

Refining NZ Crude Shipping Project

Peer Review Report of

Refining NZ Crude Freight Proposal – Tangata Whenua o Whangārei Te Rerenga Paraoa Cultural Effects Assessment (31 August 2017)



Prepared by Antoine Coffin, Te Onewa Consultants

For Refining NZ

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TE ONEWA
CONSULTANTS

Peer Review Report October 2017

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1. Introduction

- 1.1. This review has been commissioned by Refining NZ (RNZ) and relates to the Refining NZ Crude Shipping Project.
- 1.2. This is a review of a final cultural effects assessment (CEA) prepared by Patuharakeke Te Iwi Trust Board. The CEA is called *Refining NZ Crude Freight Proposal – Tangata Whenua o Whangārei Te Rerenga Paraoa Cultural Effects Assessment* (31 August 2017) and referred to in this review in full or as the 'CEA'. This review also identifies potential measures that could avoid, mitigate or remedy effects identified in the cultural effects assessment and advice to Refining NZ regarding further work that could be undertaken.
- 1.3. A draft cultural effects assessment dated 11 June 2017 was provided to the author (Antoine Coffin) around 19 June 2017 along with various discussions and correspondence with other tangata whenua representatives. Antoine Coffin met with the author of the draft CEA on the 23rd June 2017 and undertook a site visit to Urquarts Bay and Marsden Point Oil Refinery on the same day. A peer review was conducted in June and July 2017 and provided to Patuharakeke Te Iwi Trust Board.
- 1.4. The final version of the CEA (dated 31 August 2017) contains a large number of changes to the earlier draft. These are mostly useful editorial amendments that include the addition of the author, macrons, cross-referencing, graphics, explanations and softening of language.
- 1.5. In September 2017, the final CEA was provided to the peer reviewer for further comment together with a RNZ proposed mitigation package. A letter setting out a proposed mitigation was sent to Patuharakeke Te Iwi Trust Board and Ngati Wai Trust Board. A preliminary response to the mitigation package was received from Ngati Wai Trust Board on 4 October 2017. No response has been received from Patuharakeke Te Iwi Trust Board.
- 1.6. The Refining NZ Crude Shipping project involves partially realigning the Whangarei Harbour access channel to provide safe navigational access for fully loaded "Suezmax" ships, to remove / replace / relocate / add to navigational aids along the new channel alignment, targeted capital and maintenance dredging to achieve and maintain a minimum depth to support 16.6m ship draught in the access channel, and to dispose of dredged materials. The project seeks the granting of resource consents for the dredging, disposal, and ancillary activities.
- 1.7. The CEA has been commissioned by Refining NZ and undertaken by Patuharakeke Te Iwi Trust Board on behalf of Nga Kaitiaki/Tangata Whenua o Whangārei Te Rerenga Paraoa as part of the Tangata Whenua engagement process in relation to an application proposal

being investigated and prepared by Refining NZ to make modifications to the Whangarei Harbour to allow existing oil tankers to enter the harbour fully loaded. The CEA follows an earlier cultural values assessment (CVA) also prepared by Patuharakeke Te Iwi Trust Board to assist RNZ and its expert consultants identify and assess the effects on the environment.

- 1.8. The author of the CEA report is Julianne Chetham. Ms Chetham is a trustee and secretary of Patuharakeke Te Iwi Trust Board and a consultant employed by Patuharakeke Te Iwi Trust Board to manage the Resource Management and Customary Fisheries Portfolio's on behalf of the Trust Board. The author has the relevant expertise and experience to prepare a CEA.
- 1.9. Patuharakeke Te Iwi Trust Board has a Memorandum of Understanding with RNZ, and it is understood that Patuharakeke Te Iwi Trust Board has a close relationship with the Marsden Point Refinery (i.e. the land-based site). It is understood that tangata whenua representatives supported Julianne Chetham preparing the cultural values assessment and the cultural impact assessment.¹

2. Author

- 2.1. My name is Antoine Coffin. I am a professional consultant and director of Te Onewa Consultants Limited. I have twenty years' experience in Māori resource management, cultural heritage planning, community engagement and facilitation.
- 2.2. I have held positions at Ngāti Kahu Resource Centre as a planner and researcher, Auckland Regional Council as Team Leader Iwi Relations, New Zealand Historic Places Trust as heritage advisor, University of Auckland as a lecturer, Boffa Miskell as principal, Auckland War Memorial Museum as Maori Partnerships and Business Director and have held more than 20 governance roles in community organisations and iwi rūnanga.
- 2.3. In 2013, I was awarded NZ Planning Institute's 'Nancy Northcroft Planning Practice Award', the Institute's supreme award for excellence in planning practice for project managing and writing the Ngāti Rangitahi Environmental Management Plan.
- 2.4. I have worked in a range of roles on major infrastructure and water-related projects in Auckland, Waikato, Wellington, Taranaki and the Bay of Plenty including:
 - re-consenting of the Tauranga wastewater network and major interceptor project involving seven cultural impact assessments;
 - Maturanga Maori Technical Leader for Healthy Rivers Waiora Plan Change for the five river Iwi incorporating iwi values, interests and aspirations into the plan change;

¹ Pers. Comment Julianne Chetham, 23 June 2017

- technical advisor to the Rotorua Wastewater Project Cultural Assessment Committee involving 13 iwi representatives and two cultural impact assessments;
 - strategic advisor to the applicant in the MV Rena environment court proceedings, my role was to review all cultural evidence and identify the key issues that needed to be addressed. I also presented evidence to the Court focussing on my review of the draft conditions. My evidence recommended a number of changes to clarify and give meaningful expression of cultural matters in the implementation of the consents;
 - Environmental Court expert witness for Ngati Ruahine regarding Ports of Tauranga dredging applications;
 - monitoring implementation of conditions for dredging Waitemata Harbour;
 - Cultural assessment of the Coastal Motorway and Transmission Gully, Porirua to Wellington.
- 2.5. I currently provide training and professional development in Māori resource management and Māori engagement for staff at New Zealand Transport Agency, members of the New Zealand Planning Institute and a number of iwi and hapu representative groups.
- 2.6. I am also an independent hearing commissioner specialising in Maori matters of consultation, heritage, cultural values and effects.

