

Submission on notified proposal for plan change



About preparing a submission on a proposed plan change

You must use the prescribed form

- [Clause 6](#), Schedule 1 of the Resource Management Act 1991 (RMA) requires submissions to be on the prescribed form.
- The prescribed form is set out in [Form 5](#), Schedule 1 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.
- This template is based on Form 5. While you do not have to use this template, your submission must be in accordance with Form 5.

Your submission and contact details will be made publicly available

- In accordance with [clause 7](#) of Schedule 1 of the RMA, the Council will make a summary of your submission publicly available. The contact details you provide will also be made publicly available, because under [clause 8A](#) of Schedule 1 of the RMA any further submission supporting or opposing your submission must be forwarded to you by the submitter (as well as being sent to Council).
- [Section 352](#) of the RMA allows you to choose your email to be your address for service. If you select this option, you can also request your postal address be withheld from being publicly available. To choose this option please tick the relevant boxes below.

Reasons why a submission may be struck out

Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least one of the following applies to the submission (or part of the submission):

- it is frivolous or vexatious
- it discloses no reasonable or relevant case
- it would be an abuse of the hearing process to allow the submission (or the part) to be taken further
- it contains offensive language
- it is supported only by material that purports to be independent expert evidence, but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.

To Kāpiti Coast District Council

Submission on Proposed Plan Change 2 to the Operative Kapiti Coast District Plan 2021

Submitter details

Full name of submitter: Manly Flats Limited

Contact person (name and designation, if applicable): Catherine Milne (secretary)

Postal address (or alternative method of service under section 352 of the RMA):
53 Manly Street Paraparaumu 5032

Telephone: 021803327

Electronic address for service of submitter (i.e. email): philip.milne@waterfront.org.nz

I would like my address for service to be my email *[select box if applicable]*



I have selected email as my address for service, and I would also like my postal address withheld from being publicly available *[select box if applicable]*



Scope of submission

The specific provisions of the proposed plan change that my submission relates to are:
[give details]

Manly Flats Limited owns the land at 127 Manly Street Paraparaum

A. Opposition to the use of the Jacobs 2 report as a basis for defining the CQMP.

B. Opposition to the CQMP in its entirety until the Coastal Hazards chapter of the District Plan (which has not yet been proposed) is operative.

C. Opposition to the inclusion of a small portion of the property at 127 Manly Street within the proposed CQMP which has been based on the Jacob 2 report and the location of a coastal access way on the boundary of the property.

D. Opposition to the failure to include a wider CQMP which is based on section 6(a) of the RMA and supporting policies in the NZCPS with the aim of avoiding inappropriate (intensive) development within the immediate coastal environment as viewed from the beach or roads running parallel to the beach (such as Manly Street).

Continue on a separate sheet if necessary

Submission

My submission is: *[include whether you support or oppose the specific provisions or wish to have them amended; and reasons for your views]*

See attachment

Continue on a separate sheet if necessary

I seek the following decision from the Kāpiti Coast District Council: [give precise details]

Relief sought

- i. Delete the current CQMP (which is based on an “ unlikely ” potential for erosion hazard)
- ii. Replace it with a CQMP based upon section 6 (a);or
- iii. Require the Council to properly investigate a means of recognising and providing for section 6 (a) and the subservient NZCPS policies and vary the Plan Change or Change the District Plan to include such an CQMP.
- iv. If you decide to allow the current CQMP (which is based on purported erosion potential) then remove the anomaly at 127 Manly Street.
- v. If you decide to allow the current CQMP then ensure that consistent QMPs are introduced to deal with flood hazard and ponding areas shown in the District Plan.
- vi. Delete the town centre label for Paraparaumu Beach shopping area and replace it with a local centre identification.
- vii. Delete the consequential PREC_{x2} - Residential Intensification Precinct B as shown. (Plan 08) and replace it with general residential.
- viii. Delete the Kena Kena PREC_{x2} - Residential Intensification Precinct B and replace it with general residential.
- viii Such further or other relief as is consistent with this submission.

Continue on a separate sheet if necessary

Hearing Submissions [select appropriate box]

I wish to be heard in support of my submission.	<input checked="" type="checkbox"/>
I do not wish to be heard in support of my submission.	<input type="checkbox"/>
If others make a similar submission, I will consider presenting a joint case with them at a hearing.	<input checked="" type="checkbox"/>
If others make a similar submission, I will not consider presenting a joint case with them at a hearing.	<input type="checkbox"/>

14/09/2022

Signature of Submitter
(or person authorised to sign on behalf of submitter)

Date

A signature is not required if you make your submission by electronic means.

