conditions that may be imposed.

3.2 Description of the affected environment

The application is for a CSWA between Febrero Point in the north and Puysegur Point in the south. This area includes Dagg Sound, Breaksea Sound, Dusky Sound, Chalky Inlet and Preservation Inlet.

Fiordland is a World Heritage Site of outstanding natural character. Policy 5.2.1 of the RCP states:

It is a wild, untamed, rugged, and largely pristine landscape. The entire area is outstanding for the drama of its landforms, the quality and abundance of water in its various forms, the richness and diversity of its vegetation and the almost complete absence of buildings and structures.

The waters in which the applicant proposes to operate are classified as Natural State Waters. A Natural State classification requires that discharges must have no effect on water and seabed quality, beyond a zone of reasonable mixing.

The Fiordland environment can generally be considered to contain high wilderness and remoteness values. These are conditions wherein there is a high to very high probability of complete isolation from the sights, sounds and activities of humans. These values are increasingly prized as they become scarcer, both nationally and internationally. The proposed operational area has high wilderness and remoteness values due to the degree of isolation from the sights, sounds and activities of humans.

The land adjoining the area in which the applicant intends to operate is within Fiordland National Park. The National Park is managed under the provisions of the Fiordland National Park Management Plan, which is prepared and given effect to by the Department of Conservation.

Fiordland is also recognised internationally as a UNESCO World Heritage Site, as part of the Te Wāhipounamu - South West New Zealand World Heritage Area. This designation is extended to sites of special cultural or physical significance. Heritage areas remain part of the legal territory of the state wherein the site is location, although UNESCO considers it in the interest of the international community to preserve each site.



Figure 2: Map of Dagg Sound

Dagg Sound (Te Ra)

Dagg Sound is a narrow fiord approximately 13.3 kilometres in length, with an arm to the north named Anchorage Arm¹. Figure 2 shows a map of Dagg Sound.

Diving is popular in Dagg Sound due to the spectacular underwater scenery, and whales are frequent visitors to the entrance of the fiord².

Anchorage include Anchorage Cove and Dagg Sound (Head), listed in Appendix 6 of the RCP.



Figure 3: Map of Breaksea Sound, Acheron Passage/Wet Jacket Arm and Dusky Sound

Breaksea Sound (Te Puaitaha)

Breaksea Sound is 33 kilometres long, splitting into two arms, Vancouver Arm and Broughton Arm. Breaksea Island lies at the entrance to the fiord². Figure 3 shows a map of Breaksea Sound, Acheron Passage, Wet Jacket Arm and Dusky Sound.

Breaksea Sound contains many heavily forested islands, which contribute to its unique character. Early Māori visited Breaksea Sound, as evidenced by the rock shelters at the fiord² entrance.

Appendix 6 of the RCP lists 16 anchorages within Breaksea Sound.

Acheron Passage/Wet Jacket Arm

Acheron Passage is a 15 kilometre long passage linking Breaksea Sound to Dusky Sound. Resolution Island² forms its western boundary. Figure 3 shows a map of Breaksea Sound, Acheron Passage, Wet Jacket Arm and Dusky Sound.

Wet Jacket Arm is approximately 20 kilometres long and strikes inland about halfway along Acheron Passage. Moana Uta (Wet Jacket Arm) Marine Reserve is within the boundaries of Wet Jacket Arm. The Marine Reserve contains significant and varied habitats, including rock wall,

rocky reef, deep basin and estuarine habitats. These habitats support a wide range of species including dense kelp beds, high concentrations of brachiopods and other suspension feeders, and the highest density of black coral within the fiords².

Anchorage within Wet Jacket Arm are Muscle Cove and Oke Island, listed in Appendix 6 of the RCP. There is a china shop area at the intersection of Acheron Passage and Wet Jacket Arm where no anchoring is allowed².

Dusky Sound/Tamatea

Dusky Sound is 43.9 kilometres long, and is the longest fiord in Fiordland². Figure 3 shows a map of Breaksea Sound, Acheron Passage, Wet Jacket Arm and Dusky Sound.

There are numerous islands scattered around the entrance to Dusky Sound. Anchor Island sits in the mouth of the fiord, and is one of two islands where kākāpō dwell, along with a variety of other rare native birds. There are quarantine requirements that must be followed before setting foot on or mooring adjacent to Anchor Island. There are numerous historical sites and wrecks within Dusky Sound¹.

Taumoana (Five Fingers Peninsula) Marine Reserve contains wave-exposed, rocky reef habitats. This area supports large numbers of pāua and rock lobster. There are also shallow habitats and large estuarine habitats in certain areas. An area north of Pigeon Island is designated as a commercial rock lobster pot storage area².

Appendix 6 of the RCP lists 17 anchorages within Breaksea Sound. There is a china shop area along Nine Fathom Passage adjacent to Cooper Island where no anchoring is allowed².

Chalky Inlet (Taiari)

Chalky Inlet is defined by its striking white chalk cliffs. Chalky Inlet has an exposed entrance about 7-8 kilometres wide, in the middle of which Chalky Island rests. The fiord is 15 kilometres long and splits into Edwardson Sound and Cunaris Sound. These fiords are about 12 kilometres long each². Figure 4 shows a map of Chalky Inlet and Preservation Inlet.

Chalky Inlet's exposure to the open ocean provides habitat for significant seaweed forests, which support large populations of kina².

Chalky Inlet contains many heritage sites of both Māori and European origin. These include Māori occupation of sea caves and nohoanga (campsites), as well as evidence of European industries such as sealing, whaling, sawmilling and fish processing².

Appendix 6 of the RCP lists 14 anchorages within Chalky Inlet, Edwardson Sound and Cunaris Sound.

Preservation Inlet (Rakituma)

Preservation Inlet is 36 kilometres long, with a wide entrance containing many islands, bays and coves². About 11 kilometres along, Preservation Inlet splits into Isthmus Sound and Long Sound. Figure 4 shows a map of Chalky Inlet and Preservation Inlet.

There are many historical sites within Preservation Inlet, including gold mining, smelting and sawmilling sites, and small townships at Cromarty and Te Oneroa. There is an automated lighthouse at Puysegur Point that is still in operation².

Te Tapuwae o Hua (Long Sound) Marine Reserve is located within Preservation Inlet. The Marine Reserve incorporates Revolver Bay, Useless Bay, Narrow Bend and Long Sound. A shallow sill at Narrow Bend inhibits the exchange of water with the open coast. This structure results in a persistent, thick freshwater layer within the Marine Reserve. As a result of this relative isolation, communities within the Te Tapuwae o Hua (Long Sound) Marine Reserve are highly distinctive².

Appendix 6 of the RCP lists 14 anchorages within Preservation Inlet. There is a china shop area within Narrow Bend where no anchoring is allowed, and another no-anchoring area at Awash Rock².



Figure 4: Map of Chalky Inlet and Preservation Inlet

² Fiordland Marine Guardians (2008). *Beneath the Reflections: A User's Guide to the Fiordland (Te Moana o Atawhenua) Marine Area*. Wellington, New Zealand: Ministry for the Environment.

3.3 Actual and potential effects

Effects to be Considered (Section 104(1)(a))

CSWAs are identified in the RCP as being responsible for the majority of the adverse effects arising from the use of the FMA. CSWAs can result in diminished water quality, disturbance of the seabed or foreshore, loss of public opportunity, habitat depletion and loss of natural character, landscape and amenity values. The applicant has provided an assessment of environmental effects as part of their application for the proposed activity.

There are two matters outstanding that need to be addressed by the applicant:

1. the noise effects of the vessel; and
2. the use of certain anchorages.

These matters are detailed further below.

Natural Character, Landscape, Amenity, Wilderness, Remoteness

I consider that there will be minor effects on the natural character, landscape, amenity, remoteness values and wilderness values of the proposed operational area:

- for the reasons outlined in the commentary below;
- provided that the outstanding issues around the noise effects of the vessel are addressed by the applicant; and
- provided that proposed conditions of consent are adopted and adhered to.

Fiordland has a number of values and attributes that make it both intrinsically valuable and valuable due to the experiences it can offer visitors. These matters are addressed in Section 3.2 of this report.

CSWAs can impact on natural character, landscape, remoteness and wilderness values and amenity values in a number of ways, including (but not limited to):

- effects from the inappropriate discharge of sewage and rubbish, such as diminishment of water quality, and the production of unsightly scums or flotsam and jetsam;
- the production of vessel wakes through excessive vessel speed, which may disturb the foreshore;
- anchoring in areas with fragile benthic environments such as china shops;
- generation of excessive noise;
- disturbance of marine mammals and birds;
- depletion of fishing stocks; and
- endangerment of public safety through poor seamanship.

The above are relatively easily addressed, either through the proposed consent conditions or through the regulations of other bodies such as DOC, MPI and Maritime New Zealand (MNZ), and can largely be avoided.

However, there are some effects that cannot be avoided completely. These include the visual impact of the vessel on the surrounding environment and the noise associated with the vessel as

it travels through the sounds. Cumulatively, these effects can create a sense of “busyness” and crowding in the FMA that can degrade natural character, landscape, amenity, wilderness values and remoteness values. Conversely, these effects of CSWAs are temporary and do not permanently reduce the valued attributes of the FMA. As soon as a vessel moves from one location to another, or is removed from the FMA, the effects of its presence disappear, provided that any of the lasting effects listed above are addressed.

While the applicant’s proposed vessel is somewhat larger than other vessels in the proposed operational area, there are other vessels of similar size operating in other fiords, and the proposal can be considered to be broadly consistent with the scale of other vessel activity occurring within the FMA.

I travelled through Dusky Sound, Preservation Inlet and Chalky Inlet aboard the *HMNZ Otago* in February 2016. A day was spent in each of Preservation/Chalky Inlet and Dusky Sound. Breaksea Sound was not visited due to time and navigational constraints. Two teams of Royal New Zealand Navy seamen and Council officers were sent out in small rigid-hulled inflatable boats (RHIBs) each day to undertake inspections of structures and CSWAs. My team encountered very few vessels during our inspections, and did not board any vessels as they were mostly fishing vessels.

The overall impression I came away with was one of a high degree of remoteness, though perhaps not true wilderness, as most of our inspections occurred in areas where the bulk of human activity occurs. We saw very little human activity, except for the occasional vessel, buoys marking rock lobster pot storage areas, and moorings and barges at Dusky Sound.

