



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:

- One of the moorings is in the Bluff Port Zone, but the applicant has been unable to get confirmation from South Port NZ that it will not interfere with port activities. That conflicts with policy and would be an adverse effect that is more than minor.
- The applicant has not carried out consultation with other potentially affected parties, in particular Te Ao Marama Inc, Te Runanga o Ngai Tahu and the commercial fishermen's association. That is also inconsistent with policy direction.
- At this stage I consider that adverse effects will be, or are likely to be more than minor with regard to cultural values, and potentially adverse effects on other users of the area. That view may change later in the application process, particularly when the various groups have had an opportunity to consider the application and provide feedback, but in the absence of better information at this point my view is that effects are likely to be more than minor.
- There is potentially a special circumstance that warrants notification as I am unable, in the absence of consultation by the applicant, to identify all the potentially affected parties, or the level to which they may be affected.

Therefore, in my view, the application triggers s95A(8)(b) and s95A(9)(a) of the RMA and requires notification.

The application

Particulars

Applicant:	C Harpur for South West Marine Services
Application reference:	APP-20232992
Site address or location:	Bluff Harbour/Awarua
New consent(s) for new activity(ies) (s88)	<input checked="" type="checkbox"/>
New consent(s) for existing activity(ies) (s88)	<input type="checkbox"/>
Change to conditions of existing consent(s) (s127)	<input type="checkbox"/>

The proposal

Craig Harpur, for South West Marine Services, has applied for a coastal permit to erect two moorings and to occupy part of the coastal marine area with two moorings, in Bluff Harbour/Awarua, about 460 to 600 metres north of the Island Harbour.

Each mooring will consist of an 8-tonne anchor block, chain and buoy.

The moorings will be used by vessels of up to 40 metres length and up to 200 gross tonnes. The swing area one of the vessels while tied to a mooring will be 62 metres.

The applicant is seeking exclusive occupation. However the application states that the moorings will be available for use by the public when not in use by the applicant.

Coastal permit	
Relevant rule(s)	
Placement of moorings and associated occupation of the coastal marine area	Rule 11.7.7.8 of the Regional Coastal Plan
Activity Status	Discretionary

Overall, the application is a discretionary activity.



Plan showing the proposed mooring locations.

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 checked="" type="checkbox"/> Yes	Public notification is required by s95C. Go to 10.2
	<input type="checkbox"/> No	See comment below The applicant was asked for the results of consultation with various parties and responded that no consultation had occurred. Technically the information request has received a response, and it was specific to the request for summary of the results of consultation. But it leaves the application with a weak assessment on some matters, particularly because the assessment in the application is largely derived from a separate application. That makes it very difficult to determine effects with regard to the port, cultural effects, and effects on other users of the harbour.

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): <input type="text" value="enter rule"/> 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 publicly notified unless there are special circumstances. Go to 4.1
	<input checked="" type="checkbox"/> No	Go 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 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.

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

Bluff Harbour/Awarua is a recognised anchorage and mooring site in Appendix 6 of the Regional Coastal Plan.

The proposed mooring sites are 460-600 metres north of the Island Harbour in Bluff Harbour/Awarua.

The southern-most mooring is within the 'Bluff Port Zone, as described in the Regional Coastal Plan, although it is outside the occupation area under the s384A deemed coastal permit held by South Port NZ Ltd.

The application quotes a chart that describes the seafloor in the area of the proposed moorings as coarse sand, broken shell and weed.

The application describes the harbour as shallow, with water depths typically less than 5 metres, with a mean tidal range of 1.5 metres. The harbour contains a major port facility to the south of the proposed moorings, and there is a wharf structure to the southeast that services the aluminium smelter at Tiwai Point.

There are marine farm sites about 1.2 km north, 1.8 km northeast and 1.8 km northwest of the proposed mooring site.

