

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
AT WHANGAREI**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKÉ  
KI WHANGAREI**

**IN THE MATTER  
AND**

**of the Resource Management Act 1991**

**IN THE MATTER**

**of the hearing of submissions on applications by the  
Northport Ltd – Port Expansion project at Marsden  
Point**

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**STATEMENT OF PRIMARY EVIDENCE OF MAKARENA EVELYN TE PAEA DALTON  
ON BEHALF OF PATUHARAKEKE TE IWĪ TRUST BOARD**

**(PLANNING)**

**18 SEPTEMBER 2023**

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## 1. EXECUTIVE SUMMARY

- 1.1 The Application is proposed in the middle of Patuharakeke's Cultural Landscape and Place of Significance. Cultural effects directly related to the proposed reclamation, dredging activities and future operation of the Northport expansion will be significant and directly impact Patuharakeke's cultural, historic, spiritual and traditional associations to their ancestral lands, wāhi tapu and other taonga. The Applicant's proposed mitigation is considered inadequate to avoid, remedy or mitigate these adverse effects to a level that is no more than minor, and accordingly it would be inappropriate at this stage to grant consent in accordance with Policy D.1.4 of the Proposed Regional Plan – Appeals Version.
- 1.2 Other key areas of contention include coastal processes, marine ecology, marine mammals, avifauna and recreation. There remains contention between the relevant experts as to the scale and magnitude of adverse effects, and resolution between experts on the adequacy of mitigation is yet to be reached. This includes adverse effects that must be avoided or otherwise remedied or mitigated in accordance with the relevant statutory policies and plans.
- 1.3 PTB's coastal processes and marine mammal experts have identified important gaps in baseline data that inform the environmental effect assessments for these categories which, relying on their opinions, undermines the adequacy of the scale and magnitude conclusions for adverse effects. Having regard to those experts' opinions, additional best practice data collection is required, and elements of the effect assessments require re-examination to accurately determine scale and magnitude conclusions, and identify appropriate mitigation.
- 1.4 PTB's marine ecology expert highlights that additional assessment on the connectivity of marine ecology is required to determine the overall scale and magnitude of effects on intertidal sediment habitats, macrofauna and kaimoana shellfish (particularly, Patuharakeke's taonga species). Overall, cumulative adverse effects on marine ecology are potentially significant

and there is uncertainty to the adequacy of the proposed mitigation and whether these effects can be appropriately avoided.

- 1.5 Adverse effects on threatened or at-risk avifauna are assessed as potentially significant and the adequacy of mitigation is not agreed between the experts. Until such time as adequate mitigation can be agreed to achieve the required avoidance directions of Policy 11 of the NZCPS, at this stage it would be inappropriate to grant consent.
- 1.6 Overall, taking into account the statutory planning documents, in my opinion, consent should not be granted until such time as complete and accurate environmental effects assessments have been undertaken and adequate mitigation has been identified.

## **2. INTRODUCTION**

- 2.1 My full name is Makarena Evelyn Te Paea Dalton. I am a Planner (Associate) at Barker and Associates, a planning and urban design consultancy with offices across New Zealand. I am based in the Kerikeri office, but undertake planning work throughout the country, although primarily in Taitokerau Northland.
- 2.2 I affiliate to Ngāpuhi-nui-Tonu, from hapū in the Far North, including Te Hikutū, Ngāti Ueoneone, Ngāti Rangī, and Ngātiringimatamamoe in the Hokianga, Kaikohe and Otangaroa.

### **Qualifications and Experience**

- 2.3 I have a Bachelor of Arts with double majors in Māori Studies and Political Studies and a Master of Planning Practice from the University of Auckland. I am an Intermediate Member of the New Zealand Planning Institute.
- 2.4 I have over 9 years' experience in resource management planning. During this time, I have been employed in various resource management planning positions in local government and private companies within Aotearoa New Zealand including experience with:

- (a) Statutory resource consent planning in Taitokerau Northland and Auckland regions, including a range of work in the Whangārei, Kaipara and Far North Districts. This includes preparing resource consents for private clients and processing resource consents on behalf of Far North, Whangārei and Kaipara District Councils.
  - (b) Preparation of plan change provisions and section 32 reports as part of the Proposed Far North and Kaipara District Plan Reviews. Including for Noise, Signs, Light, Historic Heritage and Heritage Overlays, Special Purpose Zones and Māori Purpose Zone topics.
  - (c) Providing planning advice, and engaging in consultation with and on behalf of iwi organisations, including for resource consent applications, private plan changes, future development strategies, and most recently as part of the Auckland Light Rail project.
  - (d) Prepared the Effectiveness and Efficiency Review of the Northland Regional Policy Statement Report – Tangata Whenua Lens (5 – yearly) on behalf of the Northland Regional Council (**“the Council” or “NRC”**)<sup>1</sup>.
- 2.5 I attach a copy of my CV in Patuharakeke Te Iwi Trust Board’s (**“PTB” or “Patuharekeke”**) Evidence which provides further detail on my experience and expertise. With particular regard to this project, I highlight that I have experience in resource consents in Whangārei at both a District and Regional level, including processing resource consents as a consultant for Whangārei District Council (**“the Council” or “WDC”**) and in applying for land use and subdivision consents on behalf of private applicants.

#### **Involvement with Patuharakeke in the Northport Expansion Project**

- 2.6 This evidence has been prepared in respect of the notified resource consent application to the NRC and WDC by Northport Limited (**“the Applicant” or “Northport”**) to construct, operate, maintain and expand

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<sup>1</sup> Acronyms and abbreviations used throughout this evidence.

the existing Northport facility under the Proposed Regional Plan for Northland Appeals Version (June 2023) (“**PRP-AV**”), Operative Regional Coastal Plan for Northland (May 2016) (“**RCP**”) and Whangārei District Plan – Operative in Part (September 2022) (“**WDC-OP**”).

- 2.7 I have been engaged by PTB to provide independent planning advice. My engagement with PTB and the project started in November 2022 attending meetings and providing high level planning advice. I became more involved post the notification and after PTB’s submission was lodged. My involvement has therefore been largely limited to post submission processes. As such, I have had no liaison with Council staff or the Applicant.
- 2.8 I visited the Site and surrounding area on the 8 of September 2023, but I am familiar with the surrounding and wider environment having visited the area many times throughout my life as well processing and preparing resource consents in the One Tree Point area.

#### **Code of Conduct**

- 2.9 Although this is a Council hearing, Code of Conduct for Expert Witnesses, contained in the Environment Court’s Practice Note 2023 and I agree to comply with it. My qualifications as an expert are set out above.
- 2.10 I confirm that the issues addressed in this statement of evidence are within my area of expertise.

#### **Material Reviewed**

- 2.11 I have reviewed the relevant planning documents produced in relation to this application, including the following:
- (a) The Assessment of Environmental Effects (“**AEE**”) and the following appendices: Appendix 2 Issues and Options Report; Appendix 3 Design Drawings; Appendix 6 Pocket Park Concept Plan; Appendix 19 Recreational Effects Assessment; Appendix 24 Cultural Values Assessment; Appendix 28 Planning and Policy Analysis; Applicant’s s92 Response Letter (21 Feb 2023) and

Attachment 1- 10: Functional Need, Legal Opinion, Mana Whenua, Contamination, Traffic, Underwater Noise.

