

The Hearing Commissioner

3 March 2021
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 Commissioner. The report is evidence and has no greater weight than any other evidence that the Hearing Commissioner will hear and consider.

Hearing of Application – APP-20202246

Fiordland Cruises Limited

Compiled by George Gericke, Consents Officer

- Hearing: The hearing is scheduled to commence at 9.00 am on Wednesday, 3 March 2021 in the Council Chambers, Environment Southland, corner of Price Street and North Road, Waikiwi, Invercargill.
- Application: Fiordland Cruises Limited is applying for a new resource consent to carry out commercial surface water activities in the Doubtful Sound/Patea complex, Fiordland.
- Notification: The application was publicly notified on 21 August 2020 and one submission was received.
- Executive Summary: Fiordland Cruises Limited (the applicant) has applied for a new resource consent to carry out commercial surface water activities in the form of daytrips within a number of the principal arms of the Doubtful Sound/Patea Complex, including Crooked Arm (east of Turn Point), Doubtful Sound and Thompson Sound. The applicant is proposing to undertake one trip per day using a 20 metre vessel for up to 40 passengers. The vessel has been operating within Doubtful Sound/Patea complex for the past 10 years, and is currently being used for backcountry charter trips.

As outlined in this report the key issues are:

- potential effects of the proposed activities on natural character, remoteness and wilderness values associated with the Doubtful Sound/Patea complex; and
- the current allocation status of commercial day trips and backcountry trips.

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 Fiordland 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 consent authority in making a decision on the application.

1.2 About the author

My name is George Gericke. I am a consents officer employed by the Southland Regional Council. I have been employed by the Council since September 2019.

I hold the following qualifications:

- Bachelor (Honours) in Environmental Management from the University of South Africa (UNISA);
- Bachelor (Honours) in Communication Studies (Journalism) from the North-West University (NWU);
- Making Good Decisions certification.

I have also undertaken a backcountry trip within the Doubtful Sound/Patea complex in September 2020.

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;
- further information requested under Section 92(1) of the RMA;
- submission received by the Department of Conservation (DOC) on the application;
- pre-hearing meeting S99 report;
- pre-hearing response to DOC submitted by Bonisch Environmental on 26 November 2020;
- Resource Management Act 1991;
- New Zealand Coastal Policy Statement 2010 (NZCPS);
- Southland Regional Policy Statement 2017;
- Regional Coastal Plan for Southland 2013;
- Te Tangi a Tauria (Iwi Management Plan) 2008;
- Fiordland National Park Management Plan 2007; and
- Resource Management (Marine Pollution Regulations) 1998.

2. The application

2.1 The proposed activities

Applicant: Fiordland Cruises Limited
Application: APP-20202246
Site address or location: The coastal marine area of Fiordland from Yates Point to Puysegur Point.
Legal description: Coastal Marine Area

Fiordland Cruises Limited (the applicant) has applied for a new resource consent to carry out commercial surface water activities within a number of the principal arms of the Doubtful Sound/Patea complex, including Doubtful Sound, Thompson Sound and Crooked Arm (east of Turn Point). The applicant is proposing to undertake one trip per day using a 20 metre vessel for up to 40 passengers. The vessel has been operating within Doubtful Sound/Patea complex for the past 10 years, and is currently being used for backcountry charter trips under Coastal Permit AUTH-201180.

Due to the flood damage to the Milford Road the applicant was recently granted a temporary variation to its current permit (AUTH-201180) to undertake day trips in the Doubtful Sound/Patea complex. The application for temporary variation was considered as a discretionary activity, and was granted on the basis that the effects resulting from the variation were temporary, and that visitors during that time would have recognised that the circumstances were unusual and would be more accepting of the additional activities within the fiords. It was made clear at the time that the granting of the temporary variation to recognise the Milford Road closure situation should not create a presumption that a similar permanent activity would necessarily be approved.

However, this application is for the undertaking of the same additional day trips on a year round basis within Crooked Arm east of Turn Point, Doubtful and Thompson Sounds.

The day trips will all commence from and return to Deep Cove. The trips will be sightseeing cruises of approximately 3-6 hours. Various points of interest will be visited along the way, before returning to Deep Cove. When the vessel is not in use, it will be moored in Deep Cove at the applicant’s own wharf/floating pontoon used for all Fiordland Cruises vessels operating in this area.

The table below shows the various possible route options which will be dependent on sea and weather conditions:

Table 1: Trip options proposed by the applicant

<p>Trip Option 1 (preferred route)</p>	<p>Trip Option 1 would depart Deep Cove visiting Crooked Arm briefly as far in as the first bay on right. The vessel would then travel up to Blanket Bay before entering Thompson Sound. It would travel up Thompson Sound as far as Open Cove before returning back to Deep Cove by no later than 2.30 pm. Weather conditions required for operating this trip are calm sea conditions and light winds.</p>
<p>Trip Option 2</p>	<p>Trip Option 2 includes the vessel departing Deep Cove visiting Crooked Arm as far as Turn Point. The vessel would then travel up to Blanket Bay before entering Thompson Sound. It would travel up Thompson Sound as far as Deas Cove before returning back to Deep Cove by 2.00 pm. Weather conditions that this trip could operate under are clear or rainy conditions, with choppy seas and southerly winds 10 knots or less.</p>

<p>Trip Option 3</p>	<p>Trip Option 3 includes the vessel departing Deep Cove visiting Crooked Arm as far as Turn Point. From here the vessel will travel through the Patea Passage around Bauza Island, passing through the Te Awaatu Channel (The Gut), before returning to Deep Cove at 2.00 pm. This trip would operate at a time when there is choppy seas and light north west to strong easterly winds.</p>
<p>Trips Option 4</p>	<p>Trip Option 4, includes departure from Deep Cove, visiting Crooked Arm as far as Turn Point. The vessel would then sail to Marcaciones Point on Bauza Island, then across to Blanket Bay, before returning to Deep Cove. This trip would operate during cloudy/rain conditions, choppy seas and gale-force westerly winds.</p>

