

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA WHANGANUI Ā  
TARA ROHE

CIV-2017-485-286  
CIV-2017-485-281

IN THE MATTER OF

the Marine and Coastal Area  
(Takutai Moana) Act 2011 (the Act)

AND IN THE MATTER OF

an application by Patuharakeke Te  
Iwi Trust Board for an order seeking  
Customary Marine Title and  
Protected Customary Rights

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AFFIDAVIT OF JULIANE KATHRYN CHETHAM IN SUPPORT OF  
APPLICATIONS BY PATUHARAKEKE TE IWI TRUST BOARD

*Dated this 21<sup>st</sup> day of August 2023*

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**MAY IT PLEASE THE COURT**

I, **JULIANE KATHRYN CHETHAM**, of Whangārei, affirm the following:

**INTRODUCTION, QUALIFICATIONS AND EXPERIENCE**

Ko Manaia te Maunga  
Ko Whangārei Terenga Paraoa te Moana  
Ko Pukekauri te Awa  
Ko Takahiwai te Whenua  
Ko Takahiwai te Marae  
Ko Patuharakeke te hapū  
Ko Ngāpuhi me Ngātiwai ōku iwi  
Ko Juliane Chetham tōku ingoa

1. My name is Juliane Kathryn Chetham. I am a descendant of Patuharakeke and was raised at Rauiri (Blacksmiths Creek) on the shores of the Whangārei Harbour.
2. From 2010 I served more than a decade as a Trustee on Patuharakeke Te Iwi Trust Board (“the Trust” or “PTB”), holding the resource management and customary fisheries portfolios. For the last few years, I have held the role of Co-convenor of PTB’s Pou Taiao (Resource Management Unit).
3. I provided evidence to the Waitangi Tribunal – Te Paparahi o Te Raki (Northland) Inquiry (WAI 1040, WAI 745, WAI 1308) on behalf of the Trust in October 2013 and February 2016. The focus of my evidence was on Patuharakeke’s natural resources and environment, including Whangārei Terenga Paraoa - the harbour, waterways, ancestral lands and other sites of significance to Patuharakeke; and our participation in local and central government processes.
4. I hold a Bachelor of Science degree majoring in Geography and Marine Biology and a Master of Science degree (with First Class Honours) specialising in Coastal Management, both from the University of Auckland. My Master’s thesis addressed Kaitiakitanga and the Resource Management Act, utilising a case study of the consent for the establishment of the Northland Port Corporation Timber Port (now known as Northport) in the Whangārei Harbour.
5. I have worked both in the field of environmental consultancy and in resource consent processing at the district council level. I spent several years as the Manager of the Environmental Arm of an Iwi Settlement Authority and for the last decade I have been running my own consultancy, Chetham Consulting



Limited, specialising in Māori resource management matters and contracting to various iwi, hapū and central and local government agencies.

6. In my professional and trustee roles my experience has included preparation of cultural impact assessments and advice on tangata whenua engagement, preparation of cultural authority agreements and triggers documents, preparation of evidence for the Waitangi Tribunal, preparation of reports on cultural landscapes and sites of significance to tangata whenua, preparation of submissions and evidence on district and regional plan and policy development and resource consents, presentation of evidence at district and regional council hearings, development of cultural and mātauranga Māori monitoring frameworks, development of hapū/iwi management plans, customary fisheries policy, shellfish, freshwater and biosecurity monitoring programmes.
7. I am an accredited Hearings Commissioner. I have been a member of Auckland Council's independent hearing commissioner pool since December 2015, and have sat on hearing panels for Auckland Council, Queenstown Lakes District Council's District Council, and the Environmental Protection Authority.
8. I have formerly held advisory roles on the following regional and national groups:
  - a) Māori Advisor to Whangārei District Council Planning Committee (2016)
  - b) Kauri Dieback National Programme's Tangata Whenua Roopu Executive Committee (2009-2020)
  - c) Te Huinga/ Te Karearea Hapū of Whangārei Advisory Committee to WDC (2016-2021)
  - d) Biosecurity 2025 Māori Focus Group
  - e) NZ Biological Heritage National Science Challenge Stage 1: Myrtle Rust and Kauri Dieback - Rapid Implementation Group and Scoping Group
  - f) Whangārei Harbour Catchment Advisory Group (2013-2021)
9. I hold current advisory roles on the following regional and national groups:
  - a) Te Tira Whakamataki Māori Biosecurity Network
  - b) Te Tai Tokerau Māori and Council ("TTMAC") Working Party (Northland Regional Council)
  - c) EPA Member Māori National Network (Te Herenga)
  - d) NZ Biological Heritage National Science - Nga Rakau Taketake Research Programme - Māori co-lead

### **Code of conduct**

10. I confirm that the evidence that I present is based on my qualifications and experience, and within my area of expertise. I am not aware of any material facts which might alter or detract from the opinions I express. If I rely on the evidence or opinions of another, my evidence will acknowledge that.
11. I confirm that I am authorised by the Trust to present this evidence.

### **Purpose of this evidence**

12. The purpose of this affidavit is to support PTB's applications for CMT and PCR on behalf of Patuharakeke hapū and whānau.

### **Whanaungatanga**

13. Outside of our exclusive customary rohe at Takahiwai, Patuharakeke acknowledge the interrelatedness and shared interests of our whānanga hapū and iwi in Whangārei Terenga Paraoa as evidenced in our Traditional Report.
14. Myself, Trustees, Kaumatua and others on behalf of Patuharakeke have attended a number of hui and online meetings with other claimants including Te Parawhau, Ngātiwai Trust Board, ("NTB"), Kare Rata (on behalf of Ngā Hapū o Ngāti Wai).
15. We have discussed collective strategies and collaboration and are open to working together with our relations. PTB hosted two collective hui in April and May of this year in which we initiated discussions on possible representation and role for a kāhui kaumatua/taumata to support this application/hearing process and proposed development of a whanaungatanga accord/treaty to further guide collaboration. Te Parawhau and others have indicated a similar whanaungatanga based whakaaro.
16. PTB and NTB have also committed to developing an agreement that sets out how we will work together and tautoko each other during this MACA process through a tikanga based process. This included co-development of a joint kaumatua affidavit, which is being filed alongside this affidavit. NTB have also made a clear position statement in support of those hapū of Ngātiwai that we strongly support. We understand that Te Rūnanga o Ngāti Whatua have made similar assurances to Te Parawhau and other claimants and we wholeheartedly agree that any future customary title should be held by hapū, at the hapū level (and/or whanau).

### Scope of evidence

17. My evidence is in six parts.

- Part One: Background
- Part Two: Impacts on Whangārei Terenga Paraoa
- Part Three: Engagement in RMA Policy and Planning processes
- Part Four: Patuharakeke's rohe and role in customary fisheries management.
- Part Five: Te Pou Taiao operations; research and projects
- Part Six: Conclusions Te Ao Māori/ ki uta ki tai.

18. For the most part, my evidence is sourced from the existing evidence of Patuharakeke whanau such as from the Northland Port Corporation Hearing 1997 and a number of published and unpublished submissions, cultural impact assessments, plans and strategies produced by Patuharakeke Te Iwi Trust Board over the last decade. The remainder is pulled from personal experience as a member of the hapū who grew up on the shores of the Whangārei Harbour and who has spent more than the past decade coordinating the resource management/environmental portfolios of PTB.

### PART ONE: BACKGROUND

#### *Patuharakeke's rohe*

19. Our Patuharakeke Traditional Report attached to my joint affidavit with Harry Maki Midwood provides a description of our rohe at Wahanga Tuarau and is depicted in maps 3 and 4 and I do not repeat that here.

#### *PTB*

20. The Trust has been in existence since 1990. The Trust Deed sets out a number of objects and purposes including such matters as:

- a) Seeking opportunities for and encouraging training, work experience and creation of employment for Patuharakeke people;
- b) Promoting and make provision for educational and economic advancement including the promotion and maintenance of the health, education and spiritual wellbeing of Patuharakeke people;
- c) To protect and utilise all land, water and sea-based resources of Patuharakeke Te Iwi.

21. As evidenced in our historical and traditional reports, Patuharakeke have a long history of advocacy - to protect and enhance our rights and our responsibilities to our customary resources.
22. The Trust has established a number of sub committees that deal with the various matters as set out above, such as the Pou Taiao/Resource Management Unit and Rohe Moana Sub Committee which is mandated to act on the Trust's behalf on all matters pertaining to customary fisheries.
23. Over the last 30 years, Patuharakeke has become adept at utilising the statutory/legislative mechanisms (however incomplete, lacking or non treaty compliant they may be) to our advantage, or to support our kaitiaki efforts, or what I often refer to as "contemporary kaitiakitanga."
24. For reasons illustrated in our SOC to the Waitangi Tribunal<sup>1</sup> and in evidence Patuharakeke, and indeed the tribes of Whangārei generally, have been left virtually landless. The Crown conceded this fact as noted in the Stage 2, Te Paparahi o te Raki, Waitangi Tribunal Report 2023.<sup>2</sup> Regardless, as per the tikanga and mātauranga passed down from our tūpuna, we have collectively as hapū and whanau of Patuharakeke retained the vast majority of our whenua at Takahiwai. In those areas where exclusive use and occupancy of the whenua and adjacent moana has been disturbed due to breaches of Te Tiriti o Waitangi, Patuharakeke have been steadfast in maintaining our ahikātanga and tikanga through kaitiakitanga and other customary practices from 1840 and through to this day.
25. Furthermore, tikanga is not a fixed cultural artefact, frozen in time at some point prior to 1840.<sup>3</sup>
26. To my mind, the principles that are being upheld, such as kaitiakitanga, remain the same. The use of such terms in law (for example RMA 1991), while not entirely unproblematic, has also provided a vehicle for the ongoing protection of those values and their contemporary expression.
27. Developing our Pou Taiao unit has enabled active enagement in multiple aspects of contemporary practice of kaitiakitanga. We continue to draw on the support of our kaumatua, pukenga, whanau whanui to guide us in our operations and research, continually seeking ways to revitalise and resume traditional customary practices and tikanga. This aids us in making informed decisions based on our own hapū initiated research and with like-minded partners, and to include tāi tamariki and kaumātua in our mahi as we strive for

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<sup>1</sup> Wai 745, #1.2(h), Wai 1308, 1.1(a), Wai 1040, #1.1.88(c), Wai 1040, #1.1.151(e), Second Amended Statement of Claim, 22 December 2015

<sup>2</sup> Waitangi Tribunal, Tino Rangatiratanga me te Kawanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part 1, 2023, p.925

<sup>3</sup> Carwyn Jones "Tikanga Māori in New Zealand Common Law" *LowTalk Issue 943* (online ed, New Zealand, 15 Sep 2020).

environmental management - ki uta ki tai as well as to influence legislation, policies and plans to increase the mauri of our Taiao.

## **PART TWO: IMPACTS ON WHANGĀREI TERENGA PARAOA**

28. I have commented extensively in previous fora including Te Paparahi o Te Raki inquiry before the Waitangi Tribunal (in 2013 and 2016) and as outlined in our HEMP providing an overview of the myriad of environmental pressures facing Whangārei Terenga Paraoa and the resultant cultural and socio-economic impacts on Patuharakeke. These pressures include such matters as industrial development, dredging and reclamation, sedimentation, runoff and pollution, biosecurity incursions and overharvesting.
29. These changes to our harbour and takutai moana have been borne out in the korero from our pukenga kaumatua (for example the affidavits of Grant Pirihi and Gilbert Paki) and those that participated in interviews informing our Traditional Report. We lament the ongoing deterioration of the health of our water systems and in particular, the impact that this is having on our kaimoana and mahinga mātaītai. This situation is nothing new, and over recent decades the hapū has been witness to the continual deterioration of our ecosystems and the life they support.

### *Whangārei Terenga Paraoa*

30. The status of our food basket has become critical. Our once pristine waterways are clogged and suffocated by the silt of uninterrupted urban and rural development with their associated nutrient, pesticide, herbicide and industrial pollutants.

### *Sedimentation/Pollution*

31. Whangārei Terenga Paraoa is recognized as a nationally significant ecosystem, serving as habitat for migratory birds and a nursery for species such as snapper and trevally. Aerial photography records support our parents and grandparents' reflections that in the 1940's seagrass beds were extensive in the harbour, particularly seaward of Papich Road, in Marsden Bay, and on large areas of Patangarahi Snake and MacDonald Banks and the Mangawhati sand flats. The approximate aerial extent of seagrass beds in 1942 was 14.34 km<sup>2</sup>.<sup>4</sup>
32. During 1966-69, a major dredging programme was undertaken to deepen the main channel and 754,000 m<sup>3</sup> of sediment was removed and pumped on to Snake Bank and the Takahiwai shoreline. Between 1958 and 1971 cement processing waste discharges from the Portland cement works were pumped

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<sup>4</sup> Reed, J., Schwarz, A., Gosai, A. & Morrison, M. *Feasibility study to investigate the replenishment/reinstatement of seagrass beds in Whangarei Harbour – Phase 1*. (NIWA Report for NRC, 2004).

into the harbour. In 1967, approximately 250,000 tonnes of sediments were discharged into Whangarei Harbour from the cement works, the most discharged in any one year.<sup>5</sup> Overall, nearly 3 million m<sup>3</sup> of sediment entered the harbour.

