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## OPEN LETTER

## BY EMAIL

15<sup>TH</sup> March 2018

### To:

**Lisa Tumahai**  
**Interim Kaiwhakahaere**  
**(Chair) Te Rūnanga o Ngāi**  
**Tahu**

**Hon Shane Jones**  
**Associate Minister of Transport**

**Hon Phil Twyford**  
**Minister of Transport**

**Hon Julie Anne Genter**  
**Associate Minister of Transport**

**Hon Eugene Sage**  
**Minister of Conservation**

**David Bedford**  
**Chair; Environment Canterbury**  
**Regional Council**

**Hon Kelvin Davis**  
**Minister of Tourism**

**Winston Gray**  
**Mayor; Kaikoura District Council**

**Hon David Parker**  
**Minister for the Environment**

**Gary Taylor**  
**Environmental Defence Society**

## **Outstanding Natural Feature under threat of degradation by NCTIR By Way Of Order In Council (OIC) emergency legislation - to Facilitate a Cycleway?**

Tēnā koutou Lisa Tumahai, Phil Twyford, Eugene Sage, Kelvin Davis, Shane Jones,  
Julie Anne Genter, David Bedford, Winston Gray

### **Overview**

On the 9<sup>th</sup> March NCTIR submitted a consent application, which is being processed under Clauses 5-10 of the Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016. It's main effect or purpose is to push through and build a cycleway within the foreshore and coastal hazard zone around Mangamaunu and north. This

application has been intentionally submitted utilising the legislation designed for the earthquake emergency purposes to open the road and restoration work. It is noted, that as of the 1<sup>st</sup> April 2018 onwards any consent going through will have to go through the full RMA process and will not benefit from the automatic approvals of all consents the emergency legislation provides. Clearly the road is open and in that there has never been a cycleway in Mangamaunu, therefore this is clearly not restoration work thus, it should not be opportunistically submitted under this process or legislation.

Mangamaunu Bay is the only bay or stretch of coast that NCTIR is currently working in which has 5 nationally significant features: It lies within the Kaikoura Whale Sanctuary, contains two protected Mataitais, and one nationally significant surf break as listed in the New Zealand Coastal Policy Statement. The Surf break is recognised as a nationally significant Outstanding Natural Feature (ONF) which gives the surf break (and the bay for which it relies upon for its natural processes that define it) the rating of Outstanding Natural Character (ONC) and the highest protections akin to a national park, where no activity that has an adverse affect can be undertaken.

We note this information was provided to NCTIR last year and the pushing of the cycleway consent in a month prior to the emergency legislation lapsing and the RMA process coming back in amounts to intentional damage to a national taonga and purposeful sidelining of the communities of interest and national safeguards.

There is a precedent and a parallel in case law as evidenced by the 2012 High Court case law of Independent Fisheries Limited and The Minister for Canterbury Earthquake Recovery, the Canterbury Regional Council, Christchurch City Council, Waimakiriri District Council, Selwyn District Council, the New Zealand Transport Agency and others where the earthquake related emergency legislation was found by the High court to be mis-used for activity that did not fall within the act, as clearly this is as well.

The previous government misunderstood the legislation and powers as evidenced by the 2012 decision in the High Court and taking this current issue to court can be avoided by your urgent intervention.

In that NCTIR have submitted the consent, one option that can right this mis-use of legislation is that NCTIR can voluntarily choose the RMA process, and we believe the RMA process is the correct one for such a radical change which, by their own assessments, will adversely affect this nationally important and protected surf break and area.

The RMA process will provide a better outcome with a more considered and better informed process and will benefit from the combined knowledge of the community. This current process completely sidelines this option and avoids national safeguards, specifically put in place to protect both the surfbreak and its surrounding environment.

In that this is a misuse or inappropriate use of the earthquake legislation and a cycleway can not be considered “restoration work”, we request the Ministers urgent attention to direct NCTIR to withdraw their consent and resubmit under the RMA process after the 1<sup>st</sup> April or to voluntarily opt for the RMA process now.

By taking this fair and appropriate action, you will stop the desecration of a nationally treasured site, allow the knowledge of the community to shape the developments, as they should and not trample the mana of the groups that came before us and worked to have all 5 nationally important features of the bay recognised in legislation.

