

Before the Independent Hearings Panel

In the Matter of the Resource Management Act 1991

And

In the Matter of the Proposed Natural Resources Plan for the Greater
Wellington Region

And

In the Matter of Hearing Stream 3

Legal Submissions for Wellington International Airport Limited [Submitter Number 282 and Further Submitter Number 69]

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INTRODUCTION

1. These legal submissions are presented on behalf of Wellington International Airport Limited (**WIAL**).
2. WIAL lodged a submission on the Proposed Natural Resources Plan (**Proposed Plan**) with the Greater Wellington Regional Council (**Council**) on 25 September 2015 (Submission Number 282) and a further submission (Further Submission Number 69) on 29 March 2016 (**Submissions**).
3. These legal submissions address matters raised in WIAL's Submissions relevant to Hearing Stream 3 – Water Allocation and Natural Form and Function.
4. Our earlier legal submissions for Hearing Stream 1¹ described Wellington International Airport's (**Airport**) operations and the statutory framework for the Independent Hearing Panel's (**Panel**) consideration of the Proposed Plan. Those legal submissions remain relevant to the Panel's considerations for Hearing Stream 3 but I do not propose to repeat them here.

THE PROPOSED PLAN – WIAL'S SUBMISSIONS

5. Overall WIAL supports the consolidation of land, water and coastal activities into the Proposed Plan. It considers this will enable a more cohesive approach for the Council to perform its functions under section 30 of the Resource Management Act 1991 (**Act**).
6. However, WIAL seeks amendments to specific provisions and rules to ensure consistency throughout the Proposed Plan, prevent duplication, and to better meet the higher order documents and/or the purpose of the Act.
7. The particular matters WIAL seeks to address in Hearing Stream 3 relate to Natural Form and Function; and in particular:
 - (a) Natural Character:
 - (i) Objective O17: Natural Character;
 - (ii) Policy P24: Outstanding Natural Character;

¹ dated 7 June 2017

- (iii) Policy P25: Natural Character;
 - (iv) Policy P48: Protection of Outstanding Natural Features and Landscapes;
- (b) Natural Processes:
- (i) Objective O19: Natural Processes;
 - (ii) Policy P26: Natural Processes;
- (c) Significant Geological Features:
- (i) Objective O36: Significant Geological Features;
- (d) Significant Surf Breaks
- (i) Objective O37: Significant Surf Breaks;
 - (ii) Policy P51: Significant Surf Breaks;
 - (iii) Schedule K: Significant Surf Breaks; and
 - (iv) Map 24: Significant Surf Breaks.

NATURAL CHARACTER AND PROCESSES

8. Given the Airport's close proximity to the coastal environment, in particular Evans and Lyall Bays, WIAL has an interest in the provisions of the Proposed Plan that seek to address natural character within the coastal marine area (CMA).
9. WIAL's interest extends to natural processes, significant geological features and surf breaks identified in the Proposed Plan.

Natural Character

Objective O17

10. Proposed Objective O17 provides:

"The natural character of the coastal marine area, rivers, lakes and their margins and natural wetlands is preserved and protected from inappropriate use and development."

11. WIAL considers O17 is inappropriate as it seeks to provide a level of protection more suitable to areas that exhibit outstanding natural character.
12. The proposed objective does not allow for consideration of circumstances where it is not appropriate or even possible to preserve and protect natural character. For example, the expansion of existing Regionally Significant Infrastructure (RSI) in the CMA due to a functional need or operational requirement.
13. The Council Officer recommends the retention of O17 subject to a minor amendment to more clearly address wetlands, as follows:

“The natural character of the coastal marine area, natural wetlands, and rivers, lakes and their margins ~~and natural wetlands~~ is preserved and protected from inappropriate use and development.”
14. As the Panel is aware, the Proposed Plan is required to give effect² to the New Zealand Coastal Policy Statement (NZCPS) and the Regional Policy Statement for the Greater Wellington Region (RPS), as higher order planning documents.
15. WIAL, along with Mr Kyle, considers that O17 fails to give effect to:
 - (a) Policy 13(1)(b) of the NZCPS which provides:

“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.”

and
 - (b) Policy 3 of the RPS that provides for the protection of high natural character in the coastal environment.
16. Mr Kyle considers without a schedule to the Proposed Plan identifying areas of (at least) high natural character, O17 is unwieldy and difficult to implement.
17. Accordingly, WIAL considers O17 lacks sufficient specificity and should be deleted³.

