

The Hearing Panel

26 January 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 Panel. The report is evidence and has no greater weight than any other evidence that the Panel will hear and consider.

Hearing of Application – APP-20201876

Real Journeys Limited

Compiled by George Gericke, Consents Officer

- Hearing: The hearing is scheduled to commence at 9.00 am on Tuesday, 26 January 2021 in the Council Chambers, Environment Southland, corner of Price Street and North Road, Waikiwi, Invercargill.
- Application: 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/Patea complex.
- Notification: The application was publicly notified on 21 February 2020 and one valid submission was received.
- Executive Summary: This is an application for renewal of a coastal permit to operate a 44 metre vessel, two tender vessels and up to 30 kayaks for day trips and backcountry trip activities in the coastal marine area of Fiordland, including the Doubtful Sound/Patea complex. The application is also to alter some of the areas and trips the commercial surface water activities operate within during backcountry trips. As outlined in this report the key issues are:
- the non-complying status of the proposal as a result of the over-allocation of discretionary day trips and backcountry trips within the Doubtful Sound/Patea complex under the operative Regional Coastal Plan for Southland 2013;
 - effects of the activities on natural character, remoteness and wilderness values associated with the Doubtful Sound/Patea complex.

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 Real Journeys Limited. Section 42A allows local authorities to require the preparation of such a report on an application for resource consent and allows the consent authority to consider the report at any hearing.

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

1.2 About the author

My name is 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 been involved with the application since it was lodged and received by Council. I have also undertaken an overnight/backcountry trip in September 2020 within the Doubtful Sound/Patea complex on-board the Fiordland Navigator, which is the vessel that will be used for undertaking the proposed commercial surface water activities being applied for.

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;
- Bill Chisholm submission;
- 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 and procedural matters

2.1 The proposed activities

Applicant: Real Journeys Limited

Application: APP-20201876

Site address or location: The coastal marine area of Fiordland from Yates Point to Puysegur Point.

Legal description: Coastal Marine Area

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/Patea complex.

Current Coastal Permit 97049 allows the applicant to operate commercial day and backcountry trips using a vessel of approximately 44 metres (currently the Fiordland Navigator as seen in **Figure 1**), two tender vessels and up to 30 kayaks within the principal arms of the Doubtful Sound/Patea complex. The principal arms consist of Doubtful Sound, First Arm, Hall Arm, Crooked Arm, Thompson Sound, Bradshaw Sound, Gaer Arm and Precipice Cove as illustrated in **Figure 2**.

The application proposes to maintain the current size and scale of its activities for day trips. However, to improve operational practice and health and safety, this application is seeking authorisation to alter some of the areas and trips the commercial surface water activities operate within during backcountry trips.

The Regional Coastal Plan for Southland (RCP) differentiates between commercial day trips and commercial backcountry trips. Generally, commercial day trips involve the use of motorised boats that commence and complete a trip on the same day and commercial backcountry activities involve the use of motorised boats, which commence a trip on one day and complete that trip on another day. The RCP also places limits on the number of discretionary day trips and backcountry trips within the principle arms of the Doubtful Sound/Patea complex. Any trips above these discretionary limits become non-complying activities.

For day trip purposes in the Doubtful Sound/Patea complex, the proposal is seeking authorisation to operate one trip in total each day of the calendar month, which includes:

- Deep Cove to embark or disembark passengers - without restriction - **Discretionary**
- Doubtful Sound - one trip per day - **Non-complying**
- Hall Arm - one trip per day - **Non-complying**
- Crooked Arm east of Turn Point - one trip per day - **Non-complying**

For backcountry trip purposes in the Doubtful Sound/Patea complex the proposal is seeking authorisation to operate one backcountry trip each day of the calendar month which includes:

- Deep Cove to embark or disembark passengers without restriction - **Discretionary**
- Doubtful Sound including Hall Arm - up to 31 times each calendar month - **Discretionary**
- Thompson Sound - twice each calendar month - **Discretionary**
- Bradshaw Sound (including Precipice Cove and Gaer Arm) - up to 31 times each calendar month - **Discretionary**
- Crooked Arm east of turn point - up to 31 times each calendar month - **Discretionary (Non-complying in December)**