### **2017 Issues with NCTIR at Mangamaunu**

In June 2017 the Surfbreak Protection Society (SPS) wrote a [letter](#) to the then current Ministers of Transport, Conservation, and Tourism regarding the threat to the Outstanding Natural Character of Mangamaunu posed by CTIR rapidly dumping some 80,000 cu m. of earthquake spoil along the bay’s northern foreshore without any meaningful consultation with the local community.<sup>1</sup>

NCTIR originally intended to dispose a further 220,000 cu m. down the entire length of the bay’s coastal hazard zone, one kilometre long and 8-9metres high including alongside the nationally significant Mangamaunu surf break one of 17 surf breaks listed in schedule one of the NZCPS.

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<sup>1</sup> <http://www.surfbreak.org.nz/wp-content/uploads/2018/03/Mangamaunu-Letter-and-Appendices.pdf>



After intensive lobbying by ourselves and the local community at Mangamaunu, SPS received a letter from Ecan CEO stating that: *they [NCTIR] have advised Environment Canterbury and the community at Kaikōura that they will no longer be establishing a permanent stockpile at the Mangamaunu site; they have committed to removing the stockpile at the end of the job....*

And;

*I trust this news will give you confidence that your concerns have been taken seriously and that the surf break will continue to be protected.”*

### **NCTIR have now gone back on their word.**

On the 9<sup>th</sup> of March SPS received a letter and a written comments form for SPS to provide feedback on NCTIR’s intention to alter the foreshore at Mangamaunu with the intent being to provide greater access to the surf break and building a cycleway.

NCTIR have lodged new consents which must be granted before 31<sup>st</sup> of March 2018 as that is when the emergency legislation lapses, and regular RMA checks and balances are reinstated.

We note the original consent to put in a cycleway was inappropriately pushed through in September 2017 under the emergency legislation and was non notifiable.

Environment Canterbury consents: CRC184124-CRC184127 (NZTA) and CRC184129-CRC184132 (Kiwirail) and Kaikoura District Council consents – 1510 NZTA and 1511 Kiwirail.

The consents refer to work below Mean High Water Springs in three locations along the Kaikoura / Hurunui coastline. The limited notification by way of the letter provided to SPS by Ecan states:

NCTIR have stated that overall, the Modified resource consent process is in response to several recent cyclones that have impacted on the Kaikoura district.

Yet the reason to rock armour the foreshore of the Mangamaunu surf break is to increase amenity access to the Nationally significant surf break?

From the NCTIR letter:

*Ongoing design refinement of the recovery work has led to the need to make amendments to the existing consent footprint at three locations along the coastal route:*

- *Halfmoon Bay – an amendment to enhance the safety of the transport corridor and address the resilience of the transport corridor by increasing the distance from the existing slopes. Halfmoon Bay has been significantly impacted by recent storm events.*
- *Okiwi Bay South – an amendment to address an “out of context” curve thereby enhancing the safety of the road corridor at this location.*
- *Mangamaunu – an amendment to enable greater room alongside the road and rail corridor to provide amenity and safety improvements, and enhance access and safety to the surf break.....*

### **Modified resource consent process**

*The consent applications are being processed under Clauses 5-10 of the Hurunui/Kaikōura Earthquakes Recovery (Coastal Route and Other Matters) Order 2016. The Order in Council modifies the normal process under the Resource Management Act 1991. In particular the applications:*

- *Must be granted as a controlled activity (Clause 6 of the OIC);*
- *Need only contain broad details of the proposal and sites and desktop assessments of effects (Clause 7); and*

- *Cannot be publicly notified or given limited notification (Clause 8). This means that there will be no hearing, and the Order removes the ability of persons invited to make comment to appeal or object to the consent authority's decision.*

For Mangamaunu, NCTIR intend to impose a permanently engineered batter slope which appears to breach the Mean High water Springs line, providing significant potential to influence the very coastal processes that create this Outstanding Natural Feature in the first place.

As one of the seventeen schedule 1 listed surf breaks in the NZCPS protected under policy 16, Mangamaunu has an equivalent level of protection as a national park or any other recognised Outstanding Natural Feature or landscape/seascape such as EDS vs King Salmon, or Te Mata Peak which was subject to a walking track being cut into the side of the ONF, without the applicant having the appropriate information in front of them at the time.

The EDS vs King Salmon decision was leveraged by EDS appealing on the strength of Policy 13 of the NZCPS for the preservation of natural character which gives direction:

*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*
- 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;*

Policy 15 of the NZCPS is specifically relevant to the protection of ONF's. While natural character is not the same as natural features and landscapes, the information and methods used to characterise natural character in relation to Policy 13 and Policy 15 can be related.