² Section 67(3) of the Act

³ Statement of Evidence by John Kyle dated 22 August 2017 at [2.10]

18. In the alternative, Mr Kyle considers O17 can be redrafted to better reflect the NZCPS's cascading approach for management of adverse effects in the Proposed Plan⁴.
19. In my submission, if the Panel does not recommend the deletion of O17, the suggested alternative relief by Mr Kyle⁵ is within the scope of WIAL's submission, as it is lesser relief than originally sought.

Policy P24 and Policy P48

20. Proposed Policies P24 and P48 are intended to implement proposed Objective O17 in relation to areas of outstanding natural character, natural features and landscapes.

21. Proposed Policy P24 (relevant to WIAL's submission) provides:

"Areas of outstanding natural character in the coastal marine area will be preserved by:

...

- (d) *avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from the natural character values of the outstanding natural character area."*

22. Proposed Policy P48 provides:

"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."*

23. WIAL is concerned the proposed policies result in uncertainty about the spatial extent of their application and fail to give effect to Policy 15 of the NZCPS and Policy 25 of the RPS as the coastal areas of outstanding natural character in the region are not identified or mapped.
24. WIAL also considers sub-clause (e) of P24 inappropriately extends its application to land outside an outstanding natural landscape, and duplicates matters addressed in P25. This is of concern as it contradicts

⁴ Statement of Evidence by John Kyle dated 22 August 2017 at [2.10]

⁵ Statement of Evidence by John Kyle dated 22 August 2017 at [2.10]

the considerations in Policy 35 and 36 of the RPS, which relate to the site of the activity and the area it is within.

25. In response to these concerns the Officer Report states:

“There is no Schedule in the plan that identifies ‘outstanding natural character’. The RPS Policy 35 and 36 set out the matters that are to be considered to determine if an activity is inappropriate.

...

Method M24 is to work with territorial authorities and the community to identify areas of outstanding natural features and landscapes, outstanding/high natural character in the coastal environment, and to produce a regional list for inclusion in the Plan by plan change.

I consider that the relief sought is unworkable because there is no natural character schedule in the Proposed Plan. Deleting sub-clause (e) would not give effect to the provisions in the RPS that are to preserve natural character and which set out criteria for establishing if an activity is inappropriate and would be inconsistent with the requirements in RMA section 6(a).⁶

26. WIAL concedes its relief seeking reference to a Schedule in P24 and P48 that does not exist is problematic but considers that it is appropriate to do so. This is because in the absence of a Schedule of these area and values, it is unclear if the Council will take a liberal or conservative approach to their identification, which may have implications for the drafting of these policies.
27. In my submission, it is good planning practice for this identification to occur as part of the Proposed Plan process to enable a full assessment of the provisions under the Act especially in the King Salmon era.
28. Accordingly, WIAL seeks the following amended relief for P24 and P48:

Policy P24

“Areas of outstanding natural character in the coastal marine area identified in a schedule to this Plan will be preserved by:

- (a) avoiding adverse effects of activities on natural character in areas of the coastal marine area with outstanding natural character, and*
- (b) requiring use and development to be of a type, scale and intensity that will maintain the natural character values of the area, and*

⁶ Yvonne Legarth, Officer Report – Natural Form and Function dated 7 August 2017 at [189]-[190].

- (c) *requiring built elements to be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and*
- (d) *maintaining the high levels of naturalness of these areas, and*
- ~~(e) *avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from the natural character values of the outstanding natural character area.*~~

Policy P48

"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 identified in a schedule to this Plan, and*
- (b) *avoiding significant adverse effects and avoiding, remedying or mitigating other the adverse effects of activities on natural features and landscapes."*

Policy P25

29. Proposed Policy P25 is also intended to implement proposed Objective O17 in relation to the avoidance of significant adverse effects on natural character.

30. Proposed Policy P25 (relevant to WIAL's submission) provides:

"Use and development shall avoid significant adverse effects on natural character in the coastal marine area (including high natural character in the coastal marine area) and in the beds of lakes and rivers, and avoid, remedy or mitigate other adverse effects, taking into account:

...