The applicant’s assessment of effects with regard to natural character and landscape leans heavily on Environment Court evidence prepared by Allan Rackham, a landscape architect. This evidence was prepared in relation to commercial charters in Doubtful Sound, though I consider the comments directly quoted by the applicant to be applicable to the proposed operation area.

The applicant has proposed the following measures to mitigate the effects of the activity on natural character, landscape, amenity, remoteness values and wilderness values:

1. no overnight camping out or use of huts will be undertaken by passengers;
2. where other users of Fiordland National Park and the FMA are encountered, the applicant will avoid interaction and ensure priority to these users;
3. while the ‘*MV Island Passage*’ will need to carry three tender craft (as one of these is required for survey requirements), only two will be allowed in the water at any one time. Of these two, one may only be used when kayaks are in the water, to oversee kayaking operations for safety purposes;
4. areas where trampers on walking tracks can access the application area are limited to Supper Cove in Dusky Sound. To preserve the sense of isolation for these visitors, the ‘*MV Island Passage*’ will not anchor within sight of this area;
5. tender vessels shall only come within sight of this area for the purposes of transferring shore visitors for walks, and not for other activities such as fishing, diving or kayaking.

Council cannot exercise discretion over some of these matters. Point 1 above relates to on-shore activities outside the CMA and is the purview of DOC. I am unsure how to draft a useful consent condition around point 2, and am satisfied with accepting it as an operating principle espoused by the applicant. Points 3, 4 and 5 have been included in the proposed consent conditions.

I note the concerns of submitters with regard to the effects of the proposed activity on natural character, landscape, amenity, remoteness and wilderness. However, there is currently little data regarding the ultimate carrying capacity of natural character, landscape, amenity, remoteness values and wilderness values within Fiordland, and the total impact of existing commercial surface water activities on these values. According to the Council database, the Compliance Division has not received any formal complaints from either operators or clients of operators regarding the effects of existing, legally-operating CSWAs on natural character, landscape, amenity, remoteness values and wilderness values.

Therefore, in relation to the effects of the proposed activity on natural character, landscape, amenity, remoteness values and wilderness values, I have applied a precautionary approach. Where the effects of activities are unknown or little understood, the precautionary approach applies and the effects of the activity must be avoided, remedied or mitigated. In my consideration of the effects of the activity and drafting of the proposed consent conditions, I believe that effects on these values and attributes have been mitigated as far as possible.

A precautionary approach differs from a cautious approach, where in the absence of full information, use and development is restricted. A cautious approach should only be applied if the effects of an activity would be permanent, irreversible, or of a large scale.

Other matters specific to natural character, landscape, amenity, remoteness values and wilderness values are considered below:

➤ **Visual Effects**

The application states that the vessel proposed to be used, which will be 49 metres in length, and is similar in size to other vessels operating in the area. There are vessels in excess of 40 metres, which operate in the FMA, but these vessels are confined to Milford and Doubtful Sounds. The next-largest vessel operating in the proposed operation area is approximately 30 metres in length.

The RCP does not set a maximum limit for length of vessels. However, vessels must have a volume less than 1,000 gross registered tonnes to be considered as a CSWA, rather than a cruise ship activity under the RCP.

The applicant's current vessel, the '*MV Island Passage*', has a low silhouette in the water, which mitigates the vessel's visual effect. The colour of the '*MV Island Passage*' is relatively neutral, and similar to other vessels that operate in the FMA. Figure 5 shows an image of the '*MV Island Passage*' in George Sound, Fiordland. Any new vessel will be of a similar design to the '*MV Island Passage*'.

Tender vessels and kayaks, being smaller, will have a lesser visual impact than the main vessel.

➤ **Noise Effects**

The absence of human-induced noise is a special characteristic of the FMA and contributes to the natural character, amenity, remoteness and wilderness of the area. Excessive noise arising from human activity would have a detrimental effect on these values.

The application recognises this, stating that '*...the background noise level is characteristic of a pristine wilderness and should not be intruded upon.*' The application goes on to state that

mitigation measures have been put in place to minimise noise effects, but has not specified these measures.

The application also states that noise emissions of the ‘*MV Island Passage*’ have been measured and assessed in accordance with the provisions of NZS 6801:1991 ‘Measurement of Sound’ and NZS 6802:1991 ‘Assessment of Sound’. However, when this information was requested, the applicant stated that the raw data was not available.

Therefore I cannot make a full assessment of the noise effects of the main vessel unless the applicant provides either:

- (a) a description of the measures used to ameliorate the noise effects of the main vessel;
or
- (b) the noise readings indicated in the application are provided.

The tender vessels utilise Yamaha F200A outboard engines, which generate noise of up to 60 dBA at idle and 85.5 dBA at full throttle. This is within the limit of 90 dBA for ships in motion specified in Rule 5.3.6 of the RCP.

Cumulative Effects

The RMA defines a cumulative effect as an effect that arises over time or in combination with other effects. Cumulative effects such as degradation of water quality, depletion of habitat, and disturbance of flora and fauna have been discussed below and can be adequately addressed through consent conditions or regulation by other agencies.

Cumulative effects resulting from this proposal that cannot be avoided altogether include the effects of the presence of the vessel itself, including the visual and noise effects of the vessel and the creation of a sense of ‘busyness’ and crowding within the FMA. The submitters’ concerns around natural character, amenity, remoteness values and wilderness values appear to largely relate to cumulative effects arising from the number of vessels operating in the proposed operational area.



Figure 5: MV 'Island Passage' in George Sound, Fiordland

Excepting an application lodged in 2005 that was not completed until 2012, a new resource consent for CSWA has not been issued for the proposed operational area since 2010. There have been three applications to vary consent conditions to allow small vessel size increases and one variation application to increase trip numbers in that time.

I do not consider that the number of permits issued by the Council is consistent with the view that there is a significant increase in cumulative effects resulting from the issue of CSWA permits. It must be acknowledged that many of the consents issued for the southern fiords provide for unrestricted access to the area, but the effects of that level of activity have been previously assessed by Council and deemed to be appropriate.

Notwithstanding this point, it is possible that part of the perceived increase in vessel activity in the proposed operational area is due to activities Council does not regulate, such as commercial fishing boats and recreational vessels.

In the absence of a defined carrying capacity for the level of CSWA activity occurring in the area, my consideration of cumulative effects takes a precautionary approach, and the effects of this activity should be avoided, remedied or mitigated. I consider that cumulative effects arising from the proposal will be minor.

Effects on Other Users

Submitters have raised some issues around the applicant's proposed use of anchorages, which were not previously considered by Council. These matters will need to be addressed by the applicant in order to fully determine the scope of the effects of the activity on other users of the FMA, as follows:

➤ **Navigational Safety**

The Council's Maritime Manager, Lyndon Cleaver, conducted a navigational safety assessment and found no matters of concern in relation to the application.

➤ **Use of Anchorages**

The anchorages proposed to be used by the applicant are detailed in Section 2.1 of this report.

Several submitters have stated that some of the anchorages identified by the applicant are unsuitable for a vessel 49 metres in length. DOC and Fiordland Expeditions name Sunday Cove, Stevens Cove, Stick Cove, Luncheon Cove, Duck Cove, North Port and Weka Island as being unsuitable in their submissions.

The applicant may be able to provide a response that clarifies whether its vessel can indeed utilise the anchorages identified by the applicant as unsuitable. However, in the absence of this information, I have specifically excluded these anchorages in the proposed consent conditions.

➤ **Public Safety**

The applicant has stated that its vessel is compliant with all maritime and marine protection rules. These are matters that are enforced by Maritime New Zealand under the Maritime Transport Act 1994 (MTA), and are *ultra vires*. Consequently, Council cannot enforce directly matters addressed under the MTA through the resource consent process. Notwithstanding this point, maintaining a safe CMA for all users is a matter specifically addressed in the RCP.

If the applicant's vessel is compliant with MNZ requirements, then the applicant's operation could be deemed to be generally safe, excepting unforeseen events. However, there are still some specific elements of the applicant's operation to be addressed and clarified, particularly with regard to the applicant's use of anchorages.

Habitat Depletion and Biodiversity

It is considered that there will be less than minor effects on habitat, in relation to the matters that Council can consider, for the reasons set out below, and provided that the proposed conditions of consent are adopted and adhered to:

➤ **Indigenous Flora and Fauna**

As identified in Section 2.1 of this report, the applicant does not intend to interact with marine mammals or birds in any way. The applicant maintains a code of practice which states that marine mammal interactions will be avoided, that all DOC regulations and codes of practice with regard to marine mammals will be followed, and that seal rookeries and penguin colonies shall be avoided.

The applicant will avoid anchoring in china shops, which will avoid effects on areas of sensitive benthic flora and fauna. This activity is expressly prohibited under Rule 11.7.7.13 of the RCP.

The applicant must not moor within 400 metres of rat-free islands, as this is a discretionary activity under Rule 11.7.7.2 of the RCP, and the applicant has not applied to undertake this activity.

The applicant has stated that it will maintain a speed of 6 knots within 500 metres of a seal or penguin colony, to minimise the disturbance of these communities. Unless the applicant has good reasons to the contrary, I have suggested a consent condition requiring speed to be reduced to 5 knots in the proposed consent conditions, in line with similar speed limits set under the Southland Regional Council Navigation Safety Bylaws 2009.

➤ **Fisheries**

Fishing activities are detailed in Section 2.1 of this report.

Three submissions have identified depletion of fish stocks as a possible effect of the proposed activity. The effects of fishing activities on fisheries in the FMA cannot be addressed through the resource consent process under the RMA, and must be managed by the Ministry for Primary Industries (MPI) under the Fisheries Act 1996.

➤ **Biosecurity**

The applicant's biosecurity procedures are detailed in Section 2.1 of this report. Any issues with these procedures are addressed through the proposed consent conditions.

The Council's Biosecurity Officer, Shaun Cunningham, has provided a technical comment on the application, stating that a number of additional biosecurity procedures should be included in consent conditions, as well as the provisions of condition 14 in Coastal Permit AUTH-302129-V2. Mr Cunningham's technical comment is paraphrased as follows:

1. that a hull inspection should be undertaken at the last port of call upon entry to the FMA;
2. that evidence of regular maintenance and hull inspections must be made available to the Council on request;
3. that the applicant should ensure that hull and niche areas (including, but not limited to, the propeller and seawater intakes) are clean, free of fouling, and are not harbouring marine pest or unwanted species;
4. that the applicant should ensure that associated equipment such as dive gear, tender vessels, and kayaks are clean, free of fouling, dry, and are not harbouring marine pest species upon entry to the FMA;
5. that the application must comply at all times with the current version of the Regional Pest Management Strategy for Southland, as well as an subsequent version; and
6. that if IECL notices or suspects a marine pest on their vessel or in NZ waters they will contact the MPI hotline to report this (phone 0800 80 99 66).