3. Cultural Impact/Effects Assessment

- 3.1. A Cultural Impact Assessment (CIA) or Cultural Effects Assessment (CEA) is a report documenting Māori cultural values, interests and associations with an area or a resource, and the potential impacts of a proposed activity on these. CIA/CEAs are a tool to facilitate meaningful and effective participation of Māori in impact assessment. Some iwi/hapū use the terms 'Tangata Whenua Impact Assessment', or 'Tangata Whenua Effects Assessment', to describe the impact assessment process and report.² The report being reviewed has been termed a Cultural Effects Assessment.
- 3.2. There is no statutory requirement for applicants or a territorial/regional council to prepare or commission a CEA. However, an assessment of impacts on cultural values and interests can assist both applicants and the council to meet statutory obligations in a number of ways, including:
- preparation of an AEE in accordance with section 882B including matters in schedule 4 of the Resource Management Act 1991 ('the RMA')

² www.qualityplanning.org.nz (what is a cultural impact assessment)

- requests for further information under s92 of the RMA in order to assess the consent application
 - providing information to assist the council in determining notification status under ss95 to 95F of the RMA
 - providing information to enable appropriate consideration of the relevant Part 2 matters when making a decision on a resource consent under s104 of the RMA
 - consideration of appropriate conditions of a resource consent under s108 of the RMA.
- 3.3. CEAs are often prepared to articulate the effects of a proposal or activity and are framed in response to Part 2 matters under the RMA, usually as part of a consent or requirement for a designation process. In particular, CEAs address:
- Recognising and providing for the relationship of tangata whenua with their ancestral lands, waters, forests, wāhi tapu and other taonga
 - Having particular regard for Kaitiakitanga
 - Having particular regard for historic heritage, and
 - Taking into account the principles of the Treaty of Waitangi.
- 3.4. The CEA being reviewed is some 39 pages long with more than 100 pages of appendices. The following comments outline the content of the CEA.
- 3.5. An executive summary was added to the final CEA. This executive summary is consistent with the body of the report.
- 3.6. An introduction on pages 5 and 6 of the CEA provides a short summary of the proposal, an acknowledgement of engagement with Tangata Whenua since 2014 and the production of a cultural values assessment as well as an independent technical review.
- 3.7. In section 1 (p6) there is an addition of a new chapter (2) regarding sand disposal offshore. The new chapter summarises the options for disposal, and emphasises the depth of sand disposed in Area 3.2 will be between 1.5m and 4m, depending on final disposal method (and noting that the approximate water depth in that location is 45m). Disposal at Area 1.2 is up to 5% of the capital dredge volume, and is primarily to be used to replenish sand if lost from the ebb tide shoal over time.
- 3.8. In section 2 of the CEA the report provides a summary of the engagement conducted by RNZ in collaboration with Patuharakeke Te Iwi Trust Board with a range of Tangata Whenua groups. At page 7 the CEA describes the four-step engagement and cultural affects assessment road map which was agreed to by Tangata Whenua. Minutes and notes of the various meetings, hui and workshops is included in Appendix 1.

- 3.9. Section 3 of the CEA describes the process followed to complete a cultural values assessment in January 2015. A list of Tangata Whenua of Whangarei Te Rerenga Paraoa (15 groups) is also provided along with the key themes or matters of significance to Tangata Whenua at that time. The CEA confirms that technical studies related to mahinga mataitai taonga species and other sites of significance should be commissioned and a Tangata Whenua working party have a continuing role to provide input into the project. The CVA prepared in 2014 also recommended that an independent technical advisor review the studies.
- 3.10. At section 4 the CEA sets out the RNZ considerations of alternatives.
- 3.11. At section 5 the CEA gives a very brief summary of the independent technical review and the information that was provided to Tangata Whenua, including five key areas of concern.
- 3.12. At Section 5, last paragraph (p15), there is an addition of an acknowledgement of RNZ responding to the Independent Technical Review Report and a reference to that response being in Appendix 3.
- 3.13. At section 6 the CEA sets out the assessment framework and later identifies relevant provisions of two iwi planning documents. The CEA concludes that the RNZ dredging proposal is not consistent with the relevant provisions in those iwi planning documents. With regard to Kaitiakitanga the CEA identifies that potential diminishing of the role of kaitiaki is a result of the dredging. Regarding the Treaty of Waitangi principles, the CEA focuses on governance of Whangarei Harbour, the legal recognition of customary rights (MACA 2011), commercial and customary fishing rights and iwi future aspirations for commercial development. The CEA identifies (not in order of priority) several key areas of concern, these being:
- Historic ecological effects of the North Port development (1998)
 - Noise effects and vessel strike of marine mammals
 - Potential risk of murky water, lighting and noise effects on Korora (penguins) Oi (petrels)
 - Potential sedimentation of benthic invertebrates
 - Potential changes to beach profiles
 - Erosion destabilisation of Mair Bank as a result of climate change/ sea level rise
 - Oil spill risk as a result of more ships
 - Advocating a low carbon economy and the relationship with climate change.
- 3.14. At section 6.1 Assessment Framework (p15-16), explanatory paragraphs have been added about effects and values of a cultural group. This appears to be a response to my comments on 'effects and concerns'. The explanatory note is helpful to a reader and adds substance to the CEA.

3.15. At section 6.3.2 Treaty of Waitangi (p24), a conclusion has been added to this section. ...“tāngata whenua consider that RNZ’s dredging proposal does not strengthen their ability to exercise rangātiratanga and may undermine their right to develop in future, including the potential outcomes of their applications for customary marine title and/or protected customary rights”.

3.16. At section 6.3.3 Oil Spill Risk (pp29-30) there is an addition of commentary on ‘*risk cannot fully be eliminated (particularly the human error factor)*’ and the example of drunkenness is used...‘*This was illustrated recently when a sea captain having difficulty berthing at Northport was found to be well over the blood-alcohol limit and was arrested.*’ I understand the health and safety is a matter of high importance to RNZ. It may be prudent to set out the range of plans, policies and culture of the organisation and the record of incidents at the oil refinery.

