

**BEFORE THE SOUTHLAND REGIONAL COUNCIL  
(ENVIRONMENT SOUTHLAND)**

**UNDER** the Resource Management Act 1991

**AND**

**IN THE MATTER**

**OF** a Resource Consent Application by  
Offspring Travel Ltd (APP-20202433)

**AND**

**IN THE MATTER**

**OF** submissions by Te Rūnaka o Oraka  
Aparima, Te Rūnanga o Ngāi Tahu,  
Department of Conservation and Fiordland  
Marine Guardians

---

**EVIDENCE OF DR LYNDA MARION WEASTELL MURCHISON  
ON BEHALF OF TE RŪNAKA O ORAKA APARIMA AND TE RŪNANGA O NGĀI  
TAHU**

---

## 1. INTRODUCTION

- 1.1 My name is Lynda Marion Weastell Murchison. I am currently employed as a senior environmental advisor for Te Rūnanga o Ngāi Tahu.
- 1.2 I have been asked to provide planning evidence on behalf of Te Rūnaka o Oraka Aparima and Te Rūnanga o Ngāi Tahu on resource consent application APP-20202433 by Offspring Travel Ltd to Southland Regional Council (Environment Southland) to carry out commercial surface water activities in Patea/ Doubtful Sound complex.
- 1.3 I hold the following relevant qualifications: a PhD in Geography (Environmental Policy and Planning) from the University of Canterbury; a Master of Arts Degree (First Class honours) in Geography from Canterbury University; and post-graduate Certificates of Proficiency in Natural Resource Law and Advanced Regional and Resource Planning from Canterbury and Lincoln universities, respectively. I am a full member of the New Zealand Planning Institute and an accredited Hearing Commissioner.
- 1.4 I have worked in environmental or resource management policy and planning for 25 years, holding senior planning and managerial positions with Selwyn District Council, Canterbury Regional Council (Environment Canterbury), Te Rūnanga o Ngāi Tahu and in private practice. From 2013 to 2018, I was also contracted as an adjunct lecturer in environmental and resource management at Canterbury University and at Lincoln University in 2019.
- 1.5 Throughout my career I have been involved in drafting multiple statutory planning documents including the Canterbury Regional Policy Statement, various regional, district and catchment plans including the Canterbury Land and Water Regional Plan, the Selwyn District Plan, the Replacement Christchurch City District Plan, and a review of both the Canterbury Regional Coastal Plan and the proposed West Coast Regional Coastal Plan. I have been involved in drafting and processing over 80 plan changes and have extensive experience in both processing and applying for resource consents pertaining to both district and regional council functions.
- 1.6 I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court of New Zealand Practice Note (2014) and that I shall abide by it in preparing and giving this evidence. I confirm that the issues addressed in this statement are within my area of expertise except where I state that I am relying on information provided by another party. I have not knowingly omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **2. SCOPE OF EVIDENCE**

- 2.1 The key issue for both Te Rūnaka o Oraka Aparima and Te Rūnanga o Ngāi Tahu is whether the proposed activity will result in any further increase in commercial day trips or commercial back country trips over and above the allocation limits set in the Southland Regional Coastal Plan or the allocation allowed in the current consent held by Offspring Travel Ltd.
- 2.2 This matter appears to be a central tenet of both the s42A Officers Report and the evidence of Ms Aitken on behalf of the applicant.
- 2.3 My evidence traverses the following matters:
- (i) The status of Te Rūnanga o Ngāi Tahu as the iwi authority over this area and the relationship between Te Ōraka o Aparima and Te Rūnanga o Ngāi Tahu, by way of introduction.
  - (ii) My understanding of the proposal.
  - (iii) My reading of the relevant definitions of the Southland Regional Coastal Plan and therefore whether I agree the use of the support vessel complies with the definition of a commercial day trip or a commercial back country trip.
  - (iv) Whether I agree the trip allocation limits in the plan ought to be adhered to.
- 2.4 In preparing my evidence I have considered the following documents:
- Te Rūnanga o Ngāi Tahu Act 1996
  - The Ngāi Tahu Claims Settlement Act 1998
  - Te Rūnanga o Ngāi Tahu (Declaration of Membership) Order 2001
  - The Resource Management Act 1991 (RMA)
  - The New Zealand Coastal Policy Statement 2010
  - The Southland Regional Coastal Plan
  - The Application by Offspring Travel Ltd, APP-20202433
  - The Section 42A Officers Report (S42A Report)
  - The evidence of Ms Bridgett Aitken
  - The submissions by Te Rūnaka o Oraka Aparima and Te Rūnanga o Ngāi Tahu.

