

BEFORE THE WHANGAREI DISTRICT COUNCIL AND NORTHLAND REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a resource consent application by Northport Limited under section 88 of the Resource Management Act 1991 for a port expansion project at Marsden Point

APPLICATION NO. LU2200107 (WDC)
APP.040976.01.01 (NRC)

REBUTTAL EVIDENCE OF BRETT LEWIS HOOD

(PLANNING)

3 October 2023

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REBUTTAL EVIDENCE OF BRETT HOOD

1. My name is Brett Lewis Hood. My qualifications and experience are as set out in my statement of evidence in chief (EIC) dated 25 August 2023.
2. I have read the expert witness Code of Conduct for Expert Witnesses and have complied with this Code in the preparation of my further evidence.
3. I attended all of the expert conferencing and am a party to all JWSs that have been filed.
4. This statement of rebuttal evidence relates to the following topics:
 - (a) Transport
 - (b) Activity status of WDC consents
 - (c) Landscape
 - (d) Recreation
 - (e) Other matters raised in the evidence of Linda Kirk
 - (f) Other matters raised in the evidence of Makarena Dalton and Juliane Chetham
 - (g) Conditions
5. I have reviewed the rebuttal evidence of Dr Mitchell which I agree with and adopt.

Transport

State Highway 15/Waka Kotahi

6. The joint statement of evidence of Ms Crafer and Ms Heppelthwaite for Waka Kotahi is focused on the Transport and Planning JWS prepared after the first transport conference on 5 September 2023. However, the first JWS was a “work in progress” and the material in paragraph 3.2 of the JWS does not accurately reflect the ongoing discussions referred to in paragraph 3.3. As outlined in paragraph 3.3, there were two alternate sets of conditions being discussed and the experts agreed to continue discussions after the 5 September witness conferencing session.
7. In my view the attempt to reconcile the two sets of conditions at the first conference meant that the overall structure and intent of the conditions 61-72 appended to my EIC was lost. Therefore, in conjunction with Ms Harrison, I prepared and pre-circulated a new set of

conditions for discussion at the second transport conference. The experts for Waka Kotahi then tracked changes to these conditions prior to the third conference, some of which have been incorporated in the condition set now appended to this rebuttal evidence, and some that have not.

8. The points of difference between the position advanced by Ms Harrison and myself, and the position advanced by the Waka Kotahi experts, as I understand that position, are as follows:

(a) Crash mitigation: I do not agree that Northport should be responsible for all crash mitigation on SH15. Rather their contribution should be a proportionate one, noting the acknowledged difficulty in attributing the causes of crashes to expansion port traffic, port traffic in general, or general public traffic. In my opinion a pragmatic approach to this issue is necessary.

(b) Intersection upgrading: In a similar vein, I do not agree that Northport should be solely responsible for upgrading intersections if/when there is an unacceptable level of service at the respective intersection. My position remains that Northport should contribute to the cost of intersection upgrades proportionate to the contribution/effects attributable to expansion port traffic. Physical works to complete any intersection upgrades should rightly be the responsibility of Waka Kotahi as the road controlling authority.

(c) Traffic monitoring: While I accept that continuing to monitor traffic may be helpful to Waka Kotahi in planning for the future, I do not agree that this monitoring should continue until the SH1/SH15 intersection has been upgraded. The performance of, and potential upgrades to, that intersection are not related to the identified effects of the proposal or any associated mitigation.

(d) Intersection monitoring: Similarly, while I accept that monitoring the SH1/SH15 intersection may be helpful to Waka Kotahi in planning for the future, I do not agree that the Consent Holder should be responsible for this work, particularly as it is not related to the identified effects of the proposal or any associated mitigation.

