

**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF OF OTAGO
REGIONAL COUNCIL**

Under	The Resource Management Act 1991 (the Act)
In the Matter	of an application to alter and extend existing structures and to occupy the common marine and coastal area (RM22.550)
Between	ONUMAI ENTERPRISES LIMITED Applicant
And	OTAGO REGIONAL COUNCIL Respondent

**SUBMISSIONS OF COUNSEL ON BEHALF OF ONUMAI
ENTERPRISES LIMITED**

DATED 5 SEPTEMBER 2025



GALLAWAY COOK ALLAN LAWYERS

Bridget Irving/Gus Griffin

bridget.irving@gallowaycookallan.co.nz

gus.griffin@gallowaycookallan.co.nz

PO Box 143

Dunedin 9054

Ph: (03) 477 7312

Fax: (03) 477 5564

SUBMISSIONS OF COUNSEL

1. Onumai Enterprises Limited (**Applicant**) seek consent to alter and extend the existing structures upon an existing wharf and to occupy the Marine A (**CMA**) coastal area with those structures and a floating pontoon (**Proposal**) adjacent to Marine Parade, Taieri Mouth (**Site**).
2. Consent is sought for the Proposal under rules 7.5.1.5 and 8.5.2.5 of the Otago Regional Plan: Coast (**RCP**) as described at 5.1 of the s 42A report.
3. The Applicant wishes to be able to utilise the proposed facility for recreational purposes, including 180 nights of visitor accommodation. The proposed facility is designed to provide access to the CMA for people with accessibility challenges. The Applicant has identified a significant lack of facilities for this purpose within Otago, and more broadly.
4. The following evidence has been filed support of the proposal:
 - (a) Greg Mirams – Applicant
 - (b) Sandie Grant – Ability Adventures
 - (c) John Marrable – Access consultant and educator
 - (d) Sally Barkman - Peer Supporter
 - (e) Mike Moore – Landscape Architect
 - (f) Allan Cubitt – Resource Management Planner.
5. In summary, our submission is that:

- (a) The Proposal has a functional need to locate in the CMA;
- (b) That functional need meets the relevant tests for the purposes of the NZCPS, RPS 2019, PORPS 2021 and RCP;
- (c) That the Taieri Mouth coastal development area is the 'appropriate place' for the facility in terms of Policy 6(2)(c) of the NZCPS;
- (d) If functional need is not established, we submit that the Proposal:
 - (i) is an exception to the general threshold in Policy 6(2)(d) NZCPS; and/or
 - (ii) a structured *East West Link*¹ analysis of the NZCPS and Regional Planning documents support a decision to grant consent.
- (e) The proposal does not give rise to any significant adverse effects. Granting consent would achieve sustainable management and be consistent with obligations under the New Zealand Bill of Rights Act 1990 (**NZBORA**).

The Council's s 42A report

- 6. The s 42A report (**Report**) recommends that components of the Proposal excluding the multipurpose building should be granted. This includes occupation of the CMA with a wharf, floating pontoon, and appurtenant structures (ramps and crane with winch) for the purpose of recreational, sporting, and educational use, and emergency, civil defence, and regulatory services.

¹ *Royal Forest & Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 (***East West Link***).

7. Ms McDonald then concludes that construction and use of the multipurpose building for any type of private residential or commercial rented accommodation be *declined*.
8. The primary reason for this recommendation is that Ms McDonald considers there is no functional or operational need for an accommodation activity, or a building that is “*evidently entirely designed to support accommodation activity, to locate within the common marine and coastal area at this location*”.²
9. As a result, Ms McDonald concludes the proposal is inconsistent with or contrary to the most relevant provisions of the relevant planning documents. Ms McDonald also factors landscape and cultural considerations into her recommendation.

Matters addressed by these submissions

10. Accordingly, these submissions primarily respond to the reasons relied upon to partially decline consent, including:
 - (a) Amendments to the Proposal identified in evidence;
 - (b) Discussion of the Existing Environment and Permitted Baseline;
 - (c) Functional and operational need for the multi-purpose facility in the coastal marine area and perceived public benefits;
 - (d) Landscape and cultural effects of the Proposal;
 - (e) Consistency with the relevant planning documents; and
 - (f) Precedent effect.

² Report, at p 64.

Amendments made to the Proposal

11. The Applicant has considered the Report at length. In response to the issues raised, it is proposing to clarify the Proposal in the following ways:

- (a) Impose a limit of 180 nights per annum on overnight accommodation at the Site.
- (b) Impose a maximum of 5 consecutive nights of accommodation use.
- (c) A 3% contribution from all accommodation income will go to Taieri Mouth community initiatives.
- (d) A minimum of six days of community use per year will be made available free of charge for use by organisations including Parafed Otago, schools, government agencies, community groups, or events.
- (e) Lighting is to meet international dark sky standards.
- (f) The crane and hoist will provide clear instructions about use and will be maintained in a good state of repair. The hoist will be available for public use via an online registration system.
- (g) Guests to the facility must:
 - (i) Not complain about the odour arising from any fishing related activity; and
 - (ii) Be ready to vacate the facility when required for use by emergency services.