- (d) *whether it is practicable to protect natural character from inappropriate use and development through:*
 - (i) *using an alternative location, or form of development that would be more appropriate to that location, and*
 - (ii) *considering the extent to which functional need or existing location or existing use limits location and development options."*

31. WIAL is concerned the proposed policy does not adequately provide and recognise the operational requirement for expanding existing RSI in the CMA, and in doing so does not give effect to the NZCPS in particular, Objective 6 and Policy 6.

32. Further, the Proposed Plan and the Officer Report refer to outstanding natural character and high natural character individually and together. In my submission, P25 is not intended to apply only to outstanding natural character and high natural character and WIAL seeks amendments to reflect this.

33. The Officer Report suggests that:

“Activity specific policies are already included in the proposed plan that address the appropriateness of regionally significant infrastructure (e.g. Policy P139 which deals with the construction of seawalls except where it is required to protect regionally significant infrastructure); and the benefits of regionally significant infrastructure (e.g. Policy P12). Not all regionally significant infrastructure has a functional need to locate in the CMA or the beds of lakes and rivers.

It is not necessary to duplicate those provisions, or to specifically refer to regionally significant infrastructure, in Policy P25 which deals with significant adverse effects of use and development on natural character. ‘Use and development’ already encompasses ‘Regionally significant infrastructure’.”

34. In response to a number of submissions the Officer recommends the deletion of sub-clause (d) from P25 and the inclusion of the following new sub-clauses:

(d) *alternative locations, design or form of development that have less adverse effects; and*

(e) *the extent to which the activity has a functional need to be located in the coastal marine area that limits location and development options; and*

(f) *the ecosystems, natural flow characteristics and hydrodynamic processes, and the natural pattern and range of water level fluctuations in natural wetlands, and river and lakes and their margins.”*

35. In my submission, the deletion of sub-clause (d) is not appropriate in particular in light of *King Salmon*⁷ and *Davidson*⁸ that prevents the granting of a resource consent when a directive policy requiring the avoidance of adverse effects cannot be met.

36. In my submission, it is not sufficient that other less directive provisions recognise RSI in the Proposed Plan as these cannot be considered if a more directive policy cannot be given effect to.

⁷ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38

⁸ *R J Davidson Trust v Marlborough District Council* [2017] NZHC 52

37. WIAL has also sought the inclusion of the phrase “operational requirement” to ensure this remains a relevant consideration in the context of a more directive policy. This language is consistent with other RSI provisions in the Proposed Plan and Policy 36(a)(i) of the RPS which requires consideration of whether there is “*functional need or operational requirement to locate within the coastal environment*”. I note the Proposed Plan also defines both these terms.
38. Accordingly, WIAL suggests the following changes to the Officer’s amendments to P25 to address its concerns:

“Use and development shall avoid significant adverse effects on natural character in the coastal marine area (~~including high natural character in the coastal marine area~~) and in the beds of lakes and rivers identified in a method to this Plan, and avoid, remedy or mitigate other adverse effects, taking into account:

...

- (d) *alternative locations, design or form of development that have less adverse effects; and*
- (e) *the extent to which the activity is an existing use, or has a functional need or operational requirement to be located in the coastal marine area that limits location and development options; and*
- ~~(f) *considering the benefits associated with the use, operation, maintenance, upgrade and growth of existing regionally significant infrastructure and renewable energy generation activities.”*~~
- (f) (g) *the ecosystems, natural flow characteristics and hydrodynamic processes, and the natural pattern and range of water level fluctuations in natural wetlands, and river and lakes and their margins.”*

Natural Processes

39. By way of context, the Proposed Plan defines “natural processes” as:

“Dynamic natural, physical and ecological relationships and events that are characteristically natural in their occurrence and effects, that act to shape the natural environment, its landforms and features, such as beaches, dunes, wetlands, and rivers; and including processes of: wave formation, breaking and dissipation: swash run-up; nearshore currents; sediment transport, erosion and deposition, flooding, river meandering, aggradation and mass movement.”⁹

⁹ Chapter 2 – Interpretation of Proposed Natural Resources Plan for the Wellington Region (31.07.2015) at page 26.

Objective O19 and Policy P26

40. Proposed Objective O19 provides:

“the interference from use and development on natural processes is minimised.”