- Crooked Arm west of turn point - up to 31 times each calendar month - **Discretionary (Non-complying in December)**
- First Arm - up to 31 times each calendar month - **Non-complying.**



Figure 1: Fiordland Navigator Vessel



Figure 2: Doubtful Sound/Patea Complex

Current allocation status of discretionary day trips and backcountry trips

Rule 16.2.1 of the RCP places limits on the number of discretionary day trips and backcountry trips within the principal arms of the Doubtful Sound/Patea complex. The granting of any trips above the discretionary 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 (the different arms within the Doubtful Sound/Patea complex) to absorb those activities while protecting the natural character and amenity of those areas and providing for a range of different experiences within Fiordland.

In October 2010, a panel of councillors heard and granted an application by Fiordland Wilderness Experiences Limited (APP-207431-01) for the use of a support vessel for kayaking activities in Doubtful Sound, Thompson Sound, Crooked Arm (east of Turn Point) and Hall Arm. The hearing decision ([Attachment 1](#)) concluded that the application passed the test set out under s104D based on consideration of policy and that the proposal was not contrary to the RCP, while also recognising that there is some uncertainty in the different interpretations of Rule 16.2.1 and the associated definitions of commercial activities in Section 16 of the RCP, which will be addressed in a review of the plan.

It should also be noted that a subsequent application by Go Orange Limited (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 referred to above was to make all subsequent applications for replacement consents for day trips, non-complying as well. It was considered that the 2010 decision should be given regard to when considering the cumulative effect of commercial day trips in the Doubtful Sound/Patea complex. To do otherwise would be detrimental to applicants for subsequent renewal applications. The 2020 application was a renewal application, and did not seek to increase the number of day trips. It was therefore considered that the effects on remoteness and wilderness values will be no more than minor. However, a shorter consent term of 10 years (not the requested 25 years) was granted to align the consent expiry date with the expiry dates of the majority of other consents for undertaking day trips within the Doubtful Sound/Patea complex. This would allow Council to re-assess the cumulative effects of the number of consented day trips at the time of application for renewal of current permits.

The total number of discretionary day trips of five trips per day by all operators, including the applicant's existing number of trips, is currently exceeded at an average of nine trips per day within Doubtful Sound, Thompson Sound and Crooked Arm (east of Turn Point), and at 5.9 trips per day in Hall Arm, as shown in the tables below. The proposal to maintain the current number of day trips within Doubtful Sound, Thompson Sound, Crooked Arm and Hall Arm is therefore a non-complying activity.

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	Current	20-Mar-2023	39	36	39	38	10					30	31	38	39
206961	Deep Cove Charters	Current	13-Mar-2030				5	5	5	5	5	5	5	5		
97049-V4	Real Journeys	Current	03-Nov-2020													
200125-V3	Real Journeys	Current	16-Nov-2021	124	112	124	120	124	120	124	124	120	124	120	124	124
301896-V1	Go Orange	Current	03-Nov-2020													
300538-V1	Fiordland Explorer Charters	Current	17-Nov-2031	31	28	31	30	31	30	31	31	30	31	30	31	31
207431	Go Orange (support vessel for kayaking daytrips consented under permit 203307-V3)	Current	10-Mar-2028	124	112	124	120	62	60	62	62	60	124	120	124	124
20201878	Go Orange (pending surrender of 301896-V1)	Pending														
Days Allocated				318	288	318	313	232	215	222	222	245	315	308	318	
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	

Hall Arm

Consent Nr	Consent Holder	Status	Expiry Date	Month													
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
203196	Offspring Travel Ltd	Current	20-Mar-2023	39	36	39											
206961	Deep Cove Charters	Current	13-Mar-2030				5	5	5	5	5	5	5	5			
97049-V4	Real Journeys	Current	03-Nov-2020														
200125-V3	Real Journeys	Current	16-Nov-2021	124	112	124	120	124	120	124	124	120	124	120	124	120	124
301896-V1	Real Journeys	Current	03-Nov-2020														
300538-V1	Fiordland Explorer Charters	Current	17-Nov-2031	31	28	31	30	31	30	31	31	30	31	30	31	30	31
20201878	Go Orange (pending surrender of 301896-V1)	Pending															
Days Allocated				194	176	194	193	170	155	160	160	185	191	188	194		
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		