- (h) The final design of the facility will be reviewed by a suitably qualified access consultant to ensure that it meets accessibility requirements for disabled access.³
 - (i) Signage will be installed advising people that the wharf is public and may be accessed.
12. If consent is granted for the Proposal in full, the Applicant is comfortable with conditions reflecting the above being imposed.

The Receiving Environment and Permitted Baseline

13. To address the effects of the Proposal on the environment it is important to understand what is already there. The correct approach to analysis of the 'environment' for the purposes of s 104(1)(a) of the Act is well settled.⁴ The "environment" includes:

...the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented. ...

14. Pursuant to section 104(2), the "permitted baseline" then gives this Panel discretion to disregard an adverse effect of an activity on that environment, if a national environmental standard or Plan permits an activity with that effect.⁵

What is the existing environment?

³ Report, p 29.

⁴ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424, 442 (CA).

⁵ Resource Management Act 1991 (**RMA**), s 104(2).

15. As outlined in the evidence of Mr Cubitt, the site is located within the CMA at Taieri Mouth and sits within the Taieri Mouth Coastal Development Area or 'CDA 5' in the Otago Regional Plan: Coast (RCP).⁶
16. The CDA recognises the facilities and infrastructure in these areas, and the values and uses associated with them.⁷
17. The RCP identifies Taieri Mouth's values and uses including 'fishing' and 'recreational' facilities.⁸ It also states that CDAs are "characterised by having a mixture of structures, facilities and associated infrastructure required by the recreational and commercial activities occurring in those areas".
18. It is submitted that identifying Coastal Development Areas is a method to implement the aspects of the policy framework that recognise the need for activities/facilities to occur within the CMA, in order for access to be obtained to it.
19. The evidence of Mr Mirams and Mr Cubitt describes the nature of activities within the Taieri Mouth area and how those are evolving. This is also indicated through the consenting of a commercial takeaway café and retail outlet.⁹
20. As noted by Mr Mirams and Mr Cubitt the fishing industry's demise was clear by the 1990s following changes to how fishing quota operates and the notorious Taieri Mouth bar crossing. Whilst there were once more than 25 fishing boats operating out of Taieri Mouth, there is now one part time commercial fishing operation in Taieri Mouth. Increasingly, Taieri Mouth is becoming a holiday location for Southerners keen on a quiet beach escape.

⁶ RCP, at 5.4.3.

⁷ RCP, at 5.1.

⁸ RCP, at Schedule 2.2.

⁹ EIC of Allan Cubitt, at [19] and [57].

21. The RCP permits the following relevant activities at the Site:
- (a) 7.5.1.1 - Any activity or event which restricts or excludes public access from land of the Crown within the CMA for three days in any 12 month period where the exclusion of access is limited to an area of 0.5ha or less, disturbance of the foreshore or seabed is confined within the perimeter of the area of occupation; and other (more straightforward) criteria are met.
 - (b) 7.5.1.4 – the occupation of the CMA by any structure which is identified as a permitted activity by rules 8.5.1.1-3, 8.5.1.6-7, 8.5.2.1-3 or 8.5.4.1. Subject to conditions those structures include maimai; eel traps; stormwater discharge pipes of certain dimensions; navigational aids, telecommunication or radio equipment; and submarine cables.
22. The RCP further acknowledges that the Resource Management (Marine Pollution) Regulations regulate discharges from ships, and that no rules in the RCP control those discharges.¹⁰ The regulations permit the discharge of Grade A and Grade B treated sewage directly into the CMA from a ship moored at the Site.¹¹
23. We are not aware of any rule in the Act, Regulations or RCP that would prevent a person overnighing in a vessel moored at the wharf, so long as that overnighing is not for a period of time that would be to the exclusion of all or any class of persons.¹² Based on 7.5.1.1 above, we understand that a person could legally stay overnight at the wharf for a minimum of three consecutive days without breaching any RCP rule. Longer stays would be possible if they did not seek to restrict or exclude others from the facility.

¹⁰ RCP, at 10.1.1.

¹¹ Resource Management (Marine Pollution) Regulations 1998 (**Marine Pollution Regulations**), reg 12.

¹² We note s 12(2)(a) of the Act and the definition of 'occupy' in s 2.