9. Mr Mutton for Waka Kotahi describes the “limited pool of funding” available to Waka Kotahi¹ and states that “*while Northport has indicated a willingness to fund the portion of*

¹ Mutton EIC Paragraph 5.

the works attributable to its increased traffic flows from the port expansion, no funding has been determined or allocated for the remaining portion of the improvements".² This funding uncertainty is the basis for the restriction on Northport movements proposed by Waka Kotahi's experts if the intersections are not upgraded.³

10. I agree with Mr Mutton that *"funding mechanisms to deliver the upgrades are not a matter that is relevant to this hearing"*. I further note that, in practical terms, Waka Kotahi will have at least 5 years to achieve funding from the time the Consent Holder begins the detailed design to when construction is complete, and likely many more years after that before port traffic grows to the volumes where upgrades are likely to be needed.

11. Mr Mutton describes the sources of funding available to Waka Kotahi in paragraph 4.1 of his EIC, including:

"d Supplementary funds where a third party benefits from a land transport benefit the third party is expected to contribute to that benefit."

12. However, I note that the description of funding sources on the Waka Kotahi website is worded differently and states that [my emphasis]:

*"Where a third party benefits from a land transport investment, Waka Kotahi expects that the third party **will contribute to the level of that benefit.**"*⁴

13. In my opinion, the expectation that the Consent Holder either limits its movements, or alternatively, be responsible for the total cost of intersection upgrades on SH15⁵ is at odds with the position publicly advanced by Waka Kotahi. As I read it, a proportional assessment and contribution based on the effects of the activity (such as that proposed in the conditions⁶ appended to this rebuttal evidence) is consistent with the description on the Waka Kotahi website.

14. In their evidence Ms Heppelthwaite/Crafer have identified Objective 3.11, Policy 5.1.1, and 5.1.3 from the Regional Policy Statement for Northland ("**RPS**") and state that the

² Mutton EIC Paragraph 7.6.

³ Heppelthwaite/Crafer Joint EIC para 4.6.

⁴ <https://www.nzta.govt.nz/planning-and-investment/planning-and-investment-knowledge-base/archive/201821-nltp/planning-and-investment-principles-and-policies/investment-and-funding-assistance-policy/funding-sources/>

⁵ Heppelthwaite/Crafer Joint EIC para 7.2-7.3.

⁶ Conditions 68-70.

Councils must “give effect to Policy 5.1.3 (avoid adverse effects on regionally significant infrastructure) when assessing resource consents”⁷.

15. Notwithstanding Method 5.1.5 (which provides direction regarding statutory plan development), I do not agree that the Councils must “give effect to” Policy 5.1.3 when assessing resource consents. The requirement under s104 is that they “have regard to” it (amongst others).
16. While I agree that SH15 is Regionally Significant Infrastructure, so too is Northport. Further, the direction in Policy 5.1.3(c) to avoid effects on “*The operation, maintenance or upgrading of existing or planned regionally significant infrastructure*” has a particular focus on avoiding the effects of “residential development”. Noting that SH15 is only a State Highway because Northport is located at the end of it,⁸ in my view Policy 5.1.3(c) reinforces the need to avoid the adverse effects of residential traffic on both the State Highway network and on Northport’s operations. It does not, in my view, support the position being advanced by Waka Kotahi that Northport operations be constrained, or that intersections be upgraded at Northport’s sole cost, in circumstances where it is accepted that residential traffic is a major contributing factor towards any requirement for intersection upgrades.
17. The RPS provisions identified above have been given effect to in the WDP. To that end, Ms Heppelthwaite/Crafer identify TRA-O2 and TRA-P3⁹ of the WDP as reinforcing the RPS policy themes.¹⁰ I agree these provisions are relevant, but for different reasons to Ms Heppelthwaite/Crafer. TRA-P3(2) reinforces the appropriateness of the proposed conditions requiring Northport to contribute to intersection upgrades to the extent that they are ‘directly attributed to measurable impacts of the subdivision or development’. In my view it does not support the Waka Kotahi position that Northport should be constrained or alternatively required to meet the full cost of any intersection upgrades, where those

⁷ Heppelthwaite/Crafer Joint EIC para 4.8.

⁸ Condition 29 of LUC #3 required a contribution of \$1.5M (in 1999) towards transforming local roads into the state highway as part of the port build.