Points 5 and 6 in Mr Cunningham's technical comment are *ultra vires*, but the remainder of the points raised by Mr Cunningham are suggested as conditions of consent.

Water Quality Effects

I consider that there will be less than minor effects on water quality within the proposed operational area, based on the applicant's description of procedures surrounding the storage and disposal of sewage and rubbish, detailed in Section 2.1 of this report. I have some concerns about the applicant's oil spill procedures, but these are addressed below:

➤ **Hazardous Substances**

The oil spill containment and recovery procedures on-board the vessel appear to be sound, as detailed in Section 2.1 of this report.

However, there do not appear to be contingencies for the containment and recovery of oil spills to coastal waters. The application states that no oleophilic booms, pads or pillows are held on-board the vessel. These are standard equipment for the containment and recovery of oil spills that enter coastal waters.

I have suggested a consent condition that would require the applicant to hold oleophilic booms, pads or pillows on-board the vessel at all times, for use in the event that oil spills reach coastal water.

Seabed/Foreshore Disturbance

I consider that the application will result in less than minor disturbance of the seabed and foreshore effects within the proposed operational area for the reasons set out below, and provided that:

- the proposed conditions of consent are adopted and adhered to; and
- the Southland Regional Council Navigation Safety Bylaws 2009 are adhered to.

The applicant states that it will not anchor in marine reserves or sensitive china shop areas where unique benthic fauna may be adversely affected. However, the anchorages at Stick Cove and Useless Bay, which have been identified for use by the applicant, are located within marine reserves. It is not prohibited to anchor in these areas, and I have no concerns about the effect of anchoring in these areas, but the applicant should provide clarification on this matter.

A consent condition is suggested requiring the applicant to avoid anchoring within china shops and near rat-free islands.

The travelling speed of the vessel should be limited close to the shore to minimise disturbance of the seabed. The applicant has stated that it will maintain a speed of 6 knots within 200 metres of the shoreline. This limit should be reduced to 5 knots to ensure consistency with speed limits under Clause 3.2.1(b) of the Southland Regional Council Navigation Safety Bylaws 2009.

Effects Conclusion

There are a number of matters to be clarified by the applicant in relation to the effects of this application, including:

- the use of anchorages which are inappropriate for a vessel 49 metres in length; and

- the level of noise generated by the proposed main vessel, or detail about noise mitigation measures.

However, provided the applicant can address these matters adequately, and that the proposed consent conditions are adopted and adhered to, I consider the effects of the activity will be minor.

3.4 Relevant provisions of the relevant regional plan objectives, policies and rules (Section 104(1)(b)(v))

Regional Coastal Plan

The objectives and policies of the RCP that are relevant to this application have been grouped according to topic:

General Objectives and Policies

Objective 4.1.1	<i>To avoid, wherever practicable, remedy or mitigate any adverse effects from the use and development of the natural and physical resources within the coastal environment.</i>
Objective 4.8.1	<i>To manage surface water activities in the coastal marine area by making a distinction between commercial and non-commercial activities where the cumulative effects of either type of activity will significantly outweigh the other.</i>
Objective 5.8.1	<i>To provide for efficient use and development of natural and physical resources in the coastal marine area where adverse effects are avoided, remedied or mitigated.</i>
Policy 4.8.1	<i>To distinguish, where appropriate, commercial activities in the coastal marine area from non-commercial activities.</i>
Policy 5.8.1	<i>To recognise and have regard for the efficient use and development of natural and physical resources in the coastal marine area, while having regard to the finite character of some natural and physical resources.</i>
Policy 16.2.6	<i>Provide for commercial surface water activities, taking place up to and including 15 February 1997.</i>
Policy 16.2.13	<i>Consider and if necessary restrict or provide for as separate activities (trips), activities that are “spawned” by or are incidental to the activity of the principal surface water activity.</i>

Comment

The application is largely consistent with the objectives and policies listed above. Effects are avoided where possible, and mitigated where avoidance is not possible.

The application is not consistent with Policy 16.2.6, as this application is for a new CSWA, and will result in additional CSWA beyond the level currently consented. For all applications of this

nature, the decision-maker needs to consider the current level of CSWA within Fiordland, and whether these activities give rise to adverse effects on the matters discussed below.

The use of tender vessels, kayaking, diving and fishing are consistent with Policy 16.2.13.

Conservation; Natural Character, Features and Landscapes; Wilderness and Remoteness

Objective 4.1.2	<i>To identify and protect significant conservation values within the coastal marine area.</i>
Objective 5.1.1	<i>To preserve the natural character of the coastal marine area.</i>
Objective 5.2.1	<i>To protect outstanding natural features and landscapes in the region's coastal marine area from the adverse effects of use, development, and subdivision.</i>
Objective 16.1.1	<i>To maintain the essential characteristics of the pristine coastal marine area environment adjoining the Fiordland National Park that contribute to a range of high quality experiences in a natural coastal environment.</i>
Objective 16.1.2	<i>To preserve the remoteness and wilderness values of the internal waters of Fiordland.</i>
Objective 16.1.3	<i>To ensure that commercial and private recreational surface water activities do not adversely affect the intrinsic values of the Fiordland coastal environment.</i>
Policy 5.2.1	<i>Identify and protect outstanding natural features and landscapes within the coastal marine area.</i>
Policy 16.2.2	<i>Limit the extent and number of commercial activities that occur within the coastal marine area of Fiordland to a level which does not reduce natural character, landscape and amenity values, specifically remoteness and tranquillity values.</i>
Policy 16.2.8	<i>Protect the opportunity for remoteness and wilderness experiences in all of the principle Arms, Inlets and Fiords of Fiordland apart from Milford Sound.</i>
Policy 16.2.10	<i>Monitor the distribution of surface water activities and their effects on visitor perceptions and the physical environment.</i>

Comment

The application is largely consistent with the objectives and policies listed above on most matters. However, the application is not consistent with the above provisions on the matter of noise effects on the natural character, wilderness values and remoteness values of the FMA, as these have not been adequately addressed by the applicant.

The effects of the activity on natural character, landscape, remoteness values and wilderness values are addressed fully in Section 3.3 of this report. I consider that effects that can be avoided

are either addressed by the applicant, as discussed in Section 3.3 above, or are addressed by adopting and adhering to the proposed consent conditions. The effects which cannot be avoided altogether (relating to the presence of the vessel), are ameliorated as far as possible through the applicant's proposed mitigation measures and the proposed consent conditions.

Further, the lack of data regarding the carrying capacity of the proposed operating area for CSWA warrants a precautionary approach, which I have applied when considering the effects of the activity and in the proposed consent conditions.

In terms of Policy 16.2.10, standard conditions require consent holders to submit logs of activity detailing the number of trips undertaken each month. This monitors the level of activity occurring in Fiordland coastal waters and is intended to help the Consent Authority gauge the cumulative effects of the activity. Cumulative effects are considered in Section 3.3 of this report, although it is difficult to manage the cumulative effects of these activities through the resource consent process.

It should be noted that there is currently no system in place to monitor the effect of surface water activity on visitor perceptions of the environment.

Amenity, Public Value, Public Access and Effects on Other Activities and Users within the CMA

- | | |
|------------------|---|
| Objective 4.2.1 | <i>To ensure that only those activities and developments that have a functional need to be located in the coastal marine area or for which there is no practicable alternative location outside the coastal marine area are situated there.</i> |
| Objective 4.5.1 | <i>To ensure that the value of the coastal marine area to the public is maintained or enhanced.</i> |
| Objective 4.6.1 | <i>To protect areas free from use and development by seeking, wherever practicable, to concentrate use and development into areas where those activities are already taking place.</i> |
| Objective 5.3.1 | <i>To ensure that the use and development of the resources of the coastal marine area will not have significant adverse effects on amenity values, nor on the safety of the public, nor on the enjoyment of the coast by the public.</i> |
| Objective 5.3.3 | <i>To recognise, maintain and enhance the contribution that open space makes to the amenity values in the coastal environment.</i> |
| Objective 5.3.6 | <i>To maintain a safe environment for all people using of the coastal marine area.</i> |
| Objective 5.5.1 | <i>Where appropriate, to maintain and enhance public access by suitable means to and along the coastal marine area.</i> |
| Objective 5.10.1 | <i>To recognise the need for social and economic utilisation of the coastal marine area in a manner that enables people and communities to</i> |

- provide for their social, cultural and economic well-being and for their health and safety.*
- Policy 4.2.1 *Require that proposals for uses and developments in the coastal marine area justify the functional necessity for that location or demonstrate that there is no practicable alternative location outside the coastal marine area.*
- Policy 4.4.3 *Give priority to compatible multiple use rather than setting aside areas for specific purposes.*
- Policy 4.6.1 *Encourage concentration of compatible activities in areas of existing uses and developments, where adverse effects can be avoided, remedied or mitigated, in preference to using undeveloped areas in the coastal marine area.*
- Policy 5.3.1 *Protect amenity values of the coastal marine area.*
- Policy 5.3.2 *Maintain and enhance open space values of the coastal marine area.*
- Policy 5.3.6 *Limit activities and structures in the coastal marine area to those that:*
- a have a functional need for that location; or*
 - b contribute to the amenities of that area;*
 - c are a necessary and functional part of activities also undertaken on adjoining land.*
- Policy 5.3.12 *Ensure that activities that take place in the coastal marine area do not endanger public safety.*
- Policy 5.5.3 *Maintain and enhance public access to and along, the coast while having regard to the mode of access and the amenities of the area, unless a restriction on access is necessary to:*
- a protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna; or*
 - b protect Maori cultural values; or*
 - c protect public health or safety; or*
 - d ensure a level of security consistent with the purpose of a resource consent; or*
 - e protect national security or the temporary use of an area for defence purposes; or*
 - f protect heritage, natural or cultural values; or*
 - g in other exceptional circumstances sufficient to justify the restriction notwithstanding the national importance of maintaining that access.*
- Policy 5.5.4 *The mode of access to and along the coast is to be appropriate to:*
- a the functional needs of people using it;*
 - b the ecosystems contained in the area;*
 - c the physical characteristics of the area; and*
 - d the well-being of people affected by it.*

Policy 5.10.1

Recognise the importance of the coastal marine area for social, cultural and economic activities.