24. The Applicant currently holds Coastal Permit 2006.321 which authorises the occupation of the CMA with a wharf and sheds, for the purpose of using the wharf for mooring and loading a commercial vessel and using sheds for storage of fishing and boating equipment. The current storage sheds occupy an area of 68m².
25. As noted by the Report author,¹³ 2006.321 does not require the consent holder to provide access to the wharf for the purpose of enabling public access to the CMA.
26. Nearby there are several other active coastal permits. These include 2005.728, which allows the consent holder to operate a commercial takeaway café and fresh fish outlet.
27. The above permitted and consented activities suggest an existing environment that is highly modified as outlined by Mr Cubitt. Structures and activities within this area of the CMA have a long history and several permutations.
28. The environment demonstrates a CMA that is amenable to quite liberal use by those fortunate enough to be able to operate a marine vessel. Boats utilising the area can discharge treated sewage into the CMA and overnight on a boat with few (if any) clear and enforceable restrictions. A café and fish and chip shop is considered appropriate three doors down from the Proposal.

Functional need

29. We do not focus on the functional need for the wharf, crane and hoist which seems to have been accepted by the Report author. However, we do note that these facilities are a package. The positive effects associated with the wharf facilities are reliant on the wider facility

¹³ At 6.1.2.5.

establishing a commercial model that supports the ongoing maintenance and upkeep of the assets that will be available to the public.

30. 'Functional need' is defined as "*the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment*".¹⁴
31. As outlined in the leading decisions of *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council*¹⁵ and *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council*¹⁶, the focus of the functional need definition is not on a particular *location* but instead on the need for an activity to locate in a "particular environment".¹⁷
32. For example, in the *Ngāti Awa* decision, the Court of Appeal found that the activity of water bottling had a functional need for a rural location, given that was where the water was located.¹⁸

Has functional need been established on the facts?

33. In our submission, the evidence of Mr Marrable, Ms Grant and Ms Barkman clearly demonstrates a functional need for the multi-purpose facility to locate in the coastal marine area, particularly in this location. Their reasons include:
 - (a) Despite best efforts, some disabled people cannot utilise a hoist to access a boat. A facility such as that proposed is the closest these people can come to accessing the CMA.

¹⁴ National Planning Standards 2019, Definitions Standard, 'functional need'.

¹⁵ [2022] NZCA 598 (subject to appeal to the Supreme Court) [*Ngāti Awa*].

¹⁶ [2022] NZHC 629 [*Poutama Kaitiaki*].

¹⁷ *Poutama Kaitiaki*, at [53].

¹⁸ At [152].

- (b) The facility provides passive recreation opportunities for people with disabilities.
 - (c) Beach accessible wheelchairs are generally non-existent in remote locations like Taieri Mouth and are in very limited supply in larger urban centres of Otago. There are no conventional wheelchair accessible beaches within Otago.
 - (d) The nearest accessible accommodation is in Milton, and it does not provide for carer/support person to have a separate bedroom.¹⁹
 - (e) Currently, a disabled person visiting Taieri Mouth cannot stay in the settlement after undertaking activities in the CMA, whilst their friends/family can. The facility will allow these people to stay near the activity they and their group are undertaking.
 - (f) There are additional time requirements for travel, recreation preparation and other matters for disabled people. The facility will allow the flexibility to remain at the Site before and after recreation and to change and prepare. This will enable a wider range of disabled people to engage in recreational activities within the CMA.
 - (g) The facility provides for use by emergency services as a headquarters in the event of a marine incident.
 - (h) The facility will provide an all-tide base for recreational, sporting, and education activities and events requiring access to the CMA.
34. In our view, the above comfortably demonstrates a functional need for the multipurpose facility on the facts.

¹⁹ EIC of John Marrable, at [21].

Rights based approach to functional need

35. We note the differentiation between what a disabled person experiences in terms of accommodation in Taieri Mouth and their ability to access the CMA in Otago compared to how able-bodied people experience accommodation and access in the CMA.
36. Disability is a prohibited ground of discrimination under the Human Rights Act 1993.²⁰ The New Zealand Bill of Rights Act 1990 (**NZBORA**) states that everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act.²¹
37. Section 6 of the NZBORA notes that wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in the NZBORA, that meaning shall be preferred to any other meaning.
38. With that in mind, we seek that this Panel interpret the meaning of functional need in a manner which is most consistent with preventing disabled people from experiencing discrimination. As set out in the evidence of Mr Marrable, Mrs Grant and Mrs Barkman, current access to the coastal marine area within Otago for disabled people is poor at best. Public access to the CMA is a matter of national importance in section 6 of the RMA. On that basis an interpretation of 'functional need' in this context should address the potential discriminatory experience by disabled people through lack of access provision to the CMA.

Policy approach to functional need

39. Whether a functional need is established is relevant to the policy assessment of the NZCPS, Otago RPS 2019, PORPS 2021 and RCP.

²⁰ Human Rights Act 1993, s 21(1)(h).

²¹ New Zealand Bill of Rights Act 1990 (**NZBORA**), s 19(1).

