

BEFORE THE WELLINGTON REGIONAL COUNCIL

**IN THE MATTER OF**                      of the Resource Management Act 1991

**AND**

**IN THE MATTER OF**                      the Proposed Natural Resources Plan

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**STATEMENT OF EVIDENCE BY JOHN KYLE**

22 AUGUST 2017

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**1. INTRODUCTION**

- 1.1 My name is John Kyle. I am a founding director of the firm Mitchell Daysh Limited. I hold an honours degree in Regional Planning from Massey University, obtained in 1987.
- 1.2 I appear at this hearing to provide planning evidence with respect to submissions and further submissions prepared by Wellington International Airport Limited (WIAL).
- 1.3 My qualification and experience are set out in paragraphs 1.1 to 1.3 of my statement of evidence for Hearing Stream 1, dated 5 May 2017.
- 1.4 I confirm my acceptance of the obligations set out in the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

**SCOPE OF EVIDENCE**

- 1.5 This hearing covers two main topics: Water Allocation and Natural Form and Function. WIAL only has an interest in the latter of these matters. In preparing this evidence I have read the section 42A report prepared by Ms. Legarth as well as the legal submissions prepared for Hearing Stream 3 on behalf of the Greater Wellington Regional Council (the Council).
- 1.6 In this statement of evidence, I address the following matters:
- Discuss WIAL’s submissions relating to the natural character provisions within the Proposed Natural Resources Plan for the Wellington Region (Proposed Plan) specifically:
    - Objective O17;
    - Objective O19;
    - Policy 25;
    - Policy 26.

- Discuss WIAL’s submission relating to the identification and inclusion of provisions providing for significant natural features in the coastal marine area (CMA) particularly:
  - Significant geological features; and
  - Significant surf breaks and Schedule K.

## 2. NATURAL CHARACTER PROVISIONS

### Objective 17

- 2.1 Objective 17 seeks that the natural character of the coastal marine area, rivers, lakes and their margins and natural wetlands are to be preserved and protected from inappropriate use and development. WIAL opposed this objective on the basis that it ascribes a level of protection to natural character that is more appropriate to those areas which have been identified as being outstanding. WIAL submitted that this objective was inconsistent with the requirements of the New Zealand Coastal Policy Statement 2010 (NZCPS) and in particular Objective 2 and Policy 13 of that statement.
- 2.2 Ms. Legarth considers Objective 17 as notified to be appropriate, largely on the basis that it is generally consistent with section 6(a) of the Resource Management Act 1991 (RMA) and is concerned that deleting the objective would create a gap in the Proposed Plan.<sup>1</sup>
- 2.3 I accept that the objective is broadly consistent with various matters set out in section 6 of the RMA. However with regard to the coastal environment in particular, greater guidance and specificity as to how sections 6(a) and 6(b) are to be provided for in regional plans is provided by the NZCPS.
- 2.4 Policy 13 of the NZCPS reads as follows:
1. *To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*
    - a. *avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and*

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<sup>1</sup> Paragraphs 145 – 148, Pages 36 and 37, Section 42A Report Natural Form and Function

- b. *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; including by:*
  - c. *assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and*
  - d. *ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.*
2. *Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:*
- a. *natural elements, processes and patterns;*
  - b. *biophysical, ecological, geological and geomorphological aspects;*
  - c. *natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;*
  - d. *the natural movement of water and sediment;*
  - e. *the natural darkness of the night sky;*
  - f. *places or areas that are wild or scenic;*
  - g. *a range of natural character from pristine to modified; and*
  - h. *experiential attributes, including the sounds and smell of the sea; and their context or setting.*

2.5 In my opinion, determining what might be “inappropriate” in a given situation is heavily affected by context and should be assessed by reference to what it is that is sought to be protected. I understand that the Supreme Court in *EDS v King Salmon* has confirmed that in the context of section 6(a) of the RMA, determining inappropriateness relates back to the natural character attributes that are to be preserved or protected rather than the activity which is proposed.

