



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 publicly notified. This is because:

- I consider that adverse effects that may result from this activity are likely to be more than minor.
- The proposal is inconsistent with Policy 16.2.2, 16.2.8 and Rule 16.2.1 which seek to 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.

The application

Particulars

Applicant:	Real Journeys Limited
Application reference:	APP-20201876
Site address or location:	The coastal marine area of Fiordland from Yates Point to Puysegur Point.
Resource consents required:	To renew an existing coastal permit to continue with current allocated number of day trips, and to allow for additional backcountry trips in Doubtful Sound complex
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

Real Journeys Limited is applying for a resource consent to carry out commercial surface water activities in the coastal marine area of Fiordland, between Yates Point and Puysegur Point, including the Doubtful Sound complex which consists of Doubtful Sound, First Arm, Hall Arm, Crooked Arm, Thompson Sound, Bradshaw Sound, Gaer Arm and Precipice Cove.

The applicant is seeking to renew their current permit, which includes day trip and backcountry trip activities. The current application will retain the number of daytrips but alter the number of backcountry trips.

The proposal is a non-complying activity because:

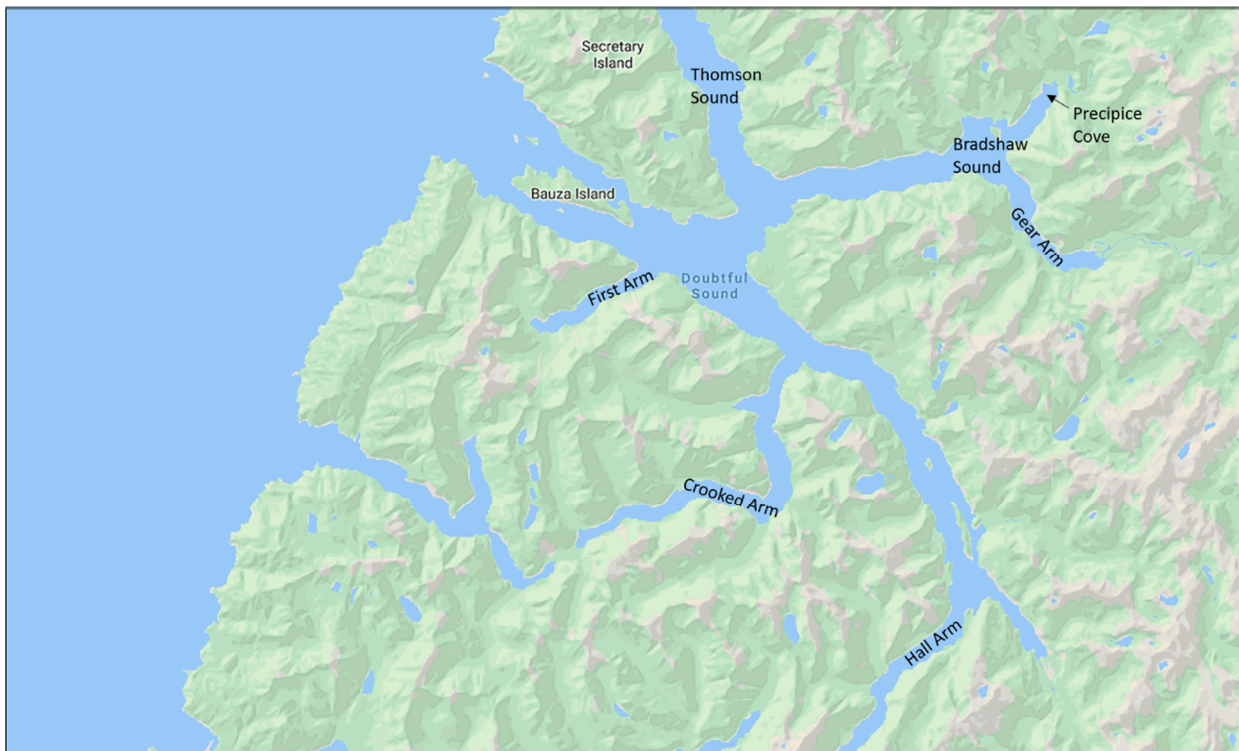
- The total number of day trip activities within the Doubtful Sound complex, including the applicant's existing number of trips, exceeds the discretionary allocation limit.
- The application will increase the number of backcountry trips within Doubtful Sound complex above the discretionary allocation limit.

Proposed changes to the backcountry trips include:

- To increase the number of overnight (backcountry) trips in First Arm from 12 times each calendar month to up to 31 times each calendar month
- To allow for the vessel to travel between Yates Point and Puysegur Point for charter cruises.
- To allow the vessel to access Gaer Arm in Bradshaw Sound during 31 overnight (backcountry) trips each calendar month.
- To allow the applicant to use tender craft in support of kayaking activities twice a day on overnight (backcountry) trips when adverse weather conditions result in overnight trips having to stay within the Doubtful Sound Complex for two nights.
- To allow for tender craft in support of kayaking activities within Gaer Arm in Bradshaw Sound (previously excluded).
- To reduce the number of overnight (backcountry) trips in Thomson Sound from 12 times each calendar month to 2 times each calendar month.

