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Evidence of the Surfbreak Protection Society for Hearing Stream three of the Greater Wellington Regional Council Proposed Natural Resources Plan

In hearing stream one SPS lodged a clear and comprehensive presentation outlining the legal protection awarded to surf breaks under the New Zealand Coastal Policy Statement gazetted 3rd December 2010.

The Surf break Protection Society (SPS) provided a video demonstrating how, as Outstanding Natural Features surf breaks, provide an “experiential conduit” to nature, for those that not only participate in the sport, but also those that observe the spectacle of surfing.

Surf breaks provide communities mental, social, and cultural benefits by providing a connection with nature.

These benefits were recognised by the Board of Inquiry to the NZCPS in 2008.

In regard to policy p51 surf breaks;

SPS asserts that the GWRC PNRP proposal of “minimising” adverse effects on surf breaks is inadequate in conveying the intent of the NZCPS in relation to policies (but not limited to) 3,13, 14, 15, and 16, of the National coastal policy statement.2010.

With regard to policy 3 of the NZCPS:

Policy 3 Precautionary approach

- (1) Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.
- (2) 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.

The precautionary approach promotes avoidance in the first instance, where: proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.

The term **avoid** has been chosen specifically for this reason in regard to natural processes, geological features, natural features, and natural Character, all of which are attributes of surf breaks, by the Board of Inquiry to the NZCPS, and reflects the intent of the RMA, particularly section 17¹.

Surf breaks, especially sand bar surf breaks like the Corner in Lyall Bay (listed in schedule K of the PNRP), are heavily dependent on the natural processes that form them.

The Corner surf break is a poignant example of this, in that this surf break is already suffering degradation to surfing wave quality, due to modifications made to the seawall along Moa Point Road by the Wellington airport company. The slope angle of the seawall no longer provides a reflection of energy back toward the surf break itself, and this means that now the Corner surf break hardly provides surfable waves especially on small days.

One can only presume that the Wellington airport company had no knowledge that their activities along the seawall were having an adverse effect on the Corner surf break.

The reshaping of the Moa Point seawall by WIAL is an activity that has been taking place incrementally over a several decades, but most significantly in the last seven or so years.

SPS is engaging with GWRC and WIAL separately on this matter, but find it unsettling that at the same time, WIAL are seeking the removal of the Corner Surf break from schedule k of the PNRP, the schedule itself, and policy p51 surf breaks in its entirety.

SPS again asserts that WIAL's behaviour in this regard is more akin to that of a trade competitor than that of an organisation constructively engaging in a consultation process for an environmental plan.

"Minimising" adverse effects is inappropriate in relation to activities that may impact on surf breaks even small changes to the drivers of sediment transport can result in changes to or new morphological features which have previously been shown to evolve in to large scale morphological features (Ashton et al 2001; Ashton and Murray 2006; Coco and Murray, 2007). The small perturbations lead to modification of the flow, this positively feeds back in modification to the morphological setting, which again modifies the driving forces. As the way in which waves break is directly related to seabed morphology, any resulting changes, detrimental or not, will be manifested in the breaking of these waves.

It is for this reason that "Avoid" in the first instance is most appropriate, while remedy and mitigation can be considered, it is best if a developer has foresight of these impacts before carrying out an activity, as remedy and/or mitigation can prove expensive, particularly in regard to restoring the Corner wave back to its optimum potential.

¹ Section 17 of the RMA: "*Every person has a duty to avoid, remedy or mitigate any adverse effect on the environment arising from an activity, whether or not the activity is carried out in accordance with a national environmental standard, a rule, a resource consent, or an existing activity right.*"

The Section 42a report by Yvonne Legarth notes that “The use of ‘minimised’ in an objective is problematic.”² Our above statements endorse the council officers statement in this regard. It is more often than not that an activity or proposed activity by way of resource consent applications AEE does not adequately provide the level of research required to determine if the proposed activity/development will impact significantly or even minimally, on natural processes that form surf breaks.

