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3 August 2017

Lyttleton Port Company Limited
Private Bag 501
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BY POST AND SCANNED EMAIL
jared.pettersson@lpc.co.nz

ATTENTION Jared Pettersson – Project Director

Dear Sir

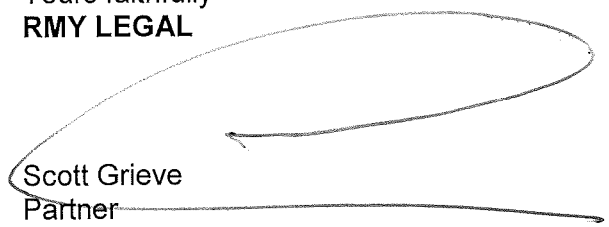
NOTICE OF APPEAL - SURFBREAK PROTECTION SOCIETY INCORPORATED v CANTURBURY REGIONAL COUNCIL – ENV-2017-CHC

Please find **enclosed** by way of service a Notice of Appeal by Surfbreak Protection Society Incorporated duly filed with the Environment Court on 8 August 2017.

On a "Without Prejudice" basis, Surfbreak Protection Society Incorporated would be prepared to meet with you for the purposes of exploring an expedient resolution to this matter.

If you are minded to accept this request, then please contact Michael Gunson, Surfbreak Protection Society in the first instance (whose contact details are within the Notice of Appeal).

Yours faithfully
RMY LEGAL



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c.c. Surfbreak Protection Society Incorporated
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By scanned email
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BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

ENV-2017-CHC-

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal under section 120 of the Resource Management Act 1991
BETWEEN	**SURFBREAK PROTECTION SOCIETY INCORPORATED**
	Appellant
AND	**CANTERBURY REGIONAL COUNCIL**
	Respondent

NOTICE OF APPEAL AGAINST DECISION ON

APPLICATION FOR RESOURCE CONSENT

Surfbreak Protection Society Incorporated
PO Box 58846
Botany
Auckland 2163

TO: The Registrar
Environment Court
CHRISTCHURCH

1. NAME OF APPELLANT

1.1. The Surfbreak Protection Society Incorporated ("Appellant"), appeals the decision of the Canterbury Regional Council ("Respondent") dated 12 July 2017, to grant resource consents (Coastal Permits CRC172455 - CRC172522 – CRC172456 - CRC172523) ("the consents") to Lyttelton Port Company Limited ("LPC") for, inter alia, disposal of dredging material from capital and maintenance dredging, to discharge dredging spoil offshore into the Pacific Ocean (and deposit seabed material), up to an estimated maximum volume of 18,000,000 m3 in at least two dredging campaigns of approximately 9 months each, from the channel and berth areas in or about Lyttelton Harbour ("the Decision"), insofar as the Decision relates to the new capital and maintenance dredging spoil relocation areas/offshore disposal grounds sites approximately 5.96 km and 2.25 km respectively, seaward off/East of Godley Head (as more particularly shown on the plans showing the channel deepening spoil disposal ground and proposed maintenance spoil disposal grounds in the Decision) ("the Disposal Sites").

1.2. The Appellant made a submission on the relevant resource consent application and presented submissions and evidence to the Independent Commissioners'/Hearing Committee.

1.3. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("RMA").

2. DATE OF RECEIPT OF DECISION

2.1. The Appellant received notice of the Decision dated 12 July 2017 on 13 July 2017.

3. NAME OF RESPONDENT

3.1. The Decision was made by the Canterbury Regional Council.

4. THE [PART OF THE] DECISION BEING APPEALED

4.1. The Appellant is appealing the whole of the Respondent's Decision to grant the consents to LPC for disposal of dredging material from capital and maintenance

dredging, to discharge dredging spoil offshore into the Pacific Ocean (and deposit seabed material), up to an estimated maximum volume of 18,000,000 m3 in at least two dredging campaigns of approximately 9 months each, from the channel and berth areas in or about Lyttelton Harbour, insofar as the Decision relates to the Disposal Sites and the impacts/adverse effects or potential impacts/adverse effects of the proposed activities at the Disposal Sites on the surf breaks of Taylors Mistake, Sumner Bar, Sumner and New Brighton, Christchurch.

5. THE LAND/RESOURCE AFFECTED

5.1. The land/resource affected is the Disposal Sites (and surrounding environment), and Surf breaks of Taylors Mistake, Sumner Bar, Sumner and New Brighton, Christchurch ("the Surf Breaks").

