

**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

EVIDENCE OF PETER ALLAN CUBITT (PLANNER)
DATED 26 AUGUST 2025



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BRIEF OF EVIDENCE OF PETER ALLAN CUBITT (PLANNER)

Introduction

1. My name is Peter Allan Cubitt (Allan). I am the Principal of Cubitt Consulting Limited that practices as planning and resource management consultants throughout the South Island, providing advice to a range of local authorities, corporate and private clients. I hold Bachelor of Arts and Law Degrees from the University of Otago. I am an affiliate member of the New Zealand Planning Institute and have been involved in resource management matters since 1989.
2. During this time, I have been involved in many aspects of planning and resource management throughout the South Island. I was the principal author of three District Plans prepared under the Resource Management Act, being the Southland, Central Otago and Clutha District Plans. I have also participated in the review of numerous District and Regional Plans throughout the South Island for a large range of private clients.
3. I am also a Certified Hearings Commissioner (Chair certified). I have conducted numerous hearings on resource consent applications, designations and plan changes over the last 25 years for the Dunedin City Council, the Clutha District Council, the Southland District Council, the Invercargill City Council, the Timaru District Council, the Waitaki District Council, the Hurunui District Council, the Grey District Council, the Waimakariri District Council, the West Coast Regional Council, the Otago Regional Council, and the Southland Regional Council.
4. I was also the Chair of Environment Southland's Regional Policy Statement Hearings Panel and the Chair of the Hurunui District Council Hearings Panel on the proposed Hurunui District Plan. I have just recently been part of the Hearings Panel for the Waimakariri District Plan and relevantly for this proposal, the proposed Otago Regional Policy Statement 2021.

5. Accordingly, I am very familiar with the relevant Otago Regional Policy Statements and plans, and the other relevant statutory planning documents. I am also familiar with the application site and the surrounding environment. Cubitt Consulting Limited prepared the resource consent application documentation for the proposal.
6. While this is a local authority hearing, I have read and agree to comply with the Code of Conduct for Expert Witnesses set out in the Environment Court Practice Note on Alternative Dispute Resolution, Expert Witnesses, and Amendment to Practice Note on Case Management. My evidence has been prepared on that basis.

Scope of Evidence

7. My evidence focusses on the issues where Ms McDonald and I are not aligned. Ms McDonald largely considers the proposal acceptable under all relevant assessment matters except in relation to the application of the 'functional need' policy framework to the accommodation aspect of the proposal. Her view that there is no 'functional need' for the accommodation use in the CMA forms the basis for her recommendation to decline that part of the application. Hence, my evidence largely focuses on this matter, and the wider policy direction of the various planning instruments. There are also other areas of minor disagreement, mainly in relation to the degree of adverse effect on landscape character and the benefits of the proposal. I also touch on the precedent issue.
8. Accordingly, I cover the following matters below:
 - The site and the proposal
 - Planning Framework
 - Functional Need
 - Amenity and Landscape Effects
 - Cultural Effects
 - Conclusion on Environmental Effects
 - Relevant Policy Framework

- Precedent Effects
- Summary and Conclusions

The Site and the Proposal

9. The site and proposal have been fully described in the application documentation (both the AEE and Mr Moore's report), the s42A report and in the evidence of Mr Mirams and Mr Moore. I do not repeat that here but highlight below the key components of both the site and the proposal that are significant to the assessment of this proposal.
10. The site is located within Coastal Marine Area (CMA) at Taieri Mouth. The CMA ends at the Taieri Mouth Road bridge, and the true right of the riverbank south of the bridge to Hanning Place is developed to service the fishing industry and recreation activities. A large boat launching area is located just south of the bridge with the commercial wharves stretching from the launch area south to Hanning Place. As detailed in Ms McDonald's s42A report, there are 11 coastal permits issued for this area. Most relate to the mooring, loading, and unloading of commercial vessels, along with associated buildings used for storage of fish and fishing equipment. Of note is Coastal Permit 2005.728 which enables the operation of a commercial takeaway cafe and a fresh fish retail outlet.
11. This area is identified as 'Coastal Development Area' 5 (**CDA5**) in Schedule 2 of the Regional Plan: Coast for Otago (**RPC**). The RPC only identifies five (5) such areas, all of which are relatively well confined, including the Otago Harbour CDA which seems to focus on Port Chalmers, the inner-city wharves and the shipping channel and associated navigation infrastructure. None of the eastern side of the Otago harbour (which contains numerous boatsheds) is shown as CDA. The Steamer Basin is identified as Coastal Harbourside Area, which contains a wider range of values including 'tourism facilities' and 'water facilities well integrated with land facilities'.
12. Coastal Development Areas *"are characterised as having a mixture of structures, facilities, and associated infrastructure required by the recreational*

and commercial activities occurring in those areas.”¹ The specific values identified for CDA5 are “fishing facilities and recreational facilities”.