Policy 13 has the same response type as policy 15, avoid adverse effects of activities on Outstanding Natural Features .. and , avoid significant adverse effects and avoid remedy or mitigate other adverse effects or activities....

The protection afforded to Policy 16 surf breaks is greater than that afforded to Natural Character and natural features under polices 13 and 15.

Policy 16 is to **absolutely avoid** adverse effects in there entirety. There is no mention of remedy or mitigate:

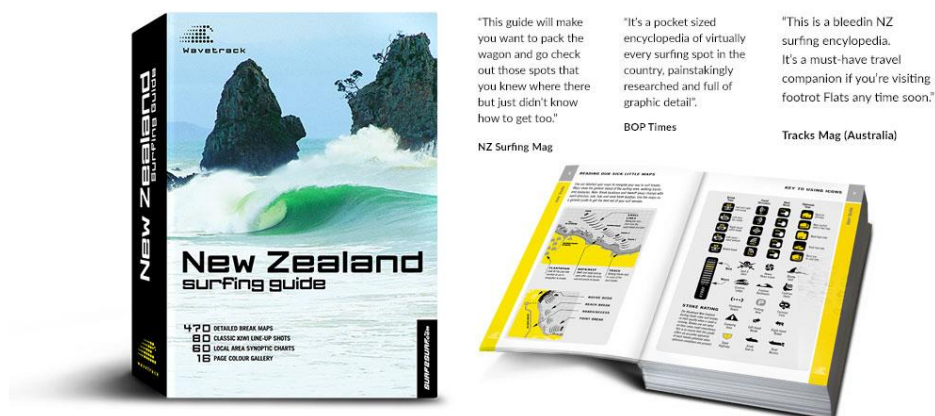
## Policy 16

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

The reasoning for the approach of “avoid only” with the “best of the best” is because surf breaks are wholly dependent on a delicate balance of natural processes that can be upset by very subtle changes to seabed or foreshore changes, either from natural or human influence.

Backwash from a manmade structure such as a seawall can influence sediment movement and placement, causing a wave to break in a manner that is less than optimum, or not break conductively for surfing altogether. The effects could be so subtle as to make an exceptional surf break like Mangamaunu (or any other nationally significant surf break like the Whangamata Bar) degrade to a point where the surf break may then only offer surfing wave quality to a level as any other regionally significant surf break, i.e. not ten out of ten but perhaps six out of ten or less, as per the The Wavetrack Guide:



This book was accepted by the Board of Inquiry to the NZCPS as a legitimate proxy for the identification of 470 surf breaks in New Zealand, where 17 of the best of the best were included in schedule one of the NZCPS. Maungamaunu is one of the best of the best, and is featured on a New Zealand Postage stamp. Maungamaunu is especially significant in that it attracts a huge audience of international surfing tourists to Kaikoura, many staying around

the area for quite some time in order to experience the optimal conditions that this surf break can provide.

It is apparent that NCTIR (the consent applicants under the emergency legislation) have not read the guidance notes for [Policy 16](#) of the NZCPS<sup>2</sup>

For one, the guidance notes state that:

*decisions about activities affecting their management can include quite complex considerations..*

NCTIR have openly stated that under the emergency legislation they are only obligated to provide a desktop evaluation of adverse effects and this type of limited deliberation contains flaws in the final assessment.

Examples of activities that can threaten or compromise the quality of any surf break include:

- Discharges causing poor water quality
- **Sedimentation** caused by some land uses, which can flatten out the seabed and potentially adversely affect wave quality
- Limitations on access to surfable areas
- **Changes** to natural character and features, which provide the context for the surfing experience
- **Structures** that impact on surf breaks and wave quality
- **Coastal** hazard engineering solutions, which may hinder access and adversely affect surf breaks
- Dredging and/or dredge spoil disposal which can potentially adversely affect wave quality.

We put it to you that the excerpt above from the Policy 16 Guidance Note demonstrates clearly at least several identified threats to this nationally significant ONF that demands the highest consideration before any modifications are made to the immediate environment.

In addition to this, the desktop assessments conducted by NCTIR clearly state the expected negative impacts to the Mangamaunu surf break as **significant**.