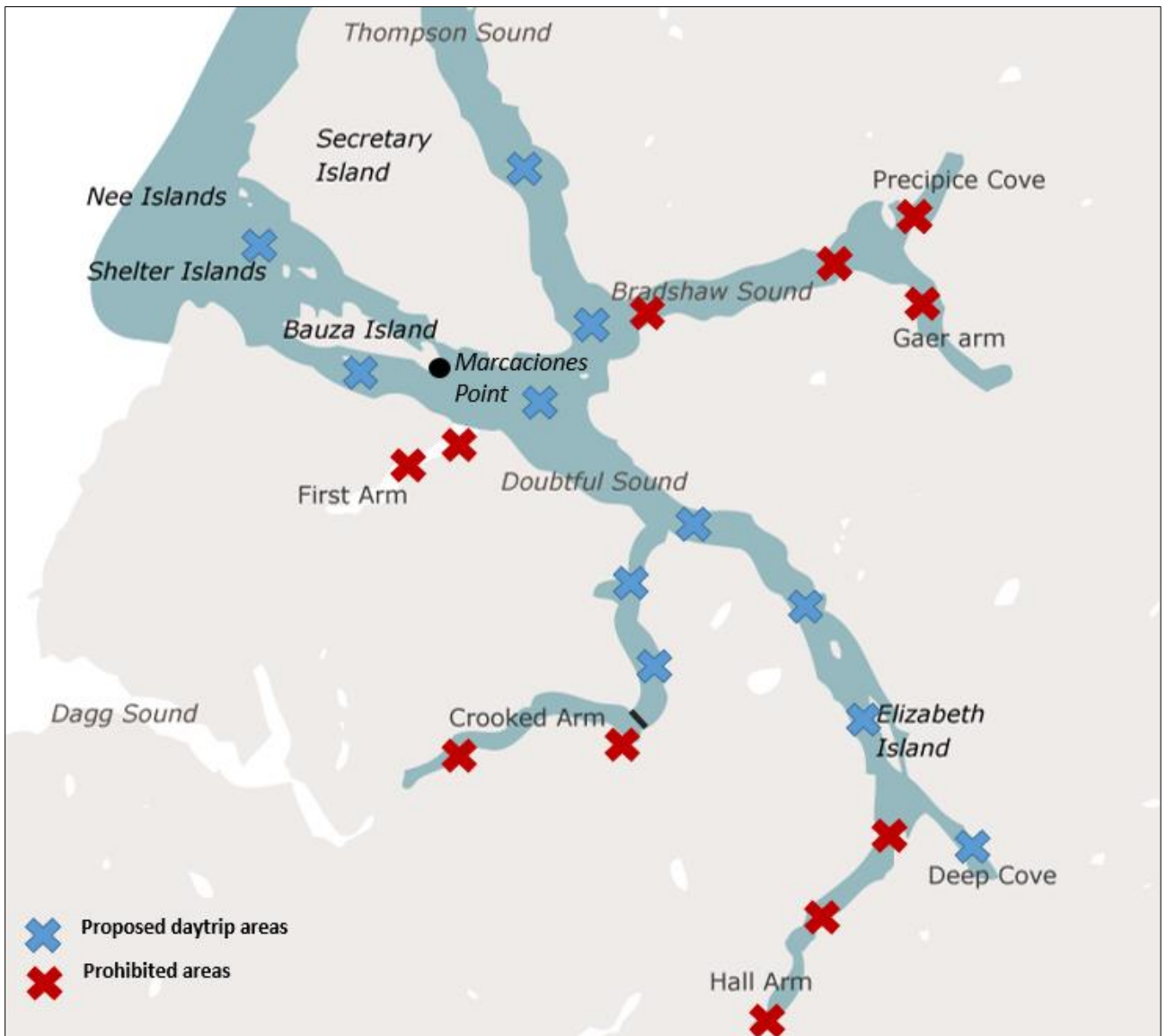


Figure 1: Proposed areas for undertaking day trips

Current allocation status of discretionary day trips and backcountry activities

The Regional Coastal Plan for Southland (RCP) places limits on the number of day trips and backcountry trips within the principal arms of the Doubtful Sound/Patea complex. Any trips above these limits become non-complying activities. The RCP further explains that the rule status of each activity (discretionary or non-complying) is dependent on the ability of the environment to “absorb those activities while protecting the natural character and amenity of those areas and providing for a range of different experiences within Fiordland”. The RCP does not specify allocation limits for commercial surface water activities elsewhere in Fiordland.

An increase above the five day trips in Doubtful Sound, Thompson Sound, Crooked Arm (east of Turn Point) and Hall Arm was previously approved by Council as a non-complying activity. A panel of Councillors heard an application (APP-207431-01) in October 2010 for the use of a support vessel for kayaking activities in Doubtful Sound, and allowed for the discretionary allocation level to be exceeded. While the hearing panel did not conclusively determine that the adverse effects of the higher number of day trips on the environment would be minor, it did conclude that the proposal passed the tests set out in s104D based on consideration of policy.¹

The effect of the previous 2010 decision was to make all subsequent applications for replacement consents for day trips non-complying as well, including replacement applications that did not cause further increase in the allocation. In effect, that decision set a level of allocation that the Council has accepted as appropriate with regard to remoteness and wilderness values. I consider that regard should be had to the 2010 decision when considering the cumulative effect of commercial surface water daytrips in the Doubtful Sound/Patea complex. To do otherwise would be contrary to that decision and detrimental to applicants for subsequent renewal applications.

