

Section 42A Officer's Final Reply (Topics 1 – 6)

Proposed Plan Change 1 — Regional Coastal Plan — Kermadec and Subantarctic Islands

Report prepared by: Jesse Gooding

8 July 2026



1. Introduction

1. My name is Jesse Quentin Gooding. I prepared the s42A Report and s42A Summary for PC1. I confirm that I have read all the submissions, further submissions, submitter evidence and technical documents relevant to my s42A Report. I was present at the hearing, to hear the oral evidence of submitters and questions of the Panel. My qualifications and experience are set out in my s42A Report (on submissions received, dated 15 May 2026).
2. I reconfirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this s42A reply.
3. The purpose of this report is to provide my final reply in relation to the matters raised by submitters in written and oral evidence in accordance with the directions contained in Minute 3, as modified by Minute 4.
4. Minute 3 from the Panel directed the following:¹
 - (a) Heritage Expeditions (2018) Limited (HEL) is permitted two weeks to (i.e. until 24 June 2026) to provide its proposed redrafting of Rule 29;
 - (b) The s42A Officer is permitted four weeks (i.e. until 8 July 2026) to provide his s42A reply (strictly confined to respond to any new issues or matters not previously addressed in his report or evidence) including the proposed redrafting of Rule 29 but excluding issues covered by Minute 2.
1. Minute 4 modified the scope of the reply due on 8 July, by directing that the s42A reply due on 16 July could be extended to cover all matters relating to submissions on the biofouling provisions – i.e. topic 7 in my s42A report. Accordingly, this s42A reply covers matters for all other topics (Topics 1 – 6) that fall within the scope of the direction in Minute 3.
2. I confirm that the recommendations set out in my s42A Report and Summary Statement (dated 9 June 2026) still stand, except as identified below.
3. In my s42A report, I divided my consideration of submissions into seven topics. Topics 1 – 6 are set out below where I confirm whether there are any outstanding matters in scope of Minute 3. Where there outstanding matters I have addressed them accordingly.

2. Topic 1: General submissions

4. HEL's submission seeks PC1 be withdrawn. HEL's legal submissions given at the hearing advance arguments for this position. In short, I consider the reasons for rejecting this general submission, and in favour of continuation of PC1, have been addressed in my s42A Report² and in the opening legal submissions given on behalf of the Minister for Conservation³. No further consideration of this matter in reply is necessary.

¹ Minute 3, paragraphs 2.1 and 2.2.

² Section 42A Report, section 3.2

³ Legal submissions on behalf of the Minister for Conservation, 8 June 2026, paragraphs 32 – 34.

3. Topic 2: Terminology changes in relation to natural character

5. Submission points on this topic were raised by Te Ao Marama Incorporated (TAMI), with a further submission in support of those points by HEL. As TAMI did not wish to be heard in support their submission, no new evidence was presented on this topic. No further consideration of this matter in reply is necessary.

4. Topic 3: Access and anchoring — Ancillary Craft (proposed changes to Rules 40 and 56)

Measuring distance of ancillary craft from the mother ship - proposed Rules 40 and 56

6. At paragraphs 32 – 33 of his evidence Mr Nathan Russ identified that under the s42A recommended drafting of Rules 40 and 56 there is ambiguity as to how the 1000 m and 6000 m permitted distances will be measured. As outlined in Appendix A⁴ to this reply report Mr Dilley has clarified the method for measuring the distance of ancillary craft from the mother ship i.e., measurement in a straight line from the bridge of the mother ship, within a 6000 m radius. I have reflected Mr Dilley's recommendation in additions to proposed Rules 40 and 56 accordingly (s42A reply additions are shown in blue underline):

ACTIVITY	RULE	CONDITIONS	CLASSIFICATION
<i>Ancillary craft</i>			
Access to the coastal marine area of the Subantarctic Islands by ancillary craft, subject to there being no scientific research being undertaken in a particular location which requires isolation at the time the vessel accesses that location and where vessel operators have been notified of these requirements by the relevant Department of Conservation Director	40	<u>A. All vessels ancillary craft must comply with Performance Standards 2, 4, 5 and 6 (in Table 2).</u> <u>B. Vessels Ancillary craft do not enter Port Ross in the zone shown on Map 2 during the period 1 April to 31 October.</u> <u>C. Ancillary craft must not be in a position:</u> <u>(a) more than within 0.54nm (1000m) from where the mother ship is authorised to access in accordance with the Plan without reliance on Rule 1; and/or</u> <u>(b) more than within a 3.24nm (36000m) radius from of the mother ship, at any time, as measured in a straight line from the bridge of the mother ship.</u> <u>D. Ancillary craft launched from vessels longer than 125m are exempt from Condition C (a) for the purpose of accessing Lake Hinemoa, Auckland Island</u>	Permitted

