



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

Summary

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

- I consider that special circumstances exist due to the difficulty of assessing cumulative effects on the environment
 - Monitoring of effects (such as remote camera recording and assessment of vessel movements, and surveys of visitor perceptions) has not occurred.
 - A standardised method of assessing cumulative effects, particularly on remoteness and wilderness values, is not identified in the Coastal Plan.
 - The level of allocation exceeds the discretionary allocation limits. That does not automatically mean that adverse effects are more than minor, but it does imply that the activity level is beyond the amount that the Coastal Plan foresaw as having minor effects.
 - I requested further information about cumulative effects on remoteness and wilderness values, and the applicant responded, but I don't consider that the applicant was able to make a satisfactory assessment.

The application

Particulars

Applicant:	Offspring Travel Ltd
Application reference:	APP-20202433
Site address or location:	Coastal marine area within Doubtful Sound/Patea - Thompson Sound/Te Awa-o-Tū
New consent(s) for new activity(ies) (s88)	<input type="checkbox"/>
New consent(s) for existing activity(ies) (s88)	<input checked="" type="checkbox"/>
Change to conditions of existing consent(s) (s127)	<input type="checkbox"/>

The proposal

Offspring Travel Limited have applied for a new resource consent to carry out a commercial surface water activity in the Doubtful Sound/Patea - Thompson Sound/Te Awa-o-Tū area.

The company conducts guided kayak tours, supported by an 18-metre long safety vessel. The kayak trips include day trips and back-country trips. The applicant has existing allocation for day trips, but is increasing the allocation and adding new back-country trips.

Coastal permit	
Relevant rule(s)	Rule 16.2.1
Activity Status	Non-complying

Activity	Description
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Day trip (fully)	One trip per day August-May period Five double kayaks and one single kayak To and from Deep Cove
Day trip (early)	One trip per day November-April period Five double kayaks and one single kayak To and from Deep Cove
Backcountry trip (two-day tour)	Eight times per month October-April period Five double kayaks and one single kayak Start from Deep Cove. Overnight in Hall Arm or Crooked Arm. Return to Deep Cove. Note: the support vessel returns to Deep Cove, so will not be mooring in Hall Arm, unless necessary due to extreme weather conditions.

	Full Day Proposed	Early Day Proposed	2 Day Tour Proposed	Total Trips Proposed
January	31	15	8	54
February	28	15	8	51
March	31	15	8	54
April	30	15	8	53
May	31	0	0	31
June	0	0	0	0
July	0	0	0	0
August	31	0	0	31
September	30	0	0	30
October	31	0	8	39
November	30	15	8	53
December	31	15	8	54
Total	304	90	56	450

Table 1: Proposed number of trips to be undertaken.

The following outlines the trip options proposed by the applicant, depending on weather:

Day Trips	
Option 1	Kayaking clients commence trip from the OTL wharf located in Deep Cove. Mooring of vessel at Commander Peak with kayaking clients lunching on vessel. Clients continue kayaking to the south end of Hall Arm. Clients and kayaks loaded on vessel and transported back to OTL wharf at Deep Cove.
Option 2	Kayaking clients commence trip from the OTL wharf located in Deep Cove. Mooring of vessel at Commander Peak with kayaking clients lunching on vessel. Clients continue kayaking to Secret Cove.

	Clients and kayaks loaded on vessel and transported back to OTL wharf at Deep Cove
Option 3	Kayaking clients commence trip from the northern end of Crooked Arm. Lunch on vessel at Lucky Burn in Crooked Arm. Clients continue kayaking to Turn Point, Crooked Arm. Clients and kayaks loaded on vessel and transported back to OTL wharf at Deep Cove
Option 4	Kayaking clients commence trip from the Shelter Islands. Mooring of vessel and lunch at Blanket Bay. Clients continue kayaking along the south side of Thompson Sound next to Secretary Island, opposite Deas Cove. Clients and kayaks loaded on vessel and transported back to OTL wharf at Deep Cove.
Overnight Trips	
Option 1	<u>Day 1</u> Kayaking clients commence trip from the OTL wharf located in Deep Cove. Mooring of vessel at Commander Peak with kayaking clients lunching on vessel. Clients continue kayaking to the south end of Hall Arm returning to Ponytail Falls campsite to overnight. <u>Day 2</u> Commence from Ponytail Falls Campsite returning to OTL wharf in Deep Cove.
Option 2	<u>Day 1</u> Travel by vessel from OTL wharf at Deep Cove to Secret Cove. Commence kayaking trip from Secret Cove. Lunch on vessel next to Lucky Burn in Crooked Arm. Kayak down Crooked Arm to Turn Point. Return to Lucky Burn campsite to overnight. <u>Day 2</u> Commence from Lucky Burn campsite kayaking to Blanket Bay. Lunch on vessel at Blanket Bay. Clients and kayaks loaded on vessel and transported back to OTL wharf at Deep Cove.