41. This is intended to be implemented by proposed Policy P26 which provides that:

“Use and development will be managed to minimise effects on the integrity and functioning of natural processes.”

42. One of WIAL’s concerns is the use of the term “interference” in O19 as it is too subjective and likely to lead to an inappropriately wide range of matters being considered by a decision-maker leading to increased and unnecessary uncertainty in the context of consenting.

43. Mr Kyle discusses how *“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”.*¹⁰ It is Mr Kyle’s opinion that *“on its face at least, it would seem to me to be something substantially less than that.”*¹¹

44. In the context of the terms “minimise” and “minimised” WIAL continues to consider its use inappropriate as discussed in my legal submissions for Hearing Stream 1.

45. The Officer in response to WIAL’s submission recommends O19 be amended as follows:

“The interference from use and development on natural processes is minimised including natural elements, patterns and ecological processes continue to occur, and the integrity and functioning of natural processes and forms are retained.”

46. However in my submission, this recommendation results in a more onerous O19 as the focus shifts from the minimisation of effects on the integrity and functioning of natural process and forms to their retention.

¹⁰ Statement of Evidence by John Kyle dated 22 August 2017 at [2.12]

¹¹ Statement of Evidence by John Kyle dated 22 August 2017 at [2.12]

47. Mr Kyle considers the outcome of O19 remains vague and duplicates a number of other objectives in the Proposed Plan that address effects on natural processes.¹²
48. In my submission, the officer's recommendation is also beyond the scope of WIAL's submission that focused on terminology within the provision.
49. In relation to P26, the Officer recommends its retention as notified or if the Panel is minded to recommend amendments to Policy P4 in line with the expert caucusing statement, then the Officer recommends the addition of the following five subclasses to P26:

"use and development will be managed to minimise effects on the integrity and functioning of natural processes, by

- (a) considering alternative locations and methods for undertaking the activity that would have less adverse effects, and*
- (b) locating away from areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (indigenous biodiversity), and*
- (c) 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*
- (d) using good management practices, and*
- (e) designing the activity so that the effects of the scale or footprint of the activity is as small as practicable."*

50. In my submission, the Officer's alternative recommendation is not appropriate as it simply reintroduces the issues already identified by a number of parties, including WIAL with Policy P4 in Hearing Stream 1.
51. Accordingly, WIAL seeks proposed O19 is deleted and P26 is amended as follows:

"Use and development will be managed to ~~minimise~~ avoid, remedy or mitigate adverse effects on the integrity and functioning of natural processes."

52. If the Panel is not minded to recommend the deletion of O19, WIAL seeks the following alternative relief:

Objective O19

¹² Statement of Evidence by John Kyle dated 22 August 2017 at [2.20]

~~"The interference from Any adverse effects of use and development on natural processes is are avoided, remedied or mitigated minimised.~~

SIGNIFICANT NATURAL FEATURES

Significant Geological Features

53. The Airport is located near to Moa Point/Hue te Taka on the Wellington South Coast and its reefs¹³, which is identified in the Proposed Plan as a significant geological feature.

Objective O36

54. Proposed Objective O36 provides:

"Significant geological features in the coastal marine area are protected."

55. WIAL supports (in part) the inclusion of O36 in the Proposed Plan but seeks amendments to clarify its intent, by adding the phrase "identified in Schedule J to this Plan" and to specifically protect significant geological features "from inappropriate use and development".

56. The Reporting Officer suggests that only referring to Schedule J in O36 removes the possibility of a new discovery occurring that meets the criteria for consideration under Policy 25 of the RPS.

57. The Officer Report also considers significant geological features "...are a subset of outstanding natural features and landscapes, and the natural character of the CMA"¹⁴ and the inclusion of the words "from inappropriate use and development" as suggested by WIAL "...adjusts the management of the geological features from an assessment of its vulnerability and protection of its values to an assessment about doing so in the context of an overall judgement about what may be 'inappropriate' activities."¹⁵

58. However in response Mr Kyle considers:

"...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

¹³ The description and values of Moa Point/ Hue te Taka in Schedule J: Significant geological features in the coastal marine are: rock stacks, shore platforms and raised beach including 1855 uplift ridge