2.6 Whether an activity is “inappropriate” will depend upon the extent to which a location can absorb development without adverse effects on the natural qualities of the site itself and the surrounding environment. An assessment will turn upon both the characteristics of the area and the effects brought about by the proposed activity.

- 2.7 Policy 13 of the NZCPS provides some meaning to the term “inappropriate” in relation to natural character in the coastal environment. It adopts a cascading approach through its requirement for avoidance of adverse effects of activities on outstanding natural character and, in other areas of the coastal environment, for significant adverse effects of activities on natural character to be avoided.
- 2.8 Policies 13(c) and 13(d) require the Council to undertake an assessment of the natural character of the coastal environment, identifying at least areas of high natural character and ensuring that regional policy statements and plans identify areas where preserving natural character requires the imposition of objectives, policies and rules.
- 2.9 The Wellington Regional Policy Statement (RPS), Policy 3 requires district and regional plans to protect areas considered to have ‘high’ natural character from inappropriate subdivision, use and/or development. In achieving this outcome, it explains that Councils must assess land in the coastal environment to ascertain which areas have high natural character, in order to protect these areas, and to determine what would be inappropriate activities, depending on the attributes associated with an area’s high natural character.
- 2.10 Given this context it is my opinion that Objective 17 is not sufficiently refined. Its inherent requirement to protect and preserve all areas of natural character from inappropriate use and development lacks sufficient specificity. It does not properly address Policy 13 of the NZCPS or Policy 3 of the Wellington RPS<sup>2</sup>. I agree with WIAL that the objective should be deleted. In the alternative, it should be redrafted to better reflect the cascading approach adopted within Policy 13 of the NZCPS.

### **Objective 19**

- 2.11 Objective 19 requires interference from use and development on natural processes to be minimised. WIAL submitted that the term “interference” is subjective and could arguably extend to a very wide range of influences, however small. Similarly, WIAL raised issues with the use of the term “minimise” in this objective.<sup>3</sup> WIAL sought that

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<sup>2</sup> Similar issues arise with regard to Policies 24 and 48, in that these provisions should refer specifically to the mapped areas of outstanding natural character in the region.

<sup>3</sup> The issue with this term has been discussed in detail in my evidence on behalf of WIAL for Hearing Stream 1.

this objective be deleted or amended to remove the terms “interference” and “minimise”.

- 2.12 I agree that the drafting and intent of this objective is ambiguous and may be very limiting in guiding the assessment of proposals where any form of “interference” with natural processes results. The term “interference” has not been defined in the Proposed Plan, and without such a definition, it is not clear if the term “interference” is synonymous with the generation of an “adverse effect”. On its face at least, it would seem to me to be something substantially less than that.
- 2.13 Paragraph 5.1.1 of Council’s “Section 32 report: Activities in the coastal marine area” discusses the need to manage “impacts” on natural processes, however does not discuss or identify what activities would constitute “interference”. Similarly, Policy P26 of the Proposed Plan refers to “effects” rather than “interference”.
- 2.14 Arguably any activity which is going to be located in an environment where there are natural processes at play will “interfere” at least to a certain degree with those processes. Whether it be a discharge which alters the state of water quality, or a coastal structure which alters current flows and wave patterns. Such interference does not necessarily convert into an adverse effect. This conversion depends of matters of scale, degree, intensity and the sensitivity of the receiving environment. Mitigation might also be relevant. Put simply, interference with a natural process does not necessarily equate to an adverse effect which might necessitate “minimisation” as a management response.
- 2.15 As discussed in Hearing Stream 1, I have concerns with the use of the term “minimise” and if it is to be used it must be used with some considerable care. The term is defined through Policy P4 (as notified) to require:
- The reduction in adverse effects to the smallest extent that is practicable; and
  - An assessment of alternative locations and methods for undertaking the activity which might result in less adverse effects; and
  - Avoidance of certain significant areas; and
  - Timing of the activity, or adverse effects to avoid particularly sensitive times of the year or receiving environment; and

- Adoption of good management practice to manage adverse effects; and
- Designing the activity so that the scale is the smallest extent practicable.