A revision of the current number of discretionary backcountry trips by Council during August 2020 showed that the total number of discretionary backcountry trips of three trips per day by all operators within Crooked Arm (west of Turn Point), including the applicant’s existing number of trips, is currently exceeded during the month of December at an average of 3.03 trips per day. The revision also concluded that the total number of discretionary backcountry trips of two trips per day by all operators within First Arm, including the applicant’s existing number of trips, is currently exceeded at an average of 2.3 trips per day as shown in the tables below.

The proposal to maintain the current number of backcountry trips within Crooked Arm (west of Turn Point) is a non-complying activity during the month of December. The proposed increase from 12 to 31 trips each calendar month within First Arm is also a non-complying activity, and will result in the further exceedance of the number of non-complying trips from 2.3 trips to 2.9 trips per day by all operators.

Crooked Arm (West of Turn Point)

Consent Nr	Consent Holder	Status	Expiry Date	Month													
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
20191595	Legacy Fishing Charters Limited	Current	07-Jan-2040	3		3	3	3	7	6	5		3		3		
206961	Deep Cove Charters	Current	13-Mar-2030	15	15	15	15	15	15	15	15	15	15	15	16	15	
200869	Fiordland Expeditions Ltd	Current	12-May-2023	10	10	10	10	10	10	10	10	10	10	10	10	10	10
97049-V4	Fiordland Travel Ltd - Real Journeys	Current	03-Nov-2020	31	28	31	30	31	30	31	31	30	31	30	31	30	31
301635-V1	Real Journeys	Current	29-Oct-2032	24	24	24	24	24	20	20	20	24	24	24	24	24	24
201180-V3	Fiordland Cruises 2002 Ltd - Clint Tauri	Current	02-Dec-2022	10	7	10	7	10	8	11	11	10	10	10	10	10	11
20181624	Maria Kuster & Sean Ellis	Current	11-Nov-2038				1					1					
Days Allocated				93	84	93	90	93	90	93	93	89	93	90	94		
Days Allowed				93	84	93	90	93	90	93	93	90	93	90	93		
Days in Month				31	28	31	30	31	30	31	31	30	31	30	31		

First Arm

Consent Nr	Consent Holder	Status	Expiry Date	Month													
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
201654	Brian & Diane Appleby - Affinity Cruises	Current	06-Jun-2023					3	3	5	5						
202869	Bill & Lyn Atyo - Takaroa Adventure Cruises*	Current	07-Mar-2021	5	5	5	5	5	5	5	5	5	5	5	5	5	5
20171246	Derek Brown - Fiordland Charters Ltd	Current	04-Sep-2037	4	4	4	4	4	4	4	4	4	4	4	4	4	4
203872-V2	Fiordland Discovery Ltd	Current	08-Oct-2022	5	5	5	5	5	5	5	5	5	5	5	5	5	5
20191595	Legacy Fishing Charters Limited	Current	07-Jan-2040	7		7	7	4	9	9	9	5	7	5	7		
206961	Deep Cove Charters	Current	13-Mar-2030		1		1										
97049-V4	Fiordland Travel Ltd - Real Journeys	Current	03-Nov-2020	12	12	12	12	12	12	12	12	12	12	12	12	12	12
301635-V1	Real Journeys	Current	29-Oct-2032	22	22	22	22	22	17	17	17	22	22	22	22	22	22
201180-V3	Fiordland Cruises 2002 Ltd - Clint Tauri	Current	02-Dec-2022	17	17	17	14	17	15	15	15	17	17	17	17	17	17
Days Allocated				72	66	72	70	72	70	72	72	70	72	70	72		
Days Allowed				62	56	62	60	62	60	62	62	60	62	60	62		
Days in Month				31	28	31	30	31	30	31	31	30	31	30	31		

2.2 Regional Planning framework

Resource consents for the above activities are required under Rule 16.2.1(2), Rule 16.2.1(3) and Rule 16.2.1(7) of the RCP. An application for resource consents was lodged with Environment Southland in accordance with these requirements ([Attachment 2](#)).

