

Decision of the Southland Regional Council

Publicly notified resource consent application

Section 104B and section 113 of the Resource Management Act 1991

Applicant:	South Port New Zealand Limited
RM reference:	AUTH-20242149
Location:	Awarua/Bluff Harbour
Legal description:	Coastal Marine Area
Decision date:	7 June 2024
Expiry date:	31 May 2049
Class of activity (ies)	Discretionary
Activities authorised:	To dredge sediment at the Syncrolift site and to discharge the sediment from the dredging onto the seabed and into coastal waters
	Rule 10.2.4 of the Regional Coastal Plan

1. Decision

Resource consent is **granted** under delegated authority.

2. Reasons for the decision

In making this decision I have considered the application, and the relevant planning documents.

South Port New Zealand Limited applied for a coastal permit to dredge sediment at the Syncrolift site at the Island Harbour, Bluff, and to discharge the associated sediment from the dredging into Awarua/Bluff Harbour about 320 metres northeast of the Syncrolift site.

The application was publicly notified and no submissions were received.

The existing environment

The works will occur in Awarua/Bluff Harbour, which is a working port. The proposed discharge area is in the coastal marine area, in an area modified by the construction of the Island Harbour, and by

ongoing works to facilitate the port. The Harbour supports cargo vessels as well as a fishing fleet and recreational boating activities.

Awarua/Bluff Harbour supports marine and estuarine vegetation and fish, including paua, mussels, kina, moki, butterfish, lobster, octopus, and seahorses. Species of shark, including the endangered white pointer, utilise the harbour and Foveaux Strait at times. Seals are commonly observed along the foreshore near Bluff township. A variety of seabirds utilise Awarua/Bluff Harbour and the nearby marine area, including endangered or threatened species such as yellow-eyed penguins, sooty shearwaters, black-billed gulls and white-fronted terns. Seagrass habitat within the harbour provide important habitat and are vulnerable to disturbance.

In the dredge area at the syncrolift the sediment on the seabed is largely silt, clay and very fine sand. The sediments exceed guideline values for copper, arsenic and zinc. The sediment under the syncrolift also exceeds guidelines for Tributyltin, which is associated with anti-fouling marine paints. Replicate and duplicate samples have been inconsistent, which may indicate that the Tributyltin are attributable to discrete particles of antifoul paint.

The proposed discharge area is adjacent to the main channel from the harbour to Foveaux Strait, which flows between the Bluff and Tiwai peninsulas, past the port facilities and township to the south, and the Tiwai wharf to the north. Due to the proximity and elevation on the township side, the channel is highly visible from Bluff township. The seabed in the proposed discharge area is dominated by sand with lower fractions of silt and clay. Contaminant levels are either low or similar to background.

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

There is a mātaihai reserve, the Motupöhue Mātaihai, on the west and southern sides of the Bluff peninsula, ending at the eastern most point of Bluff.

There are no archaeological sites recorded in the dredging or discharge areas of the harbour.

Effects on the environment

The excavation/dredging is permitted, so it is the discharge/deposition and its effects that needs to be considered. The key adverse effects are likely to be:

- Cultural/spiritual effects
- Water quality effects
- Effects on the ecology and habitat of the seabed
- Redistribution of contaminants.

Cultural/spiritual effects:

The application referred to a cultural impact assessment for the recent capital dredging application for the entrance to Awarua/Bluff Harbour (APP-20211362)¹. That assessment identified potentially significant effects on mana whenua values, particularly due to effects on water quality, benthic habitat

¹ I have saved the cultural impact assessment separately as A1073879

and mahinga kai species. The assessment identified the following values of particular importance to tangata whenua:

- Mauri, and the life supporting capacity and cultural and ecological health of the harbours.
- The ability for our future generations to engage with the harbour as their ancestors did.
- That water quality is protected to a standard that allows for mahinga kai to be diverse, abundant and safe to eat.
- Mahinga kai species, habitat, and access to these for customary use during and after the activity.
- That existing and any future proposed Mātaitai reserves in the harbour are protected.
- Wāhi tapū, wāhi ingoa and archaeological sites on or under the seabed are protected.