2.16 As discussed in legal submissions presented on behalf of WIAL during Hearing Stream 2, expert conferencing has occurred between the expert witnesses who presented evidence at Hearing Stream 1 on Policy P4 and the meaning of ‘minimise’. I participated in that process and endorse the suggested revised approach to the way that “minimise” should be interpreted and applied.<sup>4</sup>

2.17 It remains my view that where “minimise” is to be used in the Objectives and Policies within the Proposed Plan some careful diligence is necessary to ensure that its use does not unduly or improperly impede otherwise meritorious outcomes. I do not consider that Objective 19 is an appropriate place for the term to be used.

2.18 In my view, this is an objective where it might be better to replace the term “minimise” with “avoid, remedy or mitigate”. This would provide decision makers with greater flexibility in approaching the management of adverse effects on natural processes. And it would mean that the unduly narrow language adopted in the current drafting does not unduly or improperly impede otherwise meritorious outcomes.

2.19 Ms. Legarth recommends amending Objective O19 so that it reads as follows:

*Natural processes including natural elements, patterns and ecological processes continue to occur, and the integrity and functioning of natural processes and forms are retained.*<sup>5</sup>

2.20 Whilst I regard this redrafting as an improvement, the intended outcome of this objective still remains vague. More particularly, I question what value this objective

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<sup>4</sup> The Joint Witness Conference Statement proposes to amend the Proposed Plan by either:

inserting a new definition:

*“Minimise when used in policies means reducing the adverse effects of the activity to the smallest amount reasonably practicable.”*

or

replacing Policy P4 with:

*“When policies in the Plan require adverse effects to be minimised, this means the adverse effects of the activity shall be reduced to the smallest amount reasonably practicable.”*

<sup>5</sup> Paragraph 303, Page 69, Section 42A Report Natural Form and Function

adds to the Proposed Plan as there are a good number of other objectives which relate to the management of effects on natural processes which are more specific as to the intended outcome. For example:

- Objective O25 – Water Quality and Ecosystems
- Objective O27 – Riparian margins
- Objective O28 – Wetlands
- Objective O29 – Fish Passage<sup>6</sup>
- Objectives O31 and O32 – Outstanding Waterbodies and Features and Landscapes
- Objective O35 – Significant Indigenous Biodiversity
- Objective O43 – Soils

2.21 When read against these provisions, I reach the conclusion that Objective 19 does not add particular value and it should be deleted.

### **Policy 25**

2.22 Policy 25 requires that use and development shall avoid significant adverse effects on natural character in the coastal marine area, lakes and rivers, and avoid, remedy or mitigate other adverse effects of activities taking into various matters.

2.23 WIAL submitted in opposition to this policy, and sought amendments to add a sub-clause to better recognise and provide for regionally significant infrastructure and require the avoidance of significant adverse effects to apply to areas of outstanding natural character.

2.24 Ms. Legarth has recommended rejecting the WIAL submission on the basis that Policy 25 addresses “significant adverse effects” on natural character, reflecting the policy approach to managing natural character in the NZCPS, and that activity specific policies are already included in the Proposed Plan which address the appropriateness of regionally significant infrastructure.<sup>7</sup>

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<sup>6</sup> I note that the report prepared by Mr Willis (14 July 2017) recommends combining a number of these objectives.

<sup>7</sup> Paragraph 226, Page 53, Section 42A Report Natural Form and Function

2.25 I tend to agree with her recommendation. However, given the existence of Policy 13 of the NZCPS I do question whether there is value in its inclusion in the Proposed Plan. The Proposed Plan does not need to regurgitate the various provisions from the NZCPS. Better value is achieved if policies build on the direction provided by higher order documents and provide more detail about the outcomes that give effect to these matters.