13. While this location is identified as CMA, it is more properly identified (geographically) as being located on the bank of the tidally influenced Taieri River. Of the five (5) CDA’s identified in RPC, only Taieri Mouth and Karitane are not located within a harbour, while only Taieri Mouth is not adjoined by Coastal Protection Areas (**CPA**). The CPA is described as:

*“... those areas below the line of mean high water springs that are considered to be of **regional, national or international importance in terms of their ecological and scenic values, and including those areas having spiritual or cultural significance**. All estuarine areas along Otago’s coast have been included in the coastal protection area because they are particularly valuable in terms of biological productivity. Kai Tahu, in accordance with tikanga Maori, have also identified areas that contain important cultural or spiritual values which the plan provides recognition for.” [my emphasis]*

14. This particular part of the riverbank adjoins what the Clutha District Plan identifies as a formed legal road (Marine Parade), although this area also incorporates land administered by LINZ which sits between the road reserve and the riverbank. However, for all intents and purposes, it operates as legal road, with associated parking adjacent to the carriageway.
15. This area was significantly modified in the 1950’s when the rock bluff behind the wharf area was blasted/excavated to source rock to reclaim part of the riverbed and reform the road to facilitate the development of the area. The land beyond the road to the west is not zoned ‘Coastal’ but is zoned ‘Urban’ in the Clutha District Plan (CDP). There are areas of ‘Coastal’ zoned land to the southeast along Kingston Terrace and directly to the northeast, across the river. There is no landscape, heritage, cultural or biodiversity overlays across

¹ Schedule 2.2 Regional Plan: Coast for Otago (Updated to 1 August 2025)

the site or the adjoining urban zone. Hence, the surrounding land area is also available for development.

16. The proposed use is multipurposed. The coastal permit sought would enable both public and commercial use, similar to what is currently provided for in the CDA5 by Council under Coastal Permit 2005.728. What sets it apart, however, is that the commercial use is not related to fishing, fishing charters, retail fish sales or a takeaway cafe, but would provide a unique accommodation experience, with a focus on enabling people with disabilities to access and experience the coastal environment. The uses are an interconnected package. A number of the public benefits will not accrue if the commercial aspect cannot operate. This is a simple matter of economics.
17. The proposed use does not extend the footprint of the existing wharf structure and does not involve any disturbance to the CMA. Nor does it involve any discharge of stormwater, greywater or effluent into the CMA or the adjoining environment.
18. Some changes have been made to the proposal as originally lodged. These mainly relate to building design in response to the landscape architect's peer review. I share Mr Mirams concern that these changes tend to reduce the utilitarian appearance of the building somewhat so are not ideal. Mr Mirams' evidence also outlines a number of limits proposed on the accommodation aspect of the proposal.
19. The foregoing confirms that the site is:
 - A highly modified, essentially human-made landscape with little in the way of natural coastal character;
 - That the site and the adjoining environment has not been identified as having any special values in terms of landscape, heritage, biodiversity or cultural matters in either the CDP or the RCP.

- That it is one of the few areas in the Otago's identified CMA that has been identified for ongoing development, reflecting its 100-year plus commercial history;
- That Council has recognised the changing nature of this CDA by consenting a commercial takeaway cafe and retail outlet on a neighbouring wharf.

20. In my view, these factors weigh heavy in the outcome of this proposal.

Planning framework

21. Ms McDonald addresses the relevant rule framework in her section 5. She confirms that the proposal is a **discretionary activity** under Rule 8.5.2.5 (for the building work) and Rule 7.5.1.5 (to occupy the CMA) of the RCP. There seems to be some confusion at section 5.1 over what structures have been applied for in terms of the occupation permit. The initial application was merely to roll over the occupation part of the activity, which I understood included the floating pontoon. The associated ramp was built by Mr Mirams to enable wheelchair access to the pontoon, but it would seem unnecessary to require consent for this given it essentially sits on top of the wharf/pontoon structures, much like a chair would. However, it appears that if these structures have not been previously consented, Ms McDonald has accepted that the application is framed in such a way that this will be rectified under this consent, if granted.
22. Ms McDonald has also noted the need to get an earthworks consent if the accommodation aspect of the proposal is granted. That is acknowledged but is not sought through this process because the extent of such works is unknown. The effects associated with those works are discrete and best dealt with subsequently when the full detail of them is able to be known.
23. At her section 6.1.2.1, Ms McDonald discusses a number of general matters relevant to the assessment of applications under s104 of the Act. She does not consider the permitted baseline to be applicable to this case. However, my