33. This dumping of sediment and cement fines was devastating to the health of the harbour and is attributed to the demise of the seagrass.<sup>6</sup> Along with agricultural run off this has caused the widespread encroachment of mud and mangroves displacing oyster beds and the once white sandy beaches of Takahiwai and also the Ruakākā Estuary. Pipi, kutaī, hūai, pupu and tipa were among the taonga species that were casualties of this mismanagement.
34. Sewerage discharges have also been an historic stressor on the health of the harbour and continued until very recently impacting on customary harvesting. Northland District Health Board data records that mahinga kai sites including Snake Bank and Mair Bank were closed to shellfish gathering for approximately 85 days in 2010, 94 days in 2011 and 92 days in 2012. These closures related to pollution following heavy rainfall or emergency bypass of the Whangarei Wastewater treatment plant resulting in untreated discharges entering the upper harbour. Fortunately, the treatment plant at Kioreroa has now been upgraded and the issues have largely been dealt with.

#### *Reclamation/Development*

35. If the impacts of pollution and sedimentation were not enough, huge kaimoana resources were physically destroyed through industrialisation and development at Poupouwhenua. The reclamation of seabed at Poupouwhenua for the construction of the Timber Port in 2002 resulted in the destruction of arguably the largest remaining (and readily accessible by foot) pipi bed. Abundant mussel beds in the vicinity were wiped out years earlier as a result of refinery construction activities. More recently, the Hopper Development and Marina at Marsden Cove displaced remaining Marsden Bay cockle beds.
36. The siting of these developments in our rohe has increased the likelihood of pest species arriving in ballast water and on the hulls of ships and yachts, as confirmed by the current infestation of Mediterranean fanworm and styela sea squirt at Marsden Cove Marina<sup>7</sup>. No comprehensive research into the impacts of discharges from the antifouling paints (for example Tributyl Tin/TBT) used on shipping vessels and other chemicals used to treat timber (for example Methyl Bromide) has been undertaken at Poupouwhenua.

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<sup>5</sup> Dickie, B. *Whangarei Harbour Technical Report No. 4: Soft Shore Investigations* (1984).

<sup>6</sup> Above n 4 and n 5.

<sup>7</sup> "Northland Regional Pest and Marine Pathway Management Plan 2017-2027" (10 November 2017) Northland Regional Council:

<[www.nrc.govt.nz/media/uhudlio4/northlandregionalpestandmarinepathwaymanagementplan20172027.pdf](http://www.nrc.govt.nz/media/uhudlio4/northlandregionalpestandmarinepathwaymanagementplan20172027.pdf)>.

Nonetheless, hapu members are concerned the die off of pipi at Mair Bank and the failure of stocks at Marsden Bank to recover over the last decade to potentially be attributed to contamination from either the Port or the Refinery. The consenting of an ocean outfall into Bream Bay for Ruakaka's treated wastewater presents an added threat to the future of tuatua beds in the bay and pipi at Poupouwhenua/Te Koutu.

37. The development of the deepwater port, refinery and Marsden A and B Power Stations propelled further industrial expansion, with much of the dune system along Bream Bay long being zoned and flattened for heavy industry. This has attracted the likes of Carter Holt Harvey's Laminated Veneer Lumber (LVL) plant, a solvent recycling plant that ended up dumping toxic waste<sup>8</sup> and a number of other heavy industries. The refinery site, while now transitioning from a processing facility to a terminal, sits upon a toxic legacy of hydrocarbon plume that has to be continuously pumped and contained to stop it from entering the coastal environment.<sup>9</sup>
38. It is our view that this area was never compatible with heavy industry and toxic materials and we are left considering what the future effects of locating such plant in a dynamic coastal environment might be. Natural hazard risk, erosion rates and predicted sea level rise are forcing the refinery to produce a coastal erosion strategy to protect their assets as the shoreline has now breached their perimeter fence. The magnitude of impact caused by coastal inundation of these properties is an unknown. What think likely is that they may look to further deface our coastline with sea wall structures in an attempt to hold back the tide.

#### *Northport Case Study*

39. David Armstrong's Historic report sets out the numerous Harbour Board Vesting and Empowering Acts and ensuing activities that progressively enabled increasing levels of development at Poupouwhenua from the construction of the Marsden Point Oil Refinery and ancillary jetty in the early 1960's through to the consenting of Northport in the 1990's and early 2000's. While hapū had no say in the decision to build the Refinery, by 1991 the RMA was in play and the decision-making environment for the timber port was somewhat different.
40. Patuharakeke were first approached by the then Northland Port Corporation ("NPC") in 1992 regarding the proposal. NPC commissioned Patuharakeke to undertake a cultural impact assessment of the proposal. A clear protocol for engagement was set out by Patuharakeke and later strengthened and

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<sup>8</sup> Farah Hancock "Abandoned toxic waste will take two years, \$3m to clean up" *RNZ* (online ed, New Zealand, 21 January 2021).

<sup>9</sup> Phil Pennington "Refining NZ yet to talk to government about Marsden Point's future" *RNZ* (online ed, New Zealand, 24 June 2021).

supported by Dr Margaret Mutu who was part of a Technical Review Panel set up by the Parliamentary Commissioner for the Environment at the time. This was following a request from Northland Regional Council ('NRC') to assist in the process of considering the application. However, the period leading up to the resource consent hearings in 1997 was fraught with issues, particularly around consultation, differing ideas of what constitutes consultation, and an inaccurate list of iwi and hapū to consult with. Patuharakeke and our whanaunga hapū and iwi around the harbour universally opposed the application on the grounds of environmental impacts and the loss of the takutai moana.

41. Given the history of the Crown's exercise of presumptive ownership, management and control over the harbour, in our experience, the decision to grant consent was almost a foregone conclusion. The prevailing view was always going to be that reflected by the Joint Hearing Committee.

*"The Committee accepts that Maori presence and ancestral values underpin RMA matters, but in the special circumstances of this application considers that these need to be put in the context of the wider issues of the application, the harbour, and the community....After much deliberation the Committee has reached a view that the furthest outreach of settlement in Tai Tokerau and their productive lands will receive positive benefits from the availability of the proposed port. The wood and other products that they will export through the port could, in turn, be a contributor to adverse effects on the harbour, therefore on the customary way of life of Maori people living on its shores. This is part of the paradox of the modern world."<sup>10</sup>*

42. Again, an all too familiar tale of Māori having to endure degradation of our wāhi tapu, mahinga mātaītai, associated culture and traditions, and the diminishing of the mauri of our harbour – for the greater good. The Commission stated that consideration of mitigation offers made by NPC in closing submissions had been an important element in the final decision. These offers were encapsulated in resource consent conditions 10 and 11, a scientific fund and an environmental mitigation fund (discussed further below).
43. Notwithstanding the Committee's recommendation to NRC and the Minister of Conservation to grant the various consents and restricted coastal activities, tangata whenua resisted the decision and appealed to the Environment Court albeit unsuccessfully. Construction of the port commenced in October 2000 and it opened for operations in June 2002.

#### *The Whangarei Harbour Kaitiaki Roopu*

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<sup>10</sup> Northland Regional Council, "Joint Hearing Committee Transcript", 1997 at 38.

44. The Roopu came about through a specific condition of NPC's Resource consent (condition 11). Much like the past committees referred to in our Historic and Traditional reports, representatives of Patuharakeke, Te Parawhau, Ngāti Kahū o Torongare and others were nominated for this roopu to oversee the Whangarei Harbour Health Improvement Fund ("WHHIF"). At the time, there was a genuine belief held by tangata whenua that the environmental mitigation fund would assist in building capacity as kaitiaki and promoting the participation of tangata whenua in the management of the harbour.
45. The general view of mana whenua following close to two decades of working with the consent holder and NRC to attempt to allocate this fund is that the mitigation offered by the fund hasn't come close to compensating for the loss and degradation inflicted upon the harbour and upon mana whenua, mana moana. While some inroads have been made to lift hapū capacity and capability through use of the fund, issues including the administration of the fund, perceived influence of the funder and dynamics within the make-up of the kaitiaki roopu have caused challenges. Ultimately, the vast majority of funding went to Crown Research Agencies, limiting the ability for tangata whenua to build capacity or greater understanding of the harbour ecology, the methods necessary to mitigate port reclamation's impact and develop and locate appropriate and important knowledge in our rohe.
46. While often burdensome for a voluntary charitable organisation to participate in multiple such groups, PTB continue to represent our people in these spaces, upholding ahikātanga and kaitiakitanga as our forebears did. Committees we have or continue to participate in include, the Whangārei Harbour Catchment Group, Whangarei Harbour Marine Reserves Committee, Mid Northern Customary Fisheries Forum.

#### *Port Reclamation Vesting Process*

47. Prior to the enactment of the Marine and Coastal Area (Takutai Moana) Act 2011 (and its predecessor the Foreshore and Seabed Act 2004), areas of reclamation were administered by the Minister of Conservation under section 9A(1) of the Foreshore and Seabed Endowment Revesting Act 1991 ('Revesting Act').
48. A former lease for \$1 per year between the NRC and Northport covered approximately 30 hectares of the facility commencing in 1991 and expired in 2011. Following the outcome of the resource consent process both NPC and Patuharakeke had sought ownership of the reclamation by applying for vesting of the fee simple title under section 355 of the RMA. NPC considered that ownership of the reclaimed land would provide them with security and certainty required for ongoing investment and ensure the long-term viability of the port. PTB's application was largely based on our claim that customary

title has never been relinquished, our obligations as kaitiaki and the cultural importance of the site.<sup>11</sup>

49. Consideration of the vesting applications was not progressed for some time due to the environment court proceedings and then the increasing debate over the foreshore and seabed ownership and subsequent legislation in 2004. Leading up to the expiry of the lease in 2011 the Department of Conservation ("DOC") began to increase dialogue with Patuharakeke and NPC in 2010 and issued a draft submission making recommendations to the Minister of Conservation. DOC's position was to recommend that the Minister delay vesting the land in either party until Treaty claims pertaining to the area were settled.<sup>12</sup>
50. Communications between DOC and PTB broke down over the matter despite continued queries raised by PTB. In January 2018, the Minister of Conservation vested the leasehold interest in the reclamation in Marsden Maritime Holdings Ltd (NPC's new title) for 105 years. PTB found this information by chance in the gazette while researching other matters. In our view, this decision was contradictory to section 4 of the Conservation Act which requires the principles of the Treaty of Waitangi are given effect to; and section 41(4) of the Marine and Coastal Area (Takutai Moana) Act 2011 ('MACA').

*Northport Expansion – "Vision for Growth"*

51. This issue is once again at the forefront of our minds as Northport prepares to take yet more of Whangārei Terenga Paraoa. Last year, Northport applied for resource consents to expand their footprint in the harbour to create a container terminal on the eastern side of the current reclamation. They also continue to develop and refine plans for a proposed western development involving a dry dock facility. I have included a picture of their envisioned development, see **Appendix A**, figure 1.

*"Covering approximately 13 hectares, the proposed eastern development will extend the existing port eastwards to accommodate a modern, efficient, container terminal capable of handling and storing expected increases in freight volumes. The expansion will also enable Northport to integrate the port with KiwiRail's proposed Marsden Point spur, seamlessly connecting rail, road and sea freight."*

52. Patuharakeke kaumatua recalled the stance taken by our hapū to the original Northland Port Corporation application back in the late 1990's. They were clear that "nothing has changed" and we should refuse to be dispossessed of

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<sup>11</sup> Wai 1040, #116, Brief of Evidence of Juliane Kathryn Chetham, 30 September 2013.

<sup>12</sup> Above n11.

even “one more acre” of our land whether it be on the whenua or in the moana.