With regard to these matters, the application pointed to a memorandum of understanding between Te Rūnanga o Awarua and the applicant about port activities and collaborative actions to support mahinga kai species and habitat. The applicant had also noted that the timing of the discharge on ebb tides, and over winter months, should mitigate adverse effects on taonga species. In particular, the works are timed to occur outside the Little Penguin breeding months and the seagrass flowering season. The restriction will avoid the predominant season when marine mammals have been found to utilise the harbour.

I note that modelling indicates that the sediment discharge will not impact on the Motupöhue Mātaitai reserve.

Overall the sediment discharge may adversely affect cultural and spiritual values, particularly through impacts on water quality, benthic habitat and mahinga kai. The applicant initiated consultation with Te Ao Marama Inc, Te Rūnanga o Awarua, and Te Rūnanga o Ngāi Tahu. In addition, the applicant obtained contact details to initiate consultation with the Tangata Tiaki for the Motupöhue Mātaitai reserve. I consider that the applicant's attempts at consultation are consistent section 3.6.2(1) of Te Tangi a Tauri. I am not an expert on spiritual and cultural values, however, I note that Te Ao Marama Inc, Te Rūnanga o Awarua, and Te Rūnanga o Ngāi Tahu had the opportunity to make a submission but did not do so.

Water quality effects:

The point of discharge will be near the seafloor within the harbour. The applicant considers that the discharge will not give rise to conspicuous discolouration at the surface when viewed from Bluff township. In part this is because of the nature of the port area. The assessment seems to be concerned with visual amenity rather than water quality effects, but as the discharge will be several metres underwater, will be temporary and associated with necessary maintenance work, any visible plume beyond reasonable mixing is probably a minor effect.

The applicant has modelled the spread of sediment from the dredge discharge and it shows localised deposition near the discharge point. The model was masked to exclude deposition of less than 1 mm, so there may be some fine deposition over a wider area near the discharge point, or in other locations within the harbour.



Worst-case sediment footprint (from a P3 release location over a spring tide cycle from 1 h before to 4 h after high water) with seabed resuspension excluded. The green and red contours highlight 2 and 4 mm respectively. The purple, yellow and black hatched patch represents the seagrass, rocky and mataitai area respectively. Deposition thickness of less than 1mm were masked (from Zyngfogel & McComb, 2023).

Effects on the ecology and habitat of the seabed:

Fish and other mobile benthic species are likely to move away from the discharge area.

The modelling predicts short-term deposition of low levels of sediment, but generally not in ecologically sensitive areas. The depositional areas are assumed to be due to localised eddies, and because the eddies are existing features in the current, the predicted deposition areas are likely to already be sites of fine sediment deposition, and not particularly sensitive to the activity.

Overall, E3 Scientific assessed adverse effects on the ecology of the discharge area and harbour as low (minor).

Redistribution of contaminants:

The modelling indicates that the sediment will be mainly deposited over less sensitive areas, within a “highly dynamic part of the harbour mouth”. E3 Scientific considered that species present in that area would be relatively resilient to the presence of sediment. The short-term (estimated to be only days) presence of sediments with elevated copper concentrations was expected to have no more than minor effects, particularly given that dispersal will also have the effect of reducing concentrations of contaminants at any one location.

Effects on marine farming activities:

Discharging the dredged sediment during outgoing ebb tides will help protect marine farming activities further up the harbour. Any effects on marine farming activities are expected to be no more than minor.

Effects on water takes in the area:

The applicant was asked about effects on water takes from the harbour in the vicinity of the discharge to demonstrate that the discharge would not adversely affect the takes. The modelling actually relates to deposition effects, so may be of limited value in assessing effects in the water column. However, the water takes in the area must be used to periods of discolouration within the waters of the Harbour. Therefore I expect that effects on those water takes will only be minor.

Effects on amenity values

The sediment plume is expected to have minimal effect on visual amenity.

The applicant consulted with the Bluff Yacht Club, Greenpoint Yacht Club and the Awarua Rowing Club and confirmed that the discharge period would not coincide with any planned recreational or community events in or next to the harbour that may be impacted by discolouration in the harbour.