Comment

The application is largely consistent with the objectives and policies listed above on most matters. However, the application is not consistent with the above provisions on the matter of noise effects on amenity, as these have not been adequately addressed by the applicant.

The applicant also needs to clarify matters regarding the use of anchorages, based on concerns raised by submitters with regard to some of the anchorages identified by the applicant. The application cannot be considered to be fully consistent with Objective 5.3.1, Objective 5.3.6 and Policy 5.3.12 until these matters are addressed.

The application is not considered to diminish the value of the CMA to the public in terms of its effects on natural character, landscape and amenity. It is broadly consistent with the nature and scale of activity occurring within the FMA, although the vessel is somewhat larger than most vessels used for CSWAs in the proposed operational area.

The effects of the activity on amenity are fully addressed in Section 3.3 of this report.

The proposal will not adversely affect public open space, and has a functional need to occur within the CMA.

The proposal will not adversely affect public access to the CMA, and may actually enhance public access in some fashion by providing charter vessel access to areas that are not easily traversed, which is a feature of all CSWAs. The mode of access is considered appropriate in accordance with Policy 5.5.4, as the FMA is extremely difficult to access by other means.

Water Quality

Objective 7.2.2.2

To protect the natural state of coastal waters wherever it is considered that they can be fairly described as being in their natural state.

Objective 7.3.2.1

To avoid adverse effects on the amenity of the coastal marine area caused by inappropriate discharge of waste products of marine species from ships in the coastal marine area.

Objective 7.3.5.1

To avoid, where practicable, any adverse effects resulting from the storage, use, discharge and transportation of any hazardous substances and hazardous waste within the coastal marine area.

Objective 7.3.5.2

To ensure that there are appropriate documented procedures and equipment available to remedy or mitigate the adverse effects of any accidental or deliberate release of hazardous substances within or to the coastal marine area.

Policy 7.2.2.1

Avoid, remedy or mitigate adverse effects on the coastal marine area from any human alteration to the quality and quantity of freshwater entering the coastal marine area.

Policy 7.3.2.2	<i>Require alternatives to discharging to the coastal marine area to be considered.</i>
Policy 7.3.2.12	<i>Strongly discourage discharges of human sewage and ballast water into coastal waters from ships.</i>
Policy 7.3.2.13	<i>Encourage the use of systems on-board ships for the collection, storage, treatment and transfer of human sewage to avoid, wherever practicable, mitigate or remedy the adverse effects of discharging sewage into the coastal marine area.</i>
Policy 7.3.5.1	<i>Avoid, where practicable, adverse effects of the storage, use, discharge and transportation of hazardous substances and/or hazardous waste within the coastal marine area.</i>
Policy 7.3.5.3	<i>Encourage persons engaged in activities associated with hazardous substances in the coastal marine area to have contingency or emergency response plans.</i>

Comment

The application is consistent with the objectives and policies listed above.

The vessel has adequate sewage storage and treatment systems on-board. Sewage can be stored on-board the vessel in 28 m³ and pumped to a shore-based tanker truck, or discharged to coastal water.

Sewage discharged in this manner will be discharged in accordance with the MPR. Accordingly, I do not consider the discharge to be “inappropriate” in terms of Objective 7.3.2.1, but it is not consistent with Policy 7.3.2.12. The MPR is higher in the hierarchy of documents than the RCP, and while the decision-maker must consider the provisions of the RCP in this matter, the MPR ultimately takes precedence.

The application identifies procedures for oil spills on-board the vessel. The proposed conditions also require equipment to be held on-board the vessel to contain and recover oil spills that reach coastal waters. Hazardous chemicals are stored on-board the vessel in banded compartments to prevent them from escaping the vessel.

The MPR, discussed in more detail in Section 3.9 below, allow vessels to discharge treated or untreated sewage, with some restrictions.

Navigation Safety and Anchoring

Objective 11.7.7.2	<i>To ensure that adequate anchorages remain available for all mariners.</i>
Objective 11.7.7.3	<i>To ensure that the rat-free status of offshore islands is not compromised by use and development of the coastal marine area.</i>
Objective 11.7.7.4	<i>To ensure that safe navigation of coastal waters is not unnecessarily put at risk by inappropriate use and development within the coastal marine area.</i>

Objective 11.7.7.5	<i>To provide for anchoring and mooring in China Shops in the Fiordland (Te Moana o Atahenua) Marine Area where these activities are not incompatible with the special values of these areas and the cumulative adverse effects of these activities are not likely to be significant.</i>
Objective 11.8.1	<i>To ensure there is safe and efficient navigation in the coastal marine area.</i>
Policy 11.7.7.1	<i>Maintain the anchorage value of coves and embayments that are recognised anchorages.</i>
Policy 11.7.7.2	<i>Consult with Fishermen's Associations as a matter of course in respect of resource consent applications in areas that are either frequently fished or navigated.</i>
Policy 11.7.7.21	<i>Prohibit anchoring or the placement of moorings in those China Shops shown on Maps 2 to 6 of Appendix 3A. These China Shops have been identified as particularly sensitive to the adverse effects of anchoring and mooring.</i>
Policy 11.8.2	<i>Avoid any adverse effects from structures and activities on navigation safety.</i>
Rule 11.7.7.2	<p><i>The anchoring or mooring overnight within 400 metres of the following islands is a discretionary activity:</i></p> <ul style="list-style-type: none"> ➤ <i>Breaksea Island Group, including Wairaki Island and the island approximately 700 metres generally west thereof, and Havea Island and the island approximately 700 metres east thereof</i> ➤ <i>Entry Island</i> ➤ <i>Thrum Cap</i> ➤ <i>Passage Islands</i> ➤ <i>Chalky Island (Te Kakahu-O-Tamatea)</i> ➤ <i>...</i> ➤ <i>...</i>
Rule 11.7.7.13	<p><i>Any activity involving anchoring or placement of moorings in the following areas of the Fiordland (Te Moana o Atahenua) Marine Area, defined in Maps 2 to 6 of Appendix 3A is a prohibited activity:</i></p> <ul style="list-style-type: none"> ➤ <i>...;</i> ➤ <i>...;</i> ➤ <i>the area at the intersection of Acheron Passage and Wet Jacket Arm between Breaksea and Dusky Sounds;</i> ➤ <i>Nine Fathoms Passage, off Cooper Island, Dusky Sound;</i> ➤ <i>Narrow Bend from Adam Head to Sandy Point in Long Sound.</i>

Comment

Some of the anchorages identified by the applicant have been identified as unsuitable for a vessel 49 metres in length. As a result, the application cannot be considered to be fully consistent with Objective 11.7.7.2, Objective 11.7.7.4, Objective 11.8.1, Policy 11.7.7.1 and Policy 11.8.2. The anchorages identified as unsuitable have been excluded from use by the applicant in the proposed consent conditions, ensuring the proposed activity is in line with the objectives and policies mentioned above.

It is a prohibited activity to anchor within the china shop areas identified in Rule 11.7.7.13. These areas have been specifically excluded in the proposed consent conditions.

The applicant did not specifically consider the effects of anchoring adjacent to rat-free islands in their application. Therefore, a consent condition is suggested that requires the applicant not to anchor within 400 metres of the rat-free islands identified in Rule 11.7.7.2.

CRA8 Management Committee Inc was directly notified of the application in accordance with Policy 11.7.7.2.

Helicopter Landings

- | | |
|-----------------|---|
| Objective 5.5.2 | <i>To provide for aircraft to be used in the coastal marine areas where this does not have an adverse impact on areas valued for remoteness and wilderness and on significant habitats of indigenous fauna.</i> |
| Policy 5.5.6 | <i>Manage the adverse effects of the presence and noise of aircraft landing and taking off in the coastal marine area so that aircraft activity does not have an adverse impact on areas valued for remoteness and wilderness and on significant habitats of indigenous fauna.</i> |
| Policy 5.5.8 | <i>Allow helicopter landings and take-offs within the coastal marine area where:</i>
<i>a there are no landward facilities available in the locality; and,</i>
<i>b they can be undertaken without the need for additional landing pads or other structures; and,</i>
<i>c such landings and take-offs are infrequent and irregular; and,</i>
<i>d the resultant air disturbance does not give rise to nuisance; and</i>
<i>e such landings and take-offs comply with the New Zealand Standard NZS6807:1994 Noise management and land use planning for helicopter landing areas.</i> |
| Rule 5.5.3 | <i>The landing and take-off of aircraft:</i>
<i>(a) on aerial tourism/recreation operations in the landing zones shown on Maps 1 to 3 (Permitted Landing Zones); or</i>
<i>(b) on operations in those parts of Edwardson, Cunaris and Long Sounds shown on Map 3 (Permitted Landing Zones) where the primary purpose is to embark or disembark passengers transferring from or to a ship being used for a commercial surface water activity after or for a stay on-board of 72 hours duration or more; or</i> |

- (c) *on operations in the landing zones referred to in Rule 5.5.2 (a) (x) where the primary purpose is to embark or disembark passengers to or from a commercial surface water activity*

is a permitted activity provided the following conditions are met:

- (i) *The take-off/ landings occur between the hours of 7am and 7pm*
(ii) *A monthly record of the number of flights, number of passengers on each flight, the actual landing and take-off sites used and the specific purpose of each flight is supplied by the operator to the Southland Regional Council.*

Rule 5.5.4

- (a) *Except as provided in Rules 5.5.1, 5.5.2 and 5.5.3 the landing and take-off of all aircraft is a permitted activity in the following areas:*
- (i) *on the foreshore from Awarua Point to the Waiau Mouth, except for those areas identified in Rules 5.5.1 and 5.5.2;*
- (ii) *on the foreshore of Stewart Island from Mamaku Point westward to Bullers Point, provided that a monthly record of the number of flights, number of passengers, and the actual landing and take-off sites is supplied by the operator to the Southland Regional Council;*
- (iii) *on the surface of the water, or on ships or lawful structures within the coastal marine area except in those areas identified in Rules 5.5.1, and 5.5.2;*
- (iv) *in any part of the coastal marine area for the purpose of servicing or maintaining navigational aids, except for areas referred to in Rule 5.5.1.*
- (b) *The landing and take-off of fixed-wing aircraft is a permitted activity in the following areas:*
- (i) *on the foreshore of Horseshoe Bay when adverse weather conditions prevent the safe landing of aircraft at the Ryans Creek airstrip on Stewart Island.*
- (c) *The landing and take-off of helicopters is a permitted activity in the following areas:*
- (i) *on the foreshore from the Waiau Mouth to the Brothers Point except as described in Rule 5.5.2(a)(i).*

Comment

A helicopter is used to transport passengers to and from the vessel. As no consent for this activity has been applied for, it is incumbent on the applicant and its chosen helicopter to ensure that it complies with the provisions listed above, and can undertake helicopter landings as a permitted activity.

