

IN THE MATTER OF

**The Resource Management Act
1991, Subpart 6 concerning
Intensification Streamlined
Planning Process**

AND

IN THE MATTER

**of Plan Change 2, a Council-led
proposed plan change to the
Kapiti Coast District Plan under
the Resource Management Act
1991, Schedule 1 Subpart 6.**

LEGAL SUBMISSIONS ON BEHALF OF

Coastal Ratepayers United Inc. (CRU)

17 March 2023

Introduction

1. These submissions are made on behalf of CRU to support its primary request that the Council/Panel deletes the CQMP based upon *Kāpiti Coast Coastal Hazards Susceptibility and Vulnerability Assessment Volume 2: Results* (Jacobs, 2022), for the reasons stated in its originating submission.
2. These legal submissions should be read in conjunction with the evidence of Sean Rush.
3. In so far as the submissions relate to the use of the Jacobs “2120 P10 projected future shoreline position using the RCP 8.5+ (with -3mm/year vertical land movement) relative sea level rise scenario” (the ‘scenario’) as a basis for the proposed CQMP, these submissions and the evidence on behalf of CRU and the legal submissions filed by Mr Hazelton are adopted in respect of my own submission and that of Manly Flats Limited.¹

Key Points from CRU’s Submission

4. I set out below the key points from CRU’s submission to this panel:
 - f) *The coastal qualifying areas identified are not “required” to meet the directions in the NZCPS.*
 - g) *In so far as the NZCPS requires Councils to identify and manage coastal hazards, that can and should be achieved by Council introducing a Coastal Hazards chapter in its District Plan as it has signalled it is going to do.*
 - h) *That is the appropriate manner of addressing coastal hazards and associated climate change issues.*
 - i) *It is premature, unnecessary, inefficient and unreasonable for the Council to use the untested and flawed Jacobs 2022 report to address coastal hazard issues through PC2.*
 - j) *The proposed CQMP does not identify areas that make medium-density development inappropriate, as the scenario used has been described by Council and Jacobs as being “highly unlikely” and by the IPCC as “implausible to occur”.*
 - k) *At most, the CQMP is a bounded area of land that (based on an untested report) the Council expects may ultimately be included in the coastal hazards chapter. This*

¹ Note that I am not a member of CRU and am only appearing as counsel in the current proceedings, I am not CRU’s legal advisor.

pre-judges the process leading to that plan change and may not be found to be unsuitable for more intensive development as envisioned by the MDRS changes.

l) Coastal hazard zones and controls will need to be finalised through the future coastal hazards plan change.

m) It is inevitable that the coastal hazards plan change process will result in the identification of coastal hazard areas which will not be congruent with the proposed CQMP.

n) For the reasons outlined above, CRU considers that using the Jacobs 2022 2120 P10 projected future shoreline scenario in this manner inappropriate, inconsistent with the NPSUD and unlawful.

The basis for CRU's objection to the use of the Jacobs line within the context of PC2

5. When preparing PC2 the Council introduced a Coastal Qualifying Matter Precinct (CQMP) in reliance on section 771(a) and (b) and clauses 3.32 and 3.33 of the NPSUD.
6. In preparing the CQMP the Council has not relied on subsection (j) ...'other matters'. It follows that you need to be satisfied that all parts of the CQMP are *necessary to accommodate either* section 6 (h) **or** the NZCPS. In my submission, the Council's evidence does not demonstrate such *necessity* because the Jacobs report does not identify areas which are at *significant risk* from natural hazards (s 6 (h) . Nor, in terms of policy 24 does it give ...*(priority to the identification of areas at high risk of being affected.*" Furthermore, Jacobs have not utilised....*"the best available information on the likely effects of climate change on the region or district."*
7. The location of the CQMP has been based upon the "2120 P10 projected future shoreline position using the RCP 8.5+ (with -3mm/year vertical land movement) relative sea level rise scenario" (Jacobs 2022. This approach is intended to exclude areas that are prone to *coastal erosion* from the intensification provisions. The approach is inconsistent because the report does **not** include coastal inundation. Furthermore, the Council has not provided a QMP for other natural hazards located in the *coastal environment* or the wider District as mapped in the District Plan. (which it could have and in my submission should have done under section 771 (j)).
8. CRU opposes the use of the Jacobs scenario for the definition of a CQMP for the following reasons:²

² This list is based on the list within the originating submission but I have added some points for clarification.