⁹ **TRA-P3 Transport Network Capacity**

To manage the scale and design of subdivision and development by:

1. Ensuring that there is sufficient capacity within the transport network to cater for the proposal.
2. Requiring subdividers and developers to meet the costs of any upgrades and/or extensions to the transport network which are directly attributed to measurable impacts of the subdivision or development.

¹⁰ Heppelthwaite/Crafer Joint EIC para. 4.9.

upgrades will have benefits for various third-party use, subdivision and development that is in no way relevant to Northport's proposed expansion.

18. In summary, I consider that proposed conditions 61-70 appended to my rebuttal evidence are a fair, reasonable, and appropriate response to managing the effects of the port expansion traffic. I also consider the proposed conditions fully align with the policy direction in the RPS and WDP.

Activity status

19. The activity status of the WDC consents has been questioned in the evidence of Ms Kirk,¹¹ and subsequently by Ms Sharp and Ms Niblock in the Planning JWS.¹² The reason provided is due to a small portion of the overall port activities area being located spatially within the Natural Open Space Zone (“**NOSZ**”) (being the esplanade reserve behind the beach). I do not consider there is any real contention as to the appropriate activity status.
20. Ms Kirk, in her EIC, suggests that the activities to be undertaken are “Commercial Activities” as defined in the District Plan, however (as recorded in the JWS) she also considers the activities to fall within the definition of “Industrial Activities”. Ms Sharp (as recorded in the Planning JWS) considers the activities to be undertaken may fall within the definition of “Industrial Activities” and more specifically “Storage.”
21. In regard to Ms Kirk’s contention that there can be more than one activity status, this is not correct within the construct of the Whangarei District Plan (“**WDP**”). The WDP definitions are “nested” with “Commercial Activities” and “Industrial Activities” separately defined with their own separate nested activities. Notwithstanding that I do not consider that the proposed activities fall within either definition, HPW-R7 (below) makes it clear that an activity cannot be both.

HPW-R7 Application of Activity Definitions

1. *Where an activity could be captured by more than one definition grouping classification, the most specifically defined activity and most specific rule shall override the more general definition and rule.*

¹¹ Kirk EIC paragraphs 165-170.

¹² JWS Section 3.1.

22. In my view, and as clearly explained in the application/AEE, the WDP contains a definition for 'Port Activities'.¹³ The definition has been developed with particular regard to Northport, which is why it refers specifically to port activities within the Port Zone (Northport being the only 'Port Zone' in the WDP). The activities proposed in the application are exactly those proposed in the Port Activities definition. That said, because they will be occurring on an area to be reclaimed (and in part within the NOSZ) they are not occurring within the Port Zone. Accordingly, Ms Sharp, Ms Kirk, and Ms Niblock consider that the activities default to be considered as Industrial Activities. I understand that they hold this view because some of the activities align with the definition of 'Storage', which is nested with 'Industrial Activities'.¹⁴
23. With reference to the definition of 'Port Activities', storage type activities are one of 13 other activities identified in a non-exhaustive list. Accordingly, I do not consider it appropriate to 'shoehorn' what are, in all practical terms, port activities into the definition of 'Industrial Activities' because one component of many happens to fit. I do not consider the approach differently floated by Ms Sharp, Ms Kirk and Ms Niblock to be reasonable nor pragmatic in this context: I reflect that my understanding is that resource management practice should not descend unnecessarily into procedural technicalities. Rather, I consider that, in the absence of being able to rely on the port activities definition, the proposed activity is innominate (and therefore discretionary)¹⁵ on the basis that it is not defined, and therefore not listed in the NOSZ rules.
24. After having read the evidence of the other planning experts and participating in expert conferencing, I remain of the view that the appropriate activity status is as set out in the

¹³ **Port activities**

means the use of land and/or building within the Port Zone for port related activities, including but not limited to:

- a. port and ancillary port activities;
- b. cargo handling, including the loading, unloading, storage, processing and transit of cargo;
- c. debarking;
- d. fumigation;
- e. transport, storage and goods handling activities;
- f. maritime passenger handling/services;
- g. construction, maintenance and repair of port operations and facilities;
- h. port administration;
- i. refuelling/fuel handling facilities;
- j. activities associated with surface navigation, berthing;
- k. maintenance or repair of a reclamation or drainage system;
- l. marine and port accessory structures and services.
- m. repair and maintenance services and facilities ancillary to port activities.