### **3. SUMMARY OF EVIDENCE**

- 3.1 I agree with the S42A Report that the operation of the support vessel falls within the definitions of ‘Commercial Day Trip Activity’, ‘Commercial Day Trip’, and ‘Commercial Back Country Activity,’ depending on the duration of the event, though my reasons differ.
- 3.2 I agree with the s42A Reporting Officer that the trip numbers allowed in the previous consent granted in 2010 above the allocation limits set in the plan ought to be considered in this application, though my reasons differ.
- 3.3 I do not agree with the evidence of Ms Aitken as to the regard to be given to the allocation limits set in the plan.

### **4. PART ONE - TE RŪNANGA O NGĀI TAHU AND TE RŪNAKA O ORAKA APARIMA**

- 4.1 Te Rūnanga o Ngāi Tahu is the iwi authority that represents Ngāi Tahu whānui as recognised in section 15 of Te Rūnanga o Ngāi Tahu Act 1996.
- 4.2 The takiwā of Te Rūnanga o Ngāi Tahu is described in section 5 of the Act and includes all of Te Wai Pounamu/the South Island from an approximate area south of a boundary centred on Belvedere Peak in the Nelson Lakes District across to the coastline of Cloudy Bay in Marlborough north-west of White Bluffs, and includes Rakiura/Te Ara a Kiwa (Stewart Island) and offshore and sub-Antarctic islands.
- 4.3 Te Rūnanga o Ngāi Tahu is comprised of 18 papatipu rūnanga, who collectively represent the hapū and whānau of Ngāi Tahu and their ancestors, including Ngāti Mamoe and Waitaha. Te Rūnaka o Oraka Aparima is one of the 18 papatipu rūnanga that collectively comprise Te Rūnanga o Ngāi Tahu.
- 4.4 The takiwā of each papatipu rūnanga is described in the Ngāi Tahu (Declaration of Membership) Order 2001. The takiwā of Te Rūnaka o Oraka Aparima is described as:
- “centres on Oraka and extends from Waimatuku to Tawhititarere sharing an interest in the lakes and mountains from Whakatipu-Waitai to Tawhititarere with other Murihiku Rūnanga and those located from Waihemo southwards.*
- 4.5 While Te Rūnanga o Ngāi Tahu is the iwi authority, in practice local authorities, resource consent applicants and other parties are encouraged to consult directly with papatipu rūnanga on matters pertaining to their takiwā. Te Rūnanga on Ngāi Tahu may support papatipu rūnanga in these matters when requested by papatipu rūnanga or may become involved as the iwi authority in matters of tribal property or tribal interest.
- 4.6 In this case, Te Rūnanga o Ngāi Tahu is supporting Te Rūnaka o Oraka Aparima and is also involved because the activity is occurring within a Statutory Acknowledgement Area.

## **5. PART TWO – THE PROPOSAL**

- 5.1 The S42A Report describes the activity as a range of one-day and two-day conducted guided kayaking tours around the Patea/Doubtful Sound complex accompanied by a safety vessel.
- 5.2 Relying on the original application, my understanding is that Offspring Travel Ltd hold a resource consent authorising similar activities which was granted in 2010 and is due to expire in 2023. This application is to replace that consent and to expand the operation.
- 5.3 Relying on the S42A Report, my understanding is that new application made by Offspring Travel Ltd has since been modified and the proposal is now:
- (i) To increase the number of early-day and one-day trips within Patea/Doubtful Sound and Hall Arm;
  - (ii) To maintain the existing number of two-day tours and allocated back country trips in Hall Arm;
  - (iii) To add a new double kayak to the early-day and two-day tours; and
  - (iv) To replace the 10m safety vessel with a 14.3m safety vessel.
- 5.4 Relying on the original application and the evidence for Ms Aitken, my understanding is that the original application has been amended as follows:
- (i) To reduce the size of the support vessel from 18m to 14.3m and to exclude accommodation facilities from the vessel; and
  - (ii) To remove the application for proposed one-day trips to Crooked Arm and the outer islands and Te Awa o Tū/Thompson Sound.

## **6. PART THREE – STATUS OF SUPPORT VESSEL UNDER PLAN DEFINITIONS**

- 6.1 The Southland Regional Coastal Plan sets allocation limits for 'Commercial Day Trips' and "Commercial Back Country Trips' in the Patea/Doubtful Sound complex under Rule 16.2.1(4). Commercial surface water activities which exceed those allocation limits are a non-complying activity under Rule 16.2.1(2).
- 6.2 Both the S42A Report and the evidence of Ms Aitken accept that the overall status of the application is non-complying. The S42A Report (p.6) states that the current consent held by Offspring Travel Ltd was assessed and granted as a non-complying activity in 2010 as it exceeded the day trip allocation limits in the plan. The S42A Report states that the resource consent was granted not because the consent authority was satisfied the effects were minor

but because it deemed that the activity was not contrary to the objectives and policies of the plan.