- a) The use of Jacobs 2022 for this purpose does not reflect section 6 (h) of the RMA or Policy 24 of the NZCPS and does not satisfy the requirements of clause 3.33 of the NPSUD because it is not site specific.
 - b) Jacobs 2022 is in effect a preliminary technical report feeding into the Takutai Kāpiti/CAP process. It has not been the subject of public submissions, and it has not been adopted by the Council as the basis for its intended future coastal hazards plan change. It has not been the subject of a full independent technical review.
 - c) Jacobs itself acknowledges that the report is not a *risk assessment*.
 - d) CRU's technical advisors have concerns regarding the methodology and assumptions used by Jacobs (some of these concerns are outlined in the evidence of Sean Rush).
 - e) However, the critical point, is that the use of Jacobs 2022 is premature since the consultation, submissions, evidence and decision-making around the location of coastal erosion hazard lines is a matter for the development of the Coastal Hazards chapter. That process will need to address the extent to which hazards can and should be mitigated in order to reduce risk. In the meantime the extent and degree of likely risk can not be properly assessed. In my submission, this is not the forum to be deciding whether the Jacobs predictions are soundly based and appropriate in terms of section 6(h) and NZCPS policy 24.
 - f) 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 for 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 QMPs. It follows that the Council has not recognised and provided for the management of *"significant risks from natural hazards"* as directed by section 6 (h). Nor has it given *priority to the managing areas of high risk* from natural hazards within the coastal environment. (The Coastal Environment as shown in the District Plan is very wide and encompasses areas which are shown on the District Plan as being as significant risk from flooding and ponding.)
9. This latter point is important in light of recent events. The Council has not included areas within the coastal environment, which are identified in the District Plan as being subject to current flood or ponding risk as QMPs. However it has included areas of the coast that are not currently identified in the District Plan as being subject to erosion risk. A good example of that is the inclusion of a slither of the Manly Flats Limited property (127 Manly Street) in the CQMP. This is a property that is well back from the coast and in an area that is not currently eroding and in recent years has accreted significantly. (see my submission on behalf of Manly Flats Limited)

10. The failure by the Council to not include known areas of current hazard risk in QMPs, is short-sighted, to say the least. There are large areas of Kāpiti that have been identified as subject to flooding hazards and yet proposed PC2 permits the intensification of land use in these areas. So, the Council is in fact proposing to increase the risk to life and property, by allowing more intensive development of hazard-prone areas.
11. The current PC2 process is no substitute for what the Council needs to do in notifying coastal hazard management plan changes in the District Plan in order to comply with its obligations under section 6(h) and the NZCPS.
12. In short, the Council has:
 - Put the cart (CQMP) before the horse (the coastal hazards plan change process)
 - Balanced the cart on wobbly wheels (technical, legal and policy)
 - Ignored the trains coming from other directions. (e.g., flood hazards, coastal inundation etc)
 - Failed to properly consider the likely level of demand for housing.
 - Failed to consider the impact of the proposed intensification on the “high” natural character of the coastal environment
 - Failed to consider other means of providing for that demand such as greenfield development and encouraging intensification in more suitable areas.
13. Put simply, this Panel is not the right forum to be deciding where coastal erosion hazard lines should go on maps in Kāpiti. Nor is it the right forum for deciding whether Jacobs 2022 and the chosen Jacobs scenario is soundly based. Those are decisions for the Panel which hears a future coastal hazards Plan Change, which must necessarily introduce coastal hazard lines and controls.
14. If the CQMP is inserted into the District Plan by way of the PC2, then that is information that the Council will have to include on LIMs. This will wrongly give potential purchasers of a relatively small number of properties the impression that the Council has carried out a soundly based coastal hazard risk assessment, which it clearly has not. The Council is proposing this **interim** measure (the CQMP) without having carried out the necessary NZCPS Policy 24 hazard risk assessment. Jacobs was contracted to carry out that assessment (Annexure 2), but on its own admission has not done that.³

³ Jacobs (June 2021). *Kāpiti Coast Coastal Hazard Susceptibility and Vulnerability Assessment Volume 1: Methodology*, page 8, paragraph 1.