- (b) Councils' Section 42A Report ("**s 42A Report**") and the following appendices: Appendix A Section 95 Notification Report; Appendix B Summary of Submission; Appendix C1 Coastal Processes; Appendix C2 Landscape and Natural Character and Visual Amenity; Appendix C4 Avifauna; Appendix C8 Recreation; Appendix C14 Economic.
- (c) The Applicant's Planning Evidence prepared by Mr Brett Hood, including Attachments 1 – 3 and Attachment 4 Marked Up NRC Conditions; Dee Isaacs Cultural Evidence.
- (d) The reports prepared by PTB that articulate and demonstrate Patuharakeke ancestral relationship to the area as 'ahi kā'<sup>2</sup>, including the Cultural Values Assessment Report ("**CVA**"), Interim Cultural Effects Assessment ("**Interim CEA**"), Final Cultural Effects Assessment ("**Final CEA**") and PTB's submission<sup>3</sup>.

2.12 Further, I have read Directions 1 – 3 from the Hearing Panel and the schedule of dates for expert conferencing.

### **Scope of Evidence**

2.13 The purpose of my evidence is to provide my professional expert opinion as to the appropriateness of the proposal from a planning perspective. I have undertaken an assessment of the actual and potential effects of the proposal, with particular reference to relevant statutory and plan criteria, objectives and policies.

2.14 My evidence will address the following matters:

- (a) Areas of Agreement with the s 42A Report.

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<sup>2</sup> Te reo Māori term, translated by maoridictionary.co.nz as: "burning fires of occupation, continuous occupation - title to land through occupation by a group, generally over a long period of time. The group is able, through the use of whakapapa, to trace back to primary ancestors who lived on the land. They held influence over the land through their military strength and defended successfully against challenges, thereby keeping their fires burning".

<sup>3</sup> Submission #164.

- (b) Existing Environment.
- (c) Assessment of Effects Areas of Agreement:
  - (i) Navigational and Safety;
  - (ii) Terrestrial Noise and Vibration;
  - (iii) Archaeology;
  - (iv) Stormwater Discharge;
  - (v) Air Quality;
  - (vi) Land Transport; and
  - (vii) Terrestrial Ecology.
- (d) Assessment of Effect Areas of Contention:
  - (i) Cultural Effects;
  - (ii) Coastal Processes;
  - (iii) Marine Ecology;
  - (iv) Marine Mammals;
  - (v) Avifauna; and
  - (vi) Recreation.
- (e) Assessment of Relevant Policy Statements, Plans or Proposed Plans.
- (f) Evidence of Applicants and Response to Areas of Expertise

2.15 Where appropriate and relevant, my evidence will reference and rely on the evidence of Professor Karin Bryan, Dr Richard Bulmer, Dr Tom Brough, and Ms Juliane Chetham whose opinion I agree with.

### 3. S 42A REPORT AND RESPONSE TO AREAS OF EXPERTISE

#### Areas of Agreement

3.1 To simplify my evidence for the Commissioners, I outline below the areas where I agree with the assessment undertaken within the Councils' s 42A Report:

- (a) **Proposal** – I agree with how the proposal has been described<sup>4</sup>. In particular, that the proposal does not include any specific means of remediation or mitigation to the significant adverse cultural effects generated by the proposal on Patuharakeke's cultural values.
- (b) **Site Description** – I agree with how the local and surrounding environments have been described.<sup>5</sup> However, I have provided more specific commentary below relating to the existing environment below.
- (c) **Reasons for Consent** – I agree that the correct reasons for consent have been identified and that overall, the activity status is a discretionary activity requiring consideration of all actual and potential effects of the proposal<sup>6</sup>.
- (d) **Relevant Context** – I acknowledge the Applicant has taken steps to consult with Patuharakeke and other mana whenua hapū as described in the s 42A Report<sup>7</sup>. However, I emphasise that the issues raised by PTB and others remain unresolved and without mitigation (acknowledging that the applicant has put forward cultural mitigation as outlined in the Applicant's evidence). This is addressed further in my evidence.

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<sup>4</sup> Sections 2.0, 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 of the Councils' s 42A Report.

<sup>5</sup> Sections 3.1.1, 3.1.2 of the Councils' s 42A Report.

<sup>6</sup> Sections 4.1, 4.2 and 4.3 of the Councils' s 42A Report.

<sup>7</sup> Section 5.1 of the Councils' s 42A Report. Further, I highlight in s5.2 of the s 42A Reports recognition of the Marine and Coastal Area (Takutai Moana) Act under which 35 groups, including Patuharakeke, currently have claims under consideration as Customary Marine Title (CMT) groups. PTB's CEA highlights that should resource consent and coastal permits be granted, this will extinguish their CMT rights over this area, as this will no longer qualify as the Coastal Marine Area (CMA).



#### 4. EXISTING ENVIRONMENT

4.1 Further to the above, and to assist the Commissioners, I generally agree with the s 42A's description of the existing environment and outline these below:

- (a) **Site Description** – I agree with how this has been described within the s 42A Report.
- (b) **Surrounding Environment** – I agree that Patuharakeke's cultural landscape forms part of the existing environment<sup>8</sup>, noting that the cultural landscape feature in combination with the coastal environment, ecosystems and natural landforms heighten the cultural importance and sensitivity of the environment.
- (c) **Planning Notations: Zoning and Resource Overlays/Features** – I agree and highlight the following particular features: Te Poupouwhenua, a Site and Area of Significance to Tangata Whenua ("**SASTW**"), Significant Marine Mammal and Seabird Area ("**SMSB**"), Significant Bird Area ("**SBA**") and Significant Ecological Area ("**SEA**") of the PRP-AV.<sup>9</sup> In short, these notations reflect and represent the cultural and ecological significance and sensitivity of the environment. Further, I highlight to the Commissioners that the SASTW are not subject to appeal and can now be treated as operative under section 86F of the Resource Management Act 1991 ("**RMA**").
- (d) **Relevant Resource Consents** – Specifically, I acknowledge Refining NZ now Channel Infrastructure NZ Ltd's ("**Channel Infrastructure**") resource consent to dredge and realign the Whangārei Harbour, and Northport Ltd's resource consent to construct and operate Berth 4.<sup>10</sup> With respect to Channel Infrastructure's resource consent to dredge, I share PTB's view in questioning the likelihood of the Channel Infrastructure resource

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<sup>8</sup> Outlined in Section 3.1.2 of the s 42A Report.

<sup>9</sup> Refer to section 3.3 of the s 42A Report

<sup>10</sup> As described in section 3.3 of the s 42A Report.

consent being realised, given they are transitioning away from refining activities.<sup>11</sup> In terms of Berth 4, while it is my opinion that this does form part of the consented baseline and receiving environment, I highlight to the Commissioners that the Issues and Options Report discount this as an economically viable option on its own, and has discarded this as a viable option on its merits alone. Based on that report, in my opinion it is unlikely to occur should the current application not be approved and, and based on PTB's legal submissions, therefore it should not be included with the 'existing environment' for the purposes of the planning assessment.<sup>12</sup>

- 4.2 With respect to Patuharakeke's Cultural Landscape, the extent and key features are outlined in PTB's Hapū Environmental Management Plan 2014.<sup>13</sup> While I recognise all of these features are not mapped by the statutory planning documents, it is my opinion that these key features in conjunction with Patuharakeke's associated cultural narrative, histories, spiritual traditions and practices represent a distinct and cohesive cultural landscape. Given these identified features and having regard to Patuharakeke's cultural, historic, spiritual and traditional associations, in my planning opinion, Patuharakeke's Cultural Landscape is a Place of Significance to Tangata Whenua in accordance with the criteria set out in Policy D.1.5 of the PRP-AV.
- 4.3 Further, I highlight the extensive mahinga mātaimai<sup>14</sup> (traditional harvesting and customary management areas for shellfish beds and fishing grounds) that form part of the immediate and wider environment.