3.17. The CEA concludes that the potential environmental effects or rather the cumulative environmental effects will contribute to a decline in ecosystem health. Whilst the CEA acknowledges that these environmental effects would have a low probability of occurring, the potentially high impact of these potential effects are unacceptable and not supported by Tangata Whenua.

3.18. The CEA at pages 31 and 32 identifies three cultural effects, these being,

- temporary effects on the form of Mair Bank, Busby Head and other cultural markers as a result of dredging.
- effects on Mauri articulated as a broad and general ecosystem context with no time dependence.
- the lack of participation of Tangata Whenua in decision making processes and as a consequence a loss of Mana. The CEA concludes that cumulative cultural effects from the past, present and the future are considered at significant adverse effects that cannot be mitigated.

3.19. The CEA at pages 33 to 35 sets out the social and economic effects of the proposal. The social effects appear to be focused on noise effects of the dredging and the industrialisation of the Whangarei Harbour and the consequential impacts on harvesting kai. With regard to economic effects the CEA questions the economic benefit of the existing plant (Maori staff and management) and the limited life span of the refinery. The CEA also raises the concern regarding re-mediation costs of the site post closure. The CEA takes a view that the proposal will constrain and have a negative impact on current pipi and cockle bio-mass and the opportunity for commercial fishing and aquaculture. The CEA concludes that any positive social and economic effects are negligible and that effects on mahinga kai and future commercial fishing/ aquaculture would be potentially adverse.

- 3.20. At section 6 of the CEA under the heading 'Measure to Avoid, Remedy or Mitigate' the report confirms that potential mitigation measures were briefly discussed at a 12 May 2017 hui and that the consensus of the participants considered the proposal to have unacceptable adverse effects and the effects could not be mitigated. The CEA states "mitigation measures have not been recommended in this CEA report and Tangata Whenua seek that proposal in its entirety be avoided, i.e should not proceed".
- 3.21. At section 7 of the CEA there are four recommendations to the applicant and consent authority. The first of these related to the report being received and considered; the second recommendation encourages RNZ to continue dialogue with Tangata Whenua on all aspects of the application; the third acknowledges a RNZ mitigation package and willingness to evaluate it; and the fourth recommendation that RNZ work with Tangata Whenua on the restoration of mahinga kai and customary resources.

4. General Observations

- 4.1. I have sighted a significant body of technical work that has been conducted to support the applications for resource consent. This work appears to identify in whole or part the physical effects identified by tangata whenua; these being, ecology (marine mammals, birds, benthic fauna), coastal processes, climate change (sea level rise), and oil spill risk. It appears that some of this work has been commissioned in response to concerns from tangata whenua.
- 4.2. The commissioning of both a cultural values assessment and a cultural effects assessment, supported by several years of meaningful consultation is a solid foundation for identifying and addressing concerns and effects identified by tangata whenua. It is understood that the CEA has been developed in consultation with tangata whenua, written by a person of their choosing, with assistance / input from technical experts of tangata whenua choosing and will shortly be formally endorsed by tangata whenua. The independent technical review prepared by Newell and Nuttall³ sets out further matters that should be considered by tangata whenua. A comprehensive response to the concerns and issues was prepared by Refining NZ⁴, whilst not included in the draft CEA, is included in the final CEA.
- 4.3. There appears to be a positive relationship between RNZ (the applicant) and tangata whenua representatives. This is evidenced by well-attended meetings, the longevity of consultation, the commissioning and production of both a cultural values assessment and a cultural effects assessment and the existing MoU. A good relationship with tangata whenua is often challenging to establish and maintain. It is suggested that a balancing

³ Alison Newell and Dr Peter Nuttall. Hui Outcomes and Technical Review of Refining NZ Documents Summary for Crude Shipping project. April 2017

⁴ Refining NZ response to "Hui Outcomes and Technical Review of Refining NZ Documents Summary for Crude Shipping Project", April 2017

act needs to be performed that fine tunes technical support to the applications and addresses the concerns and aspirations of tangata whenua.

4.4. There appears to be an obvious opportunity to formalise the working relationship with the establishment of a kaitiaki group made up of appropriate representatives and technical expertise to manage and give advice to the implementation of the consents including conditions. This is a matter that can be imposed by a decision-maker, however, it is preferable to have something already scoped and agreed to by all or most parties before a hearing. The development of a draft terms of reference may be a place to start as well as commissioning some work identifying and assessing the feasibility of using existing forums or committees.

4.5. The applicant should turn some attention now to addressing the 'concerns' of tangata whenua. As mentioned above significant technical expertise and assessment has been commissioned. I believe in this instance there can be a discrete but important difference between the concerns of tangata whenua and the effects of the proposal including those identified by tangata whenua. An effect as you know can include the actual and potential positive or adverse, temporary or permanent, past, present or future; and cumulative **effects on the environment** or **change as a result or consequence of an action**, in this case the proposal. A concern is a cause of anxiety, worry or a matter of interest or importance to someone.⁵ In this context the concerns and anxiety of tangata whenua can include the:

- Concern for the impact on natural processes
- Strong concerns about traditional kai and taonga species (stingray and penguin)
- ..risks of oil spill...This is a serious concern...
- Generations of harvesting kai but today concern for making sure there are safe and healthy pipi for future generations
- Being involved in a meaningful way in expressing kaitiakitanga.

5. Consultation with tangata whenua

5.1. Whilst there is no duty to consult on resource consent applications, it is good practise to consult with tangata whenua to identify any relevant RMA matters that should be considered and accounted for in the preparation of the applications.

5.2. A summary record of consultation will be important for the hearings panel to account for the various parties involved and who has or hasn't submitted. This could be included in the evidence of submitters and/or in the applicant's evidence. Furthermore, the panel will likely want to know from the applicant that iwi/cultural concerns have been well canvassed and addressed in some part in the application. I will comment on this later in my review.