The daytrip activities, which are not increasing under this application, are to operate the vessel as follows:

- Deep Cove to embark or disembark passengers – no restriction
- Doubtful Sound – one trip per day;
- Hall Arm – one trip per day;
- And Crooked Arm east of Turn Point – one trip per day.
- The combined number of day trips in these areas shall number one in total.



Coastal permit	
Relevant rule(s)	Regional Coastal Plan: Commercial Surface Water Activity: 16.2.1 (2) Non-Complying 16.2.1 (5) Non-Complying 16.2.1 (7) Discretionary

Overall, the application is a **Non-Complying** activity.

Notification memorandum

Public notification consideration

1. Is notification mandatory?

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

2. Is notification precluded?

2.1	Is each activity subject to a rule or NES that precludes public notification?	<input type="checkbox"/> Yes	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 special circumstances exist. Go to 4.1
		<input checked="" type="checkbox"/> No	Go to 2.3
2.3	Is each activity a residential activity <u>and</u> a discretionary activity or a restricted discretionary activity?	<input type="checkbox"/> Yes	Application must not be publically notified unless special circumstances exist. Go to 4.1
		<input checked="" type="checkbox"/> No	Got to 3.1

3. Is notification required?

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

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

The existing environment

Section 3.1 of the application discusses the environment. The area is valued for its wilderness and remoteness values and the land around the fiords is Fiordland National Park.

Deep Cove is the most developed area within the Doubtful Sound Complex. It can be reached by road and receives a significant freshwater discharge from the Manapouri Hydro-electric scheme. It is also the main mooring location in the complex.

Adverse effects of the proposed activities on the environment

Sections 3.2 to 3.15 of the application discuss the effects of the proposed activities on the environment. These can be considered in two ways, the effects of the actual vessels, and the crowding effect of additional vessel movements on wilderness/remoteness values.

The Fiordland Navigator was launched in October 2001. No changes to the dimensions or look of the vessel are proposed. The operator uses up to 30 kayaks, which are brightly coloured, as part of this operation. The use of the main vessel, two tender craft and up to 30 kayaks will have adverse visual effects on the environment. However, the presence of the Fiordland Navigator and its associated activities will only have a minor effect on visual amenity and values as the area is associated with tourism activities, and the vessel is not affixed and transitory in nature.

The significant wildlife, ecosystems and habitats within the operational area of the Fiordland Navigator were described in the application. It was indicated that the sensitive areas either occur in depths of water in excess of 20 metres deep, close inshore or near rocks which poses a navigational risk to the vessel. It was concluded that the potential adverse effects on these habitats and ecosystems will be no more than minor as the operation of the vessel will not occur in close proximity to these areas.

It was also determined that the wake effect created by the Fiordland Navigator will not influence these areas, or contribute to coastal erosion more than normal wave action, given the rocky nature of the shoreline and the relatively low speeds at which the vessel travels.

Sound level measurements were taken for the Fiordland Navigator in June 2019, and the noise emitted from the vessel at the landward boundary did not exceed 90dBA which is the permitted activity level set in Rule 5.3.6 for ships in motion. The measurements further indicated that the noise emitted while the main vessel was idling, and while the tender crafts were idling or in motion all complied with permitted activity criteria set in Rule 5.3.4 (general limits).

The bio invasion risk from operating the Fiordland Navigator is considered to be low as the vessel is slipped, cleaned and antifouled (if necessary) before re-entering the Fiordland CMA, or every two years.

It was illustrated in the application that Real Journeys Limited meets Maritime New Zealand's requirements to operate in accordance with navigational safety regulations. Council's Maritime Officer also did not have any concerns with regard to navigation safety.

Waste disposal has been detailed in the application, which I adopt.

To protect the wilderness and remoteness values of the fiord, the Coastal Plan restricts the number of commercial surface water activities within the Doubtful Sound complex. The number of discretionary day trips of 5 trips per day within Hall Arm, Doubtful Sound, Thompson Sound and Crooked Arm are currently exceeded at 5.7 trips per day, making it a non-complying activity.

Day Trip Activity Days - Allocated												
Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Hall Arm	178	163	177	177	170	155	160	160	177	182	173	178
Doubtful, Thompson, Crooked Arm	178	163	177	177	170	155	160	160	177	182	173	178
Day Trip Activity Days - Allowed												
Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Hall Arm	155	140	155	150	155	150	155	155	150	155	150	155
Doubtful, Thompson, Crooked Arm	155	140	155	150	155	150	155	155	150	155	150	155

An increase above 5 trips per day for day trips in Hall Arm, Doubtful Sound, Thompson Sound and Crooked Arm was previously approved by Council as a non-complying activity. A hearing panel heard an application (APP-207431-01) in October 2010 which allowed the cumulative number of day trips to exceed the discretionary limit. While the hearing panel did not conclusively determine that the adverse effects on the environment of the higher number of day trips would be minor, it did conclude that the proposal passed the tests set out in s104D. This was based on consideration of policy. However as policy allows us to make judgements on the scale of effects, the decision amounts to a determination that the current level of day trips will have no more than minor adverse effects on the environment.