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11 Refer to section 3 of PTB's Final CEA where it states: "We also note that the unimplemented Refining NZ (now CINZ) capital dredging consent is highly unlikely to be implemented given the end to refining processes at the refinery. It is doubtful that the Suezmax tankers designed for the transportation of large quantities of crude oil that required the design of a deeper channel will now be required for the terminal operation".

12 Refer to Section 9.2.2.2 of the Issues and Options Report provided as Appendix 2 of the AEE.

13 Refer to Figure 4 of Patuharakeke's Cultural Landscape and Sites of Significance Overlay

14 Refer to <https://www.nrc.govt.nz/media/obxjhweq/patuharakeke-takahiwai-mahinga-mataimai.pdf> for details of Patuharakeke's identified mahinga mātaimai.

## 5. ASSESSMENT OF EFFECTS AREAS OF AGREEMENT

5.1 To simplify my evidence for the Commissioners, I outline below the areas where I agree with the assessment undertaken within the Councils' s 42A Report:

- (a) **Navigation and Safety** – I agree with the s 42A Reports conclusions that effects on navigation and safety will be minor taking into account the advice and recommendations of Mr Scott Keane of Stantec for Proposed Berth 5.<sup>15</sup> It is his view that potential adverse navigational effects and conflict risks associated with the occupation and use of the proposed tug facilities have not been appropriately mitigated. His report concludes that the effects will be minor.
- (b) **Terrestrial Noise and Vibration** – Taking into account Mr Runcie's expert advice and recommended changes to conditions, I agree with the s 42A Report that subject to compliance with recommended conditions that effects of terrestrial noise can be managed and will overall be reasonable.<sup>16</sup>
- (c) **Archaeology** – I agree with the s 42A Report's conclusions, however I highlight that Clough & Associates recommends standard accidental discovery measures to be applied which the Applicant has accepted. On this particular matter, I highlight that a more suitable accidental discovery protocol should involve consultation with tangata whenua.<sup>17</sup> At the time of preparing this evidence, no such accidental discovery protocols have been agreed between the Applicant and PTB.

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<sup>15</sup> Mr Keane recommends more rigorous and independent full mission bridge simulations be undertaken to inform operational management controls and that Marine Oil Spill Risk Assessment be prepared to inform the existing Northland Marine Oil Spill Contingency Plan. Refer to paragraphs 333 – 338 of the s 42A Report.

<sup>16</sup> Paragraph 367 of the s 42A Report.

<sup>17</sup> Refer to paragraph 370 and 371 of the s 42A Report.

- (d) **Stormwater Discharge** – I agree with the s 42A Report’s conclusions that the adverse effects of stormwater discharge will be minor.<sup>18</sup>
- (e) **Air Quality** – I agree with the s 42A Report’s conclusions, namely that the effects on air quality will be minor during the construction phase.<sup>19</sup>
- (f) **Land Transport** – Taking into account the advice from the Applicant and Councils’ experts, I agree with the findings of the s 42A Report on this topic<sup>20</sup> that transport effects will be no more than minor.
- (g) **Terrestrial Ecology** – I agree with the conclusions of the s 42A Report, that the effects to terrestrial ecology will be less than minor, noting Councils’ expert Ms Webb, considers that financial contributions to Coastal Care groups are likely to result in greater ecological benefits than the proposed restoration planting and weed management at the site.<sup>21</sup>

## 6. ASSESSMENT OF EFFECTS – AREAS OF CONTENTION

6.1 The assessment below outlines the areas of contention and considers the actual and potential effects of the proposal in accordance with s 104(1)(a) of the RMA, relying where appropriate on the opinions of other experts, and having regard to the relevant statutory planning provisions in accordance with s 104(1)(b).<sup>22</sup>

### Cultural Effects

6.2 Patuharakeke along with several other hapū are acknowledged as having interest and ancestral relationships to the area and wider Whangārei

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<sup>18</sup> These conclusions are based on the expert advice and alignment of specialist advice outlined in Section 10.4.13 of the s 42A Report.

<sup>19</sup> Section 10.4.14, page 79, paragraph 388 of s 42A Report.

<sup>20</sup> Section 10.4.15, page 81, paragraph 397 of s 42A Report.

<sup>21</sup> Paragraph 403 of the s 42A Report.

<sup>22</sup> Including the NZCPS, RPS, PRP-AV and WDC-OP.

Terenga Parāoa<sup>23</sup> (Whangārei Harbour). Patuharakeke’s whakapapa and ancestral relationship to Whangārei Terenga Parāoa and Poupouwhenua is undisputed and acknowledged within the AEE and Councils’ s 42A Report.

6.3 A signed relationship agreement between PTB and the Applicant is in place and sets the terms over which consultation will occur with respect to matters relating to Northport, including the proposed expansion. As such, PTB produced three reports in response to the proposed Northport expansion, being:

- (a) Cultural Values Assessment Report (“**CVA**”);<sup>24</sup>
- (b) Interim Cultural Effects Assessment Report (“**Interim CEA**”);<sup>25</sup>  
and
- (c) Final Cultural Effects Assessment Report (“**Final CEA**”).<sup>26</sup>

6.4 The iterative production of expert reports by PTB demonstrates in my opinion an ongoing commitment by PTB to engage in good faith with the Applicant. In my opinion, these reports accord with the requirements of Policies D.1.1 and D.1.2 of the PRP-AV, in that they identify Patuharakeke’s taonga, cultural landscape resources, values, and associated cultural practices and the extent to which they will be affected by the proposal. Further, they provide a baseline for which mitigation and conditions of consent can or could be proffered as required by Policy D.1.2(9) of the PRP-AV. Despite these reports, no such mitigation and/or conditions of consent were included within the AEE, and have only been provided as part of the Applicant’s evidence at a very late stage in the process.

6.5 The Councils’ s 42A Report highlights that the AEE does not provide a determinative assessment of the magnitude or scale of effects generated

<sup>23</sup> A list of hapū groups listed under Section 5.1 Tangata Whenua o Whangārei Terenga Parāoa in the Cultural Values Assessment prepared by PTB. This list is in relation to iwi claimant groups under the Marine and Coastal Area/Takutai Moana Act 2011.

<sup>24</sup> A CVA prepared by PTB was provided to the Applicant in April 2021. The CVA was prepared to assist the Applicant and provide Patuharakeke’s contextual values with respect to the immediate, surrounding and wider environment and inform the Applicant’s concept design.

<sup>25</sup> The Interim CEA was attached as Appendix 24 to the AEE. At this time, the report had not been finalised and ratified by the PTB’s Board.

