

In the Matter of

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

And

**Plan Change 2, Kapiti Coast District
Council, under Schedule 1 Part 6 of
that Act.**

Memorandum of Counsel

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memorandum of counsel

MEMORANDUM OF COUNSEL

May it Please the Commissioners:

1. On 23 March 2023 I was asked by the Chair, Commissioner Maassen, about the introductory words to section 771(j):

A matter is not a qualifying matter under section 771(j) in relation to an area unless the evaluation report in section 32 also -
2. This posed the question as to whether a qualifying matter can be included in the Plan Change if it is not the subject of a full evaluation report as required by the Act.
3. Areas of outstanding natural character and high natural character are *existing qualifying matters* (s77K(3)) as they are required by s6(a) and the NZCPS.
4. The beach residential precincts are not *existing qualifying matters* (s77K(3)) as they fall to be evaluated under section 771(j) - though they are *adjacent* to areas of high natural character areas as determined under the NZCPS - so some level of set back protection, all along the coast, is appropriate to the natural character areas.
5. However, the beach residential precincts are in the operative District Plan - so they are not “new”, or proposed in response to NPS-UD.
6. Should the Commissioners not accept the Council’s interpretation of NPS-UD as set out in its section 32 Report, and addressed in Counsel’s submissions, justifies the removal from the operative District Plan of the beach residential precincts then:
 - (a) The only evidence before the Commissioners is that the beach residential precincts are sensitive environments, worthy of beach residential status and the plan provisions that support that.
 - (b) These plan provisions encourage low density and height.
7. In these circumstances the Council could not possibly have reached an evidential threshold that justifies the removal of these areas from its operative District Plan. These areas were, after all, the subject of a rigorous planning process to put them in the District Plan in the first place.
8. The question then becomes “How should NPS-UD be provided for in these areas?”
9. Counsel submits:

- (a) The areas should remain as set out in the operative district plan until such time as the Council justifies their removal either by calling evidence that demonstrates that they are not character areas or by undertaking a full analysis under s77L as contemplated by the Act which justifies intensification (or not), whatever that may be.
- (b) Given the evidence before the Committee, these areas should not be subject to the intensification provisions of NPS-UD until such time as either course of action in (a) above is pursued by the Council. This may be done as part of the coastal plan change that Council has signalled.

Dated this 25th day of March 2023



Andrew Hazelton