A single safety vessel is used to support the kayaking trips.

Overall, the application is a non-complying activity.

Public notification consideration

1. Is notification mandatory?

1.1 Has the applicant requested that the application be publicly notified? (s95(3)(a))	<input type="checkbox"/> Yes	Application must be publicly notified. Go to 10.2
	<input type="checkbox"/> No	Go to 1.2
1.2 Was further information, or commissioning of a report, requested under s92?	<input checked="" type="checkbox"/> Yes	Go to 1.3
	<input type="checkbox"/> No	Go to step 2.1

1.3 If yes, was the request refused, or did the applicant fail to respond or fail to provide the information by the deadline?	<input type="checkbox"/> Yes	Public notification is required by s95C. Go to 10.2
	<input checked="" type="checkbox"/> No	Go to step 2.1

I requested further information about cumulative effects and a response was attempted. I don't regard it as sufficient but, in fairness, I also don't think that the cumulative effects on people's perceptions of wilderness and remoteness can be satisfactorily assessed without monitoring and a standardised method of assessment.

2. Is notification precluded?

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

3. Is notification required?

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

As discussed below, I don't consider that the adverse effects are clearly minor or more than minor.

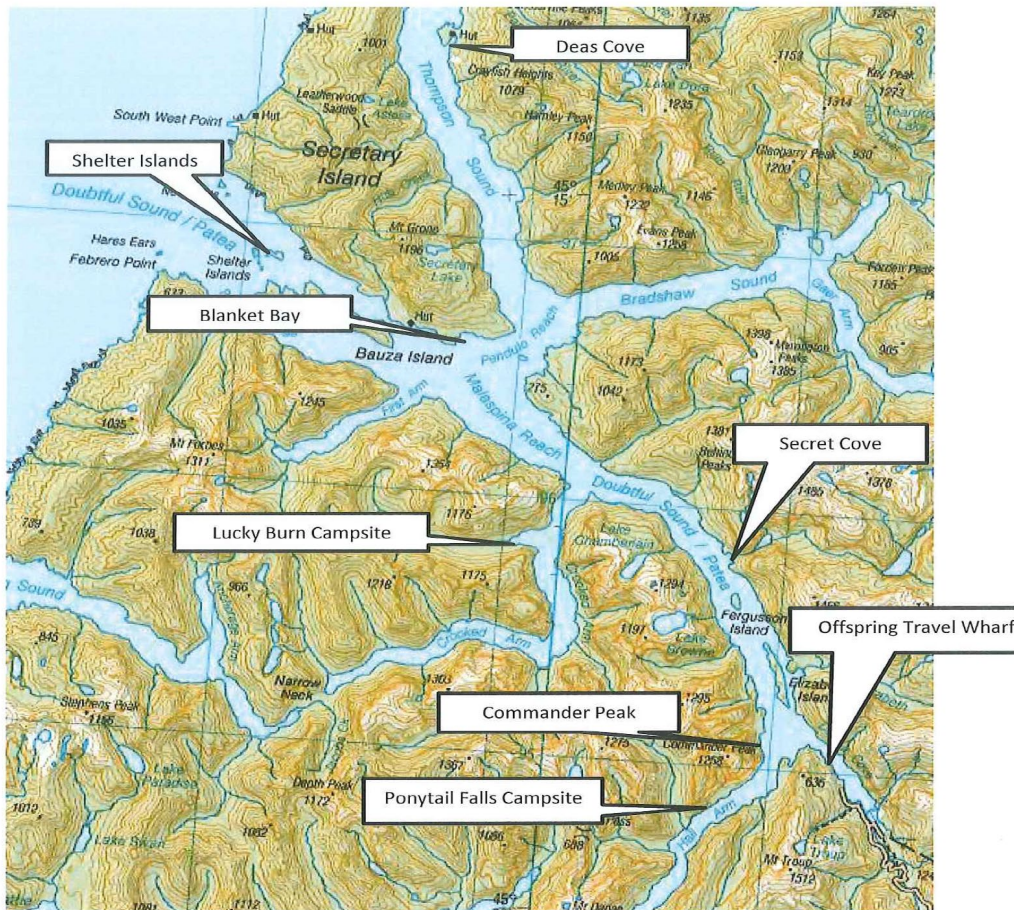
Note: In forming this opinion (a) to (e) apply:

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

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

The existing environment

The proposal is for operations in the coastal marine area in the Doubtful Sound/ Patea-Thompson Sound/ Te Awa-o-Tū complex in Fiordland. While they are named as ‘sounds’ (drowned coastal river valleys), Doubtful Sound and Thompson Sound 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.



Map 2: Topo image showing various landmarks and locations as referred to in the application

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 for commercial fishing¹ and tourism activities². 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 Statement³ refers to the Deep Cove area within Doubtful Sound as a harbour

¹ Section 3.2.9: “A significant fishing fleet operates out of Doubtful and Milford Sounds, with both having wharf facilities”

² Explanation to Objective 16.1.1: “Except for Milford Sound, and to a lesser extent in Doubtful Sound, the intensity of tourism on the Fiordland coast is such that the intrinsic values or inherent worth of the area is largely unspoiled.”

³ Chapter 7, paragraph 5.

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”.*⁴

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. *“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 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 following significant values are identified for the fiords: Maori cultural values, estuaries, marine mammals and birds, ecosystems, flora and fauna habitats, scenic values, historic values and coastal landforms.

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-Thompson Sound/ Te Awa-o-Tū area 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.

Commercial surface water activity allocation

Commercial surface water activities are 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.

In general commercial surface water activities in the coastal areas of Doubtful Sound/ Patea-Thompson Sound/ Te Awa-o-Tū are tourism vessels. The Coastal Plan identifies two subsets of commercial surface water activities that have allocation limits: commercial day trips (CDT) and commercial backcountry trips (CBT). The definition of CDT and CBT refers to activities that *“involve the use of a motorised or wind-powered ship”*. Motorised support vessels used to support kayaking trips therefore trigger these

⁴ Explanation to Policy 16.2.9 of the Regional Coastal Plan

definitions, which means that the kayak trips account towards allocation as either commercial day trips hand commercial backcountry trips.

The following tables indicate existing commercial surface water activity allocation. Differences in red show exceedances of the discretionary allocation limit. Differences shown as negative and green indicate available allocation.

Existing **commercial day trip** allocations (Doubtful Sound):

	Month											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Applicant's allocation	39	36	39	38	10				30	31	38	39
Total allocation	318	288	318	313	232	215	222	222	245	315	308	318
Discretionary limit	155	140	155	150	155	150	155	155	150	155	150	155
Difference	163	148	163	163	77	65	67	67	95	160	158	163

Existing **commercial day trip** allocations (Hall Arm):

	Month											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Applicant's allocation	39	36	39	38	10				30	31	38	39
Total allocation	194	176	194	193	170	155	160	160	185	191	188	194
Discretionary limit	155	140	155	150	155	150	155	155	150	155	150	155
Difference	39	36	39	43	15	5	5	5	35	36	38	39

Existing **commercial back-country** allocation – Hall Arm

	Month											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Total Allocated	93	84	93	90	93	84	87	87	90	93	90	93
Days in Month	31	28	31	30	31	30	31	31	30	31	30	31
Discretionary allocation	93	84	93	90	93	90	93	93	90	93	90	93
Difference	0	0	0	0	0	-6	-6	-6	0	0	0	0

Existing **commercial back-country** allocation – Crooked Arm

	Month											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Total Allocated	93	84	93	90	93	90	93	93	89	93	90	94
Days in Month	31	28	31	30	31	30	31	31	30	31	30	31
Discretionary allocation	93	84	93	90	93	90	93	93	90	93	90	93

Difference	0	0	0	0	0	0	0	0	0	-1	0	0	1
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As can be seen, the applicant has existing commercial day trip allocation. This involves an existing support vessel for the kayak trips.

An increase above the 5 discretionary day trips 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 number of discretionary day trips 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.