<sup>26</sup> The Final CEA was attached to PTB’s submission, noting this version has been ratified by PTB’s Board.

by the proposal on the cultural values of Patuharekeke and other Poupouwhenua hapū, relying solely on the reports prepared by PTB and consultation undertaken with hapū. In acknowledgement of this approach, the s 42A Report has adopted this same approach, but helpfully clarifies and concludes that adverse cultural effects are **significant**.<sup>27</sup>

6.6 As set out in Section 3.3 of this evidence, relying on PTB's CEA and Ms Chetham's evidence<sup>28</sup>, in my planning opinion Policy D.1.4 is relevant and should apply for the following reasons:

- (a) PTB has provided a comprehensive set of expert reports that details the proposal's scale and magnitude of adverse effects on their cultural values, ancestral lands and waters, wāhi tapu and taonga species as set out in D.1.5(1) – (2);
- (b) This area includes existing scheduled SASTW, and is a collection of related resources described and mapped in PTB's CVA and Ms Chetham's evidence demonstrating their historical, cultural, and spiritual associations in accordance with D.1.5. (3) and D.1.5(4)(a) – (d); and
- (c) Follows the 'must' criteria set out in D.1.5.(5), in that it is based on traditions and tikanga; is endorsed for evidential purposes; records the values of the place; records the relationship to sites; and has been based on Patuharakeke's assessment; and is geographically defined.

6.7 As such, in the management of effects on Places of Significance to tangata whenua<sup>29</sup>, Policy D.1.4 of the PRP-AV directs that resource consent activities **may generally only be granted** if the adverse effects of Places of Significance to tangata whenua in the coastal marine area are **avoided, remedied or mitigated so they are no more than minor**.

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<sup>27</sup> Refer to paragraph 274 of the s42A Report.

<sup>28</sup> Refer to sections 4.11 – 4.13 of Ms Chetham's evidence, particularly Table 1 where she has stepped through the criteria set out in Policy D.1.5 of the PRP-AV. The relevant collection of cultural resources is geographically mapped in Appendix 1 of Ms Chetham's evidence.

<sup>29</sup> As set out line Policy D.1.5 of the PRP-AV, are Places which have been identified and described in a manner required by the policy but have not been subject to a plan change, and can still be given weight in resource consent application decisions.

- 6.8 PTB's CVA, CEA and the expert evidence of Ms Chetham ultimately concludes that adverse effects on Patuharakeke's cultural landscape from the proposal are immense, permanent and significant, as a result of direct impacts from construction and dredging activities and the future operation of the Northport expansion.
- 6.9 In response to the planning context outlined in Policies D.1.1, D1.2 and D.1.4 of the PRP-AV I consider the following to be the key cultural matters which remain unresolved:
- (a) **Engagement** – I highlight that at least three formal hui (meetings) between the Applicant and mana whenua groups, including PTB, have occurred between 2019 and 2021.<sup>30</sup> PTB have produced a CVA and CEA with respect to the proposal. My understanding is that the intention of these reports was to establish Patuharakeke's relationship to the site and surrounds, their values associated with the site, to provide guidance to the Applicant and inform the overall concept, design and mitigation package. In my opinion, the lack of cultural mitigation provided in the AEE and subsequent s 92 Responses demonstrates an unwillingness by the Applicant to genuinely and fully engage with PTB. In my opinion, there have been no demonstrable attempts to narrow the cultural issues, and it is only as part of the Applicant's evidence that cultural mitigation has been proposed at a very late stage. In my opinion and based on my experience undertaking engagement with tangata whenua, this approach limits well-functioning working relationships and risks agreement being reached between the parties due to a lack of trust. Relying on Ms Chetham's commentary of the Applicant's proposed mitigation,<sup>31</sup> in my planning opinion, the suitability of these conditions remains unresolved and are not suitably mitigated.

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<sup>30</sup> PTB provide details of the number of meetings and attendants in their submission (Submission #164). Refer to Item 4, page 3 of their submission and accompanying footnote.

<sup>31</sup> Refer to Section 5 of Ms Chetham's evidence, which includes analysis of the Applicant's proposed conditions. In particular, she highlights the proposed funding model and timeframes for the Kaitiaki Group, in her experience, will be insufficient to cover the operating costs of such a group and describes some of the identified roles and functions as 'mana diminishing'.

- (b) **Patuharakeke Cultural Landscape** – The proposed reclamation, occupation of the Coastal Marine Area and the operation of the Northport expansion results in the direct loss of the takutai moana that forms part of Patuharakeke’s Cultural Landscape. An area which Patuharakeke hold ‘rohe moana’ over. Ms Chetham’s evidence describes the impacts of the reclamations as the permanent loss of habitat within their rohe moana, eroding the mauri of Whangārei Terenga Parāoa, undermining the viability and health of mahinga mātaimai, impeding Patuharakeke’s ability to practice kaitiakitanga over its rohe (ancestral areas land) and rohe moana (ancestral waters) which will be felt by current and future generations of Patuharakeke. In my opinion, the combination of all of these impacts in conjunction with the potentially significant cumulative adverse effects on recreation, marine ecology, marine mammals and avifauna combine to generate significant adverse effects on Patuharakeke’s Place of Significance that cannot be avoided. If left unmitigated, these impacts overtime have the potential to cumulatively erode Patuharakeke’s cultural and spiritual connection to Poupouwhenua (whenua and mātaimai), particularly their cultural practices associated with the taonga species found in this location.
- (c) **Taonga Species** – PTB’s CVA identifies keystone taonga species within the Whangārei Terenga Parāoa to include shellfish (pipi, kōkota, huia, cockles and scallops), whales (orca, gray’s beaked whale), dolphins, manu (birds, including Kuaka, manu oi, pakaha).<sup>32</sup> In my view, PTB’s account of traditional kaimoana gathering practices at Poupouwhenua Mātaimai (Mair Bank / Marsden Banks) and surrounding locations demonstrate Patuharakeke’s ongoing involvement and active management as kaitiaki of keystone taonga species including pipi, kōkota, huia, cockles and scallops. PTB highlight that Poupouwhenua Mātaimai

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<sup>32</sup> Referenced throughout their CVA, but in particular in section 5.2.4, pages 26 – 31.



has been subject to a number of customary rāhui and temporary closures under s186A of the Fisheries Act 1996 to improve the availability and size of taonga species stocks for over a decade, which are yet to recover.<sup>33</sup> In my opinion, Patuharakeke's ongoing and active role as kaitiaki in the management of the kaimoana fishery at Poupouwhenua, particularly taonga species, establishes a body of mātauranga-a-hapū (knowledge that is specific to Patuharakeke and based on traditional knowledge) that spans decades. Patuharakeke and other Whangārei Terenga Parāoa hapū have already demonstrated their commitment to the management of these resources with the closure of their customary kaimoana shellfish gathering areas.<sup>34</sup> While this demonstrates PTB's kaitiakitanga<sup>35</sup> in action, it also demonstrates that they are unable to fulfil and practice manaakitanga<sup>36</sup>. While I acknowledge the expert advice of the AEE and Councils' reporting marine ecologists in forming my opinion I also take into account the in-depth knowledge of PTB that provides an experiential evidence base as provided for by Policy D.1.2 of the PRP-AV. On this basis, I consider the effects on Patuharakeke's taonga species, if unmitigated, to be more than minor and cumulatively significant.

- (d) **Alternatives** – Taking account of the above and the permanent extinguishment of Patuharakeke's relationship to the reclaimed area, it is my opinion that the Applicant's alternatives assessment and approach cannot be separated from understanding the cultural effects generate by the proposal. This is discussed further in Section 7.16 – 7.20 of my evidence. The Issues and Options Report has briefly contemplated land-based options, however, it

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33 Refer to page 19 of PTB's CEA.

34 The condition of Patuharakeke's customary shellfish resources is discussed in depth on page 19 – 20 of PTB's Final CEA.

