

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT WHANGAREI**

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

IN THE MATTER **of the Resource Management Act 1991**
AND
IN THE MATTER **of the hearing of submissions on applications
by the Northport Ltd – Port Expansion project at
Marsden Point**

**SUMMARY STATEMENT OF EVIDENCE OF TOM BROUGH
ON BEHALF OF PATUHARAKEKE TE IWI TRUST BOARD**

MARINE MAMMALS

30 OCTOBER 2023

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1. INTRODUCTION

1.1 My full name is Tom Evan Brough. I have qualifications and experience as set out in my Evidence in Chief (“**EiC**”) dated 18 September 2023. As per my EiC, I confirm that I have read the Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2023 and I agree to comply with it.

1.2 The purpose of this statement, is to briefly:

- (a) Summarise the key points from my EiC;
- (b) Highlight some additional points in response to matters raised during the hearing so far.

2. SUMMARY OF EVIDENCE

2.1 The ‘best available information’ used by Northport’s experts and the Council’s expert, to appraise the potential impacts of the project on marine mammals is inadequate. The data/information sources used are not sufficiently robust to determine the importance of Whangārei Harbour or Bream Bay to marine mammals, including occupancy or habitat use patterns and seasonality. Therefore, I do not agree that it is possible to draw robust conclusions on the severity of impacts from the evidence of Northport.

2.2 The impact assessment undertaken by Northport’s expert is largely based on the construction phase and omits the potential long-term and cumulative effects of the resulting increase in activity at Northport, in particular, the multiple stressors related to potential increases in shipping traffic.

3. RESPONSE TO MATTERS RAISED DURING THE HEARING

3.1 Rebuttal evidence provided by Dr Clement on behalf of Northport has provided the first robust information that can be used to appraise the impacts of the proposed

development on marine mammals. These data, sourced from acoustic monitoring in the vicinity of the proposed development, suggest marine mammals are present between 10 and 15% of the time.

- 3.2 While not discussed by Dr Clement in the rebuttal evidence, it is likely that most detections from the acoustic monitoring are sourced from bottlenose dolphins, a species listed as endangered in New Zealand. Acoustic monitoring of bottlenose dolphins in areas with known resident populations (e.g., Fiordland) has resulted in similar rates of detection as those provided in Appendix 1 of Dr Clement's rebuttal evidence.
- 3.3 Additionally, preliminary acoustic, visual and photo-identification data collected by the Tere Tohora, Karanga Tangata research programme in Bream Bay (referred to in my EIC) confirms the likelihood of a resident bottlenose dolphin population with the wider Bream Bay. Thus, in contrast to the opinion of Dr Clement the councils expert, Ms McConnell, it is my opinion that the area is in fact an area of importance for this species.
- 3.4 As noted in Dr Clement's rebuttal evidence, I am in general agreement with the assessment of impact from construction activity. However, based on the use of area likely to be impacted by construction (e.g., pile driving) by bottlenose dolphins, I consider additional mitigation is necessary (e.g. real-time acoustic monitoring).
- 3.5 The data provided in Dr Clement's rebuttal evidence provides information for the impacts of the construction activity in the area adjacent to the port. However, the same level of information is not available for the wider Bream Bay area, and the original EIC of Dr Clement, Ms McConnell and myself all note the likelihood of impacts associated with ship

strike. I would question why it is deemed appropriate to have good data to assess one impact, but not the other.

- 3.6 I remain unsatisfied by the lack of assessment of the impacts associated with the ongoing operation on the port and the possibility of increased vessel traffic. During the hearing, there has been discussion around increased vessel traffic, and in their rebuttal evidence, Dr Clement repeated the claim that the development is unlikely to result in increased shipping traffic. It is my opinion that the port should be responsible for providing evidence as to the increase (or not) of commercial shipping, not the port's marine mammal expert. If the purpose of the reclamation is increased container capacity, this suggests to me that more ships would be expected to arrive at Northport. Alternatively, and as discussed at the hearing, larger ships may use the port. However, larger ships generate elevated noise pollution and thus this potential impact (from increased traffic or larger ships) should be considered as an impact from the ongoing operation of the port under the proposed development.
- 3.7 The key mitigation being proposed for the wider Bream Bay is the use of the Hauraki Gulf Transit Protocol for commercial shipping.¹ I agree that this protocol has been successful in the Hauraki Gulf and its uptake in Bream Bay is appropriate. Currently, the adoption of the protocol seems to be nested within the MMMP (within the wider construction management plan) and thus there should be clarity that the protocol will be used for the ongoing operation of the port and not just during construction.
- 3.8 Based on my experience and the preliminary results of the Tere Tohora, Karanga Tangata research programme, I consider Bream Bay to be an important area for marine

¹ e.g. see rebuttal of Dr Clements para 28

mammals and for there to be the potential for high overlap between marine mammals and commercial shipping. I remain convinced that the port should support data collection on marine mammals in Bream Bay. I note that Dr Clement's agrees with this point in their rebuttal evidence.

- 3.9 It is my opinion that these data are critical to ensuring the impacts of the ongoing operation of the port, in terms of both noise pollution and ship strike, are understood and appropriately mitigated. As such, I believe supporting collection and analysis of data on marine mammals in Bream Bay should form part of an additional condition of the consent, and the port should commit to adaptive management if significant overlap between Bryde's whales and shipping or noise pollution impacts on other marine mammals are identified. Such adaptive management may include limiting shipping traffic to current rates, further reducing vessel speed as necessary and revision of shipping lanes such that overlap between whales and commercial shipping is minimised.

Tom Brough

28 October 2023