53. I authored cultural values and effects assessments on behalf of PTB<sup>13</sup> and a submission in opposition to the consents based on a number of matters such as those associated with the previous proposal, including:
- a) Failure to adequately or appropriately respond to the degraded state of Whangārei Terenga Parāoa, including the parlous state of taonga species, and the continued cumulative effect of this development leading to the demise of those species.
  - b) Our lack of confidence in future mitigation proposals given the failings of past mitigation measures conditioned in the original port development consent.
  - c) No mitigation of cultural effects and failure to adequately or appropriately provide a kaitiaki role in respect of taonga species within the harbour and wider Te Akau/ Bream Bay, in particular as regards marine mammals, and failure to provide for the relationship of tangata whenua with those species.
  - d) The failure to adequately or appropriately respond to the risks of climate change, and how those effects will be exacerbated by the proposal.
  - e) The effects of the eastern reclamation and proposed capital and maintenance dredging on coastal processes.
  - f) The significant adverse, and permanent, effects on the cultural landscape and seascape.
  - g) Effects relating to the direct loss and alienation of the takutai moana that Patuharakeke never sold or relinquished their rangatiratanga over and loss of access to sites and areas of significance. This consent will essentially preclude any opportunity for hapū and iwi of Whangārei Terenga Parāoa to have their rights and interests in the project footprint realised under the Marine and Coastal Area (Takutai Moana) Act.
  - h) The effects of the proposal on our intangible connections and values will also be permanent, significant and adverse (for example in the context of whakapapa, mauri, manaakitanga, mana, wairuatanga, rangatiratanga, kaitiakitanga, mātauranga, te reo Māori me ōna tikanga).
  - i) The proposal is contrary to key provisions of the RMA Planning Framework such as the New Zealand Coastal Policy Statement, the Regional Policy

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<sup>13</sup> Juliane Chetham *INTERIM CULTURAL EFFECTS ASSESSMENT Northport Vision for Growth* (Patuharakeke Te Iwi Trust Board, Appendix 24 Cultural Effects and Values Assessments, November 2021).

Statement, and the proposed Regional Plan and Whangārei District Plan and Part II of the RMA.

54. The hearing on the Northport Expansion Proposal is scheduled for October of this year and Mana Whenua submitters will be heard at Takahiwai Marae.

*Northport in the context of MACA*

55. The CVA produced by PTB for Northport's expansion provided background on the illegal confiscation of Poupuwhenua from its original owners, a central tenet of our claim before the Waitangi Tribunal which has already been covered in our Historical and Traditional Reports. The proposed port expansion will perpetuate and exacerbate the grievances interrogated in those proceedings.

56. We have previously been involved in the WAI 2660 Marine and Coastal Area (Takutai Moana) Act Inquiry is a kaupapa inquiry (an inquiry on a nationally significant issue that affects Māori as a whole) currently before the Waitangi Tribunal addressing two main questions:

- a) To what extent, if at all, are the MACA Act and Crown policy and practice inconsistent with the Treaty in protecting the ability of Māori holders of customary marine and coastal area rights to assert and exercise those rights? and
- b) Do the procedural arrangements and resources provided by the Crown under the MACA Act prejudicially affect Māori holders of customary marine and coastal area rights in Treaty terms when they seek recognition of their rights?

57. Question b) was dealt with first at hearings held in 2019. Patuharakeke, Ngātiwai, Te Parawhau and others presented evidence at these proceedings relating to confusion of the MACA processes, the lack of consultation, the significant financial burden experienced with the Crown's inadequate funding regime for applicants, the Crown's lack of clear policies and procedures for funding, and the MACA regime itself creating dissension amongst applicants. The Tribunal's Stage 1 Report was released in June 2020 and concluded that many aspects of the Crown's procedural and resourcing regime fell well short of Treaty compliance, saying "this is particularly regrettable given the context in which the Marine and Coastal Area (Takutai Moana) Act was developed as a replacement for the controversial Foreshore and Seabed Act 2004, which left such a damaging imprint on Māori– Crown relations and the social fabric of Aotearoa New Zealand."

58. In 2021, Barrister Sarah Shaw addressed the Tribunal as a witness for Ngātiwai Trust Board on behalf of Ngātiwai whānau, marae and hapū in Stage 2 of the

Inquiry.<sup>14</sup> She dealt with several questions, importantly, the impact of “accommodated activities” already in place or which may be granted in the future (section 64 MACA Act) on an RMA Permission Right held by customary marine title holders under the MACA Act; and, what the differences are between the rights available to resource consent holders under the RMA and the rights available to customary marine title holders under the MACA.

59. Regardless of the limitations of MACA, our interpretation of her evidence is that the lodging of this application will set in motion the permanent extinguishing of mana whenua’s potential to have their Customary Marine Title (CMT) or Protected Customary Rights (PCR) recognised and in particular our ability to use the RMA permission right (MACA ss66-68). This is because the proposal will meet the definition of accommodated activity in (MACA s64). Ms Shaw concluded:

*“In my opinion the impact of “accommodated activities”, already in place or which may be granted in the future, on a RMA permission right held by CMT groups is:*

- a. *For consented activities:*

  - i. *The RMA permission right is not able to be exercised until the coastal permit has reached the end of its consented term, which for most activities is a maximum of 35 years. A coastal permit that had a lengthy consenting path through the council and appeal to the Environment Court might not commence for several years after it was initially lodged with the council, with the term then running from commencement.*
  - ii. *The coastal permit could be for an activity with long-term or largely irreversible physical effects, such as reclamation or sand mining.*
  - iii. *Reclamation has no statutory maximum term. Unless one is stated in the conditions on the coastal permit, the coastal permit will never expire and the RMA permission right will never apply.*

- b. *For accommodated infrastructure, I interpret sub-paragraph (a) of the definition of “associated operations” as providing for renewal, which means that the RMA permission right will never apply.*
- c. *For deemed accommodated infrastructure, the Minister of Land Information is empowered to waive the CMT group’s RMA permission right with or without compensation.”<sup>15</sup>*

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<sup>14</sup> Wai 2660, #B148, Brief of Evidence Sarah Tremain Shaw, 8 March 2021.

<sup>15</sup> Above n14 at [229].

60. Ms Shaw also compares the rights available to resource consent holders under the RMA and the rights available to CMT groups under the MACA.<sup>16</sup> What is interesting here is that if hapū or iwi were to gain CMT at Poupouwhenua, MACA s60(1)(a) states that CMT provides an interest in land but does not include a right to alienate or otherwise dispose of any part of a CMT area. Northport on the other hand, through what is essentially a property right conferred by a resource consent, can do exactly that.
61. In summary then, Northport's application being lodged before CMT orders will mean that if it is approved, hapū and iwi MACA applicants are not able to exercise the right to decline permission even if our orders come through before the consent is actually implemented. Secondly, the reclamation area will be permanently removed from the moana that we have already asserted our claim over. MACA only applies below Mean High Water Springs (MHWS), and the reclaimed area will be above MHWS, so we cannot get CMT or PCR for moana that has been reclaimed. If what follows is the same as what occurred with the existing reclamation, hapū will have no rights to the "new" whenua that has been created. This has already borne out in the process outlined above relating to the vesting of the title created by the current port reclamation. While the Minister of Conservation did not go so far as to vest title, for all intents and purposes the resource consents held, and particularly the 105-year lease to Northport, is a property right.
62. A recent report from Te Rōpū Tai Timu Tai Pari<sup>17</sup> has again highlighted these timing issues, but in the context of the transition of customary rights under the Takutai Moana Act 2011 into the new regime. Importantly, they reiterate the constant refrain of iwi and hapū, that being:
- "Māori currently hold rights and interests in the takutai moana whether or not those have been recognised legally under the te Takutai Moana Act. In our view, to give effect to Te Tiriti/Treaty principles requires decision-makers to recognise rights and interests that exist, whether or not they have been proven under the Act. No prejudice should arise from the time taken to prove customary interests".<sup>18</sup>*
63. PTB consider this issue has relevance in terms of RMA Part II matters for consideration (for example s6(e), 6(g), 7(a) and 8, adds significantly to the mix of the full scale of cultural effects and overall can only be addressed by declining the Northport consent).
64. In 2017, PTB also opposed the Refining NZ (now Channel Infrastructure) consent application for the capital dredging of 3.7 million cubic metres to deepen and realign the channel at Poupouwhenua to allow larger oil tankers

<sup>16</sup> Above n14 at [262]-[275].

<sup>17</sup> Andrew Irwin *Report of Te Rōpū Tai Timu Tai Pari* (Clifton Chambers, 20 June 2021).

<sup>18</sup> Above n17 at 30.

to enter the harbour. Our objection to the proposal was on similar grounds to that of the Northport consent, such as effects on taonga species, coastal processes and our ability to undertake our kaitiaki duties in respect of our rohe moana. The consent was granted by the Northland Regional Council's Independent Commissioner Panel but PTB again joined an appeal to the Environment Court. We participated in mediation to strengthen consent conditions and ultimately the consent was approved in 2018.<sup>19</sup> As described earlier, the Refinery is no longer refining crude oil and therefore it appears unlikely that the consents will ever be exercised, fortunately. Less fortunate is the fact that Northport have been able to leverage off this existing consent to utilise it as part of an "existing environment" context under the RMA and downplay the potential effects of their proposal.

65. In the last couple of years, PTB have produced Cultural Effects Assessments and engaged in a further consenting project at Channel Infrastructure's site regarding their existing structures and discharges. Other consent renewal activities we have been involved in monitoring and providing advice on include that of the Marsden Cove Marina and a number of rock revetment seawalls sought by the Whangārei District Council. There is constantly kaupapa to respond to in this space which has necessitated the development of a full time Pou Taiao Unit for PTB.

### **PART THREE: ENGAGEMENT IN RMA POLICY AND PLANNING PROCESSES**

66. The type of issues I have outlined above have made it imperative that Patuharakeke be proactive in the RMA planning and policy space. We have focused on development and implementation of our HEMP and more recently, entered into Mana Whakahono a Rohe arrangements with both the District and Regional Council to outline our expectations of how we will participate in plan making and other processes.<sup>20</sup>
67. PTB prepared a Patuharakeke Hapu Environmental Management Plan ("Patuharakeke HEMP") in 2014<sup>21</sup> to:
- a) guide appropriate engagement and participation of Patuharakeke in the planning and decision-making processes of councils, agencies, and developers with respect to our rohe;

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<sup>19</sup> "Environment Court confirms consents for Marsden Pt Oil Refinery dredging" *Northern Advocate* (online ed, New Zealand, 24 December 2018).

<sup>20</sup> "Patuharakeke, councils sign important resource management agreements" (7 December 2020) Northland Regional Council <<https://www.nrc.govt.nz/news/2020/december/patuharakeke-councils-sign-important-resource-management-agreements/>>.

<sup>21</sup> Juliane Chetham "Patuharakeke Hapu Environmental Management Plan 2014" (December 2014) Patuharakeke Te Iwi Trust Board <[www.nrc.govt.nz/media/wynyiks/patuharakeke-hapu-environmental-management-plan-2014.pdf](http://www.nrc.govt.nz/media/wynyiks/patuharakeke-hapu-environmental-management-plan-2014.pdf)>.

- b) assert our tino rangatiratanga and kaitiakitanga over our natural environment and all ancestral taonga;
  - c) achieve the intent of empowering legislative provisions such as RMA s6(e);
  - d) clearly identify the environmental management kaupapa of Patuharakeke.
68. The HEMP is lodged with Northland Regional Council, Whangārei District Council, Heritage New Zealand/Pouhere Taonga, and the Department of Conservation.
  69. The Trust is listed on the Te Kahui Mangai register as an “other iwi authority” for the purposes of the Resource Management Act 1991.<sup>22</sup>
  70. A key action has been to get appropriate recognition and protection for our sites of significance in planning documents.
  71. Patuharakeke sites of significance or wāhi tūpuna were identified in 2015 in conjunction with a Whangārei District Council project for the purpose of informing historic heritage and cultural protection in the Whangārei District Plan. Most of these sites are included in the Patuharakeke Map Booklet at Map 6 and Map 8 of the Patuharakeke Traditional Report.
  72. PTB took key coastal sites of significance - mahinga mātaītai areas - from this overlay through the recent Northland Regional Plan review process and they have since been mapped and scheduled as Sites of Significance to Tangata Whenua (“SSTW”) in the Proposed Plan (see map at **Appendix B**).
  73. There were no appeals on the mapped SSTW and the Proposed Plan is now operative.
  74. Multiple other overlapping significant values are identified and mapped in Patuharakeke’s SSTW, including Significant Ecological Areas (SEA), Significant Bird Areas (SBA), Outstanding Natural Character (ONC) and High Natural Character (HNC).
  75. Te Ara Kahika, Rauiri and Te Koutu (the stretch from the wahapū or harbour mouth to One Tree Point for example) is a subset of our wider relationship to the harbour and Te Ākau/Bream Bay. Cultural landscape values which are holistic, applying to entire area and interrelated ecologically, culturally, and spiritually are reinforced by the recent Environment Court decision relating to the SEA zoning adjacent to the west of Northport. Part of the SEA area changed to a Multi-Purpose Port Zone (“MPPZ”) in the Decisions Version of the Proposed Regional plan and the SEA designation was removed. The Royal Forest and Bird Protection Society (“F&B”) filed an appeal seeking the

