Submission on Onumai Enterprises Ltd Application – RM22.550

Submitter: Troy McNeill

Introduction

I strongly oppose the proposal by Onumai Enterprises Ltd to build a private commercial residence on the wharf at Taieri Mouth.

In addition to my original written submission, my opposition is based on a combination of planning, cultural, environmental, legal and precedent, and creep of definition concerns. I have developed these views through observation of and participation in this process.

Whilst I acknowledge the importance of accessibility for all members of the community, including those with disabilities, this proposal is clearly not the appropriate way to achieve it.

FIrstly. Precedent and Policy Integrity

- Contrary to what other submitters would have you believe, This would be the **first ever private permitted house approved within the Coastal Marine Area (CMA)** in Otago.
- It is clear in NZCPS Policy that councils must **avoid inappropriate subdivision, use, and development** in the CMA.
- Approval will set a dangerous precedent for other leaseholders and developers to pursue similar private developments on similar terms, slowly eroding public space and access to it.
- This type of precedent creep has already occurred in other parts of New Zealand, such as the Marlborough Sounds, Bay of Islands, and around Queenstown lakesides. It could also likely expose the ORC to many costly legal challenges from neighbouring Wharf owners who have nothing but a right to occupy the CMA for specific purpose. That purpose had nothing to do with provisions of accommodation.
- ***The thought that a one-off exception today becomes a standard tomorrow would be disappointing given all that currently exists is NOTHING MORE THAN a right to occupy and the wharf to be used for fishing and storing fishing equipment .***

Secondly. Public vs Private Use of Public Space

- The CMA is **public space** under section 6(d) RMA and NZCPS Policy 18, which protects public access.
- This proposal permanently alienates part of that public space for a single group or family.
- While the applicant claims to enhance access, there are **no enforceable guarantees for example:**
    - No reserved days or priority access for disabled users.
    - No fee reductions or protections for public affordability.
    - Nothing preventing it from being run purely as a private house or commercial BnB.
- The applicants have agreed that creating public access under the current lease terms is encouraged. They have offered excuses in the past for being unable to provide public access to their wharf, some security or Health and Safety claim of not being able appropriately secure a container or some such. Meaning the gate has been locked for at least the period of the application being in process (3 years?+) and they therefore seem unmotivated, unable to, or uninterested do what is necessary in the meantime to create public access as a measure of goodwill. I can only interpret this behaviour as showing intentions to exploit their simple right to occupy for way more than what is defined.
- **I have the personal belief, that I would hope like most Kiwis believe that the CMA that the wharf sits in, the land that it is tied back to, is owned in some way, shape or form by everybody of this land and therefore should not be privatised.**

Third. Functional Need – House Not Justified in CMA

- Whilst the wharf, the hoist and non-complying pontoon **may meet the *functional need*** test, the **house does not:**

- It would appear the ultimate sniff test being that functional need requires the activity **must** be in the CMA to operate.
- *Doig v Marlborough DC (2018)* rejected toilets and showers at a marina because they could be on land — clearly a stricter necessity test applies under this legislation and has been clearly tested.
- Expanding on this test, the concept of toilets and showers to expand further onwards to full blown accommodation is a heavy lift to say the least!

- Ultimately this proposal blends operational convenience and personal preference with functional need, which is evidently **not supported by law**.

Four. Cultural Opposition and Treaty Obligations

- Edward Ellison's evidence on behalf of Iwi shows clear **cultural opposition** to this proposal in several clear and obvious ways.
- On the face of it, approving this development would likely **breach Treaty principles** without doubt be legally challenged if allowed to happen.

Ignoring Iwi opposition would be to ignore both the law and the Crown's partnership obligations.

While it would be inappropriate for me to speak to Iwi concerns. Like Iwi, I can speak to my **personal cultural attachment** to this area and the natural environment that I hold dear and try to enjoy on a daily basis. Quite simply I believe this right is not the applicants to take! Those are rights that are afforded to those who own freehold property on land, not in our treasured CMA.

Fifth. Technical, Practical and Environmental Concerns

- The application **lacks key technical details**, including:
  - A report from a professional who is willing to put their name to structural integrity of the existing structure, mainly concerning pile suitability on which to place a house.

- Plans for tankage of blackwater and greywater. Including how they would vent/overflow from such systems and how that would be dealt with.
- Foundations, Cables and utilities that may require excavation of public land.

- Assessments of the hoist and pontoon and how they intend to meet compliance under the Health and Safety at work act. Given the applicants proposing to provide services to paying customers, one would hope these structures meet such stringent requirements that legislation
- NZCPS Policies 24 and 25 require avoiding development that increases **exposure to coastal hazards.**
- A building just above mean high tide:
  - Risks damage from storms and sea level rise.
  - Could require future seawalls or extensions, increasing CMA encroachment.
- This development locks in ***future costs and environmental impacts that we may be all forced to bear.***

Six. Reverse Sensibility, Enforcement and Future Use Risks

- **Reverse sensibility** – I have a major concern about the compatibility of current normal wharf operations, with the proposed retreat style exclusive B & B.
- Whilst the applicants' have offered some means of mitigating potential reverse sensibility conflict, It would appear the applicants have not mentioned noise in their standard customer terms as an expectation of the experiences in their retreat, as opposed to odour, public use of the wharf, or potentially being kicked out in and emergency etc...Regardless, Those terms would also become bones of contention amongst certain clientele!
- Incidentally and some may say conveniently, the applicants' believe that there needs to be some kind of gentrification of this area. On this

point and relevant to reverse sensibility I note contrary to their observation the use of the wharves they believe is outdated. There are a**t least 4 vessels** are tied to the wharves with Maritime NZ MNZ identification numbers. These commercial (for reward) registered vessels, in additional to the recreational fleet are likely to come and go from the nearby wharves or boat ramp as they please at all hours according to the tides as per their operational needs Unfortunately, these tides and vessels do not wait for these BnB clientele to wake to allow these boats to come and go.

- I personally know of one such commercial charter boat parked right next to the applicants' wharf with a v8 Scania engine with straight above water exhausts which will no doubt get the attention of people paying one would assume very good money for a peaceful nights sleep.
- This is a clear **conflict between existing lawful uses of the CMA and this proposal**. A quick google search reveals many examples of such issues with similar types of development. Like the vineyards in Marlborough conflicting with residential development, or Port of Tauranga and its issues nearby apartments, or rural quarries in Auckland and nearby subdivisions.

Consequently, it is hard to see how the neighbouring wharf operations are not going to create reverse sensibility issues, and further create new issues for council in policy and policy enforcement and potentially invite conflict between stakeholders in the area.

- There are **no mechanisms to prevent future misuse**:
    - Resource consents "run with the land" under RMA s136, meaning future owners inherit rights, not promises.
    - Once built, the building could easily become a full-time B&B or private residence regardless of applicants' current proposals or undertakings. Once again this is another facet of the proposal whereby policing the restriction on days of occupation count would also be difficult to police.

- I note that other submitters are convinced that this type of operation, or at least overnight stays with plumbing and house like facilities are already being happening or operated in the CMA. Whilst concerning, and warranting investigation, it is just another example of how difficult this operation would be to police.

Finally:

"This case is about more than a single building. It is about the future of public coastal space in Otago. If this consent is approved, the precedent it sets will be irreversible. Accessibility can and should be achieved, but not at the cost of permanently privatising the Coastal Marine Area. I urge the commissioners to decline this application to protect the coast for future generations."