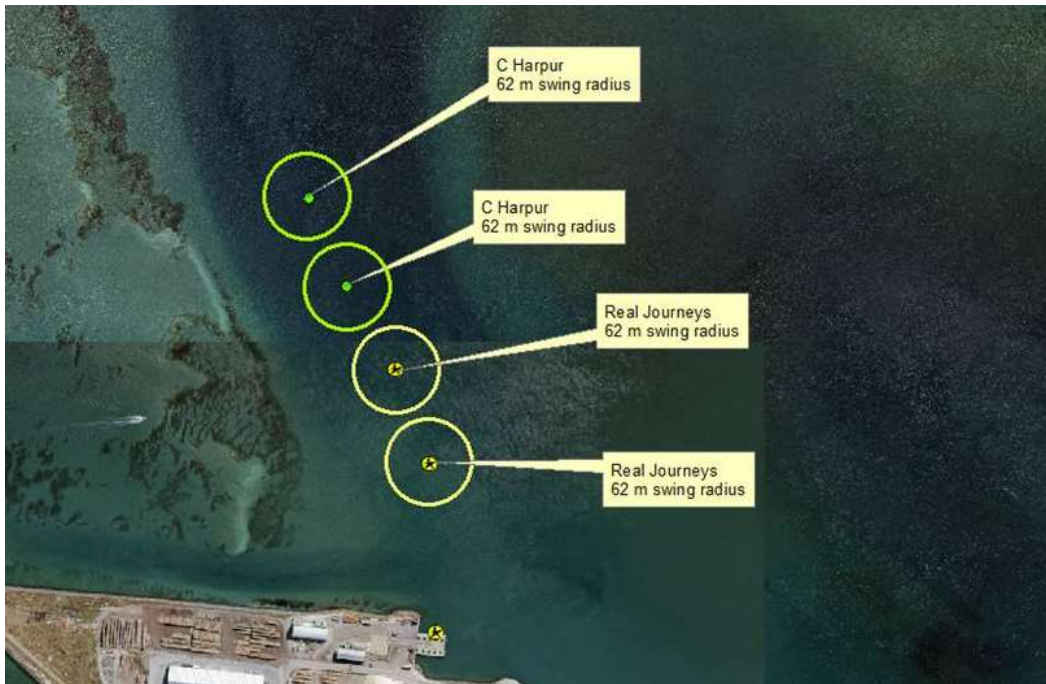
Commercial fishing vessels operate out of the harbour. The harbour itself is also utilised for recreational fishing and boating. In addition to the vessels anchored and moored around the Bluff foreshore and harbour, there are boatsheds to the west.

The harbour is within the Rakiura/Te Ara a Kiwa (Rakiura/Foveaux Strait Coastal Marine Area), which is a statutory acknowledgement area under Schedule 104 of the Ngāi Tahu Claims Settlement Act 1998. The Crown has acknowledged Ngāi Tahu's cultural, spiritual, historic and traditional association with the area.

I note that the area is also subject to a customary marine title application by Te Rūnanga o Ngāi Tahu.

The southern-most proposed mooring is about 140 metres north of the existing moorings established by Real NZ Ltd.

The following shows the proposed moorings and swing areas relative to the Real NZ moorings. The Island Harbour is visible in the bottom left.



Adverse effects of the proposed activities on the environment

Placement of the moorings should have minimal effects on the seabed, localised to the immediate vicinity of the mooring blocks. Drag by the mooring chain may affect organisms that live on the seafloor but this should also be relatively localised, remembering the scale of the wider harbour. Also, given the substrate, and the activities within the harbour, it is likely that seabed will be relatively insensitive to the effects of the moorings.

The mooring buoys will be the only visible component on the surface. However buoys are not unusual in the harbour and should have minimal visual effect. The proposed mooring locations will be on the far side of the Island Harbour from Bluff township, so are likely to be relatively hidden from view. However they may be visible from the west, such as from SH 1, when vessels are moored.

The applicant has applied to occupy the moorings on an exclusive basis. That could potentially adversely affect anchoring or mooring space for other vessels. However the application states that the applicant's use of the moorings will be periodic, and that the moorings would be available for use by other parties when not in use by the applicant. The mooring blocks will occupy a relatively small area, each being roughly 5 m². With a vessel attached, the swing area of 62 m around the mooring block represents the occupation of space.

Aerial photographs show that the proposed moorings will be sited in a slightly deeper channel, although I understand that the bed is subject to movement so that may not always be the case. The application describes the channel as over 250 metres wide in the vicinity, and that recreational boats and other shallow-draft vessels will be able to pass around the moorings without difficulty. In terms of larger vessels, such as the ferry and fishing vessels, most activity occurs south of the proposed mooring sites.

The Council's Harbourmaster has considered the proposal and considers that the proposed moorings are suitable for the size of vessel, that there is sufficient swing area for vessels attached to the moorings, and that there will be sufficient space for other vessels to safely navigate in the area.

The application discusses waste disposal, and light and noise effects. Discharges into the waters of the harbour will not occur from vessels while tied to the moorings. Noise and light effects are assessed as no more than minor.

No archaeological sites are recorded for the proposed mooring sites, so the proposal should not adversely affect any archaeological material.