⁵ Oxford Dictionary.

- 5.3. It is understood that work on consultation for this proposal was initiated in October 2013 and has been undertaken with a wide range of groups and the public generally since that time, and continues at the present. My assessment of the application documents and cultural impact assessment suggests that some 10 meetings/hui have been conducted over a 3 and a half year period. Meetings appear to have been well-attended by tangata whenua representatives and supported by senior RNZ representatives and technical experts. Consultation draft reports were provided to tangata whenua ahead of their release to the public and independent technical reviewers of tangata whenua choosing were commissioned to read/interpret those reports. As I have mentioned earlier, the commissioning of a CVA and a CEA together with the large body of technical work illustrates the commitment of the applicant to understand and acknowledge the concerns of tangata whenua.
- 5.4. The CEA sets out 5 separate lists of tangata whenua of Whangarei Te Rerenga Paraoa. These are set out in:
- Section 2, page 8 (paragraph 3)
 - Section 3, page 10-11 (paragraph 3)
 - Appendix 1 – Request for Iwi Contacts from NRC, prepared by Rachel Ropiha
 - Appendix 1 – meeting held 15 August 2014, 25 May 2016, 7 April 2017, 12 May 2017
 - Appendix 2 – CVA, section 5 (paragraph 3).
- 5.5. On the face of it, these lists appear to be slightly different and the CEA does not articulate why they are different. It is likely that the tangata whenua groups are dynamic and known by a range of names and the list reflects this, and also, the tangata whenua group and its representative body may be quite familiar with the nuances of the different names. These matters should be clarified. A simple table may assist included in the evidence provided to the hearing. This table would include the tangata whenua group, its type of interest or relationship with Whangarei Te Rerenga Paraoa, the representative body(s) and whether they have taken part in the CEA/consultation.
- 5.6. The CEA does not presently articulate the discrete and special relationships of each group with Te Rerenga Paraoa, rather it provides a 'sum' of the issues, concerns and opportunities. These comments are not a criticism per se, rather an observation. The cultural effects assessment could have been enhanced by describing the relationships of the various groups in more detail (if they want to), thus giving weight to the values, concerns and effects articulated later in the CEA. It is presumed that tangata whenua groups who have submitted may articulate their specific interests to the proposal area.

6. Specific Comments

6.1. This section sets out my comments regarding specific matters in the CEA not already covered above.

Iwi Management Plans

6.2. The CEA identifies two relevant iwi management plans; the Patuharakeke Hapu Environmental Management Plan 2014 and the Te Iwi o Ngatiwai Iwi Environmental Policy Document 2015. The conclusions of the CEA on page 21, state that the application is overall, inconsistent with the iwi management plans. Whilst this may be the case, it does not appear to be supported by a thorough assessment of each provision in the plans. It could well be that some provisions are not relevant, some are inconsistent, some are consistent, and others are uncertain. This type of assessment will be useful in identifying potential enhancement measures and those which may avoid, mitigation or remedy effects.

6.3. For the purposes of a notification for requirement at Waikeria Prison the following assessment included in the cultural impact assessment was used by Antoine Coffin for assessing each provision of three iwi management plans. A similar approach would be appropriate for this application before making a conclusion that the application is inconsistent with the iwi management plans. Furthermore, there should be a recommended response or action that would address the issue or opportunity.

Extracted from Cultural Impact Assessment for Waikeria Prison, 2017⁶

Subject	Ref	Page	Issue, Opportunity or statement	Current Response / Action	Future/Proposed Response / Action
Interconnectedness	M22	57	Collaborate with RCT on identifying internship and training program opportunities at all levels	Meeting with RCT on 7 December 2016	Keep RCT updated with NoR and Regional Consent progress (ongoing communication) Work with RCT to identify opportunities for RCT to be involved in training programs that are run for prisoners

Key Concerns

6.4. Much of the CEA is devoted to articulating the concerns of tangata whenua. Throughout the CEA relevant quotes from the hui/meetings are added to emphasise the importance and sincerity of their concerns. Many of the concerns identified in the CEA are broad, general and contextual. The CEA in my view blurs the line between concerns and effects. This does not appear to be intentional, however, it makes addressing both concerns and effects in the application challenging for the applicant. One example of a challenge

⁶ Coffin, Antoine. Cultural Impact Assessment of the Proposed Waikeria Prison Expansion, March 2017, Pg 75.

includes deploying experts to ascertain the scope of 'effects' related to the activity and the measures that may avoid, mitigate or remedy those effects. Broader concerns may be related to other users, historic activities and wider geographic matters and so are missed or not addressed by the experts.

6.5. These concerns include:

- 6.5.1. Maintaining tangata whenua relationships with Whangarei Te Rerenga Paraoa;
- 6.5.2. Providing for meaningful participation in decision-making;
- 6.5.3. The protection and enhancement of mahinga kai (pipi, tuangi);
- 6.5.4. Concern for birds, fish, shellfish, marine mammals and the ecosystem;
- 6.5.5. Issues related to major infrastructure and industrialisation of the harbour and land-use past, present and future;
- 6.5.6. Risk of oil spill;
- 6.5.7. Climatic changes;
- 6.5.8. Protecting the potential for realising commercial fishing/aquaculture;
- 6.5.9. Economic benefits of the refinery among local Maori; and
- 6.5.10. Protection and enhancement of the harbour generally.

6.6. An exercise should be undertaken to correlate the specific responses of the application to the above concerns and should be the topic of ongoing discussions with tangata whenua. Responses to concerns could form part of evidence at the hearing, a package of environmental and cultural enhancement programmes and matters that can be raised with appropriate statutory agencies.

