

## Decision Report

Onumai Enterprises Limited

RM22.550

Coastal Permit Application  
to  
Otago Regional Council

**23 September 2025**

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## 1 Introduction

- [001] In November 2022 Onumai Enterprises Limited<sup>1</sup> (**OEL** or **applicant**) applied for:
- Coastal Permit RM22.550.01 to alter and extend existing structures; and
  - Coastal Permit RM22.550.02 to occupy the common marine and coastal area with a wharf, floating pontoon, and multipurpose building at 21 Marine Parade, Taiari Mouth<sup>2</sup>.

**The application is granted in part for the reasons herein.**

## 2 Appointment

- [002] The Otago Regional Council (**ORC**), acting under s34A of the Resource Management Act 1991, appointed independent hearing commissioners Rob van Voorthuysen<sup>3</sup> and Ros Day-Cleavin<sup>4</sup> to decide the application.

## 3 Process Issues

### 3.1 Notification, written approvals, pre-hearing meetings, hearing and site visit

- [003] The application was publicly notified on the basis of 'special circumstances', namely this being the first application for residential activity within the Otago coastal marine area (**CMA**). 53 submissions were received with 35 in support, 17 in opposition and one submission from FENZ was neutral. One submission in support was withdrawn.
- [004] The submissions were summarised in the Section 42A Report<sup>5</sup> and we adopt those summaries. We also received and read for ourselves copies of each submission.
- [005] No written approvals were provided.
- [006] A pre-hearing meeting was held on 3 October 2024. We were provided with a copy of the Pre-Hearing Report authored by Dave Randal.
- [007] The Section 42A Reports,<sup>6</sup> the applicant's evidence<sup>7</sup> and legal submissions<sup>8</sup>, and submitter's evidence<sup>9</sup> were pre-circulated in accordance with a procedural Minute that we issued. Additional summary statements of evidence from submitters<sup>10</sup> were tabled at the hearing. We do not summarise that material here, but refer to it or quote from it in subsequent parts of this Decision. Copies of all that material are held by the ORC.

<sup>1</sup> Greg and Ange Mirams. "Onumai" is the Māori name for the headlands at Taiari Mouth. We note Mr Ellison provided the correct spelling of "Onumia" in his evidence.

<sup>2</sup> We have used the spelling preferred by Te Rūnanga.

<sup>3</sup> Commissioner van Voorthuysen is an experienced independent commissioner, having sat on over 365 hearings throughout New Zealand since 1998. He has qualifications in natural resources engineering and public policy. In 2020 he was appointed as a Freshwater Commissioner by the Minister for the Environment under Clause 65 of Schedule 1 to the RMA.

<sup>4</sup> Commissioner Day-Cleavin is an experienced independent commissioner working throughout the Otago and Canterbury Regions with qualifications in resource management planning and decision making.

<sup>5</sup> Section 4.2.1 "Submissions in support, section 4.2.2 "Submissions in opposition" and section 4.2.3 "neutral submissions"

<sup>6</sup> Otago Regional Council, Section 42A Staff Recommending Report, Application RM22.550, Onumai Enterprises Limited. Shay McDonald, Principal Consents Planner, 19 August 2025. Addendum to RM22.550 Section 42A Report, 9 September 2025.

<sup>7</sup> Greg Mirams (applicant), John Marrable (Access Consultant and Educator at the Livingwell Disability Resource Centre in Dunedin), Sally Barkman (Vice-President of Spinal Support New Zealand), Sandie Grant (owner of Ability Adventures), Mike Moore (Principal of Mike Moore Landscape Architects), Allan Cubitt (Principal of Cubitt Consulting Limited).

<sup>8</sup> Submissions of Counsel on Behalf of Onumai Enterprises Limited (Bridget Irving and Gus Griffin), Dated 5 September 2025.

<sup>9</sup> Edward Ellison (Te Rūnanga o Ōtākou)

<sup>10</sup> Edward Ellison (speaking notes) James Painter, John Bywater, Sally van Dyk, Glen Patterson, Sue Keith and Troy McNeill.

- [008] We held a hearing at the Cullen Conference Room at the Invermay Campus in Mosgiel on 10 and 11 September 2025. We heard from a number of submitters<sup>11</sup>, both in support of an in opposition to the applications. The applicant's provided written Reply submissions on 18 September 2025. We closed the hearing that same day, having concluded that we required no further information from any of the participants.
- [009] We undertook a site visit on 9 September 2025 accompanied by Michael Hodge (ORC Team Leader Consents Business Support). We undertook a second unaccompanied site visit on 11 September 2025. We viewed the site from Marine Parade and Taiari Mouth Road. We also viewed Knarston Park, Livingstonia Park and the boat ramp by the Marine Parade bridge.

### 3.2 Officer's recommendation

- [010] The ORC Section 42A reporting officer (Shay McDonald) recommended that the application for the occupation of the common marine and coastal area 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 use be granted.
- [011] She recommended that the part of the application relating to the construction and use of a multipurpose building for any type of private residential or commercial rented accommodation be declined.

### 3.3 Description of the activity

- [012] The nature of the application and the environment was described in the applicant's AEE<sup>12</sup>, the Section 42A Report<sup>13</sup> and the evidence of Greg Mirams and Mike Moore. We adopt those descriptions, but by way of overview some of the more salient points are:
- At the Hearing, the applicant advised they had altered their company name to 'Janefield Enterprises Limited' in response to the concern of Te Rūnanga about misappropriating a cultural place name. However, we have continued to refer to Onumai Enterprises Limited in this Decision (other than in consent conditions) to avoid confusion for readers;
  - The Site is an existing wharf structure located in the CMA, located on the true right bank of the Taiari River approximately 105m southwest of the intersection of Marine Parade and York Street, Taiari Mouth;
  - The adjacent Marine Parade Road Reserve is administered by Clutha District Council while land administered by LINZ sits between the road reserve and the riverbank;
  - The site is located within Coastal Development Area 5 (**CDA5**) as identified in Schedule 2 of the Regional Plan: Coast for Otago (**RPC**). Specific values supported by CDA5 are fishing facilities and recreational facilities;
  - Coastal Permit 2006.321 authorises the occupation of the CMA for the wharf and the associated storage shed and two cool sheds. The coastal permit enables commercial use of the wharf for the mooring and unloading fishing boats and the storage of fishing and boating equipment. Coastal permit 2006.321 does not require the consent holder to provide access to the wharf for the purpose of enabling public access to the CMA. The permit expires on 1 December 2040;
  - The wharf is currently in a reasonably poor state of repair. The applicant is proposing to restore and upgrade the wharf and establish a multipurpose building for daytime and overnight use by the applicant and as short-term rental accommodation for paying guests. The number of nights available for overnight use is proposed to be limited to 180 nights per annum. The applicant has proposed a maximum of 5 consecutive nights of accommodation, whether by themselves or by paying guests;

<sup>11</sup> Aukaha (Joshua Leckie (counsel) and Edward Ellison), Elizabeth Lukeman, Sally Van Dyk, Christopher Knight, Werner Van Harselaar, Gillian Holland, Glen Patterson, Scott Barkman, John Bywater, Susan Keith, Troy McNeill and Juliet Anderson.

<sup>12</sup> Application for Resource Consents (pre-application RM22.400), Onumai Enterprises, 21 Marine Parade, Taiari Mouth, Prepared by Cubitt Consulting Ltd, June 2022. Section1 "Description of the Proposal".

<sup>13</sup> Section 3 titled "Description of the Environment".

- The applicant also proposes to donate 3% of all accommodation income to undisclosed Taiari Mouth community initiatives. A minimum of six days of community use per year will be made available free of charge for use by organisations, schools, government agencies and community groups;
- The multipurpose building will be approximately 8.6m by 9.6m (82m<sup>2</sup>) whereas the current storage sheds occupy an area 8.5 by 8m (68m<sup>2</sup>). The multipurpose building will extend around 1.7m further landward than the existing sheds;
- The multipurpose building will be constructed in one stage over a period of around four weeks. No machinery will be required and no construction from the water will occur. The applicant anticipates that the existing jetty piles should be sufficient to support the proposal, so no further piling will be necessary. If a geotechnical investigation to be undertaken by the applicant reveals that additional or replacement wharf piles are required, a separate consent application will be lodged to disturb the bed of the CMA;
- The existing storage sheds are 3.0m above ground level whereas the new building will have a maximum height of 5.9m above ground level at the top of the roof pitch. The roof will be finished in a dark coloured (ebony) aluminium coloursteel cladding while the walls will be clad in a James Hardies Linea weatherboard to replicate colonial construction. The 'Baltic Sea' colour from Resene Heritage Range has been chosen for the finish, also to reduce glare;
- Access to the building will be from the grass verge that adjoins the gravel car park<sup>14</sup> adjacent to Marine Drive. A new accessible ramp will be constructed along the north-west side of the building to provide access to the main wharf. The existing pontoon<sup>15</sup>, which has been upgraded, will remain at the south east end of the wharf. The existing commercial fishing station will be restored and repurposed for recreational fishing while the existing commercial fishing crane with winch will remain to aid with unloading vessels and people with disabilities;
- Signage will be installed advising people that the wharf is public and may be accessed;
- Two storage areas will also be accessed directly from the grass verge. The western storage area will contain holding tanks for foul waste and the eastern storage area will contain potable water tanks. The multipurpose building will be self-contained with no waste water being discharged to the CMA; and
- A earthworks consent is needed if the accommodation aspect of the proposal is granted, but that is not sought at this time because the extent of such works is unknown.