The effect of that decision was to make all subsequent applications for a replacement consent for day trips, such as this application, non-complying as well. In my view, that earlier decision should be given regard¹ when considering the cumulative effect of commercial surface water day-trip activities in the Doubtful Sound complex. To do otherwise would be detrimental to applicants for subsequent renewal applications. As a result of that earlier decision it is my opinion that the effects of day trips on remoteness and tranquillity values, at 5.7 day trips per day, will be no more than minor.

It was also noted that the proposed increase in backcountry trips within First Arm from 12 to 31 times each calendar month will exceed the number of discretionary backcountry trips of 2 trips per day to 2.6 trips per day, which makes it a non-complying activity.

Back Country Trips – First Arm								
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Total allocation	62	56	62	60	62	60	62	62
Allocation limit	62	56	62	60	62	60	62	62
Available	0	0	0	0	0	0	0	0
<i>Proposed change</i>	<i>81</i>	<i>72</i>	<i>81</i>	<i>78</i>	<i>81</i>	<i>78</i>	<i>81</i>	<i>81</i>
<i>Exceedance</i>	<i>19</i>	<i>16</i>	<i>19</i>	<i>18</i>	<i>19</i>	<i>18</i>	<i>19</i>	<i>19</i>

I note the applicant refers to the explanation to Policy 16.2.8, which refers to lesser remoteness values in Doubtful Sound. However that comment is referring to the wider sound, and does not address that the Coastal Plan seeks to limit back country trips in specific parts of Doubtful Sound to protect such values. The further information response from the applicant also discusses communication between operators as a means of mitigation. I acknowledge that it would be difficult to assess a crowding effect on remoteness values, without first causing an adverse effect. However, in my view, the application does not adequately consider the cumulative effect of the additional back country trips on remoteness and wilderness values.

It is my view that Rule 16.2.1 sets a threshold at which we can be satisfied that, for the purposes of Policies 16.2.2 and 16.2.8, the cumulative adverse effects of back country trips on remoteness and tranquillity values will be no more than minor. Beyond that, I consider that the effect will be 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.

¹ I acknowledge that there are differences between the considerations under ss95-95G and that under s104, but that earlier decision would be able to be taken into account under s104(1)(c), and my reasoning would give some effect to s104(2A).

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.

I consider that the application is not consistent with Policy 16.2.2 and Policy 16.2.8.

Adverse effects that have been disregarded

Consideration has been given to section 95D, which requires that effects in relation to the following circumstances must be disregarded:

- Parties who own or occupy the land or adjacent land;
- Trade competition; or
- Effects on a party who has provided written approval.

Conclusion: significance of adverse effects on the environment

In line with Policy 16.2.2, Rule 16.2.1 sets out to ensure that adverse effects of commercial activities on remoteness and tranquillity values are no more than minor. Inconsistency with the rule would likely result in effects on remoteness and tranquillity values that will be **more than minor**.

4. Special circumstances and public notification

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

4.2 Reasons why special circumstances do or do not exist:

I do not consider there to be special circumstances, as the activity is not out of the ordinary and the circumstances around the application are not unusual or exceptional.

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 checked="" type="checkbox"/> Yes	Go to 5.2
	<input type="checkbox"/> No	Go to 6.1
5.2 May the activity have adverse effects on a protected customary right carried out in accordance with the requirements of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011?	<input type="checkbox"/> Yes	The customary rights group(s) is an affected customary rights group(s). Application must be limited notified on them. Record in 5.3 and go to 6.1
	<input checked="" type="checkbox"/> No	Go to 6.1

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

There are no recognised customary rights group or customary marine title groups as the applications have not been decided upon yet.

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 type="checkbox"/> Yes	Include TRONT in 8.2 and go to 6.3
		<input checked="" 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

Te Ao Marama Inc was provided a copy of the application and has provided unconditional written approval of the application and proposal.

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 type="checkbox"/> Yes	Go to 8.2
		<input checked="" type="checkbox"/> No	Go to 8.3

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

Potentially Affected Party written approval has been gained from the Fiordland Marine Guardians, the Department of Conservation and Te Ao Marama Incorporated.

No other parties were identified to be affected by the proposed activities. Provided the proposed mitigation measures and practices are employed it is expected that adverse effects on any other person or party will be less than minor.

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

I do not consider there to be special circumstances, as the activity is not out of the ordinary and the circumstances around the application are not unusual or exceptional.

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"/>



George Gericke
Consents Officer

Date: 12 February 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
Acting Consents Manager

Date: 18 February 2020