### **Policy 26**

2.26 Policy 26 seeks that “use and development will be managed to minimise effects on the integrity and functioning of natural processes”. For the reasons explained during Hearing Stream 1 and discussed above, WIAL is concerned with the use of the term “minimise” in this policy and seeks that this is replaced with “avoid, remedy or mitigate”.

2.27 Ms. Legarth recommends rejecting WIAL’s submission on the basis that objectives and policies in the plan should apply the RMA principles to the specific circumstances of the district or region, and not just restate the RMA. While I accept that plans need to reflect the specifics of the district or region, for the reasons that have already been canvassed during the evidence presented on behalf of WIAL for Hearing Stream 1, I have significant concerns with the application and interpretation of the term “minimise” in the context of some policies, including this one.

2.28 Ms. Legarth refers to the notified meaning of the term “minimise”.<sup>8</sup> As discussed in my evidence during Hearing Stream 1 use of this term creates a very high threshold for resource users and the term is confining and limiting. In many circumstances, proponents are unlikely to be able to achieve this outcome and at the same time retain a viable project. In my opinion, minimisation should only be applied where the environmental values affected by a given proposal are such that their quality or sensitivity to change is such that minimisation is the correct strategy. General adoption of this approach to the “integrity and functioning of natural processes” is too blunt and all encompassing. Greater precision is required in drafting policy to ensure that it properly focusses minimisation as a strategy. I would suggest that such

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<sup>8</sup> Paragraph 316, Page 72, Section 42A Report Natural Form and Function

a strategy should only be applied where the stakes are highest in terms of a need to preserve environmental qualities that prevail in a given location or situation.

2.29 In response to submissions and the Joint Witness Conferencing Statement regarding Policy 4, Ms. Legarth recommends amending Policy 26 to include the following sub-clauses to further clarify what is intended by the requirement to “minimise” effects on the integrity and functioning of natural processes:

- Considering alternative locations and methods for undertaking the activity that would have less adverse effects; and
- Locating away from areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (indigenous biodiversity); and
- Timing the activity, or the adverse effects of the activity, to avoid times when adverse effects may be more severe, or times when receiving environments are more sensitive to adverse effects; and
- Using good management practices; and
- Designing the activity so that the effects of the scale or footprint of the activity is as small as practicable.<sup>9</sup>

2.30 Of course, inserting these clauses into this policy essentially has the effect of reinstating Policy 4, along with its inherent issues. This is not appropriate in my view. It would be my preference to delete both Objective 19 and Policy 26 as I do not consider these provisions to be necessary or effective in ultimately achieving good resource management outcomes.

### 3. SIGNIFICANT “NATURAL” FEATURES

3.1 Objective 36 requires that significant geological features in the coastal marine area are to be protected. Objective 37 seeks that significant surf breaks are protected from inappropriate use and development.

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<sup>9</sup> Paragraph 318, Page 73, Section 42A Report Natural Form and Function

- 3.2 WIAL has sought amendments to Objective 36 to make it more certain and has sought the deletion of Objective 37.
- 3.3 I understand from the section 32 documentation that both geological features and surf breaks are considered to be elements which are derived from and contribute to the natural character of the coastal marine area. Ms. Legarth states in her report that Objective 36 is intended to protect significant geological features<sup>10</sup>, and that these are a subset of what might be considered outstanding natural features and landscapes, which in turn contribute to the natural character of the coastal marine area.<sup>11</sup> Similarly, and with regard to Objective 37, Ms. Legarth reports that surf breaks also contribute to the natural character of the coastal environment and so align with matters relevant in terms of section 6(a) and are thus recognised by NZCPS Policy 13(2)(c).<sup>12</sup> Ms. Legarth recommends rejecting WIAL's submissions on both Objectives 36 and 37 and retaining these provisions as notified.
- 3.4 These objectives are supported by Policy 50 which relates to significant geological features, and Policy 51 which relates to surf breaks in the region. Policy 51 reads as follows:
- 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.*
- 3.5 In its submission WIAL sought the deletion of Policy 51. More particularly, WIAL opposed the imposition of policy intended to protect regionally significant surf breaks on the basis that what would result was tantamount to the same protection reserved for surf breaks of national significance via the NZCPS. WIAL also expressed concern that Policy 51 would effectively act as a veto to an otherwise meritorious proposal because adverse effects that might arise could not be avoided, and the

