

Prepared for: Hearing Panel
Activity: Addendum to RM22.550 Section 42A Report
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Purpose

1. This is an addendum to my s42A report which was released on 19 August 2025. The purpose of this addendum is to clarify my overall recommendation following receipt of the Applicant's evidence, in which the proposal was slightly 'reframed' to highlight the specific desire to provide improved public access and recreational opportunities for the disabled community. I also respond to several points raised in the submissions of Counsel for the Applicant and Te Rūnanga o Ōtākou.
2. In this addendum I cover the following broad topics:
 - a) Consistency of planning documents
 - b) Functional and operational need
 - c) Functional need in the wider policy context
 - d) Other commercial activities
 - e) Permitted baseline
 - f) Landscape effects
 - g) Cultural effects
 - h) Overall recommendation

Consistency of planning documents

3. I remain of the view that the relevant planning documents, being the New Zealand Coastal Policy Statement (**NZCPS**), the operative Otago Regional Policy Statement (**ORPS 2019**), the proposed Otago Regional Policy Statement (**ORPS 2021**), and the Regional Plan: Coast for Otago (**RPC**) provide a reasonably coherent set of policies designed to achieve clear environmental outcomes in respect of the coastal environment. I consider that this is particularly so for the objectives and policies that deal with the 'need' for activities and structures, as each of these documents require consideration of whether a coastal location is appropriate or necessary, albeit with varying degrees of directiveness.
4. I consider that less weight should be placed upon the RPC as compared with the higher order documents. This is because this plan has not been updated to give effect to the NZCPS. Mr Cubitt correctly notes in his paragraph 27 that the first page of the RPC describes changes that were made in December 2011 (and operative 1 January 2012) to address the NZCPS. Mr Cubitt has not, however, noted the following relevant facts:
 - a) Section 1.2 of the RPC states that: "*This Plan was amended by Amendment 1 (NZ Coastal Policy Statement) on 1 January 2012. This amendment removed Restricted Coastal Activities*

in accordance with the New Zealand Coastal Policy Statement 2010, and removed references to the 1994 New Zealand Coastal Policy Statement.”

- b) Section 2.3.1 says: *“This Regional Plan: Coast for Otago must give effect to the New Zealand Coastal Policy Statement. The contents of the New Zealand Coastal Policy Statement 1994 have been considered and taken into account in the development of this Plan.”*
 - c) Section 2.5.4 states in relation to discretionary activities: *“... The Council will, in considering any application for a discretionary activity be guided by the policies contained within the Plan, the Regional Policy Statement for Otago, any policies and requirements of the New Zealand Coastal Policy Statement and the requirements of the Act.”*
5. The above suggests to me that the plan has not been updated specifically to reflect the NZCPS and that decision makers should be guided by the policies in the NZCPS in addition to those in the plan.
 6. Beyond assigning less weight to the RPC as compared to the higher order planning documents, I do not consider that a complex weighting exercise is necessary to inform my overall recommendation. I agree that the functional need policies need to be considered in the context of other relevant objectives and policies in each of the documents.

Functional and operational need

7. The relevant planning documents contain objectives and policies which speak to the ‘need’ for activities to occur within the coastal marine area. This need is variably described as functional need, operational need, and consideration of whether a coastal location is required. The relevant definitions are set out in Section 6.3 of my s42A report and are not repeated here.
8. The Applicant takes the position that the functional need test variably implemented by the relevant planning documents is met for the proposal. This seems to be on the basis that in order to provide for the improved accessibility and recreational opportunities for the disabled community, the accommodation building, and its various internal facilities, are functionally required. It is suggested by the Applicant that without the accommodation the other benefits, being the improved accessibility and recreational opportunities, will be not deliverable for the disabled community.
9. I accept that for the disabled community there are barriers and issues to accessing and enjoying the coastal marine area, and that these are as described in the evidence of Mr Marrable, Ms Grant, and Ms Barkman. Their evidence indicates that recreational activities may be enhanced for some members of the disabled community if there was a nearby clean and accessible bathroom space and an area to rest, presumably with shelter from the wind, sun, or rain, before, during, and after participating in recreational activities. Their evidence also describes the value of having accessible accommodation near to the areas at which recreational activities would be undertaken.
10. I have carefully reconsidered each of the definitions of functional and operational need in light of the Applicant’s reframing of the proposal.