Day trips

The total number of commercial day trips by all operators within Doubtful Sound, Thompson Sound and Crooked Arm (east of Turn Point) currently exceeds the discretionary allocation limits as shown in Table 2 below. The proposal to increase the current number of day trips within these areas is therefore a non-complying activity.

Table 2: Day Trips - Doubtful Sound, Thompson Sound & Crooked Arm (east of Turn Point)

Consent Nr	Consent Holder	Status	Expiry Date	Month												
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
203196	Offspring Travel Ltd (Guided kyaking tours with support vessel)	Current	20-Mar-2023	31	28	31	30	10					30	31	30	31
206961	Deep Cove Charters (Daytrips with 19m vessel, 8 kayaks & 1x tender vessel)	Current	13-Mar-2030				5	5	5	5	5	5	5	5		
97049-V4	Real Journeys (Daytrips with 44m vessel, 30 kayaks & 2x tender vessels)	Current	03-Nov-2020													
200125-V3	Real Journeys (Daytrips with 30m vessel)	Current	16-Nov-2021	124	112	124	120	124	120	124	124	120	124	120	124	124
20201878	Go Orange (Daytrips with 44m vessel, 30 kayaks & 2x tender vessels)	Current	30-Aug-2030													
300538-V1	Go Orange (Daytrips with 20m vessel)	Current	17-Nov-2031	31	28	31	30	31	30	31	31	31	30	31	30	31
Days Allocated				186	168	186	185	170	155	160	160	185	191	180	186	
Days Allowed				155	140	155	150	155	150	155	155	150	155	150	155	
Days in Month				31	28	31	30	31	30	31	31	30	31	30	31	

¹ Those particular trips have since been removed from the allocation for day trips on the basis that the use of a safety vessel did not constitute a commercial day trip as defined in the RCP, in that particular instance. For this activity the safety vessel would only be used in emergencies or when group or individual safety is compromised, or during times when the discharge from the Manapouri Power Scheme tailrace exceeds 485 cubic metres per second.

Overall, the proposal is a **non-complying activity** under Rule 16.2.1(2) of the RCP.

2.2 Regional Planning framework

Resource consents for the above activities are required under Rule 16.2.1(2) of the RCP. An application for resource consents was lodged with Environment Southland in accordance with these requirements ([Attachment 1](#)).

Overall, the proposal is a **non-complying activity** under Rule 16.2.1(2) of the RCP, and would require a resource consent.

When considering an application for a **non-complying activity**, the consent authority may only, in accordance with Section 104D, grant a resource consent if it is satisfied that either:

- (a) the adverse effects of the activity are minor, **or**
- (b) the application is for an activity that will not be contrary to the objectives and policies of the relevant plan or proposed plan.

If the application passes either or both of the “gateway” tests in Section 104D, under Section 104B the consent authority may grant or refuse the application. If it grants the application, conditions may be imposed under Section 108 of the RMA.

2.3 Further information request

Further information was requested from the applicant on 12 October 2020. The requested information included:

1. Noise level measurements for the vessel to be used *in accordance with the provisions of NZS 6801:1991 "Measurement of Sound" and NZS 6802:1991 "Assessment of Environmental Sound"*.

The above information was provided by the applicant on 6 August 2020 in the form of video recordings. I was satisfied that the recordings adequately illustrated that the operation of the vessel will adhere to the noise level requirements set in the RCP.

2.4 Notification and Submissions

The application was publicly notified on 21 August 2020. One submission was received. The submission ([Attachment 2](#)) is summarised as follows:

Table 3: Summary of submission received

Submitter	Oppose/ Support	Issues/comments	To be Heard?
Department of Conservation	Oppose	<ul style="list-style-type: none"> • The proposed activity will undermine the adjacent remote planning setting in the Fiordland National Park Management Plan, which is a relevant matter under s104(1)(c) of the RMA. The proposed activity could displace existing remote setting activities, including kayakers who use a Department of Conservation camp site in Hall Arm, to other parts of Fiordland. 	Yes

Submitter	Oppose/ Support	Issues/comments	To be Heard?
		<ul style="list-style-type: none"> • The applicant's proposed biosecurity measures are not sufficient to reduce the risk of introduced species spreading into this part of Fiordland. • Surface water activities can disturb the bottlenose dolphin population and adversely affect their behavioural activity budgets. • Pendulo Reach has a benthic fauna that is outstanding. Its fauna includes corals and sea pens which have already been damaged by an anchor chain dragging across the area, which this application could exacerbate. • The proposed activity will have more than minor adverse effects on indigenous biodiversity and natural character and natural feature and natural landscape values. • The application is contrary to Part 2 of the RMA and the policy framework. • The application is for a non-complying activity. Because the activity is contrary to the objectives and policies of the Southland Regional Coastal Plan and the adverse effects of the activity are more than minor, the application fails the s104D Resource Management Act 1991 tests. The application therefore cannot be granted. 	

2.5 Section 99 pre-hearing meeting

A pre-hearing meeting was held for this application on 19 November 2020. The meeting was chaired by Mr Bruce Halligan, Environment Southland Principal Consents Officer. At the meeting it was agreed that the applicant would provide further information to clarify the nature and locations of its proposed operations and measures it proposes to mitigate adverse environmental effects. Subsequent to this, the applicant has amended the application to exclude Hall Arm beyond the marine reserve boundary as part of its application for day trips to address concerns raised in regard to potential effects on kayaking operations and other vessels that operate within Hall Arm.