[013] The applicant's opening legal submissions stated<sup>16</sup> that the wharf, crane and hoist are a package. The positive effects associated with the wharf facilities are reliant on the wider facility establishing a commercial model that supports the ongoing maintenance and upkeep of the assets that will be available to the public. From those submissions we understand that the wharf, crane and hoist being made available to the public is dependent on the approval of the multipurpose building.

[014] A perspective of the proposed new building is shown overleaf.

<sup>14</sup> This land is administered by Land Information New Zealand (LINZ).

<sup>15</sup> This pontoon is not authorised by the current coastal permit 2006.321.

<sup>16</sup> Paragraph 29.



Copied from Figure 5 of the ORC Notification Report.

- [015] In her Reply submissions counsel advised that applicant wished to remove 'residential' from the description of the activity because residential activity denotes a sense of permanence. Counsel submitted that it is not intended that the multipurpose building be occupied on a permanent basis and use of that building by the applicant was considered to be 'visitor accommodation', because it would be short term (no longer than 5 consecutive days).
- [016] We are not persuaded by that submission because the occupation of a building by its owner cannot reasonably be described as use by a 'visitor'. When an owner of a building is present it is commonly acknowledged that they are said to be 'in residence'. We find that the occupation of the multipurpose building by its owners, if even for no more than five consecutive days at a time, constitutes residential occupation and we have continued to refer to it as such.
- [017] In Reply counsel also submitted that:
- the applicant now proposed that the multipurpose building would only be available for a party (we take that to mean a person or group of persons) that does not have a member with a disability for up to 60 nights per annum. We understand this change was intended to lend weight to the argument that the multipurpose building has a functional need to locate in the CMA in order to enable access to the CMA for disabled people. We address that matter further in section 5.3 of this Decision;
  - there will no longer be a gate on the proposed new access ramp and signage will be retained advising that the public are entitled to freely access the wharf;
  - the multipurpose building will be relocatable; and
  - only dark sky approved luminaries (or lights) will be used.
- [018] Counsel submitted that if we were not minded to grant consent for overnight use of the facility by people without disabilities, it was open to us to impose conditions of consent which limited visitor accommodation to people with disabilities.
- [019] Counsel suggested that if we were not minded to grant consent for visitor accommodation, it would be within scope to grant consent for a recreational facility, including the multipurpose building, for daytime use. We return to those suggestions later in this Decision.

### 3.4 Permitted baseline

- [020] When forming an opinion for the purposes of subsection 104(1)(a) of the RMA we may disregard an adverse effect of the activity on the environment if a national environmental standard or a plan permits an activity with that effect.<sup>17</sup>
- [021] In this case Ms McDonald advised that the RPC does not provide for the proposed occupation of the CMA as a permitted activity, nor is there any relevant environmental standard that permits such an activity. The RPC does not provide for the alteration or extension of the proposed structures as a permitted activity. Consequently, there is no applicable permitted baseline and so we have assessed the potential adverse effects of the proposal in their entirety.
- [022] We note that Ms Irving submitted<sup>18</sup> that permitted activity Rule 7.5.1.1<sup>19</sup> was relevant insofar as it enabled a person to stay overnight on the wharf for three consecutive days, but we are not persuaded that is a relevant permitted baseline. A person staying overnight on an existing wharf is entirely different from providing a substantial multipurpose building with bedrooms, kitchen and toilet facilities catering for private residential and commercial accommodation.

### 3.5 Receiving environment

- [023] Mr Cubitt asserted that the receiving environment is highly modified<sup>20</sup> and suggested in his evidence that Coastal Permit No: 2005.728\_V1 signalled that the Council had previously recognised the changing nature of the CDA by consenting a commercial takeaway and retail outlet on a neighbouring wharf. Ms McDonald confirmed that the coastal permit variation for that activity was granted 18 years ago under a different planning framework<sup>21</sup> and that there is no available compliance evidence held at Council to suggest that commercial activity was ever undertaken. We note this to be consistent with the observations of some submitters<sup>22</sup> during the Hearing.
- [024] We have considered the evidence provided by Mr Cubitt and Ms McDonald on this matter and find that the authorised activities under permit 2005.728\_V1 (occasional sale of fresh fish and pre-prepared food items, with substantial restrictions on hours of operation) from a wharf that accommodates commercial fishing does not represent the 'same effect' as suggested by Mr Cubitt. We do not accept that the existence of permit 2005.728\_V1 provides credible evidence as to the changing nature of the CDA in this location.

## 4 Consent category

- [025] As outlined earlier, OEL has sought resource consents to alter and extend the existing structures and to occupy the CMA with those structures for the purpose of residential, recreational, commercial, and emergency use. It was common ground that the proposal requires:
- Discretionary activity consent under Rule 8.5.2.5 of the RCP for the maintenance, extension, alteration, replacement, or reconstruction of structures within the CMA; and
  - Discretionary activity consent under Rule 7.5.1.5 of the RCP for occupation of the CMA (including by the floating pontoon).
- [026] The activity is therefore assessed as a discretionary activity.
- [027] We note that in her Section 42A Addendum Ms McDonald advised that because the existing two containers on the wharf would not be incorporated into the proposed new multipurpose building, her

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<sup>17</sup> Section 104(2) of the RMA.

<sup>18</sup> Paragraph 23.

<sup>19</sup> 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.

<sup>20</sup> Statement of Evidence, Alan Cubitt, 26 August 2025, paragraph 24.

<sup>21</sup> Ms McDonald in her s42A Addendum notes that while the RPC at that time is the same as currently operative, the RPS at that time (now superseded) and the NZCPS did not include the functional need concept.

<sup>22</sup> Submitters including Susan Keith

interpretation of the RCP rules was that the building would constitute a new structure, rather than the conversion of an existing structure. However, that did not affect her conclusion that in overall terms the application fell to be considered as a discretionary activity.

## **5 Section 104 and 104B matters**

### **5.1 Effects Assessment**

- [028] The applicant's AEE and the ORC Section 42A Report identified potential adverse effects of concern, as did the submitters. Having reviewed that material we find that following potential effects on the environment require our assessment.

#### **5.1.1 Construction effects**

- [029] We understand that the construction will not involve any disturbance to, or discharge of contaminants into, the CMA. It was common ground between the applicant and Ms McDonald that, subject to the imposition of suitable conditions of consent, the potential adverse effects resulting from the construction phase of the proposal would be less than minor. We agree and note that no submitters raised concerns specifically related to construction effects.

- [030] Counsel for the Te Rūnanga o Ōtākou (Te Rūnanga) submitted<sup>23</sup> we should also consider the effects of earthworks required to 'pin' the multipurpose building to the land outside the CMA and the potential need for additional piling. We are not persuaded that is appropriate as any necessary consents for those purposes have not been sought. Nor do we need to be aware of those details to assess the applications before us.

#### **5.1.2 Effects on marine ecology and water quality**

- [031] As noted by Ms McDonald, the construction of the multipurpose building will not involve any disturbance of the seabed or foreshore, nor will it involve any discharge of water or contaminants into the CMA. Consequently, adverse effects on ecological values and coastal water quality will be less than minor during the construction of the proposal.

- [032] Regarding the ongoing use of the multipurpose building, the applicant proposes to install a modern, fully self-contained water collection and wastewater disposal system. Wastewater tanks will be positioned within the interior of the building. No wastewater of any type will be discharged to the CMA. Rainwater will be captured and held in industry-approved water holding tanks for use within the dwelling. Any overflow rainwater (stormwater) will be discharged in compliance with the relevant RPC permitted activity rule.