¹⁴ Planning JWS Section 3.1.

¹⁵ Section 87B(1)(b) provides that an application for a resource consent for an activity must, with the necessary modifications, be treated as an application for a resource consent for a discretionary activity if a plan or proposed plan requires a resource consent to be obtained for the activity, but does not classify the activity as controlled, restricted discretionary, discretionary, or non-complying.

application/AEE. I have read the rebuttal evidence of Dr Mitchell, and record that he has reached the same conclusion as I have.

Landscape

25. Mr Farrow (the District Council's landscape advisor) and Mr Brown (for Northport) are generally aligned on landscape and natural character effects. The exception is in relation to the magnitude of effects on the Motukaroro Island and Mount Aubrey portion of the Outstanding Natural Landscape ("**ONL**") at Whangarei Heads (Bream Head Manaia sequence). Specifically, Mr Farrow considers the proposed STS cranes and containers on the expanded port will have more than minor effects on the ONL,¹⁶ while Mr Brown does not consider that the effects generated by the proposal will change the fundamental nature of the harbour landscape or the values of its ONLs,¹⁷ and that the expansion proposal is consistent with Policies 13(1) and 15 of the New Zealand Coastal Policy Statement ("**NZCPS**").¹⁸
26. My understanding is that Mr Brown's opinion is informed by the context of existing and other consented major industrial installations and operations at Marsden Point. From a planning perspective, Mr Brown's approach is supported by various provisions in the Natural Features and Landscapes ("**NFL**") chapter of the WDP, most notably NFL-P6 which requires regard to be had to (amongst other things) "*The sensitivity of resource to change, recognising the effects of existing land use*" (my emphasis).¹⁹ I also note that NFL-O3²⁰ requires specific recognition that existing land use and development, including regionally significant infrastructure, forms part of the characteristics and qualities of the environment where they are located. While this policy is directed at activities in or on ONFs and ONLs, this logically extends to activities in the area surrounding these features.
27. In my view it should also be noted that NFL-O2 and NFL-P2 both refer to protecting ONLs from "*inappropriate subdivision, use and development*" and NFL-P11²¹ specifically

¹⁶ Landscape and Planning JWS Section 3.1.

¹⁷ Landscape and Planning JWS Section 3.1.

¹⁸ Brown EIC.

¹⁹ NFL-P6(2) WDP.

²⁰ **NFL-O5 Existing Land Use and Development**

Recognise existing land use and development, including regionally significant infrastructure, form part of the characteristics and qualities of the environment where they are located in or on Outstanding Natural Features and Outstanding Natural Landscapes.

²¹ **NFL-P11 Regionally Significant Infrastructure and Community Facilities**

recognises regionally significant infrastructure where there is “no practical alternative location”. In my view, expanding the existing port within a specific zone²² that anticipates port activities (and which is the only such zone) aligns with these provisions.

Recreation

28. The recreation experts Mr Jones and Mr Greenaway have opined that there are significant residual adverse recreational effects at the local scale and more than minor effects at the regional scale that are not being avoided, remedied, or mitigated and state that “*off-site mitigation is required to address these residual effects*”.²³ While I accept their opinion on the magnitude of effects, I do not agree (based on an analysis of the relevant planning provisions) that mitigation of these residual effects is “required”. As set out in the Planning JWS,²⁴ I have reviewed the relevant objectives and policies in the WDP²⁵ and consider that there are no provisions that direct that there be no net adverse effects on recreation.
29. Notwithstanding the absence of a policy/plan requirement for ‘no net adverse recreation effects’, the memo provided by Mr Jones and Mr Greenway dated 25 September 2023 is interesting. It identifies four “indicative” off-site proposals being:
- Construction of a cycle route from Marsden Cove to Bream Bay Beach via Rama Road
 - Relocation of the Te Araroa Trail service to Marsden Cove
 - General passive recreation facilities at One Tree Point and Marsden Bay
 - Swimming Pontoon/Structure at One Tree Point
30. I understand from Mr Greenaway that the basis for the indicative off-site proposals is to direct as much pressure away from the residual beach by providing attractive local