6. REASONS FOR THE APPEAL

6.1. The Appellant says:

6.1.1. The Decision does not promote the sustainable management of natural and physical resources under the RMA.

6.1.2. The Decision failed to properly consider, have regard to, and/or apply (or erroneously considered, had regard to and/or applied) relevant Objectives and Policies of the New Zealand Coastal Policy Statement 2010 ("NZCPS") including, (but not necessarily limited to), Objectives 2 and 4 and Policies 3, 13 and 15 more particularly insofar as those objectives and policies relate to the Surf Breaks as defined in the Glossary of the NZCPS (in terms of the definition of "*Surf break*" in that Glossary).

6.1.3. The Surf Breaks are both locally and regionally significant. The Surf Breaks hold/possess high amenity and recreational values for people and communities - not just because of their accessibility, frequency of use, and proximity to a large dependent population; but also because of the range of surfable waves provided by the different breaks (learner to advanced). The Surf Breaks are Christchurch city's main surfbreaks and are heavily used and valued by people and communities locally, regionally and nationally (including international tourists).

6.1.4. The evidence presented to the Independent Commissioners' for/on behalf of LPC upon which they relied in the context of the Appellant's issues of concern was

inaccurate. For example (but not necessarily limited to) paragraph [14.10] of the Decision wrongly concluded that:

"... Dr Beamsley who, having carefully and thoroughly considered and tested the objections raised, confirmed his original advice that the modelling he had carried out was conservative and revealed that the effects of the project on the surf breaks are expected to be minor or less than minor."

6.1.5. The evidence presented to the Independent Commissioners' for/on behalf of LPC in the above context was fundamentally flawed and provided little useful information to determine the adverse impacts/effects (both actual and potential; and cumulative) of the proposed activity on the Surf Breaks and surrounding environment. Given the close proximity of the Disposal Sites to the coast, the Appellant has concerns about adverse impacts/effects (both actual and potential) of the proposed activity on the Surf Breaks both due to (but not necessarily limited to) the direct effects and cumulative impacts on the Surf Breaks.

6.1.6. The Appellant's expert evidence, inter alia, provided that it is well established/known that seabed morphology offshore of surf breaks 'pre-conditions' waves through the process of refraction/diffraction, and that offshore mounds can have a profound adverse impact/effect on surfing breaks[1]. The flaws in the evidence presented to the Independent Commissioners' for/on behalf of LPC in the above context are further described in detail in the Appellants submission and the letters from the Appellants expert consultants (eCoast) dated 4 April 2017 and 10 May 2017 (attached to this notice as described in paragraph 8.1.3 below) – all of which evidence was presented to the Respondent and Independent Commissioners by the Appellant (prior to and/or at the hearing in respect of the consents granted under the Decision).

6.1.7. The Independent Commissioners who made the Decision ignored and gave no weight, or insufficient weight, to the evidence given for/on behalf of the Appellant in that context. For example (but not necessarily limited to) paragraph [14.9] of the Decision records that:

"... Mr Aitken's six page letter discussed the modelling work of Dr Beamsley and was critical of it, raising 11 issues about various aspects of the methodology

[1] Battalio, 1994; Mesa, 1996; Mead et al., 2003; Pitt, 2010; Mead et al., 2012

employed. On 28 April Dr Beamsley systematically responded to these criticisms in considerable detail. To do so, he carried out further modelling to test some aspects and provide support to his conclusions".

However, the Decision ignored and gave no weight, or insufficient weight, to Mr Aitken's letter of 10 May 2017 in response to the abovementioned summary and response evidence of Dr Beamsley (modelling) dated 28 April 2017 (also attached to this notice as described in paragraph 8.1.3 below).

6.1.8. In summary, the flaws in the evidence presented to the Independent Commissioners' for/on behalf of LPC in the above context include (but are not necessarily limited to): unrealistic disposal of dredge material in numerical modelling scenarios; no actual worst case scenario and/or combined effects being simulated; a lack of understanding of fundamental physical oceanographic principles; poor or inadequate decisions concerning the determination of surfing conditions; no or inadequate consideration for effects on water quality; poor or inadequate evaluation of results; and provided very little (or nothing) in terms of adequate adaptive management.

6.1.9. Following the Appellants submission and evidence during the (Council) hearing, LPC provided further evidence to address the flaws in the earlier evidence presented, highlighted by the Appellants submission and above-mentioned evidence (i.e. letters/evidence from Dr Mead and Mr Atkin of eCoast). The further evidence called/provided by/for LPC failed to address all the concerns raised in the Appellants submission and evidence (and this notice), including those relating to (but not necessarily limited to) water quality, the lack of higher order numerical modelling, and, adequate robust adaptive management (to adequately and appropriately avoid, remedy or mitigate adverse effects on the Surf Breaks environment and receiving, surrounding environment).

