

**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

Philip Milne

15 March 2023

Introduction

1. This legal submission is made on behalf of myself and my wife Catherine Milne who own and reside at a coastal property in Manly Street. The proposed CQMP does not affect our property, but does touch upon another property at 127 Manly street of which our Family Trust is a 1/6 owner and I am one of 6 Directors. The owner of that property (Manly Flats Limited) has lodged a separate submission (through me) and I have prepared a brief legal and factual submission in support.

2. My personal submission related to the following:
 - 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).*
 - E. *Opposition to the inclusion of the Paraparaumu Beach Village shopping area as a "town centre" rather than a "local centre" (Plan 08)*
 - F. *Opposition to the inclusion of the Paraparaumu Beach PREC_x2 - Residential Intensification Precinct B as shown. (Plan 08)*
 - G. *Opposition to the*

inclusion of the Kena Kena village shopping area as PREC2 - Residential Intensification Precinct B as shown. (Plan 08)

3. In terms of my personal submission, although not directly affected by the CQMP, I oppose the use of the CQMP based upon the Jacobs report. In this context I adopt the legal submissions on behalf of CRU and the evidence of Sean Rush called on behalf of CRU. In particular, I adopt and do not repeat my submissions regarding jurisdiction and the “cart before the horse” argument.
4. As per our submission we would prefer a much larger CQMP based upon protection of the natural character of the coastal environment for inappropriate.
5. We accept however, that the Council has not carried out requisite work. It has identified the area between our property and the beach as being of *high* natural character in the operative District Plan. However, in preparing PC2 it has failed to assess the effect of allowing 3 story development along this coastal strip on the high natural character of the coastal environment which it has previously identified.
6. It is not our job to do what the Council should have done. Hence, we have called no evidence on this landscape issue. It is up to the Panel to ensure that PC2 complies with section 6:
 - (a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
7. The Council has identified most of the coastal margin between private property and MHWS as being of high natural character. You are directed to ensure that this high natural character area is protected from *inappropriate* subdivision, use and development. How can you be satisfied that 3 story development directly fronting areas of recognised high natural character will be “appropriate” and will protect that area of high natural character?
8. I am struggling to see how the Council’s section 32 report and evidence provides you with a basis to conclude that 3 story development on the boundary of an area of high natural character, will not detract from that natural character. In my submission it is obvious that it will do so and that this could be readily avoided by way of a CQMP which recognises this value.

9. We accept that natural character is already compromised by 1 and 2 story development. However, it does not follow that 3 story development (and 6 story development at Kena Kena and Paraparaumu beach village will not further compromise that natural character.
10. In my submission, if the Council had carried out its duties appropriately, it would have carried out a proper landscape assessment of the effects of this proposal on the natural character of the coastal environment. It has not done so.

The management of coastal hazards within the context of climate change

11. The Council is obliged by section 6(h) and policy 24 of the NZCPS to carry out a risk assessment in relation to coastal hazards. As set out in my submissions for CRU, the Council is obliged to carry out a risk assessment and to manage those risks. The opportunity for that to occur is the coastal chapter of the District Plan. The problem is that the Council has no coastal hazards chapter and is not planning on notifying a draft of that until at least 2025. (pers com Jason Holland KCDC last week).
12. In the absence of a proposed coastal hazards chapter, it is our submission that the proposed CQMP is premature and not soundly based.
13. In our view the Council has failed in its responsibility to the community. Despite assurances to the contrary, it has not proposed a coastal hazards plan change. Despite having flood hazard and ponding areas in the District Plan it has not excluded these from the intensification provisions.
14. The Jacobs report is provisional and (for the reasons explained in the Rush evidence) flawed. It states that it is not a risk assessment. The Council has not adopted the hazard lines in Jacobs report for the purpose of coastal hazard management. It has not prepared a draft, let alone a proposed Coastal Hazards Chapter.
15. The net result, is that it is uncertain which areas of the Kapiti Coast are at risk of coastal hazards. That is evidenced by the fact that the community has not yet been consulted by the Council (or CAP) about the location of hazard lines or the level of risk within those lines.
16. Within that context, the proposed CQMP is premature and ill founded. It wrongly implies a level a level of specificity and probability which does not exist and/or has not been tested via the relevant RMA process. If the CQMP remains, potential purchasers of properties within the CQMP will wrongly assume that all of the properties in the CQMP have been identified as being subject to a likely hazard. Equally, those looking a coastal

property outside of the CQMP will wrongly assume that the Council is indicating that there is no potential for coastal erosion or coastal inundation