The applicant was asked to consult with a number of parties to ensure that the proposal did not interfere with:

- cultural or spiritual values or traditional use,
- the operations of the port
- the interests of the Crown
- marine farm operations (particularly movement of farm structures and support vessels)
- commercial fishermen
- recreational boating clubs

I am uncertain, but I believe that reference in the application to consultation with South Port before lodging the application was a carry-over from an earlier document. However when asked to provide documentation the applicant's consultation with the port was unsuccessful. The applicant also did not carry out consultation with the other groups. As a result the applicant has requested that the Council proceed with at least limited notification.

The application acknowledges that Ngāi Tahu are Kaitiaki of the Rakiura/Te Ara a Kiwa coastal marine area and that any activity within the area should not be in conflict with Ngāi Tahu's values for it. The application discusses the provisions of Te Tangi a Tauria, and notes that the proposal is consistent with Policy 7 of Section 3.6.3, which is to concentrate structures within existing port zones. The applicant also identifies Te Ao Marama Inc as an affected party, in order to allow them to exercise kaitiakitanga.

Planning provisions (policies and objectives) relevant to adverse effects

The following policies are helpful in identifying and determining the level of adverse effects associated with the proposed activity.

Coastal Plan provisions:

- | | |
|------------------|--|
| Policy 11.7.7.2 | Consult with Fishermen's Associations as a matter of course in respect of resource consent applications in areas that are either frequently fished or navigated. |
| Policy 11.7.7.3 | Avoid, where practicable, remedy or mitigate the adverse effects of ships using moorings that are incompatible with the size of the ship and the prevailing coastal processes. |
| Policy 11.7.7.9 | Allow the establishment of private mooring facilities in recognised anchorages only where there is no shortage of suitably sheltered space in the foreseeable future. |
| Policy 11.7.7.11 | Provide for defined mooring areas where the activity does not restrict navigation or other values of the area within which they are located. |
| Policy 11.7.7.15 | Discourage new moorings in the Bluff Port Zone where these could adversely affect port activities and other existing activities within the Zone. |

Comment:

As the applicant was unsuccessful in consultation with South Port NZ Ltd, and did not carry out consultation with the commercial fishermen's association, I am unable to conclude that the proposal will not conflict with Policy 11.7.72 and 11.7.7.15.

The Harbourmaster has confirmed that the proposal will be consistent with Policy 11.7.7.3.

Te Tangi a Tauria provisions:

- Policy 3.6.3(1) Any activity within, adjacent to or that may potentially impact on Statutory Acknowledgment areas, including Rakiura/ Te Ara a Kiwa (Stewart Island/ Foveaux Strait Coastal Marine Area), will require consultation with both Te Rūnanga o Ngāi Tahu, Ngāi Tahu ki Murihiku and Tangata Tiaki gazetted under the South Island Customary Fishing Regulations
- Policy 3.6.3(7) Promote concentration of structures within the existing Port Zones (e.g. Bluff, Aparima/Riverton, Waikaiwa) to minimise the risks caused by dispersal on the surrounding coastal environment. Where possible utilise existing facilities within the zones for ship activities.
- Policy 3.6.3(17) Maintain close working relationships with Maritime New Zealand and the Harbourmasters, and be actively engaged in assessments undertaken with respect to the development of new structures that may have an impact on aspects of navigation and public safety. This is particularly important when discussing the provision and maintenance of safe anchorages for extreme weather events in areas remote from ports.

Comment:

The proposal is consistent with Policy 3.6.3(7). However it is inconsistent with Policy 3.6.3(1), as no consultation has been carried out and it does not appear that assessment in accordance with Policy 3.6.3(17) has occurred.

Conclusion: significance of adverse effects on the environment

Due to the reliance on documentation from another application, some inconsistencies occur in the application. The main one of concern is about consultation with South Port NZ Ltd. Another important issue with the application is the lack of consultation with key groups such as Te Ao Marama Inc, Te Rūnanga o Ngāi Tahu and the commercial fishermen's association. I note that other parties representing recreational groups, such as local boat or yacht clubs, and marine farm operators in the area, were also not consulted, even when that was asked about by the Council.

The Harbourmaster's advice is that the proposal should not adversely impact navigational safety, and that there should be sufficient space for other vessels to manoeuvre around the mooring areas. We can rely on that advice that for normal navigation, the proposal is similar to other activities in the area, and poses little navigational impediment to most other operators.

However the proposed southern mooring site is within the Bluff Port Zone, so it is difficult to be certain that the moorings are sufficiently clear of the port's activities.

In the circumstances, I consider that the proposal will have, or is likely to have, adverse effects that are more than minor, particularly with regard to effects on cultural and spiritual values, and on the operations of the port, given the location relative to the Bluff Port Zone, and the cultural values of the area. That view

may change later in the application process, particularly when the various groups have had an opportunity to consider the application and provide feedback, but in the absence of better information at this stage my view is that effects will be more than minor.