Trade Competition [select the appropriate wording]

If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by [clause 6\(4\)](#) of Part 1 of Schedule 1 of the Resource Management Act 1991.

I could ☐ / I could not ☒ gain an advantage in trade competition through this submission.

If you could gain an advantage in trade competition through this submission, please complete the following:

I am ☐ / I am not ☐ directly affected by an effect of the subject matter of the submission that—

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition.

Email your submission to district.planning@kapiticoast.govt.nz or post/deliver to:

Attn: District Planning Team
Kāpiti Coast District Council
175 Rimu Road
Paraparaumu 5032

For office use only

Submission No:

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Attachment to submission on KCDC District Plan PC 2

by Manly Flats Limited

Reasons for opposition

A. In relation to A my opposition to the use of the Jacobs 2 report as a basis for defining a CQMP is:

- a) The report was not intended to be used for this purpose and is not fit for this purpose.
- b) The report has not been subject to public consultation or any proper technical review.
- c) The lines in the report are not suitable for defining coastal erosion hazard because they were not intended for property specific hazard assessment.
- d) The Council has had many years to include coastal hazard lines in the District Plan to replace those which were withdrawn because they were found to be not fit for purpose.
- e) The Council should not be using draft lines (which at this stage are essentially for discussion purposes) as a basis for defining the boundary of a CQMP based on erosion hazard.
- f) Jacobs (Volume 1: Methodology) explains that their work is not a coastal hazard risk assessment under NZCPS Policy 24.
- g) Jacobs Volume 2 does not give effect to NZCPS Policy 24 – *Hazard identification*, and therefore any of its outputs cannot be used to implement or address NZCPS Policy 25 as a coastal management policy for areas of coastal hazard risk. Therefore, we have re-defined the assessment to be coastal hazard vulnerability rather than coastal hazard risk”.

The spatial extent of the Coastal Qualifying Matter Precinct is based on the 2120 P10 projected future shoreline position using the RCP 8.5+ (with -3mm/year vertical land movement) relative sea level rise scenario. This scenario is the most landward scenario modelled by Jacobs, and while it is described as highly unlikely, this scenario does have the potential to occur.

- h) NZCPS Policy 24 does not require that unlikely or “highly unlikely” hazards be identified.
- i) The Council’s decision to use a “highly unlikely” sea level rise scenario to define the spatial extent of the CQMP, is not in accordance with or required by RMA section 6 (h) and is therefore outside of the scope of section 77I (a).
- j) Given the Council’s approach is not required in order to implement Policy 24 of the NZCPS and is premature in terms of NZCPS Policy 25, it is not “required” or lawful under RMA section 77I (b)

B. In relation to B all of the above points are repeated and in addition:

- a) The use of the Jacobs 2 report is premature and unjustified given that it has not been subject to any public submission process or proper technical review.
- b) The Council’s approach to the coastal erosion hazard is inconsistent with its approach to other natural hazards. The Council has created a proposed CQMP in the absence of any District Plan coastal erosion hazard identification. In contrast, the District Plan includes overlays for flooding, ponding and surface flow and associated restrictions on development, but the Council has not reflected those in corresponding exclusion areas.

It follows that the Council has not recognised and provided for management of “significant risks from natural hazards” (RMA section 6 (h)).

C. In relation to C:

- a) The Milne Family Trust of which I am one of the trustees is a 1/6 shareholder in this property. (The property is owned by Manly Flats Limited which has also made a submission.)
- b) All of the prior points at A and B above are repeated and in addition:
- c) It is unreasonable to include a tiny corner of this large property (127 Manly street) in the CQMP (see the southern most point of the Manly street CQMP on Map 08) based on a report which is not and was never intended to provide such site specific detail.
- d) Almost all of the property is excluded from the CQMP however a tiny corner at the northern end has been included. This implies to potential purchasers of the property, that this corner of the property is subject to erosion hazard, however the Jacobs 2 report is not a hazard or risk assessment.
- e) It appears that the basis for this tiny inclusion, is that this corner or the property, is at the seaward end of council managed access way to the beach which has (by use over a period of 80 years or more) has worn a trench into the protective foredunes. (the access also follows a former water course, but that has been piped.) This is in effect a council made hazard which can be readily managed by the council filling in the narrow line of vulnerability it has allowed to be created.
- f) The inclusion of any part of the property in a “quasi” erosion vulnerability area before the coastal hazard lines and restrictions have been debated is premature and unreasonable.
- g) The arbitrary nature of this proposed CQMP is reflected by the fact that from 129 Manly North significant parts of the properties are proposed to be included in the CQMP with the implication that they are subject to erosion hazard. An observation of the erosion along the coastline shows that erosion in recent years commences further north. (It is accepted that some properties to the north are subject to coastal erosion hazard in the future based upon erosion trends in recent years coupled with projected sea level rise.