Key Effects

6.7. The CEA has identified a small number of environmental, social/economic and cultural effects. These are:

- Kaitiakitanga - The enduring, systematic and systemic loss of knowledge that has occurred post colonisation and may continue to be affected as a result of the proposal, through loss of access to sites and mahinga kai, loss of original placenames, reduced abundance of mahinga kai⁷

⁷ CEA. pp21-22

- Treaty of Waitangi - The potential impact on tangata whenua customary and commercial rights and interests now and in the future⁸
- Ecological – the potential effects of marine mammal collision and entanglement with dredging operation⁹
- Ecological – cumulative significant effects of turbidity, lighting and noise effects of dredging on Mair Bank and Reotahi Bay shorebirds¹⁰
- Ecological – loss of benthic Fauna within dredging footprint¹¹
- Coastal processes – secondary effects of shoreline erosion as a result of higher intensity storm events and surges (caused by climate change)¹²
- Oil spill risk¹³
- Climate change – cumulative effects of climate change on coastal processes, geomorphology, and extreme weather events¹⁴
- Mauri – removal of sand out of the system, loss of benthic community, sediment plumes, any impacts on whales¹⁵
- Mana – constraints on participation in decision-making, past, present and future¹⁶
- Socio-economic effects – noise, loss of amenity, industrialisation of harbour¹⁷
- Socio-economic effects – no positive effects for local community, future remediation costs, dredge footprint and loss of pipi and cockle, constraints on commercial and future aquaculture opportunities.¹⁸

6.8. My area of expertise is in the assessment of cultural effects. I turn my attention to those matters of a Maori cultural nature; Kaitiakitanga, Treaty of Waitangi, Mauri, and Mana.

6.9. As noted above under Key Effects, the CEA identifies a loss of knowledge may continue as a result of the loss of access to sites and mahinga kai, loss of original placenames, reduced abundance of mahinga kai. The CEA does not spell out the extent to which this may occur and the length of time (if relevant) this would apply. It is presumed that there may be some restrictions of access during dredging operations and if dredging occurs on pipi and cockle beds there would a loss of abundance at those places. Dredging is a temporary activity and only applicable to the area being dredged. It is unclear if tangata whenua access the areas to be dredged, the frequency of visits and to what degree access and loss of mahinga kai may be experienced. This would assist in determining the degree of effects on Kaitiakitanga. On the face of it this has the potential to be a minor to moderate effect of a temporary nature. Kaitiakitanga can be enhanced by ensuring tangata whenua appointed representatives are provided with a role to participate in the

⁸ CEA. pp22-24

⁹ CEA. p24

¹⁰ CEA. p26

¹¹ CEA. pp27-28

¹² CEA. pp28-29

¹³ CEA. pp29-30

¹⁴ CEA. p30

¹⁵ CEA. p31

¹⁶ CEA. p32

¹⁷ CEA. p32-33

¹⁸ CEA. p33-35

implementation of consents, are resourced to do so, and having a role in projects and activities that will enhance environmental outcomes.

6.10. The CEA identifies an effect on Treaty rights, viz a viz, commercial rights and interests now and in the future. The CEA has identified tangata whenua rights in fishing quota as well as aquaculture space as an issue. Fishing quota can be sought from a fishing management area that includes a very large area of the coastline. Inshore and deepsea fish quota is unlikely to be affected. The CEA suggests there may be local impacts on commercial species of shellfish, crabs, crayfish and other crustaceans that are commercially harvested within the dredging and spoil area. The effects on crabs, scallops, and other mobile species are wide spread and distributed. Dredging activities would physically remove existing benthic communities resulting short-term displacement for between 6-24 months before recolonising those areas. The Treaty of Waitangi Settlement Aquaculture rights of Mandated Iwi Organisations can be realised for new aquaculture space. These Aquaculture rights are likely to be exercised in large scale operations land-based or at coastal locations some distance from Port and shipping facilities and recreational boating activities. There do not appear to be any identified at the present time. These potential effects are regarded as less than minor.

6.11. The CEA identified effects as a result of the removal of sand out of the system, loss of benthic community, sediment plumes, any impacts on whales. These are described as effects on mauri. The matter of mauri is a rather personal and perceptive concept. It means many things to many people. Specific species and groups of those species can be a representation of the mauri of a place, their presence giving sense to the life essence of a place. Mauri can also be considered an overall value of a place and its resources, its life-giving qualities as a whole rather than its constituent parts. The concept that mauri is tapu, and tapu is mauri denotes the spiritual or unseen forces of mauri. These mauri can be attributed to the Atua - realms of the environment and imbued in physical objects. Whatever the view of mauri is in this case, it is one of the most important principles to Maori. I am of the opinion that the matter of mauri could be explored and interrogated more in the context of the CEA. For that reason, I believe the CEA is not determinative on discussion and assessment of effects on mauri as a result of the proposal. The matters of removing sand out of the system, loss of benthic community, sediment plumes and any impact on whales as they relate to mauri are important and more discussion in the CEA may better support the conclusions.

6.12. The CEA identified effects on Mana through constraints on participation in decision-making, past, present and future. Refining NZ has actively sought to include tangata whenua throughout scoping and refining its proposal and in doing so has exceeded the requirements of the current RMA legislation. The applicant has agreed to and resourced the production of cultural and technical inputs into the application process, however, the applicant has no mandate or control over past and future legislative provisions on Maori

input into the decision-making process. The engagement undertaken to date with tangata whenua is in my opinion appropriate, meaningful and conducted in good faith.

6.13. I am of the view that the social, economic, and environmental effects have been addressed in the technical reports for the most part. Some of these 'effects' could be regarded as concerns or issues. Nonetheless, an exercise should be undertaken to correlate the specific responses in technical reports and the AEE to the effects identified in the CEA.

Independent Technical Review

6.14. As already mentioned an Independent Technical Review was undertaken by Alison Newell (Ecologist) and Dr Peter Nuttall of University of South Pacific. This was recommended by the tangata whenua working party due to the large number and complexity of background and AEE reports. The independent review is attached to the CEA. The CEA draws on many of the comments of the independent review and includes these as concerns and effects in the body of the report.