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<sup>10</sup> Paragraph 419, Page 93, Section 42A Report Natural Form and Function

<sup>11</sup> Paragraph 436, Page 96, Section 42A Report Natural Form and Function

<sup>12</sup> Paragraph 471, Page 103, Section 42A Report Natural Form and Function

policy makes no allowance for methods of remediation or mitigation that might be applied. The submission also noted that the scheduled surf breaks in Lyall Bay have been (significantly) influenced by the historic construction of the airport. For example, without the runway rock wall the Corner surf break would not exist in its current form. WIAL also questioned how Policy 51 would work in regard to those scheduled surf spots which have been enhanced or created by human-induced modification. If it is intended to only protect naturally occurring surf breaks, the schedule would have to be revised to reflect this. The submission also sets out that Schedule K in the Proposed Plan identifies all of the surf breaks within the Wellington Region as being significant. Given this broad ascribing of significance, WIAL expressed concern that there has been no robust analysis to support the inclusion of the surf breaks that are identified in Schedule K.

- 3.6 I accept that a surf break is generally derived from a natural coastal process and in turn might be regarded to comprise a natural feature which contributes to the natural character of the coastal marine area. However, it is not clear to me why all “regionally significant” surf breaks have been specifically identified in the Proposed Plan for specific protection due to the contribution they make to natural character. Not all these breaks necessarily solely derive from natural processes and in fact some are highly influenced by, and in fact rely on coastal modifications.
- 3.7 Nor is it clear to me why surf breaks (as natural features) have attracted a level of policy protection that is in some circumstances more elevated than other natural elements that contribute to natural character. In addition, surf breaks which are recreational features, have been ascribed a certain status when other important recreational pursuits undertaken in the coastal marine area have not. Finally, it appears that the Proposed Plan has applied a level of protection to the surf breaks identified in Schedule K that is more appropriately reserved for surf breaks of national significance. I address each of these matters in turn below.

### **Natural Character**

- 3.8 While natural character is not defined in either the RMA or the NZCPS, the New Zealand landscape profession has defined natural character as, *the expression of natural elements, patterns and processes in a landscape*. Natural Character is the term used to describe the natural elements of coastal environments as the expression of

natural elements, patterns and processes in a landscape (or the ‘naturalness’) where the degree of ‘naturalness’ depends on:

- The extent to which natural elements, patterns and processes occur.
- The nature and extent of modifications to the landscape, seascape and ecosystems.<sup>13</sup>

3.9 The highest degree of natural character (greatest naturalness) occurs where there is the least modification. In the context of natural character assessments, naturalness can be defined as a measure of the degree of human modification of a landscape ecosystem, expressed in terms of:

- Ecological naturalness (indigenous ecology)
- Landscape (perceived) naturalness.

3.10 Relative to natural features and natural landscapes (including seascapes) (NZCPS, Policy 15), Policy 13(2) notes that “natural character is not the same as natural features and landscapes or amenity values”.

3.11 So, while the coastal marine area in a given location might be made up of (amongst other things) geological features and surf breaks, the extent to which these features, should be afforded “protection” in accordance with Policies 13 and 15 of the NZCPS largely depends on whether they are within or whether they themselves comprise an area of outstanding natural character or landscape.<sup>14</sup>

3.12 In my experience, natural character is usually assessed on a continuum of modification that describes the expression of natural elements, patterns and processes. In a coastal environment, the degree of naturalness depends on:

- The extent to which natural elements, patterns and processes occur and are legible;

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<sup>13</sup> Paragraphs 4.6 – 4.8, page 8, Wellington International Airport Limited, Airport Runway Extension, Natural Character Assessment. Frank Boffa, April 2016.