<sup>22</sup> “Patuharakeke Te Iwi Trust Board” Te Puni Kōkiri <[www.tkm.govt.nz/rmagroups/te-tai-tokerau/](http://www.tkm.govt.nz/rmagroups/te-tai-tokerau/)>.

reinstatement of the SEA in this area and PTB joined as a s274 party to the appeal. Judge Smith set out the following:<sup>23</sup>

*"[13] Ms Shaw appeared before us for Patuharakeke Te Iwi Trust Board and made submissions as to the relationship of tangata whenua in this particular area. She noted that the area in question is at the eastern extent of a large area of particular cultural significance to Patuharakeke, and in fact that one of their significant marae is adjacent to this coastal feature.*

*[14] It is clear that they actively maintain a relationship with this area, including around Marsden Point and One Tree Point, and that it constitutes part of their ancestral lands, waters, sites, wāhi tapu and other taonga. We note that there is a Treaty claim in respect of the area. We also acknowledge that, as the eastern extent of the harbour, it would have some particular values. The extensive cultural areas exist both to the east and the west of the 190ha of SEA. To the west of the SEA, the harbour edge is noted as an area of cultural significance. From a cultural perspective, the harbour edge forms part of the cloak between the shoreline and the harbour, which is unbroken for a number of kilometres along the southern edge of the harbour. It is also reinforced by large sandbank areas comprising pipi and the like.*

*[15] In our view, these parallel forms of value (cultural and ecological) coalesce in the values that are seen on the southern side of Whangārei harbour, and particularly around One Tree Point. Whilst the existing port is of great significance to the Northland economy, and it provides national necessities, including oil and freight, this is in the context of an area that has significant ecological values."*

76. Other Regional Plan appeals we have been involved in relate to topics such as Marine Protected Areas, Vehicle on Beaches, Mangrove Removal and Outstanding Natural Landscapes.

#### **PART FOUR: PATUHARAKEKE'S ROHE AND ROLE IN CUSTOMARY FISHERIES MANAGEMENT.**

77. As set out in our Traditional Report at Wahanga Tuarua and in previous evidence I have filed with the Waitangi Tribunal<sup>24</sup>, Patuharakeke's rohe moana and tangata kaitiaki were gazetted in May 2009 under the Kaimoana Fisheries Regulations 1998<sup>25</sup> and a map of Patuharakeke's rohe moana can be viewed in the Map Booklet annexed to the Traditional Report as Map 4. Patuharakeke

<sup>23</sup> *Royal Forest & Bird Protection Society of New Zealand Incorporated v Northland Regional Council* [2021] NZEnvC 021 at [13]-[15].

<sup>24</sup> Above n11.

<sup>25</sup> "Fisheries (Kaimoana Customary Fishing) Notice (No.1) 2009 (No. F482) (7 May 2009) *New Zealand Gazette* No 2009-go4000.

therefore now has over a decade of experience in the utilisation of Fisheries Act tools to help us manage our customary fisheries.

78. I remain critical of New Zealand's Fisheries Management regime's limitations in the protection or sustaining of our mahinga mātaītai and taonga species, as customary harvest is becoming virtually untenable in Patuharakeke's rohe.
79. Notwithstanding this, we do rely heavily on these tools in conjunction with traditional customary practices.
80. Patuharakeke's participation both in terms of feeding our whanau and acting as kaitiaki in this constrained to recreational take and customary management. Recreational fishing is primarily utilised to put kai on the table. The reviews over the last decade of the sustainability and other management controls for snapper and other species have shown bias in the Crown's protection of commercial interests over those of hapū and whanau and many uncertainties around the amount of quota utilised and reported across commercial, recreational and customary quotas.<sup>26</sup> According to Fisheries NZ snapper biomass is down to around 20% of its original state and Tarakihi at approximately 15%.
81. Low-income whanau tend to rely on kaimoana to supplement their larders and this situation is affecting the recreational sector and therefore compromises their ability to do so.
82. As mentioned, the kaitiaki management opportunities for Māori that have arisen from fisheries settlement in regard to customary management practices and harvesting are Taiapure and Mātaitai reserves. Only 12 Mātaitai have been established in the North Island.<sup>27</sup>
83. Based on my experience I consider that this is a reflection of the onerous process and information requirements, serious time delays, and lack of access to technical support. Hapū or iwi are required to demonstrate how they have engaged with the community, commercial and recreational sector, how they aim to address any issues raised by these groups and meet tests to ensure they do not prevent existing quota holders from getting their entitlement. However, after all of that, it is the Minister that makes the final decision on whether to grant a Taiapure or Mātaitai.
84. Our Pou Taiiao and Rohe Moana Committee been active in monitoring our kaimoana, firstly through a Ministry for the Environment funded research project developing cultural health indicators (Takutai Health Analysis), and

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<sup>26</sup> "Snapper 1 management plan" (December 2016) Ministry of Primary Industries <<https://www.mpi.govt.nz/fishing-aquaculture/sustainable-fisheries/snapper-1-management-plan/>>

<sup>27</sup> "Customary fisheries management areas, rules, and maps" (12 January 2023) Ministry of Primary Industries <<https://www.mpi.govt.nz/fishing-aquaculture/maori-customary-fishing/customary-fisheries-management-areas-rules-and-maps/>>

more recently through joint biomass surveys with NIWA in 2010 and 2012 followed by a 5 year project funded by the Whangārei Harbour Health Improvement Fund and administered by Northland Regional Council from 2016.<sup>28</sup> That particular project involved surveys of several mahinga mātaimai at Poupouwhenua, One Tree Point and Ruakākā estuaries and we have also worked with NIWA to survey Patangarahi in recent times. All of this work has been focused on trying to better understand the population dynamics of pipi and kūtai at Te Poupouwhenua whilst allowing this bed to rejuvenate and us to further prepare a mātaimai application.

85. Due to the loss of inner harbour sites to sedimentation, construction of the Port and frequent closures due to sewage spills I have described above, Te Koutu/Poupouwhenua became a “last bastion” of clean, easily accessible kaimoana. Whanau would regularly collect kaimoana there and our tangata tiaki last recalled writing a permit in 2010 when we took two sacks of pipi to Rotorua for the Māori Rugby League tournament from Marsden Bank, in accordance with tikanga of koha, manaakitanga etc.
86. However, it was not long after that pipi/kōkota became scarce on Marsden Bank. Then in 2012 the commercial pipi fishery at Mair Bank was affected by a “die-off” of pipi and the quota holders “walked away”. When PTB were alerted to the die off we struggled for at least 18 months to get MPI to undertake research into what could be causing this issue. By the time samples were collected it was too late to ascertain the cause. PTB enlisted the support of Northland Regional Council, Northport and the Refinery to assist us in lobbying for action but made very little progress with MPI (now Fisheries NZ).
87. PTB’s concern over depletion of pipi stocks at neighbouring Marsden Bank led us to petition the Minister of Fisheries in February 2011 for a rāhui (s186A closure) under the Fisheries Act to allow stocks to recover. Our 2012 follow up survey signalled those stocks had not increased during the closure period, rather they had declined even further. Although this mahinga mātaimai was subject to relatively strong harvest pressure because of the loss of inner harbour sites, we consider that the decline during a two-year closure suggests that further reduction of biomass cannot be solely a result of overharvesting. NIWA found that bank morphology appears to have changed and consider that new and ongoing research is required to understand factors affecting pipi at Marsden Bank and Mair Bank.<sup>29</sup>

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<sup>28</sup> Juliane Chetham “Patuharakeke Pipi Monitoring Program Final Project Report 2016-2020” (6 February 2021) Patuharakeke Te Iwi Trust Board <<https://www.mpi.govt.nz/dmsdocument/50815-Appendix-B-Patuharakeke-Pipi-Monitoring-Program-2016-2020>>.

<sup>29</sup> Williams, J.R.; Hume, T.M “Investigation into the decline of pipi at Mair Bank, Whangārei Harbour.” (Unpublished report, NIWA, June 2014).

88. As mentioned, PTB progressed applications to MPI in 2011, and a renewal in 2013, to close Marsden Bank to the harvest of pipi under section 186A of the Fisheries Act 1996. These closures can support customary rāhui, and fisheries officers are able to prosecute offences should people breach the rules. However, they only run for a two-year period and must be reapplied if the issue with the kaimoana stock has not resolved over that time.
89. In my experience two years is not long in ecological terms, and in our case the populations had not shown sufficient recovery to warrant reopening recreational or customary take after 24 months. Subsequently PTB worked with MPI, Northland Regional Council and other stakeholders to jointly seek an indefinite closure of both Mair and Marsden Bank for pipi collection under s11 of the Fisheries Act 1996. This was set down in October 2014.
90. At about the same time the indefinite closure was approved, we were encouraged by the fact that after many decades juvenile kūtai had begun to recolonize the nearby channel between Mair and Marsden Banks. By November 2015 a healthy adult population of kūtai was in this area. However, they were extremely accessible (the closure only applied to pipi) and subject to such significant harvest pressure that the majority of the bed disappeared within 12 months. PTB put forward another proposal in 2016/17 to the Minister seeking a closure of both Marsden and Mair Bank to all shellfish harvest<sup>30</sup>.
91. Each application or renewal process involves extensive hui with the hapū, community and stakeholders to ensure that the Trust has adequate data and support, as well as significant discussion and correspondence with MPI/Fisheries staff. None of this work is resourced and involves many hours and hapū funds provided by PTB – a charitable trust run by volunteers.
92. All of the s186A closures are required to be publicly notified. For the proposal to close to all shellfish harvesting, one submission in opposition was received from Fisheries Inshore NZ Ltd (FINZ) and the Paua Industry Council and Kina Industry Council. The grounds of opposition as set out in the FINZ submission were:
- a) A closure to the take of all shellfish is not legal;
  - b) The applicant has not provided information appropriate to assessing the proposal;
  - c) Section 186A closures are not a legal option to reserve space while other regulatory measures such as mātaimai are considered; and

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<sup>30</sup> "Proposed further temporary closure at Mair Bank and Marsden Bank, Marsden Point, Whangārei, to the harvest of all shellfish" Ministry for Primary Industries (30 May 2022) <<https://www.mpi.govt.nz/consultations/proposed-further-temporary-closure-at-mair-bank-and-marsden-bank-marsden-point-whangarei-to-the-harvest-of-all-shellfish/#:~:text=Ministers%20decision,and%2028%20June%202024%2C%20inclusive>>.

d) The Minister is unable on the basis of the information supplied to be satisfied that the application is warranted.

93. We then had to seek legal advice to respond to these arguments. The banks in question do not and have not ever supported populations of kina or paua. They are sandbanks. The Trust was therefore extremely disappointed that the Paua and Kina Industry Councils had seen fit to undermine our kaitiakitanga. Ultimately PTB was successful, and the closure was gazetted in mid-2018. The Trust had to scramble again in 2020 during the Covid lockdown to renew it once again.<sup>31</sup>
94. All of these closure proposals were advanced on the basis that PTB would hopefully soon be in a position to apply for a longer-term management solution - a mahinga mātaītai reserve - to avoid having to constantly reapply for S186A closures and eventually get bylaws in place to better manage kaimoana species.
95. Fourteen years after Patuharakeke's rohe moana and tangata kaitiaki were gazetted, management of customary fisheries within our gazetted rohe moana has proved extremely challenging and the Trust continue to be frustrated by the apparent lack of resource and capacity within MPI for dealing with customary fisheries matters. While PTB's Rohe Moana Committee has been active in advocating for the protection of kaimoana resources and in monitoring their health, the end goal of establishing Mātaītai reserves has been hampered by the onerous application process.
96. Since commercial fishing is excluded when a Mātaītai reserve is established, an important aspect of the application is an "undue adverse effects or prevention" test to ensure that persons with a commercial interest in a species are still able to take their quota entitlement or annual catch entitlement within the quota management area.
97. MPI's Mātaītai application guidelines encourage applicants to discuss their application with commercial fishers operating in the area of the proposed reserve, and to explain in their applications how any issues raised by local commercial fishers have been addressed. The Ministry's preference is that applicants get as much information as they can about the commercial operations in the area of the proposed Mātaītai reserve before submitting an application.
98. However, when the Trust attempted to be proactive and seek contact details of commercial operators within our rohe moana and an audit of their catch records, we were advised by MPI's inshore fisheries team staff that we would

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<sup>31</sup> "Fisheries (Masden Bank and Mair Bank Temporary Closure) Notice 2020 (MPI 1157) (29 June 2020) *New Zealand Gazette* No 2020-g02341.

be required to submit an Official Information Act request to get this information. This matter unfolded over about 18 months without producing the information sought so Patuharakeke's Rohe Moana Committee advised me to "park" the conversation with commercial fishers about our aspirations for a Mātaitai reserve for the time being.