ACTIVITY	RULE	CONDITIONS	CLASSIFICATION
<i>Ancillary craft</i>			
Access to the coastal marine area of any of the Kermadec Islands by ancillary craft	56	<u>A. All vessels ancillary craft must comply with Performance Standards 2, 4, 5 and 6 (in Table 2).</u> <u>B. Ancillary craft must not be in a position:</u> <u>(a) more than within 0.54nm (1000m) from where the mother ship is authorised to access in accordance with the Plan without reliance on Rule 1; and/or</u> <u>(b) more than within a 1.61nm (3000m) radius from of the mother ship, at any time, as measured in a straight line from the bridge of the mother ship.</u>	Permitted

7. An amendment of this nature is not required for the 1000 m distance limit (proposed Rule 40, Condition C (a) and proposed Rule 56, Condition B (a)) as

⁴ Appendix A to s42A Reply, paragraphs 25 – 28.

the measurement of 1000 m from where the mother ship is authorised to access in accordance with the plan is not fixed to the mother ship's actual location. It is a hypothetical position that the mother ship can access in accordance with the Plan. In other words the starting point for such a measurement is not fixed but is relative to where the mothership may choose to access in accordance with the plan. So long as the method for measuring the 6000 m permitted distance from the mothership, which is a measurement taken from the actual (not hypothetical) position of the mothership, has been clarified, as above, I consider Mr R Russ's concern has been satisfactorily addressed.

Relevance of Department of Conservation Entry Permit Allocation to PC1

8. In his oral evidence, I understood Mr Nathan Russ to suggest navigation safety issues related to long distance use of ancillary craft at the Subantarctic Islands could be more appropriately managed through the allocation process for entry permits that DOC issues under the Reserves Act 1977 (Reserves Act), rather than through the Regional Coastal Plan.
9. I understood Mr N Russ's point to imply that, having regard to the Regional Coastal Plan, only operators who can 'safely' access the landing sites at the islands should be granted entry permits.
10. I have inferred that this approach would involve cruise operators that have vessels longer than 125 m and do not have a coastal permit to access closer than the permitted thresholds⁵ under the access and anchoring rules in the Plan being refused entry permits on the basis that ancillary craft would have to travel a greater distance from their mother ship (for example, they would have to travel greater distances than 6 km to access the Col Lyal track at the head of Perseverance Harbour).
11. As I understood Mr N Russ's point, if this approach were to be taken when DOC allocates entry permits the risks that the proposed changes to the ancillary craft rules under PC1 seek to manage would be addressed, meaning these changes would not be required.
12. For context, I will briefly outline the legislative basis for conservation approvals to land on the Subantarctic Islands and how landing/entry permits⁶ are allocated
13. The Subantarctic Islands are classified as national nature reserves, meaning entry permits issued under the Reserves Act 1977 are required for entry (i.e. landing) to the Islands. The number of entry permits is limited in accordance with the policy framework in the Southland / Murihiku Conservation Management Strategy 2016 (CMS). Along with entry permits, operators must also have a guiding concession issued under the Conservation Act 1987, in accordance with the CMS, to manage land-based activities such as hiking

⁵ i.e. A coastal permit to access and anchor within the zone 600 m – 1000 m of MHWS in accordance with Rule 48.

⁶The required authorisation to land on the Subantarctic Islands (or any nature reserve in NZ) is called an entry permit.

designated tracks on the islands. I understand that entry permits are only allocated to operators who hold concessions.