understanding is that there is no rule or law that restricts people from living aboard a boat tied to a wharf or moored further out in the water. That activity comes with all the attendant effects of an accommodation activity such as night light, noise, the coming and going of people, and in particular, the storage of effluent over the CMA. The storage (and discharge) of effluent in the CMA is in fact widespread through the many boats that ply their trade throughout our coastal waters, in particular fishing boats that spend many nights at sea and may discharge their wastewater in accordance with the Resource Management (Marine Pollution) Regulations 1998. If there is an environmental effect or a cultural effect arising from this activity, there are many permitted activities already generating that effect. The proposal does not seek to discharge wastewater to the CMA.

24. Ms McDonald also outlines the receiving and existing environments in this section. In terms of the receiving environment, I would note her identification of the dilapidated nature of the existing development within the CDA along with the urban catchment that surrounds it. I would highlight the observations I have made in paragraphs 14 and 15 above – the receiving environment is highly modified, which is also relevant in terms of the existing environment. While Ms McDonald has identified the numerous consents that enable the mooring, loading, and unloading of commercial vessels (which permits a range of noise and lighting effects), she has not identified the commercial ‘takeaway café and fresh fish shop’ enabled by Consent No: 2005.728_V1 in this section of her report. These are commercial activities that economically benefit the consent holder and which would appear to have the same effect raised at the top of page 33 of her report (under the ‘In Principle Opposition’) regarding private use and financial gain and the various references to the ‘sense of privatisation’ made throughout the report (see last paragraph page 28, for example). I note that iwi provided written approval to this application. Nor do these uses have a functional need to be in the CMA. While I acknowledge that the NZCPS 1994 did not include the ‘functional need’ concept, the RCP was made operative on 1 September 2001 (therefore pre-dating 2005.728_V1) and includes a policy

requiring consideration of “*whether or not a coastal location is required, and to any other available practicable alternatives*”.²

25. Ms McDonald sets out the relevant planning documents at her section 6.3 (along with those that are not relevant). I agree with her conclusions here although in my opinion many of the provisions she discusses from these documents are not overly relevant to the assessment of this proposal while a number of important policies have not been considered. I will address this further in my assessment of the key issues below.
26. I would also comment that I don’t necessarily agree with Ms McDonald at section 6.3.7 that both the operative and proposed Otago Regional Policy Statements have been prepared to give effect to the NZCPS. I note the 2021 RPS is not settled while neither of these documents picks up all the policy direction relevant to this proposal.
27. I would also comment that Ms McDonald also states here that “*the relevant regional plan, the RPC, was first operative in 2001, has not changed since 2012,³ and was not prepared to give effect to the NZCPS. As such, less weight is afforded to the provisions in the RPCRCP*”. The NZCPS was gazetted in 2010 so one would assume the 2012 changes ensured consistency with that document. The first page of the RPC in fact notes that changes were made in December 2011 to address the NZCPS.

Functional Need

28. Ms McDonald’s primary reason for recommending the decline of the accommodation element of the proposal “*is that 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, and hence, the proposal is inconsistent with or contrary to the most relevant provisions of the relevant planning*

² Policy 7.3.2.

³ Except for July 2025 amendment to include aquaculture settlement areas.

documents". She notes that *"Although the relevant planning documents have been implemented at different times and with different emphasis, I consider that in respect of the provisions of most relevance to this application these documents are relatively consistent and are not in conflict."* This is an understandable conclusion for Ms McDonald to reach given the application did not go into great detail around one of the driving forces behind this application, the provision of access to the CMA for people with a disability to experience and enjoy the coastal environment. As highlighted in the evidence of Mr Mirams, the applicants have witnessed first hand the struggles people with physical disabilities have in this regard.