Overall, the proposal is a **non-complying activity** under Rule 16.2.1(2) and Rule 16.2.1(3) of the RCP, and would require a resource consent.

When considering a **non-complying activity**, the Council may only, in accordance with Section 104D, consider whether to grant or decline a non-complying resource consent if it is satisfied that the adverse effects of the activity are minor or 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 the “gateway” tests in Section 104D, under Section 104B the Council may grant or refuse consent for a non-complying activity, and if it grants the application, may impose conditions under Section 108 of the RMA.

2.3 Further information request

Further information was requested from the applicant on 24 January 2020. The requested information included:

An assessment under Section 104D of the RMA to:

- illustrate that the adverse effects of over allocation of commercial surface water activities within Hall Arm, Doubtful Sound, Thompson Sound and Crooked Arm east of Turn Point (for day trips), and First Arm (for backcountry trips) on remoteness, tranquillity values and wilderness experiences will be no more than minor; or
- illustrate that over allocation will not be contrary to the objectives and policies of the Regional Coastal Plan under Section 104D.

The above information was provided by the applicant on 29 January 2020 ([Attachment 3](#)).

2.4 Notification and Submissions

The application was publicly notified on 21 February 2020. This was for the following reasons:

- it was considered that adverse effects that may result from this activity are likely to be more than minor;
- the proposal is inconsistent with Policies 16.2.2 and 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 wilderness values.

One submission was received. The submission ([Attachment 4](#)) is summarised as follows:

Submitter	Oppose/Support	Issues/comments	To be Heard?
<p>Bill Chisholm, Chisholm Associates</p>	<p>Oppose</p>	<p>Non-complying activity The application is for a non-complying activity under the Coastal Plan because of the significant adverse effects that commercial surface water activities have on landscape, visual amenity, wilderness and related values. The Coastal Plan places strict limits on the nature and extent of commercial activities in Doubtful Sound. The applicant seeks to circumvent these restrictions with scant justification, through a process which is essentially unfair.</p> <p>Sewage discharge No information was provided on the effects of greywater discharge to Doubtful Sound via the Deep Cove Outdoor Education Trust waste water treatment plant. The applicant also proposes to discharge treated sewage directly from the vessel into the outer sound under certain circumstances, which is considered unacceptable.</p> <p>Landscape and visual amenity effects The AEE considers effects on landscape and visual amenity values to be minor because of the transitory nature of the main vessel, tender vessels and kayaks. However, 30 kayaks and two tender vessels operating all at the same time will have a significant effect on visual amenity and wilderness values.</p> <p>The applicant did not consider the viewing audience in its assessment of effects on landscape and visual amenity. In particular, trampers arriving at huts at Catherine Cove (George Sound) and Supper Cove (Dusky Sound) will be adversely affected if the main vessel, tender vessels and/or kayaks are operating there.</p> <p>Mooring/anchoring The applicant did not provide an assessment of the effects of anchoring on other users such as recreational users and commercial fishermen. Parking a 44-metre-long vessel in some of the smaller anchoring areas would prevent their use by other vessels, especially smaller vessels which might be in more need of shelter.</p> <p>Use of helicopters The applicant states <i>“Real Journeys Limited believes that reliance on helicopters to transfer passengers to and from the Fiordland Navigator would have effects on the environment that are more than minor and should be avoided.”</i></p> <p>The submitter disagrees, stating that the use of helicopters in Fiordland is closely regulated by the Civil Aviation Authority and DOC (through their concessions processes via the Fiordland National Park Plan). If helicopter transfers were used, then the number of possible alternative locations for undertaking day trips and backcountry cruises are virtually unlimited (or limited only by the pocketbooks of Real Journeys’ customers).</p> <p>Relief sought The submitter would like the application to be declined by Council.</p>	<p>No</p>

The applicant provided written approval from the following parties:

- Te Ao Marama Incorporated;
- Department of Conservation;
- The Fiordland Marine Guardians.

2.5 Section 99 pre-hearing meeting

No pre-hearing meeting was held for this application, as no pre-hearing was requested by the applicant.

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.