It should also be noted that another application (APP-20201878) for a replacement consent for day trips was granted as a non-complying activity in February 2020. The effect of the previous 2010 decision was to make all subsequent applications for replacement consents for daytrips, non-complying as well. It was considered that the 2010 decision should be given regard to 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.

Adverse effects of the proposed activities on the environment

The proposed activities will occur in Doubtful Sound. Day trips will include Hall Arm, Crooked Arm and Thompson Sound. The proposed back-country trips will enter Hall Arm and Crooked Arm.

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. The purpose of the rules on commercial surface water activities is to protect remoteness, wilderness⁵ and tranquillity⁶ values, and the recreational experience for other people⁷, in particular. This may include congestion at the embarkation and disembarkation areas in Deep Cove.

As mentioned above, commercial day trips (CDT) and commercial backcountry trips (CBT) “involve the use of a motorised or wind-powered ship”. The definition complicates the determination of allocation for supported kayak trips, as it can be interpreted that the CDT and CBT are just the trips of the motorised support vessels. However I understand the word “involve” to mean that the entirety of the operation, not just the support vessel, counts towards the allocation limits. I note that Policy 16.2.13 refers to smaller vessels reliant on a larger vessel, although the context is slightly different. The explanation to the policy notes that “*these ships are able to generate considerably more activity than would normally be expected*”.

The explanation to Rule 16.2.1 states that [CDT and CBT] are discretionary activities up to a certain level of use after which then become non-complying activities and that “*the rule status of each activity is dependent upon the ability of the environment to absorb those activities while protecting the natural character and amenity and providing for administrative flexibility and a range of different experiences within Fiordland*”. The explanation also states that “*Within Milford Sound, Doubtful Sound and Thompson Sound, the effects of commercial backcountry activities are considered relatively minor, having regard to the range and extent*”.

⁵ Objective 16.1.2 of the Regional Coastal Plan

⁶ Policy 16.2.2 of the Regional Coastal Plan

⁷ Objective 16.1.3 of the Regional Coastal Plan

of other commercial activities undertaken within those areas, and in Doubtful and Thompson Sounds, the frequent thoroughfare nature of backcountry activity within those areas.”

Public access and navigational safety

The applicant utilises its own wharf at Deep Cove for the kayaking operation, so it does not cause or contribute to congestion at the Deep Cover Meridian wharf used by some other operators. It also operates its trips at different times to other, larger operators’ vessel movements. Therefore I consider that the proposal provides for public access to the coastal marine area without impeding access for other people.

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 applicant will also avoid taking tours into particularly sensitive areas. Overall, the kayak tours are unlikely to have more than minor adverse effect on wildlife and their habitat.

Wake effects

Wake effects from kayaks are likely to be negligible. The support vessel will typically operate at low speeds when kayaks are in the water. At other times wake from the support vessel is estimated at 30 cm in height, similar to natural waves in the area. Therefore the effects of wake on the surrounding landforms, flora, fauna, structures or vessels is expected to be no more than minor.

Noise

The applicant has stated that the operation will comply with noise limits under the regional rules. The kayak tours and the support vessel will operate at slow speeds with low noise emissions. Therefore I consider that effects of noise will be no more 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.

Bio-invasion

The applicant follows the Fiordland Vessel Pathways rules. The support vessel will remain in Fiordland except for maintenance and survey work, or in the event of an emergency, so there is limited potential for it to transport pest species to the area. The applicant will also maintain rodent traps or bait stations onboard. Therefore I consider that the potential for the operation to give rise to a biosecurity risk is no more than minor.

Rubbish and Waste

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

Wastewater (sewage and washwater) will be discharged in accordance with the Resource Management (Marine Pollution) Regulations 1998.

Visual effects

Kayak tours are conducted in small groups. Although the kayaks and life jackets are brightly colours, because the kayaks are small and sit close to the water they have little visual effect at medium to long distances.

The number of support vessels is not increasing. The new vessel will be larger in size, but it is unlikely that the size difference will have a more noticeable visual effect, particularly in the fiord areas outside of Deep Cove.

Wilderness and Remoteness values

To protect the wilderness and remoteness values, Rule 16.2.1 under the Coastal Plan restricts the number of commercial surface water activities within the Doubtful Sound/Patea. Up to 5 commercial day trips per day, and up to 3 commercial back country trips per day in Hall Arm and Crooked Arm, are provided for as discretionary activities.