15. I can understand the Council’s political desire to be seen to be doing something in terms of coastal hazards. In my submission however, the Council has failed to carry out its duty in terms of section 6 (h) and policies 24, 25 and 27 of the NZCPS. Instead, it seems to be proposing a half-baked CQMP as an interim measure, until it has finalised an operative coastal hazards chapter and updated its wider natural hazards provisions to comply with section 6 (h), the NZCPS and the provisions of the Local Government Act.
16. This Panel does not have to buy into that half-baked approach. You can either reject the CQMP entirely:
- or recommend a measure that excludes all low-lying areas subject to flooding and ponding risk (as detailed on District Planning Maps);
 - and/or recommend a measure that excludes all areas within the immediate or “dominant” coastal environment (as referred to in the Coastal Environment chapter of the District Plan);
 - or recommend a measure based on “other matters” as per section 77I (j):
(j) any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if [section 77L](#) is satisfied.

Amendment to the Relief sought by CRU

17. The basis for CRU’s submission (which relates to the inappropriate use of Jacobs 2022) remains largely as stated in its submission, however, CRU seeks to amend its relief. The relief sought in CRU’s submission was as follows:
- a) Delete the proposed CQMP which has been based on Jacobs Volume 2 report;*
 - b) Replace the proposed CQMP with a new enlarged area CQMP based on further advancing the NZCPS objectives and policies already addressed in the District Plan.*
 - i. As a minimum, CQMP is to include all land identified as the “Adaptation Area” in the Takutai Kāpiti GIS Map Viewer maps.*
 - ii. Alternately, if the Council chooses instead to base the CQMP on coastal hazard identification, CQMP should include only that land and those properties that are currently identified in the District Plan as within the ‘no build’ and ‘relocatable’ coastal hazard zones.*

iii. The alternative above at (ii) is not CRU's preferred approach, however, CRU submits it is the only lawfully defensible approach given the Council's failure to have implemented NZCPS Policy 24 by not yet bringing forward proposed coastal hazard provisions under NZCPS 2010 via a Plan Change specifically addressing these matters.

18. As is clear from CRU's submission, its primary concern is that Jacobs 2022 does not provide a sound basis for the CQMP. After preparing their submission, CRU discovered via a KCDC response to a LGOIMA request, that the "Adaptation Area" (as referred to in b(i) above) was also prepared using the same scenario from Jacobs 2022 (as is proposed for use in PC2) in combination with separate flood hazard modelling completed by Greater Wellington Regional Council (GWRC). Accordingly, CRU no longer supports the "Adaptation Area" as an alternative to the current proposed CQMP.

19. The amendment CRU wishes to make is to delete all of para b(i) and to make the additional amendments shown below. The amended relief then reads:

*a) Delete the proposed CQMP which has been based on Jacobs Volume 2 report;
AND*

*b) Replace the proposed CQMP with a new enlarged area CQMP based on further advancing the NZCPS objectives and policies already addressed in the District Plan; **OR***

*c) if the Council chooses instead to base the CQMP on coastal hazard identification, CQMP should include only that land and those properties that are currently identified in the District Plan as **being** within the 'no build' and 'relocatable' coastal hazard zones.*

*d) The alternative above **at (c)** is not CRU's preferred approach, however, CRU submits that if the CQMP is to be based on coastal hazards (rather than protection of natural character or "other matters" as would be more appropriate), then **(c)** is the only lawfully defensible approach given the Council's failure to have implemented NZCPS Policy 24, by not yet bringing forward proposed coastal hazard provisions under NZCPS 2010 via a Plan Change specifically addressing these matters.*

20. In my submission, those amendments are "within the scope" since it is clear from the original submission, that CRU's primary concern was and is with the use of Jacobs 2022 as a basis for identifying the boundaries of a CQMP, and at **(a)** it sought to delete that CQMP.