17. We would prefer a precautionary approach which excludes all areas potentially at risks from coastal erosion, coastal erosion, and associated coastal flooding, from the intensification provisions.
18. In our submission, we have an arbitrary CQMP which is based on the exclusion of all properties on either side of the coastal road such as Manly Street. We submit that as an absolute minimum this should exclude all areas to the west of such roads.
19. That is because ultimately some of these areas will fall within the 100 year hazard zone and should intensification at the level proposed is, to put it simply, STUPID.
20. You do not have any information to allow you to know what areas will be within the eventual hazard zones. A precautionary approach would have you excluding all areas which might potentially be within such zones. That is what the Council could have done. Instead it has excluded some limited areas of potential hazard before determining whether those are in fact subject to likely hazards.
21. In my view this an arbitrary approach which (for the reasons set out in my submissions for CRU) is unlawful as going beyond the scope of section 77I and L.

Conclusion in relation to the CQMP

22. We seek that you:
 - a) Delete the CQMP based on the Jacobs report and either do not replace it; **or**
 - b) Replace that with a precautionary interim CQMP hazard exclusion area based upon sections which are either side of the roads such as Manly street which are parallel to close to the coastal strip; **or**
 - c) Include (on a precautionary basis) as a Natural Hazards QMP, all areas below say 3??m above MHWS.
23. I accept that b and c are both somewhat arbitrary, however in my submission, both would suffice as interim measures without implying that the council has any certainty about relative levels of risk on various properties as is the case with the current CQMP.
24. (b) could be based not just on potential hazard but also on protecting the high natural value coastal strip from inappropriate use and development.

25. If the Panel shares my concerns about flooding and ponding hazards, it could (and in my view should) include those areas within a natural hazard QMP based upon the areas shown in the existing District Plan.
26. Alternatively, if the Panel decides to uphold the current CQMP in whole or in part, we seek that you ensure that there is appropriate wording in the Plan which clearly indicates that:
- a) The CQMP reflects areas of *potential* rather than *likely* risk of coastal erosion over the next 100 years.
 - b) That the CQMP is not an indicator of potential or likely coastal inundation or coastal flooding.
 - c) The Council has not yet carried out a coastal erosion and coastal inundation risk assessment and is yet to notify a proposed natural hazards chapter in the District Plan.
 - d) The zones of likely coastal hazard in the eventual coastal hazards chapter when made operative are likely to differ from the CQMP and the accordingly, the CQMP will need to be adjusted in the future to align it with the eventual natural hazards chapter in the District Plan once it becomes operative.
 - e) In the meantime, potential purchasers of properties on the coast should not rely on the CQMP as being indicative of likely future hazards or the location of future hazard management or adaptation zones.

Other matters

27. The other matter which I submitted on is covered at point E of the submission as set out above. I am not in a position to call any evidence on this point, but I struggle to see the justification for the Kena Kena and Paraparaumu beach areas being included as a local centre and town centre, respectively.
28. Kena Kena is a very small area of about 6 shops. It is currently surrounded by low level low intensity development. To propose 6 story development be permitted in this area is in my view unnecessary and will significantly detract from the amenity values of the area. I can not see any evidence that Paraparaumu needs this level of intensification. Particularly if 6 storey development is allowed at the Paraparaumu Beach village.
29. Similarly with Paraparaumu Beach Village, we already have intensive development occurring in the area. Where is the need to allow 6 story development as of right? Where is the assessment to show that this is appropriate development within the coastal environment? How does this protect the natural character of the Coastal Environment, the gateway to Kapiti Island. Sadly, many in the community simply do not understand what the Council is proposing here.

Philip Milne

Barrister

15 March 2023