<sup>14</sup> Noting of course that the scheme of Policy 13 in particular is to provide protection where such values are outstanding (which is highly limiting), to avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects of activities on natural character.

- The nature and extent of human modifications to the landscape, marine area and ecosystems;
- The proposition that the highest degree of natural character (greatest naturalness) occurs where there is least modification/uncluttered by obvious or disruptive human intervention and/or influence; and
- Recognition that the degree of natural character is context-dependent and can change over time.

3.13 With regard to the identification of regionally significant surf breaks WIAL has opposed the inclusion of the three surf breaks within the Lyall Bay coastal marine area. These are identified on proposed Schedule K as:

- Airport Rights
- Lyall Bay – Clubrooms
- Lyall Bay – The Corner

3.14 As discussed in my evidence for Hearing Stream 1, WIAL is proposing to extend its runway to provide for larger aircraft in and out of Wellington Airport. An assessment of the proposed runway extension on the surf characteristics within Lyall Bay was undertaken as part of the resource consent application for the Project.

3.15 In this regard, WIAL commissioned DHI Water and Environment Ltd (DHI) to carry out a numerical modelling study to assess the impact of the proposed runway extension on the wave climate, swimmer safety and surf quality at Lyall Bay.

3.16 As part of this assessment and the recreational assessments for the Project it was identified that Lyall Bay is highly valued as a surfing spot, primarily as it is conveniently located close to the CBD and contains a quality surf break, referred to as ‘The Corner’. The Corner is considered a very good, reasonably consistent, left hander for intermediate level surfers, which breaks on the sand banks that have built up along the edge of the airport runway sea wall. The DHI assessment reports that when surf conditions are good at The Corner it can get very crowded with surfers. The report also observes that without the presence of the runway sea wall and the breakwater, The Corner surf break would not exist in its current form and it is likely

that without these man made features the waves breaking in this location would likely be similar to the rest of the bay.

- 3.17 The DHI assessment also reports that there is another surf break called “Airport Rights”. Airport rights is an exposed reef break off the southern end of the runway which only breaks in very large swell events and is for expert level surfers only.
- 3.18 The report observes that the rest of the bay is made up of average beach breaks which can be good during certain conditions, but without the consistency of The Corner. The breaks ranging from the Maranui end of the bay to the west, (close to The Corner), are very dependent on the variable sand banks within Lyall Bay, but are typically good for surfers of all levels. For this reason, Lyall Bay is also considered a nursery surf break where people are able to learn to surf without the dangers that can be associated with surf breaks for surfers with more experience and advanced abilities.
- 3.19 The surrounding environment in which these features exist is also heavily modified. It is dominated by the presence of the airport which is located on the isthmus between Lyall Bay and Evans Bay and a very significant part of the isthmus is devoted to the airport. A large area of the coastal environment at Lyall Bay involves an area of reclamation for the existing runway. The original development of the airport in 1956-59, and its subsequent further development in 1972 when an additional area was reclaimed to extend the runway (establishing the current coastal edge) has had a significant effect on the natural character of the Rongotai Isthmus and Lyall Bay generally, including on the way waves propagate into Lyall Bay. The construction of the airport has involved reclamation at both the northern and southern ends, including 14 ha of the eastern side of Lyall Bay. The construction incorporated a rock outcrop and reef towards the southern end of the runway and the breakwater covers the end of this reef. Construction of the runway has extensively modified the eastern edge of Lyall Bay, creating a linear, rock- armoured edge extending 800m from Lyall Bay beach southwards. The breakwater that extends 150m into Lyall Bay also forms part of this artificial edge.

3.20 The evolution of the airport is shown on figures 1 to 3 below:<sup>15</sup>



Figure 1: Rongotai Isthmus prior to first airport reclamation



Figure 2: Original Airport Development

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<sup>15</sup> Source: Wellington International Airport Limited, Airport Runway Extension, Natural Character Assessment. Frank Boffa, April 2016.