6.1.10. Furthermore, modelling a sediment disposal feature with vertical sides and a flat top (a cuboid) was also flawed and unrealistic; and is impossible in real life. The additional numerical modelling completed as part of the relevant supplementary evidence called/presented by/for LPC shows that there is in fact potential to adversely impact/effect the surfing wave quality of the Surf Breaks; and, shows a lack of robust due diligence by poor or inadequate characterisation of the Surf Breaks.

6.1.11. It follows that the Decision did not (and the consent does not) provide for an adequate assessment of the existing environment in the context of the issues raised by the Appellant in this notice; and, therefore, there will not be (and is not) an adequate baseline against which the effects of that increased deposition of dredging spoil at the Disposal Sites on the Surf Breaks can be compared and properly assessed.

6.1.12. The Independent Commissioners' clearly relied on the use of an adaptive management strategy and monitoring proposals to address actual and potential adverse effects of the disposal of dredging material activities at the Disposal Sites on the Surf Breaks and their wave quality and the use and enjoyment of the Surf Breaks, and found such a regime to be generally adequate; however, the evidence presented to the Independent Commissioners' for/on behalf of LPC upon which they relied in this context (and more particularly in the context of the issues raised by the Appellant in this notice) was inadequate and inaccurate. Moreover, the Decision, which was reliant on the use of an adaptive management strategy and monitoring proposals, failed to adequately and/or appropriately implement such an approach; and consequently, also failed to adequately and/or appropriately implement a precautionary approach - which is clearly applicable in the circumstances of this case (as is acknowledged in the Decision)[2].

6.1.13. The conditions imposed in the Decision are flawed and do not, and in their current form cannot, provide for an adequate and/or appropriate adaptive management approach and/or monitoring, to adequately and appropriately avoid, remedy or mitigate the effects of the disposal of dredging material activities at the Disposal Sites on the Surf Breaks, and their wave quality, and the use and enjoyment of the Surf Breaks, because:

(a) There is no good (or there is inadequate) baseline date or information about the relevant receiving environment;

(b) The conditions of the consents do not provide for effective monitoring of adverse effects on the Surf Breaks using appropriate indicators;

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[2] At para [17.5]

(c) Adequate and appropriate thresholds have not been determined and or set to trigger remedial action before the effects on the Surf Breaks become overly damaging; and

(d) Effects that might arise on the Surf Breaks potentially cannot be remedied before they become irreversible.

6.1.14. To properly determine actual and potential adverse effects of the disposal of dredging material activities at the Disposal Sites on the Surf Breaks and their wave quality and the use and enjoyment of the Surf Breaks (in order to adequately and appropriately avoid remedy or mitigate actual and potential adverse effects on the environment), the surfing wave quality at the Surf Breaks must first be adequately and appropriately quantified.

6.1.15. Adequate and appropriate baseline data/information should be collected for a minimum of 3-years (ideally 5 years), prior to the disposal of any dredging material activities at the Disposal Sites, to capture the seasonal differences in swells and local seabed conditions (for example, but not limited to, the classic winter/summer sub tidal beach profiles, short versus long-period swells, various swell directions within the swell corridors).

6.1.16. That baseline data/information collection must be undertaken without, and prior to, disposal of any dredging materials (at the Disposal Sites) during that baseline data/information collection period to be able to quantify the changes that occur to the Surf Breaks when disposal occurs.

6.1.17. The specific parameters that need to be adequately and appropriately quantified to determine the baseline surfing wave quality of the Surf Breaks include (but are not necessarily limited to):

(a) Wave peel angles – which can be captured, for example, using a remote camera appropriately located to allow for image rectification;

(b) Wave breaking intensity – which can be measured, for example, by capturing images parallel to the wave crest looking towards the breaking part of the wave; this requires either a remote camera at beach level, or taking images from the water;

(c) Wave height – which can be measured, for example, with instruments on the seabed or by beach level video; both require a wave gauge offshore of the Disposal Sites in order to determine the changes to wave height that the disposal causes in comparison to the baseline; and

(d) Wave breaking length (ride length) – which can be captured, for example, using a remote camera appropriately located to allow for image rectification.

In the Appellant's view, the Respondent in fact requested the above information in a letter to LPC dated 20 December 2016 - but the information provided in response by LPC was grossly inadequate.

6.1.18. Following that minimum baseline data/information collection period the methods in paragraph 6.1.17 above must be continued (throughout any continued disposal of dredging material at the Disposal Sites) to determine the impacts of that disposal of dredging material on the Surf Breaks and their wave quality (and consequent use and enjoyment of them).