21. It remains correct to say that:

The alternative above at (c) is not CRU's preferred approach....

That is because CRU considers that there should be QMPs that are based on existing District Plan provisions so as to protect the natural character of the coastal environment as directed by section 6 (a) and protect natural and physical resources from *significant risk from natural hazards* as directed by section 6 (h).

Background to CRU's Involvement

22. CRU has been involved in coastal hazard issues in Kāpiti since the Council proposed a set of coastal hazard lines in 2012 based on a coastal hazard assessment prepared by CSL Limited. In 2013, Mike Weir supported by CRU took a High Court action against the Council in relation to the hazard line placed on his property's LIM. Although the Judicial Review proceedings were unsuccessful as the Court could not adjudicate on the factual and scientific basis for determining the location of the hazard lines, Justice Williams concluded that there was "a good argument" for describing the result of the coastal assessment as the "very worst case scenario"⁴.
23. The case led to the Council appointing an Independent Review Panel to peer review the risk assessment on which the hazard lines were based.⁵ The Review Panel concluded that:

"... the hazard lines recommended by CSL are not sufficiently robust to be incorporated into the Proposed District Plan" (Komar et. al, section ES.1 Overview, see also page 51).

And in 2014, the Council withdrew the Coastal Hazards chapter from its Proposed District Plan and withdrew the coastal hazard lines from LIMs.

24. In 2016, CRU sought two Declarations with the Environment Court⁶ as no progress on the Proposed District Plan coastal hazard variation had been actioned by the Council in accordance with its resolution of 24 July 2014 to prepare a variation⁷ In her evidence for Council, Ms Stevenson stated that a period of four years would elapse before Council would notify new coastal hazards provisions for the District Plan. Judge Dwyer's remarks in that regard are noted above.

⁴ *Weir v Kapiti Coast District Council* [2013] NZHC 3522, at para 71

⁵ Komar, P., Carley, J., Kench, P. and Davies, R. (2014). The Coastal Erosion Hazard Assessment for the Kāpiti Coast: Review of the Science and Assessments Undertaken for the Proposed Kāpiti Coast District Plan 2012

⁶ *Coastal Ratepayers United Inc v Kapiti Coast District Council* [ENV-2016-WLG-000028]

⁷ Minutes of the Meeting of the KCDC, 24 July 2014, KCDC 14/06/128, pp. 6-9 <http://www.kapiticoast.govt.nz/contentassets/fa4306d86d704b6eb55ecea81c26d5c2/24-july-2014/council-minutes-24-july-2014.pdf>

25. Although Judge Dwyer reluctantly accepted their timeframe and reasons for the delay (i.e., delay to 2020 before notification of provisions), no further work on coastal hazard provisions was undertaken in the subsequent four years.
26. The Council eventually engaged Jacobs to prepare a new coastal hazard risk assessment, which was finalised in two reports: Jacobs 2021 and Jacobs 2022.

The Council also established a Coastal Advisory Panel (CAP)⁸ as part of its Takutai Kapiti coastal adaptation project. At this stage, it is unclear whether CAP will be making recommendations regarding the location of the coastal hazard lines (NZCPS Policy 24 requirements).