6.15. The Newell and Nuttall independent technical review report identifies five areas of concern. These are:

- The economic analysis provided by NZIER, including the overall viability of the refinery in the long term.
- Related to this is the relationship of the proposed application within the context of climate change and New Zealand's current and future policy over the lifetime of the consents sought.
- **The overall health of the harbour and the role of Refining NZ as a key stakeholder.**
- **The practical implementation of the responsibility of kaitiakitanga by Patuharakeke in relation to the harbour.**
- The potential impacts of dredging, including disposal of dredgings.¹⁹

6.16. Refining NZ responded to the technical review in a comprehensive and detailed manner in April 2017. The response acknowledged the concern that hapu and iwi have for the overall health of the harbour and supported the important role of Tangata Whenua in the harbour and surrounds.²⁰ The Refining NZ response sets out the undertaking and efforts to keep Tangata Whenua informed, involved and resourced opportunities to input. At page 9, Refining NZ confirms their willingness to discuss practical and technical application of Kaitiakitanga.

¹⁹ Alison Newell and Dr Peter Nuttall. Hui Outcomes and Technical Review of Refining NZ Documents Summary for Crude Shipping project. April 2017. p1

²⁰ Refining NZ response to "Hui Outcomes and Technical Review of Refining NZ Documents Summary for Crude Shipping Project", April 2017. pp8-9

Conclusions / Recommendations

6.17. The conclusions appear to signal strong opposition to the proposal and a decision sought to decline the application. This conclusion is made in the absence of any proposed or suggested mitigation measures. For example, on page 29, a quote from a meeting held on 29 May 2017;

Does the project allow us to provide for the cultural and spiritual protection of the harbour?: the resounding answer was "no"...

...These cumulative effects span the past, present and future and are considered significant adverse effects that cannot be mitigated. As such they should be avoided.

6.18. The conclusions appear to be absolute but often do not have facts or evidence to support an actual effect. This opposition may reflect either an iwi consensus view of the application at the time of the hui, which favours the loudest and most ardent opposition, or a holding position until the next phase of the process; this being, submission and pre-hearing. The recommendations on page 36 relating to ongoing dialogue and working together would support this view that mitigation and agreements are the topic of the next phase of engagement.

6.19. The recommendations on page 36 of the CEA appear on the face of it to be out of step with the strong opposition in the conclusions of the report. The recommendations request that the report be received and considered. The CEA goes on to recommend ongoing dialogue on all aspects of the application, including face to face reports to marae communities, and regardless of application work together on restoration of the mauri of Whangarei Te Rerenga Paraoa. It is unclear whether, as I have suggested above, this is a holding position or a reflection of different voices in the CEA.

7. Potential measures to avoid, mitigate or remedy effects

7.1. This section sets out the types of measures that could be employed in this project.

7.2. As mentioned earlier, the CEA does not provide any measures to mitigate or remedy effects, rather states that the proposal should be avoided in its entirety. It is understood that there may be an appetite among tangata whenua to discuss and establish a range of measures that could enhance the environment, provide positive effects and give tangata whenua confidence that the project could be acceptable.

7.3. In New Zealand there is now a range of common measures that are used to recognise and provide for relevant Part 2 matters to Maori and address issues of concern to Maori. Notwithstanding a proposal will be modified during its development in consultation with tangata whenua to respond to concerns, the following is a supplementary list of methods. These include the establishment of management and technical forums, investment in environmental enhancement programmes and projects (offset mitigation), research on

understanding natural processes and consequences/effects of development, implementation and monitoring plans that include tangata whenua participation and input, and periodic reviews of latest technology and techniques.

7.4. I have included below a series of examples and included thoughts on whether these may be applicable to the Refining NZ Crude Shipping Project.

7.4.1. A **Kaitiaki/tangata whenua forum** is a matter that has been raised by tangata whenua in the CEA and during consultation. It is understood that there may be at least one existing Kaitiaki Group conducting projects or programmes of enhancing the general well-being of the harbour environment and undertaking or commissioning of research.²¹ A kaitiaki group of some form to provide advice on matters of tikanga, have input into various management plans and the implementation of conditions of consent, recommending environmental enhancement projects would go some way to ensuring meaningful participation of iwi in the outcomes of decision-making including an ongoing role in projects that enhance the natural harbour environment. In projects where there are a number of tangata whenua groups, a Kaitiaki Forum has an advantage of providing for a one-stop place to engage for a specific reason. It is suggested that a Kaitiaki Forum would be appropriate for the Crude Shipping Project to serve as a conduit for information relating to the monitoring of the consents, a forum to seek advice on matters of tikanga and kawa, and facilitate/oversee enhancement projects. The purpose and role of the Kaitiaki Group should be developed, perhaps as part of a draft terms of reference. The representatives of the group should be progressed once the purpose and role have been confirmed but it is likely that an extension of the existing tangata whenua working group would be a good place to start.

7.4.2. **Technical advisory groups** exist for a range of wastewater treatment projects and large infrastructure projects around the country and usually have roles and responsibilities related to the pre-application consideration of options and alternatives, and then sometimes post-application implementation of conditions related to preparing management plans and reviewing technical information. Some technical advisory groups have matauranga Maori expertise and provide for a role of tangata whenua in the selection of technical people. The technical expertise is related to the matters of relevance to the consent. For activities in a coastal environment such as Whangarei Harbour with high levels of interest of tangata whenua I would expect a technical advisory group to include a Matauranga Maori expert. A technical advisory group could provide independent technical support for a Kaitiaki Forum and/or the consent holder in the implementation of consents. I do not have a strong view on whether there should be a technical advisory group with Matauranga Maori expertise, post-consent.

²¹ Whangarei Harbour Kaitiaki Roopu mentioned at 5.2.7 of the CVA

My recommendation is that suitable expertise can be sought as and when required during implementation of the consent.