The sediment discharge is unlikely to affect the operation of vessels, nor activities on the Tiwai side of the Harbour. There may be some amenity effects for recreational boaties if the sediment causes discolouration, but the effect should be transitory.

Any noise effects will largely be associated with the dredging activity, which is a permitted activity, rather than the discharge. In any case, the sound of the dredging operation is not expected to be audible to the nearest residents, and noise emissions are expected to comply with the relevant regional rules.

Effects on monitoring activities:

The discharge is not expected to affect any investigation or monitoring activities in the area related to water quality or seabed sediment.

Environment Southland's State of the Environment and Resource Management monitoring teams confirmed that the discharge would not affect their monitoring activities, including those associated with the aluminium smelter.

Positive effects

The purpose of the dredging is to maintain the operation of the syncrolift, which is important infrastructure for lifting vessels from the water for inspection and maintenance activities, such as for biosecurity checks. The dredging will reinstate the previous range of the lift, so that it can be lowered to a greater depth, which improves its function for larger vessels with a deeper draught.

Assessment under relevant plans

I have had regard to the relevant provisions of the New Zealand Coastal Policy Statement (NZCPS), the Southland Regional Policy Statement (RPS), the Regional Coastal Plan for Southland and Te Tangi a Taurā, which is the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan. I consider that the policies of Te Tangi a Taurā are relevant and reasonably necessary to the determination of this application.

I have considered the NZCPS and the RPS because they are higher level documents, but they post-date parts of the Coastal Plan that became operative in 2006. Therefore they must be considered to ensure that the decision is consistent with higher level policies, as well as with the plan provisions.

The principal provisions of relevance to this application are discussed below:

New Zealand Coastal Policy Statement

- Policy 9 Recognise that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes, including by:
- (a) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes; and
 - (b) considering where, how and when to provide in regional policy statements and in plans for the efficient and safe operation of these ports, the development of their capacity for shipping, and their connections with other transport modes.
- Policy 23 (1) In managing discharges to water in the coastal environment, have particular regard to:
- (a) the sensitivity of the receiving environment;
 - (b) the nature of the contaminants to be discharged, the particular concentration of contaminants needed to achieve the required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded; and
 - (c) the capacity of the receiving environment to assimilate the contaminants; and:
 - (d) avoid significant adverse effects on ecosystems and habitats after reasonable mixing;
 - (e) use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and
 - (f) minimise adverse effects on the life-supporting capacity of water within a mixing zone.
- (2)
- (3)
- (4)
- (5) In managing discharges from ports and other marine facilities:
- (a) require operators of ports and other marine facilities to take all practicable steps to avoid contamination of coastal waters, substrate, ecosystems and habitats that is more than minor;
 - (b) require that the disturbance or relocation of contaminated seabed material, other than by the movement of vessels, and the dumping or storage of dredged material does not result in significant adverse effects on water quality or the seabed, substrate, ecosystems or habitats;
 - (c) require operators of ports, marinas and other relevant marine facilities to provide for the collection of sewage and waste from vessels, and for residues from vessel maintenance to be safely contained and disposed of; and

- (d) consider the need for facilities for the collection of sewage and other wastes for recreational and commercial boating.

Policy 9 recognises the importance of the operation of the port.

I consider that the proposal is consistent with clauses (1) and (5) of Policy 23.

Southland Regional Policy Statement

- Policy COAST.2 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.4 Recognise and make provision for nationally significant, regionally significant or critical infrastructure that has a functional, operational or technical need to be located within the coastal environment, and appropriate port, aquaculture, mineral extraction activities and energy projects that must be located within the coastal environment.
- Policy COAST.5 Avoid, remedy or mitigate adverse effects of land-based and marine activities on coastal water quality and its ecosystems.

With regard to Policies COAST.2 and COAST.5, the applicant has selected discharge locations and will time the discharge with the ebb tide, to avoid adverse effect on indigenous species and habitat within the harbour.

Policy COAST.4, which is supportive of the proposal, is relevant because of the importance of the Syncrolift to the port operations.