40. Mr Cubitt's evidence traverses this in detail.

NZCPS

41. A consent authority, when considering an application for resource consent, must, subject to Part 2 of the Act, have regard to any relevant provisions of the NZCPS.²²
42. The purpose of the NZCPS, is to state objectives and policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand.²³
43. In achieving those purposes, decisionmakers must recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.²⁴
44. The NZCPS must state objectives and policies regarding national priorities for maintaining and enhancing public access to and along the CMA.²⁵
45. 'Access' is not defined in the Act. It is defined in the Oxford Dictionary as *'the means or opportunity to approach or enter a place'*.
46. The various policies regarding functional need in the lower order documents stem from Policy 6(2) of the NZCPS:

Policy 6: Activities in the coastal environment ...

2. Additionally, in relation to the coastal marine area: ...

²² RMA, s 104(1)(b)(iv).

²³ RMA, s 56.

²⁴ RMA, s 6(d),

²⁵ Ibid, s 58(1)(ga).

(c) recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places;

(d) recognise that activities that do not have a functional need for location in the coastal marine area generally should not be located there; ...

47. Therefore, in accordance with this policy, if the commission agrees that the proposal has a functional need, you must recognise that and provide for it in an appropriate place.

Is the Proposed Site an 'appropriate place'

48. As noted above, the Proposal sits within the Taieri Mouth CDA. The policy reason for adopting these areas is to recognise the importance of the facilities, services and infrastructure associated with the developed areas for the social, cultural and economic well-being of Otago's communities.
49. It is submitted that the Taieri Mouth Coastal Development Area, which is established to support fishing and recreational use of the CMA is an entirely appropriate location for the Proposal. The values of the CDA are identified as fishing facilities and recreational facilities.
50. The principal reasons for adopting the CDA framework include recognising the importance of facilities, services, and infrastructure in these areas and that continued use and development of these areas is important for the wellbeing of people in Otago.
51. The evidence of Mr Marrable emphasises the need for accessible infrastructure in this location. We understand there are accessible toilet facilities in the village but they are not adequate for changing purposes. So, they do not adequately support disabled individuals engaging in water-based activities as discussed by Mr Marrable and Mrs Grant.

The evidence also indicates that the appropriate place for that may be directly adjacent to the crane and hoist, allowing users to move quickly into or out of the facility to change. This would address a number of the challenges discussed in the evidence of Mr Marrable, Mrs Grant and Barkman.

52. Beyond that, the evidence of Ms Grant and Mr Marrable notes a lack of opportunity for disabled people to experience accommodation in the coastal environment and engage in passive recreation immersed in the Coastal Marine Area. This absence is notable in Taieri Mouth, with the nearest accommodation facility more than 25km away.
53. We think that those factors indicate the Proposal is situated in an appropriate place, and is clearly a facility targeted at enhancing the recreational values of the CDA.

'Not generally'

54. If the commission determines there *is not* a functional need for the multipurpose facility to locate in the CMA, then Policy 6(2) means that *generally* it should not be located in the CMA. Such a finding is not a hard stop for this proposal however.
55. 'Generally' does not mean 'always' but 'in most cases'. Policy 6(2)(d) is not a highly directive policy. It leaves the door ajar for proposals without a functional need. It is submitted that consent may still be granted if the proposal is demonstrated as serving other policy imperatives in a manner that achieves the purpose of the Act.
56. The Report author argues that "if there is no need, functional or otherwise, for an activity to located in the coastal marine area, then it should not be located there". This is the basis for their recommendation to decline the building components of the application. It appears that this statement relies on Policy 5.4.9 of the Operative Regional Policy

Statement which directs that activities that do not have a functional need to locate in the CMA are avoided.

57. It is submitted that the ORPS does not give effect to the NZCPS with this policy, because it lacks a policy response to the more nuanced drafting of the policy 6(2)(d) and policy 18 and 19. There is clearly a gap in Policy 5.4.9 with respect to Policy 19(2)(c) of the NZCPS. There is no guidance in the chapter for disability access, which means the ORPS is incomplete in this respect.
58. There will be times when activities without a functional need *should* be located in the coastal marine area. We submit, that this is one such proposal.
59. That is because of the identified deficiencies in access for disabled people to the CMA in Otago and Taieri Mouth specifically. Granting consent to this proposal directly addresses section 6(d) and policy 18 and 19 of the NZCPS.
60. Policy 19 of the NZCPS recognises the need for walking access to and along the coast that is practical, free of charge, and safe for pedestrian use. It provides for the maintenance and enhancement of public walking access to, along and adjacent to the CMA, by identifying opportunities to enhance or restore public walking access, including where:
 - (a) Improving access would promote outdoor recreation; or
 - (b) Physical access for people with disabilities is desirable.
61. In our submission this would be one of the 'few cases' that Policy 6(2)(d) was intended to provide a gateway for on the basis that supports achievement of Policy 18 and 19. In that sense this proposal 'threads the needle' as discussed in *East West Link*.