To provide for adverse effects arising from the establishment and operation of regionally significant infrastructure and community facilities, excluding National Grid Electricity Infrastructure, in or on Outstanding Natural Features or Outstanding Natural Landscapes where:

1. It is demonstrated that there is no practical alternative location;
2. Regard has been had to policies NFL-P3 - 5, and taking into account policies NTW-P10 - 15 in the Network Utilities chapter.
3. Measures are in place to avoid adverse effects, and adverse effects that cannot be avoided are remedied or mitigated to the extent that they are no more than minor.

²² Marsden Point Port Zone (PRP).

²³ Recreation and Planning JWS paragraph 3.3. Refer also EIC of Mr Greenaway at paragraphs 62-64.

²⁴ Planning JWS Section 3.6.4.

²⁵ WDP chapters RCM, WB, and CE.

alternatives. I also understand that the general passive recreation facilities in the third bullet point match those currently at the beach to the east of Northport.

31. I note that the proposal being advanced by Northport includes the replication and enhancement of existing recreation facilities at the eastern end of the expanded facility (the “pocket park”). I also note that a cycleway is proposed from Mair Road to Northport when a connection is available to other cycleways planned for the area (*Augier* condition 71), and that discussions are already underway to relocate the Te Araroa Trail water taxi service to Marsden Cove, consistent with condition 48. These are all mitigation measures that respond to the policy direction in the WDP, ‘Riparian and Coastal Margins’, ‘Water Bodies’, and ‘Coastal Environment’ chapters.
32. In addition to the above measures (which are included in the proposed conditions of consent appended to this rebuttal evidence) I understand that Northport is investigating potential improvements to the access, carparking, passive recreation, and beach access facilities at Mair Road. This is a well-used but poorly maintained area which suffered considerable storm damage during Cyclone Gabrielle. It is owned by the Crown, and so any improvement works will require the prior approval of the Department of Conservation (“DOC”). To that end, I understand that Northport has already initiated discussions with local DOC staff.

Other matters raised in the evidence of Ms Kirk

Avoiding adverse effects (bird roosting area)

33. Ms Kirk considers that the proposed bird roost is not an avoidance measure,²⁶ and instead refers to it as both offsetting,²⁷ and compensation.²⁸ I disagree with Ms Kirk. As outlined in the rebuttal evidence of Dr Bull,²⁹ the construction of a nearby high tide roost prior to the reclamation constitutes an avoidance measure in relation to the effects of the loss of roosting habitat. I also agree with Dr Mitchell’s analysis on this point and do not repeat it.

Rule C.1.5.11 – Restricted Discretionary Rule Assessment

²⁶ Kirk EIC, paragraph 16, 32b, 41, 131, 133, 134.

²⁷ Kirk EIC, paragraphs 16, 38-43, 40, 91, 131, 134, 189, 190.

²⁸ Kirk EIC paragraphs 16, 38-43, 40, 91, 131, 134, 189.

²⁹ Bull Rebuttal Evidence, paragraphs 17-22.

34. Ms Kirk is critical because she has been unable to find in the AEE an assessment against the criteria in Rule C.1.5.11 in relation to the proposed bird roost.³⁰ Nevertheless, the Planning JWS records that all planning experts agree that that the bird roost/sandbank has been considered and assessed against this rule.³¹

Precautionary approach

35. Ms Kirk, relying on the evidence of Dr Beauchamp, considers that a precautionary approach should be applied in respect to effects on threatened or at-risk avifauna.³² Having reviewed the evidence and rebuttal evidence of Dr Bull, I am satisfied that there is sufficient certainty in relation to effects, and that the approach taken is sufficiently precautionary, consistent with Policy 3 (NZCPS, Policy 3 (NPS-IB)³³, and D.2.20 (PRP)³⁴.