3.3 Description of the affected environment

The proposed commercial surface water activities will be carried out in the coastal marine area of Fiordland, including the Doubtful Sound/Patea complex, which consists of Doubtful Sound, First Arm, Hall Arm, Crooked Arm, Thompson Sound, Bradshaw Sound, Gaer Arm and Precipice Cove.

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 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.

Commercial surface water activities have the potential to impact on a number of values within the Fiordland environment generally, including wilderness and remoteness values. According to the RCP the proposed operational areas have high wilderness and remoteness values due to the degree of isolation from the sights, sounds and activities of humans.

3.4 Actual and potential effects

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 remoteness and wilderness values.

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. A copy of the report was sent to Ngāi Tahu and Te Ao Marama Incorporated (TAMI) for comment. Unconditional written approval for the proposal was provided by TAMI on 20 December 2019.

Visual effects

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, I consider that the presence of the Fiordland Navigator and its associated activities will only have a minor effect on visual amenity values as the area is associated with tourism activities, and the vessel is not affixed and transitory in nature.

Wildlife, ecosystems and habitats

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 pose 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 within close proximity to these areas.

I also consider that the wake effect created by the vessel 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.

Noise

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 of the RCP 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).

Bio-invasion risk

The bio invasion risk from operating the vessel 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.

Navigational safety

It was indicated 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 management

Black water and grey water from the vessel will be discharged ashore into the Deep Cove Outdoor Education Trust (DCOET) Waste Water Treatment Plant. Rubbish will be discharged to an appropriate facility on land. I consider that effects from waste disposal will be less than minor.

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.

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.

The applicant is not seeking to increase the current number of consented day trips in Doubtful Sound, Thompson Sound, Crooked Arm and Hall Arm, and having regard to the earlier decisions referred to in Section 2.1, I am of the view that the cumulative effects of the continuation of the current day trips, as proposed, on existing remoteness and wilderness values of these areas will be no more than minor. My view is predicated on the condition that the proposed measures are implemented to mitigate the physical effects of the activities, and that a shorter consent term is imposed to align the consent expiry date with the expiry dates of the majority of other consents for undertaking day trips within the Doubtful Sound/Patea complex.

The applicant is also not seeking to increase the number of consented backcountry trips within Doubtful Sound, Hall Arm, Bradshaw Sound (including Precipice Cove and Gaer Arm) and Crooked Arm. For the same reasons as above, I also consider that the effects of the proposal to maintain the current number of consented backcountry trips within these areas on existing remoteness and wilderness values will be no more than minor.

However, the applicant is seeking to increase the number of backcountry trips within First Arm from 12 to 31 times each calendar month. As previously illustrated in Section 2.1, the number of discretionary backcountry trips of an average of two trips per day by all operators within First Arm has already been exceeded at a current average of 2.3 trips per day. The proposal to increase the number of trips from 12 to 31 times each calendar month will result in the further exceedance of the number of non-complying trips to 2.9 trips per day.

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 backcountry trips on remoteness and wilderness values will be no more than minor. For this part of the proposal, a precautionary approach was taken because the proposed additional backcountry trips are above the benchmark that was set in the planning framework. I therefore consider that the effects of undertaking additional backcountry trips within First Arm on remoteness and wilderness values will likely be **more than minor**. I also consider that the proposed increase is **not consistent** with 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 Council cannot further consider this part of the proposal as it does not pass 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 mātaītai 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 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’.

It is my view that the parts of the proposal which seek to maintain the current number of day trips and backcountry trips within the Doubtful Sound/Patea complex are consistent with the direction provided in the NZCPS, and I consider that potential adverse effects on the receiving environment can be effectively avoided, remedied or mitigated by the proposed measures and consent conditions.

However, 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 and to ‘protect’ it from inappropriate use and development, and further considering the requirement to adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood (the carrying capacity of First Arm and its ability to absorb additional activity as set in the RCP), it is my view that the part of the proposal to increase the number of backcountry trips within First Arm is inconsistent with the direction provided in the NZCPS.