- [033] We find that, subject to the imposition of suitable conditions of consent, potential adverse effects on marine ecology and water quality will be less than minor.

#### **5.1.3 Landscape, natural character, and visual amenity effects**

- [034] In terms of natural character, we note the consistent opinions of Mr Moore (Landscape Architect for the Applicant) and Ms Annan (Landscape Architect for ORC) that the site is not within an area of high or outstanding natural character and that the proposal will have 'very low' effects on natural character, equivalent to effects that are less than minor. Although Ms Annan disagreed with aspects of Mr Moore's assessment, she confirmed for us at the Hearing that her overall conclusion remained unchanged. We accept this evidence and find that the effects of the proposed change from a fishing industry-related structure to a recreational and private residential and commercial accommodation structure will have a less than minor effect on natural character.

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<sup>23</sup> Legal Submissions, paragraph 14.



- [035] In relation to landscape and visual amenity effects, Mr Moore concluded that the proposed development would integrate readily into the setting and would improve visual amenity. He considered that the structure would be an element of visual interest in the landscape that reflected the changing use of the Taieri Mouth CDA from commercial fishing to recreation. Further, he considered that the proposed structure would clearly read as a live-in boatshed and would not appear out of place in terms of scale or character. Mr Moore concluded that the proposal would result in effects on landscape values that were positive to a minor degree.<sup>24</sup>
- [036] Ms Annan considered that Mr Moore's assessment disregarded the relationship between character and amenity, and that describing the visual amenity outcomes of introducing residential character as entirely positive separated amenity effects from the underlying character and values of the existing area. She considered that Mr Moore's report overstated the change associated with the shift from commercial to recreational boating use of the Marine Parade wharves because the identified values of CDA5 already included 'boating and recreational use'. In her view, out of character development can initiate incremental erosion of landscape values, thereby contributing to a loss of a place's distinct identity, coherence and legibility. She stated that given the existing wharves and structures did not express residential character, there would be a notable loss of character for this area should the multipurpose building proceed. Ms Annan concluded that the proposal would result in low (minor) adverse landscape effects<sup>25</sup>
- [037] Having considered the respective landscape evidence, we agree with Ms Annan that the introduction of residential character in the CDA5 setting would not be appropriately integrated with the location. In reaching this finding we note that Mr Moore's illustration of existing boatsheds in the Otago Harbour and their reported expression of recreational accommodation and residential usage was not a particularly relevant reference point, given there are no boat sheds in the Otago CMA currently authorised for accommodation or residential use. In any case, we do not consider the nature of the matters in disagreement between the landscape experts to be determinative, especially given the site is not located within an area of the coastal environment with outstanding landscape values. We note that their respective assessments of the landscape effects range from positive effects to low (minor) adverse effects. On this basis, we accept Ms McDonald's overall conclusion that adverse landscape effects can be managed such that they are minor and acceptable.

#### **5.1.4 Effects on public access to the CMA**

- [038] The proposed multipurpose building, floating pontoon, ramp and wharf will occupy the CMA. The applicant proposes that the multipurpose building will remain locked and we agree that is reasonable given its intended use for private residential and commercial accommodation. The access ramp<sup>26</sup> will be installed on the northwestern side of the wharf to facilitate wheeled access to the wharf. As no gate is now proposed, public access to the wharf and pontoon will not be physically restricted.
- [039] The existing crane and winch will be retained and used to load or unload vessels, and to provide direct access into boats for persons with limited mobility. It may also be used to aid emergency services to extract distressed or injured persons from boats. However, and quite reasonably, the crane will be available on an 'appointment only' basis as it needs to be operated by an experienced person.
- [040] The potential for reduced public access was a matter of concern for a number of submitters. We reiterate that public access to the wharf is not currently required. Submitter concerns focussed on the presence of the gate and the proposed commercial accommodation reducing public accessibility, either through physical restrictions or perceived restrictions. In response Ms McDonald recommended that signage be installed on the side of the building facing the road advising that the wharf and pontoon are freely accessible to the public at all times. We agree that would be appropriate and note it has been volunteered by the applicant.

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<sup>24</sup> Mike Moore, Statement of Evidence, 26 August 2025, paragraph 68.

<sup>25</sup> Rachael Annan, Statement of Evidence, 7 August 2025, paragraph 58.

<sup>26</sup> This ramp has already been installed prior to the obtaining of the necessary resource consent.

[041] We find that potential adverse effects on public access to the CMA will be no more than minor.

#### **5.1.5 Effects on navigational safety**

[042] The AEE included a letter of support from the ORC Harbourmaster Steve Rushbrook<sup>27</sup>. Given the Harbourmaster's statutory navigation and safety functions, we quote from the letter in full and it stated:

*I write in support of the above application. I have no navigational concerns with this application, it is essentially an upgrade to the current situation and one that would benefit the community and emergency services in regard to access to at water level.*

*Access of this type (as proposed) is not currently available in this area and would be of huge benefit to many.*

*Access to 21 Marine Parade will be available at all times for Civil Defence, Emergency Services and other Community agencies, such as Harbour Master, the public benefit being safe transfer of users to and from water. This includes accessibility for disabled persons with access to the small crane*

[043] On the basis of the Harbourmaster's support, we find potential adverse effects on navigational safety will be less than minor.

#### **5.1.6 Reverse sensitivity**

[044] Some submitters were concerned about potential reverse sensitivity effects from the proposed private residential and commercial accommodation use impacting on adjacent commercial fishing operations, particularly in relation to potential odour from fishing activities, and the noise and fumes emanating from heavy duty marine engines. In response Ms McDonald recommended a consent condition for the coastal permit authorising occupation activities that would state that the consent holder must not make a complaint about any lawful commercial fishing operation in the vicinity of the site. This was also volunteered by the applicant.

[045] These 'no complaints covenants' are not unusual, however they have limited merit because while they can bind the consent holder they cannot bind third parties, including in this case any people who rent the proposed commercial accommodation. Those people may still complain about fishing odours, noise and diesel fumes. However, we do not find that to be a potential adverse effect of such significance that it would alone lead to us declining consent for the overall proposal. The reason being that the adjoining area and facilities are clearly used for recreational and commercial fishing and so presumably any people looking to rent the proposed accommodation would presumably do so 'with their eyes open'.

[046] Having said that, we agree with submitters that the potential for reverse sensitivity to adversely affect the existing recreational and commercial boating activities in CDA5 is an adverse effect that weighs against a grant of consent for the multipurpose building, albeit to a minor degree. We acknowledge Ms McDonald's opinion that reverse sensitivity effects can be managed such that they are no more than minor and acceptable, however we prefer the submitters' evidence on that matter as it is based on their lived experience of the CDA5 area and the nature of the existing activities occurring within it.

#### **5.1.7 Effects on Māori cultural values and interests**

[047] As required by s62 of the Marine and Coastal Area (Takutai Moana) Act 2011, the applicant notified and sought the views of the relevant Customary Marine Title applicant group, being Ngāi Tahu Whānui, prior to the application being accepted for processing by the ORC. A response was received from Te Rūnanga stating that they would support Papatipu Rūnanga in their reply to the application.<sup>28</sup>

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<sup>27</sup> Dated 22 September 2022.

<sup>28</sup> ORC Notification Report, section 6.5.