6.3 In a footnote on p.6, the S42A Report notes that these additional trips were subsequently removed from the allocation on the basis that the safety vessel trips were not deemed to meet the definition of a 'commercial day trip' as defined in the plan.

6.4 The Southland Regional Coastal Plan includes the following relevant definitions in Appendix One-Glossary (Appendices – page 5):

**Commercial Surface Water Activities** – *include any activities that involve the use of a 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 the crew is engaged in the catering of quota and non-quota fish and ancillary activities.*

**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.*

**Commercial Backcountry Activity** - *means 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.*

**Commercial Backcountry Trip** - *means the undertaking of a commercial backcountry activity within either Hall Arm, Crooked Arm west of Turn Point, First Arm or Bradshaw Arm for any purpose, other than using an anchorage and travelling directly to and from that anchorage when conditions prevent the use of anchorages in areas other than those specified.*

6.5 Whether the safety vessel falls within the definition of 'Commercial Day Trip' or 'Commercial Back Country Activity' is a point of difference between the S42A Report and the evidence of Ms Aitken. On page 7, the S42A Report sets out a case for why the safety vessel complies with these definitions in the Southland Regional Coastal Plan. The arguments raised are:

- (i) The explanation to Rule 16.2.1 acknowledges that not all commercial trips will fit neatly into these definitions;

- (ii) Even though passengers are not embarking or disembarking from the safety vessel it is involved in the kayaking activity;
  - (iii) The effects of the motorised vessel are the same regardless of whether passengers are embarking or disembarking; and
  - (iv) The support vessel will be used for kayakers to have lunch and for toileting facilities in the one-day tour and early-day tour.
- 6.6 Ms Aitken's evidence (paras 13 to 17, p.5) outlines why she believes the support vessel does not comply with the definitions of 'Commercial Day Trip Activity' or 'Commercial Back Country Activity'. In summary, she reasons:
- (i) The vessel is intended for safety not for the transport of sight-seeing passengers;
  - (ii) The safety vessel is only used to transport kayakers from one destination to another, there is no embarkation or disembarkation of passengers from the applicant's wharf unless safety conditions mean the kayakers cannot continue.
  - (iii) For the overnight tour at Hall Arm, kayakers may be transported one way by the vessel but not both.
- 6.7 My understanding is that when a term is defined in a statutory plan, it has the definition as outlined in that plan unless the term is defined in the relevant statute; in which case it takes the definition set out in the statute. Any definition should be read applying an ordinary definition of the words as set out in the Oxford English Dictionary,
- 6.8 None of these terms is defined in the RMA or in the New Zealand Coastal Policy Statement 2010, which is a higher order statutory document which the Southland Regional Coastal Plan must give effect to under section 67(3)(b) of the RMA. Therefore, I have applied the ordinary meaning of the words in these definitions as set out in the Oxford English Dictionary.
- 6.9 Using this analysis, I agree with the S42A Report that the support vessel does fall within the definition of 'Commercial Day Trip' and 'Commercial Back Country Activity', but not for the same reasons.
- 6.10 I do not agree with the S42A Report that the explanation to Rule 16.2.1 that not all commercial activities will fit neatly into the definition provides any lawful basis upon which to stretch the definition beyond the meaning of the words used in the definition itself.
- 6.11 I do not agree with the S42A Report that the use of the word 'involves' in the definition means that when passengers are not embarking or disembarking, the motorised vessel still falls within the definition. Both definitions clearly state that the activity involves the use of a motorised or wind-powered ship from a point of embarkation to a point of disembarkation over a specified period of time. In my opinion the actions of embarkation and disembarkation are key

components of the definitions and if it was intended that the definitions capture any use of a motorised or wind powered vessel whether or not embarkation or disembarkation takes place, I would have expected the definition to say that.

- 6.12 Similarly, while I agree that some of the effects of motorised vessels in the Patea/Doubtful Sound complex will be the same irrespective of whether passengers are embarking or disembarking, I do not agree that argument can be used to stretch the application of a definition in the plan beyond the words set out in the definition.
- 6.13 The key point for me is partly encapsulated in the fourth reason given in the S42A Report; that the support vessel will be used for lunch and toileting facilities. In other words, people will be embarking and disembarking from the support vessel during the guided tours, not only for lunch and comfort stops, but also to be taken to and in some cases from kayaking destinations.
- 6.14 At paragraph 13, Ms Aitken reasons that because passengers are not embarking and disembarking from the applicant's wharf, the definitions do not apply. However, from my reading of the definitions, there is no requirement that embarkation or disembarkation occurs from a wharf facility.
- 6.15 The ordinary meaning of 'embarkation' in the Oxford English Dictionary is, "the act of getting on to a ship or airplane." Similarly, 'disembarkation' is defined as, "the act of leaving a vehicle, especially a ship or an aircraft."
- 6.16 In my view, whether passengers board or alight from the support vessel via a kayak, a wharf or the shoreline they are undertaking the act of embarking and disembarking each time they board and leave the vessel.
- 6.17 Consequently, I believe the support vessel does fall within the definitions of 'Commercial Day Trip Activity' and 'Commercial Back Country Activity' and, therefore, depending on the nature of each guided trip, the support vessels movements may constitute a 'Commercial Day Trip' or a 'Commercial Back Country Trip'.