Flora and Fauna; Biosecurity

Objective 5.4.1.1	<i>To protect areas of significant indigenous vegetation and significant habitats of indigenous fauna within the coastal marine area.</i>
Objective 5.4.1.2	<i>To protect the intrinsic values of ecosystems in the coastal marine area.</i>
Objective 5.4.2.1	<i>To avoid the introduction of plant species, including phytoplankton, into the coastal marine area in circumstances that could result in adverse environmental effects.</i>
Objective 5.4.2.2	<i>To eradicate, confine, or reduce the spread of pest plants in the coastal marine area.</i>
Objective 5.4.3.1	<i>To avoid the introduction of fauna into the coastal marine area in circumstances that could result in adverse environmental effects.</i>
Policy 4.1.4	<i>Ensure that in considering applications, under the Resource Management Act 1991, for activities within marine reserves and within China Shops in the Fiordland (Te Moana o Atawhenua) Marine Area, the activities are compatible with the values and purposes of these areas.</i>
Policy 5.4.1.2	<i>Protect the habitats of species in the coastal marine area which are important for commercial, recreational, traditional or cultural purposes.</i>
Policy 5.4.1.3	<i>To preserve the habitat of distinctive communities.</i>
Policy 5.4.2.5	<i>Encourage the removal of pest plants from the coastal marine area.</i>
Policy 5.4.3.1	<p><i>Prevent the introduction of exotic species of fauna where information relating to that species indicates that its introduction is likely to adversely affect:</i></p> <ul style="list-style-type: none"> <i>a indigenous vegetation; or</i> <i>b indigenous fauna; or</i> <i>c alter coastal processes; or</i> <i>d natural character; or</i> <i>e life-supporting capacity of ecosystems.</i>

Comment

The application is consistent with the objectives and policies listed above.

The application states that marine mammal and penguin interaction will be avoided. The applicant proposes speed limits around seal rookeries and penguin colonies, and has identified that no anchoring will take place in china shops. Operational restrictions included in the proposed conditions of consent will further reduce the risk of mammal and penguin interaction.

Provided that the proposed consent conditions surrounding biosecurity on-board the vessel are adopted and adhered to, the risk of an incursion of unwanted or pest organisms will be minimal.

Noise

Objective 5.3.7	<i>To ensure that the effects of noise in the coastal marine area do not adversely affect people's health and well-being, natural character and amenity values.</i>
Policy 5.1.2	<i>Protect areas from noise intrusion where the absence of unnatural noise is a significant component of the natural character of the area.</i>
Policy 5.3.15	<i>Protect amenity values of the coastal environment from the adverse effects of artificial noise in the coastal marine area.</i>
Policy 5.3.16	<i>Protect the health and well-being of the public from the adverse effects of noise in the coastal marine area.</i>
Policy 5.3.18	<i>Avoid noise from ships in motion that adversely affects the health and well-being of people or degrades amenity values.</i>
Policy 16.3.1	<i>Avoid noise that compromises the tranquillity and peacefulness which is a characteristic of Fiordland.</i>
Policy 16.3.2	<i>Encourage commercial operators to seek alternatives to loudspeaker systems in order to better reflect the natural character and low visitor generated noise values of Fiordland's internal waters.</i>
Policy 16.3.5	<i>Avoid, wherever practicable, or mitigate, the adverse effects of noise from commercial and non-commercial ships.</i>

Comment

The application is not consistent with the above provisions on the matter of noise effects, as the noise emissions have not been adequately addressed by the applicant.

Heritage

Objective 5.7.1	<i>To recognise and have regard for the need to protect heritage values of sites, buildings, places or areas within the coastal environment.</i>
Objective 5.7.2	<i>To avoid, remedy or mitigate adverse effects on landscape features of high heritage value in the coastal marine area.</i>
Policy 5.7.1	<p><i>Protect the heritage values of the following sites and areas:</i></p> <ul style="list-style-type: none"> <i>a Port of Invercargill Jetty</i> <i>b "Waikare" 1910 wreck</i> <i>c "Endeavour" 1795 wreck - ballast stones</i> <i>d sites in the Department of Conservation Historic Resources Register and identified in this Plan (Introduction to Section 5.7)</i> <i>e sites in the New Zealand Archaeological Association register and identified in this Plan (Appendix 8)</i>

Policy 5.7.2	<i>Protect the heritage values of sites, areas, natural and physical features not listed in Policy 5.7.1, but otherwise recognised as having some heritage value.</i>
--------------	---

Comment

The application is consistent with the objectives and policies listed above.

The applicant does not anticipate any adverse effects on historic or heritage sites.

Timing, Frequency, Duration and Regularity

Objective 4.3.1	<i>To ensure that the adverse effects of an activity attributable to its timing, frequency, duration and regularity of operation are avoided, remedied or mitigated.</i>
Policy 4.3.1	<i>Manage the times of day, month, or year of activities where this avoids, remedies or mitigates the adverse effects of those activities on the coastal environment.</i>
Policy 4.3.2	<i>Manage the frequency, duration and regularity of activities where this avoids, remedies or mitigates the adverse effects of those activities on the coastal environment.</i>

Comment

The application is consistent with the objectives and policies listed above.

Trips are generally undertaken through May to October each year, but may occur at any time of the year. This is a consistent level of activity with other CSWAs in the proposed operational area.

Cumulative Effects and Appropriate Use

Objective 4.7.1	<i>To avoid, remedy or mitigate cumulative adverse effects.</i>
Objective 4.7.2	<i>To obtain a level of use which is appropriate in the coastal marine area, particularly in areas where remoteness, wilderness and tranquillity are significant components of the environment.</i>
Policy 4.7.1	<i>To avoid, remedy or mitigate adverse cumulative effects of activities in the coastal marine area.</i>

Comment

Cumulative effects are addressed fully in Section 3.3 of this report, and have been assessed as minor. In the absence of a defined carrying capacity for the level of CSWA activity occurring in the proposed operational area, my consideration around cumulative effects takes a precautionary approach, and conditions of consent will ensure that the effects of this activity will be avoided where possible. Where effects cannot be avoided, they will be mitigated.

The application is consistent with the objectives and policies listed above.

Consultation/Integrated Management

Objective 4.9.1	<i>To ensure that territorial authorities are consulted where resource consent applications are in areas of the coastal marine area that either adjoin or are within territorial authority boundaries, iwi or government agency boundaries.</i>
Objective 4.9.2	<i>To ensure that consultation takes place with affected adjacent landowners and the community in general.</i>
Objective 4.9.3	<i>To ensure that adjacent territorial authorities are kept informed of any new information or developments regarding activities or processes that have cross boundary effects in the coastal environment.</i>
Policy 4.9.1	<i>Consult with adjoining territorial authorities, including Community Boards, in every case where consent is sought to undertake activities in the coastal marine area adjoining or within their boundaries.</i>
Policy 4.9.2	<i>Share information and knowledge gained about the coastal environment with adjoining territorial authorities iwi and government agencies, particularly where it relates to coastal processes and/or to activities with previously unknown or little known effects.</i>

Comment

The application is consistent with the objectives and policies listed above.

The application was publicly notified on the basis that a full list of affected parties could not be compiled, providing for public consultation on the application. Agencies and territorial authorities such as DOC, FMG, MNZ, Public Health South (PHS), the Southland Conservation Board (SCB), and Southland District Council (SDC) were notified of the application directly.

Tangata Whenua

Objective 5.6.1	<i>To recognise and provide for cultural, spiritual and traditional values and uses of Ngai Tahu in the coastal marine area.</i>
Objective 5.6.2	<i>To ensure that consultation takes place with tangata whenua in appropriate circumstances.</i>
Policy 5.2.3	<i>Consult with the tangata whenua and take into account tangata whenua cultural, traditional and spiritual values in relation to issues affecting landscapes and natural features.</i>
Policy 5.6.1	<i>Have particular regard to the concept of kaitiakitaka in relation to managing the use, development and protection of natural and physical resources in the coastal marine area.</i>
Policy 5.6.3	<i>The tangata whenua shall be meaningfully consulted by the Council and/or applicants for resource consents when:</i>

- a an activity could physically disturb a site identified in this Plan as being of significance to tangata whenua;*
 - b an activity could have adverse effects on values of tangata whenua.*

- Policy 5.6.4 *Identify and protect the characteristics of the coastal marine area of special value to tangata whenua.*

- Policy 5.6.5 *It is a national priority to protect:*
 - a characteristics of traditional spiritual, historical or cultural significance to Maori identified in accordance with tikaka Maori; and*
 - b significant places or areas of historic or cultural significance; which in themselves or in combination, are essential or important elements of the natural character of the coastal marine area.*

Comment

Te Ao Marama Inc (TAMI) and Te Rūnanga O Ngai Tahu (TRONT) were directly notified of the application. This is consistent with, and gives effect to, the above objectives and policies.

3.5 Relevant provisions of the Southland Regional Policy Statement (Section 104(1)(b)(v))

The following objectives and policies in the operative Regional Policy Statement (RPS) are of particular relevance to this application:

Taka Whenua Issues

- Objective 1.1 *To protect wahi tapu from the adverse effects of resource use activities.*

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

- Objective 1.3 *To incorporate Maori cultural and traditional spiritual values where appropriate into resource management decision making processes.*

- Objective 1.4 *To have particular regard to the concept of kaitiakitanga in relation to managing the use, development and protection of natural and physical resources.*

- Policy 1.2 *Recognise “Te Whakatau Kaupapa O Murihiku” as a Kai Tahu resource management reference planning document for the region.*

Comment

TAMI and TRONT were directly notified of the application. The application is consistent with the objectives and policies listed above.