The explanation to Rule 16.2.1 states that *“the rule status of each activity is dependent upon the ability of the environment to absorb those activities while protecting the natural character and amenity and providing for administrative flexibility and a range of different experiences within Fiordland”*. That suggests that allocation as a discretionary activity was considered to have only minor adverse effects on wilderness and remoteness values. It may imply that at the non-complying level the adverse effects will be excessive, but it is far from definite. In general, status as a non-complying activity does not automatically make the adverse effects of an activity more than minor

As noted above, the applicant has existing allocation for kayak trips with a support vessel. The support vessel is being replaced, and the applicant proposes to increase the number of commercial day trips and add commercial back-country trips.

The following tables show allocation as proposed. Differences in red indicate figures above the discretionary limit, making them non-complying activities. Differences in green indicate allocation available within the discretionary limit.

Proposed commercial day trip allocations (Doubtful Sound):

Applicant’s proposed allocation	Month											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	46	43	46	45	31			31	30	31	45	46
Total allocation	325	295	325	320	253	215	222	253	245	315	315	325
Discretionary limit	155	140	155	150	155	150	155	155	150	155	150	155
Difference	170	155	170	170	98	65	67	98	95	160	165	170

Proposed commercial day trip allocations (Hall Arm):

Applicant’s proposed allocation	Month											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	46	43	46	45	31			31	30	31	45	46
Total allocation	201	183	201	200	191	155	160	191	185	191	195	201
Discretionary limit	155	140	155	150	155	150	155	155	150	155	150	155
Difference	46	43	46	50	36	5	5	36	35	36	45	46

Proposed **commercial back-country** allocation – Hall Arm

	Month											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Applicant's proposed allocation	8	8	8	8						8	8	8
Total Allocated	101	92	101	98	93	84	87	87	90	101	98	101
Discretionary allocation	93	84	93	90	93	90	93	93	90	93	90	93
Difference	8	8	8	8	0	-6	-6	-6	0	8	8	8

Proposed **commercial back-country** allocation – Crooked Arm

	Month											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Applicant's proposed allocation	8	8	8	8						8	8	8
Total Allocated	101	92	101	98	93	90	93	93	89	101	98	102
Days in Month	31	28	31	30	31	30	31	31	30	31	30	31
Discretionary allocation	93	84	93	90	93	90	93	93	90	93	90	93
Difference	8	8	8	8	0	0	0	0	-1	8	8	9

Policy 16.2.10 of the Regional Coastal Plan 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’.

The applicant considers that remoteness and wilderness values are most affected in the Deep Cove area, where vessel movements are more frequent and close together than in the wider fiord areas. The applicant avoids effects at the embarkation and disembarkation stages by operating from their own wharf at Deep Cove, and by starting the tours at different times than the large operators in the area. In the wider fiord areas, interaction between the kayak tour groups and other vessels are infrequent.

I note that the applicant has referred to the actual number of commercial surface water activity trips being lower than allocation. However, it is possible for all allocation to be fully utilised so I consider that the appropriate approach is to assess the activity as if full utilisation did occur.

It is the applicant’s assessment that, due to the low concentrations of vessels and the dominance of the landscape, the impact on the natural character of the area is no more than minor. 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 information to conclude that effects are more than minor.

Planning provisions (policies and objectives) relevant to adverse effects

Regional Coastal Plan:

The most relevant policies from the Regional Coastal Plan are below:

- 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.

Conclusion: significance of adverse effects on the environment

I cannot provide a reliable conclusion as to the level of adverse effects on the environment.

I am satisfied that the physical effects of the applicant’s operation, as an individual activity, are no more than minor. However, despite seeking further information from the applicant, I cannot be sure that the proposal will have, or is likely to have, cumulative adverse effects on the environment that are more than minor, particularly with regard to people’s perceptions of remoteness and wilderness. But nor is there information, other than the opinion of the applicant’s consultant, that the activity is likely to have cumulative adverse effects are not more than minor.