- [048] Aukaha (on behalf of Te Rūnanga) submitted in opposition to the proposal<sup>29</sup>. The submission set out the purpose of the Ngāi Tahu Claims Settlement Act 1998, and explained the Kāi Tahu relationship with Te Taiao the Coastal Environment, the coast of Te Tai o Araiteuru and the Taiari River. The submission documented the concerns of Te Rūnanga in regard to potential cumulative impacts, functional need and policy direction, public access and the potential for a precedent to be set.
- [049] In response to Aukaha's submission Mr Cubitt considered that given the site was highly modified it was unlikely to retain any pre-European cultural landscape values, and, on that basis, he concluded there would be no adverse effects on cultural landscape values and Mahika Kai values would not be impacted. He noted that the submission did not reference any cultural values specific to the location, and he concluded that the proposal offered the opportunity for the disabled members of the Kai Tahu community to reconnect with this part of the coastal environment and the Taiari River, resulting in positive benefits.<sup>30</sup>
- [050] Edward Ellison provided cultural evidence for Te Rūnanga. He spoke to the Ōtakau association with the site and the coastal area and highlighted that 'cultural landscapes' (wāhi tūpuna) also encompass highly modified sites that are significant in terms of section 6(e) of the RMA. He stated that:
- "Mana whenua have an enduring kaitiakitaka responsibility to keep the connection with wāhi tūpuna areas warm so that stories, associations and traditions of wāhi tūpuna are remembered, celebrated and maintained for ever. The fundamental test to this duty is "Can we still recognise this place?" Loss of wāhi tūpuna means loss of cultural narratives and mātauraka, and of Kāi Tahu identity.*
- The inappropriate degrading of such wāhi tūpuna would represent a gross breach of our mana whenua values and associations, further reduce ancestral connections, and disinherit the generations that come after us".<sup>31</sup>*
- [051] Mr Ellison described how the proposal (in particular the use of the site for private visitor accommodation purposes) would have adverse effects on the Ōtakou and Kāi Tahu relationship with the Taiari River. He noted that the presence of private residential accommodation would disincentivise Ōtakou from engaging or reconnecting with traditional cultural practices such as the gathering of mahika kai in the river mouth and estuary. In this regard, Mr Ellison considered that the proposal did not safeguard wāhi tūpuna (cultural landscape) and could further entrench the effects of displacement and disconnection of Ōtakou with the landscape.<sup>32</sup>
- [052] In his legal submissions for Te Rūnanga Mr Leckie stated that:
- "It is for Ōtakou as mana whenua to determine how a proposal impacts on their cultural values. The High Court has previously held that where an iwi claims that a particular resource management outcome is required to meet section 6(e), 7(a) and 8 of the RMA, decision makers must meaningfully respond to that claim".<sup>33</sup>*
- [053] On that basis, noting that only mana whenua can enunciate the nature of adverse effects on Māori cultural values and interests with any degree of authority, we find that the private residential and commercial accommodation aspect of the proposal will result in adverse effects on cultural values. On the evidence before us we find those adverse effects to be significant and we are unable to conclude that they can be avoided or mitigated through the imposition of consent conditions, reflective of the fact that Te Rūnanga sought that the applications be declined.

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<sup>29</sup> Submission # 48

<sup>30</sup> Alan Cubitt, Statement of Evidence, 26 August 2025, paragraphs 59-63

<sup>31</sup> Edward Ellison, Statement of Evidence, 2 September 2025, paragraphs 32-33.

<sup>32</sup> Edward Ellison, Statement of Evidence, 2 September 2025, paragraphs 60-61.

<sup>33</sup> Joshua Leckie, Legal Submissions, 5 September 2025, paragraph 22.

### 5.1.8 Cumulative effects

- [054] The proposal will have negligible to minor adverse effects on marine ecology, water quality, occupation of the CMA, and public access to the CMA. As noted by Ms McDonald, the proposed uses of the multipurpose building may introduce noise, lighting, and people movements of a different nature to those typically expected within the CMA at Taiari Mouth. Those effects may be adverse on landscape values, natural character, or amenity, but are not expected to contribute significantly to cumulative effects given they are of a different nature to the noise and movement typical to the area and may occur at different times of the day.
- [055] We agree with Ms McDonald that potential adverse cumulative effects are likely to be no more than minor.

### 5.1.9 Precedent effects

- [056] Numerous submitters expressed a concern about the potential for this proposal to set an undesirable precedent. In her Section 42A Report, Ms McDonald concluded that limited weight should be given to precedent effects because similar proposals would need to seek resource consents as a discretionary activity on a case-by-case basis within the context of their respective coastal management area provisions.<sup>34</sup> Mr Cubitt agreed with Ms McDonald's conclusion in this regard.
- [057] However, as noted by Ms McDonald, the application is (in part) for activities, being private residential<sup>35</sup> and commercial accommodation in the CMA, that do not currently occur anywhere else in the Otago Region. Accordingly, this application is the first of a kind in Otago. Counsel for Te Rūnanga submitted<sup>36</sup> that because there are no consented residential activities in the Otago CMA, there is a genuine risk that granting consent for the proposal will set a precedent for future applications for such activity in the Otago CMA, as well as nationally.
- [058] Mr Ellison had this to say<sup>37</sup>:

*"We are greatly concerned at the precedent the Application could set at the Taiari and for the Otago region regarding the use of structures at estuaries, hāpua, and coastline. Ōtākou wants to avoid the situation where boatsheds or structures in our coastal takiwā are authorised for use as private residences and/or temporary visitor accommodation. On this basis, Ōtākou consider the Proposal is an unacceptable activity at the Taiari Mouth".*

- [059] It might be argued that precedent effects are not significant because the application before us is a discretionary activity which we must assess on its merits based on the evidence presented. Other applications for use of the CMA for residential or commercial accommodation would also be discretionary activities that would each be assessed on their individual merits, their site-specific circumstances and any evidence presented.
- [060] However, in this case we find that precedent effects should be given considerable weight with regard to similar future applications in CDA5. If this application were to be granted, and should other applicants seek to construct private residential or commercial accommodation buildings on existing wharfs in CDA5, then the homogeneous nature of that particular part of the coastal environment suggests to us that future decision-makers would be hard pressed to come to a different conclusion regarding the appropriateness of any such applications. We consider that would be the case whether or not other proposals sought to provide accommodation for disabled or able-bodied people.

<sup>34</sup> Shay McDonald, s42A Report, 19 August 2025, page 60.

<sup>35</sup> On the basis of Mr Miram's evidence we have presumed that the applicants may choose to reside in the multipurpose building themselves from time to time.

<sup>36</sup> Legal Submissions, paragraph 5(e).

<sup>37</sup> EIC Ellison, paragraph 61.

- [061] Given the policy imperatives relating to ‘functional need’ (which we discuss in section 5.3 below), we consider such a precedent would be undesirable and that weighs against a grant of consent for the multipurpose building.
- [062] We consider that there would also be an undesirable precedent created for the occupation of space in the CMA for residential and commercial accommodation purposes in both other coastal development areas and the wider CMA in Otago, because the requirement to demonstrate ‘functional need’ is a principle that applies throughout the CMA.
- [063] Regarding the setting of a nationwide precedent, we note there are existing authorised commercial and residential activities in the CMA in other regions, particularly in Wellington<sup>38</sup> and Auckland<sup>39</sup>, albeit those activities are of a much larger scale than the one before us here. Accordingly, we do not assign significant weight to concerns about the setting of an adverse national precedent if this application was to be granted in full.
- [064] In conclusion, we find that precedent effects weigh strongly against a grant of consent for the multipurpose building and the private residential and commercial accommodation aspect of the proposal.

#### 5.1.10 Positive effects

- [065] The multipurpose building will have positive effects insofar as it will provide accommodation for the applicants and for people who may wish to rent it. The wider proposal will also enhance public access for both abled bodied and disabled people to and from the CMA by way of access to the wharf and through use of the crane and pontoon. We referred to the letter of support from the Harbourmaster in section 5.1.5 above.

- [066] A letter of support was also provided by the Ministry of Primary Industries<sup>40</sup> that stated:

*“To have access to the wharf sited at 21 Marine Parade (Costal Permit 2006.320) would greatly benefit Otago Fisheries Officers. It would significantly enhance our ability to berth our patrol vessel at a secure base inside the ‘mouth’ where we can complete inspections of vessels returning from fishing activity. This is an option we currently do not have. Future use could also include the wharf/pontoon as a base for “Fisheries Information Open Days” to engage with and educate recreational fishers and the local community”.*

- [067] ParaFed Otago<sup>41</sup> also wrote in support stating:

*“ParaFed Otago strongly supports the redevelopment of the wharf at 21 Marine Parade which will greatly benefit the community of those living with a disability. Having safe, and clearly defined access to a wharf and use of a crane to act as a hoist, which would aid persons with a disability on and off a boat, would be an incredible asset to the disability community. To our knowledge, this type of service is not currently available in Dunedin or the wider area.”*

- [068] Taieri College<sup>42</sup> also provided written support stating:

*“The ability to access toilets, freshwater, internet connection and kitchen facilities would be very helpful to us and enhance the student’s outdoor education experience. There would be enormous advantage for us to have access for students with disabilities from roadside to the wharf itself and by using the existing crane assisting students on and off boats would also be of great benefit.”*

- [069] Evidence was presented for the applicant by Greg Mirams, John Marrable, Sally Barkman and Sandie Grant regarding the positive effects that the proposal would have for disabled people. In particular:

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<sup>38</sup> Clyde Quay Wharf

<sup>39</sup> Princess Wharf.

<sup>40</sup> Signed by Garreth Jay and dated 21 October 2022.

<sup>41</sup> Signed by Kelly Nooy (Sport and Development Officer, ParaFed Otago) dated 20 October 2022.