11. Some of the interior facilities in the accommodation building, such as those required to provide for the hygiene requirements and physical limitations of disabled persons while undertaking passive or active recreational activities, could perhaps be considered to have a 'logistical' need to occur on the wharf in the context of providing for recreational activities. This may meet the test for operational need in the pORPS 2021, or the definition of 'functional need' as it is defined in the ORPS 2019. This is because hygiene requirements may need to be dealt with somewhat urgently, and it may be logistically simpler if this could be managed on site without the need to travel to an alternative nearby location. However, I don't consider that the 'functional need' test as it is defined and applies to the NZCPS and the pORPS 2021 would be met for these facilities, as these facilities can occur in a location other than the coastal marine area.
12. I am not persuaded by the evidence of the Applicant that there is a functional or operational need for accommodation to occur upon the wharf in the coastal marine area for the disabled community, or for the Applicant, or any other member of the public. Accessible accommodation could be developed anywhere in the Taieri Mouth area to achieve the majority of the benefits described in the evidence of Mr Marrable, Ms Grant, and Ms Barkman.
13. As set out in paragraph 29 of the submission of Counsel for the Applicant, the various facilities are proposed as a 'package'. The Applicant does not propose to provide the hygiene facilities in isolation of the overnight accommodation activities.
14. I do not consider that it would be appropriate to grant consent for the accommodation building and its use for residential accommodation for the applicant, their friends and family, or as a short-term rental accommodation facility for paying guests on the basis that it contains an accessible bathroom that may support the generally day-time recreational activities for disabled persons.
15. Mr Cubitt in his paragraph 16 states that the proposed use is multipurpose, that the uses are an interconnected package, that a number of the public benefits will not accrue if the commercial aspect cannot operate, and that this is a simple matter of economics. Mr Mirams in his paragraphs 24 and 26 also speaks to the wharf and hoist having ongoing maintenance and inspection requirements, and that the additional costs of making provision for the disabled access and the ongoing operation and maintenance of facilities such as the crane and pontoon require generation of income from the accommodation facility.
16. Neither Mr Cubitt nor Mr Mirams have quantified the expected operating or maintenance costs of the wharf, pontoon, or crane, nor how these costs may increase if these structures are made available to the public. However, I do note that the ongoing maintenance of the wharf and sheds (the existing structures) in a structurally sound and tidy state is required by the existing coastal permit 2006.321, regardless of whether the applicant obtains the new consents sought by this application and can derive an income stream from the exercise of these consents.
17. Mr Mirams states in his paragraph 17 that there is an existing cupboard which houses the controls for the crane, and in his paragraph 18 that the crane will not require access to the building to operate it. The wharf is structurally sound, and a ramp provides wheelchair access between the wharf and pontoon at all tides. It therefore appears to me that the majority of the

activities that are proposed in this application as accessibility and recreational improvements, are in fact already attainable and appear to be currently utilised by the Applicant and their guests.

18. While the Applicant may wish to have an income stream to support the accessibility features such as the ramps, pontoon, and crane, I do not consider that this constitutes a functional or operational need for an accommodation facility.
19. In conclusion, I remain of the view that there is no functional or operational need for an accommodation facility at this location, and in my opinion consent should be declined for this aspect of the proposal.

Functional need in the wider policy context

20. In his evidence Mr Cubitt discusses the need, as set out in the NZCPS, to provide for access to the coastal marine area for people with disabilities to enable these persons to experience and enjoy the coastal environment. In his paragraph 30 he says:

This need is recognised in the NZCPS. Objective 4 recognises that the CMA 'is an extensive area of public space for the public to use and enjoy' and accordingly 'public open space qualities and recreation opportunities are to be maintained and enhanced'. Policies 18 (Public Open Space) and 19 (Walking Access) seek to implement this objective. This policy direction is also reflected in Policy 6(2)b which provides for activities within the coastal environment.