35 Defined in the RMA as meaning: 'the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship'.

36 Defined by Te Ak Māori Dictionary as meaning: "hospitality, kindness, generosity, support - the process of showing respect, generosity and care for others".

simply discards this as due to third party ownership and that it is 'not practical' due operational constraints that make this option uneconomic.<sup>37</sup> In my opinion, this assessment does not correspond with the scale and magnitude of adverse cultural effects generated by the current proposal, which are assessed as significant, irreversible and cannot be mitigated.

- 6.10 Taking into account Patuharakeke's Hapū Environmental Management Plan, their CVA, CEA, and Ms Chetham's expert cultural evidence, it is my opinion that the proposal results in **significant adverse effects** on Patuharakeke's cultural values, their relationships, cultural and traditions. Particularly when taking account of Policy D.1.1, D.1.2, D.1.4 and D.1.5 of the PPR-AV, it is my opinion that the AEE only fulfils these directions in part, while failing to provide a conclusive scale and significance effects assessment or meaningfully identify how the proposal will avoid, remedy or mitigate cultural effects directly related to this proposal.
- 6.11 I acknowledge address the Applicant's very recently provided proposed conditions of consent in Section 8 of my evidence.

### **Coastal Processes Effects**

- 6.12 The NZCPS, RPS and PRP-AV seek to improve the quality of Taitokerau Northland's estuaries and harbours through the minimisation of sedimentation to maintain and improve water quality, so that recreational and cultural kai gathering sites are safe to harvest.<sup>38</sup>
- 6.13 The s 42A Report concludes based on the specialist advice of Councils' expert and subject to the successful implementation of recommended mitigation, that actual and potential effects on coastal processes will range from negligible to more than minor.
- 6.14 PTB's coastal processes and numeric modelling expert Professor Karin Byran has reviewed the relevant specialist and expert advice and is not

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<sup>37</sup> recognising that adjacent Commercial, Industrial and Port zoned land is underdeveloped. Refer to page 58, Section 9.2.3.3 of the Issues and Options Report provided as Appendix 2 of the AEE.

<sup>38</sup> Objective 3.2, Policy 4.2.1 of the RPS, and Policies F.1.2, D.4.1 of the PRP-AV

confident that effects are minor. In her opinion, the numerical hydrodynamic and sediment transport modelling does not sufficiently calibrate or verify the baseline data with in-situ current and suspended sedimentation modelling. Professor Bryan considers that this does not accord with best practice.<sup>39</sup>

- 6.15 What I understand this evidence to mean is that the analysis on Whangārei Terenga Parāoa's dynamic current system and how this influences sedimentation may be different to that modelled within the baseline reports. In my opinion this raises question as to whether the Commissioners have sufficient information in order to understand and determine the scale and magnitude of adverse effects on the quality of Whangārei Terenga Parāoa as result of sedimentation rates generated by the proposed reclamation activities.
- 6.16 In my opinion, and on the basis of Professor Bryan's evidence, the magnitude of effects cannot be confidently determined as being minor or less, which is problematic given the scale and permanence of this proposal when taking into account the sensitivity of the significant ecological and cultural environment. As such, and relying on Professor Bryan's expert advice, I consider a precautionary approach is warranted in this instance given the scale and magnitude of effects cannot be relied upon and the adequacy of mitigation cannot be determined. Until such time that best practice, calibrated and verified data is obtained, and effects re-analysed, in my opinion the magnitude of likely effects on coastal processes cannot be sufficiently accurately determined.

### **Marine Ecology**

- 6.17 At the outset of this discussion, I remind the Commissioners that Patuharakeke's rohe as ahi kā and mana moana is limited to this specific area of Whangārei Terenga Parāoa. This is particularly important to inform and understand the scale and magnitude of potential and actual adverse

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<sup>39</sup> Refer to section 4.3 of Ms Bryan highlights that the Acoustic Doppler Survey (ACDP) appears to have been undertaken over a single incoming and outgoing tide, and over a single track. Where standard practice, in complex currents such as the application site, would typically be undertaken at multiple locations over and over at least 14 days.

effects of the proposal on Patuharakeke’s cultural values. Particularly, how this interacts with the adverse effects on marine ecology at varying spatial scales in accordance with PRP-AV Policy D.2.15(5)(a).<sup>40</sup>

- 6.18 Policy D.2.18 of the PRP-AV, Policy 4.4.1 of the RPS and Policy 11 of the NZCPS requires that significant adverse effects on other habitats of indigenous species (that are important for recreation or cultural purposes) are avoided, remedied or mitigated.
- 6.19 The AEE was supported by a Marine Ecological Effects Assessment (“MEEA”) undertaken by Mr Shane Kelly and Ms Carina Sim-Smith of Coastal & Catchment Environmental Consultants. Mr Drew Lohrer of NIWA reviewed the MEEA on behalf of the Councils.
- 6.20 The s 42A Report concludes that the Applicant’s and Councils’ experts are reasonably aligned on the scale of assessment<sup>41</sup>, and generally agree on the magnitude of direct effects on the nine different components identified as compromising the affected marine ecosystem. There are three key areas where the experts’ opinions differ and these are summarised in the s 42A Report as being:
- (a) The application of scales and corresponding effect assessment applies to the intertidal sediment habitats and macrofauna;
  - (b) Magnitude of effect on kaimoana shellfish (including pipi, scallops and cockles); and
  - (c) Cumulative effects on kaimoana shellfish.<sup>42</sup>
- 6.21 Dr Richard Bulmer has provided expert evidence on behalf of PTB and focusses on the same areas of contention to the Applicant and Council’s

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40 4 PRP-AV Policy D.2.18(5)(a) states that potential adverse effects on identified values of indigenous biodiversity are to be assessed by “...taking a system-wide approach to large areas of indigenous biodiversity such as whole estuaries or widespread bird and marine mammal habitats, recognising that the scale of the effect of an activity is proportional to the size and sensitivity of the area of indigenous biodiversity”.

41 The Applicants Marine Ecological Effects Assessment (“MEEA”) identifies three spatial system scale to which the assessment is based; these Harbour System (“Harbour”), the Outer Harbour and Entrance Zone (“OHEZ”), and Reclamation and Dredging Extent (“Development Footprint”).

42 Refer to section 10.4.5, page 68, paragraph 292 of the s 42A Report.

experts outlined in (a) – (c) above. Dr Bulmer broadly concurs with Mr Lohrer that adverse effects on intertidal sediment habitats, macrofauna, and kaimoana shellfish will be **at least moderate** (minor – more than minor),<sup>43</sup> and considers that effects may be greater. He also agrees that adverse effects on kaimoana shellfish, cumulatively, will be **significant**.

- 6.22 Of note is that Dr Bulmer considers that the AEE and MEEA have inadequately assessed the ecological connectivity of kaimoana shellfish, resulting in an inadequate and inconclusive assessment of marine ecology effects with Whangārei Terenga Parāoa. On this basis, Dr Bulmer concludes that there is insufficient information to confidently demonstrate magnitude of adverse effects on indigenous marine ecology, in the absence of an assessment on the potential disruption to ecological connectivity as well as cumulative interactions with other stressors such as sedimentation and sea level rise which he considers will impact the ecosystem over the time horizon of the consent.
- 6.23 Overall, the s 42A Report concludes and highlights that “...in the absence of turbidity monitoring and response mitigation detail, the adequacy of this mitigation has not yet been demonstrated”. Due to these differing views between experts, the s 42A Report cannot conclusively determine the magnitude of marine ecological effects, particularly due to the policy implications of the effects magnitude.<sup>44</sup>
- 6.24 Relying on the expert opinion of Dr Bulmer, and having regard to the policy implications of Policy D.2.18 of the PRP-AV and Policy 11 of the NZCPS, in my opinion it is unclear whether the potentially significant adverse effects of the proposal have been suitably avoided, remedied or mitigated which is required. Given the policy context, it is my opinion that the granting of consent would be inappropriate.