Application of PRP Policy D.2.7, D.2.8, and D.2.9

36. Ms Kirk considers that the proposal represents the establishment of new regionally significant infrastructure.³⁵ I disagree, and rather consider it to be an upgrade of established regionally significant infrastructure.
37. Building on her (incorrect, in my view) assertion that the proposal is new regionally significant infrastructure, Ms Kirk expresses the view that D.2.7 of the PRP contains a “bottom line”,³⁶ and that this means regionally significant infrastructure should only be enabled when effects are minor.³⁷ Notwithstanding my view that D.2.7 is not a relevant policy,³⁸ in my opinion, Ms Kirk has misunderstood how this provision works together with Policies D.2.8 and D.2.9, and the other enabling Policies D.5.8, D.5.9, and Objectives F.1.6 and F.1.11. As noted in the Planning JWS, if Ms Kirk’s interpretation of D.2.7 was applied, this would have the perverse outcome of requiring regionally significant infrastructure to meet a higher effects threshold than other infrastructure or activities,

³⁰ Kirk EIC paragraph 22,145-149.

³¹ Planning JWS 3.6.2.3.

³² Kirk EIC, paragraphs 19, 32d, 61-64, 142-144, 154-156, 185.

³³ National Policy Statement for Indigenous Biodiversity, August 2023.

³⁴ Proposed Regional Plan for Northland.

³⁵ Kirk EIC, paragraph 113.

³⁶ Kirk EIC, paragraphs 116.

³⁷ Kirk EIC, paragraphs 118-122.

³⁸ Hood Rebuttal, Paragraph 34.

which is completely at odds with the overall approach to regionally significant infrastructure in the PRP and RPS.

38. Having considered the evidence of Ms Kirk on these provisions, my position remains unchanged as outlined in paragraphs 8.80-8.83 of my EIC.

Proposed Regional Plan consistency with the NZCPS

39. Ms Kirk considers that Policy D.2.18 of the PRP does not properly give effect to Policy 11 of the NZCPS.³⁹ The reasons she provides is due to the reference in Policy D.2.18 to taking a system-wide approach to assessing effects in D.2.18(5)(a), and the reference to minor or transitory effects in D.2.18(c). I do not agree with her.
40. The PRP and RPS were both promulgated under, and give effect to, the NZCPS. Policy D.2.18 of the PRP has appropriately given effect to Policy 11 of the NZCPS, contextualised at the regional level and, with reference to D.2.18(5)(c), is consistent with the relevant caselaw as addressed in paragraph 41 (below).

Minor or transitory effects (King Salmon)

41. Ms Kirk considers that it is inappropriate to allow minor or transitory effects on the basis of the Supreme Court *King Salmon*⁴⁰ decision in the context of Policy 11, because that decision related to Policies 13 and 15, and not Policy 11. I do not agree with this and continue to rely on the advice of Mr Simmons in relation to this matter.

Matters raised in the evidence of Makarena Dalton and Juliane Chetham

Analysis of NZCPS, RPS, and PRP tangata whenua provisions

42. Ms Dalton⁴¹ and Ms Chetham⁴² are critical of my analysis of the tangata whenua provisions in the NZCPS, RPS, and PRP, citing paragraphs 3.12-3.13, 7.47, 8.19-8.20, 13.10, and 14.16 of my EIC.

³⁹ Kirk EIC, paragraphs 84-95.

⁴⁰ *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38.

⁴¹ Dalton EIC, paragraph 8.3.

⁴² Chetham EIC, paragraphs 5.1, 5.2.