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 *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.*
- Policy TW.3 *Iwi management plans - Take iwi management plans into account within local authority resource management decision making processes.*
- Policy TW.4 *Decision making - When making resource management decisions, ensure that local authority functions and powers are exercised in a manner that:*
- a. *recognises and provides for:*
 - (i) *traditional Māori uses and practices relating to natural resources (e.g. mātaihai, kaitiakitanga, manaakitanga, matauranga, rāhui, wāhi tapu, taonga raranga);*
 - (ii) *the ahi kā (manawhenua) relationship of tangata whenua with and their role as kaitiaki of natural resources;*
 - (iii) *mahinga kai and access to areas of natural resources used for customary purposes;*
 - (iv) *mauri and wairua of natural resources; (v) places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua;*
 - (v) *Māori environmental health and cultural wellbeing.*
 - b. *recognises that only tangata whenua can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*
- Policy COAST 2 *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:*
- a. *protect indigenous biodiversity, historic heritage, natural character, and natural features and landscape values;*

- b. maintain or enhance amenity, social, intrinsic, ecological and cultural values, landscapes of cultural significance to tangata whenua and coastal dune systems;*
- c. maintain or enhance public access; and*
- d. avoid or mitigate the impacts of natural hazards, including predicted sea level rise and climate change.*

Policy COAST 3

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, and the written approval provided by TAMI has been incorporated into decision-making framework.

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.

I consider that the proposed measures, existing operational management practices and conditions will ensure that any potential adverse effects on the coastal environment associated with the parts of the proposal that will maintain the number of number of trips within the Doubtful Sound/Patea complex will be avoided or mitigated.

However, given the subsequent direction provided to ‘protect’ natural character, natural features and landscape values and to ‘maintain or enhance’ amenity values it is my view that the part of the proposal to increase the number of backcountry trips within First Arm is also inconsistent with the direction provided in the RPS.

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 and policies 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 complex, and the following policies are of particular relevance to this application and operations within the Doubtful Sound 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.*

Comment

As stated in my consideration of effects in Section 3.4, I am of the view that, for the purposes of Policies 16.2.2 and 16.2.8 of the RCP, Rule 16.2.1 sets clear thresholds for the number of day trips and backcountry trips within the principal arms of the Doubtful Sound/Patea complex at which the consent authority can be satisfied that the cumulative adverse effects on remoteness and wilderness values will be no more than minor.

I consider that the parts of the proposal which seek to maintain the current number of day trips and backcountry trips within the Doubtful Sound/Patea complex are consistent with the direction provided in the RCP.

However, given the direction provided in Policy 16.2.8 of the RCP to ‘protect’ the opportunity for remoteness and wilderness experiences, I am of the view that the part of the proposal which seeks to increase the number of backcountry trips within First Arm is inconsistent with the direction provided in the RCP, and that Council cannot further consider this part of the proposal as it does not pass the “gateway” tests under Section 104D of the RMA.

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 | <i>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.</i> |
| Policy 3.3.6.3 | <i>Require that the cultural and natural values of Fiordland are not compromised for recreation or tourism opportunities.</i> |
| Policy 3.6.4.6 | <i>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.</i> |
| Policy 3.6.6.2 | <i>Strongly discourage discharges of human sewage and ballast water into coastal waters from commercial vessels and ships.</i> |
| Policy 3.6.6.6 | <i>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.</i> |

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 Tauria Iwi Management Plan further sets out the issues and policies 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 Tauria 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 part of the proposal that seeks to increase the number of backcountry trips within First Arm is not consistent with this policy framework.

Fiordland National Park Management Plan

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

The FNPMP seeks to provide for recreational activities in the fiords, while limiting commercial operations in order to sustain wilderness recreational opportunities. It 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 MPR provides 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 Ngāi Tahu (TRONT) were sent a copy of the application, and has not raised concerns with the application.

With regard to this application, black water and grey water from the vessels will be discharged ashore into the Deep Cove Outdoor Education Trust (DCOET) Waste Water Treatment Plant. Rubbish will be discharged to an appropriate facility on land.

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 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 107 does not directly apply to this application.