¹⁴ Yvonne Legarth, Officer Report – Natural Form and Function dated 7 August 2017 at [436]

¹⁵ Yvonne Legarth, Officer Report – Natural Form and Function dated 7 August 2017 at [437]

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.”¹⁶

59. In my submission, the Officer's views are incorrect in light of the Supreme Court's consideration of the meaning of “inappropriate”:

“... where the term “inappropriate” is used in the context of protecting areas from inappropriate subdivision, use or development, the natural meaning is that “inappropriateness” should be assessed by reference to what it is that is sought to be protected.”¹⁷

60. The inclusion of the words “from inappropriate use and development” assist the Council and users of the Plan to understand what is appropriate development by focusing on the values of the significant geological feature which warrant protection.
61. Further, this wording is required to give effect to Policy 15 of the NZCPS and make is a meaningful objective that provides amongst other matters, what is to be accomplished, where and when this is to occur.¹⁸
62. Additionally, if as the Reporting Officer suggests, significant geological features are a subset of outstanding natural features and landscapes, then in my submission these provisions should refer to “outstanding geological features” not “significant” to provide more clarity to users of the Plan.
63. Accordingly WIAL opposes the relief sought by Royal Forest and Bird Protection Society¹⁹ and continues to seek amendments as follows:

“Significant geological features in the coastal marine area identified in Schedule J to this plan are protected from inappropriate use and development.”

Significant Surf Breaks

Objective O37 and Policy P51

64. Proposed Objective O37 and Proposed Policy P51 seek to afford protection to “significant surf breaks” identified in Schedule K and Map 24.

¹⁶ Statement of Evidence by John Kyle dated 22 August 2017 at [3.11]

¹⁷ *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* [2014] NZSC 38 at [101]

¹⁸ www.qualityplanning.org.nz/index.php/plan-steps/writing-plans/writing-issues-objectives-and-policies

¹⁹ Submitter 353

65. Objective O37 proposes *“Significant surf breaks are protected from inappropriate use and development.”*

66. Policy P51 is designed to implement Objective O37 and proposes as follows:

“Use and development in and adjacent to the significant surf breaks identified in Schedule K (surf breaks) shall be managed by minimising 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.”

67. It is understood that Schedule K lists the significant surf breaks for the Wellington Region that have been identified by a report by eCoast Marine Consulting and Research (**Report**) and relied upon by the Council.

68. WIAL is concerned these proposed provisions incorrectly adopt the protection afforded to nationally significant surf breaks in the NZCPS, none of which are identified in the Greater Wellington Region, and inappropriately apply this protection to any identified significant surf break.

69. WIAL's concerns with the approach of these provisions relate to:

(a) the failure of the Proposed Plan to properly apply Policies 13 and 16 of the NZCPS;

(b) the adequacy of the Report identifying significant surf breaks, in particular the lack of assessment criteria and objectiveness; and

(c) the appropriateness of elevating surf breaks above other natural character features with recreational values.

70. The Reporting Officer does not specifically address WIAL's submission to delete O37 but in respect of the deletion of P51 suggests:

“The identification of surf breaks that are regionally significant promotes the sustainable management of natural resources, and gives effect to provisions in the RPS and NZCPS that deal with natural character, natural processes, and manage significant natural features.”²⁰

²⁰ Yvonne, Legarth, *Officer Report – Natural Form and Function* dated 7 August 2017 at [492]

"If Policy P51 was deleted, then decision-makers would have no more guidance than that which is provided in the RMA to avoid, remedy or mitigate the adverse effect, with no emphasis placed on the critical characteristics."²¹