14. To allocate entry permits in accordance with the CMS policy framework for the 2025/26, 2026/27 and 2027/28 seasons, DOC has undertaken a comprehensive process, that involved a Panel ranking cruise operators (existing concessionaires) by evaluation against a set of weighted criteria. I understand the criteria covered a range of matters such as ability to manage biosecurity (insofar as it relates to land, rather than in the marine environment), impact on and benefit to conservation of the islands, relationships with tangata whenua, ability to utilise landings and compliance.
15. I understand that under the 'utilisation' criteria there was scope to consider the relevance of vessel length insofar as it relates to a cruise operator's ability to land visitors when there is good or bad weather. I.e. a larger vessel, which cannot access as close to the landing sites as a smaller vessel, would rely more heavily on good weather conditions given the length of the zodiac trip required to land visitors at some sites, meaning lower ability to 'utilise' entry permits.
16. My point in outlining the above is that entry permits are allocated against criteria that focus on the ability to land and the impacts of land-based activities, they are not directed at activities and effects on the coastal marine area (CMA). This is simply a reflection of the legislative framework (the Reserves Act) that sits behind the allocation process.
17. I agree that integrated management of the CMA with the Minister's and/or DOC's other legislative obligations for the islands is generally to be aimed for, and is encouraged in the Plan⁷ and the CMS⁸. I am of the opinion, however, that there are good reasons to manage activities in the CMA such as ancillary craft use under the Regional Coastal Plan, and in accordance with the section 5 purpose of the RMA, rather than trying to achieve this only through allocation of entry permits, as suggested by Mr N Russ.
18. The use of ancillary craft is an activity that occurs predominantly in the CMA, meaning it is clearly an activity within the jurisdiction of the Plan. As outlined in the evidence of Mr N Russ, Mr Dilley and others established ancillary craft use at the Subantarctic Islands is not limited to transit of visitors from vessels to landing sites, but also involves 'zodiac touring', where people may not land on the islands at all and the activity may remain entirely in the CMA. Where that is the case, the entry permit process under the Reserves Act would be entirely irrelevant to ancillary craft use.
19. Moreover, the proposed (both notified and s42A recommended) changes to Rules 40 and 56 are not directed at simply managing health and safety. Their objective is to maintain a permitted activity for ancillary craft use, while minimising the risk of adverse effects on the sensitive marine environment at the islands, by reducing the risk of an incident that could result in an oil spill either from ancillary craft and/or the mother ship.⁹ This wider ambit of managing adverse effects in accordance with the RMA and to give effect to the

⁷ See the "Other Matters" section of the proposed plan, pg. 67 — "Integrated Management"

⁸ See: [Southland Murihiku Conservation Management Strategy 2016](#) last paragraph of page 123 and first 2 paragraphs of page 124.

⁹ Refer pgs. 46 and 47 of the s32 Report for further outline of the effects-based rationale for the proposed changes.

New Zealand Coastal Policy Statement 2010 is simply not a matter that can be managed via DOC's land based entry permit allocation process.

20. In my opinion, PC1 remains the appropriate tool for managing ancillary craft use in the CMA at the islands.

Circumnavigation of small island groups

21. In his oral evidence given at the hearing I understood Mr Rodney Russ to suggest the changes to Rule 40, recommended in my section 42A Report, would permit ancillary craft to circumnavigate small island groups at the subantarctic islands such as the Snares Island group. I understood Mr R Russ to suggest such an outcome was overly permissive. I have requested advice from Mr Dilley to address this point. His advice is set out in Appendix A¹⁰.
22. In summary Mr Dilley's advice demonstrates there will be some instances where ancillary craft may be able to circumnavigate a small island group such as the Snares Islands as a permitted activity under the s42A recommended changes to Rule 40. Mr Dilley confirms this outcome is consistent with the intent of the rule. As Mr Dilley explains, this activity would still be undertaken within the 6000 m permitted distance limit which he has identified as appropriate¹¹. In other scenarios (involving vessels longer than 125m) the proposed rule would operate to prevent ancillary craft from circumnavigating a small island group such as the Snares Islands.
23. Relevantly, Mr Dilley confirms the proposed Rule does not provide for circumnavigation of a larger island such as Auckland Island or Campbell Island. Nor does it permit ancillary craft access to Carnley Harbour at Auckland Island or Perseverance Harbour at Campbell Island in circumstances where the mother ship cannot access those harbours as a permitted activity in accordance with the plan. This is because a vessel longer than 125 m cannot access those harbours as a permitted activity due to the narrow harbour entrance to Carnley Harbour and the narrowness of the full length of Perseverance Harbour. As outlined in the section 32 Report, primary section 42A Report and Mr Dilley's Attachment D (to that report), this can result in ancillary craft travelling more than 6 km from the mother ship, in circumstances where the mother ship may not be able to readily aid the ancillary craft should an incident occur. Mr Dilley does not consider this to be a low-risk activity; hence the proposed rule seeks to regulate such ancillary craft use.
24. In my opinion, the example raised by Mr R Russ demonstrates the s42A recommended changes to the Rule strike an appropriate balance between permissive use and restriction of activities that raise a genuine risk of navigation safety incident and consequential environmental effect. The example raised by Mr R Russ in his oral evidence has not changed my opinion. The proposed changes to Rules 40 and 56 remain appropriate subject to the changes recommended above, to clarify the way that the distances will be measured.

¹⁰ Appendix A to s42A Reply, paras 7 – 13.

¹¹ For the reasons outlined in Appendix D to the s42A Report, paragraph 110.