D. In relation to issue D:

- a) The Council has proposed a CQMP which purports to be based on coastal hazards but is in fact based on coastal hazard potential on an *unlikely scenario*.
- b) The Council has however failed to properly consider whether to introduce a QMP based on section 6(a) of the RMA and the resulting policies in the NZCPS.
- c) It is clear that the Council does have the ability to include a QMP based on recognizing and providing for section 6(a) but has not done so.
- d) This may be because the Council has been wrongly advised, that it cannot have a QMP based upon special character. (The Council’s legal advice on this matter should be made available to the Panel and the public if it has been the basis for the Council’s decision to not consider introducing a coastal character QMP.)

- e) In the section 32 report, RMA section 6 (a) has been excluded from the table on pages 16-17, as it was not considered a “Relevant matter”. The basis for that conclusion is unclear, but I understand from Council sources is based on legal advice.
- f) In this regard, I note that Auckland Council (and maybe others) has adopted a different approach.(KCDC has also inconsistently introduced QMP’s based upon ecological values.)
- g) The majority of the dwellings along the coastal margin in Kapiti are one story with a few two story dwellings (usually with basement garages or living areas below the foredune). Providing for 3 story dwellings along most of the coastline and 6 story development at Paraparaumu Beach Village and elsewhere will result in inappropriate use and development of the coastal marine area and will fail to maintain (preserve) the remaining natural character of this iconic and defining part of the Kapiti Coast District.
- h) Accordingly, the failure to provide for this matter is a failure to recognise and provide for section 6 (a) of the RMA.
- i) Section 77I read in conjunction with section 6 enables and requires, the Council to accommodate this requirement by including a qualifying matter which precludes intensification which would amount to inappropriate use and development of the coastal environment and/or which would fail to preserve the remaining natural character of the coastal environment.
- j) Permitting 3 story (or greater) development along much of the urbanised Kapiti coast is clearly inappropriate. Such an approach ignores the effect of development on the views of the coast, the sea and Kāpiti Island from properties roads and public spaces inland of such development and from the sea and beach looking back towards the foredunes and the coastal hinterland.
- k) The impact of such development needs to be considered from the perspective of those looking inland from the beach or the sea and for those looking seaward from inland of such development. The Council has made no such assessment.
- l) Policy 6 (1) of the NZCPS requires the Council to (emphasis added):
consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;
- m) Policy 7 of the NZCPS requires Councils to:
identify areas of the coastal environment where particular activities and forms of subdivision, use, and development:are inappropriate; and may be inappropriate without the consideration of effects through a resource consent application, notice of requirement for designation or Schedule 1 of the Resource Management Act process; and provide protection from inappropriate subdivision, use, and development in these areas through objectives, policies and rules.
- n) Policy 14 of the NZCPS promotes the restoration or rehabilitation of natural character of the coastal environment including identifying areas for restoration, providing policies

and methods in the District Plan and through imposing conditions on resource consents and designations.

- o) In the development of PC2 the Council has not implemented or (it seems) even had regard to these policies which serve section 6(a).
- p) Developing a CQMP claimed to be based on part of section 6 and one part of the NZCPS and ignoring the other parts is inconsistent and a derogation of the Council's duty.

From: [Philip Milne](#)
To: [Mailbox - District Planning](#)
Subject: Submission by Manly Flats Limited on PC2
Date: Wednesday, 14 September 2022 9:20:32 pm
Attachments: [image001.png](#)
[Attachment to submission by Manly Flats Limited on KCDC District Plan PC 2.pdf](#)
[proposed-plan-change-2-submission-form-form-5 for Manly Flats Limited.pdf](#)

Please find attached a submission on behalf of Manly Flats Limited 127 Manly Street

PHILIP MILNE | BARRISTER | RMA COMMISSIONER

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