Operative and proposed regional policy statements

62. The policy framework addressing functional need in the CMA is unusual in Otago.
63. The RPS 2019 remains operative in part whilst the PORPS 2021 is subject to appeals.
64. This would not ordinarily be problematic, but the two most relevant policies for functional need in the CMA: 5.4.9 of the RPS 2019 and CE-P10 of the PORPS 2021, differ in their approach, which requires close consideration of the question of their relative weight.
65. The 2019 RPS effectively imposes an avoid direction for activities that do not have functional need to locate in the CMA:

In the coastal marine area minimise adverse effects from activities by all of the following:

a) Avoiding activities that do not have a functional need to locate in the coastal marine area; ...

66. The PORPS 2021 on the other hand does not require functional need for all activities to locate in the CMA. Operational need and public benefit can be sufficient. The public benefit limb of CE-P10 provides for consideration of disability access issues inherent in Policy 18 and 19 of the NZCPS which addresses the deficiency identified in ORPS 2019 Policy 5.4.9 discussed above.

What weight should be afforded to the policy statements?

67. A consent authority must, subject to Part 2, have regard to any relevant provisions of a regional policy statement or proposed regional policy

statement.²⁶ That means both policy statements are relevant to the assessment of this application. However, the weight to be given to their respective provisions may be different.

68. There is limited case law that specifically addresses weight to be given to operative and proposed Regional Policy Statements. However, there is extensive jurisprudence on the approach to reconciling an operative and proposed plan. We submit that there is no reason to differentiate approaches.
69. When a plan and a proposed plan are inconsistent (or in this case policy statements), it is a matter for the decision-maker to assess the weight that should be given to one over the other. There are several established principles governing the extent to which a proposed plan should prevail over an operative plan or vice versa.²⁷ The assessment will depend on the circumstances. Including, the stage the new document has reached and whether the proposed document represents a significant shift in policy.²⁸
70. The 2019 RPS completed the statutory process and is operative. However, as discussed above it is submitted that the relevant provisions are incomplete and inconsistent with higher order policy because it does not address disabled access in the CMA and does not 'keep the door ajar' for activities without a strict functional need consistent with NZCPS policy direction.
71. The PORPS 2021 has been through public submissions and hearings process resulting in a decision. Aspects of the PORPS remain subject to appeal including CE-P10.²⁹

²⁶ RMA, section 104(1)(b)(v).

²⁷ *Soroka v Waikato District Council* [2023] NZCA 510, at [53].

²⁸ *Keystone Ridge Ltd v Auckland City Council* HC Auckland AP24/01, 3 April 2001 at [16]-[17].

²⁹ Environment Court appealed provisions table, 24 June 2025.

72. *Hanton v Auckland City*³⁰ provides that the weight to be given to a proposed plan is generally greater the further the relevant provisions have been exposed to testing along the statutory course prescribed by Schedule 1.
73. CE-P10 has been through a public process and tested. On that basis it can be given weight.
74. Further, where there has been a significant shift in Council policy (as here) and the new provisions are in accordance with Part 2 of the Act (or better reflect higher order policy direction) greater weight can be afforded to the new provisions.³¹
75. We note the evidence of Mr Ellison for Te Rūnanga o Ōtākou regarding the preparation of the PORPS 2021 in this respect.
76. Consent Orders have issued with respect to the Mana Whenua chapter of the PORPS 2021 meaning that they are operative.³² In that respect the provisions of the PORPS 2021 should 'prevail' with respect to the manawhenua chapter.
77. In our submission the relevant 2021 PORPS provisions address the deficiencies identified in the ORPS 2019 provisions. This is through the inclusion of reference to 'operational need' which responds to NZCPS Policy 6(2)(d). Further, through CE-P10(4) Policy 18 and 19 are addressed more effectively.
78. As noted by Mr Cubitt, even if the Panel views Policy 5.4.9(a) as carrying significant weight, a 'structured analysis' approach³³ to the

³⁰ Planning Tribunal Auckland A10/94, 1 March 1994, at [32].

³¹ *Keystone Ridge v Auckland City Council*, High Court Auckland, AP24/01, 3 April 2001, at [16].

³² See Consent Orders at: <https://www.orc.govt.nz/your-council/plans-and-strategies/otago-regional-policy-statements/2021-otago-regional-policy-statement/appeals-porps-2021/environment-court/appeals/>

³³ *Port Otago Ltd v Environmental Defence Society* [2023] NZSC 112.

various policy documents in the context of the test in the *East West Link* case establishes this proposal as a genuine on-the-merits exception that “threads the needle”. *East West Link* established that “a genuine, on-the-merits exception, ... will not subvert a general policy, even a directive one” where it is consistent with the sustainable management purpose of the Act. The policy direction of the NZCPS indicates to Mr Cubitt that accessible facilities in the CMA promotes sustainable management.

79. Overall, we submit that more weight should be afforded to the PORPS 2021 in this instance. The document has progressed a long way through the Schedule 1 process and addresses many of the deficiencies of the RPS 2019 provisions.