<sup>42</sup> Signed by Dave Hunter (principal) dated 18 October 2022.

- There is a lack of areas in the Otago region where a disabled person, especially in a wheelchair, can safely access a boat or easily go fishing. There is currently only one location in Otago that a hoist is being considered to assist disabled access to a boat and that is at the Broad Bay boat club<sup>43</sup>;
- The frustration of encountering barriers, such as inaccessible docks, steep ramps, or lack of proper equipment, can be disheartening for disabled people<sup>44</sup>;
- Mr Mirams wishes to enable the disabled community to safely access and enjoy the near water related activities and accommodation experiences in the same way that able bodied people do;
- Suitable accommodation for disabled people is severely lacking, especially in waterfront areas where access and safety are often compromised or completely overlooked<sup>45</sup>;
- Having accessible accommodation on site means that the disabled person can clean up and not have to travel home or to their accommodation in dirty and possibly wet clothes. This may give some people the confidence to try something new where previously the barriers have been too significant<sup>46</sup>; and
- Having two bedrooms means that disabled people who rely on a carer can utilise the accommodation<sup>47</sup>

[070] Mr Mirams acknowledged that it would take time for the facility to build momentum within the disabled community alone. Consequently, he wished to also make the facility available for rent by able-bodied people. He stated that in order to justify the additional costs associated with making provision for disabled access, and ongoing operation and maintenance of facilities such as the crane and pontoon, he needed to generate a reasonable income from the facility. Mr Cubitt<sup>48</sup> stated that a number of the public benefits associated with the proposal would not accrue if the commercial aspect cannot operate.

[071] Given the above, we accept there will be positive effects from the proposal, particularly for any disabled people who choose to utilise the facility and its associated accommodation.

[072] However, other than for disabled people, the positive effects primarily derive from aspects of the proposal that are separable from the multipurpose building.

[073] Ms McDonald considered that the applicant had not demonstrated that there will be economic benefit to the local community from the accommodation and event promotion components of the proposal. In that regard, Mr Mirams<sup>49</sup> advised that 3% of any accommodation income would be made by way of a contribution to local Taiari Mouth preservation activities. The applicant also proposes that 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 or community groups.

[074] That is laudable and can be secured by consent conditions that have been offered on an *Augier* basis.

## **5.2 National environmental standards and other regulations**

[075] No national environmental standard or regulations were brought to our attention.

## **5.3 Functional need**

[076] We have decided to separately assess elements of the statutory instruments that address 'functional need' for the proposed structures to be located in the CMA, because that is a key decision-making matter that

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<sup>43</sup> Evidence in Chief (EIC) Marrable, paragraphs 13 and 18

<sup>44</sup> EIC Barkman, paragraph 9.

<sup>45</sup> EIC Grant, paragraph 6.

<sup>46</sup> EIC Marrable, paragraphs 16(b) and 26

<sup>47</sup> EIC Grant, paragraph 18.

<sup>48</sup> EIC Cubitt paragraph 16.

<sup>49</sup> EIC Mirams, paragraph 29.

permeates all of the instruments. Ms McDonald noted<sup>50</sup> this need is variably described as functional need, operational need, or consideration of whether a coastal location is required. We agree with counsel for Te Rūnanga that the *East West Link* caselaw means we need to examine the functional need of each aspect of the proposal.

- [077] In sections 5.4 to 5.6 we address other policy imperatives of the statutory instruments.
- [078] At this stage we record that we agree with Ms McDonald that the wharf and pontoon have a clear functional need to be located in the CMA because they are structures that directly facilitate access to the CMA (including for disabled people) and enable activities, such as recreational and commercial fishing and boating, and educational or sporting events in coastal waters, that can only occur in the CMA. The crane and ramp similarly have a functional need to locate in the CMA as they will directly provide for the transition of people and goods in and out of vessels.
- [079] NZCPS Policies 6(2)(c) and 6(2)(d) address functional need and Policy 6(2)(d) states that we must recognise that activities that do not have a functional need for location in the CMA generally should not be located there.
- [080] Functional need is not defined in the NZCPS. However, it is defined in the New Zealand Planning Standards 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*”. In this case the ‘environment’ is the CMA in CDA5. Ms McDonald’s opinion was that the proposed multipurpose building and its associated private residential and commercial accommodation activity clearly had no ‘functional need’ to locate in the CMA.
- [081] The applicant had a different view, relying heavily on the potential use of that accommodation by members of the disabled community. That view was supported by witnesses called by the applicant. For example, Mr Marrable suggested that the proposal did have a functional need to be located in the CMA because it provided an opportunity to sleep over water that is not currently available within Otago for disabled individuals who use wheelchairs<sup>51</sup>. To test that proposition we asked several witnesses what factors of ‘sleeping over the water’ were considered to be of importance. The responses included “the sound of waves”, “the sounds of wildlife” and “the sea air”. While we acknowledge the evidence of those witnesses, we nevertheless observe those factors would be exist for any accommodation situated in a terrestrial coastal setting and do not rely on being ‘over the water’.
- [082] Interestingly, in answer to our questions, Sandie Grant (a travel agent specialising in catering for disabled people) considered that the proposal would attract a lot of day trippers from the local disabled community, whereas demand for staying overnight in the multipurpose building was likely to come primarily from ‘out of town’ disabled people. Both she and Sally Barkman saw the main benefit of the overall proposal was enabling disabled people to access boats. That relies on the use of the ramp, wharf and hoist and not the multipurpose building.
- [083] Witnesses for the applicant discussed the convenience of having ablution and washing facilities located on the wharf, particularly for the benefit of disabled people who wished to swim at the site. We place little weight on that proposition because the site is located in a Development Area used for the berthage of numerous large vessels in a part of the Taiari River that is subject to swift currents, tidal surges and cold water. It would be an unsafe swimming area for able bodied and disabled people. Even if we are wrong about that, we note the submission<sup>52</sup> of counsel for Te Rūnanga that the Environment Court<sup>53</sup> has held that the ‘convenience’ of a structure or activity being located in the CMA does not meet the functional need test.

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<sup>50</sup> Section 42A Addendum.

<sup>51</sup> EIC Marrable, paragraph 34

<sup>52</sup> Legal Submissions, paragraph 38.

<sup>53</sup> *Doig v Marlborough District Council* [2-18] NZEnvC 055 at [38]-[39].

- [084] The applicant suggested that the commercial accommodation was required to fund the facilities (wharf, ramps, crane and pontoon) that enabled public access to the CMA. However, as noted by Ms McDonald<sup>54</sup>, while the applicant may wish to have an income stream to support those accessibility features, that does not constitute a functional or operational need for an accommodation building in the CMA.
- [085] The applicant contended that the overall proposal would be of benefit to ‘first responders’ in cases of emergency. We heard conflicting evidence on this point, with some submitters<sup>55</sup> considering that existing facilities at Knarston Park were adequate for that purpose, together with the boat ramp located by the Marine Parade bridge which is well suited to the launching of the type of RIB craft preferred by ‘first responders’.
- [086] In her Reply counsel drew our attention to *SKP Inc v Auckland Council* [2018] NZEnvC 81 where the Court found in favour of authorising facilities associated with a marina (a floating access and carparking pontoon, a marina office, viewing deck and storage and launching facilities) on the basis of functional and operational needs. We appreciate that assistance but consider that case to be distinguishable because it appeared to be about enabling new boat storage and servicing facilities and axiomatically boats generally need to be stored on the water. The difference here is that a private residential and commercial accommodation building does not need to be located on the water.
- [087] Having considered the above matters and the evidence presented, we find that the multipurpose building and its associated private residential and commercial accommodation is inconsistent with NZCPS Policies 6(2)(c) and 6(2)(d). That means that the multipurpose building “generally should not be located there”. We find that to be the case whether the building is occupied by the owners, by paying disabled guests, or by paying able bodied guests.
- [088] We agree with Mr Cubitt<sup>56</sup> that the normal meaning of ‘generally’ is ‘in most cases’ or ‘usually’, so there will always be exceptions to the rule. We take that to mean that the multipurpose building should not be located in the CMA unless there are particular circumstances which in this case make that appropriate.
- [089] Counsel for the applicant submitted that our consideration of what “generally” means in this case should be informed by NZCPS Policies 18 and 19. However Policy 18 refers to public open space and the multipurpose building is private enclosed space. Policy 19 refers to “walking access to and along the coast” which we find to have some relevance, particularly given the applicant’s emphasis on the provision of access for disabled people, including those who are wheelchair bound. However, as noted by Ms McDonald in her Addendum Report, Policy 19 requires that public access to and along the coastal marine area is free of charge.
- [090] In her Reply, counsel noted that *“access to the wharf itself, and utilisation of the hoist is proposed to be free of charge and as we have noted elsewhere enhances public access. It is only access to the building (excluding the 6 community days) where a charge is proposed”*. Notwithstanding those aspects of the proposal which provide ‘free’ access in line with Policy 19, the private residential and commercial accommodation aspects of the proposal are clearly inconsistent with this policy direction.
- [091] Nevertheless, a relevant ‘particular circumstance’ emphasised in the applicant’s evidence is the ability for disabled people and their carers to hire the commercial accommodation as a means of facilitating their recreational access to and enjoyment of the CMA. To enable us to better understand that aspect of the proposal we asked Mr Mirams what proportion of the proposed 180 days of paid accommodation would be expected would be utilised by disabled people. He was unable to quantify that for us but advised that the vast majority of those 180 days would be taken up with commercial rentals of the building as opposed

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<sup>54</sup> Section 42A Addendum.