3.12 Part 2 of the Resource Management Act 1991

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

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

In relation to the matters outlined in Section 5, I consider that this application is largely consistent with the purpose and the principles of the Act. This is the promotion of the sustainable management of natural and physical resources. However, the part of the proposal which seeks to increase the number of backcountry trips within First Arm of the Doubtful Sound/Patea complex will place the number of trips above the benchmark that was set in the RCP. When viewed through the lens of the current policy direction in the relevant planning instruments, I consider that the further increase of non-complying backcountry trips within First Arm will likely have more than minor effects on remoteness and wilderness values of the area, and consequently the ability of the receiving environment to meet the reasonably foreseeable needs of future generations.

Also considering the current policy direction in relation to the matters outlined in Section 6, I consider that the application is largely consistent with matters of national importance as outlined in Section 6 of the Act, but that the likely more than minor effects on remoteness and wilderness values within First arm will not 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.

In relation to the considerations under Section 7, I also consider that the application is largely consistent, but that the likely more than minor effects on remoteness and wilderness values within first arm will not result in 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 largely consistent with the policy direction in Te Tangi a Tauria, but that the part of the proposal to increase the number of backcountry trips within First Arm is not consistent with this policy framework.

Overall, I consider that the application generally meets the relevant provisions of Part 2 of the RMA. However, I am also of the view that the likely more than minor effects on remoteness and wilderness values within First Arm will not meet the purpose of the RMA which is the sustainable management of natural and physical resources.

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.

It is my view that Rule 16.2.1(5) 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 backcountry trips on remoteness and wilderness values will be no more than minor. For the part of the proposal which seeks to increase the number non-complying backcountry trips within First Arm a precautionary approach was taken, and I consider that the effects on remoteness and wilderness values of First Arm will likely be **more than minor** and that the proposed increase in the number of trips is **not consistent** with the policy framework provided in the RCP. For these reasons I am of the view that Council cannot further consider the proposed increase in backcountry trips within First Arm because this part of the application does not pass the “gateway” tests under Section 104D of the RMA.

I therefore considered the application without the proposed increase of backcountry trips within First Arm as follows:

For day trip purposes in the Doubtful Sound/Patea complex, the proposal is seeking authorisation to operate one trip in total each day of the calendar month which includes:

- Deep Cove to embark or disembark passengers - without restriction - **Discretionary**
- Doubtful Sound - one trip per day - **Non-complying**
- Hall Arm - one trip per day - **Non-complying**
- Crooked Arm east of Turn Point - one trip per day - **Non-complying**

For backcountry trip purposes in the Doubtful Sound/Patea complex the proposal is seeking authorisation to operate one backcountry trip each day of the calendar month which includes:

- Deep Cove to embark or disembark passengers without restriction - **Discretionary**
- Doubtful Sound including Hall Arm - up to 31 times each calendar month - **Discretionary**
- Thompson Sound - twice each calendar month - **Discretionary**
- Bradshaw Sound (including Precipice Cove and Gaer Arm) - up to 31 times each calendar month - **Discretionary**
- Crooked Arm east of turn point - up to 31 times each calendar month - **Discretionary (Non-complying in December)**
- Crooked Arm west of turn point - up to 31 times each calendar month - **Discretionary (Non-complying in December)**
- First Arm - up to 12 times each calendar month - **Non-complying**

In regard to S.104D(1)(a), it is my view that the effects of the above proposed activities on the receiving environment and on current remoteness and wilderness values of the said arms will be no more than minor provided the proposed measures are implemented to mitigate the physical effects of the vessel and associated activities, and that a shorter consent term is imposed to align the consent expiry date with the expiry dates of the majority of other consents for undertaking commercial surface water activities within the Doubtful Sound/Patea complex.

In regard to S.104D(1)(b), the relevant document is the Regional Coastal Plan. I consider that the proposal as outlined above is not inconsistent with the relevant objectives and policies of the Regional Coastal Plan, and that the effects of the proposed activities will be no more than minor.

Overall, I recommend that the application for the activities outlined above be granted pursuant to Sections 104, 104B and 108 of the Resource Management Act 1991, subject to the conditions ([Attachment 5](#)).

3.2 Term of consent

The applicant has requested a consent term of 25 years. A consent term of 12 years is hereby recommended 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

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AS COUNCIL POLICY UNLESS ADOPTED BY COUNCIL