

Evidence of the Surf break Protection Society Inc. (SPS)

That, Ladies and Gentlemen, is Outstanding Natural Character.

As per the edited video presented here today we are drawing to your attention that surf breaks are an attribute of Natural Character as prescribed by the New Zealand Coastal Policy Statement. Where Surf breaks represent the physical, and surfing represents the metaphysical.

The connection with nature that these outstanding natural features – surf breaks, provide to the **human experience** cannot be understated.

Surf breaks provide a very real and deep connection with nature, to those who experience them through surfing, and an appreciation of the experiential attributes of natural character to those who are watching.

This point was not lost on the board of inquiry to the New Zealand Coastal Policy Statement released in 2010. That is why the BOI included surf breaks under natural Character, it exemplifies the 21st century interpretation of seascapes as noted by the BOI. The Chair of the BOI, Judge Shonagh Kenderdine said to the SPS representatives; “From the bottom of NZ to the top of NZ, all the surfers that spoke to the BOI stated: “only a surfer knows the feeling”” and then articulated the experience of tube riding.

We trust that the Board of Inquiry working papers referenced here, and the DoC guidance notes to policies 13, 15, and 16, can be taken as read in regard to our presentation.

The Surfbreak Protection Society (SPS) disputes that policy p51 Significant surf breaks should fall under the hierarchy of Objective O19 and policy P4 in regard to minimising adverse effects in regard to surf breaks, There also appears to be some inconsistency where surf breaks also have their own objective 37, where the wording focuses on **protection**, not minimising. To protect something you avoid activities in the first instance, in all other instances you avoid, remedy or mitigate.

SPS is deeply concerned by the wording of policy p51 : “**(surf breaks) shall be managed by minimising the adverse effects on..**” It is the view of SPS that this takes away the direction of avoid, from the prescription of the NZCPS and section 5 of the RMA. The Board of Inquiry (BOI) to the NZCPS accepted that surf breaks are a finite and scarce natural resource with approximately one surf break for every 38 km of coastline in NZ and acknowledged by way of policy 16 of the NZCPS that for surf breaks of international and

national significance as listed in schedule one of the NZCPS, avoid was the only option. For all other surf breaks under policies 13 and 15 avoid must be considered in the first instance.

When we questioned GWRC about the change from the draft policy, to the new policy on minimising, we were told that: *"the surf break provisions for the proposed Natural Resources Plan have been changed to reflect legal advice we were given around the use of the word 'avoid' thanks to the king salmon decision."*¹

SPS are a bit puzzled by this, as our understanding from the King Salmon case is that Avoid means avoid, at least in the first instance. How can you avoid, when from the outset you prepare to minimise?

The EDS v King Salmon decision the Supreme Court found that policies 13 and 15 of the New Zealand Coastal Policy Statement set strict environmental bottom lines, minimising is not referenced to in policies 13 and 15, and must be struck out of policy p51.

Surf breaks include all the attributes of Policies P48, P49, and P50 where the objective is to avoid remedy or mitigate.

Surf breaks are much more than just "natural processes" where the council has deemed to minimise adverse effects as in Policy P51.

To not consider avoid in the PNRP regarding surf breaks as outstanding natural features in their own right is in conflict with direction laid down by the NZCPS, and ultimately the RMA itself.

Surf breaks are addressed under policy 13 of the NZCPS where they are to be preserved and **protected**. In Policy P51 of the PNRP the wording: *shall be managed by minimising adverse effects*, does not give effect to the meaning and direction of Objective 2 and Policy 13, 14, and 15 of the NZCPS where adverse effects must be avoided, and avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character / natural features and natural landscapes (including seascapes).