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<sup>2</sup> <http://www.doc.govt.nz/Documents/conservation/marine-and-coastal/coastal-management/guidance/policy-16.pdf>



The NCTIR [Landscape assessment report](#)<sup>3</sup> page 5 states that :

*This area is not identified as an ONL. The coastal edge is well used by surfers to access the surf breaks, and ride the waves. The consented amenity area, associated road access and shared path will increase the ability for the public to access this part of the coast.*

*Subsequently this will be an area of high recreational use with carparks, toilets and site furniture. The proposed works will not change this character, but the formalised coastal edge may be rock revetment rather than a vertical seawall type structure. Revetment will facilitate easier access down to the beach than a more vertical structure.*

SPS notes that the Environment [Canterbury Regional Policy Statement](#) has incorrectly interpreted the direction given by the NZCPS in that it's policy regarding the regions two nationally significant surf breaks (including Mangamaunu):

*Policy 8.3.3 – Management of activities in the coastal environment....*

*(6) protecting the values of the coastal environment while avoiding, or where this is not practicable, remedying or mitigating adverse effects within the coastal environment on:*

*(h) surf breaks of national significance;*

As Environment Canterbury has incorrectly interpreted the NZCPS policy 16, this higher order national policy statement applies, and adverse effects must be avoided absolutely, regardless of any direction under the Canterbury Regional Policy Statement.<sup>4</sup>

The NCTIR landscape report goes on to quantify the adverse effects on Natural Character at Mangamaunu on page 5:

### **Significance of Natural Character Effect: High**

The physical impacts on the surf break itself will render its status as a nationally significant surf break in schedule one of the NZCPS null and void, should these consents proceed in their current form.

The table from page 26 of the NCTIR Appendix D - Coastal Assessment (PDF File, 1.86MB) clearly adverse effects are likely from the works at Mangamaunu point <sup>5</sup>

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<sup>3</sup> Appendix D - Landscape Assessment (PDF File, 736.6KB) available as a direct download from: <https://www.ecan.govt.nz/do-it-online/resource-consents/notifications-and-submissions/current-consent-projects/new-zealand-transport-agency-and-kiwirail-holdings/>

<sup>4</sup> <https://www.ecan.govt.nz/document/download/?uri=3122545>

<sup>5</sup> Appendix D - Coastal Assessment (PDF File, 1.86MB) direct download available: <https://www.ecan.govt.nz/do-it-online/resource-consents/notifications-and-submissions/current-consent-projects/new-zealand-transport-agency-and-kiwirail-holdings/>

Description of coastal effects	Risk assessment			Risk mitigation/comment
	Likelihood	Consequence	Risk level	
Structural damage to Revetments through scour and downcutting.	Unlikely	High	High	Risk mitigated by having foundations keyed into rock or below typical beach envelope.
Adverse effect on nationally significant surf break due to coastal processes	Unlikely	High	High	Avoiding any works below MHWS.
Adverse effect on nationally significant surf break due to occupation of beach area above MHWS	Likely	Moderate	High	Reduce crest elevation and shared path width, locate as far landward as practicable.

SPS has been in contact with Dr Shaw Mead of eCoast Marine and Consulting Ltd for a preliminary assessment and comment on the “likely” impacts on the Mangamaunu surf break, Dr Mead’s response by email this morning is as follows:

“Avoiding any works below MHWS” will not mitigate the impacts of the structure on coastal processes during storm events and this does not consider SLR – taking into account storm surge (high tide, inverse barometric pressure, and wind and wave set-up), wave run-up, and 0.6-1.4 m SLR (for 50 and 100 years, respectively, by applying H+ SLR scenario for a category A development (Coastal subdivision, greenfield development or major new infrastructure)), any “works” would likely need to be in the range of 2.5-3.0 m ABOVE MHWS tides, including buried foundations/toe structures.

The plans and x-sections indicate that the revetment face will directly interact with waves during the higher spring tides when there is long-period swell (increased set-up) at the proposed Mangamaunu amenity area (SK1301), and is well within the 100 year coastal hazard zone along the main part of the break (SK1302), while the toe of the structure is below the low tide mark at both locations. Without looking into it in detail (i.e. I’m unsure of the beach material at the site), the results will likely be accelerated erosion in front of the structures, end-effect erosion either end of the structures, and wave reflection off the 1:1.5 face of the revetment at higher tides, and then at all tides once the material in front has eroded. All of this will impact negatively on the nationally significant surfing break, with feedback effects such as development of erosion holes and rips unknown.