The Section 99 report is attached as [Attachment 3](#). The pre-hearing response to the Department of Conservation that was submitted by Bonisch Environmental on 26 November 2020 is attached as [Attachment 4](#).

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.

3.2 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, I consider that, at existing allocation levels, this application is inconsistent with the purpose and the principles of the Act as I am not satisfied that the proposed increases to the number day trips will avoid, remedy or mitigate adverse effects on the environment, particularly cumulative adverse effects on remoteness and wilderness values.

With regard to the matters outlined in Section 6, ss 6(a), 6(b) and 6(e) are particularly relevant. I do not believe that the proposed increase in the number of day trips will recognise and provide for the preservation of the natural character of the coastal environment (including the coastal marine area) or outstanding natural features and landscapes and the protection of them from inappropriate use and development. I also note that the proposal occurs in the Te Mimi o Tu Te Rakiwhanoa (Fiordland Coastal Marine Area) statutory acknowledgement area under Schedule 102 of the Ngāi Tahu Claims Settlement Act. The Crown has acknowledged Ngāi Tahu's cultural, spiritual, historic and traditional association with the area.

In relation to the considerations under Section 7, I am not satisfied that the proposed increase in the number of day trips will recognise and provide for the maintenance and enhancement of the quality of the environment, the efficient use and development of resources, or the maintenance and enhancement of amenity values.

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 (Iwi Management Plan) and the relevant policies in other planning documents. It is my view that the proposal is not consistent with this policy framework.

Overall, I consider that the application generally does not meet the relevant provisions of Part 2 of the RMA because of the uncertainty around the potential effects of the proposed increase in the number of day trips in Doubtful Sound, Thompson Sound and Crooked Arm (east of Turn Point) on remoteness

and wilderness values. I am not satisfied that the proposal will meet the purpose of the RMA, which is the sustainable management of natural and physical resources.

3.3 Description of the affected environment

The proposal is for operations in the coastal marine area in the Doubtful Sound/Patea complex in Fiordland. While they are named as “sounds” (drowned coastal river valleys), Doubtful Sound/Patea and Thompson Sound/Te Awa-o-Tū are actually fiords, created by glaciers, relatively long, narrow channels, often deep, with the land rising steeply on either side. The land around Doubtful Sound and Thompson Sound is a national park, with indigenous vegetation/bush/forest.

The fiords are unique estuarine systems. They have a variety of significant ecosystems, flora and fauna habitats, significant marine mammal and bird species and scenic and historic values. The land adjoining the area in which the applicant intends to operate forms part of Fiordland National Park. Fiordland is also recognised internationally as a UNESCO World Heritage Site, as part of the Te Wāhipounamu - South West New Zealand World Heritage Area.

While the fiords are recognised as having a high natural character and wilderness value, Doubtful Sound is, to some extent, recognised as having a level of for fishing and tourism activities. The application refers to large cruise ships operating in Thompson Sound. There are also private, non-commercial vessels present in the fiords. The Regional Policy Statement refers to the Deep Cove area within Doubtful Sound as a harbour area for fishing, tourism and recreational users - *“Doubtful and Thompson Sounds are important thoroughfares for a range of ships wanting access to facilities or the road end at Deep Cove. They also provide access to anchorages or bases within the sounds themselves”*.

The Doubtful Sound/Patea complex is home to a number of native marine mammals such as Fiordland Crested Penguins, Southern Fur Seals and a population of Bottle Nosed Dolphins that are unique to the Fiordland area.

Values of the area

Section 3.2.4 of the Regional Coastal Plan describes the landscape of the area between Awarua Point to Big River as virtually unmodified with extremely high natural character values. Section 3.2.4 states that *“Together with the extremely high natural character of the adjoining land, the natural character of the coastline and coastal waters creates a coastal environment of outstanding and unparalleled quality internationally.”* Section 3.2.7 states that *“fiords are probably the most significant coastal landform in this region and are outstanding natural features. Fiords mammals and birds, ecosystems, flora and fauna habitats, scenic values, historic values and coastal landforms are relatively rare worldwide but the New Zealand fiords are unique as a result of the environment within which they are located, particularly the high inflow of fresh water.”*

Appendix 4 of the Regional Coastal Plan includes coastal landscape assessments. The Fiords landscape assessment identifies the fiord landscape as natural with high inherent value, and outstanding wilderness qualities.

Appendix 5 of the Regional Coastal Plan identifies the fiords as an ACVS (Area Containing Significant Values). The significant values identified for the fiords include Maori cultural values, estuaries and marine.

The explanation to Policy 16.2.1 states that “Hall Arm and Bradshaw Arm have been identified as highly valued areas of Doubtful Sound”.

The Doubtful Sound/Patea complex is within the Te Mimi o Tu Te Rakiwhanoa (Fiordland Coastal Marine Area) statutory acknowledgement area under Schedule 102 of the Ngāi Tahu Claims Settlement Act. The Crown has acknowledged Ngāi Tahu’s cultural, spiritual, historic and traditional association with the area.

3.4 Actual and potential effects

The proposed activities will occur in Doubtful Sound/Patea complex. Day trips are proposed in Doubtful Sound, Thompson Sound and Crooked Arm (east of Turn Point). Commercial surface water activities in the fiords can have a variety of adverse effects on the environment. These include individual and cumulative effects due to noise, waste disposal, vessel wake, interaction with marine mammals and birds, navigational hazards, impacts on amenity and landscape values.

Public access and navigational safety

The applicant utilises its own consented wharf at Deep Cove (AUTH-204954-V1), so it does not cause or contribute to congestion at the Deep Cove Meridian wharf used by some other operators. The applicant also proposes to operate its trips at different times to other, larger operators’ vessel movements. However, because schedules can be varied, no fixed timetable was provided with the application.