## **7. PART FOUR – IMPACT OF EXCEEDING TRIP ALLOCATION LIMITS**

- 7.1 The other key point of difference between the S42A Report and Ms Aitken's evidence is whether the effects of increasing the number of commercial day trips is appropriate.
- 7.2 The S42A Report notes that the current resource consent already authorises more trips than those allocated under Rule 16.2.1(4). However, the S42A Report notes (p.6) that these additional trips are already consented and suggests the consented activity should be the baseline for assessing the impacts of the proposed activity, including cumulative effects.
- 7.3 I do not agree that the existing consented activity is the baseline for assessing effects from a new activity, once the existing consented activity expires. To adopt that logic would mean a



consent authority could never address effects from over-allocation or other adverse effects from past decision-making.


- 7.4 My understanding is that the leading case law on what constitutes the 'existing environment' for the purposes of considering a resource consent application under s104 of the RMA remains *Queenstown Lakes DC v Hawthorne Estates Ltd* [2006] NZRMA 424 (CA) where the Court of Appeal said:

*"in our review, the word 'environment' embraces the future state of the environment as it may be modified by the utilisation of rights to carry out a permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of a resource consent which has been granted at the time a particular application is considered, where it appears likely that these resource consents will be implemented...."*

- 7.5 However, it does not address the scenario being considered here where a coastal permit has been granted for a limited duration and whether the effects allowed by that permit ought to be considered as an 'environmental baseline' when assessing the effects of a new activity that will replace that consent. At this point, the existing resource consent will not continue to be implemented.
- 7.6 In 2010, the consent authority determined that the current activity and its effects were appropriate. The S42A Report has not identified any environmental effects, nor any significant change in relevant planning policy, that may alter this assessment. Rather the issue appears to be whether a further increase in full-day trips and early-day trips is appropriate.
- 7.7 The S42A Report finds (pp13-16) that increasing the number of early-day trips and full-day trips in the Patea/Doubtful Sound and Hall Arm will lead to an overall increase in the number of vessel traffic movements in the fiords, which the Reporting Officer concludes will affect natural character, remoteness and wilderness values. The S42A Report concludes (p.13) this outcome will not achieve the purpose of the Act and has recommended no increase from the number of trips authorised by the existing consent.
- 7.8 Ms Aitken argues (para48) that the additional kayak and larger safety vessel will have some visual effects but compared with the existing activity, the proposed changes are less than minor. At paragraph 50, Ms Aitken reasons that the number of days on which activities occur will increase but argues the additional days are in autumn, winter and early spring which is the least busy time.
- 7.9 This assessment does not address the extent to which these 'quieter times' are important to mitigate the impact of the busier season on marine ecosystems, natural character and cultural and amenity values.
- 7.10 Ms Aitken also notes (para 55) that not all currently allocated trips are used all the time for a variety of reasons. For the reasons outlined in paragraph 7.4, I agree with the S42A Report

that the full allocation of consented trips must be assumed to be occurring when assessing the effects of the proposed activity on the environment.

- 7.11 In assessing the application under the provisions of the Southland Regional Coastal Plan, Ms Aitken argues (para 56) that the allocation values in the plan are not derived from a specific source or report and were determined largely by considering the level of activity at the time and allowing for some growth, and anecdotal evidence. She suggests (para 57) that due to the lack of reasoning for how the allocation numbers were derived it is difficult to accurately determine a suitable level for cumulative effects.
- 7.12 I do not agree with Ms Aitken's assessment. Irrespective of how the allocation limits were derived for the Southland Regional Coastal Plan, they are the limits set in the plan. In my planning experience, the whole purpose of setting allocation limits over a defined space such as a catchment is to manage cumulative effects, including the cumulative effects of many small-scale activities which, when assessed individually through the resource consent process, it is hard to demonstrate effects will be more than minor.
- 7.13 In addition, the allocation limits are set in an operative plan. While the wording of section 32 of the RMA has been amended several times, at the time the plan was written, there was a duty on the Council to be satisfied that the plan provisions were the most efficient and effective means to achieve the purpose of the Act. In my view, the appropriate place to challenge the merit of limits set in the plan is through a planning process, not undermining them through the granting of resource consents to exceed them.
- 7.14 For these reasons, I support the conclusions and recommendations in the S42A Report.



Lynda Murchison

24<sup>th</sup> February 2020