27. CRU fully supports the NZCPS and its requirement for the identification of coastal hazards under Policy 24, but has significant reservations regarding the technical and legal robustness of the lines identified by Jacobs, nor does CRU have confidence in the Panel's ability to critique associated technical and legal matters in order to identify science-related flaws and RMA/NZCPS non-compliance in Jacobs' work.
28. As with the previous coastal hazard assessment by CSL Limited CRU does not believe the Jacobs work will survive merit review under the RMA/NZCPS. Some of the technical deficiencies are explained in the evidence of Sean Rush, called on behalf of CRU. These are by no means the only issues which CRU has with the report.
29. In summary, CRU submits that the Jacobs report does not provide a lawful basis for the proposed CQMP, even as an interim measure.
30. Irrespective of your views on the technical issues raised by Mr Rush, the wider concern is simply this is not the forum for these issues to be decided.
31. These coastal hazard provisions should have been notified in 2020 in accordance with the evidence presented to the Environment Court under ENV-2016-WLG-000028. In his interim decision on this matter of timing, Judge Dwyer referred to RMA section 21 and remarked (emphasis added);

[36]

*A delay of some four years in commencing the required alteration by plan change might be regarded as **pushing the extreme boundaries of promptness and CRU's concerns in that respect are understandable...***

[39]

⁸ <https://www.kapiticoast.govt.nz/our-district/our-environment/coastal-adaptation/coastal-advisory-panel>

*...I acknowledge that the situation where control of coastal hazards will continue to be undertaken for a substantial period of time pursuant to provisions of the ODP [1999] which the Council has found require alteration is **seriously unsatisfactory**...*

77I QUALIFYING MATTERS IN APPLYING MEDIUM-DENSITY RESIDENTIAL STANDARDS AND POLICY 3 TO RELEVANT RESIDENTIAL ZONES

*A specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone **only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:***

(a) a matter of national importance that decision-makers are required to recognize and provide for under section 6:

(b) a matter required in order to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010:

32. For the reasons discussed subsequently, CRU submits that the CQMP is not *a matter required* to give effect to policies 24, 25 and 27 of the NZCPS 2010, and in terms of section 6 (h) it does not accurately reflect areas that are at **significant risk** from natural hazards. If that is accepted, then it is ultra vires.
33. Section 6 (h) provides that all persons exercising powers under the Act must recognise and provide for *the management of significant risks from natural hazards*. Accordingly, it is up to the Council to demonstrate either that all of the areas included in the CQMP are at *significant risk* from natural hazards within the planning horizon, **or** are required by the NZCPS. In my submission, it has not done that. The Jacobs 2021 report itself acknowledges that it is not a risk assessment.
34. What you should not do, is endorse a CQMP which is based on an untested (and in CRU's submission unreliable) interim report which has not been subject to any RMA process except the current fast track, intensification bulldozer. My plea is that you should not allow this Panel to be used as a surrogate for deciding coastal erosion hazard provisions which are part of a Plan Change process that Council officers now suggest will not be notified until (at least?) 2025.

THE CQMPs DO NOT COMPLY WITH THE NPS UD

35. The NPS UD provides that:

Policy 4: Regional policy statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements under

Policy 3 only to the extent necessary (as specified in subpart 6) to accommodate a qualifying matter in that area.

3.33 Requirements if qualifying matter applies

This clause applies if a territorial authority is amending its district plan and intends to rely on Policy 4 to justify a modification to the direction in Policy 3 in relation to a specific area.

The evaluation report prepared under section 32 of the Act in relation to the proposed amendment must demonstrate why the territorial authority considers that:

(i) the area is subject to a qualifying matter; and

(ii) the qualifying matter is incompatible with the level of development directed by Policy 3 for that area; and

assess the impact that limiting development capacity, building height or density

(as relevant) will have on the provision of development capacity; and

assess the costs and broader impacts of imposing those limits.

A matter is not a qualifying matter under clause 3.32(1)(h) in relation to an area unless

the evaluation report also:

identifies the specific characteristic that makes the level of development directed by Policy 3 inappropriate in the area, and justifies why that is inappropriate in light of the national significance of urban development and the objectives of this National Policy Statement; and

includes a site-specific analysis that:

(i) identifies the site to which the matter relates; and

(ii) evaluates the specific characteristics on a site-specific basis to determine the spatial extent where intensification needs to be compatible with the specific matter; and

(iii) evaluates an appropriate range of options to achieve the greatest heights and densities directed by Policy 3, while managing the specific characteristics.