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43 Refer to section 3.2(a) - (b), page 4 – 5 of Mr Bulmer’s expert evidence.

44 Section 10.4.5, page 71, paragraph 312 of the s 42A Report.

### **Marine Mammals**

- 6.25 Activities within the coastal marine area are required to avoid adverse effects on marine mammals listed as threatened or at risk, and avoid, remedy or mitigate other adverse effects on marine mammals. These directions cascade from the NZCPS (Policy 11), RPS (Policy 4.4.1) to the PRP-AV (Policies D.2.18 and D.5.27). Further, Policy D.2.20 of the PRP-AV requires decision makers to adopt a precautionary approach where adverse effect of activities is uncertain, unknown or where little is understood on indigenous biodiversity, including where adverse effects are potentially significantly adverse and where an environment is vulnerable to the effects of climate change.
- 6.26 Dr Tom Brough (PTB's marine mammal's expert) has raised particular concern with adequacy of information on marine mammals for Whangārei Terenga Parāoa, and his opinion is that this information is not fit-for-purpose to inform the assessment of actual and potential adverse effects on marine mammals. Dr Brough refers to in-situ acoustic monitoring data referenced by Ms Clement (the Applicant's expert), and considers this would make a significant contribution to understanding the importance of the area for marine mammals if this was made available. Further, Dr Brough also raises concern about the potential effects of increased shipping on marine mammals, particularly noise pollution generated by increased capacity of the port activities and the potential impact on potential prey species and destruction of benthic habitats. Overall, Dr Brough considers there to be a lack of good quality information available to have confidence that the mitigation options recommended by Ms Clements will be adequate and effective to avoid adverse effects on marine mammals within Whangārei Terenga Parāoa.
- 6.27 Relying on the opinion of Dr Brough, and given that avoidance of adverse effects on threatened or at-risk marine mammals is required, in my opinion there is insufficient baseline data specific to marine mammal patterns and distribution within Whangārei Terenga Parāoa to adequately and effectively assess the effects of the proposal on marine mammals. As such,

I consider a precautionary approach to managing the effects on marine mammals is required in this instance, and in my view, it would be inappropriate to grant consent given the policy implications of Policy D.2.20 of the PRP-AV and Policy 11 of the NZCPS which requires avoidance of adverse effects on threatened or at-risk marine mammals.

### **Avifauna**

- 6.28 Policy D.2.18 of the PRP-AV, Policy 4.4.1 of the RPS and Policy 11 of the NZCP requires the avoidance of adverse effects on threatened or at-risk indigenous flora and fauna, including avifauna. A wide range of coastal birds are known to utilise the breaches and adjacent intertidal area within the footprint of the proposed expansion and the Coastal Avifauna Assessment (“**CA Assessment**”)<sup>45</sup> assigns specific ecological values to the subject site as Moderate to Very High. This is reflected in the statutory mapping overlays that show the wider Whangārei Terenga Parāoa area as being SBAs with pockets west of the application site as being critical bird habitat.
- 6.29 The s 42A Report concludes that actual and potential adverse effects on avifauna, with the exception of cumulative effects, to be no more than minor subject to appropriate implementation of the recommended mitigation. Again, I generally agree with the way in which the s 42A Report has worked through the issues and opinions of the Applicant’s and Councils’ experts, noting that the position of these experts differs in some instances, most notably as it relates to cumulative effects.
- 6.30 In this regard, Ms Webb considers that the CA Assessment requires a broader review of past and existing activities that influence shorebird populations in order to more appropriately identify and assess key cumulative effects on avifauna at a Harbour Scale. Overall, Ms Webb is unable to conclude the scale and magnitude of adverse cumulative effects in absence of this information. In addition to this, the s 42A Report

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<sup>45</sup> prepared by Dr Leigh Bull, formerly of Boffa Miskell and is **attached** as Appendix 13 of the AEE.

highlights Ms Webb's concern regarding the longevity of the high-tide roost site given its subjectivity to erosive coastal processes.

- 6.31 Based on Ms Webb's concerns with the longevity of the proposed high-tide roost and inadequacy of cumulative effect assessment, I am concerned that the proposal does not effectively demonstrate that the adverse effects on avifauna can be appropriately avoided, remedied or mitigated to the level required by Policy D.2.18 of the PRP-AV and Policy 11 of the NZCPS.
- 6.32 Given that the planning framework requires the avoidance of adverse effects in the coastal environment on threatened or at-risk indigenous habitats and fauna, in conjunction with the associated adverse effects on taonga species and cultural practices, and the inconsistency between the relevant experts on appropriate mitigation, in my opinion, it would be inappropriate to grant consent.

### **Recreation**

- 6.33 Policy 18 of the NZCPS recognises the need for public open space adjacent to the coastal marine area. Policies D.2.18, E.2.1, and F.1.8 seek to maintain public access.
- 6.34 Mr Rob Greenaway of Rob Greenaway & Associates prepared a Recreation Effects Assessment included in support of the AEE. Mr Greenaway concludes that the effects related to construction and maintenance activities will be minor; operation effects will range from less than minor to significant; and residual effects will be significant for recreational users.
- 6.35 Mr Craig Jones of Visitor Solutions was commissioned to review Mr Greenaway's assessment and confirms the assessment methodology is suitable and concurs with the effect conclusions in relation to construction and operational impacts. Mr Jones raises many concerns with the proposal's adverse recreational effects, particularly during construction phases which will continue to disrupt recreational beach users until such time as access is reinstated. Namely, Mr Jones is concerned with the impacts of the reclamation on recreational fishing, the reduced sense of scale in the recreational setting and is generally concerned about the



quality of residual recreation environment as a result of the proposed mitigation approach. Further, Mr Jones raises concern with the potential safety issues, highlighting potential use conflicts of the proposed tug facility, water taxi, jetty, fishing pontoon and swimming steps at the pocket park.

- 6.36 Overall, Mr Jones considers that the operation of the Northport expansion will have significant recreation effects for recreational beach users with more than minor effects at a regional level. Mr Jones recommends a range of alternate mitigation that would be more suitable and aligned with the future environment should consent be approved.
- 6.37 In my opinion the proposal results in a dramatic reduction in a well utilised and easy-to-access beach at Marsden Bay. During my site visit, I noted a number of visitors to Marsden Bay beach, including walkers, recreational fishers, and people who had stopped to enjoy the area during their lunch break. The proposal involves removing approximately 2ha of beach, dune habitat and other public facilities, with effects that are assessed as being significantly adverse. Having regard to Mr Jones' expert opinions, and noting that PTB have had no design input into the Pocket Park concept,<sup>46</sup> I consider the proposed mitigation package to be grossly inadequate when considered in the context of the NZCPS. On this basis, I consider that consent cannot be granted until there is a suitable mitigation package that appropriately addresses the loss of public land that will result from the proposal.