<sup>55</sup> Including Susan Keith.

<sup>56</sup> EIC Cubitt, paragraph 41



to occupation by the consent holders themselves. We acknowledge that other witnesses<sup>57</sup> for the applicant suggested that the multipurpose building would be valued and utilised by disabled people.

- [092] We also acknowledge that in Reply the applicant has offered to limit the overnight occupation of the multipurpose building by able bodied people to no more that 60 nights per annum. We accept that would result in the predominant occupation of the building by disabled people and their carers.
- [093] However, Mr Mirams stated<sup>58</sup> that the accommodation facility would be run at a '5-star standard', and that it was intended to implement a minimum stay policy. We agree with Ms McDonald that this indicates that only a subset of the disabled community would be able to rent the accommodation and enjoy recreational activities at the site. That was a view echoed by some of the submitters in opposition who queried the affordability of renting '5-star standard' accommodation.
- [094] On this matter counsel for Te Rūnanga submitted<sup>59</sup> that *"the Proposal will provide a range of positive benefits, particularly in relation to enhancing the disabled community's access to the CMA. However, ultimately it is the view of Ōtākou that it is not appropriate to establish a visitor accommodation facility in the CMA as there is no functional need for this type of activity to be located in the CMA."*
- [095] We agree with Te Rūnanga and find that there is no need to provide accommodation for disabled people in the CMA at this location. If disabled people wish to use the wharf, crane and pontoon to access the CMA (which we accept on the evidence of witnesses for the applicant as being both beneficial and desirable) then those people can be provided with overnight accommodation elsewhere<sup>60</sup> if they wish to extend their activity beyond a daytime trip. As noted by Mr Cubitt<sup>61</sup>, *"... accessible accommodation can obviously be provided outside of the CMA."*
- [096] In Otago there are two regional policy statement to consider including the fully operative Otago Regional Policy Statement 2019 (ORPS 2019) and the Proposed Regional Policy Statement for Otago (PORPS 2021) which was made partially operative on 15 March 2021.
- [097] Turning to the ORPS 2019, the multipurpose building and its associated commercial accommodation are clearly inconsistent with Objective 5.4 and Policy 5.4.9(a) because that policy is *"Avoiding activities that do not have a functional need to locate in the coastal marine area"*. As is widely known, the *King Salmon* decision has clarified that 'avoid' means 'do not allow'. As we have found that there is no functional need to locate the multipurpose building and its associated private residential and commercial accommodation in the CMA, the ORPS 2019 weighs strongly against a grant of consent for those aspects of the proposal.
- [098] Regarding the PORPS 2021, we agree with Ms McDonald that based on the submission from Te Rūnanga and the evidence of Mr Ellison, the proposed use of the building for private residential and commercial accommodation purposes does not appear to provide for the important cultural relationship of Kāi Tahu with the coastal environment. Mr Ellison stated<sup>62</sup>:

*"It is my view that the establishment of private residential accommodation is an intrusion into the CMA that will discourage whanau from engaging or re-connecting with cultural practices and mahika kai in the river mouth and estuary. This will further entrench the effects of displacement and disconnection from the landscape and inhibit the transmission of matauraka and the exercise of our responsibilities as kaitiaki."*

<sup>57</sup> Including John Marrable, Sandie Grant and Sally Blackman.

<sup>58</sup> EIC Mirams, paragraph 30.

<sup>59</sup> Legal Submissions on behalf of Te Rūnanga o Ōtākou Dated: 5 September 2024, paragraph 4.

<sup>60</sup> The applicant's evidence is that accessible accommodation is located less than 20km away from the site and we understand that would only take around 15 minutes to reach by car. The applicant's own existing commercially available accommodation (known as The Shed) is (on the applicant's evidence to us) located less than 2km and 5 minutes distant by car.

<sup>61</sup> EIC Cubitt, paragraph 46.

<sup>62</sup> EIC Ellison, paragraph 59.

- [099] As previously noted in section 5.1.7 of this Decision, only tangata whenua can enunciate the nature of adverse effects on Māori cultural values and interests with any degree of authority, and therefore we consider the private residential and commercial accommodation aspect of the proposal is inconsistent with MW-O1 Principles of Te Tiriti o Waitangi, MW-P3 Supporting Kāi Tahu Hauora, IM-O2 – Ki uta ki tai, IM-P3 – Providing for mana whenua cultural values in achieving integrated management, and CE-O4 – Mana moana.
- [100] We emphasise that it was evident to us that Te Rūnanga considered there was no functional need for the multipurpose building and its associated commercial accommodation to located in the CMA. Mr Ellison stated<sup>63</sup>:
- “Coming from whanau with longstanding links to fishing, I appreciate that there are some activities and structures, such as those needed to support launching, berthing and maintenance of boats, that must be located in the CMA because of their purpose. However, visitor accommodation does not have the same functional need. Otakou is opposed to private occupation of the CMA for residential and visitor accommodation purposes.”*
- [101] We agree with counsel<sup>64</sup> for Te Rūnanga that the objectives and policies of the Mana Whenua chapter of the PORPS 2021 can be given greater weight than the equivalent chapter under the ORPS 2019 in light of the appeals on the Mana Whenua chapter of the PDP having been resolved by way of an Environment Court consent order. The inconsistency of the proposal with the above PORPS 2021 Mana Whenua provisions weighs strongly against the multipurpose building and its associated private residential and commercial accommodation.
- [102] We consider the multipurpose building and its associated private residential and commercial accommodation are also inconsistent with CE-O5(2) and (3) because they are not “*of a scale, density and design compatible with their location*” and nor are they “*provided for within [an] appropriate location(s)*” as they do not have “*a functional need to be located in the coastal environment.*” They are also inconsistent with CE-P10<sup>65</sup> for the same reason, noting that neither do they have an ‘operational need’ to locate in the CMA<sup>66</sup>. The New Zealand Planning Standards define ‘operational need’ as “*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*”.
- [103] We understand the applicant’s view<sup>67</sup> that there is an ‘operational need’ to provide the multipurpose building to facilitate the use of the crane and pontoon by disabled people, a changing room and ablution facilities are required for those users. However, provision of say a simple changing room and portable toilet is a very different proposition from the proposed ‘5 star standard’ multipurpose building. Furthermore, as observed in the applicant’s opening legal submissions<sup>68</sup>, there are accessible toilet facilities in the Taiari Mouth village. We are not persuaded that there is an ‘operational need’ for the multipurpose building to be located in the CMA.
- [104] The relevant regional plan is the Regional Plan: Coast (RPC) which pre-dates and does not yet fully give effect to the higher order statutory instruments. Although the following RCP provisions do not directly address ‘functional need’, they address the requirement to locate an activity in the CMA and so we consider them here:
- Policy 7.4.2: For activities seeking the right to occupy land of the Crown, consideration will be given to the reasons for seeking that occupation, whether or not a coastal location is required, and to any other available practicable alternatives.*

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<sup>63</sup> EIC Ellison, paragraph 57.

<sup>64</sup> Legal Submissions, paragraph 23.

<sup>65</sup> We note this provision is subject to appeal.

<sup>66</sup> CE-P10 refers to “functional need or operational need”.

<sup>67</sup> Legal Submissions, paragraph 91(b)(i)

<sup>68</sup> Paragraph 51.