21. In his paragraph 77, which provides concluding comments in his evidence, Mr Cubitt states that:

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

22. I agree that the functional need policies need to be considered in the context of other relevant provisions of the NZCPS and I also agree that Objective 4, and Policies 18 and 19 provide this context.
23. I note that in my s42A report I did not assess the proposed activities against Policy 19 of the NZCPS. This is because, in my opinion, Policy 19 seeks to ensure there is contiguous or uninterrupted open space along any coastline which is accessible to the public without the need to drive a vehicle, and without access being prevented by structures, strips of privately owned land, or areas that require payment to access. In my mind, this policy speaks mainly to things like accessible walkways without barriers such as steps or overly steep terrain. As such, I didn't consider this policy to be particularly relevant to this application. However, with some focus shifted to providing access to the coastal marine area specifically for the disabled community, I agree that it has some relevance.

24. In describing the requirements of Objective 4 and Policy 19 neither Mr Cubitt nor Counsel for the Applicant has identified that these provisions require public access to and along the coastal marine area that is free of charge. The Applicant is not proposing to provide these facilities on a charitable basis, and the accommodation building, and the facilities contained therein, will not be available to any member of the public free of charge. Mr Mirams at his paragraph 26 states that he expects to be able to generate additional income from the day use of the facility, which suggests to me that when the accommodation facility is not rented for overnight use, it may be rented for day use. In my view, this renders the overnight accommodation and the day-use of the accommodation building aspects of the proposal inconsistent with these provisions.
25. If the interior facilities of the accommodation building are critical to enabling recreational activities for the disabled community, as the Applicant appears to be suggesting, then charging for their use would appear to undermine some or all of the positive benefits that might otherwise ensue. In his evidence at paragraph 30 Mr Mirams states that the accommodation facility would be run at a 5-star standard, and that they intend to implement a minimum stay policy. This indicates to me that only a subset of the disabled community would be able to rent this accommodation facility and enjoy recreational activities at the site.
26. At his paragraph 18 Mr Mirams states that signage would be installed to inform the public that access is not restricted and that the public may utilise the wharf if they wish to do so. This is supported; however, I remain unsure whether renting of the accommodation would also include exclusive access to the wharf and pontoon and crane for the renter, or simply exclusive access to the accommodation facility itself. Even if renting the accommodation facility would not enable exclusive access to the wharf and appurtenant structures, I consider that it is unlikely that any people, let alone disabled people who may have less confidence and security, would actually attempt to relax on the wharf or utilise the crane when there may be paying guests that they don't know looking at them through the window of the accommodation.
27. In summary, I do not agree that there is a functional need for the proposed accommodation facility in the coastal marine area at this location, nor do I agree that this proposal is an exception to the general requirement for functional need set out in NZCPS policy 6(2)(d). This is because the proposed accommodation does not achieve the requirements of Objective 4 or Policy 19. I consider benefits proclaimed by the Applicant are not for the general public but are reserved for those fortunate enough to be able to pay for the accommodation facility.

Nearby commercial activities

28. In his paragraph 24 Mr Cubitt states that I did not identify the commercial 'takeaway café and fresh fish shop' enabled by Coastal Permit 2005.728_V1. I did identify this, in the fifth row of table 1 in my s42A report, although I did not discuss it any further.
29. Mr Cubitt states in paragraph 19 that in his view Council has recognised the changing nature of the CDA by consenting a commercial takeaway and retail outlet on a neighbouring wharf.

30. In my view, limited weight should be placed upon coastal permit 2005.728_V1 when considering the degree to which the nature of the CDA may be changing, because:
- a) The variation application was granted 18 years ago under a different planning framework. While the RPC is the same RPC which is currently operative, there was a different (now superseded) regional policy statement in play and an NZCPS which did not include the functional need concept.
 - b) Council has no evidence from compliance audits that this activity was ever undertaken, although submitters who reside in the Taieri Mouth area may have anecdotal evidence to the contrary.
 - c) There are substantial restrictions placed upon the operation of the café and sale of fish, being four hours on weekend days during winter months, afternoon hours Wednesday to Sunday over the summer months, day time during public holidays but not Christmas Day, and on the day of any publicly notified fishing competition in the Taieri Mouth area.
 - d) The occasional sale of fresh fish and takeaway pre-prepared food items from a wharf that also accommodates commercial fishing is not an equivalent activity to an overnight accommodation activity proposed by this application.
 - e) The permit prohibits the use of the shed and wharf for temporary or permanent residential purposes.