The status of the activity, given the explanation to Rule 16.2.1, suggests that adverse effects will be more than minor at this level of allocation, but it is far from definite. It is also undercut by the statement elsewhere in the same explanation that *“Within Milford Sound, Doubtful Sound and Thompson Sound, the effects of commercial backcountry activities are considered relatively minor, having regard to the range and extent of other commercial activities undertaken within those areas, and in Doubtful and Thompson Sounds, the frequent thoroughfare nature of backcountry activity within those areas.”*

The situation is unsatisfactory and further along the consent process it is likely to make it difficult to make a decision on the application. However the issue stems from a lack of monitoring as required by Policy 16.2.10, and a lack of support for particular assessment methodology in the Coastal Plan. As it was clearly intended that the monitoring be carried out by the Council, the situation shows a disconnect between the Coastal Plan and the allocation of Council monitoring resources under the Long Term Plan and Annual Plan processes.

4. Special circumstances and public notification

4.1 Do special circumstances exist in relation to the application that warrant the application being publicly notified?	<input checked="" type="checkbox"/> Yes	Application must be publicly notified. Explain reasons in 4.2 and go to 10.2
	<input type="checkbox"/> No	Explain reasons in 4.2. If each activity is a controlled activity go to 10.1. Otherwise go to 5.1

4.2 Reasons why special circumstances do or do not exist

I consider that notification is warranted as a special circumstance because:

- In the absence of monitoring data, or assessment against some recognised methodology (which would likely require monitoring data), the crowding effects on wilderness and remoteness values cannot be adequately assessed; and
- The proposal will increase day trip allocation to more than twice the discretionary allocation limit.

The special circumstance is essentially that the cumulative effect cannot be appropriately assessed and that proposal will lift the total allocation further above the levels considered as having a foreseeably acceptable effect (as indicated by the discretionary activity status) by Rule 16.2.1.

Affected Parties and Limited Notification

5. Protected Customary Rights Group or Customary Marine Title group

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

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

There are no protected customary right or customary marine title groups at present, although Te Rūnanga o Ngāi Tahu is a customary marine title applicant group. The applicant has not received a response to its correspondence with Te Rūnanga o Ngāi Tahu.

6. Statutory Acknowledgement Areas

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

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

I consider that effects on Te Rūnanga o Ngāi Tahu will be at least minor. The proposal occurs in an area that the Crown has acknowledged Ngāi Tahu has a cultural, spiritual, historic and traditional association with. I note that there are policies in Te Tangi a Tauira with regard to commercial surface water activities in Fiordland (Section 3.6.6 of Te Tangi a Tauira). The section notes that the carrying capacity of Patea with regard to the number of boats on the water is an issue, and there is a policy that effects on natural character, beauty and ecology be monitored.

7. Is limited notification precluded?

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

8. Are any people adversely affected?

8.1 Are the adverse effects on a person minor or more than minor (but not less than minor)?	<input checked="" type="checkbox"/> Yes	Go to 8.2
	<input type="checkbox"/> No	Go to 8.3

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

Person	Effect on person
Te Ao Marama Inc	Activity may impact on cultural & spiritual values and affect ability to exercise kaitiakitanga.
Te Rūnanga o Ngāi Tahu	Activity may impact on cultural & spiritual values and affect ability to exercise kaitiakitanga, particularly as this is within a statutory acknowledgement area, and they are a customary marine title applicant group.
Fiordland Marine Guardians	The proposal may affect the effective management of the Fiordland Marine Area.
Department of Conservation	The proposal has the potential to affect wildlife, ecosystems and habitat, and interaction with the crown land and national park administered by DOC.
CRA8	Policy 11.7.7.2 requires that the fishermen's association be consulted for applications in areas that are either fished or navigated. CRA8 is the current contact for Fiordland fishermen.

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

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

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

The other commercial surface water activity operators in the area are trade competitors. Trade competition and the effects of trade competition must be excluded from consideration under s95D of the RMA. Therefore I do not consider that the other commercial operators are adversely affected. I also note the applicant attempts to minimise interaction with other operators by embarking and disembarking from its own wharf and scheduling departures at times that do not conflict with other operators.

9. Special Circumstances – Limited Notification

9.1 Are there special circumstances that warrant limited notification of any other persons?	<input type="checkbox"/> Yes	Application must be limited notified to those persons and any other affected persons. Go to 9.2
	<input checked="" type="checkbox"/> No	Go to 10

9.2 Reasons special circumstances exist and persons to be notified

List and explain

Recommendation and decision

10. Officer's recommendation

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



Stephen West
Principal Consents Officer

Date: 10 November 2020

Decision under Delegated Authority

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

This decision is made under delegated authority by:



Aurora Grant
Consents Manager

Date: 11 November 2020