Examples given by Nathan Russ in his oral evidence of restrictions on existing access to landing sites or use of the CMA, under the proposed changes to Rule 40

Example 1 — transit of ancillary craft from Sandy Bay to the Hardwicke landing site, Port Ross, Auckland Islands, when the mother ship is anchored at Sandy Bay, Enderby Island, Auckland Islands.

25. Mr Dilley has considered whether the activity described by Mr R Russ in Example 1 would breach the s42A proposed conditions of Rule 40¹².
26. Mr Dilley's review of the Automatic Identification System (AIS) data for HEL's vessel, the Heritage Adventurer, confirms the vessel normally anchors off both the Hardwicke landing site and Sandy Bay landing site, at Port Ross Auckland Island¹³, and therefore can use ancillary craft to access the landing sites when anchored outside 300 m from MHWS¹⁴, at each individual location, as a permitted activity.
27. Mr Dilley's review of AIS has allowed him to estimate that use of the Sandy Bay anchorage location to access the Hardwicke landing site via zodiac would require deployment of ancillary craft over a distance of at least 6170 m up to a maximum of 6650 m from the anchored mother ship. Under these circumstances proposed Rule 40, Condition C(b) — the 6000 m permitted distance limit — would not be complied with. However, there is nothing in the proposed Rule 40, or elsewhere in the proposed and operative plan, that prevents the Heritage Adventurer from anchoring anywhere outside of 300 m from MHWS, that is close enough to the Hardwicke landing site to operate within the 6000 m limit, as a permitted activity. As Mr Dilley points out the Heritage Adventurer may anchor as little as 171 m closer to Hardwicke landing than their current closest Sandy Bay anchoring location and achieve compliance with the s42A proposed changes to Rule 40.
28. The s42A recommended changes to Rule 40 therefore provide for the activity Mr N Russ has described in Example 1, subject to a minor adjustment of the anchoring location of the Heritage Adventurer when it transits ancillary craft from its Sandy Bay anchorage to Hardwicke landing. In my opinion, the example demonstrates HEL have a reasonable ability to comply with the proposed changes to Rule 40, rather than the rule imposing any particularly onerous restriction.

Example 2 — ancillary craft transiting from Southwest Cape to the North Arm, within Carnley Harbour, Auckland Island

29. At the hearing Mr N Russ indicated a practice of taking ancillary craft to Southwest Cape and then transiting ancillary craft all the way to the North Arm (where I understand they visit landing sites such as the Erlangen Clearing landing site).

¹² Appendix A to s42A Reply paragraphs 14 – 24.

¹³ Noting this does not occur in the winter months which are outside the typical Subantarctic Islands cruise season.

¹⁴ Access and anchoring outside of 300 m from MWHS by a vessel shorter than 125 m is a permitted activity under the operative plan.

30. Mr Dilley has considered whether the activity described by Mr R Russ in Example 2, would breach the s42A proposed conditions of Rule 40. in Appendix A.¹⁵
31. I note that it was not clear in the example given by Mr N Russ at the hearing where the mother ship would be located/anchored when ancillary craft were travelling. This is the most pertinent detail as the s42A changes to Rule 40 regulate distance of ancillary craft from the mother ship. In my opinion, this omission limits the relevance of the example.
32. Nevertheless, Mr Dilley has looked at AIS tracking of the Heritage Adventurer in and around Carnley Harbour and assessed the various distances ancillary craft appear to be travelling from where he understands the Heritage Adventurer typically anchors. In summary, Mr Dilley considers their ancillary craft would be permitted to access landing sites such as at Southwest Cape and Erlangen Clearing in accordance with proposed Rule 40, Condition E, so long as the mother ship anchors within 6000 m of those landing sites. In my opinion, this demonstrates the s42A recommended changes to Rule 40 provides for on-going permitted access to landing sites commonly used by cruise operators such as HEL.
33. Should HEL seek to run simultaneous ancillary craft operations to both Southwest Cape and the Erlangen Clearing which are at opposite ends of Carnley Harbour, Auckland Island, Mr Dilley considers such ancillary craft travel of approximately 12km between the sites, and more than 6km from the mother ship, would be an operation that involves the sorts of navigation safety risks that the s42A recommended rule changes seek to regulate.
34. As outlined above, non-compliance with Rules 40 or 56 defaults to a discretionary activity under the operative access and anchoring rules. HEL may apply for a coastal permit should they wish to obtain consent for such an activity, where a full assessment of risks and potential effects could be undertaken.
35. Overall, having considered Mr Dilley's advice, I consider the s42A recommended changes to proposed Rules 40 and 56 provide for a range of permitted uses of ancillary craft, including specific provision, in the case of proposed Rule 40, to access commonly used landing sites when ancillary craft are launched from a mother ship that is shorter than 125 m (E.g., the Heritage Adventurer, see proposed Condition (E)), within an overall safe permitted distance limit of 6000m.
36. In my opinion, the example given by Mr N Russ offers no evidence of an unreasonable constraint being placed on cruise operators by the s42A changes to Rule 40.