Coast

- Objective 13.1 *To preserve the natural character of the coastal environment.*
- Objective 13.2 *To avoid, wherever practicable, remedy or mitigate any adverse effects from the use and development of the natural and physical resources within the coastal environment.*
- Objective 13.3 *To maintain and enhance public access to, and along, the coastal marine area.*
- Objective 13.4 *To recognise and provide for cultural, ancestral and traditional values of Maori in the management of the coastal marine area.*
- Objective 13.5 *To facilitate integrated management of land and coastal marine area interface.*
- Objective 13.6 *To recognise and have regard to heritage values of sites, buildings, places or areas within the coastal environment.*
- Objective 13.7 *To identify and protect significant conservation values within the coastal marine area.*
- Objective 13.9 *To ensure that only those activities and developments that require a location in the coastal marine area are situated there.*
- Policy 13.1 *Recognise sites and resources of cultural, natural and spiritual significance to Maori and consult the takata whenua when making statutory decisions on issues impacting upon such matters.*
- Policy 13.3 *To maintain and enhance public access to and along the coast unless a restriction on access is absolutely necessary to-*
- a protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;*
 - b protect Maori cultural values;*
 - c protect public health or safety;*
 - d ensure a level of security consistent with the purpose of a resource consent;*
 - e protect any other exceptional value within the coastal marine area;*
 - f protect national security or the use of an are for defence purposes: except where this could threaten personal safety and health, important natural values, or the integrity of sites important to takata whenua.*
- Policy 13.7 *Ensure that reasonable noise levels are not exceeded within the coastal environment.*
- Policy 13.10 *Facilitate integrated management of the coastal environment with the Minister of Conservation, Minister of Fisheries, territorial authorities and the takata whenua.*

Policy 13.22	<i>Recognise and have regard to heritage values when considering potential activities within the coastal environment.</i>
Policy 13.24	<i>Ensure that sites used for safe harbouring and anchorage of boats are available for use when needed.</i>
Policy 13.26	<i>Require that activities, uses, development and structures in the coastal marine area justify the functional necessity for that location.</i>
Policy 13.27	<i>Adopt a precautionary approach towards proposed activities, where their effects are as yet unknown or little understood, or where the effects of coastal processes on those activities are as yet unknown or little understood.</i>

Comment

The application is broadly consistent with the objectives and policies listed above, though it is not fully consistent with Policy 13.24, for reasons relating to the applicant's selection of anchorages, detailed in Section 3.3 of this report.

3.6 Relevant provisions of the Proposed Southland Regional Policy Statement 2012 (Section 104(1)(b)(v))

Decisions on the Proposed Regional Policy Statement (PRPS) were notified on 6 June 2015. Appeals on 81 provisions have been lodged with the Environment Court. The provisions listed below are not subject to an appeal, so are considered to be operative. The following policies in the Proposed Regional Policy Statement are of particular relevance to this application:

Objective TW.1	<i>The principles of the Treaty of Waitangi/Te Tiriti o Waitangi are taken into account in a systematic way through effective partnerships between tangata whenua and local authorities, which provide the capacity for tangata whenua to be fully involved in council decision-making processes.</i>
Objective TW.2	<i>All local authority resource management processes and decisions take into account iwi management plans.</i>
Objective TW.3	<i>Mauri and wairua are sustained or improved where degraded, and mahinga kai and customary resources are healthy, abundant and accessible to tangata whenua.</i>
Objective TW.4	<i>Wahi tapu, wahi taonga and sites of significance are appropriately managed and protected.</i>
Policy TW.1	<i>Consult with, and enhance tangata whenua involvement in local authority resource management decision-making processes, in a manner that is consistent with the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.</i>
Policy TW.3	<i>Take iwi management plans into account within local authority resource management decision making processes.</i>

Policy TW.4

When making resource management decisions, ensure that local authority functions and powers are exercised in a manner that:

- (a) recognises and provides for:

 - (i) traditional Māori uses and practices relating to natural resources (e.g. mātaītai, kaitiakitanga, manaakitanga, matauranga, rāhui, wāhi tapu, taonga raranga);*
 - (ii) the āhi kā (manawhenua) relationship of tangata whenua with and their role as kaitiaki of natural resources;*
 - (iii) mahinga kai and access to areas of natural resources used for customary purposes;*
 - (iv) mauri and wairua of natural resources;*
 - (v) places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua;*
 - (vi) Māori environmental health and cultural wellbeing.**
- (b) recognises that only tangata whenua can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*

Comment

The application is consistent with the objectives and policies listed above

The following provisions of the PRPS are subject to appeals to the Environment Court. Whilst not given the same weight as the provisions not subject to appeals, these policies are still relevant to the application:

- Objective COAST.2 *Infrastructure, ports, energy projects, aquaculture, mineral extraction activities, subdivision, use and development in the coastal environment are provided for and able to expand, where appropriate, while managing the adverse effects of those activities on public access and natural character.*
- Objective COAST.3 *Coastal water quality and its ecosystems are maintained or enhanced*
- Objective COAST.4 *The natural character of the coastal environment is restored, rehabilitated or preserved.*
- Policy COAST.2 *Ensure adequate measures or methods are utilised within the coastal environment when making provision for subdivision, use and development to:

 - (a) protect indigenous biodiversity, historic heritage, natural character, and natural features and landscape values;*
 - (b) maintain or enhance amenity, social, intrinsic, ecological and cultural values, landscapes of cultural significance to tangata whenua and coastal dune systems;*
 - (c) maintain or enhance public access; and*
 - (d) avoid or mitigate the impacts of natural hazards, including predicted sea level rise and climate change.**

- Policy COAST.3
- (a) *Ensure that subdivision, use and development activities avoid adverse effects on areas of outstanding natural features and landscapes, and/or outstanding natural character.*
 - (b) *Ensure that subdivision, use and development activities avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects on natural features and landscapes and/or natural character in the coastal environment.*
 - (c) *Having regard to (a) and (b) above, take into account the need to protect regionally significant, nationally significant or critical infrastructure, including ports and energy projects for the region.*

Comment

The application is consistent with the objectives and policies listed above.

3.7 Relevant provisions of national policy statements (Section 104(1)(b)(iii))

The purpose of the New Zealand Coastal Policy Statement (NZCPS) is to state policies in order to achieve the purpose of the Resource Management Act in relation to the coastal environment of New Zealand.

The following objectives and policies in the NZCPS are of particular relevance to this application:

- Objective 1
- To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:*
- *maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;*
 - *protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and*
 - *maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.*
- Objective 2
- To preserve the natural character of the coastal environment and protect natural features and landscape values through:*
- *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 3

To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:

- *recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;*
- *promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act; • incorporating mātauranga Māori into sustainable management practices; and*
- *recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.*

Objective 4

To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by:

- *recognising that the coastal marine area is an extensive area of public space for the public to use and enjoy;*
- *maintaining and enhancing public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area; and*
- *recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland.*

Objective 6

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;*
- *some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;*
- *functionally some uses and developments can only be located on the coast or in the coastal marine area;*
- *the coastal environment contains renewable energy resources of significant value;*
- *the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;*
- *the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;*
- *the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected; and*

- *historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.*
- Policy 1
- (1) *Recognise that the extent and characteristics of the coastal environment vary from region to region and locality to locality; and the issues that arise may have different effects in different localities.*
 - (2) *Recognise that the coastal environment includes:*
 - (a) *the coastal marine area;*
 - (b) *islands within the coastal marine area;*
 - (c) *areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;*
 - (d) *areas at risk from coastal hazards;*
 - (e) *coastal vegetation and the habitat of indigenous coastal species including migratory birds;*
 - (f) *elements and features that contribute to the natural character, landscape, visual qualities or amenity values;*
 - (g) *items of cultural and historic heritage in the coastal marine area or on the coast;*
 - (h) *inter-related coastal marine and terrestrial systems, including the intertidal zone; and*
 - (i) *physical resources and built facilities, including infrastructure, that have modified the coastal environment.*

- Policy 2
- In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment:*
- (a) *recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;*
 - (b) *...;*
 - (c) *with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;*
 - (d) *provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pūkenga, may have knowledge not otherwise available;*
 - (e) *take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council, to the extent that its content has a bearing on resource management issues in the region or district; and*
 - (i)-(ii) ...

- (f) *provide for opportunities for tangata whenua to exercise kaitiakiātanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:*
- (i) ...
 - (ii) *providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;*
 - (iii) ...; and
- (g) *in consultation and collaboration with tangata whenua, working as far as practicable in accordance with tikanga Māori, and recognising that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance or special value:*
- (i) *recognise the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and*
 - (ii) ...
- Policy 6
- (1) ...
 - (2) *Additionally, in relation to the coastal marine area:*
 - (a) *recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area, including the potential for renewable marine energy to contribute to meeting the energy needs of future generations;*
 - (b) *recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area;*
 - (c) *recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places;*
 - (d) *recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there; and*
 - (e) ...
- Policy 12
- (1) *Provide in regional policy statements and in plans, as far as practicable, for the control of activities in or near the coastal marine area that could have adverse effects on the coastal environment by causing harmful aquatic organisms⁷ to be released or otherwise spread, and include conditions in resource consents, where relevant, to assist with managing the risk of such effects occurring.*
 - (2) *Recognise that activities relevant to (1) include:*
 - (a) *the introduction of structures likely to be contaminated with harmful aquatic organisms;*
 - (b) *the discharge or disposal of organic material from dredging, or from vessels and structures, whether during maintenance, cleaning or otherwise; and whether in the coastal marine area or on land;*

- (c) *the provision and ongoing maintenance of moorings, marina berths, jetties and wharves; and*
- (d) *the establishment and relocation of equipment and stock required for or associated with aquaculture.*

Policy 13

- (1) *To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*
 - (a) *avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and*
 - (b) *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:*
 - (c)-(d) ...
- (2) *Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:*
 - (a) *natural elements, processes and patterns;*
 - (b) *biophysical, ecological, geological and geomorphological aspects;*
 - (c) *natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;*
 - (d) *the natural movement of water and sediment;*
 - (e) *the natural darkness of the night sky;*
 - (f) *places or areas that are wild or scenic;*
 - (g) *a range of natural character from pristine to modified; and*
 - (h) *experiential attributes, including the sounds and smell of the sea; and their context or setting.*

Policy 15

- To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:*
- (a) *avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and*
 - (b) *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:*
 - (c) *identifying and assessing the natural features and natural landscapes of the coastal environment of the region or district, at minimum by land typing, soil characterisation and landscape characterisation and having regard to:*
 - (i) *natural science factors, including geological, topographical, ecological and dynamic components;*
 - (ii) *the presence of water including in seas, lakes, rivers and streams;*

- (iii) *legibility or expressiveness – how obviously the feature or landscape demonstrates its formative processes;*
 - (iv) *aesthetic values including memorability and naturalness;*
 - (v) *vegetation (native and exotic);*
 - (vi) *transient values, including presence of wildlife or other values at certain times of the day or year;*
 - (vii) *whether the values are shared and recognised;*
 - (viii) *cultural and spiritual values for tangata whenua, identified by working, as far as practicable, in accordance with tikanga Māori; including their expression as cultural landscapes and features;*
 - (ix) *historical and heritage associations; and*
 - (x) *wild or scenic values;*
- (d)-(e) ...