43. Paragraphs 3.12-3.13 and 8.19-8.20 of my EIC relate to Objective 3 and Policy 2 of the NZCPS. Both of these provisions seek to recognise the role of tangata whenua in the management of the coastal environment. The analysis in the cited paragraphs of my evidence explains how this has been achieved through the consultation process, and through the proposed conditions of consent. Contrary to the assertion of Ms Chetham and Ms Dalton, I do not express a view on whether the cultural mitigation proposed on behalf of Northport is “culturally appropriate”, and I also specifically acknowledge that not all concerns raised by tangata whenua are capable of resolution through consent conditions. Instead, I rely on the evidence of Mr Isaacs.
44. Paragraph 7.47 of my primary evidence refers to Policy D.1.2 of the PRP which sets out the requirements of an analysis of effects on tangata whenua where I confirm my view that such an analysis has been undertaken.
45. Paragraph 13.10 of my primary evidence deals with the requirements of Policy 10 of the NZCPS. Again, I do not express a view on whether the cultural mitigation is “culturally appropriate” and defer to Mr Isaacs in this regard.
46. Finally, in paragraph 14.16 of my primary evidence, I state my views on Northport’s attempts to consult, and that in my experience identifying, understanding, and responding to effects on tangata whenua has been a key focus of the consenting team. Again, I do not express a view on whether the cultural mitigation is “culturally appropriate”.
47. In summary, the cited provisions of the planning documents require engagement and consultation. In the present instance, I am aware that extensive engagement has occurred over a 5-year period and remains ongoing. I am further aware that the planning documents contemplate a response by applicants to matters raised by tangata whenua. In my view, the proposed mitigation package put forward by Northport responds to the matters raised to the extent that is practicable to do so in resource consent conditions. As I see it, Ms Dalton and Ms Chetham have misunderstood the planning analysis undertaken in the cited paragraphs of my primary evidence, and I stand by my conclusions in respect to the cited tangata whenua provisions in the NZCPS, RPS, and PRP.

Existing environment

48. Ms Dalton questions whether Channel Infrastructure’s channel optimisation consent will be realised given the cessation of refining activities and whether it should therefore not be

considered as being part of the existing environment.⁴³ I agree that there is some uncertainty, but that utilisation of those consents, held by a third party, cannot be discounted. If those consents are not utilised, that makes no difference to the various effects assessments of the Northport proposal, except that it would avoid the need for temporal separation of the Channel Infrastructure and Northport dredging programmes – and would likely represent a positive environmental outcome, in that the potential cumulative effects of the Channel Infrastructure and Northport proposal (which have duly been considered by Northport’s experts) would not eventuate.

49. Ms Dalton also questions whether the consented but not yet constructed Berth 4 should be considered part of the existing environment, citing paragraph 9.2.2.2 of the Issues and Options report submitted with the application.⁴⁴ In my view, Ms Dalton has misunderstood the intent of the Issues and Options report, and the implications and context of the conclusions in paragraph 9.2.2.2. Paragraph 9.2.2.2 is assessing the potential for a single berth container terminal on Berth 4 to service the predicted freight demand and concludes that it falls well short of achieving this. However, there is no suggestion that Berth 4 will not be constructed. In fact, detailed design is currently underway in preparation for doing exactly that, as explained by Mr Blomfield. To be clear, I consider Berth 4 to form part of the existing environment.

Patuharakeke’s Cultural Landscape and Policy D.1.5

50. Ms Dalton considers that *“Patuharakeke’s Cultural Landscape is a Place of Significance to tāngata whenua in accordance with the criteria set out in Policy D.1.5 of the PRP”*.⁴⁵ This is a reference to the Cultural Landscape identified in the Cultural Values Assessment (“CVA”) and Cultural Effects Assessment (“CEA”) and referred to in the evidence of Ms Chetham. However, in my view, Ms Dalton has mis-interpreted Policy D.1.5 of PRP. While I acknowledge that places that meet the criteria under Policy D.1.5 can (and in this case should) be given weight in consent application decisions, as confirmed in footnote 37 to the policy, a Place of Significance to tāngata whenua must be mapped in the PRP. The only currently mapped Place of Significance to tāngata whenua is at Mair Bank and Marsden Bank.