29. Extensive evidence on this need and the lack of provision for it is provided by Mr Marrable, Ms Barkman, and Ms Grant.
30. This need is recognised in the NZCPS. Objective 4 recognises that the CMA *'is an extensive area of public space for the public to use and enjoy'* and accordingly *'public open space qualities and recreation opportunities are to be maintained and enhanced'*. Policies 18 (Public Open Space) and 19 (Walking Access) seek to implement this objective. This policy direction is also reflected in Policy 6(2)b) which provides for activities within the coastal environment.
31. Policy 18 recognises the need for public open space within and adjacent to the coastal marine area that can be used and appreciated by the public. This includes *'active and passive recreation'*. The policy requires the provision of such public open space.
32. Passive recreation is commonly understood to typically involve low-impact activities that do not require significant physical exertion, allowing people to enjoy nature and relax. This is particularly important to the disabled community who do not always have the ability to undertake more strenuous active recreation activities, or who have difficulty accessing many locations where passive recreation opportunities exist.

33. Difficulties arise when attempting to achieve these policy outcomes for people with disabilities. It is very difficult for such people to experience the coastal environment let alone be within it, as highlighted in the evidence of Mr Marrable, Ms Barkman, and Ms Grant. While Policy 19 relates to walking access (which is probably the reason Ms McDonald has not considered it in this context), it directs that access to, along and adjacent to the CMA be maintained and enhanced. Crucially for this case, this includes by:

(c) identifying opportunities to enhance or restore public walking access, for

example where:

(i) connections between existing public areas can be provided; or

*(ii) **improving access would promote outdoor recreation; or***

*(iii) **physical access for people with disabilities is desirable;***

[my emphasis]

34. The evidence is that physical access (as opposed to walking specifically) for people with disabilities is clearly desirable and sought after but is extremely limited, particularly in this region. Improving this access would also support outdoor recreation opportunities for disabled people. Ms Grant has outlined a number of other strategies and statutes that address this same concern. However, it is the RMA that provides the framework to ensure this is provided. And this Act identifies public access to and along the CMA as a matter of national importance (s6(c)).
35. The current focus of this particular location is to facilitate access to the wider CMA through providing the wharf structures that allow the loading and unloading of boats. Ms McDonald agrees that the hoist/crane to facilitate disabled access to vessels does have a functional need to be in the CMA. This facilitates the 'active' component of recreation needs for the disabled but does not facilitate the 'passive' component which is often the limit for many disabled people. The accommodation over the water aspect of the proposal addresses this need as it affords this community the opportunity to relax and enjoy this

environment, providing the experience of being on the water. The importance of this is highlighted in Ms Barkman and Ms Grants evidence. Accessible accommodation in this location also addresses the many issues that disabled people experience when partaking in active recreation as highlighted by Mr Marrable at his paragraph 16 and Ms Grant at her paragraph 20.

36. In my view, it would not be appropriate to sever the accommodation part of the application. The accommodation is accessible to the disabled community, so it provides the functional and operational infrastructure to enable this community to use and enjoy the CMA in accordance with the NZCPS public space and access policy direction as set out above.⁴

37. The relevant 'functional need' policy framework is as follows:

Policy 6 Activities in the coastal environment

....

(2) Additionally, in relation to the coastal marine area:

a) 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;

*b) recognise that activities that do not have a functional need for location in the coastal marine area **generally** should not be located there; and*

38. The evidence of Mr Marrable, Ms Barkham and Ms Grant indicates to me that accessible accommodation does have a functional need to locate within the CMA, so the first part of subsection (a) is met. An appropriate place to provide for that, the second part of subsection (a), is a CDA that provides access to the wider coastal environment, in an area that does not contain the sensitive values often associated with coastal environments (such as biodiversity values, high landscape and natural character values, and cultural values).

39. The Taieri Mouth CDA meets these criteria. The values associated with it are identified as "fishing facilities and recreational facilities" but as both Mr Mirams and Mr Moore have noted, the area is essentially transitioning to a more

⁴ I note that this policy direction was also in the NZCPS 1994 so should have been identified as an issue by the RCP 2010.

recreation focus. Accommodation is an activity that is ancillary to, and enabling of, recreation activities. It is not unusual to find zones that enable people to access and appreciate landscape values which permit accommodation (but not general residential activities) in areas where it might not otherwise be considered appropriate (see, for example, the Rural Visitor zone in the Queenstown Lakes District Plan.) This also occurs in our National Parks, which contain our most sensitive and outstanding environments. Provision is made for people to access and enjoy these environments through sensitively placed accommodation.