The failure of the Proposed Plan to properly apply Policy 16 of the NZCPS

71. In my submission, Policy 16 of the NZCPS only gives directive protection to the 17 listed surf breaks from activities that adversely affect their recreational values.
72. By contrast, Policy 13 of the NZCPS recognises the natural character associated with surf breaks which are in turn subject to the cascade contained within sub-clause 1.
73. In my submission, this drafting was a deliberate choice to recognise the protection of nationally significant surf breaks. Importantly, neither the NZCPS nor the RPS require so-called significant surf breaks to be identified and protected beyond that provided by Policy 13 of the NZCPS.
74. In July 2009, a Board of Inquiry (BOI) considered the proposed NZCPS and drew heavily upon the New Zealand Surfing Guide (**Surfing Guide**) and its record of 470 surf breaks throughout New Zealand as the foundation for identification of nationally significant surf breaks.
75. The BOI listed 17 surf breaks in the NZCPS as nationally significant based on the evidence of the Surf Protection Society Incorporated's (SPS) expert, Mr Rennie and his opinion that *"...[t]he identification of the 16 surf breaks given a 10 stoke rating could provide a consistent and robust means of identifying nationally significant surf breaks..."²²*
76. As part of its decision on the NZCPS, the BOI considered a submission from the SPS seeking a policy requiring local authorities to identify and protect regionally significant surf breaks.
77. The BOI determined that:

"Surf breaks not identified and protected as nationally significant...are also likely to require consideration under other policies, such as natural

²¹ Yvonne, Legarth, *Officer Report – Natural Form and Function* dated 7 August 2017 at [489]

²² *Volume 2: Working Papers / BOI Report on NZCPS (2008)*, July 2009 at p133

*character, outstanding natural features and landscapes, public open space and public access.*²³

78. In my submission, the BOI was saying it is not necessary to identify regionally significant surf breaks, as other provisions will provide appropriate protection, and therefore the Proposed Plan should not attempt to do so either.

Adequacy of Report

79. These provisions rely on the Report to identify the significant surf breaks in Schedule K.
80. The Reporting Officer considers the *“report identifies the significant surf breaks, their values and the determination of their “swell corridors”, and is a first order assessment of the risks to these regionally significant surf breaks”*.²⁴
81. As a starting point, the Report identifies 61 surf breaks, adopting all 57 surf breaks identified by the New Zealand Surfing Guide (**Surfing Guide**) in the Wellington Region and individually identifying the breaks at Lyall Bay and Titahi Bay.²⁵
82. The Report then assesses the surf breaks by reference to a number of factors such as the:
- (a) type of break;
 - (b) length of ride;
 - (c) best conditions;
 - (d) swells; and
 - (e) currents.
83. What the Report fails to do is quantify this assessment and explain the appropriateness of including every surf break in the Wellington region as “regionally significant” when the ranking against these factors varies

²³ *Volume 2: Working Papers / BOI Report on NZCPS (2008)*, July 2009 at p135

²⁴ Yvonne Legarth, *Officer Report – Natural Form and Function* dated 12 August 2017 at [481]

²⁵ eCoast Marine Consulting and Research, *Regionally Significant Surf breaks in the Greater Wellington Region*, 22 May 2015 at section 6.2

significantly and more importantly no assessment of the significance of these surf breaks in terms of natural character or as natural features is provided.

84. Consequently, in my submission, the Proposed Plan cannot include specific and directive protection for “significant surf breaks” as Policy 16 of the NZCPS does not enable this, and Policy 13 and 15 of the NZCPS appropriately address surf breaks that are not nationally significant.
85. Another relevant consideration for the Panel in my submission is the overall objectivity of the Report.
86. It is accepted that all the authors have surfing experience and two of the three are experts in Coastal morphology but in my submission, a report for this purpose would have been more appropriately undertaken by an expert with specific expertise in assessing natural character and features.
87. Further, Michael Gunson, one of the authors of the report, is also a submitter on the Proposed Plan, an active member of the SPS, and therefore in my submission cannot be considered an objective author of the Report.
88. Accordingly, in my submission the Report can be given little weight and cannot be the foundation for the inclusion of O37 and P51.

Appropriateness of elevating surf breaks above other natural character with recreational values

89. SPS opposes WIAL’s relief as it considers Policy 13 of the NZCPS provides for the protection of surf breaks as an element of natural character.
90. With respect it appears SPS, the Officer and the authors of the Report have misconstrued the application of the protection afforded to surf breaks in Policy 16 of the NZCPS as discussed above.
91. The consideration of these purported “regionally significant surf breaks” will appropriately occur in the consenting process under objectives, policies and rules that address natural character and recreational values through the graduated protection within Policies 13 and 15 of the NZCPS. In my

submission, there is no justification to afford greater protection to these surf breaks and it is inappropriate to do so.

92. Accordingly, WIAL seeks Objective O37, Policy P51, Schedule K and Map 24 are deleted from the Proposed Plan.

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