6.1.19. Following that minimum baseline data/information collection and compilation period adequate and appropriate thresholds must also then be determined and established/set, by applying appropriate relevant published scientific evaluation methods[3], to trigger remedial action (which remedial action must be implemented and/or undertaken in an appropriate and timely manner) before the effects on the Surf Breaks become overly damaging - taking into account (but not necessarily limited to) the following factors in this context:

(a) The permissible degree of change to the peel angle of the Surf Breaks waves;

(b) The permissible degree of change to the breaking intensity of the Surf Breaks waves;

(c) The permissible degree of change to the percentage of wave height change of the Surf Breaks waves; and

[3] For example (but not necessarily limited to), Hutt 1997; Mead 2000; Scarfe 2002; Moores 2005.

(d) The permissible degree of change to the wave breaking length (ride length) of the Surf Breaks waves.

6.1.20. The Decision is inconsistent with, and contrary to, the NZCPS, particularly (but not necessarily limited to) Objectives 2 and 4 and Policies 3, 13 and 15 relating to the Surf Breaks and their wave quality and the use and enjoyment of them (and the surrounding environment); is inconsistent with, and contrary to the relevant provisions of the Canterbury Regional Policy Statement and Canterbury Regional Coastal Environment Plan.

6.1.21. The Decision does not give sufficient particular regard or sufficient weight to section 7 RMA matters including, but not limited to, the maintenance and enhancement of amenity values (section 7(c)), the maintenance and enhancement of the quality of the environment (section 7(f)), and any finite characteristics of natural and physical resources (section 7(g)).

6.1.22. The Decision does not sufficiently recognise and provide for matters of national importance under section 6 of the RMA including, (but not necessarily limited to), the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development (section 6(a)).

6.1.23. The Decision does not promote the sustainable management of natural and physical resources under section 5 of the RMA and is inconsistent with Part 2 of the RMA; and, will not ensure adverse effects on the environment are adequately, and appropriately, avoided, remedied or mitigated (or that they are capable of being adequately and appropriately avoided, remedied or mitigated) including but not limited to:

(a) Adverse effects on the Surf Breaks of local and regional significance for surfing, and their wave quality and use and enjoyment of them;

(b) Adverse amenity and recreational effects;

(c) Adverse effects on the quality of the environment;

(d) Adverse effects on the natural character of the coastal environment; and

(e) Adverse cumulative effects.

6.1.24. The Decision was wrong in fact and law.

7. RELIEF SOUGHT

7.1. The Appellant seeks:

7.1.1. That the resource consent application be declined/the Decision be quashed; or

7.1.2. In the alternative, that conditions of consent be amended to ensure that any actual and potential adverse effects on the environment are adequately, and appropriately, avoided, remedied or mitigated (or are capable of being adequately and appropriately avoided, remedied or mitigated), to ensure that the Surf Breaks (which are of local and regional significance for surfing), and their wave quality, are protected - and are not adversely affected by the proposed disposal/discharge/deposition activities at the Disposal Sites - by avoiding, remedying or mitigating adverse effects (of the proposed activities) on the use and enjoyment of the Surf Breaks.

7.1.3. Such consequential or further relief as may be necessary to fully give effect to the relief sought above;

7.1.4. Costs.

8. ANNEXURES

8.1. The following documents are attached to this notice:

8.1.1. a copy of the Appellant's original submission;

8.1.2. a copy of the Respondent's Decision;

8.1.3. copies of other documents necessary for an adequate understanding of the appeal as follows:

(i) Letter from Bianca Sullivan, Environment Canterbury Regional Council to Jared Pettersson, Lyttelton Port Company Limited dated 20 December 2016;

(ii) Letter from Dr Shaw Mead/Ed Atkin, eCoast to the Appellant dated 4 April 2017;

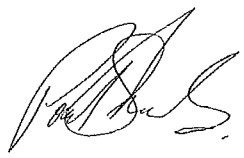
(iii) Summary and response evidence of Brett Beamsley (modelling) dated 28 April 2017;

(iv) Letter from Ed Atkin, eCoast to the Appellant dated 10 May 2017; and

8.1.4. a list of names and addresses of persons to be served with a copy of this notice.

DATED at Whangamata this 3rd day of August 2017

Signed for and on behalf of the **SURFBREAK PROTECTION SOCIETY INCORPORATED** by its duly authorised agent



Paul Shanks - President

ADDRESS FOR SERVICE:

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Advice to recipients of copy of notice of appeal

How to become a party to proceedings

If you wish to become a party to the appeal, you must, -

(a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and

(b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (*see* form 38).

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the relevant application (*or* submission) and (*or* or) the relevant decision (*or* part of the decision) or the documents referred to in paragraph 8.1.3 above. These documents may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

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