Regional Coastal Plan for Southland

The key policies in the Coastal Plan are:

- Policy 7.2.2.4 Manage areas of water in the coastal marine area having regard to those characteristics which have a direct bearing upon cultural or spiritual values.
- Policy 7.3.2.1 Avoid, remedy or mitigate the adverse effects of the discharge of contaminants into the coastal marine area of Southland.
- Policy 7.3.2.2 Require alternatives to discharging to the coastal marine area to be considered.
- Policy 10.2.2 Provide for the disposal of dredged material taken from the coastal marine area, back into the coastal marine area where the activity will not have significant

adverse effects on habitat and heritage values, coastal processes, navigation, safety and water quality.

Policy 10.2.4 Dispose of dredging spoil from the coastal marine area onto similar substrate in the coastal marine area.

Policy 10.2.2 and Policy 10.2.4 are the most directly relevant to the activity. The applicant has considered the effects on sensitive areas and will carry out the discharge in a manner and location that avoids impacting important habitat areas. Policy 10.2.4 does not provide any direct indication of adverse effects, but by implication discharge onto similar substrate should have less adverse effects than otherwise.

Regarding Policy 7.3.2.2, the application does discuss discharging the dredged sediment to land. That option involved difficulties due to the dredging location, and because of the high-water content of the dredged material.

Te Tangi a Taurira

Policy 3.6.2(1) Require that all decisions related to coastal land use and development activities within Southland's coastal environment recognise and give effect to the spiritual and historical association of Ngāi Tahu ki Murihiku within the coastal environment. Any activity within, adjacent to or that may potentially impact on Statutory Acknowledgment areas, including Te Mimi o Tū Te Rakiwhānoa (Fiordland Coastal Marine Area) and 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 1998.

Policy 3.6.2(21) Require that dredging and reclamation works avoid damage to mahinga kai, kaimoana and kaimātaitai sites, and coastal and seabed ecosystems.

Policy 3.6.7(7) Avoid the use of coastal waters and the ocean as a receiving environment for the direct discharge of contaminants.

Regarding Policy 3.6.2(1), I note that the applicant initiated consultation with the groups listed, and that they were sent notice of the application but did not make a submission.

The proposal is consistent with Policy 3.6.2(21). However it is inconsistent with Policy 3.6.7.

Statutory assessments

In terms of s105 of the Resource Management Act, the nature of the discharge and the sensitivity of the receiving environment, alternative methods and/or locations of discharge have been discussed in the application. I note that the applicant has selected the proposed discharge because alternatives, such as discharge to land, posed practical difficulties to the high-water content of the material, and the location of the dredging.

Granting this resource consent is not contrary to section 107 of the Resource Management Act 1991. The applicant was asked whether the discharge would result in conspicuous change in the colour or clarity of the receiving waters beyond the mixing zone. The assessment was that was unlikely due to the subsurface discharge point, and because the waters of the harbour in the discharge area

are often naturally discoloured and turbid. Even if that is not the case, and there is a conspicuous change in colour and clarity in the harbour waters, s107(2) allows that a discharge with that effect can be approved in some circumstances, including if it is for necessary maintenance work or the discharge is of a temporary nature, and if it is consistent with the purpose of the RMA to allow the discharge. In my view the circumstances under s107(2) will apply.

All considerations are subject to Part 2 of the RMA, which sets out the purpose and principles that guide this legislation. 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. In my view granting this resource consent achieves the purpose of the Resource Management Act 1991 as set out in Part 2 of the Act. The key issues, as discussed above, were adverse effects on water quality, deposition of sediment on sensitive benthic areas and impacts on cultural and spiritual values. These effects have been discussed above.

3. Conditions

Rule 10.2.4 of the Regional Coastal Plan makes the discharge of dredged material a discretionary activity. Under Section 104B the Council may grant or refuse consent for a **discretionary activity**, and if it grants the application, may impose conditions under Section 108 of the RMA.