With policy 16 of the NZCPS adverse effects on surf breaks of National Significance are clearly to be avoided. The Board of Inquiry to the NZCPS noted that the New Plymouth Boardriders Club recommended that Lyall Bay be included as one of several surf breaks (surf break areas) to be recognised as surf breaks of national importance, and given protection from inappropriate development². it was also noted by the BOI that the schedule of Nationally significant surf breaks(schedule one of the NZCPS) was not finite and that

¹ Tabled evidence - SPS_GWRC email

² Page 128, NZCPS-2008-board-of-inquiry-vol-2

other surf breaks of national significance, could be added to the schedule over time³.noted by

We have tabled the guidance notes of Policy 13 and 15 for the benefit of the Hearings committee, which also references Objective 2 of the NZCPS

Objective 2 of the NZCPS draws surf breaks into natural character;

Objective 2 directs the preservation of natural character of the coastal environment and the protection of natural features and landscape values through recognising the matters that make up natural character, and identifying and protecting areas where subdivision, use and development would be inappropriate. This objective also encourages restoration of the coastal environment. Implementation of Policy 13 is important to achieving Objective 2.⁴

Surf breaks are attributes to natural character, and were discussed at length when introducing the concept of surfing and surf breaks to the Board of Inquiry (BOI) to the NZCPS released 3rd December 2010:

Why a specific policy on surf breaks?

We accept the many reasons given in the s32 report and reinforced by submitters for including a specific policy on surf breaks. The arguments for the surfing community for the inclusion of this policy (with amendments) were:

- *natural surf breaks are a finite resource and naturally occurring breaks help constitute the natural character of the coastal environment under s6(a); the preservation of the natural character of the coastal environment implies that sufficiently representative breaks in their natural context should be protected; those breaks that are rare should be given a greater level of importance than those that are common;*
- *natural surf breaks are outstanding natural features in their own right, and can be an element of outstanding natural landscapes (including seascapes), under s6(b); the protection of outstanding natural features requires the identification of outstanding natural surf breaks;*
- *natural surf breaks are of social, cultural and economic value to coastal communities;*
- *Maori made use of natural surf breaks historically;*

³ Page133 of the NZCPS-2008-board-of-inquiry-vol-2

⁴ Department of Conservation Policy 13 guidance notes.

- *activities in the coastal marine area and landward can have adverse effects on surf breaks; activities like placement of artificial nourishment (sand) on a beach, building a seawall, development of coastal property, nearshore sandmining, breakwater ports and marines, changes to land catchment around a break have potential to adversely affect a surf break;*
- *increasing pressures will lead to damage and destruction of surf breaks and there is a need for protection; surf breaks are scarce and vulnerable to development and the technology does not exist at present to restore a natural break disturbed or damaged by human intervention;*
- *at an individual level the policy gives surfers confidence in the protection of their playgrounds;*
- *there are no other means for protecting surf breaks unlike in parts of Australia. Comparisons were drawn with marine reserves, national parks and other legislation protecting particular values.*

The BOI accepted that: “*surf breaks are natural features in their own right*”⁵

Section 6(b) of the RMA does not apply only to ‘nationally’ outstanding features and landscapes. It is the local context that matters, so what is outstanding in terms of a district plan is to be assessed on a district-wide basis and similarly on a region-wide basis in respect of regional policy statements and plans⁶

By identifying and mapping regionally significant surf breaks GWRC has already identified where the regions Outstanding Natural Features and outstanding Natural Character exists.⁷

In the identification of The Waikato Regional Council’s Outstanding Coastal Natural Character Report the authors assert:

Under Policy 13 of the NZCPS 2010 there is a requirement that an evaluation is made as to whether the natural character in the existing coastal environment is at least high (in order to then be able to determine whether Policy 13(1)(a) or 13(1)(b) is triggered).⁸

From The Bay of Plenty Regional Policy statement

Policy CE 2B Managing adverse effects on natural character within the coastal environment

⁵ NZCPS Board of Inquiry working papers Volume 2 page 130 <http://www.doc.govt.nz/Documents/getting-involved/consultations/closed-consultations/nzcps/NZCPS-2008-board-of-inquiry-vol-2.pdf>

⁶ <http://www.environmentguide.org.nz/rma/principles/section-6-matters-of-national-importance/>

⁷ <http://www.gw.govt.nz/assets/Plans--Publications/Regional-Plan-Review/Proposed-Plan/RegionallysignificantsurfbreaksintheGreaterWellingtonRegion.PDF>

⁸ https://www.waikatoregion.govt.nz/assets/PageFiles/46145/T14142A_Waikato_Regional%20Coastal_Environment_section_E.1.pdf

- (c) **Recognise that open coastal water in the region is of at least high natural character.**

Part (c) clarifies the natural character status of open coastal water and Policy 13 of the NZCPS 2010 will apply, recognising the blanket ranking of the open coast may require site specific assessment.