40. In my view, the Councils consenting of the commercial takeaway café reflects the transition occurring in the CDA. Furthermore, a takeaway café can also be considered ‘ancillary’ to recreation activities much the same as accommodation is. I note the decision report for this coastal permit stated:

*As the nature of the coastal area of Taieri Mouth is well developed with structures, and is recognised as a CDA, it is considered appropriate in this instance to allow the use of the sheds for commercial activities. The granting of the variation **will be in keeping with the development values associated with the area.** [my emphasis]*

41. Accommodation in the CMA is not unusual in other parts of the country although I am not aware of such facilities in Otago. Even if the Commission did not find there is a functional need under Policy 6(2)(a), the policy is not a direct ‘avoid’ policy. Subsection (2)(b) states that activities that do not have a functional need should generally not be located in the CMA. This is not the same thing as these activities must be ‘avoided’ in the CMA. The normal meaning of ‘generally’ is ‘in most cases’; ‘usually’ so there will always be exceptions to the rule.
42. Given the strong policy thread in the NZCPS that highlights the importance and need for public space and access in the coastal environment, along with the need to enable passive and active recreation including for people with disabilities, a proposal of this nature is one that would fit within the exception

to the rule as provided for by subsection (2)(b). The evidence of Mr Marrable, Ms Barkham and Ms Grant highlight the lack of accessible access and facilities in the CMA, and the need and desire for them to be developed.

43. As required, the ‘functional need’ concept has been reflected in the lower order policy statements and plans but in my view, somewhat inconsistently and inaccurately. Policy 5.4.9(a) of the 2019 RPS is a straight ‘avoid’ policy, which does not reflect the more nuanced approach of the NZCPS. While it does require the maintenance and enhancement of public access to the natural environment, there is no direct recognition of Policy 19(c)(iii) of the NZCPS. However, Objective 1.1 and Policy 1.1.2 recognise the need to promote the wellbeing of people, which needs to take into account the ‘diverse needs of Otago’s people and communities’.
44. If the Commission views Policy 5.4.9(a) as carrying significant weight, I believe a ‘structured analysis’ approach⁵ to the various policy documents in the context of the test in the *East West Link* case⁶ would establish this proposal as a genuine on-the-merits exception that “threads the needle”, as that decision put it. *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 me that accessible access and facilities in the CMA promotes sustainable management.
45. The ‘functional need’ policy framework in the 2021 RPS is more aligned with the NZCPS as CE-P10, which addresses activities in the CMA, states that they must:
- (3) have a functional need or operational need to be located in the coastal marine area, or*
(4) have a public benefit or opportunity for public recreation that cannot practicably be located outside the coastal marine area.

⁵ *Port Otago Ltd v Environmental Defence Society* [2023] NZSC 112.

⁶ *Royal Forest & Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26.

46. This policy allows for exceptions in the CMA in line with the NZCPS.⁷ The evidence of Mr Mirams highlights a number of public benefits from the proposal but again the key is providing for the recreation needs of disabled people in the CMA. While accessible accommodation can obviously be provided outside of the CMA (just as a commercial takeaway café or fish shop could be), the evidence of Mr Marrable, Ms Barkman, and Ms Grant illustrates the practical difficulties with this.
47. This policy also introduces the concept of ‘operational need’, which Ms McDonald suggests is a lower bar than ‘functional need’.⁸ I note that in the *Poutama Kaitiaki*⁹ decision, the Court recorded that this term was included in the National Planning Standards “*to cover situations where there are valid reasons why an activity should be enabled to occur in a particular location*”. In my view, there is an operational need for accessible accommodation in the CMA because of the constraints faced by disabled people, detailed in the evidence, when desiring to experience the CMA as opposed to the constraints faced by the activity itself.
48. This is a valid reason why this activity should be enabled in the CMA, particularly given the NZCPS policy thread outlined above. It also accords with CE-O5 of the 2021 RPS that provides for activities in the coastal environment at appropriate locations; CE-M(8)3 which requires the ORC to provide for Policy 19 of the NZCPS in its plans; and CE-M5 which encourages local authorities to consider the use of **other mechanisms or incentives** to assist in achieving the coastal policies, including by “*identifying opportunities to enhance or restore public walking access in accordance with Policy 19(c) of the NZCPS*”, which we know includes the needs of people with disabilities. It is also a ‘public benefit’ in terms of CE-P10.

⁷ Just for completeness, I note that with respect to CE-P10, activities must ‘enable multiple uses of the coastal marine area whenever reasonable and practicable’ before they can be enabled under the following three subsections. This is clearly the case here.

⁸ Note: Central Government is currently consulting on an amendment to include ‘operational need’ into policy 6(1)(e) and policy 6(2)(c) and (d) of the NZCPS.

⁹ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629.