RPS 2019

80. The above discussion focusses on the key provisions of the RPS'. Below we discuss the wider policy framework as we consider relevant to this proposal.
81. Policy 1.1.2 of the RPS 2019 is to provide for the social and cultural wellbeing and health and safety of Otago's people and communities when undertaking the subdivision, use, development and protection of natural and physical resources including by taking into account the “diverse needs” of Otago's people and communities. It is notable that recognition of diversity does not ‘filter down’ into the Coastal Chapter such that it reflects the direction in Policy 19 of the NZCPS.
82. As discussed above, to prevent such access would, on the evidence, not provide for the interests of those people, in a way that could be considered discrimination in terms of the Human Rights Act 1993 and the NZBORA. The latter enactment requires legislation to be interpreted consistent with providing for those interests wherever

possible.³⁴ As a matter of statutory interpretation it is submitted that what constitutes 'functional need' and 'access' needs to respond to the needs of disabled people consistent with NZBORA and in order for sustainable management to be achieved.

83. In light of the evidence presented by Mr Marrable, Ms Barkman and Ms Grant it is submitted that there is currently a deficiency in the provision of access to the CMA for disabled people. That deficiency effects their wellbeing and health and safety. Their evidence also demonstrates that the proposal would be a significant step towards addressing this deficiency and is a direct response to section 6(d) and NZCPS Policy 18 and 19.

PORPS 2021

84. The decisions version of the RPS 2021 coastal chapter provides no explicit guidance on access for disabled persons to the CMA. CE-O2 does not pick up on Policy 19(2)(c).
85. Objective CE-O5(3) of the RPS 2021 notes that activities in the coastal environment are only provided for within appropriate locations and limits acknowledging that some activities have a functional need to be located in the coastal environment.³⁵ As outlined above, we think the coastal development area is an appropriate location for the Proposal.
86. CE-O5(4) notes that activities in the CMA are to maintain or enhance public access to and along the CMA, including for customary uses, such as *mahika kai*, except where public access needs to be restricted for reasons of health and safety or ecological or cultural sensitivity.
87. CE-P10 notes that use and development in the CMA must:

³⁴ NZBORA, s 6.

³⁵ CE-O5 is subject to appeal.

(1) Enable multiple uses of the CMA wherever reasonable and practicable, **and** ...

(2) maintain or improve the health, integrity, form, function and resilience of the CMA, **or**

(3) have a functional need or operational need to be located in the CMA, **or**

(4) have a public benefit or opportunity for public recreation that cannot practicably be located outside the CMA.

[**emphasis** added]

88. Clauses (2), (3) and (4) are notable in that they are disjunctive. Therefore, absence of functional need is not fatal.

Multiple uses (1)

89. The Proposal for recreational purposes provides for multiple uses including accommodation, emergency use, event use, recreational day use and, disabled access to the CMA for active and passive recreation opportunities. It is submitted that limb (1) is satisfied.

90. Based on the evidence, those uses are both reasonable and practicable.

91. Of the remaining 3 limbs of which one must be engaged:

- (a) Limb (2) – the proposal will have no consequences on the health, integrity, form, functional and resilience of the CMA.
- (b) Limb (3) - relates to functional or operational need. As noted above, we think that functional need has been established to locate in the CMA at this location. We further submit that the

Proposal has an operational need to locate at the Site.

‘Operational need’ means the “*need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints*”.

Specifically, we think that much of the evidence for operational need is explained in the evidence of Mr Mirams and Mr Marrable, including:

- (i) To facilitate the crane and hoist, a changing room is required for users to be able to prepare for and clean up after use.
- (ii) Disability recreation generally takes longer than other recreation because of preparation and travel logistics. The facility provides an operational base for the activities. The nearest other alternative is more than 20km away.
- (iii) The proceeds from the facility are required to build and maintain the wharf infrastructure to make the operation feasible. This enables the provision of the publicly available infrastructure that supports achievement of NZCPS Policy 18 and 19.

If functional need is not established, we think the operational need for the facility is established on the evidence. On that basis, limb (3) is also met.

- (c) Limb (4) - requires the activity to have a public benefit or opportunity for public recreation that cannot practicably be located outside the CMA. In our submission, that public benefit test has clearly been met, on the evidence of Mr Marrable, Ms Barkman and Ms Grant.

- (i) The access provided by the proposal will improve public access to the CMA. Currently the wharf is closed off and public access from it is not available. The proposal will ensure that public access is available both through the ability for the public to book the facility for use, and through maintenance of public access to the wharf structure including the provision of disabled access which is currently poorly provided within Taieri Mouth and Otago more widely.
- (ii) As discussed by Mr Marrable and Mrs Grant, they expect the provision of disabled access will become well known amongst the disabled community creating somewhat of a magnet for the area. As noted by Mr Mirams, signage is offered to ensure that people understand their ability to access the wharf area. This is an improvement on the status quo.
- (iii) Further, with the nearest accessible accommodation located 20km away, the Proposal will provide an opportunity for passive recreation at the coast which simply cannot be provided elsewhere. The coastal location, wharf infrastructure and associated changing and accommodation facility would address the deficient public access and provision of public recreation opportunities for disabled people. In providing for it in Taieri Mouth, it is an area that is specifically identified for its recreational use and values under the RCP. It cannot practicably be located elsewhere nor outside the CMA.