99. After a number of years with no dedicated iwi liaison staff in MPI's Fisheries team, in 2016 an iwi liaison person was employed for Northland. To my knowledge he was one of only 2 or 3 employed by MPI to deal with Māori fisheries issues across the entire country.
100. Prior to 2009, when I worked for Te Uri O Hau Settlement Trust there were iwi fisheries forums being set up. During restructuring processes these seemed to fall away. At the end of 2018 the Trust was invited to discuss the initiation of a Mid-Northland Fisheries Forum Collective. The collective kicked off properly in 2019 and now meets fairly regularly. The Forum is funded and organised by Fisheries NZ (although I note that kaitiaki are not resourced to attend) and is primarily attended by hapū representatives of gazetted rohe moana rather than Mandated Iwi Organisations.

#### *Pou Rāhui*

101. While PTB have worked within the challenges of the fisheries legislation to apply these tools to support our kaitiakitanga, it has been extremely important to have traditional mātauranga and tikanga based approaches to sit alongside this mahi. To that end, a customary rāhui was put in place over all shellfish at Poupouwhenua/Te Koutu, Marsden Point (Mair and Marsden Banks) in December 2018 with two pou rāhui marking the boundaries at each end of the closure location (see pictures at **Appendix A**, figures 2 and 3).
102. Since the closure and our customary rāhui has been in place there has been a marked decrease in observations of harvest or illegal harvest. The community is well informed of the situation as we keep them updated through social media and the local community newspaper and regular meetings with stakeholders. Our signage and pou rāhui remain in place and appear to be well respected by the wider community.
103. The practice of rāhui associated with the closures has allowed our hapū to reinstate this customary practice and tradition that has not been utilized for management purposes for many decades. Rāhui called down in response to a resource sustainability issue would not generally be lifted until the resource was restored to a healthy state.
104. Kaitiakitanga recognises and provides for the relationships between and amongst the different species of fish that inhabit the bank, and the way each

of those species should be maintained in balance to revitalise and maintain the mauri of the bank and its fish stocks as a whole. Kaitiakitanga is also about how the people relate to the fisheries and the environment. Our kaumātua have advised that kaitiakitanga includes their responsibility to ensure people comply with any rāhui that is applied to rebuild the fishery and recognise and provide for kaitiakitanga. While compliance is carried out by Ministry of Fisheries staff, the kaumātua/kaitiaki have a role as kaitiaki in ensuring compliance can be achieved. Closing all fisheries both achieves a rebuild of the fisheries in a balanced way that recognises how Patuharakeke exercise kaitiakitanga and also ensures compliance can be achieved. On that basis our kaumātua have been satisfied that the closure to rebuild all species will both:

- a) Improve the availability and size of all the shellfish which are utilised by Patuharakeke for customary purposes; and
- b) recognise the customary practice of Patuharakeke which is to exercise kaitiakitanga by managing all the species on the Bank as an integrated group, not by managing individual species.

105. The pou rāhui were given specific ingoa as follows:

*Te Koukou (Koukou). This pou rāhui which is adjacent to the Channel Infrastructure Jetty is named to commemorate our tūpuna Te Pirihi Koukou, a chief of Patuharakeke. Te Pirihi Koukou or Ikanui Te Pirihi or Te Pirihi as he became more widely known was a Rangatira of the Whangārei area and resided at Takahiwai (as described in the Patuharakeke Historical and Traditional Reports).<sup>32</sup>*

*'Te Hakiro' is the name for the southern boundary marker in Te Akau/Bream Bay. This pou rāhui was so named to commemorate the pūrakau associated with our tūpuna Te Hakiro who is said to have been eaten by a large Tamure or snapper while fishing. The intention of this korero is as a cautionary tale to all -to abide by the rāhui.<sup>33</sup>*

106. The following korero is given by Wiremu Wi Hongi in Nga Puriri o Taiamai:

*"It was there at Pouerua that Uenuku married his wife Kareariki. The sign of that woman was a certain kauri- a taniwha in a certain area of the hot bathing springs [Ngawha Springs], hence they [the springs] are called the pets of Kareariki. Their children [the children of Uenuku and Kareariki] were born; Uewhati [female], Maikuku [female], Hauhaua [male], Tamure [male] and Ruakiwhiria [female]. The reason Uenuku gave these names – Maikuku, Tamure, Ruakiwhiria – was because of the death of his ancestor*

<sup>32</sup> Chetham, Juliane and Harry Maki Midwood. Ngā Kōrero Tuku Iho o Patuharakeke. The Traditional Research Report of Patuharakeke, 2023 at paras 34-35.

<sup>33</sup> Jeffrey Sissons, Wiremu Wi Hongi *Ngā Pūriri o Taiamai* (Penguin, New Zealand, 2008).

*Te Hakiro, at the mouth of Whangarei [harbour]. He was finally found inside the fish, which was a taniwha, a giant snapper. When that fish was caught, its stomach was squeezed to make it vomit. The [Hakiro's] hand emerged, all twisted. The fingernails were seen and were recognised as the nails of Te Hakiro. Thus, the reason for the three names of Maikuku [fingernails], Tamure [snapper] and Ruakiwhiria [vomit-twisted]."*<sup>34</sup>

107. Te Hakiro is 20 generations from Patuharakeke of today.<sup>35</sup>
108. Commercial hūai harvest on Patangarahi (Snake Bank) (see **Appendix A**, Figure 4) also ceased a decade ago. Our recent surveys in conjunction with NIWA as described in the CVA highlight that while there are reasonable abundances at Patangarahi, very few individuals were of harvestable size. The hūai at Patangarahi were formerly the largest in the harbour.
109. In 2021 a second rohe moana was gazetted in the Whangārei Harbour adjoining our existing one and essentially "shoring up" the entire harbour.<sup>36</sup> At the same time Ngāti Tu, NIWA, NRC, Fisheries NZ and Patuharakeke, met to discuss the plight of the tipa/scallop fishery nationwide and the mounting pressure on Whangārei and Bream Bay, in particular remaining Urquharts Bay stocks as a result of collapse in Pēwhairangi (Bay of Islands) and rāhui in East Coromandel and Whangaroa (see **Appendix A**, Figure 5).
110. The once plentiful tipa beds around Takahiwai and One Tree Point are virtually gone, pockets remain between Patangarahi and McDonald Bank and near Parua Bay, but Urquharts until recently was still in a relatively healthy state despite being subject to increasing harvest pressure every season. Our rohe moana committees supported either part or all of the Whangārei Harbour scallop fishery to be closed in order to preserve this bed as a form of ūkaipō (nursery). These species are not only taonga because they are important kaimoana species, but because of their role in the whakapapa – Te Tini ā Tangaroa, providing food and habitat functions for myriad other species. This impacts on mauri and has flow on effects on kaitiakitanga.
111. In April 2022, Northland's scallop fishery was closed to commercial and recreational take by Minister Parker under s11 of the Fisheries Act in the face of a serious decline and to allow them to recover.<sup>37</sup> The closure came into effect in April 2022 and is indefinite. Customary harvest is still provided for, however in recognition of the ongoing decline of this taonga in recent years,

<sup>34</sup> Jeffrey Sissons, Wiremu Wi Hongi *Ngā Pūriri o Taiamai* (Penguin, New Zealand, 2008).

<sup>35</sup> Interview with Harry Maki-Midwood (Juliane Chetham, July 2023).

<sup>36</sup> "Fisheries Notification of Tāngata Kaitiaki/Tiaki for Area/Rohe Moana of Ngāti Kahu, Parawhau, Ngāti Tu and Patuharakeke Notice 2021 (Notice No. MPI 1353) (15 July 2021) *New Zealand Gazette* No 2020-go2731.

<sup>37</sup> Fisheries (SCA 1 Closure) Notice 2022 (MPI 1455) (1 April 2022) *New Zealand Gazette* No 2022-go1122.

Patuharakeke's Rohe Moana Committee have not been issuing customary permits (for this and a range of other species) for a number of years.

#### PART FIVE: TE POU TAI AO OPERATIONS, RESEARCH AND PROJECTS

112. As part of Patuharakeke's recent Draft Hapū Strategic Plan developed through a series of hui in 2019 and 2020, a number of pou or pillars have been identified to capture our tribal aspirations, these include:
- a) *Pou Taiao (Environmental)* Identify environmental projects and initiatives to support the restoration and enhancement of the environment that supports our partners and Patuharakeke goals.
  - b) *Pou Ahurea (Cultural)* Develop opportunities to apply mana whenua cultural design and interpretation to support our partners/community and express the history of the rohe.
  - c) *Pou Mātauranga (Educational)* Develop and implement an education and employment pathway to support our partners, Patuharakeke and the community.
  - d) *Pou Tai Tamarikitanga (Succession)* Support the expression, innovation and delivery of the next generations to apply their approach to the future of their rohe.
  - e) *Pou Hauora (Whānau health)* Provide support for initiatives that improve the health and wellbeing of Patuharakeke whānau and the community.
  - f) *Pou Whaioranga (Economic)* Develop opportunities for supporting Patuharakeke economic initiatives.
113. At present the Patuharakeke Pou Taiao/ RMU is leading workstreams across Te Pou Taiao, Ahurea, Mātauranga and Tai Tamarikitanga.
114. The education and transfer of knowledge to our tamariki/ mokopuna has been a core focus. PTB has been running annual kura taiao noho or summer camps for a number of years as well as specific taitamariki or rangatahi wānanga (see **Appendix A**, Figure 6, 7 and 8).
115. A key motivator is maintaining connection to the moana (particularly as many of our whanau no longer live in the rohe), it is therefore essential that we help provide opportunities for our tamariki and mokopuna to maintain and revive the relationships and associations with our rohe moana that are their birthright while they are home in the summer months and other holidays. Tamariki learn about how their tūpuna gathered kaimoana, gain an understanding of the reciprocity underpinning tikanga associated with concepts of aroha and manaakitanga and how they govern kaitiaki practices (balance, interconnectedness, responsibilities, obligations and entitlement). They are taught karakia and waiata pertaining to the moana and rohe and the traditional names of taonga species.

116. This initiative has also enabled the tamariki to travel to Tawhiti Rahi and Aorangi to snorkel and also learn about their whakapapa to those islands and for us to run activities such as after school surfing (reti ngaru) programme over a number of seasons at Waipu Cove (see **Appendix A**, Figure 9 and 10).
117. The Patuharakeke Waka ama club has recently been established in 2023 and was named Te Kauika o Patuharakeke at a hui held at Takahiwai Marae. A Kauika is when a group of whales of all ages come together to travel and hunt, and other traditional kōrero relates to this ingoa being about a group called together for a significant hui. The main aims and values of the club are Whakapapa and Manaakitanga - acknowledging our Tūpuna who handed down Kōrero tuku iho and Mātauranga bonding us to all things we whakapapa to as Patuharakeke. As a coastal tribe, waka ama is one of the keys to giving mana to the Moana through cultural practices we practice on the Moana, Awa and Roto within our tribal boundaries as Mana Moana.
118. An aspect of Te Pou Ahurea involves caring for wāhi tapu and wāhi tūpuna. PTB's Taiao Unit is active in identifying, monitoring and researching archaeological sites in our rohe. One example of our mahi in this area has included collaboration with archaeologists such as Ben Jones of Auckland University whose Doctoral research focuses on understanding coastal change over the past 1000 years, and considering how future sea level rise will impact coastal archaeological sites. Focusing on Bream Bay/Te Akau, we are working with him to map the locations of middens, investigate and record the archaeological information and our korero associated with them in a virtual/spatial format going forward (for example story maps/cultural landscape mapping) as this may be the only way we can retain these taonga going forward. In October of last year, we involved our tai tamariki in this kaupapa, demonstrating the tools available to us in this research.<sup>38</sup>

#### *Other Operations in Te Pou Taiao – Tangaroa Workstream*

119. Our Traditional report and the affidavit of David Milner describe the relationship and tikanga of Patuharakeke in relation to whales/tohorā. Further to this, PTB have partnered with NIWA in a Vision Mātauranga project for developing our capabilities in tohorā research titled 'Te Hihiringa – Te Wānanga o te Tohorā'. The project aims to enable Patuharakeke to gather and safeguard mātauranga Māori on marine mammals in their rohe; co-develop and deliver a wānanga/training programme on marine mammal monitoring to develop capacity in scientific methods and use dual knowledge systems to synthesize a baseline on marine mammal populations in the rohe.

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<sup>38</sup> *Coastal News Issue 80, March 2023* (online looseleaf ed, New Zealand Coastal Society) at page 8.