The Harbourmaster has reviewed the proposal and does not have any concerns with navigational safety.

Wildlife, habitats and ecosystems

The applicant will adhere to the Department of Conservation’s Marine Mammal Code of Practice to avoid disruption to marine mammals. The operation will only use a single relatively small vessel in comparison to larger cruise vessels already operating in the area, and the applicant will only make use of existing infrastructure. I consider that the addition of a single relatively small vessel is not expected to add significantly to the cumulative effects of vessel presence on wildlife, habitats and ecosystems in the fiords.

Wake effects

The effects of wake produced by the relatively small vessel at the proposed speed on the surrounding landforms, flora, fauna, structures or vessels is expected to be less than minor.

Noise

The permitted baseline for noise levels from the vessel to be used is stipulated in the Coastal Plan under Rules 5.3.4 and 5.3.6. The applicant has stated that the operation will comply with noise limits under the regional rules.

I also consider that the noise assessment results submitted by the applicant on 5 August 2020 have illustrated that noise levels from the operations will adhere to the noise level requirements set in the RCP, and will be less than minor.

Cultural and historical values

The proposed surface water activities are to be undertaken within the Tū Te Rakiwhānoa (Fiordland Coastal Marine Area) which is a statutory acknowledgement area under Schedule 102 of the Ngāi Tahu Claims Settlement Act 1998, and local rūnanga may therefore be affected by the proposed activities. Te Ao Marama Inc and Te Rūnanga o Ngāi Tahu were provided with a copy of the application. No submissions were received by either of the parties.

Bio-invasion

The applicant follows the Fiordland Vessel Pathways rules to minimise the risk of marine pests being transported into the Fiordland Marine Area. The vessel will only be operating in this particular area, and the measures proposed by the applicant to mitigate the potential bio-invasion risks when maintenance on the vessel is required elsewhere was considered adequate. I consider that effects on bio-invasion risk is considered less than minor.

Rubbish and Waste

The vessel has approximately 1,000 litres of wastewater storage on-board, with the application advising that the wastewater will be discharged discharged to water in line with the rules set out in the Resource Management (Marine Pollution) Regulations 1991 or into the wastewater system at the Deep Cove Hostel.

Any solid wastes will be disposed of to an authorised land-based facility.

Natural character, remoteness and wilderness values

The RCP identifies areas within Fiordland that are particularly at risk of diminished natural character, landscape and amenity values and identifies that some areas are more at risk than others such as the Doubtful Sound/Patea complex. This is because it is directly accessible by a combination of boat and road. Access to the other areas in Fiordland is either by air or by boat around the open coast and is less popular and hence the remoteness of these areas currently has the effect of reducing the intensity of activities.

The RCP also seeks to protect the opportunity for remoteness and wilderness experiences in all of the principal arms, inlets and fiords of Fiordland (apart from Milford Sound). Section 16.1 of the RCP outlines that wilderness is a condition in which there is an extremely high probability of experiencing complete isolation from the sights, sounds and activities of humans. Remoteness is a similar condition, but the probability of experiencing complete isolation from the sights, sounds and activities of humans is reduced from extremely high to high. Remoteness and wilderness values are protected by limiting the number of discretionary commercial surface water activities. Currently limits are only placed on the number of discretionary day trips and backcountry trips in the Doubtful Sound/Patea complex and not in the broader Fiordland internal waters outside of these areas.

Policy 16.2.10 of the RCP required that the effects of commercial surface water activities on visitor perceptions and the physical environment be monitored. The explanation to the policy noted that the adverse effects were “difficult to readily quantify” and that “a large proportion of the monitoring will

be part of the Council’s general environmental monitoring pursuant to Section 35 of the Resource Management Act 1991 rather than consent monitoring”. That monitoring could take the form of remote cameras in various areas, and formalised visitor perception surveys, for example. Unfortunately, the monitoring has not occurred, so it is difficult to determine the level of effect associated with the higher levels of proposed allocation. I also note that Policy 3.6.6.6 of Te Tangi a Tauria is to “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”.

It is the applicant’s assessment that the impact on the natural character of the area will be no more than minor. The applicant considers that there is capacity for additional activity that will not significantly detract from the natural character to the extent that it is no longer outstanding. This view is based on the type of vessel that the applicant proposes to use, the scale of the receiving environment, regular communication between vessel operators to avoid being in the same area at the same time whenever possible and the relatively low number of vessels currently operating in the area. The applicant also considers that not all the allocated trips available are currently being utilised, and that there is still scope for activities that are currently classified as non-complying without causing significant adverse effects.

In the absence of monitoring data (particularly surveys of visitors and data about vessel movements in the fiords), or assessment against some recognised methodology (which would likely be dependent on monitoring data), I am unable to concur. However, I equally have no specific monitoring information nor other quantitative nor qualitative data to definitively conclude that the effects are more than minor.

The applicant is seeking to increase the number of day trips in Doubtful Sound, Thompson Sound and Crooked Arm (east of Turn Point). As previously illustrated in Section 2.1, the number of day trips have already exceeded the discretionary limit of five trips per day. The proposal to further increase the number of day trips may lead to cumulative adverse effects on remoteness and wilderness values of these areas.

It is my view that Rule 16.2.1 of the RCP sets a threshold at which the consent authority can be satisfied that, for the purposes of Policies 16.2.2 and 16.2.8 of the RCP, the cumulative adverse effects of day trips on remoteness and wilderness values will be no more than minor. Because of the lack of monitoring data available on visitors’ perceptions of current remoteness and wilderness values I consider that the potential effects of the proposed increase in the number of day trips are uncertain, unknown, and little understood, but potentially significantly adverse, and hence I am not currently satisfied that the adverse effects of the activity on the environment will be minor.