Changes to Rules 40 and 56 proposed by Heritage Expeditions (2018) Limited

37. Following the hearing, Heritage Expeditions (2018) Limited (HEL) have proposed additions to Rules 40 and 56 which are intended to provide an

¹⁵ Appendix to the s42A Reply, paragraphs 18 – 24.

exemption from the recommended s42A changes to those rules, exclusively for HEL. HEL's proposed changes for Rule 40 are:

- F. When using its ancillary craft, Heritage Expeditions Limited are exempt from Condition C if:
- a) at all times, its ancillary craft are operated in pairs, with each ancillary craft having sufficient capacity to render immediate support to all passengers on the other ancillary craft; and
 - b) its mothership has a fast rescue boat, capable of being launched within 5 minutes of the order of the Master being given.

38. Essentially the same drafting is proposed by HEL for Rule 56.

39. As I understood HEL's oral submissions at the hearing and the Memorandum of Counsel on behalf of HEL, dated 18 June 2026, HEL argue their long-standing use of ancillary craft and safety record justify an exclusive exemption from the distance limits in the proposed Rule to "grandparent" their existing use of ancillary craft as a permitted activity. HEL's proposed exemptions come with two conditions — that its ancillary craft are operated in pairs such that each ancillary craft would have sufficient capacity to render support to the other ancillary craft, and, that the mother ship would have a "fast rescue boat", capable of being launched within 5 minutes of the order of the Master being given.

40. In my experience it is unusual to exempt a specific plan user from rules in the manner suggested. An exclusive provision of this nature creates several practical issues.

41. Firstly, while HEL may well have no recorded safety incidents where use of ancillary craft in the Subantarctic and Kermadec Islands is concerned,¹⁶ a key purpose of the rule is to minimise the risk of an incident and ensure assistance can be swiftly and adequately rendered in the event that an incident occurs. Past absence of an incident does not guarantee no incident in the future.

42. Secondly, there is no guarantee that the current HEL operation will not change – for example, the business could change management or ownership over the life of the Plan, this could affect navigation safety practice, at which point any assurance provided by HEL's current safety record would cease.

43. Thirdly, administrative changes on HEL's end, such as a change to the name of their business would render the provision useless as it would no longer provide for that business. This scenario is demonstrated by the proposed amendment itself which names Heritage Expeditions Limited, which I understand was the name of the business owned by Mr Rodney Russ and appears to have been removed from the companies register¹⁷. I assume the submitter intends the provision to provide for their currently operating business – Heritage

¹⁶ Appendix A to s42A reply, paragraph 31.

¹⁷ Heritage Expeditions Limited appears to have been removed from the Companies Register [Companies Register — Heritage Expeditions Limited](#)

Expeditions (2018) Limited. While I acknowledge this may be simply an oversight in the proposed drafting, this itself is an example of a pitfall associated with the suggested drafting.

44. From a statutory planning perspective HELs proposed drafting sets up a situation in which HEL would be provided with a permissive rule denied to other plan users. Their changes would enable use of ancillary craft to access the CMA at the islands, in a way that would be denied to the public at large. It is unclear, both on an effects and section 32 basis why this outcome would be appropriate.
45. In my opinion, HEL's desire to use ancillary craft in a manner that exclusively suits their operation would more appropriately be considered through a resource consent application, in the event they wish to breach the proposed conditions in Rules 40 and/or 56. This option would be available under Rules 45 or 50¹⁸ which allow (and will continue to allow) for an application for a discretionary coastal permit to be made where proposed Rules 40 or 56 could not be met.
46. Putting aside the issues identified above with respect to specifically exempting HEL, I have also considered the navigation safety merits of HEL's proposed conditions generally. In Appendix D to the primary s42A Report, Mr Dilley accepts that the ancillary craft used on vessels operated by HEL are of a specific type and that they have successfully used these craft for a specific purpose for a long time. However, Mr Dilley points out the term "ancillary craft" used within the operative Plan is far broader in both the type of craft and the use of those craft. This means HEL's proposed drafting provides for a range of ancillary craft that may have varying safety implications. HEL would not be locked into using their current vessels and safety practices which are relied on by HEL to justify their proposed broad exemption.
47. Regarding HEL's proposal that ancillary craft must operate in pairs Mr Dilley has already addressed the efficacy of this measure at paragraphs 102 – 108 of Appendix D to the s42A Report. In Mr Dilley's opinion, the practice of ancillary craft travelling in pairs provides limited support in the event of an incident, but it does not effectively manage the risk. Mr Dilley has stated recovery of personnel back to the mother ship takes far longer from a greater distance than from shorter distances. This time is particularly relevant if people have been immersed and may be cold, or when recovered people are taken onboard a second ancillary craft that already contains several people. Rather than zodiacs travelling in pairs, Mr Dilley confirms that the ability of the mothership to move to a safe position where it may more readily provide support, have clear oversight of the incident location, and lessen the distances needed to be travelled between the incident site and the mother ship is fundamental to a safe incident response.
48. Mr Dilley has further considered HEL's proposed changes to Rules 40 and 56 in Appendix A to this report¹⁹. He has done so on the basis that permitted activity