120. As per David Milner's affidavit, responding to marine mammal strandings is an ongoing exercise in kaitiakitanga for Patuharakeke. As an example, karakia and a naming process for each of a recently stranded pod of common dolphins was carried out before our Pou Taiao Unit transported them to our partners at Massey University for autopsy (see **Appendix A**, figure 11). They will later be buried at the Tahuna Tohorā, this area is identified in map 11 of the Patuharakeke tranche of maps.
121. Patuharakeke are alarmed at the potential effects of climate change. We are currently updating our HEMP in relation to climate change adaptation and resilience outcomes. In another partnership with NIWA we are assessing the "blue carbon" potential of our estuarine habitats such as Takahiwai in relation to their ability to sequester carbon and how these habitats can be managed and protected to help realise such potential.
122. We have used resource consenting process including environment court appeals to secure long term monitoring programmes over decades eg. with Channel Infrastructure a Poupuwhenua cultural health and landscape monitoring programme has been instigated.

*Kokotā ki runga, kōkota ki raro*

123. To support our Rohe Moana Management Plan we are developing an interactive web based platform to deliver an innovative, modernised approach for capturing customary fisheries information and to enhance our ability to make well-informed decisions. The goal is to enable our community to engage with fisheries research, to deepen the understanding of taonga species populations and ecosystems, and recommendations for specific restoration efforts.
124. Our Rohe Moana Committee will have access to this database, to support customary fisheries management decisions such as uplifting a rāhui, or imposing mātaihai or taiāpure areas within the existing rohe moana. This work will also inform the issuing of customary permits (for example amounts, sizes and seasons) while simultaneously collecting this data which we have never had access to before. When and where appropriate to share, the research outputs will be valuable to other relationship partners of Patuharakeke groups such as MPI, Fisheries NZ, NIWA, NRC, WDC and neighbouring hapū as information on customary take is currently limited. This information, alongside our cultural health assessments will help to inform future research areas, management strategy and policy planning.

### *Baseline pipi health*

125. PTB's Pou Taiao have also partnered with MPI in a two year study on the baseline health of pipi (or kokota) in Whangārei Te Rerenga Pāraoa following significant mortalities we observed during the 2019 season. We collected pipi and MPI tested them for exotic diseases and bacteria and to gain an understanding of their overall physiological health.<sup>39</sup>

### *Marine Biosecurity Toolbox*

126. The Marine Biosecurity Toolbox is a 5-year (2019-24) research programme aimed at protecting New Zealand's marine environments from the impacts of non-indigenous pest species.<sup>40</sup> The programme is jointly funded by the New Zealand Ministry of Business, Innovation and Employment (MBIE) and participants are a collaborative group of science, Māori, regulatory and industry organisations aiming to develop transformative 'tools' that empower regulators, industry, Mana Whenua, and the community to effectively manage risk pathways, prevent pest establishment, and detect and respond to new incursions. Patuharakeke are the key Mana Whenua partner to project lead the Cawthron Institute for this project advising on mātauranga Māori approaches to be interwoven through all research components of the programme.
127. Patuharakeke kaumātua developed and gifted the logo and whakatauāki inspired by the mangōpare or hammerhead shark for this project.

*"Kia tirotiro mangōpare, arā ko ngā tai e whā"  
Look through the eyes of the mangōpare, observing in all directions*

128. For Patuharakeke, being strong, fierce, determined, knowledgeable and smart, the mangōpare is seen as a guardian or kaitiaki and a tohu or a symbol species. The mangōpare has a number of features, which resonate with the vision and the spirit of the Marine Biosecurity Toolbox programme:
- a) The mangōpare has the ability to observe in all directions (360 degrees), around the 4 corners of the world through the flowing of the tides (covering all parts of the moana, the ocean)
  - b) When the mangōpare looks forward it connects to the idea of this programme being about looking forward for new technologies and tools for detection and monitoring
  - c) At the same time, the mangōpare looks alongside, connecting to the ideas of tiakitanga (protection) and the health of the surrounding taiao (environment)

<sup>39</sup> Biosecurity New Zealand "Measuring the Baseline health of Pipi in Whangārei" (11 April 2022) Ministry for Primary Industries <<https://storymaps.arcgis.com/stories/1734928a8b2f403ca0dbc2877cc6c498>>.

<sup>40</sup> "Marine Biosecurity Toolbox" (2023) Marine Biosecurity <<https://www.biosecurity-toolbox.org.nz/>>.

- d) Simultaneously it can look backwards – connecting to the ideas of holding on to tikanga (Māori culture) and mātauranga (wisdom) and taonga tuku iho (treasures) passed down to us by our tupuna (ancestors).
129. Through this programme Patuharakeke is developing a Manaia Framework (Mātauranga Māori framework) to characterize the elements of Patuharakeke Ahikātanga that relate to the Manākitanga of our rohe, to establish a cultural baseline for the holistic biosecurity toolbox and decision-making.
130. This mahi has enabled us to continue to refine our existing tools such as the Cultural Health Indicator (Takutai Health Analysis) for example, to trial treatments/tools to tackle biofouling at Marsden Cove Marina, to test eDNA approaches for marine pest surveillance as well as input into pathway modelling work to create a risk analysis plan that safeguards Patuharakeke rohe Moana.

*Takahiwai CPCA/Fanworm*

131. Te Pou Taiao is embarking on a project to create a community pest control area (CPCA) seeking to manage localised populations of an invasive marine pest, *Sabella spallanzanii* (Mediterranean fanworm) established in the Takahiwai mātaio area. *Sabella* can blanket an area of seabed or structure which can displace native species and compete with koutai, tipa and tio for food as *sabella* is also a filter feeder. They are also known to physically attach to taonga species and inhibit their mobility (see **Appendix A**, Figure 12 and 13).
132. To our knowledge, this will be the first CPCA of its kind (i.e. in the CMCA – all others are terrestrial) in the Northland Region and is intended to provide a roadmap for future hapū and iwi-led marine biosecurity regimes. Our ultimate goal, as kaitiaki is to support the revitalization of the mauri of our taonga tuku iho. The goal of this project is to enhance the habitat of kaimoana and other taonga species through eradicating *Sabella* and controlling reinfestation within the mātaio. We also aim to provide valuable information regarding *Sabella* reinfestation rates, which will be used to understand if eradication has lasting effects, and therefore indicate if this approach is worth replicating in other areas of our rohe moana. We envisage this project will also assist should the new invasive *caeurpa* seaweed be detected in the harbour.
133. This project is preceded by earlier research carried out by Patuharakeke Pou Taiao at Marsden Cove marina and in collaboration with Northland Regional Council to evaluate and understand reproductive and spawning times of *Sabella spallanzanii* in Whangārei Terenga Paraoa. This enabled us to identify the peak spawning times of fanworm to inform planning of the most effective times for future suppression/eradication efforts. Therefore, the CPCA project proposes to undertake systematic removal of *Sabella* through monthly free-

diving surveys and culls across the season Sabella are not spawning (for example November - March).

134. Another project Patuharakeke Pou Taiao undertake as part of our kaitiakitanga activities in this regard relates to vessel hull surveillance. This is also a collaboration with the NRC Marine Biosecurity team. The project aims to enhance marine biosecurity protection for the harbour through our kai taiao members monitoring newly arrived vessels in the Marsden Cove Marina to identify possible marine pests, and to assess the bottom of hulls using a specially designed underwater pole camera.

**PART SIX: CONCLUSIONS TE AO MĀORI/ KI UTA KI TAI.**

135. Our harbour and estuary waters once teemed with kaimoana and other resources. However, post colonisation, more than a century of poor environmental management practices has seen an immense decline in marine species as a result of degraded water quality, habitat loss and harvest pressure. The decline of kaimoana and other taonga species and their habitats can be accompanied by a corresponding decline in traditional knowledge/mātauranga in regard to those species, their uses and relevant management practices. This can impact on the duty of tangata whenua as kaitiaki and displace an important role and function for our tamariki and mokopuna. It can have corresponding flow on impacts to our mana inter-generationally and other values and tikanga such as manaakitanga.
136. However, Patuharakeke has remained steadfast in mainraining and enhancing our connections and tikanga associated with our rohe and rohe moana both through continuation of traditional customary practices in accordance with tikanga through multiple means. We retain a leading role in managing, monitoring and enhancing the mauri of our rohe and are continuing to build capacity and capability across the spectrum of mahi taiao with the desire to protect cultural values and practices such as mauri, tikanga, rāhui and wāhi tapu that are central to our identity, sense of place and cultural well-being. Our mission to revitalise the mauri of our taonga tuku iho - ki uta ki tai (from mountains to sea) to provide for our physical, social, economic and cultural wellbeing for generations to come.

  
**SWORN/AFFRIMED** at Whangārei this 21 of August 2023.

  
Juliane Kathryn Chetham

Paula J. Wilson  
Solicitor  
Whangareai

  
Before: Justice of the Peace/ Solicitor / Registrar of the High Court,

"A"



Figure 1: Northport "Vision For Growth, Our Future Footprint" Vision for Growth  
 <<https://visionforgrowth.co.nz/>>



Figure 2: Unveiling and Blessing of Pou Rāhui at Te Koutu and Te Akau, December 2018.  
 (Credit: Juliane Chetham)

This is the exhibit marked with the letter "A" referred to in the  
 annexed affidavit of Juliane Kathryn Chetham  
 affirmed at Whangarei  
 this 21st day of August 2023

A deputy registrar/justice of the peace/lawyer of the High Court of  
 New Zealand

Paula J. Wilson  
 Solicitor  
 Whangarei

Handwritten initials or mark in the top right corner of the page.

28  
D

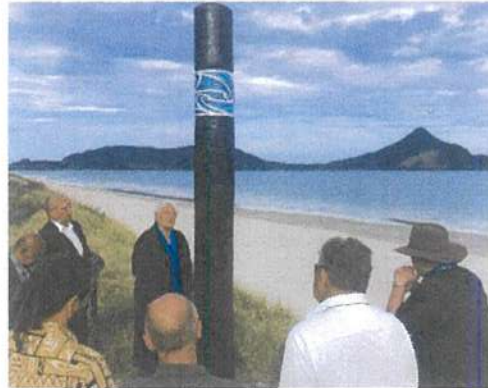


Figure 3: Unveiling and Blessing of Pou Rāhui at Te Koutu and Te Akau, December 2018.  
(Credit: Juliane Chetham)

Figure 4 (below): Snake Bank, December 2019



Figure 5 (below): Patuharakeke and NIWA Survey Patangarahi



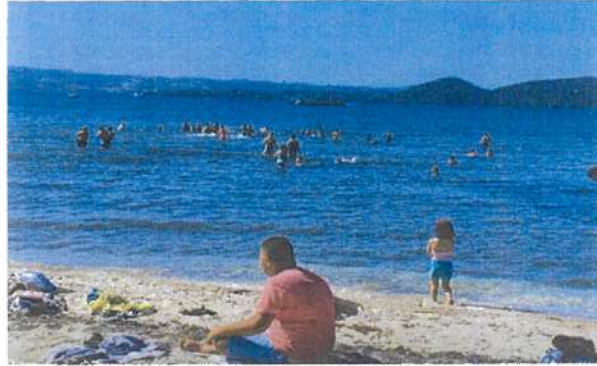


Figure 6: Patuharakeke tamakiri swimming at beach west of Northport (Papich Road Walkway) during Kura Taiao Noho January 2019. (Credit: Juliane Chetham)



Figure 7 and 8 (above and below): Tamariki surveying pipi and setting up to undertake a litter survey in Ruakākā Estuary, Noho kura taiao, January 2023 (Credit: Ari Carrington)



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0 B

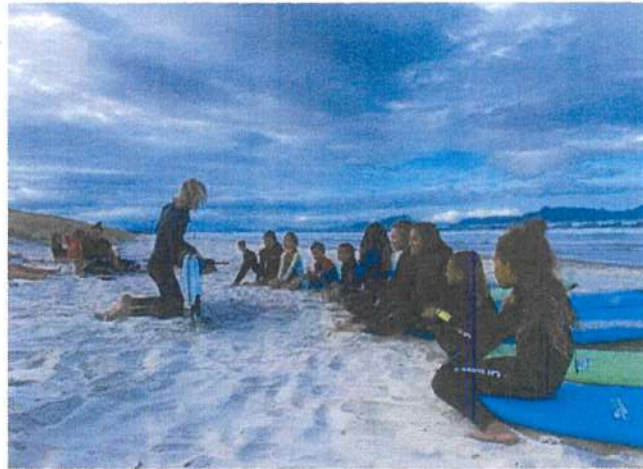


Figure 9: Reti Ngaru – Patuharakeke afterschool surfing programme at Waipu Cove, March 2021. (Credit: Ari Carrington)



Figure 10: Patuharakeke Kura Taiao Haerenga to Tawhiti rahi, April 2022. (Credit: Ari Carrington)

Page 2



Figure 11: PTB Pou Taiiao Team with kaumatua and whānau at Dolphin Stranding, To Koutu, 13 August 2023 (Photo: Hollie Kereopa).