Because of the above I am also not satisfied that the proposed increase in day trips will not be contrary to Policies 16.2.2 and 16.2.8 of the RCP, which seeks to limit the extent and number of commercial activities and to protect the opportunity for remoteness and wilderness experiences. Therefore, I am of the view that the proposal does not pass either of the “gateway” tests under Section 104D of the RMA.

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

New Zealand Coastal Policy Statement 2010 (NZCPS)

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

- 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.*
- Policy 1 **Extent and characteristics of the coastal environment**
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

The Treaty of Waitangi, tangata whenua and Māori heritage

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. *involve iwi authorities or hapū on behalf of tangata whenua in the preparation of regional policy statements, and plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;*
- c. *with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori¹ 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 pūkenga², 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) *where appropriate incorporate references to, or material from, iwi resource management plans in regional policy statements and in plans; and*
 - (ii) *consider providing practical assistance to iwi or hapū who have indicated a wish to develop iwi resource management plans;*

- f. *provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:*
 - (i) *bringing cultural understanding to monitoring of natural resources;*
 - (ii) *providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;*
 - (iii) *having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiāpure, mahinga mātaimai or other non-commercial Māori customary fishing; 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) *provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Māori heritage, for example coastal pā or fishing villages.*

Policy 3

Precautionary approach

1. *Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.*
2. *In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:*
 - a. *avoidable social and economic loss and harm to communities does not occur;*
 - b. *natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and*
 - c. *the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.*

Policy 7

Strategic planning

1. *In preparing regional policy statements, and plans:*
 - a. *consider where, how and when to provide for future residential, rural residential, settlement, urban development and other activities in the coastal environment at a regional and district level, and:*
 - b. *identify areas of the coastal environment where particular activities and forms of subdivision, use and development:*
 - (i) *are inappropriate; and*

- (ii) *may be inappropriate without the consideration of effects through a resource consent application, notice of requirement for designation or Schedule 1 of the Act process;*
and provide protection from inappropriate subdivision, use, and development in these areas through objectives, policies and rules.
- 2. *Identify in regional policy statements, and plans, coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects. Include provisions in plans to manage these effects. Where practicable, in plans, set thresholds (including zones, standards or targets), or specify acceptable limits to change, to assist in determining when activities causing adverse cumulative effects are to be avoided.*

Policy 13

Preservation of natural character

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

Natural features and natural landscapes

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. ensuring that regional policy statements, and plans, map or otherwise identify areas where the protection of natural features and natural landscapes requires objectives, policies and rules; and*
- e. including the objectives, policies and rules required by (d) in plans.*

Comment

Although the NZCPS makes provision for the maintenance and enhancement of the public open space qualities and recreation opportunities within the coastal environment, one of the key issues identified in promoting sustainable management is the loss of natural character, landscape and amenity values and wild or scenic areas along the coast. Clear direction is provided in Policies 13 and 15 to “avoid” effects on natural character within landscapes of outstanding natural character, to “preserve” the natural character of the coastal environment and to “protect” it from inappropriate subdivision, use, and development.

The NZCPS further gives direction to adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.

The policies on natural character, remoteness and wilderness values in the Regional Coastal Plan (RCP) are consistent with those in the NZCPS and are more site-specific. The RCP also sets a threshold for the number of commercial day trips and backcountry trips based on the environments ability to “absorb those activities while protecting the natural character and amenity of those areas”².

It is my view that the proposal is inconsistent with the direction provided in the NZCPS, given the clear direction provided in Policies 13 and 15 of the NZCPS to “avoid” effects on natural character, to “preserve” the natural character of the coastal environment, to “protect” it from inappropriate use and development and to adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood.

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

Southland Regional Policy Statement 2017 (RPS)

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

- | | |
|----------------|--|
| Policy TW.1 | <i>Treaty of Waitangi - 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>Iwi management plans - Take iwi management plans into account within local authority resource management decision making processes.</i> |
| Policy TW.4 | <p><i>Decision making - When making resource management decisions, ensure that local authority functions and powers are exercised in a manner that:</i></p> <ul style="list-style-type: none"> <i>a. recognises and provides for:</i> <ul style="list-style-type: none"> <i>(i) traditional Māori uses and practices relating to natural resources (e.g. mātaihai, kaitiakitanga, manaakitanga, matauranga, rāhui, wāhi tapu, taonga raranga);</i> <i>(ii) the ahi kā (manawhenua) relationship of tangata whenua with and their role as kaitiaki of natural resources;</i> <i>(iii) mahinga kai and access to areas of natural resources used for customary purposes;</i> <i>(iv) mauri and wairua of natural resources; (v) places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua;</i> <i>(v) Māori environmental health and cultural wellbeing.</i> <i>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.</i> |
| Policy COAST 2 | <p><i>Management of activities in the coastal environment - Ensure adequate measures or methods are utilised within the coastal environment when making provision for subdivision, use and development to:</i></p> <ul style="list-style-type: none"> <i>a. protect indigenous biodiversity, historic heritage, natural character, and natural features and landscape values;</i> |

² Explanation to Rule 16.2.1 of the Regional Coastal Plan, paragraph 5.