Comment

The current RCP became operative prior to the current NZCPS becoming operative.

The application is not considered to give rise to more than minor effects on the relevant characteristics listed in Objective 1. Fiordland is considered to have significant natural ecosystems and sites of biological importance, and a high degree of indigenous biodiversity. The applicant's policy, with regard to marine mammal and bird interaction and avoidance of anchoring in china shops, will ensure that this objective will be achieved.

In considering the *Environmental Defence Society Inc. v New Zealand King Salmon Company Ltd [2014] NZSC38* case, with regard to the application of policies surrounding natural character in the NZCPS, the wording in Policies 13 and 15 of the NZCPS, to 'avoid' effects on natural character within landscapes of outstanding natural character, sets a clear bottom line. The policies around natural character and outstanding landscapes are generally consistent with those in the NZCPS.

I refer in particular to Objective 5.2.1 and Policy 5.2.1 of the RCP, which provide for the protection of outstanding natural landscapes. Policy 5.2.1 specifically identifies the coastal environment of Fiordland as one of outstanding natural character.

The natural character policies in the RCP are consistent with those in the NZCPS, and are more site-specific. Therefore, while the decision maker must have regard to the policies and objectives of the NZCPS in accordance with Section 104(1), the objectives and policies within the RCP should be used to more closely guide decision-making at the consents level.

The application is inconsistent with provisions in the RCP relating to noise. Consequently, the application is considered inconsistent, at least in part, with Objective 2 and Policies 13 and 15.

TAMI and TRONT were notified of this application directly, which is consistent with Objective 3 and Policy 2.

DOC was directly notified of this application and made a submission, as it manages the land adjoining the FMA under the Fiordland National Park Management Plan (FNPMP). Consideration of DOC's submission provides for integrated management and is therefore consistent with Policy 4.

The application is not entirely consistent with Objective 6, as there are issues relating to public safety, particularly with regard to sue of anchorages.

The proposed activity is overall consistent with Policy 6. The proposal will not adversely affect public open space, and has a functional need to occur within the CMA.

In terms of Objective 4 and Policy 6(2)(b), the proposed CSWA will maintain and may actually enhance the public open space and recreation qualities of the CMA, due to the provision of charter vessel access and recreation opportunities in an area that is relatively inaccessible.

In terms of Policy 12, vessels travelling to the FMA from other areas can provide a vector for pest and unwanted organisms. Provided that the proposed conditions of consent are adopted and adhered to, the application will be consistent with this policy.

In terms of Policy 23, any discharge of sewage from a vessel must be in accordance with the MPR 1998.

Overall, I consider the application to be consistent with the objectives and policies listed above.

3.8 Relevant provisions of National Environmental Standards and other regulations (Section 104(1)(b)(i) and (ii))

There are no National Environmental Standards (NES) that are directly applicable to this application.

3.9 Any other matters considered relevant and reasonably necessary to determine the application (Section 104(1)(c))

Te Tangi a Tauria

Te Tangi a Tauria is the Iwi Management Plan for the Murihiku area. The policies relevant to this application are:

- | | |
|----------------|---|
| Policy 3.3.6.1 | <i>Advocate for the concentration of the majority of visitor activities in areas that are presently modified and that already have infrastructure in place. The preference of Ngāi Tabu ki Murihiku is to leave undeveloped, or minimally developed areas of Fiordland, in as natural state as possible.</i> |
| Policy 3.3.6.3 | <i>Require that the cultural and natural values of Fiordland are not compromised for recreation or tourism opportunities.</i> |
| Policy 3.3.6.6 | <i>Any interpretation and information relating to Ngāi Tabu ki Murihiku history, values, traditions or beliefs associated with areas of significance to Ngāi Tabu ki Murihiku is best prepared and delivered by Ngāi Tabu ki Murihiku. When concessionaires seek to use cultural history (e.g. pūrākau) in their operations, it is recommended that a kaitiaki Rūmanga representative is employed as part of the concession activity to provide and interpret such information.</i> |

- Policy 3.3.10.2 *Ensure that development and tourism in Fiordland does not compromise the pristine state of Fiordland waters.*
- Policy 3.6.1.6 *Respect, protect and enhance coastal areas of importance where possible.*
- Policy 3.6.4.1 *Ensure that all coastal regions are sustained and protected in perpetuity for all New Zealanders and visitors to enjoy.*
- Policy 3.6.6.1 *Strongly discourage discharges of human sewage and ballast water into coastal waters from commercial vessels and ships.*
- Policy 3.6.6.2 *Encourage adherence to avoidance measures (existing or developed) by vessel or ship operators to ensure the protection of coastal waters from the introduction of exotic vegetation and fauna through fouling.*
- Policy 3.6.6.3 *Advocate for removal of contaminated effluent to designated land based sewage and grey water discharge facilities in all areas where commercial vessels operate (e.g. Patea), or where appropriate, the use of technology that avoids discharge of effluent to water.*
- Policy 3.6.6.4 *Ensure that sewage tanks on the commercial boats have 24 hours of storage capability.*
- Policy 3.6.6.5 *Encourage all vessel operators to invest in the overall health of coastal Fiordland, through using only environmentally friendly products on-board (e.g. soaps and detergents).*
- Policy 3.6.6.6 *Carefully monitor the nature and number of concession applications for commercial recreation and tourism operations, to ensure that such activities are not compromising the natural character, beauty or ecology of the region.*
- Policy 3.6.6.7 *Concession holders and/or staff shall not discuss Ngāi Tabu history, traditions, culture and spirituality with clients without first consulting with and obtaining the approval of Ngāi Tabu ki Murihiku to ensure that information is both appropriate and accurate. Any interpretation or portrayal of Ngāi Tabu history or associations is subject to policies for cultural interpretation, as per Section 3.3.9 (Cultural Interpretation) of this Iwi Management Plan.*
- Policy 3.6.6.8 *Concession holders operating commercial surface water activities must ensure that clients do not remove any pounamu.*
- Policy 3.6.6.9 *Encourage operators to take advantage of new technologies to better manage the effects of commercial tourism development on the environment (e.g. waste discharge from boats).*
- Policy 3.6.6.11 *Require that, where possible, commercial boat operators use existing moorings to avoid setting the anchor as this is better for the seabed environment.*

Comment

The policies of Te Tangi a Taurira generally seek to protect and preserve the coastal environment. Policies 3.6.6.1 to 3.6.6.11 specifically focus on reducing the impact of commercial surface water activities on the coastal environment.

The discharge of sewage to sea will not comply with Policies 3.6.6.1 and 3.6.6.3, despite being consistent with the MPR.

TAMI and TRONT were directly notified of the application.

Fiordland National Park Management Plan

The Department of Conservation's Fiordland National Park Management Plan is discussed here to give effect to Policy 13.10 of the RPS. The FNPMP is relevant and reasonably necessary to the determination of this application because of the proximity and association with the Fiordland National Park. It is a substantial document and is not analysed in detail for the purposes of this report. Because it is a plan to manage Fiordland National Park, it does not impact directly on commercial surface water activities.

The FNPMP seeks to provide for recreational activities in the fiords, while limiting commercial operations, in order to sustain wilderness recreational opportunities. It would be inconsistent with the aim of the National Parks Act 1980 if the cumulative effect of commercial surface water activities detracted from the natural character of Fiordland National Park.

Resource Management (Marine Pollution) Regulations 1998

The following regulations within the MPR are of specific relevance to this application:

11 Discharge of sewage in coastal marine area

- (1) *Before 1 July 2000, any person may discharge sewage in the coastal marine area from a ship or offshore installation, unless that discharge is within 500 metres (0.27 nautical miles) of a marine farm.*
- (2) *On or after 1 July 2000, no person may discharge sewage in the coastal marine area from a ship or offshore installation unless that discharge occurs—*
 - (a) *more than 500 metres (0.27 nautical miles) seaward from mean high water springs; and*
 - (b) *more than 500 metres (0.27 nautical miles) from a marine farm; and*
 - (c) *in water depths greater than 5 metres; and*
 - (d) *more than 200 metres (0.108 nautical miles) from a marine reserve, except the marine reserve constituted by the Marine Reserve (Kermadec Islands) Order 1990; and*
 - (e) *more than 500 metres (0.27 nautical miles) from an area that the Minister of Fisheries has declared by notice in the Gazette to be a mataitai reserve under regulations made under section 186 of the Fisheries Act 1996.*
- (3) *A rule may only be included in a regional coastal plan or a proposed regional coastal plan relating to the discharges under this regulation if—*
 - (a) *the rule increases the distances seaward or increases the depth specified in subclause (2) for any harbours, estuaries, embayments, or other parts of a*

- region, or increases the distances from a marine farm, marine reserve, or mataitai reserve specified in subclause (2), for all or any part of the year; and
- (b) the rule takes effect on or after 1 July 2000.

12 Discharge of Grade A treated sewage in coastal marine area

- (1) Any person may discharge Grade A treated sewage in the coastal marine area from a ship or offshore installation, but must not discharge it within 100 metres of a marine farm.
- (2) Despite subclause (1), a rule may be included in a regional coastal plan or a proposed regional coastal plan if the rule—
- (a) relates to discharges of Grade A treated sewage in the internal waters of Fiordland (as defined in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977); and
- (b) restricts where those discharges may take place, being a distance of at least 100 metres from a marine farm; and
- (c) does not relate to vessels operated by the New Zealand Defence Force.
- (3) For the purposes of subclause (2), Fiordland means the coastal marine area between Awarua Point and Sandhill Point.