King Salmon

On this basis, the Supreme Court seems to agree that section 5 itself does not set environmental bottom lines in the sense envisioned in 1990 but that the Resource Management Act framework as a whole provides for a hierarchy of planning instruments that may set strict environmental bottom lines. In light of that, the Supreme Court was critical of overreliance on the overall broad judgment approach applied by the Environment Court to date. The Court noted that this approach does not recognise any environmental bottom lines, creates uncertainty, and can undermine strategic planning. The EDS v King Salmon decision the Supreme Court found that policies 13 and 15 of the New Zealand Coastal Policy Statement set strict environmental bottom lines.⁹

We put it to GWRC that by attempting to introduce minimising in to the PNRP for ONF's and ONC's (in this case surf breaks) GWRC risks falling into the same quagmire as the Marlborough District Council.

⁹ <http://www.environmentguide.org.nz/rma/purpose/>

Equivalent Policies in the PNRP That contradict Policy P51

4.6.5 Natural features and landscapes and special amenity landscapes

Policy P48: Protection of outstanding natural features and landscapes



The natural features and landscapes (including seascapes) of the coastal marine area, rivers, lakes and their margins and natural wetlands shall be protected from inappropriate use and development by:

- (a) avoiding adverse effects of activities on outstanding natural features and landscapes, and
- (b) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities on natural features and landscapes.

Policy P49: Use and development adjacent to outstanding natural features and landscapes and special amenity landscapes



Use and development in the coastal marine area on sites adjacent to an outstanding natural feature or landscape or special amenity landscape identified in a district plan shall be managed by:

- (a) protecting visual and biophysical linkages between the site and the outstanding natural feature or landscape, and
- (b) avoiding adverse cumulative effects on the values of an outstanding natural feature or landscape.

Policy P50: Significant geological features



The significant adverse effects of use and development on the significant geological features identified in Schedule J (geological features) shall be avoided.

Policy P51: Significant surf breaks



Use and development in and adjacent to the significant surf breaks identified in Schedule K (surf breaks) shall be managed by minimising the adverse effects on:

- (a) natural processes, currents, seabed morphology and swell corridors that contribute to significant surf breaks, and
- (b) access to significant surf breaks within the coastal marine area, on a permanent or ongoing basis.

SPS agrees with the expert evidence of John Kyle - Hearing Stream 1 in relation to Objective O19 and policy P4, however our specific concern is in relation Policy P51 where minimising has replaced Avoid, avoid remedy or mitigate.

SPS has revised its relief sought for in the PNRP in regard to wording of Policy P51

Policy P51 Regionally Significant Surf Breaks.

To preserve the natural character and seascape of the regionally significant surf breaks in their coastal environment as listed in schedule k and to protect from inappropriate subdivision, use, and development:

- (a) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on regionally significant surf breaks(as listed in schedule k), their natural processes, currents, seabed morphology, and swell corridors, and
- (b) Promote restoration or rehabilitation of the natural character and seascape of the regionally significant surf breaks where required, and
- (c) maintaining and enhancing access to significant surf breaks within the coastal environment, on a permanent or ongoing basis.

WIAL seeking the deletion of Policy P51 and the Corner Surf break from schedule k of the PNRP

SPS are puzzled as to what motive the Airport company would have for seeking the deletion of the Corner surf break from schedule k of the PNRP, and can only conclude that WIAL see the Corner as an obstacle to their future vision of the surrounding area in Lyall Bay, which includes an intensified commercial district, and a new promenade along the length of Moa Point Rd and new seawall, impacting negatively on the swell corridor of the Corner Surf break. We put it to the Hearing panel that in this matter the Airport Company is acting more like a trade competitor rather than an entity seeking to constructively support, maintain and interpret the intentions of the RMA, NZCPS, and PNRP

For surfers, surfing wave quality is not determined by pristine or modified by man. In regard to natural character we are talking about the well defined boundaries of the surf break itself. It is the end result that matters. The perfect ride that the wave may produce, be it pristine or the result of natural responses to a manmade headland, like the one the Wellington airport now occupies. Surfers are forever in pursuit of the perfect wave.