7.4.3. **Programmes and/or projects** that enhance the environment and the relationship of tangata whenua with sites and water can address or offset effects of an activity. Some projects being implemented elsewhere in New Zealand include seeding shellfish, riparian planting, weed and pest control, assisting breeding of key species, repairing existing or construction of new access, establishment of artworks and memorials, oral research projects that focus on tikanga and kawa, sand replenishment, interpretation (signage, displays, banners), etc. These projects are normally identified by tangata whenua and agreed to as part of the development of the application or during the submission and hearing process. Leaving the provision of programmes and projects to the imposition of a hearing panel is not considered good practise. As already mentioned the CEA does not identify appropriate enhancement programmes, however, it would be suggested that any such programmes should have an obvious and direct relationship with the Whangarei harbour and immediate surrounds. Refining NZ has some experience in this area as over the last 18 months Patuharakeke Te Iwi Trust Board members have been actively engaged in environmental monitoring at the refinery, relating to the restoration of a sand dune on the refinery boundary, and dredging activity at a dolphin (mooring aid) adjacent to the refinery jetties. The applicant has also sought advice on appropriate mitigation measures and ecological enhancement activities. These include support of existing catchment management projects, establishing a Stream Care Group, fencing native bird habitat at Blacksmith's Creek, interpretation, riparian planting, seagrass planting, doubling penguin nest boxes numbers and the like.

7.4.4. **Research** is often recommended as a mitigation measure but seldom delivers or responds to the original concern raised by tangata whenua. Large sums of money and time have been spent on desktop research and modelling that delivers little in increasing and sharing knowledge, answering community questions and is often self-perpetuating e.g. research that recommends more research. For this application, it is suggested that local community participatory science research will be appropriate where building capability and capacity locally among community is a priority.

7.4.5. **Monitoring plan(s)** – Many projects around New Zealand involve tangata whenua in the preparation of monitoring plans, overseeing their implementation and in some instances conducting the monitoring. In the case of the MV Rena wreck, Maori expert divers were used to monitor the health of the wreck and Astrolabe Reef. In the case of the Auckland Harbour channel dredging an Iwi representative was on board the barge during daylight hours overseeing the digger and application of GIS tracking. In this project I would recommend that tangata whenua be given an opportunity to have input into monitoring plans and potentially have a role in their implementation.

7.4.6. **Periodic review** of new technology and techniques. Some consent conditions, particularly those related to wastewater treatment have review clauses for periodic review of international literature on technology and process advances. It is not clear what may be applicable in this project but there may be some merit in investigating this further. For example, this could apply to the on-going maintenance dredging.

7.4.7. **Environmental enhancement packages and mitigation.** Various applications around New Zealand have involved the implementation of mitigation measures and enhancement packages. Each project has its own merits, capital and operational costs and benefits, varying degrees of tangata whenua involvement, priority and interest, and the relationships between applicant and tangata whenua can have a vastly different influence on mitigation. In my experience, there is some difficulty in providing a consistent scale of costs that might apply mitigation packages from one project to another. In saying that, an appropriate level of mitigation and enhancement packages should be consistent to the scale of the projects and its effects. In this instance, the Refining NZ Crude Shipping project should have some measure of mitigation/enhancement package that is of a scale that has a measurable and direct positive benefit and is reasonable and in scale to the proposal. The package could comprise:

- The establishment and maintenance of a Kaitiaki/tangata whenua forum;
- The establishment of a technical advisory group;
- local community participatory science research projects;
- risk mitigation activities;
- environmental enhancement projects that could include seeding shellfish, riparian planting, repairing existing or construction of new access, establishment of artworks and memorials, oral research projects that focus on tikanga and kawa, sand replenishment, interpretation;
- ecological mitigation projects; and/or
- programmes identified in discussions with tangata whenua.

8. Proposed Mitigation Package

8.1. RNZ has provided by letter to an offer of mitigation measures to Patuharakeke Te Iwi Trust Board and Ngati Wai Trust Board to consider and respond to.

8.2. This letter follows some work undertaken by RNZ to identify and respond to the concerns and effects identified in the draft and final CEA. As mentioned earlier Te Patuharakeke has a formal relationship with RNZ through a close relationship to the RNZ Refinery site. Patuharakeke Te Iwi Trust Board representatives have facilitated engagement with tangata whenua groups and led the preparation of the CEA. The letter sets out a proposal to provide a suite of measures to mitigate effects of the dredging proposals. These measures are set out in two parts, the first being a programme of specific measures and

the second, a two-tier participation/management framework to implement the measures and foster the relationship between RNZ and tangata whenua.

8.3. The first suite of measures includes:

- Resourcing of ecological enhancement projects
- Protection works for the Mair bank
- Nesting boxes for Korora (blue penguin) and Oi (grey faced petrel)
- Marine mammal monitoring
- A noise management plan
- A marine mammal management plan
- A vessel lighting audit
- An accidental discovery protocol
- A dredging management plan.

8.4. The second suite of measures include:

- Establishing and funding a Kaitiaki Forum to identify ecological enhancement projects, have input into the above management plans and other measures
- Establishing a Technical Advisory Group with relevant expertise including cultural to support the Kaitiaki Forum and consent Holder

8.5. The peer reviewer understands that the package of proposed measures has been provided to key tangata whenua groups, and discussions are ongoing as to the appropriateness and detail of the mitigation package. A response letter has been received from Ngati Wai Trust (dated 4 October). The letter sets out their general concerns and wish for Refining NZ to explore ways to address cultural effects and involvement and development of those groups with mana moana in the area. No response has been received to date from Te Patuharakeke Trust Board.

9. Overview

9.1. The final CEA and accompanying CVA is a comprehensive piece of work undertaken by Te Patuharakeke that sets out tangata whenua values and relationships with Te Whangarei Rerenga Paraoa, as well as concerns and effects of the proposal on tangata whenua. The CEA and CVA preparation has been facilitated by Patuharakeke Te Iwi Trust Board in a way that suits tangata whenua. It is understood that discussions between Refining NZ and tangata whenua groups continues and will consider a range of mitigation measures that may be acceptable to tangata whenua.

9.2. I have considered the cultural effects and concerns of tangata whenua that have been raised in the CEA as these relate to the Refining NZ Crude Shipping Project resource consent applications. I have also considered how the proposal sits with Part 2 of the RMA.