Figure 3: Eastern Lyall Bay Coastline in 1941 and 2015

- 3.21 Aircraft associated with the operation of the airport regularly land and take off in this environment, with all the visual, noise and atmospheric implications that that involves.
- 3.22 In my assessment, the Lyall Bay isthmus does not comprise an area which exhibits high or outstanding natural character. There are of course features within the bay that are natural, however due to the presence of the airport and other activities in the area, the Bay does not possess a degree of natural character that could be described as high or outstanding.
- 3.23 Against this evidential backdrop and as part of my involvement in the proposed runway extension project (e.g. consultation with key stakeholders including the Wellington Board Riders Club) it is apparent to me that the surf breaks in Lyall Bay, in particular The Corner, are significant for their recreational value. And while wave generation is a natural phenomenon (usually), it is evident that the Corner surf break is highly influenced by the development of the airport runway. Surf conditions in other parts of Lyall Bay are also influenced by the runway reclamation, albeit to a lesser extent than at the Corner.

- 3.24 On this basis, I have considerable difficulty with the proposition that surf breaks within the Bay should be specifically identified within the Proposed Plan on the basis that they are significant natural features which contribute to high natural character, with the commensurate policy protection that has been applied. Of course, they have high recreational value but from the Council reportage this does not appear to comprise the reason they have been identified in the Proposed Plan.
- 3.25 Furthermore, the approach adopted to the formulation of Schedule K in my view warrants closer scrutiny. It seems from the Council reporting that all of the surf breaks listed in the New Zealand Surf Guide for the Wellington Region have been included. This approach is endorsed in a Council commissioned report entitled “Regionally Significant Surf Breaks in the Greater Wellington Region” prepared by eCoast Marine Consulting and Research (dated May 2015)).
- 3.26 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. Whilst such an approach assists understanding about recreational value, it should not in my opinion be used to inform an appropriate assessment in terms of natural character or landscape. There is no evidence that I have seen that there has been any consistent or robust methodology used in order to test the validity of the natural significance status of the surf breaks included in Schedule K. This issue has not been specifically addressed in the section 42A report prepared by Ms. Legarth, and recommends that no changes are made to Schedule K.<sup>16</sup>
- 3.27 I am also concerned of the lack of certainty in terms of the extent and location of the scheduled surf breaks and associated mapping. For example, Schedule K lists “Lyall Bay – The Clubrooms” as a significant surf break. This is not a common name and it is assumed it is associated with the waves breaking in the middle of the Bay. Map 24 does not provide any further certainty in terms of location of this site in this regard:

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<sup>16</sup> Paragraph 502, Page 109, Section 42A Report Natural Form and Function

Map 24



- 3.28 This issue was identified in the submission made by Masterton District Council, which WIAL supported. I agree that the schedule and/or maps should clearly identify the location of the matters in question, and should also identify the values which give rise to the need for particular consideration (or protection).
- 3.29 For all of the reasons cited above, I consider it appropriate to delete Objective 37, Policy 51 and Schedule K from the Proposed Plan, or the approach should be modified such that their recreational attributes are recognised, commensurate with the approach adopted in the NZCPS for recreational values.<sup>17</sup>

### Recreational Values

- 3.30 With regard to the identification and management of regionally significant surf breaks, I am concerned that this also represents a misapplication of the NZCPS Policy 16 requirements. Policy 16 of the NZCPS reads as follows:

*Protect the surf breaks of national significance for surfing listed in Schedule 1, by:*

- a) *ensuring that activities in the coastal environment do not adversely affect the surf breaks;*  
*and*

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<sup>17</sup> See Objective 4 and Policy 6(2)(b).

b) *avoiding adverse effects of other activities on access to, and use and enjoyment of the surf breaks.*

3.31 There are no surf breaks within the Wellington Region that are identified in Schedule 1 of the NZCPS as being of national significance. I therefore question the appropriateness in extend the requirement to “protect” surf breaks that are not listed as being of national significance. I note that submissions were made to the Board of Inquiry into the NZCPS requesting inclusion of the Lyall Bay surf breaks within Schedule 1. The Board rejected that submission.