The consent is granted subject to conditions. These conditions are consistent with section 108 of the Resource Management Act 1991. The conditions include:

- A requirement to discharge several metres below the water surface at the two potential discharge sites. This is consistent with the information in the application, and the modelling of effects was based on discharge at these depths.
- Timing of the discharge at each potential discharge site relative to ebb tide periods. Similar to the above, the modelling of sediment deposition was based on the timing of the discharge.
- A limit on the depth of dredging. Although maintenance dredging is a permitted activity, this condition was volunteered by the applicant, and helps limit the scale of the associated discharge.
- A sediment barrier near the dredge site to limit lateral movement of material.
- Notification requirements at the start and end of each dredging period.
- Water quality and sediment monitoring.
- A biosecurity check on equipment to avoid the spread of pests and unwanted organisms.

The applicant has requested a consent period of 25 years. The term of a consent must be determined by reference to the statutory purpose of the Act, taking into account the specific facts of the application. Matters to be considered when determining the appropriate term include:

1. Whether the effects of the activity are certain/known.
2. Whether relevant planning instruments may be in place sooner than the proposed term of the consent, and exercise of the consent could hinder the effectiveness of such instruments.
3. Whether conditions on the consent can appropriately deal with any environmental concerns.
4. Any guidance in a relevant planning document.
5. The life expectancy of the asset (if any).
6. Whether a particular duration would better achieve administrative efficiency.

I have considered these factors against the information provided in the application and the relevant planning framework. I consider the following factors are relevant in this case:

- *Whether the effects of the activity are certain/known.* The effects have been assessed by the applicant, including modelling of deposition. There should be reasonable certainty about effects.
- *Whether relevant planning instruments may be in place sooner than the proposed term of the consent, and exercise of the consent could hinder the effectiveness of such instruments.* It is likely that a new Coastal Plan will be developed during the proposed consent period. However, the application has to be considered on the existing provisions and it seems unlikely that the discharge would conflict with a future coastal plan. I also note that the resource consent does include a review condition.
- *Whether conditions on the consent can appropriately deal with any environmental concerns.* The conditions include monitoring and review conditions, so I believe that there is sufficient scope to deal with any environmental concerns that may arise.
- *Any guidance in a relevant planning document.* The maximum possible term for this activity under s123 of the Resource Management Act is 35 years. The Regional Coastal Plan does not provide any guidance on consent duration. However, commentary in Te Tangi a Taurira shows a clear preference for consent durations not to exceed 25 years.

On this basis, I consider that the requested consent duration of 25 years is appropriate and approve the coastal permit for a term expiring on 31 May 2049.

Please read and ensure you understand and implement these conditions. By law you are required to comply with them for the duration of the consent. Failure to show compliance with conditions of a consent on inspection may result in enforcement action.

For the **Southland Regional Council**



Lacey Bragg
Consents Manager

Notes

1. **Right to object:** Applicants and consent holders have the right to object to any part of this decision to Environment Southland. Objections must be in writing and received by Environment Southland within 15 working days of the decision being notified. Objectors can request the objection be heard by an independent commissioner. The procedure for making and hearing objections is set out in sections 357A to 357D of the Resource Management Act 1991.
2. **Right to appeal:** The applicant, the consent holder (if different), and any person who made a submission on the application may appeal against any part of this decision (including the consent conditions) to the Environment Court. A submitter's appeal is limited in scope by the matters raised in their submission. Appellants have 15 working days to lodge an appeal, from the date they received notice of this decision. The right to appeal and procedure for lodging appeals is outlined in sections 120 and 121 of the Resource Management Act 1991.

3. Our costs: An invoice for our costs of working on your application will be forwarded to you shortly.
4. Expiry of consent: Please note the expiry date of your resource consent(s). The expiry date will be printed in on the first page of the consent. You can only undertake the activity legally between now and the expiry date. If you wish to continue with the activity after the consent expires, you will need to apply for and obtain a new resource consent in advance. We recommend you re-apply at least six months before any current consent will expire.
5. Lapse of consent: Please note that the resource consent(s) will lapse if you do not 'given effect' to it within five years of it being granted (or otherwise within a different period specified on the particular consent). Lapse of a consent has the same effect as an expiry. The consent will not lapse if you commence the activity within five years. A longer lapse period can be applied for. Please contact us in advance if you think you are not likely to give effect to the consent before it lapses.
6. Cancellation of consent: Resource consents can be cancelled if they are unexercised for a period of five years. Cancellation of a consent has the same effect as an expiry.