36. It is clear that the Jacobs 2022 report does not provide the requisite level of site-specific analysis to determine the spatial extent of the proposed CQMP. That process has not yet occurred. The Jacobs 2022 Report is in my submission a flawed and broad-brush approach, rather than a site-specific analysis. This is presumably why the authors acknowledge that it is not a risk assessment⁹.

37. The CQMP includes a large number of coastal properties, each of which is a “site”. In my submission, clause 3.33 requires the Council to demonstrate that each of these properties is likely to be subject to coastal erosion within 100 year period referred to in the NZCPS and that this represents a significant risk.

38. You need to be satisfied that the Council via Jacobs, has :

evaluated the specific characteristics (coastal erosion hazard) on a site-specific basis to determine the spatial extent where intensification needs to be compatible with the specific matter.

39. In other words you need to be satisfied that all of the properties need to be included in the CQMP in order to satisfy the NZCPS or section 6 (h). It is clear that the Jacobs report does not do that. You only have to look at the boundaries of the CQMP to see that no site specific risk assessment has been carried out. That is why for example the CQMP south of the Waikanae estuary, has a nice curved line rather than moving in and out to reflect natural features which will increase or decrease risk at particular properties. (eg the presence of inundation pathways created by the council managed walkways.)

40. It is also clear that the Council has not:

evaluated an appropriate range of options to achieve the greatest heights and densities directed by Policy 3, while managing the specific characteristics.

41. For example, there is no assessment of the extent to which the potential hazard at particular sites could be avoided or mitigated by way of physical works. (For example raising the dunes in areas damaged by the beach access ways and directing stormwater flow so that it does not erode the fore dune.)

IS THE CQMP “REQUIRED” TO IMPLEMENT THE NZCPS?

⁹ Jacobs (June 2021) Kapiti Coast Coastal Hazard Susceptibility and Vulnerability Assessment Volume 1: Methodology, page 8, paragraph 1.

42. Policy 24 of the NZCPS provides as follows:

Policy 24: Identification of coastal hazards

(1) Identify areas in the coastal environment that are **potentially affected** by coastal hazards (including tsunami), **giving priority to the identification of areas at high risk of being affected**. Hazard risks, over at least 100 years, are to be assessed having regard to:

- (a) physical drivers and processes that cause coastal change including sea level rise;
- (b) short-term and long-term natural dynamic fluctuations of erosion and accretion;
- (c) geomorphological character;
- (d) the potential for inundation of the coastal environment, taking into account potential sources, inundation pathways and overland extent;
- (e) cumulative effects of sea level rise, storm surge and wave height under storm conditions;
- (f) influences that humans have had or are having on the coast;
- (g) the extent and permanence of built development; and
- (h) the effects of climate change on:
 - (i) matters (a) to (g) above;
 - (ii) storm frequency, intensity and surges; and
 - (iii) coastal sediment dynamics;

taking into account national guidance and the best available information on the likely effects of climate change on the region or district.¹⁰

43. I note that Mr Todd in his evidence at para. 14 has omitted the closing sentence of Policy 24 (“*taking into account...the likely effects of climate change*”). This sentence is of material importance to hazard identification and risk assessment.

The s32 report, states that the erosion hazard scenario used in PC2 is “*highly unlikely*” (s32 report, page 155) and Mr Todd in his evidence at para. 25(b) states that the erosion scenario used in PC2 is “*very unlikely*”.

44. CRU submits that the Jacobs reports (both Jacobs 2021: Methodology and Jacobs 2022: Results) will (if assessed via the correct and usual Plan Change process) will fail a merits review under RMA/NZCPS and therefore should not be used for District Plan purposes and provisions. (the cart before the horse)

45. Some of the technical reasons for this are set out in the evidence of Sean Rush.

46. Further legal analysis regarding NZCPS is provided in Annexure 1. That was prepared by former Principal Environment Court Judge Joan Allin.