There is a specific discipline of science that relates to the behaviour of surfing waves, and the formulae or boundaries that give rise to a wave ideally suited for the purposes of surfing. Surf science can measure the ideal parameters of a surfable wave, but rarely do developers seek the correct scientific approach to properly gauge the impacts of their development/activity on surf breaks.

SPS agree with many other submitters that the correct wording for Objective 19 should replace minimising with Avoid, avoid remedy or mitigate.

SPS disagrees with Ms. Legarth’s assessment that:

“In my opinion simply replacing the word ‘minimise’ and repeating the RMA requirement of ‘avoid, remedy or mitigate’ does not assist the council with performing its functions because it provides little additional instruction to decision makers. When used in a policy in the plan Policy P4 sets out what is required to ‘minimise an adverse effect’. Policy P4 contains an element of discretion, when considering what may be ‘reasonably practicable’. Like all qualifiers what is ‘reasonably practicable’ requires an assessment and the outcome on the ground will vary on a case by case basis.”³

[the following can be taken as read]

SPS again assert as we did in our presentation submission to Hearing stream one that the Board of Inquiry to the NZCPS⁴ recognised that:

- 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;

² s42A-officers-report-Natural-form-and-function paragraph 286 page 66

³ s42A-officers-report-Natural-form-and-function paragraph 285 page 66

⁴ NZCPS-2008-board-of-inquiry-vol-2 page 130

- Maori made use of natural surf breaks historically;
- 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.

So with regard to Ms Legarth's statement that the term avoid remedy or litigate does not assist the council with little additional discretion, and policy p4 does lend that discretion, it is the view of SPS that the term "minimise" does not give effect to the NZCPS where avoidance should be considered in the first option, for outstanding natural features, Natural character, natural processes, and geological features, all of which comprise a surf break.

As noted by the Board of Inquiry to the NZCPS surf breaks are a finite resource, and the technology to restore them does not yet exist. Therefore, as mentioned minimising adverse effects is not appropriate, where avoidance should be considered in the first instance.

SPS does not agree with the assessment on page 67 of the section 42a report in relation

To retaining Objective 19 in its relationship to policy p51, again as previously noted, natural processes that form surf breaks can easily be degraded over time by human interference, with small changes that become amplified by positive feedback loops that that destroy the form and function of the surf breaks

289. There is a relationship between natural character and natural processes, and this means there is some overlap between the matters addressed in Objective O19 and Policies P25(a) and P26; and Objective O17 and Policies P24 and P25; and Policy P51.

290. Natural processes are often an important factor in an area of natural character and an outstanding nature feature and landscape. While human activities may interfere with natural processes, this can be reversible where the integrity and functioning of natural processes and forms is retained. In my opinion the specificity in Objective O19 (and Policy P26) addresses the potential effects of activities on natural processes that may not be so significant as to diminish

natural character as a whole.

291. I consider that including specific provisions that address natural processes in Objective O19 (and Policy P26) will assist the Council in carrying out its coastal and freshwater management functions. Use and development may be appropriate and Objective O19 (and Policy P26) recognise that this may have adverse effects on the integrity of natural processes that need to be managed. Therefore, I do not consider that Objective O19 should be deleted.

SPS recommend that Objective 19 either be amended to: *Avoid remedy or mitigate*, or deleted.

The requirement for Surf break objectives and policies in the PNRP

In reply to The Wellington Airport Company submission⁵ seeking the deletion of the Corner surf break in Lyall Bay and surf break policy overall and has criticised the background reports for identifying regionally significant surf breaks⁶ :

Mr Kyle mis-represents the report developed by eCoast Marine Coastal and Research titled “Regionally Significant Surf Breaks in the Greater Wellington Region”, stating that “This report does not include an assessment of the significance of these surf breaks in terms of natural character or as natural features. Rather the report attempts to quantify break quality from a recreational viewpoint, much like the Surf Guide does.”