*Objective 8.3.3: To provide for the development of appropriate new structures and maintenance of existing structures, whilst minimising the use of structures for activities which do not require a coastal marine area location.*

*Policy 8.4.9: Structures should only be allowed to locate in the coastal marine area where there are no practicable alternatives elsewhere.*

- [105] There is no requirement to have the multipurpose building and its associated private residential and commercial accommodation located in the CMA and there are clearly practicable alternative locations outside the CMA for '5 star' rental accommodation. On that basis we agree with Ms McDonald that the multipurpose building and its associated private residential and commercial accommodation is inconsistent with those RCP provisions.
- [106] Finally, we wish to record that while we outlined positive effects of the proposal in section 5.1.10 of this Decision, we find that the existence of those effects does not outweigh the absence of a 'functional need' to have the multipurpose building and its associated private residential and commercial accommodation in the CMA.
- [107] In overall terms we find that NZCPS Policy 6(2)(d), ORPS 2019 Policy 5.4.9(a), numerous PORPS 2021 provisions, and locational provisions of the RCP all weigh strongly against allowing the multipurpose building and its associated private residential and commercial accommodation to proceed.
- [108] We now consider aspects of the statutory instruments other than those related to functional need.

#### **5.4 National policy statements**

- [109] The New Zealand Coastal Policy Statement is relevant. Ms McDonald considered that NZCPS Objectives 2, 3, 4, and 6 and Policies 2, 6, 13, 15, and 18 were the most relevant provisions in this case.
- [110] Objective 2 relates to preserving the 'natural character' of the coastal environment. Policy 13 (2) outlines matters<sup>69</sup> that may be relevant to 'natural character'. We do not find these provisions to be overly determinative as the site in question resides within an area that has been heavily modified with wharves and structures and has little if any 'natural character'. Having regard to Policy 13(2), the only relevant matter would appear to be potentially relevant would be the "natural darkness of the sky". However, we do not find that to be a significant matter due to the urbanised nature of the wider Taiāri Mouth locality.
- [111] As previously addressed in section 5.1.3 of this Decision there is agreement between the landscape experts that adverse effects on natural character were "very low".
- [112] Objective 3 relevantly requires us to take account of the principles of the Treaty of Waitangi and to recognise the role of tangata whenua as kaitiaki. In that regard we received legal submissions and evidence from Te Rūnanga. From that material it is clear that Te Rūnanga consider the multipurpose building and its associated private residential and commercial accommodation are inconsistent with their kaitiaki obligations, but the other aspects of the proposal are not.
- [113] Objective 4 refers to maintaining and enhancing the public open space qualities and recreation opportunities of the coastal environment. The proposal will occupy a negligible additional area of public open space in the CMA than the current structures due to the proposed access ramp. We note that the proposed multipurpose building and its associated private residential and commercial accommodation are not "public open space" and in answer to our question Mr Cubitt confirmed that was the case. The multipurpose building will be enclosed private space. However, the other aspects of the proposal will

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<sup>69</sup> Natural elements, processes and patterns; biophysical, ecological, geological and geomorphological aspects; natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks; the natural movement of water and sediment; the natural darkness of the night sky; places or areas that are wild or scenic; and experiential attributes, including the sounds and smell of the sea; and their context or setting.

enhance recreational opportunities for both disabled people and the wider public by enabling public access to the CMA through use of the wharf, pontoon and crane. On balance, we find that the proposal is not inconsistent with Objective 4.

- [114] Objective 6 is to enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety. As we have noted in section 5.1.10 of this Decision, the proposal would yield social and economic benefits for the applicant and benefits for disabled people and their carers. Regarding cultural wellbeing, the evidence of Te Rūnanga was that the multipurpose building and its associated private residential and commercial accommodation would detract from their cultural wellbeing.
- [115] Policy 2 addresses the Treaty of Waitangi, tangata whenua and Māori heritage. As we did for Objective 3, from the evidence of Te Rūnanga we find that the multipurpose building and its associated private residential and commercial accommodation is inconsistent with Policy 2, but the other aspects of the proposal are not.
- [116] Policy 6(1) arguably relates more to the plan making activities of the Clutha District Council and the ORC. Policy 6(2) is more directly relevant to our decision-making. Policy 6(2)(b) relates to public open space and recreational qualities of the CMA which we discussed in relation to the more specific Objective 6. Policy 6(2)(e) is to promote the efficient use of occupied space, including requiring that structures be made available for public or multiple use wherever reasonable and practicable. We are satisfied that will be the case here for the wharf but not the multipurpose building. That weighs against a grant of consent.
- [117] Policy 6(1)(f) relates to encouraging development that maintains the character of the existing built environment. In this case the character of CDA5 relates to fishing and recreation. The proposed multipurpose building and its associated private residential and commercial accommodation is at odds with that existing character and if it proceeded it could foreseeably give rise to reverse sensitivity effects that would adversely affect the existing activities that give rise to that character. That weighs against a grant of consent.
- [118] Policy 13 relates to natural character and we make the same finding on that as we did for Objective 2.
- [119] Policy 15 is to protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development. Given our previous findings in section 5.1.3 of this Decision that adverse landscape effects can be managed such that they are minor and acceptable, we find the proposal is consistent with this Policy.
- [120] Policy 18 addresses public open space which we addressed in relation to Objective 4.
- [121] In conclusion, we find that the multipurpose building and its associated commercial accommodation are inconsistent with some NZCPS provisions. This weighs against granting consent for those aspects of the proposal. However, the NZCPS does not weigh against granting consent for the occupation of the CMA with a wharf, floating pontoon, and appurtenant structures (ramps and crane with winch) for the purpose of recreational (including by disabled people), sporting, and educational use, and emergency, civil defence, and regulatory services use.

## **5.5 Regional policy statements**

### **5.5.1 ORPS 2019**

- [122] Ms McDonald identified RPS provisions that she considered to be relevant.
- [123] Regarding the ORPS 2019 we agree that the proposal is partially consistent with Objective 1.1 and Policies 1.1.1 and 1.1.2 relating to economic, social, and cultural wellbeing due to the positive effects of

the proposal. However, regarding ‘cultural wellbeing’, counsel for Ōtākou submitted<sup>70</sup> that the proposal would result in adverse effects on the values of Ōtākou and Kāi Tahu, particularly in relation to mahika kai and the mauri of the Taiari River and CMA. In that regard the proposal is partially inconsistent with those provisions.

- [124] On the evidence, and as discussed in section 5 of this Decision, we find that the proposal is consistent with:
- Objective 3.1 and Policies 3.1.5 and 3.1.10 relating to ecosystems, biodiversity and coastal water;
  - Policies 3.1.11 and 3.1.12 relating to natural features, landscapes, seascapes and natural character;
  - Objective 4 and Policies 4.1.4 and 4.1.6 relating to natural hazards; and
  - Objective 5.1 and Policy 5.1.1 relating to public access.
- [125] We find that the ORPS 2019 does not weigh against granting consent for the 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 use.

### 5.5.2 **PORPS 2021**

- [126] On the evidence, and as discussed in section 5 of this Decision, we find that the proposal is not inconsistent with:
- IM-O3 –Sustainable impact;
  - IM-O4 – Climate change;
  - IM-P7 – Cross boundary management;
  - IM-P8 – Effects of climate change;
  - IM-P13 – Managing cumulative effects;
  - CE-O1 – Safeguarding the coastal environment;
  - CE-P5 – Coastal indigenous biodiversity;
  - CE-P3 – Coastal water quality
  - CE-O2 – Public access and recreation;
  - CE-P8 – Public access;
  - CE-O3 – Natural character, features and landscapes;
  - CE-P4 – Natural character; and
  - CE-P6 – Natural features and landscapes (including seascapes)
- [127] We find that having regard to the ORPS 2021 does not weigh against granting consent for the occupation of the CMCA 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 use.

## 5.6 **Regional plan**

- [128] We agree with Ms McDonald that the outcomes sought by the RCP and the ORPS 2019 and P-ORPS 2021 are similar. Consequently, we do not address the RCP in forensic detail.
- [129] As have outlined earlier, the site is located in CDA5 Taieri Mouth and so the location of appropriate structures should generally be enabled. In our view that depends however on an applicant establishing a functional or operational need for any structures to be situated in the CMA. We have found that is not the case for the multipurpose building and its associated private residential and commercial accommodation. However, having made that finding we note that the occupation of the CMA area with a

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<sup>70</sup> Legal Submissions, paragraph 5(b).

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 use would not be inconsistent with the RCP provisions.