## **7. RELEVANT POLICY STATEMENTS, PLANS OR PROPOSED PLANS**

- 7.1 Subject to Section 104(1)(b) of the RMA I consider the provisions of the following Plans and Policy Statement's to be applicable:
- (a) New Zealand Coastal Policy Statement ("**NZCPS**");
  - (b) Regional Policy Statement for Northland ("**RPS**");

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<sup>46</sup> As outlined in Section 3.31, page 14 of Ms Chetham's Cultural evidence.

- (c) Proposed Regional Plan – Appeals Version (June 2023) (“**PRP-AV**”); and
- (d) Whangārei District Plan – Operative in Part (“**WDC-OP**”)

7.2 In forming my overall opinion, I have considered the broader planning framework, including the analysis undertaken by Councils’ s 42A Report. The planning analysis below is focused on those aspects relevant to PTB. Unless specifically addressed below, I generally agree with the assessment undertaken within the s 42A Report.

### **Indigenous Biodiversity**

7.3 Objective 1 of the NZCPS seeks to safeguard the integrity, form, function and resilience of the coastal environment, its ecosystems, including marine and intertidal areas, estuaries, dunes and land through the maintenance and enhancement of coastal processes; protection of representative and significant ecosystems and NZ’s indigenous coastal flora and fauna; and maintaining coastal water quality, and enhancing where it has deteriorated from its natural condition. Policy 11 directs avoidance of effects on vulnerable species, taxa and habitats, and then avoidance of significant adverse effects on less vulnerable but still important habitats and ecosystems. Objective 3.4 and Policy 4.4.1 of the RPS, and Policy D.2.18 of the PRP-AV are also relevant and provide further implementation guidance with respect to the directions of the NZCPS.

7.4 Taking account of the expert opinions of Dr Brough, Dr Bulmer and Professor Bryan I do not agree with the conclusions of the AEE that the proposal achieves consistency with the directions of relevant NZCPS, RPS, and PRP-AV. This is due to indeterminative scale and magnitude effect conclusions for marine ecology and marine mammals. Particularly of concern is how these conclusions (and predicted effects) might accurately reflect the actual and potential adverse effects on Patuharakeke’s taonga species which include pipi, scallops, tohora (whales), dolphins and manu, of which several of the species are listed as at-risk or threatened by the New Zealand Threat Classification System (“**NZTCS**”).

- 7.5 The potentially significant cumulative effects on marine ecology require resolution between experts, and further assessment on marine ecology connectivity to resolve Policy 11(b).
- 7.6 Best practice marine mammal surveys need to be undertaken in order to form an adequate assessment baseline is also required before a determinative assessment of effects on marine mammals can be made. As such, I cannot conclude consistency with Policy 11(a)(i).
- 7.7 Given the identified cumulative effects on threatened or at-risk avifauna, the discord between the experts, I cannot conclude consistency with policy 11(a)(1) of the NZCPS.

### **Tangata Whenua**

- 7.8 Objective 3 of the NZCPS directs that the role of tangata whenua as kaitiaki is provided for through their involvement in the management of the coastal environment be recognising their ongoing and enduring relationship over lands, rohe and resources; promoting meaningful relationships; provides for the incorporation of mātauranga Māori into sustainable management practices; and seeks to recognise and protect the characteristics of the coastal environment that are of value to tangata whenua. Policy 2 provides the procedural planning framework to achieve objective 3.
- 7.9 Objective 3.12, policies 8.1.1, 8.1.3, and 8.1.4 of the RPS provide for the role of tangata whenua as kaitiaki in decision making, and provide for the recognition of the relationships of tangata whenua to their culture and traditions to their ancestral land, water, wāhi tapu and other taonga.
- 7.10 Policies D.1.1, D.1.2.2, D.1.4 and D.1.5 of the PRP-AV are of particular relevance in assessing consistency with the statutory directions. Through consultation with PTB, I consider the Application is generally consistent with policy D.1.1.
- 7.11 Mr Brett Hood (the Applicant's planning expert) and Mr Dee Isaac's (Applicant's Cultural Expert) do not express any conclusions as to the scale

and magnitude of adverse effects on cultural values, which I consider is inconsistent with D.1.2(8). Proposed conditions were made available at a very late stage as part of the Applicant's evidence, as such consistency with Policy D.1.2(9) is made. On balance, in my opinion, there is general consistency with Policy D.1.2.

- 7.12 Policy D.1.5 provides for Places of Significance to tāngata whenua to be given weight in resource consent decisions. In my opinion, a Place of Significance has been established through PTB's CVA and further assessed and outlined in Ms Chetham's expert evidence. In my planning opinion<sup>47</sup>, the identified features, in combination with Patuharakeke's cultural, historical, spiritual and traditional associations have been demonstrated. As such, in my opinion, Policy D.1.4 is relevant and directs that resource consents for an activity **may only be granted if** the adverse effects on the values of Places of Significance to tangata whenua in the coastal marine area are avoided, remedied or mitigated to that they are **no more than minor**.
- 7.13 Having regard to Mr Isaac's cultural analysis and based on Ms Chetham's analysis of the proposed conditions, I consider the Applicant's proposed mitigation insufficiently demonstrates that adverse cultural effects are mitigated to a level that will be no more than minor. As such, in my opinion, the Application is inconsistent with Policy D.1.4 of the PRP-AV and should not be granted.

### **Public Open Space**

- 7.14 Objective 4, Policy 18 and 19 of the NZCPS seek to maintain and enhance public open space qualities and recreation opportunities of the coastal environment.
- 7.15 Given the direction of these policies are to maintain access, and access to Marsden Bay is technically maintained, in my opinion the proposal will generally be consistent with this policy direction, however, the proposal will not enhance public open space qualities and recreation opportunities

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<sup>47</sup> As assessed in Section 3.11 of this evidence, that steps through the provisions of policy D.1.4.

as a result of the dramatic reduction in a well utilised and easy-to-access beach at Marsden Bay which in my opinion is contrary to these policies.

### **Reclamation and Alternatives**

- 7.16 Policy 10 of the NZCPS is a directive policy that seeks the avoidance unless all four categories of Policy 10(1)(a) – (d) are satisfied. Policy D.5.20 of the PRP-AV correspond with directions of the NZCPS.
- 7.17 Firstly, I highlight to the Commissioners, that the Issues and Options Paper does not include or refer to any multi-criteria analysis which in my experience would be prudent and in line with best practice when considering the scale and permanence of the proposed reclamation. In my planning opinion, and taking into account my recent experience with alternative assessments as part of the Auckland Light Rail project, the proposal has inadequately considered or assessed alternatives in a manner that is commensurate with the scale of the proposal.
- 7.18 Policy 10(1)(a) of the NZCPS requires the Applicant to demonstrate that land outside the coastal marine area is not available. The Issues and Options Paper provides the basis of the alternatives assessment, which includes the following alternatives<sup>48</sup>:
- (a) Three reclamation options that are discarded for various reasons relating to potential environmental effects, and function and operation constraints;
  - (b) Reconfiguring the existing footprint which is discarded as it is not considered to achieve the increased capacity or allow larger ships and quantity of freight;

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<sup>48</sup> Section 9 outlines provides the Alternatives Assessment, with the actual Alternatives considered detailed in section 9.2. Section 9.2.1 considers port locations 'other than Northport'. Section 9.2.2 considers different considerations including by reconfiguring the existing footprint; section 9.2.2.2 looks at the existing footprint with consented Berth 4 and discards this option; Section 9.2.3 considers extending the port footprint: Westward is discarded for various reasons including the sensitivity of cultural and ecological environment, and noise effects on residents; Northward is discarded for a range of reasons, including the cultural, ecological and social impacts that would likely result; Southward Land-Based: as it does not achieve sufficient berth frontage, the land is owned by third parties; but the reasons primarily relate to practicability, operation and function requirements; and Eastward: discarded for a range of reasons including depth of water, noise effects, and disruption to existing activities.