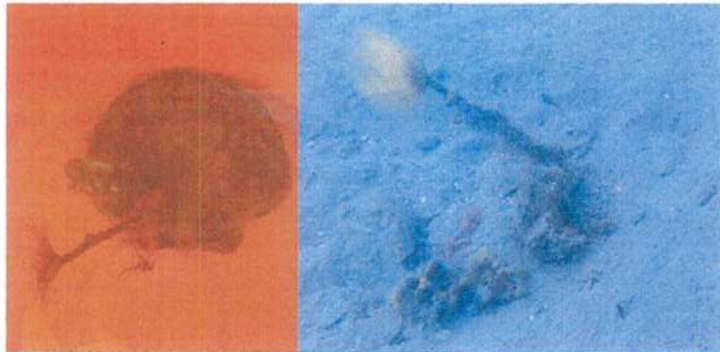
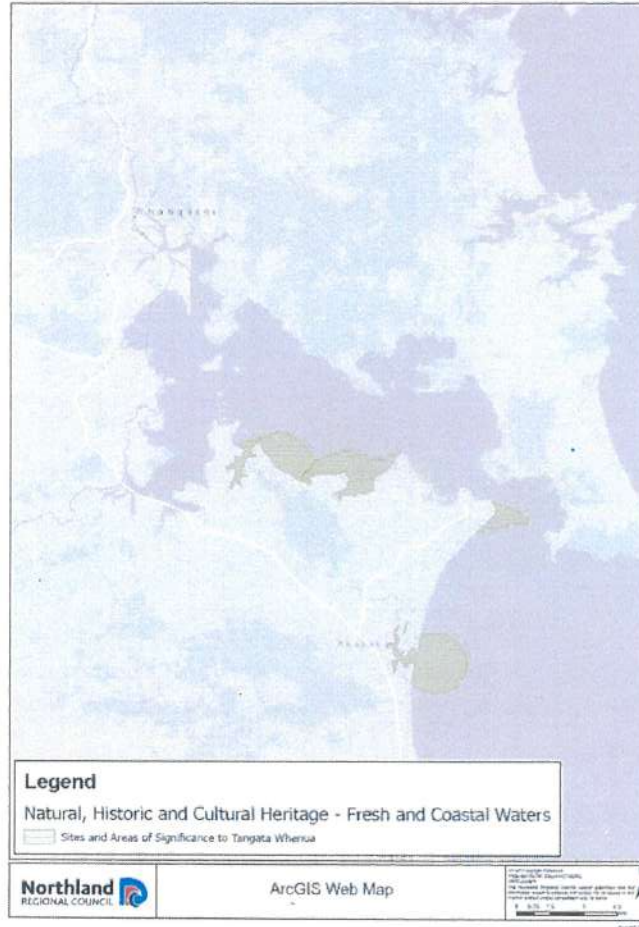


Figure 12 and 13 (above): Images of Sabella attached to Tipa at Takahiwai mātaitai. (Credit: Steve Johnson)

Page

"B"



Patuharaakeke SSTW in Northern Regional Plan

Paula J. Wilson  
Solicitor  
Whangarei

This is the exhibit marked with the letter "B" referred to in the annexed affidavit of Juliana Kathryn Chapman affirmed at Whangarei this 21st day of August 2023

A deputy registrar/justice of the peace/lawyer of the High Court of New Zealand

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-Ā-TARA ROHE**

**CIV-2017-485-281**

**IN THE MATTER OF**

The Marine and Coastal Area  
(Takutai Moana) Act 2011

**AND IN THE MATTER OF**

An application by Patuharakeke Te  
Iwi Trust Board for an order  
recognizing Customary Marine  
Title and Protected Customary  
Rights

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**AFFIDAVIT OF JULIANE KATHRYN CHETHAM**

*Affirmed this 2<sup>nd</sup> day of February 2024*

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**This document is filed by:-**



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**I, JULIANE KATHRYN CHETHAM, of Whangārei, AFFIRM the following:**

1. This affidavit is produced as an addendum to my previous affidavit dated 21 August 2023 and should be read in conjunction with it.<sup>1</sup> For brevity I do not repeat paragraphs 1-16. This affidavit provides more detail of our more contemporary relationships and associations with the Bream Bay area subject to the MACA Stage 1(b) hearing and builds on the Traditional Research Report of Patuharakeke for the MACA Whangārei Stage 1(b) Hearing (“**the Stage 1(b) Traditional Report**”) prepared by Harry Maki-Midwood and myself.

**SCOPE OF EVIDENCE**

2. My evidence is in six parts:
  - Part One: Introduction
  - Part Two: Impacts on Te Akau/Bream Bay
  - Part Three: Engagement in RMA Policy and Planning processes
  - Part Four: Relationship with Department of Conservation
  - Part Five: Te Pou Taiao operations; research and projects
  - Part Six: Conclusion Te Ao Māori/ ki uta ki tai.
3. As with my previous affidavit, my evidence is sourced from the existing evidence of Patuharakeke whānui such as from various resource consent and Court hearings and a number of published and unpublished submissions, cultural impact assessments, plans and strategies produced by Patuharakeke Te Iwi Trust Board over the past decades. The remainder is pulled from personal experience as a member of the hapū who grew up on the shores of the Whangārei Harbour and who has spent more than the past decade coordinating the resource management/environmental portfolios of PTB.

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<sup>1</sup> Affidavit of Juliane Kathryn Chetham, dated 21 August 2023.

## PART ONE: INTRODUCTION

4. The Traditional Research Report of Patuharakeke (“**the Stage 1(a) Traditional Report**”) provides a description of our rohe and includes maps which were appended to that report.<sup>2</sup> I do not repeat that here.
5. In those areas where exclusive use and occupancy of the whenua and adjacent moana has been disturbed due to breaches of Te Tiriti o Waitangi, Patuharakeke have been steadfast in maintaining our ahikātanga and tikanga through kaitiakitanga and other customary practices from 1840 and through to this day. As mentioned in my previous affidavit, over the last three decades Patuharakeke has become adept at utilising the statutory/legislative mechanisms (however incomplete, lacking or non treaty-compliant they may be) to our advantage, or to support our kaitiaki efforts, or what I often refer to as “contemporary kaitiakitanga.”<sup>3</sup> As evidenced in our evidence already filed, we continue our advocacy to protect and enhance our rights and our responsibilities to our customary resources.
6. As is the case with Whangārei Terenga Parāoa our kapata kai of Bream Bay is also in a degraded state. However, as can be seen on Map 16 and 17 of Appendix T in the Stage 1(b) Traditional Report as the majority of the whenua adjacent to the Bream Bay coastline is held by the Crown, our connection, access, use and ability to uphold tikanga in relation to it has not been diminished, and as I will relate, is even augmented.

## PART TWO: MIGHTY RIVER POWER/ MARSDEN A&B CASE STUDY

7. In my 2013 and 2016 briefs prepared for the Tribunal’s Paparahi o Te Raki Inquiry, I set out some of the details relating to the sale of Mighty River Power (“**MRP**”) land that had s 27b Memorials on its titles.<sup>4</sup> This example

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<sup>2</sup> Map 1-11 annexed to *Ngā Kōrero Tuku Iho o Patuharakeke, The Traditional Research Report of Patuharakeke*, dated 21 August 2023.

<sup>3</sup> Affidavit of Julianne Kathryn Chetham, dated 21 August 2023 at [23].

<sup>4</sup> Wai 745, #A1 Affidavit of Julianne Kathryn Chetham in Support of an application by Patuharakeke seeking an urgent hearing into the sale of Mighty River Power land, dated 15 May 2014.

provides an important illustration of Patuharakeke as ahi kā expressing tikanga, kaitiakitanga and mana Rangatira by continually stepping up to challenge the Crown when acting in a manner inconsistent with the Treaty and in this instance, potentially putting coastal whenua further from our reach. The MRP land was the former Marsden Power Station site located at an area of Te Akau/ Bream Bay traditionally known as Matewhero and straddling the boundaries of the Poupouwhenua and Ruakākā land blocks.

8. Construction of the oil-fired power station Marsden A began in 1964 and electricity generation started in 1967. Marsden B was built next door between 1976-1979, as part of the 'Think Big' series of projects, however Marsden A ended up being used infrequently during the 1970s and Marsden B was never commissioned because of the oil crisis combined with a lower-than-expected demand for electricity. Marsden A was closed in 1997 and dismantled the following year while Marsden B plant was dismantled and shipped to India in 2012.<sup>5</sup>



*Marsden Point Power Station, Whangarei, Northland: 1976 Station B - Aerial View - during construction<sup>6</sup>*

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5 National Library of New Zealand Records "Marsden A Power Station" (1998) <<https://natlib.govt.nz/records/22674363>> and "Marsden B Power Station" (2012) <<https://natlib.govt.nz/records/22674372>>.

6 Fletcher Construction Co Ltd "Marsden Point Power Station, Whangārei, Northland" 1976 Station B Aerial" (1976) Fletcher Trust Archives <<https://shorturl.at/hvzy5>>

9. Concurrent to this, MRP proposed in 2005 to build a coal-fired power station on the Marsden site. This proposal however was abandoned due to restrictive consent conditions, the introduction of the Emissions Trading Scheme and more competitive generation from renewable sources elsewhere. Following this, most of the land was leased to farmers, the NIWA aquaculture facility and Transpower also retains a substation at the site. However, once the option of generating power on the site was no longer available, MRP wanted to divest of the property.
10. Despite PTB having an MOU with MRP which relied on open communications and part of the site being subject to a S27b Memorial under the State Owned Enterprises Act, in 2014 they advertised in the New Zealand Herald seeking expressions of interest in seven blocks of land (166 hectares in total) of their site/s. Two of the seven blocks of land (known as “Marsden A” and “Marsden B”), were subject to s 27B memorials. These two blocks were the last remaining land in the Patuharakeke rohe owned by a Mixed-Ownership Model company that had the Crown as its majority shareholder. The majority of the other s27B properties in our rohe are in private residential ownership.
11. In an attempt to protect our whenua and prevent the land being transferred into the hands of a third party (most likely to be overseas investors), the Trust filed an Application for an Interim Injunction in the Whangarei High Court on 21 May 2014. The aim was to halt the sale of the land until the completion of the Paparahi o Te Raki Waitangi Tribunal proceedings. Our Application was made on the basis that the Crown, as the majority shareholder of MRP, in allowing the sale was in breach of section 45Q of the Public Finance Act 1989 as they were acting in a manner inconsistent with the principles of the Treaty of Waitangi. This Application was struck out by Judge Venning in November 2014 as he decided that although the Crown is the majority shareholder in MRP, the sale of the land does not involve any Crown action or decision and that the Crown cannot direct

MRP in relation to the sale and therefore there is no breach of the Treaty by the Crown.<sup>7</sup>

12. On 16 May 2014 the Trust also filed an Application for an Urgent Hearing in the Waitangi Tribunal. We claimed that the Crown's Large Natural Grouping Policy undermined our tino rangatiratanga and right to appropriate redress in the form of resumption of the two memorialised blocks, that the Crown were obfuscating the power of the Waitangi Tribunal, that the Crown had failed to consult with Patuharakeke or ensure that there will be appropriate redress for Patuharakeke. While we were unsuccessful in this forum the korero from our hapū was that we needed to be on the record for our future generations to show that we tried and that while the legislation is hollow in relation to protecting our interests, particularly in relation to State Owned Enterprise land with s 27b Memorials, we must continue to fight to prevent the further alienation of our whenua by any means available to us.
13. Ultimately, while MRP were able to sell approximately eight hectares<sup>8</sup> of their site to NIWA in 2015 for the Bream Bay Aquaculture facility, our action was crucial in forcing the Crown to purchase the remaining MRP landholdings to be entered into the Treaty Settlement Landbank for a future return to mana whenua.<sup>9</sup> The land banked properties are highlighted in yellow on Map 16 of Appendix T in the Stage 1(b) Traditional Report.

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<sup>7</sup> Mike Barrington "Election holds up progress" *Northern Advocate* (online ed, Whangārei, 12 August 2014) and "Hapu upset at Marsden Pt land sale" Radio New Zealand (online ed, Whangārei, 22 April 2014) and Mike Dinsdale "Land for sale is ours, says Patuharakeke" *Northern Advocate* (online ed, Whangārei, 5 May 2014).

<sup>8</sup> "NIWA Aquaculture facilities" NIWA Taihoro Nukurangi <<https://niwa.co.nz/aquaculture/our-services/our-facilities>> and NIWA "Half yearly report December 2021" (NIWA, December 2021) at p 3.