92. We think that, on the evidence of Mr Marrable, Mr Mirams, Ms Grant and Ms Barkman, both the multiple uses and public benefit elements are clearly satisfied by the Proposal.

Landscape matters

Council's view on landscape matters

93. The Report author notes, based on Ms Annan's evidence, that her recommendation factors in "the finding that the residential character of this building will not appropriately integrate into the landscape setting, resulting in minor adverse effects on landscape values".
94. The Site is not within an area of high or outstanding natural character. Ms Annan agrees with Mr Moore that the Proposal will have very low (adverse) effects on natural character.
95. The primary issue for Ms Annan was how effectively the Proposal can be integrated into the setting.
96. Overall, Ms Annan concludes that the activities proposed by the Applicant are expected to result in minor adverse landscape effects in the setting.
97. The Council's position on landscape matters seems to be that area should be maintained in its untidy and rundown state. This does not allow for gradual improvement of amenity values which would seem to be inconsistent with ss 7(c) and (f) of the Act. Those provisions require that amenity values and the quality of environment should be maintained and *enhanced*.
98. It is submitted that there is a logical disconnect between the use of the structures, and the suggestion of the need to be scruffy and utilitarian.
99. This is also inconsistent with Policy 8.4.5 of the RCP:

Policy 8.4.5 New and existing structures will be required to be maintained in a structurally sound and tidy state, and should blend as

far as is practicable with the adjoining landscape to minimise the visual impact of that structure on the character of the area.

100. That Policy suggests that the existing structures are not meeting the relevant policy objectives required under the Plan. This proposal provides an opportunity for visual impact to be better managed.

The gate

101. Ms Annan also notes the illusion of privacy imposed by the gate at the facility.
102. The existing consent does not require public access to be maintained to the wharf. Currently the gate is locked at the wharf because the Applicant cannot secure one of the containers housing equipment. At last count in September 2024, out of 10 wharves in the area, 6 were either locked or inaccessible. Two could be openly used.
103. The Applicant proposes to install signage making it clear that the wharf is accessible. As set out by Mr Mirams, there will be a website that provides information about the hoist. The purpose of the fence is to ensure that people operating a wheelchair can do so safely.
104. Insofar as Ms Annan argues that the gate implies private space (which we do not agree with), we note that there is currently no public access to the facility. So, the gate signage is an improvement on that position.
105. Mr Marrable and Mrs Grant both refer to the likelihood that the availability of the facility for disabled access will become well known within those circles and that people will likely travel specifically to utilise it.

Dark sky matters

106. Ms Annan also notes concerns about light pollution from the Proposal.
107. At the pre-hearing it was recorded that no submitters had concerns about this matter.
108. However, for the avoidance of doubt the Applicant is proposing dark sky lighting, to mitigate any potential adverse effects.

Applicant's evidence on landscape

109. The evidence of Mr Moore for the Applicant is that the effects on landscape values will be neutral or positive and the change in character from a fishing industry related structure to a recreational/accommodation structure will have a very low impact on natural character.
110. He considers it to be changing from commercial fishing to recreation in use, both of which are recognised values within the CDA. Mr Moore considers that the proposed structure will clearly read as a live in boatshed and will not appear out of place in terms of scale or character.
111. He further concludes that the proposed development would integrate readily into the setting and would improve visual amenity. In summary he concludes that the structure would be an element of visual interest in the landscape that reflects the changing use of the Taieri Mouth CDA.

Overall conclusion as to landscape

112. Overall, the landscape experts agree that the adverse effects of the Proposal will be no more than minor. Mr Moore thinks there will be some minor positive effects on amenity.

113. In our submission, the area has no significant landscape or natural character values. In these circumstances, the policy regime under the RCP provides for regard to be had to the values of the CDA.
114. In our submission, a structure that visually looks like a boat shed and is used for recreational purposes is entirely consistent with the landscape character of the CDA, and will fit comfortably into the landscape.

Cultural values

115. The s 42A author also notes that her recommendation factors in “the potential adverse effects on cultural values, which are currently not well understood”.
116. Aukaha submitted on behalf of Te Rūnanga o Ōtākou. Its key concerns with the Proposal relate to:
- (a) Potential cumulative impacts
 - (b) Functional need and policy direction
 - (c) Public access
 - (d) Precedent
117. Functional need, public access and policy direction have been addressed in detail above. The residual concerns relate to cumulative impacts and precedent setting.
118. As described in Mr Mirams’ evidence, the Applicant made numerous attempts to engage with Aukaha. For whatever reason, Aukaha did not agree to meet despite advising on two occasions that they would. There wasn’t an opportunity for discussion to occur.