Permitted baseline

31. In his paragraph 23, Mr Cubitt suggests that people can live aboard a boat tied to a wharf or moored further out in the water, and that this would generate all the attendant effects of an accommodation activity. He goes on to state that if there is an environmental effect or a cultural effect arising from this activity (the application), there are many permitted activities already generating that effect. Similar statements are made in the submission of Counsel in paragraphs 23 and 28. Presumably, it is the position of the Applicant's representatives that this is a permitted baseline of relevance to the application.
32. I do not agree that this is an appropriate permitted baseline, because neither a wharf, nor any other mooring structure, nor the mooring of any vessel to a wharf or structure, is a permitted activity at this location. Where a wharf or other mooring structure is authorised by a coastal permit to occupy the common marine and coastal area, the permit is issued with a purpose, as well as consent conditions detailing how the wharf or mooring structure is to be used. This would include the type of vessel that could be attached to the structure and the purpose for which that the vessel could be used.

Landscape effects

33. Landscape effects, and responses to specific points raised in the evidence of Mr Moore and Counsel for the Applicant, will be provided by Ms Annan, who provided the expert landscape evidence used to inform my s42A report. However, I address a small number of points here.
34. At paragraph 97 of the submission of Counsel for the Applicant, it is stated that: "*The Council's position on landscape matters seems to be that area should be maintained in its untidy and*

rundown state. This does not allow for gradual improvement of amenity values which would seem to be inconsistent with ss 7(c) and (f) of the Act.”

35. This is not correct. My position, supported by the evidence of Ms Annan, is that any maintenance and upkeep, or general ‘tidying up’ of the area, does not require the introduction of residential character, nor would this introduction be appropriate. Amenity derives from character. Out of character development can initiate incremental erosion of landscape values and the loss of a place’s distinct identity, coherence, and legibility. The existing wharves and structures do not have a residential character, and it would be a notable loss of character for this area to be homogenous with the wider residential settlement.
36. I prefer the evidence of Ms Annan over the evidence of Mr Moore because I in my opinion it more appropriately considers the relevant landscape values and the effects of the proposal on these values. Regardless, adverse effects on landscape values are considered to be minor and are not the primary driver for my recommendation to decline all aspects of the proposal relating to accommodation.

Cultural effects

37. The submission from Mr Ellison concludes in his paragraph 65 that the proposal”

will 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. Intrusion of private use into this environment will hamper the ability for mana whenua to interact with wāhi tūpuna and to engage in mahika kai activities.

38. Mr Ellison is a cultural expert authorised to speak on behalf of Te Rūnanga o Ōtākou, who is the papatipu rūnaka that represents hapū who uphold the mana of the whenua for the Taiari river and Taiari Mouth. I prefer the evidence of Mr Ellison over the evidence provided by the Applicant and their representatives in relation to the effects of the proposal on cultural values. The clarification as to cultural effects provided by Mr Ellison supports my recommendation to decline all aspects of the proposal relating to accommodation.

Overall recommendation

39. I am not persuaded by the evidence of the Applicant that there is a functional or operational need for any accommodation facility in the coastal marine area at this location. I remain of the opinion that any aspect of the proposal that relates to accommodation should be declined.
40. I understand that the Applicant does not intend to proceed with individual parts of the application, and the proposal is an ‘all or nothing’ proposal. This is noted, but I wish to be clear that the wharf, floating pontoon, crane with winch, and access ramps to the wharf and from the wharf to the pontoon are structures that would enhance the access and recreational opportunities for the public in a manner that is consistent with relevant policy direction, and that these activities could be granted.