The eCoast report clearly articulates its purpose, with the first sentence of the report stating: “This report describes the identification and characterisation of regionally significant surf breaks in the Greater Wellington Regional Council (GWRC) area, the determination of their ‘swell corridors’, and a first order assessment of the risks to these regionally significant surf breaks.”

The document characterizes the natural features comprising Wellington’s regionally significant surfing breaks, including their swell corridors, in order to provide a first order evaluation for their protection, which is mainly with respect to coastal development within the 12 nautical mile limit. The surf breaks in the eCoast report are regionally significant, and the rationale behind this classification is further defined in the “Background” Section of the report, which was reviewed and accepted by Greater Wellington Regional Council.

Furthermore, the “Background” Section of the eCoast report repeats definition of a surf break, i.e. “A natural feature that is comprised of swell, currents, water levels, seabed morphology, and wind. The hydrodynamic character of the ocean (swell, currents and water levels) combines with the seabed morphology and winds to give rise to a ‘surfable wave’.”

Mr Kyle steps beyond his area of expertise with the statement that “And while wave generation is a natural phenomenon (usually), it is evident that the Corner surf break is

⁵ <http://pnrp.gw.govt.nz/assets/Uploads/HS3-S282-John-Kyle-Planner-Hearing-Evidence.pdf>

⁶ <http://www.gw.govt.nz/assets/Plans--Publications/Regional-Plan-Review/Proposed-Plan/RegionallysignificantsurfbreaksintheGreaterWellingtonRegion.PDF>

highly influenced by the development of the airport runway.” The surfing breaks in Lyall Bay do not generate waves, and the development of the airport runway has never had any influence on wave generation.

In addition, the precedence is clear in environmental law; features of the environment are evaluated as they are today, i.e., that fact that airport reclamation in the 1950’s modified the processes within Lyall Bay does not in any way lessen the current value of the feature. As such, all of the surfing breaks in Lyall Bay are “natural features” formed by natural processes.

When the reclamation was built, the natural processes were modified resulting in changes to wave patterns and consequently changes to currents and sediment transport. The Corner surfing break is a natural feature that is comprised of swell, currents, water levels, seabed morphology, and wind.

It was neither created for the purpose of surfing incorporating ‘artificial’ aspects (e.g. an engineered seabed), nor did the airport’s reclamation somehow result in natural processes that do not conform to the laws of physics with respect to the creation of a natural feature (i.e. it is not “super-natural”).

Lyall Bay is one of 7 surf breaks that are the subject of a 3-years Ministry of Business, Innovation and Employment (MBIE) funded research project to develop guidelines for the monitoring and protection of regional and national surf breaks. This research is focused at the development of consistent and robust methodologies which will be used to characterize the natural significance of the New Zealand’s nationally and regionally significant surf breaks. That is, Lyall Bay is considered a regionally significant surf breaks

Lyall Bay’s significance as both a highly valued nursery break as well as a high-quality wave, was noted by the Board of Commissioners in the 2010 review of the NZCPS, which was determined through a multi-criteria selection process by experts in the field of surf science.

As mentioned in our presentation to stream 1, there are a number of surf breaks around New Zealand that are dependent on either manmade reclamation or impacts on natural processes through human activities. In all cases this has been by accident, not by design.

SPS held up as an example Aramoana a surf break recognised by the Board of Inquiry as one of New Zealand’s best surf breaks, which is included in schedule one of the NZCPS.

Aramoana is dependent on Port Otago maintaining a deep access channel out past the Otago harbour Heads, which “snaps” the direction of Southerly swell, directing it in toward the surf break. The mound dredge spoil nearby also influences the quality by focussing the swell once more into the peak of surf break, contributing to the hollow tubes the Aramoana surf break is famous for.

As stated in our submission to stream one, SPS seek the following changes to Policy P51 of the PNRP:

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.

Also SPS seek changes to Objective 19

Objective O19

The interference from use and development on natural processes is minimised.

To read:

Objective O19

The interference from use and development on natural processes is Avoided, remedied, or mitigated.

Michael Gunson
Surfbreak Protection Society Inc