119. As a result, the Applicant has made the best possible attempt to address cultural effects to the extent these are within its knowledge.

Cumulative impacts

120. The Rūnanga submission notes that

With the introduction of new residential and rental accommodation, this means there will be new and heightened movement, lighting and noise that one would not typically expect to see in the coastal marine area of Taiari Mouth.

121. Those effects seem to relate to lighting, noise, and potentially an increase in people in the area. The accommodation aspect is squarely addressed by the above functional need assessment.
122. Concerns relating to lighting and increase in activity are landscape effects and assessed by Mr Moore's evidence. Further to that the CDA requires regard to be had to the recreation values derived from use of the area. The effects identified in the submission all arise from recreational use of the area which are specifically recognised as being important (and not unanticipated) in this location.
123. Mr Ellison also discusses the possibility that the proposed facility will entrench a sense of displacement and disconnection. Based on the evidence from the Applicant's witnesses the proposal would appear to provide an opportunity for iwi whanau who deal with the challenges articulated by Mr Marrable, Ms Grant and Ms Barkman to reconnect with the Coastal Marine area. It is accepted that some may feel the way that Mr Ellison expressed, others will also benefit through provisions of access to the CMA that was not achievable previously.
124. Noise effects are not considered to extend beyond those provided for in the existing environment. There are several consented commercial

consents nearby relating to commercial fishing vessels and the cafe/fish and chip shop. The sound of fishing activities in the early hours and late evenings is likely to be of a nature and volume that will be more pronounced than those from the Site.

125. Further, the nature of the cafe and fish and chip shop will create a node of more intensive activity. Equally, people can occupy boats in the area and the activities they undertake will be similar to that occurring at the application site. None of which is out of character for the area.

Precedent setting

126. Rūnanga have concerns that if granted, this application will set a precedent which will allow similar activities to occur along the coast in areas that are of ancestral and contemporary significance to Rūnanga.
127. We understand the concern that if consent for this is granted, others will follow. But we think that is misplaced because of the uniqueness of this proposal in providing for disability accommodation and access. It represents a true exception that is unlikely to be replicated widely.
128. We think this point is again addressed with reference to the Taieri Mouth CDA. The coastal development area identifies those parts of the Otago coastline where development is appropriate. Therefore development within this CDA could not be used as a precedent for development within the wider CMA.
129. Having identified a deficiency for disability access, the CDA area is the appropriate place to address the issue, given its purpose.
130. If the Proposal is granted in this location the 'deficiency' associated with provision of disabled access within this CDA is addressed.

Another facility would not be necessary and future applications could be declined on that basis.

131. There could be other proposals advanced in other CDAs. However, each of them has different characteristics. For example, the argument for this type of facility in the Otago Harbour may not be successful given the proximity of accessible accommodation within Dunedin, that there are a wider range of facilities available to support access to the CMA (including the hoist referred to by Mr Marrable and organisations such as Sailability).
132. It may also be that this facility would lessen the necessity for similar facilities on the Otago coastline.
133. In that sense, we see no precedent being created by the Proposal. Any future application would need to demonstrate a similar need, relating to a matter of national significance like s 6(d). Those circumstances will be few and far between. Whilst we can understand that anxiety around the potential for a proliferation of facilities we do not consider that a realistic prospect and do not consider that precedent effects will arise.
134. They may even be positive effects in providing for a sector of the community that currently has no access to the CMA for recreational purposes.

Conclusion

135. In summary, our submission is that:
 - (a) The Proposal has established functional need for the multipurpose facility on the evidence;
 - (b) That functional need meets the relevant tests for the purposes of the NZCPS, RPS 2019, PORPS 2021 and RCP;

- (c) That the Taieri Mouth coastal development area is the 'appropriate place' for the facility in terms of Policy 6(2)(d) of the NZCPS;
- (d) Even if functional need is not established, we submit that the Proposal:
 - (i) meets the exceptions to the 'generally' rule in Policy 6(2)(d) NZCPS; and/or
 - (ii) a structured *East West Link* analysis of the NZCPS and RPS 2019 supports a decision to grant consent; and/or
 - (iii) meets the multi use, operational need and public benefit tests in CE-P10 of the PORPS 2021.
- (e) Further, if the Panel does not agree that it meets those exceptions, the Proposal should still be consented in order to give effect to Part 2 of the Act and constitutional considerations. Namely the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990.

136. The evidence demonstrates that landscape and cultural effects are no more than minor and consistent with the relevant objectives and policies.

137. On that basis, we submit that consent for the Proposal should be granted .

Dated 5 September 2025

Bridget Irving / Gus Griffin

Counsel for Onumai Enterprises Limited