¹⁸ Rule 45 — Access and anchoring within 0.16nm (300m) of MHWS of the Subantarctic Islands by vessels up to 125 metres in length, other than as provided in Rules 38, 39, 40, 41, 42, 43 or 44.

Rule 50 — Access (to any location) and anchoring (at any location) within the coastal marine area of the Subantarctic Islands by vessels of any length which do not comply with Rules 38, 39, 40, 41, 42, 43, 44, 46, 49 and if not otherwise prohibited. Both are discretionary activities.

¹⁹ Appendix to s42A Reply, paras 29 – 44.

conditions proposed by (E.g., Rule 40, proposed F (a) and (b)) would apply generally in place of s42A permitted distance limits (the 1000 m and 6000 m limits). Mr Dilley has considered the HEL changes in this way because he considers the planning issues associated with a specific operator being named in the Rules to be outside of his area of expertise.

49. In Mr Dilley's opinion, HEL's proposed drafting of conditions F and C to Rules 40 and 56 outline factors that should be considerations for all ancillary craft operations, rather than being factors that make longer range ancillary craft operations safe, Mr Dilley's view is adoption of HEL's proposed changes ignore a key tool for managing use of ancillary craft — distance from the mother ship. Mr Dilley therefore does not recommend HEL's proposed changes be incorporated into proposed Rules 40 or 56, and continues to favour the distance thresholds that have been adopted in the primary s42A Report.
50. For all of the above reasons, I recommend the changes proposed by HEL to Rules 40 and 56 be declined.

5. Topic 4: New Rule 47A and minor change to Rule 47

51. The positions of submitters on this topic have been addressed in the s42A Report, submitter evidence, and thoroughly explored at the hearing. The respective of views of the parties are clear. I consider only one matter requires consideration.

Standard of navigation safety information recommended to be provided with proposed Rule 47A applications as compared to other approvals such as a Pilot Exemption Certificate

52. In his evidence²⁰ and at the hearing Mr N Russ commented on the adequacy of the navigation safety guidance Mr Dilley has prepared and which I have recommended for inclusion in the Plan.
53. Mr N Russ states that the navigation safety guidance recommended to be provided with applications under proposed Rule 47A encourages a "level of detail that is far below that required for marine based certificates, such as a pilot exception certificate."
54. Mr Dilley has comprehensively responded to this matter in Appendix A where he explains that he expects that a proposed Rule 47A applicant would be encouraged to demonstrate how the master will meet a standard at least equivalent or higher than that required for marine based certificates such as a pilot exemption certificate.²¹
55. Without unduly repeating Mr Dilley's analysis I note again that applications made under proposed Rule 47A would be for a discretionary activity. The navigation safety guidance has been framed as the recommended minimum information to be provided with a coastal permit. Nothing would preclude the Minister of Conservation from requesting additional information over and above that proposed in the guidance.

²⁰ Nathan Russ, Evidence in Chief, paragraph 72(c).

²¹ Appendix A, paragraphs 45 – 62.

56. In my opinion, proposed Policy X, which directs applicants to “demonstrate the activity can be undertaken in a manner that minimises the risk of a navigation safety incident”, and has been drafted to work in tandem with the proposed navigation safety guidance setting out the recommended minimum information requirements, creates a strong imperative for Rule 47A applicants to ensure the navigation safety and effects management information they provide will be comprehensive, as regard must be had to this directly relevant provision in the discretionary consent assessment, in accordance with section 104 of the RMA.²²