¹⁰ Emphasis added

47. In my submission, the proposed CQMP can only be justified to the extent that all of the areas included within it are shown (based on sound evidence) to either be the subject of a “*significant*” risk in terms of section 6 (h) or at *high risk* of being affected having regard to all of the factors in policy 24 includingnational guidance and the best available information on the *likely effects* of climate change on the region or district.
48. It is significant that policy 24 is about identifying hazard-prone areas rather than managing risk within hazard areas. Accordingly, the creation of the proposed CQMP is not *a matter required in order to give effect tothe New Zealand Coastal Policy Statement 2010*. The correct process for implementing policies 24 and 25 of the NZCPS is via the overdue development of the coastal hazards chapter.
49. At best the Jacobs’ line is an initial, untested, attempt by KCDC to decide the initial (draft) location of the hazard lines for the eventual Plan Change which it has yet to embark upon as required. In CRU’s submission it is not fit for that purpose, however that is debate for later. It is not one which you need to or should determine now.
50. It might be argued that the CQMP is required by policy 25 of the NZCPS:

*In areas **potentially** affected by coastal hazards over at least the next 100 years:*

- a. avoid increasing the risk¹¹ of social, environmental and economic harm from coastal hazards;*
- b. avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;*

51. In my submission, the controls required by policy 25, cannot be put in place until the location of hazard lines is finalised, that in turn depends upon a risk assessment that has not been carried out. Put simply, the identification of hazards as required by policy 24 and the development of controls as required by policy 25, must be implemented via a comprehensive Plan Change as intended by the Council. The CQMP is premature and unnecessary.
52. It is premature to use the Jacobs 2022 report to inform the management of risks, before the public has had input into those proposals. Moreover, neither of the reviewer comments provided by Mr Todd in his evidence para. 28 suggest that the Jacobs work is NZCPS compliant, nor do they say the work reflects the most recent findings of the IPCC AR6 report (i.e., the best available information as per NZCPS Policy 24).
53. If it is accepted that the CQMPs are not **required** by the NZCPS, it follows, that in order to be lawful, they must (if focussed on hazards as they currently are) be based upon *the management of significant risks from natural hazards.....* as required by para (h) of section 6.

¹¹ Footnoted in the original and referring to the NZCPS definition of risk as contained in the NZCPS Glossary and repeated in full above.

54. The s32 report (page 155) refers to the landward boundary of the CQMP as a “highly unlikely” future shoreline scenario, and therefore it does not indicate sites which are subject to *significant risks*. In any event, the Jacobs report is not a *risk* assessment.
55. CRU is of the view, that the Jacobs 2022 report is not a reliable guide to areas of significant risk to development for the following reasons:
- a) The report was not intended to be used as a risk assessment
 - b) The risk assessment should be part of the process of developing the new coastal hazards chapter. The Jacobs 2021 methodology is flawed and the Jacobs 2022 findings will not withstand the test of merit review under RMA/NZCPS.
 - c) Some of these reasons are set out in Sean Rush’s evidence. These and other reasons will and should be thoroughly considered in the context of the Coastal Hazards Plan Change if the Council chooses to use this work as the scientific basis for the identification of coastal hazards under the RMA/NZCPS.

Conclusion

56. CRU submits that the panel should require that the CQMP as defined be deleted on the basis that:
- a) it is acknowledged in the s32 report to be “highly unlikely” with respect to coastal erosion hazard identification and/or
 - b) it is premature to introduce a coastal erosion hazard provision in this manner and/or
 - c) it is technically flawed and/or
 - d) it implies a level of precision that does not exist and is therefore misleading and/or
 - e) its use is inconsistent with Council’s failure to provide for other more certain and immediate hazards from flooding and ponding.

Philip Milne
Legal Counsel for CRU

Filed on 15 March and amended on 17 March 2023

Annexure 1

Extracts (paras 30-45) from Allin, J. (2015) former Principal Environment Court Judge

I have often seen Policy 24 set out incorrectly. The mistake that people make is indenting the words at the end ie “taking into account ... the likely effects of climate change on the region or district” so it looks like those words are part of (h). But they are not part of (h). They form the ending of what is a long sentence that effectively reads: “Hazard risks, over at least 100 years, are to be assessed having regard to [(a) to (h)] taking into account ... the best available information on the likely effects of climate change on the region or district.”