It is relatively normal to have weak consultation for small-scale activities. That would not automatically mean that adverse effects are considered to be more than minor. I would not normally expect a mooring application in Bluff Harbour to require notification. But in this case the combination of the siting, the inconsistencies arising from reliance on documentation from another application (albeit for a similar and nearby activity), and the policy direction on particular matters, raised issues about effects that were not addressed by consultation.

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

Although moorings in Bluff Harbour are not an unexpected activity, the lack of consultation with potentially affected parties leaves us in the dark about how the siting of these two moorings will affect other groups. The inability to determine who is affected in a public area with many values, interests, and users leads me to believe that there is a special circumstance that would warrant public notification.

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	See comment
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

At present there is a customary marine title applicant group, Te Rūnanga o Ngāi Tahu. They are not yet a customary marine title group. That said, the applicant should have consulted with them but has not (this is due to the inability to get a response from South Port, which the applicant regarded as a first step before consulting other groups).

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

Due to the lack of consultation with Te Rūnanga o Ngāi Tahu I am unable to determine how they may be adversely affected except that the lack of consultation means that they have been, as yet, unable to exercise kaitiakitanga with regard to this application. Therefore I believe that they are an affected party, if only to address that as an effect on cultural values.

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 6.3
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:

As discussed above, the lack of consultation means that Te Rūnanga o Ngāi Tahu have been, as yet, unable to exercise kaitiakitanga with regard to this application. Although the area is a statutory acknowledgement area, in most instances for an application of this scale it would have been sufficient for the applicant to consult with Te Ao Marama Inc., representing the local rūnanga rather than Te Rūnanga o Ngāi Tahu. That hasn't occurred either. Therefore I remain of the view that there is at least a minor adverse effect on the interests of Te Rūnanga o Ngāi Tahu.

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 (see Note)
South Port NZ Ltd	One of the moorings is in the Bluff Port Zone. Therefore the siting may affect the operations of the port.
Te Ao Marama Inc	Adversely affected with regard to impacts on cultural values, particularly the inability to exercise of kaitiakitanga. In any case, they are required to be notified in accordance with Regulation 10(2)(d) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003

Te Rūnanga o Ngāi Tahu	TRONT are a customary marine title applicant group and were not consulted as required. As such, they have been unable to exercise kaitiakitanga with regard to this application. The Crown has also acknowledged Ngāi Tahu's association with the area. So they are adversely affected with regard to impacts on cultural values, particularly exercise of kaitiakitanga. In any case, they are required to be notified in accordance with Regulation 10(2)(d) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003
Real NZ	Owners of the closest moorings. I understand that the applicant has discussed the activity with Real NZ, and has utilised information from its own application. However I have contacted Real NZ and they are unclear about the application and if it will impact the use of their own nearby moorings, particularly in terms of manoeuvring large vessels.
Fishermens associations (representing various fishing groups in Bluff)	Policy 11.7.7.2 of the Coastal Plan requires that they be consulted. If not, their activities and interests may be impeded by the proposed moorings. (There is not one fishermens association for Bluff, and I am waiting for information about the appropriate groups).
Hajca Ltd, Sanford Ltd and Southern Marine Farms Ltd	The operators of marine farms north of the proposed mooring site. They may have to manoeuvre past the proposed moorings on a regular basis. I am unclear whether the marine farms will also need to move large structures through this area at times as occurs at some marine farm sites.
Green Point Yacht Club Bluff Yacht Club	Representing recreational boat operators that may have to manoeuvre past the proposed moorings. Based on the advice from our Harbourmaster, and information in the application about the area available, I think that these groups are likely to be only marginally affected, but due to the lack of consultation I cannot be sure.
Department of Conservation	Not necessarily affected, although DOC represents the Crown's interest in the coastal marine area, so proposal may affect management considerations or have effects on indigenous species that have not been assessed. It is a requirement of Regulation 10(2)(e) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 that the Minister of Conservation be notified.

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

As discussed, I am unable to identify all the users of the area. However I rely on the Harbourmaster's advice about navigation around the structures, and the applicant's information about the space available. Therefore I don't believe that anyone else that I know of will be adversely affected.

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

I don't think that there are special circumstances that would warrant notification of other parties.

Recommendation and decision

10. Officer's recommendation

10.1 The application be processed non-notified	<input type="checkbox"/>
10.2 Public notification is 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. If they are not obtained, the application will be limited notified.	<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: 12 July 2023

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. If they are not obtained, the application will be limited notified.	<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:

Notification memorandum



Bruce Halligan
Consents Manager

Date: 12 July 2023