6. Topic 5: Access and Anchoring – Port Ross Access

Relevance of Operative Rule 1

57. The evidence of Mr Shaw for Sanford Limited has characterised my s42A Report as suggesting Rule 1 is in some way preferred by DOC as a method for enabling vessels to shelter in Port Ross.²³ I have addressed this matter in my s42A summary²⁴ and reconfirm my opinion on this matter stands.
58. When Mr Shaw spoke to his evidence at the hearing, the use of Rule 1 attracted on-going discussion from the fishing industry submitters and questions from the hearing commissioners (directed to those submitters).
59. Having heard that discussion, I wish to add one point on this topic, which arises from Mr Dilley’s Appendix D to the primary section 42A Report. That is, the options available to scampi fishing vessels seeking shelter at Auckland Island in the winter extend beyond either accessing Port Ross or triggering operative Rule 1. The choice is not binary.
60. At 36 and 42 of Appendix D, Mr Dilley provides evidence on alternative options other than to access Port Ross or exercise of Rule 1. In particular, at paragraph 42 he refers to six alternative anchoring locations available both adjacent to, and further south of, Port Ross, both inside and outside 300 m from MHWS (those inside being specifically permitted under the operative Plan). Mr Dilley comments at paragraph 44 that *“the alternative designated anchoring areas together with other bays and inlets are located along the length of the east coast of Auckland Island and, collectively, provide shelter from all wind directions²⁵.”*
61. I reiterate, the permitted activity options available to operators are not binary, they are varied and the proposed changes progressed under PC1 do not unduly encourage exercise of Rule 1.
62. As discussed in my s42A summary²⁶ application for a discretionary consent²⁷ for on-going winter access and anchoring in Port Ross would also be an option. At paragraph 13, the legal submissions on behalf of Sanford Limited refer to the view of Fishing interest parties that *“Rightly or wrongly, the assumption of the*

²² Section 104(1)(b)(v).

²³ Darryn Shaw, Evidence in Chief, paras 28, 30, 31, 46 and 71.

²⁴ Section 42A Summary, dated 9 June 2026, para 15 (d).

²⁵ The availability of Ranui Cove as an anchoring option is discussed further below at paragraphs 65 – 67.

²⁶ At paragraph 15 (c).

²⁷ Under operative Rule 45

Fishing Industry Interests is that consent will be declined unless truly exceptional grounds can be made out.” My response is that as such an application would be for a discretionary consent the proposal would be assessed on its merits, with no pre-determination.

Relevance of the marine chart that includes the label “Passage not recommended” near Ranui Cove, Auckland Island

63. In his oral evidence at the hearing on behalf of Seaeagle Fishing Limited Mr Penwarden commented on the marine chart NZ2862 – *Plans in the Auckland Islands*. Mr Penwarden implied the label “passage not recommended” shown on that chart in Figure 1 below indicates that vessels should not access Ranui Cove from a southern approach, and that instead they would need to navigate to the north of Ewing Island, to reach the Ranui Cover anchorage, thereby accessing the Port Ross winter closure area shown on Map 2 of the proposed Plan, in breach of the applicable permitted activity rules (if doing so in the winter months).