49. Consenting this proposal would be another mechanism to achieve Policy 19 (c). As Ms Grant has said at her paragraph 11:

Leaving the achievement of them to public entities and government projects is not adequate and will continue to place severe limitations on the ability for disabled people to live full lives with equal opportunity to achieve their goals – which may be as simple as spending time at the water while on holiday, being able to bob around in the water safely. This is particularly so in the more remote, less urban parts of our environment where large government entities and projects are less likely to operate or occur.”

50. Policy 7.3.2 of the RCP does not refer directly to ‘functional need’ but requires consideration of “*whether or not a coastal location is required, and to any other available practicable alternatives.*” As the RCP was amended in December 2011 to address the NZCPS 2010, I assume the ORC policy planners at the time felt this policy was achieving Policy 6(2) of the NZCPS 2010 as it was not amended. To a degree it does but in my view Policy 6(2) of the NZCPS 2010 should be given the greater weight given the inaccurate way the lower planning documents have given effect to it.

Landscape, Natural Character and Amenity Effects

51. As I have highlighted throughout this evidence, the location is a highly modified, essentially human-made landscape with little in the way of natural coastal character. Neither the immediate location or wider environment has been identified as having any special values in terms of landscape, natural character or visual amenity values. It has been identified as a CDA in the RCP, reflecting its 100-year plus commercial/industrial history. Its current visual appeal is limited given the dilapidated state of many of the wharves.
52. Given this context, the expense of an assessment by a landscape expert was not initially considered necessary to support the proposal. However, as

appears to be the case in this day and age, a landscape assessment was requested which was then peer reviewed. Despite no significant changes to the application since that peer review, further evidence has been prepared by Council's landscape expert for this hearing.

53. Despite some disagreement between the landscape experts, we are no further ahead as the result of these numerous assessments. Ms McDonald accepts that *"adverse landscape effects can be managed such that they are minor and acceptable."* My position (and that of Mr Moore's) remains that these effects are positive, not negative.
54. Ms Annan's concern seems to be the introduction of a building into this environment that has a more domestic, residential appearance and scale to what is already in the CDA. Of particular concern is the glazed river frontage and "nighttime glowing box effect" which she considers to be a further differentiation characteristic from boating and recreational use of the wharves, despite acknowledging she has not visited the site at night.
55. Ms Annan takes issue with the AEE primarily referencing residential character and values with regards to the application site as she considers the immediate backdrop to the site as being undeveloped. However, this area is available for development (it is zoned Urban) and Mr Moore's first simulation illustrates the wider residential character of the area when viewed from across the river, the critical viewing point. Residential development is clearly evident and further development is occurring. The building does not look out of place in this context or from the other simulation viewpoints point Mr Moore has provided.
56. Furthermore, the Pre-Hearing report prepared by Commissioner Randal noted that none of the submitters present at the pre-hearing meeting expressed any concern regarding the glazing or lighting effects, so this matter was not explored further. However, I note the design provides for screening along with dark tinted glass to reduce light emissions. The design philosophy of Mr Young was for a largely self-contained building with low embodied energy, which

extends to lighting design. Dark sky approved lighting will be specified in the build specifications. A condition to that effect could be included to secure that outcome.

57. While acknowledging that the buildings design is not entirely consistent with what is in the CDA now, I see this as a positive thing that should be encouraged as it reflects the changing nature of the use of the wharves (from commercial fishing to recreation). Ms Annan suggests that *“the change associated with the shift from commercial to recreational boating use”* is overplayed. In my view whether there has been a visual change associated with this shift to date is largely irrelevant as this proposal is essentially leading the way. Policy 6(1)(f) of the NZCPS requires consideration of *“where development that maintains the character of the existing built environment should be encouraged, **and where development resulting in a change in character would be acceptable**”*. [my emphasis] A higher design standard should be encouraged here as buildings that will predominantly be used for activities associated with, and ancillary to, recreation and community type events will not present in the same manner as a commercial fishing building. The building that starts that change is always likely to be slightly ‘out of place’.
58. In my view, Mr Moore’s evidence is the more considered and robust in the context of this environment and should be accepted.

Cultural Effects

59. It is acknowledged that the Otago Coastal Marine Area/Te Tai o Arai Te Uru is subject to a statutory acknowledgement that recognises the relationship of Kāi Tahu with this environment. Ms McDonald comments in her report that *“the site and surrounding cultural landscape have ancestral significance to Kāi Tahu and support important cultural values”*. I have reviewed the submission of Te Rūnanga o Ōtākou and cannot find any reference to cultural values specific to this location. Rather, the submission only addresses Kāi Tahu’s broader connection with the coast and the Taieri/Taiari River. None of the relevant planning documents identify any specific cultural values at the site or in its

immediate environment. Nor was the applicant advised of what these values might be in their attempts to consult with the Rūnanga.