⁴³ Dalton EIC, paragraph 14(b).

⁴⁴ Dalton EIC, paragraph 14(b).

⁴⁵ Dalton EIC, paragraph 4.2.

Assessment of alternatives

51. Ms Dalton is critical of the assessment of alternatives for the reclamation, with reference to the requirements of Policy 10 of the NZCPS,⁴⁶ stating that in her view multi-criteria analysis such as that undertaken for the Auckland Light Rail project “*would be prudent and in line with best practice*”. I disagree, and rather consider that the alternatives assessment (augmented by further information provided in Northport’s section 92 response) comprehensively considered the range of options available to expand the existing port facility, cognisant of the unique logistical constraints and issues pertinent to port operations, and specific environmental factors/constraints (perhaps most relevantly the location of both the deepwater channel, and the existing port facility).

Cultural effects conclusions

52. Ms Dalton is critical of Mr Isaacs and me for not providing a conclusion on the overall scale and magnitude of adverse cultural effects.⁴⁷ She also incorrectly mis-states my position in saying that “*they stipulate those effects are mitigated*”.⁴⁸
53. In my opinion, it is for tāngata whenua to determine the scale and magnitude of cultural effects, as confirmed by recent caselaw.⁴⁹ Therefore, my evidence is focussed on whether the consultation process and subsequent conditions of consent are appropriate in the context of the relevant provisions of the statutory planning documents.

Conditions of consent relating to cultural matters

54. Ms Dalton is critical of there being no cultural mitigation conditions included in the AEE, stating that “*the lack of cultural mitigation provided in the AEE and subsequent s92 responses demonstrates an unwillingness by the applicant to genuinely engage with PTB*” and that “*there have been no demonstrable attempts to narrow the cultural issues*”.⁵⁰ I disagree with these statements and consider them to be conjecture that belies the facts.
55. While Ms Dalton has only been engaged recently by Patuharakeke, she should be aware of the ongoing discussions and communication between the applicant and Patuharakeke

⁴⁶ Dalton EIC, paragraphs 7.16-7.20.

⁴⁷ Dalton EIC, paragraphs 6.10, 8.3(a), 8.4(a).

⁴⁸ Dalton EIC, paragraph 8.3(a).

⁴⁹ *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201.

⁵⁰ Dalton EIC, paragraph 6.9, 8.3(b).

in the years leading up to lodgement, and continuing post lodgement. She should also be aware that Northport engaged a specialist cultural expert (Mr Isaacs) to assist with the consultation process. She will presumably have read the comprehensive summary of repeated efforts at engagement with Patuharakeke and others, as detailed in the evidence of Mr Isaacs and Mr Blomfield. In summary, the only reason that conditions were not included in the AEE was to enable time for further consultation, collaboration, and understanding with tangata whenua, as is explicitly stated in Section 5.2.8 of the AEE. Put simply, my understanding is that Northport elected to take the additional time post-lodgement in a determined effort to exhaustively attempt to meaningfully engage with tangata whenua as to appropriate cultural mitigations.

56. As a postscript to the above, I note that Ms Dalton has subsequently acknowledged that the engagement expectations in the Section D.1 provisions of the PRP have been met.⁵¹

Conditions of consent

57. An updated suite of WDC and NRC conditions has been prepared following the consideration of expert evidence and conferencing. Key amendments to the conditions are as follows:

WDC Conditions

- (a) New noise conditions agreed by all experts (45-56).
- (b) Updated transport conditions (60-67).

NRC Conditions

- (a) Updated navigation, sedimentation, mooring forces conditions following agreement with Channel Infrastructure (38, 95-109).
- (b) Updated marine ecology assurance monitoring conditions (166-174)
- (c) Additional/amended marine mammal conditions (61-73, 93-94).

Brett Hood

3 October 2023

⁵¹ Planning JWS, paragraph 3.6.1.

Attachments

- (1) Draft WDC Consent Conditions (updated)
- (2) Draft NRC Consent Conditions (updated)