- 9.3. I am of the opinion that measures can be developed in consultation and agreed with tangata whenua that will ensure that any adverse cultural effects (including cumulative cultural effects) are appropriately avoided, remedied and mitigated. I have set out in section 7 of this review the types of measures that may be appropriate and a preliminary package of measures has been offered by RNZ.
- 9.4. The cultural well-being of tangata whenua as it relates to Whangarei Te Rerenga Paraoa has been well articulated in the cultural values assessment and emphasised during consultation. The application has been developed to minimise as far as possible the dredging requirements balance this with the needs of foreseeable generations. A range of measures can be applied to avoid, remedy and mitigate any adverse effects on the environment.
- 9.5. The application affects an important part of the ancestral landscape, water and sites, namely, Whangarei Te Rerenga Paraoa. These important matters are identified and understood by the applicant through consultation, the CVA, CEA and independent technical review. The applicant has taken time and resources to respond in a proactive and constructive manner to recognise and provide for these matters.
- 9.6. The application does not affect any known or identified wāhi tapu as such, however, important mahinga kai or harvesting areas are potentially affected. The concern of tangata whenua is acknowledged and further work needs to be undertaken to understand and respond accordingly to the many influences on mahinga kai.
- 9.7. The applicant is aware of aquaculture and fisheries rights held by Iwi, and that in the future there may be further customary rights and interests that may be protected in the coastal area. I understand that the applicant will comply with necessary statutory requirements that are forthcoming once those rights have been confirmed.
- 9.8. The proposal can give particular regard to kaitiakitanga by continuing to engage with tangata whenua representation to ensure Kaitiaki responsibilities are being discharged appropriately. The proposal can include meaningful participation of tangata whenua in the implementation of the project and the measures that I have set out at section 8. The function and form of the group is still to be explored, confirmed and implemented.
- 9.9. I am of the opinion that the relevant principles of the Treaty of Waitangi in this project are; the duty to act in good faith, duty to make informed decision through consultation and the principle of mutual benefit. The proposal has involved consultation with tangata whenua since 2013, the development of the proposal as I understand has been modified as a result of that consultation. Considerable work has been commissioned to respond to matters raised by tangata whenua and there has been a two-way flow of information. The principle of mutual benefit is yet to be realised but could be through the application of a number of methods and measures that will ensure tangata whenua participation in

the development of, oversight, and implementation of measures that will benefit the harbour as a whole.

9.10. The applicant has commissioned a cultural values assessment early in the development of the applications, has conducted consultation with a broad number of tangata whenua groups over several years and in a way recommended by tangata whenua. A cultural effects assessment has been commissioned and it reflects both the journey of engagement and the views of tangata whenua. This provides a good framework for both tangata whenua and the applicant RNZ to move forward and have further discussions regarding a range of measures that would make the proposal acceptable. I have concluded that the cultural effects and concerns can be appropriately and effectively addressed if the parties continue to work proactively together, and as such I am confident that the relevant Part 2 matters can be accounted for.

9.11. Whilst the final CEA categorically confirms the opposition of tangata whenua to the application, the language of the recommendations in my opinion seeks to find an 'acceptable' mitigation and enhancement package. This is consistent with the most recent discussions between RNZ and tangata whenua that are focussing more on mitigation measures.

10. Further work that could be done

10.1. In New Zealand there is now a range of common measures that are used to recognise and provide for relevant Part 2 matters to Maori and address issues of concern to Maori. The proposal now requires effort in developing an appropriate suite of measures that could address concerns and avoid, mitigate and remedy effects. These measures could include the establishment of management and technical forums, investment in environmental enhancement programmes and projects (offset mitigation), research on understanding natural processes and consequences/effects of development, implementation and monitoring plans that include tangata whenua participation and input, and periodic reviews of latest technology and techniques.

10.2. There is an opportunity to formalise the working relationship with the establishment of a kaitiaki group made up of appropriate representatives and technical expertise. The development of draft terms of reference may be a place to start as well as commissioning some work identifying and assessing the feasibility of using existing forums or committees.

10.3. I have earlier in this review recommended an exercise that correlates technical reports and AEE to the range of 'concerns' and 'effects' identified in the CEA and technical review. This will be important in identifying meaningful measures that can address effects of the proposal but also wider environmental and cultural enhancement.

- 10.4. The adoption or endorsement of the CEA by the various tangata whenua groups is an important milestone for the application. This both confirms the process of engagement undertaken by the applicant and articulates the matters of concern and completes a long process started in 2013. The CEA conclusions strongly oppose the application. Whilst this is not unusual of cultural impact assessments prepared by tangata whenua in NZ, it can seem quite daunting and off-putting for applicants in the context of long and intense engagement. There is a window of opportunity now for the applicant and tangata whenua to engage to forge a pathway forward.
- 10.5. The CEA does not presently include a narrative of previous responses to harbour developments. This might be helpful to illustrate the participation (or lack of), in decision-making regarding Whangarei Te Rerenga Paraoa. This could be provided as part of evidence to the hearing.
- 10.6. There are some 5 lists of tangata whenua groups throughout the CEA and its appendices. It would be helpful to have a table of tangata whenua that sets out the; name of the tangata whenua group; the representative body(s) for that group; the key representatives; the nature of their relationship with the application area; and whether the representative body/ reps have been involved in the engagement process and CEA, and if not, reasons why. This could be prepared as part of evidence to the hearing of the proposal.
- 10.7. An assessment of the provisions of the two iwi management plans could be undertaken either as part of evidence presented at the hearing for the purposes of informing appropriate mitigation and remedial measures.
- 10.8. The concept of mauri has not in my opinion received much discussion within the context of the CEA. Mauri is a very important Maori principle and should be afforded some further consideration to assist interpreting the potential effects on mauri and how they may be avoided, mitigated or remediated.
- 10.9. The conclusions of the CEA reflect a strong opposition to the proposal whilst the recommendations suggest that matters can be worked through. The subtleties of opposition, neutrality and support are not canvassed in the CEA. Clarification should be sought regarding the appetite of tangata whenua to work with RNZ to identify appropriate package of environmental enhancement programmes and mitigation measures.

END