Setting out Policy 24 incorrectly affects its meaning.

*Policy 24 effectively says that the Council’s function is to: “(1) Identify areas in the coastal environment that are potentially affected by coastal hazards (including tsunami), giving priority to the identification of areas at high risk of being affected. Hazard risks, over at least 100 years, are to be assessed having regard to [(a) to (h)] taking into account national guidance and the best available information on the **likely** effects of climate change on the region or district.” (emphases added)*

*Risk is defined in the NZCPS 2010 as: “Risk is often expressed in terms of a combination of the consequences of an event (including changes in circumstances) and the associated **likelihood** of occurrence ...”. (emphasis added)*

So, to carry out its functions under Policy 24, a Council needs to:

- a. identify areas potentially affected by coastal hazards, with the hazard risks being assessed taking into account the likely effects of climate change;*
- b. give priority to the identification of areas at high risk of being affected;*
- c. in assessing risk (likelihood x consequences), consider the likelihood of coastal erosion occurring and the consequences.*

Policy 25 of the NZCPS 2010 deals with “areas potentially affected by coastal hazards”, so “potentially affected” is used on its own there. However, it is my view that it should be read in the

context of Policy 24, which specifically deals with the “[identification of] areas ... potentially affected by coastal hazards” and also refers to the likely effects of climate change (and hazard risks), so that Policy 25 addresses areas identified by Policy 24.

Policy 27 of the NZCPS 2010 identifies the range of options the Council should assess for reducing coastal hazard risks in areas of significant existing development likely to be affected by coastal hazards. These areas should also have been identified by the Council during the Policy 24 process, as a subset of the other areas.

The first part of Policy 27 states: “Strategies for protecting significant existing development from coastal hazard risk (1) In areas of significant existing development **likely** to be affected by coastal hazards, the range of options for reducing coastal hazard risk that should be assessed includes: ...” (emphases added)

Affected Kapiti properties = \$1 billion+.

Providing only “very unlikely” results, especially in Kapiti (or in other areas of significant existing development):

- a. does not provide KCDC (or any Council) with the appropriate scientific information that it needs to carry out its tasks;
- b. does not enable the community to participate in the RMA process with appropriate scientific information; and
- c. wastes resources as it does not enable the Council to focus attention on the areas where options for reducing coastal hazards are actually needed ie the areas likely to be affected.

Policy 3(2) of the NZCPS 2010 states: “In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:

- (a) avoidable social and economic loss and harm to communities does not occur;
- (b) natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and
- (c) the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.”

Some coastal scientists seem to have interpreted this provision as applying to them and therefore think that their scientific assessment of coastal hazards should be precautionary. Indeed, according to CSL’s website as at March 2015, a number apparently consider that their results should be “very unlikely”.

I have had a coastal expert (not any expert referred to on the CSL website) confidently tell me to my face that they need to provide precautionary results, and look at me like I was an idiot for thinking otherwise.

However:

- a. the provision is referring to what Councils are to do (not coastal scientists);
- b. it relates to “use and management of coastal resources” so, planning and resource consent matters, not identification of the hazards which is addressed in Policy 24;

c. it uses different wording from Policies 24 to 27 ie “potentially vulnerable” so it is arguable whether it should be read in light of Policy 24 or not which makes it all the more important for coastal experts to prepare assessments based on objective science so that no matter what way the law is interpreted or what specific policies apply, the decision-maker has the relevant scientific basis for the decision;

d. it refers to adopting a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that avoidable social and economic loss and harm to communities does not occur. In my view, that reads both ways. Too stringent provisions can cause avoidable social and economic loss and harm to communities as can too lenient provisions.

In short, Policy 3 does not direct that coastal hazard assessments should be precautionary.

Confirmation of that also comes from DOC’s Guidance note on Policy 3 that says “The application of the precautionary approach is a risk management approach rather than a risk assessment approach.” (page 6)