3.32 In my opinion, surf breaks including those within Lyall Bay are valued for their recreational attributes, however it is not clear to me why in the Wellington context surfing has been elevated above other recreational pursuits that are undertaken within the coastal marine area. In my view, it is more appropriate and effective for the Proposed Plan to more broadly address recreational values and opportunities within the coastal marine area. Policy 6 of the NZCPS seeks to maintain and enhance the public open space and recreational qualities and values of the marine area. I also note that there is no higher-level directive in the RPS to require the specific protection of surf breaks (for either natural character or recreational values) at a regional level.

3.33 By focusing on the avoidance, remediation or mitigation of significant adverse effects on existing recreational values and maintaining or enhancing such opportunities within the coastal marine area as suggested by WIAL in its submission, the Proposed Plan would better align with the provisions of the RMA, NZCPS, and RPS.<sup>18</sup>

#### **4. CONCLUSION**

4.1 This evidence addresses the provisions in the Proposed Plan that relate to the natural form and function. WIAL made submissions on those objectives and policies which relate generally to the preservation and protection of natural character values and natural processes, and also on specific provisions relating to the protection of significant surf breaks and other features in the coastal marine area.

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<sup>18</sup> Refer to my Hearing Stream 1 evidence – Objective O9

- 4.2 The Proposed Plan contains a number of objectives and policies that seek to protect and preserve overall natural character, and to minimise interference on natural functions and processes (Objectives O17, O19, Policies P25 and P26). In my view, the way these provisions have been drafted misapplies the higher order directives of the NZCPS and the Wellington RPS, and/or introduces new terms and thresholds which are untested and generally inappropriate in my view. My preference is for these provisions to be deleted from the Proposed Plan.
- 4.3 Schedule K relating to surf breaks seeks to preserve the natural character of the coastal marine area by protecting (Objective O37, Policy P51) surf breaks. However, the schedule includes surf breaks that have been or are significantly affected by the modification of the environment in Lyall Bay. In my assessment, due to the level of modification Lyall Bay does not comprise an area which exhibits high or outstanding natural character.
- 4.4 It is not clear to me why the Council has therefore afforded these individual features protection in a manner aligned with the approach with Policy 13 or Policy 15 of the NZCPS. I am not disputing that they have high recreational value but from the Council reportage this does not appear to comprise the reason they have been identified in the Proposed Plan in the way that they have.
- 4.5 Furthermore, the approach adopted to the formulation of Schedule K in my view warrants closer scrutiny. It seems from the Council reporting that all of the surf breaks listed in the New Zealand Surf Guide for the Wellington Region have been included. This approach is endorsed in a Council commissioned report entitled “Regionally Significant Surf Breaks in the Greater Wellington Region” prepared by eCoast Marine Consulting and Research (dated May 2015)).
- 4.6 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. Whilst such an approach assists understanding about recreational value, it should not in my opinion be used to inform an assessment of what might be outstanding from a natural character perspective. There is no evidence that I have seen that there has been any consistent or robust methodology used in order to test the validity of the natural character significance status of the surf breaks included in Schedule K.

- 4.7 I am also concerned that the Proposed Plan inappropriately extends a level of protection that would be more commensurate with the management of surf breaks of national significance. Overall, I am of the view that the Proposed Plan misapplies the direction within Policies 13, 15 and 16 of the NZCPS.
- 4.8 In my opinion, the provisions relating to significant surf breaks (Objective O37, Policy P51 and Schedule K) should be deleted or modified such that their recreational attributes are recognised, with the commensurate policy approach carefully aligned with the approach adopted in the NZCPS for recreational values.

J Kyle

22 August 2017