## 5.7 Overall finding on statutory instruments

- [130] We find that the proposed multipurpose building and its associated private residential and commercial accommodation is inconsistent with the NZCPS, RPS 2019, RPS 2021 and RCP. That weighs against granting consent for that aspect of the proposal.
- [131] However, the occupation of the CMA area 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 use would not be inconsistent with the statutory instruments, which weighs in favour of granting consent for those aspects of the proposal.

## 5.8 Other matters

- [132] We agree with counsel for the applicant that it is not critical whether or not the existing containers are incorporated into the new multipurpose building. As she noted, the relevant rule does not distinguish between the wharf and the structures that may be on top of it. Rule 8.5.2.5 simply deals with any extension or alteration of an existing structure.
- [133] Some submitters raised concerns about climate change, sea level rise, storm surges, and spring tides and the impact of those hazards on the integrity of the proposed residential building, and to a lesser extent the wharf and pontoon.
- [134] Ms McDonald advised that the RPC contains a policy requiring structures provide at least 300mm of freeboard to account for possible sea level rise. In this case the applicant advised that the design floor level of the residential building will be at least 500mm above the current wharf which is approximately 1.2 m above the high tide mark. Consequently, we have no concerns regarding the effects of climate change induced, sea level rise, storm surges or spring tides affecting the structural integrity of the residential building.
- [135] Submitters also raised the issue of potable water supply and firefighting water supply. The site is located within an unreticulated area. Ms McDonald advised that adequate water capacity and pressure for the proposed activities can be determined through the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 (Code of Practice) and she recommended consent conditions accordingly should consent be granted. We find that to be appropriate.
- [136] Counsel for the applicant suggested<sup>71</sup> that to prevent disabled access to the CMA 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 New Zealand Bill of Rights Act 1990. We afford those submissions little if any weight because a decision to decline consent for the multipurpose building does not equate to preventing existing access to the CMA. The wharf, crane and hoist facilities exist now and can and have been used (as was demonstrated by images shown by the applicant) by disabled people. In our view those facilities are severable from the multipurpose building. In answer to our queries counsel confirmed we would have scope to grant consent for those existing facilities only.
- [137] We also note that while Coastal permit 2006.321 does not require the consent holder to provide access to the wharf for the purpose of enabling public access to the CMA and the applicants currently lock the gate to the wharf, there is nothing to stop them unlocking that gate now, thereby enabling public access to the wharf and its existing facilities by all members of the public, including disabled people.

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<sup>71</sup> Opening submissions, paragraph 82.

- [138] The Kai Tahu ki Otago Natural Resource Management Plan 2005 (NRMP) is a relevant other matter. Chapter 5 of the NRMP outlines the issues, objectives and policies for the whole of the Otago Region. The overall objectives in Chapter 5 are:
- The rakātirataka and kaitiakitaka of Kāi Tahu ki Otago is recognised and supported.
  - Ki Uta Ki Tai management of natural resources is adopted within the Otago region.
  - The mana of Kāi Tahu ki Otago is upheld through the management of natural, physical and historic resources in the Otago Region.
  - Kāi Tahu ki Otago have effective participation in all resource management activities within the Otago Region.
  - The respective roles and responsibilities of Mana whenua within the Otago Region are recognised and provided for through the other objectives and policies of the Plan.
- [139] We asked Mr Ellison about that and his evidence to us was that the proposal to establish residential and commercial accommodation in the CMA was inconsistent with that document. We accept his advice and note that his written evidence expanded on the above matters and concluded that the multipurpose building and its associated private residential and commercial accommodation would adversely impact the wāhi tūpuna values and mahika kai values associated with this area, through intrusion of activities that will detract from the natural character of the Taiari River and Te Tai o Āraiteuru.
- [140] We find that weighs against a grant of consent for the multipurpose building and its associated private residential and commercial accommodation.
- [141] While we have not undertaken a separate assessment of RMA Part 2 matters (given the currency of the NZCPS, the ORPS 2019 and the ORPS 2021) we accept the submission<sup>72</sup> of counsel for Te Rūnanga that the multipurpose building and its associated private residential and commercial accommodation is contrary to the requirement in section 6(e) of the RMA to recognise and provide for the relationship of Māori and their cultural and traditions with their ancestral lands, water, sites wāhi tapu and other taonga. That clearly weighs against granting consent for that aspect of the proposal.

## 6 Determination

- [142] Having consider the evidence presented we find that that consent should not be granted for the multipurpose building and its associated private residential and commercial accommodation. Accordingly, we were faced with two options:
1. Decline consents for the entire proposal; or
  2. Grant consents for the other aspects of the proposal, namely the wharf, access ramp and floating pontoon.
- [143] We have elected to take the second option as that leaves open the opportunity for the applicant to seek consent at a later time for a modified building to be located on the wharf should they so desire. We are satisfied that we have scope to grant consent solely for the wharf, access ramp and pontoon because that will enable activities that clearly fall within the envelope of activities for which consents were originally sought. Ms Irving confirmed that was the case.
- [144] In that regard it is well established<sup>73</sup> that, when determining applications for resource consent, a decision-maker has “the power to grant consent to something less than what is actually being sought”.
- [145] Pursuant to the powers delegated to us by the Otago Regional Council under section 34A of the Resource Management Act 1991, we record that:
- having read the applicant’s AEE and its supporting reports, their evidence and legal submissions;

<sup>72</sup> Legal Submissions, paragraph 5(d).

<sup>73</sup> *Director-General of Conservation v the New Zealand Transport Agency* [2020] NZEnvC 19 at [20].

- having read the Section 42A Report and considered the views of the experts engaged by the Council;
- having considered all of the written submissions and the views expressed by the submitters who attended the hearing, and
- for the reasons set out in this Decision and particularly that:
  - there is no functional or operational need to locate the multipurpose building and its associated private residential and commercial accommodation in the CMA;
  - enabling the multipurpose building and its associated private residential and commercial accommodation to locate in the CMA would create an adverse precedent;
  - locating the multipurpose building and its associated private residential and commercial accommodation in the CMA will give rise to potential minor reverse sensitivity effects; and
  - enabling multipurpose building and its associated private residential and commercial accommodation to locate in the CMA would have adverse effects on the cultural wellbeing of Te Rūnanga.

we decline the application from Onumai Enterprises Limited to alter and extend an existing structure into a multipurpose building that would provide private residential and commercial accommodation.

[146] We grant the application to occupy the CMA with a wharf, access ramp and floating pontoon at 21 Marine Parade, Taiari Mouth for a term of 35 years<sup>74</sup>.

[147] We have elected not to approve the multipurpose building while limiting it to 'recreational' use as was suggested as an option by counsel for the applicant in Reply. In our view that would necessitate a redesign of the building, including the exclusion of bedrooms for example. It would also invite a different style of building, more in keeping with a traditional boat shed style as was shown pictorially in the evidence of Ms Annan. Furthermore, it would be difficult to conceive of enforceable conditions of consent that would preclude overnight occupation of a building that has clearly been designed for that purpose.

## 6 Consent Conditions

[148] The applicant's AEE did not include recommended conditions. As part of her Section 42A Report Ms McDonald included a recommended suite of conditions. She helpfully separated out those conditions as follows:

- Consent No. RM22.550.01. To alter and extend existing structures into a multipurpose building upon an existing wharf.
- Consent No. RM22.550.02. To occupy the coastal marine area with a wharf, floating pontoon, and multipurpose building for the purpose of residential and commercial accommodation purposes, recreational, sporting, and educational use, and emergency, civil defence, and regulatory services use.

[149] As outlined above, we have decided against granting consent for the multipurpose building.

[150] Accordingly, we have amended Ms McDonald's recommended conditions to enable aspects of the proposal excluding the multipurpose building. The conditions imposed are set out in Appendix 1 of this Decision. We had regard to the amended conditions submitted by counsel in Reply.

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<sup>74</sup> As was recommended by Ms McDonald.



[151] It is conceivable that conditions we imposed may contain minor errors or omissions. Accordingly, should the applicant or the Council identify any minor mistakes or defects in the attached conditions, then we are prepared to issue a revised schedule of amended conditions under s133A of the RMA correcting any such matters. Consequently, any minor mistakes or defects in the amended conditions should be brought to our attention prior to the end of the 20-working day period specified in section 133A of the RMA

Signed by the commissioners:

A handwritten signature in black ink, appearing to be 'Rob van Voorthuysen', with a long horizontal stroke extending to the right.

Rob van Voorthuysen

A handwritten signature in black ink, appearing to be 'Ros Day-Cleavin', with a large, stylized loop at the end.

Ros Day-Cleavin

Dated: 23 September 2025

**Appendix 1: Consent conditions**