- 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

Ensure that subdivision, use and development activities:

- a. avoid adverse effects on areas of outstanding natural features and landscapes, and/or outstanding natural character;*
- b. avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects on other natural features and landscapes and/or natural character in the coastal environment;*
- c. protect and provide for nationally significant, regionally significant, and critical infrastructure, including ports and energy projects for the region, including by recognising that new development of the National Grid should seek to avoid adverse effects on the values of outstanding natural features and landscapes, and/or areas of outstanding or high natural character located within rural coastal environments. In the coastal environment, in some circumstances, adverse effects on those areas must be avoided.*

Policy COAST 7

Management of activities in the coastal marine area - Within the coastal marine area, provide a framework to avoid or mitigate adverse effects on the coastal environment for the following activities:

- a. the allocation, use and occupation of coastal space;*
- b. the use and development of the natural and physical resources of the coastal marine area;*
- c. the emission of noise;*
- d. commercial activities on the water and on the foreshore and seabed.*

Comment

In relation to Policies TW.1, TW.2 and TW.3 of the RPS I note that Te Ao Marama Inc (TAMI) and Te Rūnanga O Ngāi Tahu (TRONT) were sent a copy of the application. No submissions were made by TAMI or Te Rūnanga o Ngāi Tahu.

It is also noted that the RPS became operative subsequent to the RCP and the NZCPS and provides clear direction in Policies COAST 2, 3 and 7 to “protect” natural character, natural features and landscape values, to ‘maintain or enhance’ public access but also amenity values and to “avoid or mitigate” adverse effects of commercial activities on the water.

Given the direction provided to “protect” natural character, natural features and landscape values and to “maintain or enhance” amenity values it is my view that the proposal is inconsistent with the direction provided in the RPS because there is insufficient information to demonstrate that the adverse effects of the activity on the environment will be minor.

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

Regional Coastal Plan for Southland 2013 (RCP)

The following objectives, policies and definitions are of particular relevance to this application:

- Objective 16.1.1 *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.*
- Objective 16.1.2 *To preserve the remoteness and wilderness values of the internal waters of Fiordland.*
- Objective 16.1.3 *To ensure that commercial and private recreational surface water activities do not adversely affect the intrinsic values of the Fiordland coastal environment.*

In this case, the applicant intends to operate in the Doubtful Sound/Patea complex, and the following policies are of particular relevance to this application and operations within the Doubtful Sound/Patea complex:

- Policy 16.2.1 *Identify arms or parts of arms of Doubtful Sound and other waters of Fiordland where natural character, landscape and amenity values are vulnerable to the adverse effects of increased use.*
- Policy 16.2.2 *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.*
- Policy 16.2.8 *Protect the opportunity for remoteness and wilderness experiences in all of the principle Arms, Inlets and Fiords of Fiordland apart from Milford Sound.*
- Policy 16.2.9 *Provide for commercial surface water activity to use Doubtful Sound and Thompson Sound where it is necessary to:*
1. *pick up or off-load passengers to or from shore;*
 2. *access services;*
 3. *access wharves or launching areas;*
 4. *travel from one arm of Doubtful Sound to another in the case of commercial backcountry activities;*
 5. *off-load cargo and uplift stores;*
 6. *carry out activities associated with the construction and maintenance of the Manapouri Power Scheme and tailrace.*

Definitions

Commercial Surface Water Activities - include any activities that involve the use of any ship less than 1000 gross registered tons where that ship has been offered or used for hire or reward, and includes commercial day trip activity and commercial back country activity but:

- does not include any activity for which a reasonable charge is made towards recovery of the reasonable expenses incurred in undertaking the activity; and,
- does not include a fishing boat, when its crew are engaged in the catching of quota and non-quota fish and ancillary activities.

Ship – means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes –

- a barge, lighter, or other like vessel;
- a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- a submarine or other submersible;
- a kayak, yacht or personal watercraft.

Commercial Day Trip Activity - means commercial surface water activity that involves the use of a motorised or wind powered ship from a point of embarkation and back, with the embarkation and disembarkation of the passengers occurring on the same calendar day

Commercial Day Trip - means the undertaking of a commercial day trip activity from a point of embarkation and back, with the embarkation and disembarkation of the same passengers (more or less) occurring on the same calendar day.

Comment

As stated earlier, the applicant is seeking to increase the number of day trips in Doubtful Sound, Thompson Sound and Crooked Arm (east of Turn Point). As previously illustrated in Section 2.1, the number of day trips have already exceeded the discretionary limit of five trips per day. The proposal to further increase the number of day trips may lead to cumulative adverse effects on remoteness and wilderness values of these areas.

It is my view that Rule 16.2.1(4) of the RCP sets a threshold at which the consent authority can be satisfied that, for the purposes of Policies 16.2.2 and 16.2.8 of the RCP, at the discretionary allocation level the cumulative adverse effects of day trips and backcountry trips on remoteness and wilderness values will be no more than minor. However, we are now operating at non-complying activity levels, and I consider that the plan provides less certainty about the scale of effect at this level.

Because of the lack of monitoring data available on visitors' perceptions of current remoteness and wilderness values, I consider that the potential effects of the proposed increase in the number of day trips are uncertain, unknown and little understood, but potentially significantly adverse. Therefore, I am not satisfied that the adverse effects of the activity on the environment will be minor. Policy 16.2.10 is to monitor the distribution of surface water activities and their effects on visitor perceptions and the physical environment. The explanation is clear that this was to have mainly been general environmental monitoring by the Council. I acknowledge that such monitoring has not occurred, and it hampers the consent process. I also did not consider that the applicant's assessment of cumulative effects was sufficient in this case.

Because of the above I am also not satisfied that the proposed increase in day trips will not be contrary to Policies 16.2.2 and 16.2.8 of the RCP, which seeks to limit the extent and number of commercial activities and to protect the opportunity for remoteness and wilderness experiences.