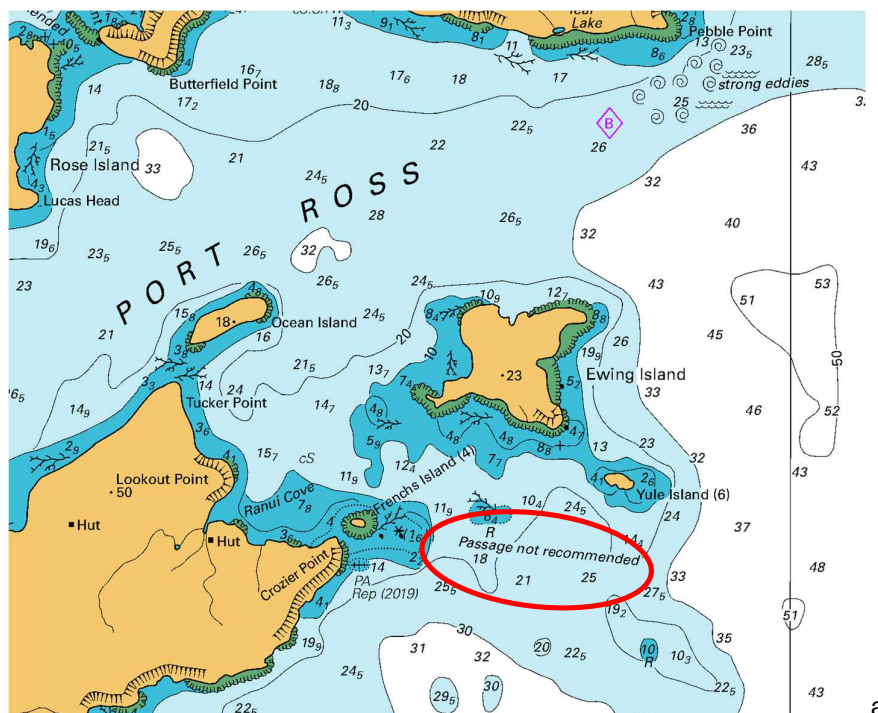


Figure 1 — Marine Chart NZ2862 – Plans in the Auckland Islands

64. Mr Dilley has addressed Mr Penwarden’s concern in Appendix A.²⁸ His advice is that marine charts must be read in conjunction with the relevant sailing directions, in this case, NP51 – New Zealand Pilot, the latest addition of which advises that the passage between “Ewing Island and Frenchs Island, 5 cables SW, has sufficient depth for the passage of medium sized vessels, keeping clear of the charted dangers.”
65. Mr Dilley’s advice is that subject to appropriate passage planning in accordance with Maritime Rule 23 (which makes voyage planning a

²⁸ Appendix A, paragraphs 63 – 68.

requirement) Ranui Cove can be safely accessed from this southern approach by medium sized vessels. Therefore, the claim that vessels have no choice but to enter the Port Ross winter closure area to access Ranui Cove appears to be based on an erroneous interpretation of the marine chart and/or NP51. In Mr Dilley's opinion, Ranui Cove remains a suitable alternative anchorage location to Port Ross, as confirmed by Mr Dilley in Appendix A.

7. Topic 6: Access and Anchoring – Additional anchorages for small vessels in Carnley Harbour and request for an anchorage at Tucker Point in Port, Ross, Auckland Island

“Tucker Point” anchorage requested by fishing interests’ submitters and ‘high whale activity area’

66. In his oral and written evidence Mr Darryn Shaw has stated the Tucker Point anchorage in Port Ross, Auckland Island, requested by Sanford Limited, is not within the ‘high whale activity area.’²⁹
67. Ms Corne has provided advice in response to this point at Appendix B³⁰ where she outlines southern right whales, including cow-calf pairs, use waters around Tucker Point, the area contains suitable whale habitat, whale density is variable not static and that while it is accepted that Tucker Point is not located within the areas of highest estimated southern right whale density identified by *Carroll et al. (2022)*, whale distribution within Port Ross is not confined to the mapped high-density areas.
68. Further, any assessment of including a permitted anchorage at Tucker Point should consider both the anchorage location and vessel movements to and from it. I understand access to Tucker Point may require transit through parts of Port Ross where whale densities are higher.
69. Finally, Ms Corne points out that population recovery trends indicate the likelihood of the requested Tucker Point anchorage overlapping with the highest use whale areas would only increase.
70. I confirm this point raised by Mr Shaw has not altered my recommendation to decline submissions seeking a permitted anchorage at Tucker Point, Port Ross.

8. Miscellaneous

71. In my s42A summary I have noted that Mr Penwarden commented on Map 3³¹, in Appendix 1 of the proposed Plan which shows Carnley Harbour, Auckland Island. He notes much of the area known as the North Arm, in the northern reach of Carnley Harbour, is shaded light blue implying it is within 300 m of MHWS. This area has also been shown in the legend in Figure 5 of my s42A Report as “300 m (plus extensions).” Some of this area is not within 300m of

²⁹ Shaw, Evidence in Chief, para 50(b), footnote 11 — Carroll et al 2022 - New Zealand southern right whale behavioural phenology demographic composition and habitat use in Port Ross Auckland Islands over three decades.

³⁰ Appendix B in its entirety.

³¹ Section 42A summary, paragraph 15(f).

MHWS. However, the relevant plan rules only refer to the zone 300 m from MHWS – not the extended light blue zone. I have agreed with Mr Penwarden, and in my s42A summary have said I would provide an amended map. On reflection I consider this minor error can be more appropriately resolved as a minor correction in accordance with Clause 16(2) of Schedule 1 of the RMA (i.e. as a separate process to the decisions on PC1). The correction to the map is simply to reflect the actual application of the operative rules, it is therefore ‘neutral’ and will not alter the legal rights of the public under the Plan.

72. In my s42A summary I also noted several provisions in the proposed Plan have been incorrectly formatted in the course of publishing the proposed Plan for notification. I have reviewed these and they are simply instances where lettered sub-clauses of provisions have been incorrectly listed with bullet points. Where this has occurred, I have recommended a global change to replace the bullet points with the correct numbering/listing system. Like the map I consider these corrections will not alter the legal rights of the public and can therefore most appropriately be addressed in accordance with Clause 16(2) of Schedule 1 of the RMA.