12A Discharge of Grade B treated sewage in coastal marine area

- (1) Any person may discharge Grade B treated sewage in the coastal marine area from a ship or offshore installation, but must not discharge it—
- (a) within 500 metres (0.27 nautical miles) of a marine farm; or
- (b) within 500 metres (0.27 nautical miles) of an area that the Minister of Fisheries has declared by notice in the Gazette to be a mataitai reserve under regulations made under section 186 of the Fisheries Act 1996.
- (2) A rule may only be included in a regional coastal plan or a proposed regional coastal plan relating to discharges under this regulation if the rule does either or both of the following:
- (a) specifies the distances from mean high-water springs or the depth where those discharges may take place for all or any part of the year, being distances of at least 500 metres (0.27 nautical miles) from—
- (i) a marine farm; or
- (ii) a mataitai reserve;
- (b) increases the distance from a marine farm or a mataitai reserve where those discharges may take place for all or any part of the year, being at a distance of more than 500 metres (0.27 nautical miles).

13 Discharge of garbage prohibited

Except as provided in regulation 13A, the discharge of garbage in the coastal marine area from any ship or offshore installation is prohibited.

13A Exceptions to prohibition on discharge of garbage

- (1) The prohibition in regulation 13 on the discharge of garbage from a ship in the coastal marine area does not apply to a discharge that is—
- (a) necessary for the purpose of securing the safety of a ship and those on-board or saving life at sea; or
- (b) an accidental loss of garbage resulting from damage to a ship or its equipment, if all reasonable precautions have been taken before and after the occurrence of the damage to prevent or minimise the accidental loss; or

- (c) *an accidental loss of fishing gear from a ship, if all reasonable precautions have been taken to prevent such loss; or*
 - (d) *a discharge of fishing gear from a ship for the protection of the marine environment or for the safety of that ship or its crew; or*
 - (e) *food waste, if the discharge occurs—*
 - (i) *while the ship is en route; and*
 - (ii) *at least 5 500 [sic] metres (3 nautical miles) seaward of the inner limits of the territorial sea; and*
 - (iii) *at least 500 metres (0.27 nautical miles) from any offshore installation; and*
 - (iv) *after the food waste has been ground or reduced to a particle size no greater than 25 millimetres; or*
 - (f) *cleaning agents or additives contained in cargo-hold, deck, and external surfaces wash water, if those substances are not harmful to the marine environment, taking into account guidelines developed by the International Maritime Organization.*
- (2) *The prohibition in regulation 13 on the discharge of garbage from an offshore installation in the coastal marine area does not apply to a discharge that is—*
- (a) *necessary for the purpose of securing the safety of an offshore installation and those on-board or saving life at sea; or*
 - (b) *an accidental loss of garbage resulting from damage to an offshore installation or its equipment, if all reasonable precautions have been taken before and after the occurrence of the damage to prevent or minimise the accidental loss.*

Comment

The MPR provides for the discharge of sewage from ships, both treated and untreated, within certain parameters. The discharge of garbage is not permitted, except in very specific circumstances.

It must be noted that these regulations do not address the aesthetic or cultural offensiveness of such discharges to Maori. TAMI and TRONT were directly notified of this application, and neither made a submission.

With regard to this application, sewage will be stored in holding tanks on-board the vessel before being removed by an on-shore tanker truck, or discharged to coastal water in accordance with the MPR.

Trade Competition

The decision-maker must have particular regard to matters of trade competition in this case, as a number of submitters are trade competitors. Section 104(3) states:

- (3) *A consent authority must not,—*
 - (a) *when considering an application, have regard to—*
 - (i) *trade competition or the effects of trade competition; or*
 - (ii) *...*

Further, Section 308B specifically states that where a submission is made by a trade competitor on an application, the trade competitor may only make a submission if they are directly affected by an effect of the proposed activity that adversely affects the environment and does not relate to trade completion or the effects of trade competition.

Therefore, the decision-maker must carefully consider whether submitters who are trade competitors are both:

- directly affected by an effect of the proposed activity that adversely affects the environment; **and**
- whether the effect relates to trade competition or the effects of trade competition.

If the decision-maker determines that the submitter is not directly affected by an effect of the proposed activity, and/or that the effect in question relates to trade competition or the effects of trade competition, then those parts of the submissions must be disregarded.

3.10 Section 105 matters relevant to discharge or coastal permits

Discharges of contaminants from the applicant's vessel are provided for under the MPR, within certain parameters. Provided that the MPR are adhered to, discharges from the vessel will not contravene Sections 15 or 15B of the RMA. As a result, Section 105 does not directly apply to this application.

The MPR is considered in Section 3.9 of this report.

3.11 Section 107 restriction on grant of certain discharge permits

Discharges of contaminants from the applicant's vessel are provided for under the MPR, within certain parameters. Provided that the MPR are adhered to, resource consent for these activities is not required. As a result, Section 107 does not directly apply to this application.

The MPR is considered in Section 3.9 of this report.

3.12 Part 2 of the Resource Management Act 1991

All considerations are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation. This means that the matters in Part 2 prevail over other provisions of the RMA or provisions in planning instruments in the event of a conflict. Section 5 states the purpose of the RMA and Sections 6, 7 and 8 are principles intended to provide additional guidance as to the way in which the purpose is to be achieved.

The application of Section 5 involves an overall broad judgement of whether a proposal will promote the sustainable management of natural and physical resources. The enabling and managing functions found in s5(2) should be considered of equal importance and taken as a whole. Sections 6, 7 and 8 provide further context and guidance to the constraints found in s5(2)(a), (b) and (c). The commencing words to these sections differ, thereby establishing the relative weight to be given to each section.

In relation to the matters outlined in Section 5 it is considered that this application is consistent with the purpose and the principles of the Act, as set out in Section 5. This is the promotion of the sustainable management of natural and physical resources. The proposed activities will not affect the ability of the receiving environment to meet the reasonably foreseeable needs of future generations, or on the life-supporting capacity of the land or any associated ecosystem. The proposed consent conditions will ensure that any potential adverse effects of the activities will be avoided, remedied or mitigated.

All of the Part 6 matters have been covered within the various Council planning instruments. The application is inconsistent with matters around noise and public safety under the various Council planning instruments, but they can be addressed through proposed consent conditions, and the applicant will be given the opportunity to answer these inconsistencies at a hearing.

Sections 6(a) to (f) are of particular relevance to this application. With regard to Sections 6(a), (b) and (f), the appropriateness of the CSWA for the area is to a certain extent subjective, especially as subsection 6(d) states that recognition should also be given to the maintenance and enhancement of public access along the CMA. The effects of the activity on the natural character of the CMA, outstanding natural features and landscapes, areas of significant indigenous vegetation and significant habitats of indigenous fauna and historic heritage have been assessed as minor.

Cultural and traditional relationships that Māori have with coastal water resources (sub-section 6(e)) have been provided for and recognised, through directly notifying TAMI and TRONT of the application, and through statutory acknowledgement of TRONT's association with the Fiordland coastal marine area is recognised under the Ngāi Tahu Claims Settlement Act 1998.

Section 6(g) has been recognised and provided for, but does not have a direct relationship to the application, because the application has no effect on protected customary rights.

Of the matters listed in Section 7 of the RMA, sub-sections 7(c), (d), (f) and (g) are particularly relevant to this application. These sub-sections state that particular regard shall be given to maintenance and enhancement of amenity values, and the finite characteristics of natural and physical resources. The aesthetic coherence, unique ecosystems and cultural and recreational attributes of the natural and physical characteristics of the area should be given particular regard.

Section 7(a) has been given effect to through communication with TAMI and TRONT.

With regard to Section 8 of the Act, the principles of the Treaty of Waitangi have been taken into account. This is through the consideration of Te Tangi a Tauria (Iwi Management Plan), communication with TAMI and TRONT, and the relevant policies in other planning documents.

Overall, the application is considered to tentatively meet the relevant provisions of Part 2 of the RMA as, despite inconsistencies with Council planning documents that can be addressed either through the proposed consent conditions, and/or by the applicant at a hearing, the proposal largely achieves the purpose of the RMA, which is the sustainable management of natural and physical resources.

4. Recommendations

4.1 Whether to grant

Under Section 104B the Council may grant or refuse consent for a **discretionary activity**, and if it grants the application, may impose conditions under Section 108 of the RMA.

The proposed operation area for this application is within the largely pristine FMA. This is an area of outstanding natural character, with significant landscape values, amenity values, remoteness values, wilderness values and unique endemic ecosystems. Effects on water quality can largely be avoided, excepting catastrophic events. Effects on indigenous flora and fauna, biosecurity, natural character, amenity values, landscape, wilderness values and remoteness values, visual effects and cumulative effects can be mitigated through consent conditions.

The applicant has not adequately addressed matters relating to noise effects, and submitters have raised issues with the use of anchorages too small for a vessel 49 metres in length. These matters can be addressed through the attached proposed consent conditions and in some cases by the applicant at hearing.

The application is largely consistent with the RCP, RPS, PRPS, and the NZCPS, although inconsistencies exist with regard to noise effects and use of anchorages. The application is considered to be consistent with the MPR.

Excepting the inconsistencies identified above, the application is largely consistent with Part 2 of the RMA.

Subject to new or contrary evidence being presented at the hearing I tentatively recommend that under Sections 104, 104B and 108 of the RMA, that resource consent is granted. The reasons for this recommendation are as follows:

- with regard to Section 104(a) of the RMA, the activity will bring about adverse effects which are likely to be minor, although there is some apprehension around the recommendation to grant this application. This apprehension is specific to the noise effects and the suitability of some anchorages proposed to be used by the applicant, and can be addressed through the proposed consent conditions, or by the applicant at a hearing;
- the adverse effects of the activity will be adequately avoided in some cases, and mitigated in others, by consent conditions;
- with regard to Section 104(1)(b), the activity is consistent with the relevant provisions of Council's RCP, RPS and PRPS, with the exception of those provisions relating to noise and use of anchorages;
- the application is considered to meet the relevant provisions of Part 2 of the RMA, notwithstanding the inconsistencies mentioned above.



Matt Hoffman
Consents Officer

RECOMMENDATIONS IN COUNCIL REPORTS ARE NOT TO BE CONSTRUED
AS COUNCIL POLICY UNLESS ADOPTED BY COUNCIL