This results in the 'Likelihood' of adverse effects in the table below being 'Likely' for both (not really concerned with structural damage), and the consequences and risks being 'High' for both; neither of the suggested mitigations will 'avoid, mitigate or remedy' these impacts, and they are definitely not demonstrated in the plans (i.e. works are below MHWS, and the structures are in the coastal hazard zone (probably because they cannot be any further landward 'practicably')).

The negative impacts of the boat ramp/breakwater constructed at Manu Bay, Raglan (also a nationally significant surf break), in the late 1960's has some broad similarities to this proposal.

Kind regards | Ngā mihi

Dr Shaw Mead

eCoast Marine Consulting and Research

### **In Summary**

Mangamaunu Bay is the only bay or stretch of coast that NCTIR is currently working in which has 5 nationally significant features: It lies within the Kaikoura Whale Sanctuary, contains two protected Mataitais, and one nationally significant surf break as listed in the New Zealand Coastal Policy Statement. The Surf break is recognised as a nationally significant Outstanding Natural Feature (ONF) which gives the surf break (and the bay for which it relies upon for its natural processes that define it) the rating of Outstanding Natural Character (ONC) and the highest protections akin to a national park, where no activity that has an adverse affect can be undertaken.

As per the image on the next page, Mangamaunu is exposed to heavy swell action, the type of works required for the NCTIR proposal would be extensive and entirely inappropriate for this area.

SPS are not satisfied with the limited information provided, yet what has been provided clearly indicates that there will be adverse effects from the proposed works by NCTIR, not just on Managamaunu but on regionally significant surf breaks north of Mangamaunu.

The drawings provided by NCTIR clearly show the proposed seawall on or under MHWS in the birds eye perspective image above while the cross sectional attached to drawing 1302 (on the final page of this letter) shows the tow of the seawall below sea level though situated above MHWS.<sup>6</sup>

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<sup>6</sup> [http://www.surfbreak.org.nz/wp-content/uploads/2018/03/NCTIRCompiled-plans-06.03.2018-DRAFT\\_opt.pdf](http://www.surfbreak.org.nz/wp-content/uploads/2018/03/NCTIRCompiled-plans-06.03.2018-DRAFT_opt.pdf)

There is no logic in the intent of the consent being to provide amenity access to the nationally significant surf break, when the works themselves threaten the surf break itself, by NCTIR's own admission



*There has been no adverse effects on road and railway infrastructure through the Mangamaunu Point curve, a car park and cycleway is superfluous to the emergency legislation to restore road rail infrastructure and will only significantly damage this nationally significant surf break.*

NCTIR can voluntarily choose the RMA process, and we believe the RMA process is the correct one for such a radical change which as already indicated, by their own assessments, will adversely affect this nationally important and protected surfbreak and wider area.

The RMA process will provide a better outcome with a more considered and better informed process and will benefit from the combined knowledge of the community. This current process under emergency earthquake legislation completely sidelines this option, and avoids national safeguards specifically put in place to protect both the surfbreak and its surrounding environment.

SPS consider the current process as a misuse or inappropriate use, of the earthquake legislation. A cycleway cannot be considered “restoration work”, SPS request the Minister’s

urgent attention to direct NCTIR to withdraw their consents and resubmit any proposals they may have under the normal RMA process after the 1<sup>st</sup> April, or to voluntarily opt for the RMA process now.

The Ministers timely intervention now would bring reason to the debate, and halt the desecration of a nationally treasured site under a false pretext of urgency, allowing the knowledge of the community to shape any future developments in this area as the local community sees fit.

NCTIR should not be allowed to trample the mana of the groups that came before us who have worked hard to have all 5 nationally important features of the bay recognised in legislation for these natural features/ seascapes protection.

SPS and our members were heartened to read the positive words of the Hon Eugenie Sage in the press release dated 4<sup>th</sup> of February - *Minister publishes review of how the NZ Coastal Policy Statement affects decision making* where the Minister comments on the fact that: "Surfers can be grateful that protecting surf breaks is now something that councils consider in preparing plans and when resource consents are sought for development work..."

But the hastily prepared earthquake legislation by the previous National Government has left a gaping hole in regard to vital checks and balances required when working within the coastal environment.

**Please Ministers, halt this ill-advised consent application.**

Kind Regards

A handwritten signature in black ink, appearing to read 'Paul Shanks', written in a cursive style.

Paul Shanks

President

Surfbreak Protection Society Inc.