- (c) Berth 4 is also discarded as the viability relies on the unconstructed rail network, will be insufficient to serve predicted capacity, and requires the reconfiguration of existing port activities; and
- (d) One land-based option that is also discarded due to capacity, function and operational constraints and that the land is owned by third parties.

7.19 The land-based option assessed was not accompanied by any concept designs or provide analysis of this option in combination with consented Berth 4. The report also appears to reference third-party ownership as a constraint despite much of the surrounding land being undeveloped and not accounting for the closure of the refinery activities. Given the lack of analysis and concept layouts for land-based options, in my opinion, the Applicant **does not demonstrate that land** outside of the coastal marine area **is not available**. In my opinion, the application is generally consistent with Policy 10(1)(b) – (d), but fails to demonstrate that land is available outside of the coastal marine area in accordance with the directions of Policy 10(1)(a).

7.20 Policy 10 directs the avoidance of reclamation, unless it can demonstrate that it satisfies all provisions of Policy 10(1). In my opinion, the proposal fails to satisfy the required statutory pathway, and without further evidence to robustly address these matters is contrary to the policy.

#### **Precautionary Approach**

7.21 Policy 3 of the NZCPS directs the adoption of a precautionary approach towards activities whose effects on the coastal environment are uncertain, and have the potential to be significant.

7.22 In my opinion, the evidence of Professor Bryan, Dr Bulmer and Dr Brough has clearly demonstrated that there is uncertainty regarding the baseline data and the adequacy of the effects assessments to robustly and confidently determine the actual and potential effects of the proposal on

marine ecology, threatened or at-risk marine mammals and coastal processes.

7.23 Relying on the expert opinion of Professor Bryan, Dr Bulmer, and Dr Brough, in my opinion, a precautionary approach is warranted for the following reasons:

- (a) Cumulative effects on marine ecology are potentially significant;
- (b) The scale and magnitude of adverse effects on marine mammals is uncertain given the lack of systematic surveying of marine mammals, and adverse effects cannot be determined; and
- (c) The baseline hydrological numerical modelling does not follow best practice, and adverse effects of sedimentation is potentially higher than those levels concluded.

7.24 Taking into account Whangārei Terenga Parāoa’s complex, sensitive ecosystems and the fragility of Patuharakeke’s Cultural Landscape given the highly industrialised impacts of the existing environment, I consider a precautionary approach is warranted.

## **8. EVIDENCE OF APPLICANTS AND RESPONSE TO AREAS OF EXPERTISE**

### **Cultural Effects**

8.1 The Applicant’s Planning Evidence prepared by Mr Brett Hood outlines and responds to Cultural Effects<sup>49</sup> and ultimately concludes that the proposal has adequately identified the cultural effects of the proposal in accordance with Policy D.1.2.(g) of the PRP-AV.

8.2 Mr Dee Isaacs has provided expert cultural evidence in support of the proposal. A summary of his commentary of cultural issues concludes that there is a range of cultural effects; that he considers engagement undertaken by the Applicant has followed best practice principles and carried out in good faith, and meaningful; and that the proposed mitigation

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<sup>49</sup> Refer to paragraphs 7.43 – 7.47 of Attachment 13

package effectively responds to the cultural concerns raised by PTB and other Poupouwhenua hapū.

8.3 While I acknowledge the analysis of Mr Isaacs and subsequent conclusions of Mr Hood that the proposal addresses the directions of Policy D.1.2.(9), I do not agree with their findings for the following reasons:

- (a) Mr Hood and Mr Isaacs, throughout their evidence refer to issues raised by PTB within the CVA and CEA, but fail to conclude in their opinion, the overall scale and magnitude of adverse effects cultural effects on the proposal. While both Mr Isaacs and Mr Hood recognise that effects cannot be avoided, they stipulate those effects are mitigated. Further, Mr Isaacs goes on to conclude that the proposed conditions put forward in the Applicant's evidence<sup>50</sup> to represent a culturally appropriate response to the issues raised. While I acknowledge these conditions, given none were provided with the application, I find this conclusion problematic given Mr Isaacs does not include a conclusion of the scale and magnitude of effects on cultural values. In my opinion, you cannot conclude that the proposed mitigation is adequate, appropriate or commensurate if you have not determined the scale and magnitude of an effect. As such, I do not agree with this position and consider it would be inappropriate to grant consent on this basis.
- (b) Mr Isaacs concludes that the Applicant has demonstrated best practice engagement principles, and considers that the engagement approach with Patuharakeke reflects a commitment to preserving the cultural values while ensuring sustainable and positive outcomes.<sup>51</sup> Based on the record of consultation outlined in the CVA, CEA and having regard to the evidence provided by Ms Chetham, in my opinion there has been no demonstrable efforts to accommodate or respond to the concerns raised by PTB since

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<sup>50</sup> Provided as Attachment 4 Marked Up NRC Conditions to Mr. Hood's evidence and include conditions 224 – 245.

<sup>51</sup> Refer to paragraph 71, page 15 of Mr Isaac's Expert Evidence.



they began engaging in the process. The proposed conditions presented in the Applicant's evidence, to my understanding, is the first set of cultural mitigation measures presented. In my opinion, these cultural conditions are not commensurate to the significant adverse effects that will be experienced by Patuharakeke.

8.4 I provide a brief commentary on the Applicant's proposed conditions, having regard to Ms Chetham's evidence, but given there has been very little time for hapū and cultural experts to consider these, commentary of their adequacy and suitability is limited. Overall, I consider these to be inadequate for the following reasons:

- (a) The Applicant fails to substantively conclude the scale and significance of adverse cultural effects on Patuharakeke and other Poupouwhenua hapū. As such, the Applicant cannot demonstrate the adequacy, or the appropriateness of the mitigation package proposed.
- (b) The Applicant does not demonstrate how these mitigations directly respond to the cultural concerns raised by Patuharakeke and other Poupouwhenua hapū.
- (c) Ultimately the conditions amount to establishing a forum to continue engagement with many caveats on its role, function and purpose. While I support the intent of some of the proposed conditions, principally the establishment of cultural monitoring and the restoration and enhancement of the harbour, in my opinion the outcomes of these conditions remain unclear as to how they can be successfully implemented or whether they adequately address adverse cultural effects on Patuharakeke's Place of Significance to a level that is minor.
- (d) The funding models are grossly inadequate when compared the roles and functions of the Kaitiaki Forum.

- (e) I raise a further concern that the conditions require a high level of engagement by Patuharakeke and other Poupouwhenua hapū and given the outcomes of the Applicant's current engagement approach, I am not confident, at this point that resolution can be made to ensure the adequacy and suitability of the proposed conditions.

**9. CONCLUSION**

- 9.1 On this basis, in my opinion, the proposal lacks sufficient analysis that demonstrates how cultural effects are effectively avoided, remedied or mitigated to a level that is minor, and accordingly it would be inappropriate at this stage to grant consent in accordance with Policy D.1.4 of the PRP-AV.
- 9.2 The key areas of concern are outlined in the Executive Summary of this evidence.



**Makarena Dalton**  
**18 September 2023**