60. The Kāi Tahu ki Otago Natural Resource Management Plan 2005 does not identify any site-specific values either, but the Te Rūnanga o Ōtākou submission helpfully identifies the policy framework that is seen as relevant by iwi. That policy framework identifies effects on Wāhi Tapu, Mahika Kai and Biodiversity, Cultural Landscapes, Air and Atmosphere, and the Coastal Environment as the main issues of concern. I have reviewed these provisions and in the context of this particular location and this proposal, they do not appear to be offended in any way.
61. As I have noted several times above, the site is a highly modified, essentially human-made landscape that has little in the way of natural coastal character. It has over 100-years of commercial/industrial history, which includes the reclamation of the riverbank in the 1950's. This history is reflected in the area being identified as a CDA in the RCP. As a consequence, the site is unlikely to retain any pre-European cultural landscape values (Objective 5.6.3 and Policy 5.6.4). Built development is already existing in this location and the new building is essentially replacing dilapidated structures within the same footprint on the 'sea floor', so the proposal does not offend Policy 5.6.4(24) nor Policy 5.8.16 (6), which is coastal specific. The effects of lightning have been addressed above and will be managed so that night sky impacts are minimal. This will ensure the outcomes sought by the Air and Atmosphere provisions (section 5.7) are not offended. There do not appear to be adverse effects on cultural landscape values.
62. The development itself does not physically alter the CMA, it sits on an existing wharf, so biodiversity and Mahika Kai values are not impacted (Objective 5.5.3 and Policy 5.5.4). There is no direct or indirect discharge of effluent into coastal water, so Objective 5.8.3(iii) is not offended. I have discussed the storage of effluent in the CMA above, noting that this is not unusual in the CMA and is not seen as culturally offensive in similar circumstances.

63. The Te Rūnanga o Ōtākou submission also raises concern with respect to public accessibility to the wharf. I have discussed public access in detail above in relation to the functional need issue. While I understand the concern raised around the perception of the area being 'private', the benefits of providing access and accommodation for those with disabilities is seen as a benefit that would significantly outweigh any negative perception in this regard. Mr Mirams sets out how the applicant intends to manage this at the site. This proposal offers the opportunity for the disabled members of the Kai Tahu community to reconnect with this part of the coastal environment and the Taieri/Taiari River, which is considered unique by Te Rūnanga o Ōtākou because it is the only river that is open from the headwaters to the sea. I can only see positive benefits in this regard as it would assist *"in providing for the relationship of Kai Tahu with this part of the coastal environment"*, a point of concern raised by Ms McDonald throughout her report.

Conclusion on Environmental Effects

64. Ms McDonald addresses a number of other environmental effects of the proposal in her report. These include construction effects, ecological and coastal water quality effects, safety and navigation, reverse sensitivity and cumulative effects. She considers the adverse effects of most of these to be less than minor with reverse sensitivity and cumulative effects being no more than minor. These conclusions are not in contention although I would consider the adverse effects of all these effects to be less than minor in the context of this environment.
65. Ms McDonald concludes that *"In most respects, the actual and potential effects on the environment are considered on balance to be acceptable and able to be managed by consent conditions"*. The exception to this *"is the adverse effects on cultural values, which are currently not well understood."* In my view, there is no uncertainty with respect to the proposal as Te Rūnanga o Ōtākou suggest in their submission. The rūnanga have had ample opportunity to advise what the specific cultural effects of the proposal on this site are but have chosen not

to do so. As I have stated above, there will be opportunities for the disabled members of the of rūnanga to reconnect with the wider coastal environment in this location and the Taieri/Taiari River. This is a positive cultural effect of the proposal.

66. I have not addressed Ms McDonalds conditions in this evidence as our preference is to wait until submitters provide their evidence. Any issues arising out of this evidence could potentially be addressed via conditions so our intention is to file conditions with the legal submissions. However, Mr Mirams has promoted a number of measures that restrict the duration of the commercial aspect of the proposal along with various positive actions that will form the nucleus of the conditions we propose. This will ensure that the benefits proposed by the applicant will be realised.
67. Having regard to these matters, I conclude that overall, the effects of the proposal will be beneficial.