To the Wellington surfing community The Corner surf break is iconic in this respect, it is a rare type of surf break, it is not a common beach break (relatively speaking) it is a left hand sand bar.

Lyall Bay is iconic to New Zealand surfing in that the first surf life saving club was established here, and the legendary Duke Kahanamoku of Hawaii gave a spectacular display of his surfing skills as a guest of the club in 1915 to a crowd of thousands. "The Duke" is regarded as the father of modern surfing, as well as a two times gold medal Olympic swimming champion, a legend of his time. At the Board of Inquiry to the NZCPS The New Plymouth Surfrider's Club submits that 'nursery breaks' should be regarded as surf breaks of national importance and given protection from inappropriate development, including the preservation of swell corridors. The club suggests including the following breaks: Mount Maunganui, Wainui, Fitzroy, **Lyall Bay**, Sumner, Castlecliff, Mangawhai Heads, Takou Bay.

In Wial's submission they dispute surf breaks due to the highly modified environment of Lyall Bay. As previously discussed for a surfer it is not the scope of surrounding modification that is important, it is the quality of the surfing wave that matters. A significant number of surf breaks as listed in the New Zealand Wavetrack Guide(NZWG) exist in a highly modified environment. The Guide was accepted as a legitimate proxy for the identification for surf breaks in N.Z. by the BOI to the NZCPS¹⁰.

Aramoana The Aramoana surf break in Otago is listed in schedule one of 17 in the NZCPS as A nationally significant surf break, an Outstanding Natural Feature.

Aramoana is a beach break that provides perfect tubing waves that break either left or right. What has helped create this surf break is the modification of the coastal environment by Port Otago historically dredging a deep channel out across the ebb tidal delta of the Otago harbour, meaning that swell snaps or bends in toward the surf break, the other modification is the dredge spoil mound offshore from the beach break that can act as either a positive or a negative depending on how much spoil is present on the mound.

After an appeal to new dredging consents fort Port Otago SPS now works collaboratively with the Port Company in an adaptive management plan to ensure the Aramoana surf break maintains its optimum outstanding value.¹¹

In 2016 SPS entered into appeal with the Bay of Plenty Regional Council opposing the Te Tumu Landholders group in regarding the Landowners seeking the deletion of the Kaituna Cut surf break, originally under the premise of the surf break being highly modified. SPS wrote a response to the land owners group citing many surf breaks exist that are modified by

¹⁰ Page 9 Planning approaches for the management of Surf Breaks in New Zealand_Skellern et al_2013

¹¹ SPS vs PORT OTAGO SETTLEMENT

man yet still provide outstanding natural Character to those surfers who surf them. The Te tumu landowners dropped their appeal in the matter.¹²

To quote from Dr Hamish Rennie:

Such a description adds weight to my earlier analysis that surf breaks deserve protection as outstanding natural features of the CMA, as outstanding features in the land and seascape, and integral components of the natural character of the coast. The added weight reflects the historic and heritage values of the surf breaks and their protection would meet the needs of section 6(f)¹³.

We would like to point out many of our references are noted in our tabled document: *Notes for SPS submission*.

Schedule K relating to surf breaks seeks to preserve the natural character of the coastal marine area by protecting (Objective 037, Policy P51) surf breaks. However the schedule includes surf breaks that have been significantly affected by the modification of the environment in Lyall Bay

and are therefore not representative of the natural character of the coastal marine area. WIAL also notes that the Proposed Plan provides little scope for the mitigation of effects on surf breaks. Furthermore, WIAL queries the reason for elevating surfing above other recreational values, when the NZCPS (Policy 6) seeks more broadly to maintain and enhance the public open space and recreation qualities and values of the coastal marine area. WIAL also notes that there is no higher level directive within the Wellington Regional Policy Statement to require the specific protection of surf breaks at a regional level, WIAL considers that the Proposed Plan inappropriately extends a level of protection to regionally significant surf breaks that would be more commensurate with the management of surf breaks of national significance, and is therefore contrary to, and does not give effect to, the NZCPS Policy 16.

¹² Jeff Fletcher re Kaituna Cut_SPS_response

¹³ 133-nzcps-evidence-7-7