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

Te Tangi a Tauria 2008

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

- Policy 3.3.5.3 *Ensure that the natural character of the Fiordland environment is protected for future generations. The effects of visitors and other tourism development on the environment must be managed in a way that ensures that the values of Fiordland are not compromised.*
- Policy 3.3.6.3 *Require that the cultural and natural values of Fiordland are not compromised for recreation or tourism opportunities.*
- Policy 3.6.4.6 *Advocate limits to coastal areas (which may include camping sites, reserves, parks) that are considered under pressure or susceptible to increased demand and do not have adequate facilities to meet pressures.*
- Policy 3.6.6.2 *Strongly discourage discharges of human sewage and ballast water into coastal waters from commercial vessels and ships.*
- 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.*

Comment

In Section 3.3 of the Te Tangi a Tauria Iwi Management Plan Ngāi Tahu ki Murihiku articulates a vision for Fiordland, which seeks that the lands, waters and biodiversity of Fiordland are managed in a way that is consistent with indigenous concepts of “wilderness” whereby humans are a part of nature, as opposed to separate from it. The vision also seeks that tourism and visitor activities are concentrated in areas where infrastructure already exists (e.g. Milford Sound), as opposed to opening up new areas for development, and that existing areas of development are managed in a co-ordinated, sustainable way.

Policy 3.3.5.3 seeks to ensure that the natural character of the Fiordland environment is protected and that the effects of visitors and other tourism development on the environment must be managed in a way that ensures that the values of Fiordland are not compromised.

In my view, the abovementioned vision for Fiordland together with Policy 3.3.5.3 provides clear direction for tourism activities within the region, and I also note the reference to the concept of “wilderness”, which is consistent with Policy 16.2.8 of the RCP.

Section 3.6.6 of the Te Tangi a Tauira Iwi Management Plan further sets out the issues and polices relevant to commercial surface water activities in Fiordland, and requires that the cultural and natural values of Fiordland are not to be compromised for recreation or tourism opportunities and to advocate limits to coastal areas that are considered under pressure or susceptible to increased demand.

The policy direction in Te Tangi a Tauira is consistent with the direction provided in the RCP and the general policy framework of the NZCPS and the RPS, and I am of the view that the proposal is not consistent with this policy framework.

Fiordland National Park Management Plan

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 is my view that 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 Marine Pollution Regulations provide for the discharge of sewage from ships, both treated and untreated, within certain parameters. The discharge of garbage/rubbish 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. Te Rūnanga o Ngai Tahu (TRONT) was sent a copy of the application, and has not raised concerns with the application.

With regard to this application, wastewater will be discharged in accordance with the Resource Management (Marine Pollution) Regulations 1998, and any solid wastes will be disposed of to an authorised land-based facility.

3.10 Section 105 matters relevant to discharge or coastal permits

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

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, discharges from the vessels will not contravene Sections 15 or 15B of the RMA. As a result, Section 107 does not directly apply to this application.

4. Recommendations

4.1 Whether to grant

The activities applied for have been considered together, and as such the highest consent test applies. The application is therefore considered as a **non-complying activity**. Under Section 104D, the Council may consider whether to grant or decline consent if it is satisfied that either the adverse effects will be minor or the application will not be contrary to the objectives and policies of the relevant proposed and operative plans. If it grants the application, it may impose conditions under Section 108 of the RMA.

As stated earlier, the applicant is seeking to increase the number of day trips in Doubtful Sound, Thompson Sound and Crooked Arm (east of Turn Point). As previously illustrated in Section 2.1, the number of day trips have already exceeded the discretionary limit of five trips per day. The proposal to further increase the number of day trips may lead to cumulative adverse effects on remoteness and wilderness values of these areas.

It is my view that Rule 16.2.1(4) of the RCP sets a threshold at which the consent authority can be satisfied that, for the purposes of Policies 16.2.2 and 16.2.8 of the RCP, at the discretionary allocation level the cumulative adverse effects of day trips and backcountry trips on remoteness and wilderness values will be no more than minor. However, we are now operating at non-complying activity levels, and I consider that the plan provides less certainty about the scale of effect at this level.

Because of the lack of monitoring data available on visitors' perceptions of current remoteness and wilderness values, I consider that the potential effects of the proposed increase in the number of day trips are uncertain, unknown, and little understood, but potentially significantly adverse. Therefore, I am not satisfied that the adverse effects of the activity on the environment will be minor. Policy 16.2.10 is to monitor the distribution of surface water activities and their effects on visitor perceptions and the physical environment. The explanation is clear that this was to have mainly been general environmental monitoring by the Council. I acknowledge that such monitoring has not occurred, and it hampers the consent process. I also did not consider that the applicant's assessment of cumulative effects was sufficient in this case.

Because of the above I am also not satisfied that the proposed increase in day trips will not be contrary to Policies 16.2.2 and 16.2.8 of the RCP, which seeks to limit the extent and number of commercial activities and to protect the opportunity for remoteness and wilderness experiences. Therefore, I am of the view that the proposal does not pass the "gateway" tests under Section 104D of the RMA.

Overall, I recommend that the application be **declined** because I am of the view that the proposal does not pass either of the "gateway" tests under Section 104D of the RMA as:

- I am not satisfied that the adverse effects of the proposed activities on the environment will be minor;
- I am also not satisfied that the proposal will not be contrary to the relevant objectives and policies of the RCP.

4.2 Draft conditions

Despite my recommendation, I have included draft conditions (Attachment 5) to assist the Hearing Commissioner should the application be granted.

4.3 Term of consent

The applicant has requested a consent term of 15 years. If the Hearing Commissioner determines to approve the application, a term of 11 years may be appropriate for the following reasons:

- the proposed expiry date of 2032 is consistent with the expiry dates of other current permits for undertaking commercial surface water activities within the Doubtful Sound/Patea complex;
- it was considered that a shorter consent term would allow Council to re-assess the cumulative effects of the number of consented trips at the time of application for renewal of current permits.



George Gericke
Consents Officer

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