Policy Framework

68. In relation to the NZCPS, Ms McDonald concludes that *“when considered as a whole the proposal would be inconsistent with [the NZCPS] provisions, noting that this inconsistency primarily stems from the proposed accommodation use. The recreational, educational, and sporting uses, and proposed improvements to accessibility, would likely be consistent with the above provisions.”* She draws similar conclusions with respect to the other relevant planning documents.
69. I do not propose to comment on each of these policy assessments as I have considered the key issues above, which relate to the ‘functional need’, cultural effects, and natural character and landscape matters. I have concluded that the proposed accessible accommodation element of the proposal does have a functional need under Policy 6(2)(c) to be within the CMA on the basis that it provides for the public access and open space provisions of the NZCPS as they relate to people with disabilities.

70. In the event that the Commission disagrees with that, I consider this proposal is genuine on-the-merits exception that “threads the needle”, as provided for by the construction of Policy 6(2)(d) of the NZCPS. The phrase ‘generally should not be located there’ clearly indicates that there will be exceptions.
71. I do not think the provisions relating to natural character are overly relevant in the determination of this proposal given the distinct lack of natural character at the site. I, like Mr. Moore, am also puzzled by Ms McDonalds position that the proposal is inconsistent with Policy 15 of the NZCPS. The site is a CDA and while the CDA was identified under a different policy regime, the clear intent is to identify an area where development is not seen as ‘inappropriate’ in the CMA. In terms of the NZCPS it aligns with Objective 2, which requires identification of areas where development would be inappropriate, and Objective 6 which is enabling and states that *“the protection of the values of the coastal environment **does not preclude use and development in appropriate places and forms, and within appropriate limits.**”* [my emphasis]
72. As I have highlighted above, I consider this is an area where a change in character would be acceptable in terms of Policy 6(1)(f) and should in fact be encouraged.
73. I do not find any inconsistency with the relevant objectives and policies of the planning documents.

Precedent Effects

74. Ms McDonald addresses the issue of precedent and plan integrity at her section 6.4, noting that a that number of opposing submitters have expressed concern *“that if this application is granted then others will follow, thereby permanently changing the character of the entire wharf area, and potentially the character of the wider Otago coastline if consents in other areas are subsequently granted.”* In her view, *“limited weight should be given to*

precedent effects in the determination of this application.” That view is based on the fact similar proposals would need to seek resource consents as a discretionary activity and “that the RPC separates the Otago CMA into various coastal management areas, each of which have different values which would need to be considered on a case-by-case basis. That is to say, the acceptability or otherwise of this application in this location does not necessarily translate into acceptability in a different coastal management area.”

75. I agree with Ms McDonald on this point. I have highlighted at my paragraph 13 that there are only 5 CDA's identified in RCP. That narrows the scope for finding an environment with similar values but the most significant factor against any undesirable precedent being set is the provision of the mobility hoist/crane in combination with accessible accommodation. This sets the proposal apart from any application that is merely seeking accommodation in the CMA. If this application is granted, there will no longer be a need for such facilities in the CMA so there can be no justification for granting consent to a similar proposal in the future.
76. Where such facilities do not exist in other parts of the region's CMA, consent to this may set a precedent. However, that precedent would not be undesirable (for the reasons discussed in relation to public access and public open space in the CMA) but again, it does not open the floodgates as once an area is served with such facilities, the need is met.

Summary and Conclusion

77. The proposed use is multipurposed and would enable a range of public and commercial uses, with a focus on accessible accommodation and access to the CMA. There will be significant public benefits if consent is granted to the full range of activities proposed for the site. The accessible accommodation and access facilities has a functional and operational need to be in the CMA to give effect to the public access, open space and recreation policy provisions of NZCPS as they relate to people with disabilities.

78. The site is highly modified to the point that it retains very little natural character. There are no landscape, biodiversity, heritage or cultural overlay affecting the site or its immediate surrounds. The RCP identifies it as a Coastal Development Area for fishing and recreation purposes. However, the area is in transition to a more recreation focus, although that is not currently visually represented by the appearance of the site. The site is considered an appropriate location for the proposed use and is an area where a change in character should be encouraged.
79. Any adverse effects of the proposal are considered to be less than minor while effects overall are seen as positive. The proposal actively achieves a range of policy outcomes sought by the various planning documents, particularly in relation to public access, public open space and recreation, and is considered to be consistent with these documents overall.
80. In my view the proposal promotes sustainable management and should be granted accordingly.

Allan Cubitt
26 August 2025