<sup>9</sup> Wai 2561, #A76(a) Index of Appendices to Brief of Evidence of Dr. Guy Gudex, dated 22 August 2016 at p 6-7. And see Sime Road properties at "List of properties in the Treaty Settlement Landbank as at 10 October 2022" LINZ (2022) <<https://shorturl.at/xDGS3>>.

### **PART THREE: ENGAGEMENT IN RMA POLICY AND PLANNING PROCESSES**

14. Part Three of my previous affidavit outlined PTB's engagement in RMA policy and planning processes including development of our Hapu Environmental Management Plan (HEMP) and Mana Whakahono a Rohe arrangements with both the District and Regional Councils'.<sup>10</sup> PTB have established a strong influence in the consenting and planning space in our rohe, consistently challenging and opposing applications that threaten our coastal landscapes and seascapes, wāhi tupuna and wāhi tapu and /or our taonga species and their habitats.
15. Key resource consent and plan change proceedings we have been involved of relevance to the Stage 1(b) Area are set out below:
- a. **A Private Plan Change by Whangarei Racing Club** to allow for rezoning the Ruakākā Racecourse site from Coastal Countryside to a "Ruakaka Equine Environment".<sup>11</sup> Key aspects of the proposed plan change included expansion of horse training activities and commercial development along with up to 350 residential dwellings. PTB opposed this proposal through the hearing process on the basis of potential effects on Ruakākā Mātaitai, Te Akau and taonga species and our cultural landscapes and wāhi tupuna such as Roto Pārera. Moreover, the racing club site is subject to s27b Memorials so we argued that the plan change effectively would perpetuate further alienation of our ancestral lands and render said land irretrievable should a resumption be successful. While the plan change was eventually approved, through Environment Court mediation PTB were able to work alongside the Department of Conservation to require a range of cultural monitoring conditions to be initiated in management plans should the development proceed.

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<sup>10</sup> Affidavit of Juliane Kathryn Chetham, dated 21 August 2023 at [66].

<sup>11</sup> Mike Dinsdale "Racing club pegs its future on home builds" *Northern Advocate* (online ed, Whangārei, 19 November 2013).

- b. **Ruakākā Wastewater Treatment Plant Ocean Outfall.** In 2011, Whangarei District Council (WDC) put in an application for the Ruakākā Wastewater Long-Term Consents Project. This involved a staged expansion and upgrade of the existing plant, including additional irrigation sites, but most significantly, a proposal to construct an ocean outfall to discharge treated wastewater into Bream Bay. PTB opposed the Ocean Outfall on the basis that the waters of Bream Bay are a taonga gifted by our tūpuna which we as kaitiaki have a duty to conserve and protect mahinga mātaimai for our mokopuna. The disposal of wastewater, no matter how well treated, is an anathema to Patuharakeke and has the effect of diminishing its mana and wairua, thereby resulting in a loss of mana for kaitiaki. While the consents were granted, through the hearings process, PTB were able to negotiate the inclusion of rigorous development, technology and environmental/monitoring conditions requiring WDC to periodically review the Ruakākā Wastewater Scheme and Strategy. The first of these reviews occurred in 2017 and involved such details as a review of the rate and further projected development and associated wastewater generation technology developments in relation to wastewater generation and projections, treatment and beneficial re-use systems and techniques and land application techniques. Other conditions require biannual liaison and a suite of mātauranga Māori based monitoring conditions to be triggered when the outfall constructions stage is to commence. Through our relationship with WDC (e.g. the Mana Whakahono a Rohe) and our continued advocacy for the outfall component to be scrapped, last year we initiated an agreement in principle to work together with WDC to secure medium, and long-term land disposal areas for the discharge of Ruakākā WWTP treated effluent. This work also leverages off relationships with other landowners and industrial development in the rohe to exhaust all possibilities for land-based disposal and re-use options.
- c. **Ruakākā South Sewage Extension.** PTB spent a couple of years working alongside WDC, the contractor and project archaeologist

during the upgrade for Ruakākā South reticulation. Kaitiaki monitors were on site on behalf of Patuharakeke throughout the works to monitor earthworks in the case of unexpected archaeological discovery and also to monitor sediment and erosion controls.

- d. A range of similar projects where Cultural Values or Effects Assessments, Cultural Mitigation Plans / monitoring have been carried out by Patuharakeke including but not limited to:
- i. WDC's Rock Revetment Seawalls at PrInces Rd Reserve Ruakākā and Hamon Rd, Waipū;
  - ii. The Waipū Rising Main upgrade, coastal or riverside subdivisions (such as Three Rivers subdivision at confluence of Waihoihoi, Ahuroa and Pohuenui Rivers Blue Moon subdivision at Langs Beach);
  - iii. Waihoihoi Reserve Skatepark;
  - iv. Waipū Riverwalk and Reserve;
  - v. Northland Regional Council (NRC) Civil Defence Tsunami Siren Upgrades at Waipū Cove, Langs Beach, Uretiti and Ruakākā, among other locations;
  - vi. Pariwaka stream works.

#### **PART FOUR: RELATIONSHIP WITH DEPARTMENT OF CONSERVATION**

16. In Part Five of my previous affidavit I have summarised relevant examples of Te Pou Taiao o Patuharakeke operations research and projects in Whangārei Harbour and some of which pertain to Te Akau/Bream Bay and Waipū.<sup>12</sup>

17. An important relationship to highlight for Stage 1(b) is PTB's close partnership with the Department of Conservation (**DOC**). Given that most of the Bream Bay coastal margin is held in the DOC estate (see Map 16 and 17 of Appendix T in Stage 1(b) Traditional Report), PTB has held a long-term relationship with DOC over three decades.

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<sup>12</sup> Affidavit of Juliane Kathryn Chetham, dated 21 August 2023 at [112].

18. PTB has contributed to the reserve and campground management plans at Waipū Cove<sup>13</sup> and Ruakākā and has representatives on governance at both. Work with DOC on management and activities at Uretiti Campground is routinely carried out.
19. In 2015 we worked with DOC on the reclassification of DOC land in Bream Bay as reserves, and provided and approved the names for these as the Poupouwhenua, Ruakākā and Uretiti Scenic Reserves respectively.<sup>14</sup>
20. Patuharakeke have been partners with DOC in the Tara iti/Fairy Tern Recovery programme since its instigation.<sup>15</sup> That mahi has included assisting with the building, maintenance and protection of nesting sites at Waipū and catching inanga to feed the chicks being reared in the aviary, wider weed and pest management and advocacy and education. See photo on the following page:

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<sup>13</sup> "Management Plan Waipū Cove Domain Recreation Reserve 2020" (Wilcon Sylvan Parks and Landcape Management Ltd, 1 December 2020) at p 19 and 33.

<sup>14</sup> "Naming of Reserves" (25 June 2015) 69 *New Zealand Gazette* No 2015-In3675.

<sup>15</sup> "New Zealand fairy tern/tara iti" Department of Conservation <<https://www.doc.govt.nz/nature/native-animals/birds/birds-a-z/nz-fairy-tern-tara-iti/>> and see Lindy Laird "Northland group to pull fairy terns back from brink of extinction" Northern Advocate (online ed, Whangārei, 1 June 2019).



*Photo (Ari Carrington). Te Pou Taiao providing shell and sand material to create nesting sites for tara iti at Waipū.*

21. PTB Pou Taiao employees also spent weekends over several summers participating alongside DOC in a beach advocacy programme to educate beachgoers and try to affect behavioural change in regard to the use of vehicles on beaches, dogs and other kaupapa that are impacting our taonga species and their habitats.<sup>16</sup>
22. With regard to concessions, DOC send all concession permit and renewal applications in our rohe to Te Pou Taiao for review and our feedback and comment on monitoring or other information requirements. Some examples include:
  - a. Horse trekking Uretiti beach;
  - b. Ruakākā Racecourse Beach Access for horse training;

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<sup>16</sup> "DOC to get tough on vehicles in dunes" *Bream Bay News* (online ed, Whangārei, 19 December 2019).

- c. WDC Lease renewal for the Uretiti Refuse Transfer Station;
  - d. Marine Mammal Filming permits in Bream Bay Takiwa;
  - e. Waipū Cove Bird Watching Tours;
  - f. Walking/hiking tours; and
  - g. Various scientific collections (wildlife collection permits) on the offshore islands and terrestrial rohe in the conservation estate.
23. Through this longstanding relationship with DOC and often alongside Ngātiwai Trust Board and whānau whanui we routinely participate in mahi on these islands as kaitiaki and ahi kā. We have consistently held the position with DOC that we should be involved in any mahi on the islands to maintain our ahi kā, our connections and in readiness for the future when we aspire to have a much greater role in the management and hopefully see a return to hapū ownership of these islands.
24. As described in the Stage 1(a) Traditional Report, in the Mahinga Mātaitai section,<sup>17</sup> this has involved some of our young people being part of the annual Island Weeding Team operation that has been going for over 20 years. When they participate in this role they “hold the mana” and cultural safety of the group, typically providing daily karakia for the oftentimes challenging and risky work and ensuring wāhi tapu are respected. Te Pou Taiao have recently taken on a track maintenance contract on Taranga and Marotiri which will get underway soon. Whānau that spend time over there speak of the mauri and wairua of the place, the richness of our taonga manu, ika and kaimoana species and view it as a privilege to stay and work over there. In my opinion these haerenga to ngā motu emulate the seasonal harvesting and fishing trips of the past as described in the Stage 1(b) Traditional Report.<sup>18</sup>

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<sup>17</sup> The Stage 1(a) Traditional Report at [234].

<sup>18</sup> The Stage 1(b) Traditional Report at [134].

## **PART FIVE: TE POU TAI AO OPERATIONS, RESEARCH AND PROJECTS**

25. In my previous affidavit I described various Pou Taiao projects in our Tangaroa workstream.<sup>19</sup> Other mahi of relevance to the Stage 1(b) area is set out below.
26. PTB partnered with NRC to complete the most recent State of The Environment (Rapid Ecological Assessment) assessment for Waipū Estuary and Lagoon Significant Ecological Area.<sup>20</sup> To my knowledge, this was the first such assessment undertaken by NRC that involved the use of Cultural Health Indicators. See photos on the next page:

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<sup>19</sup> Affidavit of Juliane Kathryn Chetham, dated 21 August 2023 at [119].

<sup>20</sup> Nick Bamford, Ari Carrington et. Al *Waipū Estuary SEA assessment 2021* (Northland Regional Council, 2021).



*Photo (Ari Carrington). Te Pou Taiao and NRC staff State of the Environment (Rapid Ecological Assessment) monitoring at Waipū Estuary.*

27. We are also involved in a dune monitoring programme where we contract to NRC to assess habitat and populations of mokomoko (native skinks) and katipō spiders. Te Pou Taiao work closely with DOC and community groups such as the Bream Bay Coastal Care Group and Piroa Conservation Trust on maintenance and habitat enhancement, along the entire coastline between Waipū Cove, the Uretiti Scenic Reserve to the Ruakākā Wildlife Refuge. See photo below:



*Photo (Ari Carrington). Te Pou Taiao Dune monitoring near Ruakākā Racecourse.*

28. The Waipū awa are taonga of critical significance to Patuharakeke. We have led education events with community groups for local kura to share how important the restoration of waterways is and continue to work and advocate in this space. We have also been a key member of the Waipū River Walk Committee to establish a better connection for the village and

community to this waterway. We have partnered with Whitebait Connection in the Northland Īnanga Spawning Habitat Restoration Project. The purpose of this project is to significantly scale up collaborative work in Northland locating, protecting, and enhancing Īnanga spawning habitat across awa in our rohe. See photo below:



*Photo (Ari Carrington). Te Pou Taiao educating local kura students about caring for the awa.*

29. In my previous affidavit I explained our efforts in relation to taitamarikitanga.<sup>21</sup> Specifically, we want our tamariki to know they belong in Waipū. Future aspirations for this area include the potential for a nohoanga site at Pariwaka to support ongoing education, management activities of the mahinga mātaimai in Waipū, and progressing more water based activities such as reti ngaru (surfing) and waka ama. We are currently working with both Cawthron and University of Auckland on

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<sup>21</sup> Affidavit of Juliane Kathryn Chetham, dated 21 August 2023 at [112].

understanding the kūtai habitat at Pariwaka to Wairahi so we can better protect it from sustained harvest pressure. Further to my previous affidavit where I discussed PTB's involvement in customary fisheries management, we are currently preparing the documentation to support a mahinga mātaītai reserve application throughout our rohe moana and including the special rocky reef habitat and kohanga for taonga species at the south-eastern end of our rohe.



*Photo (Ari Carrington). Patuharakeke tamariki reti ngaru lesson at Waipū Cove.*



*Photo (Ari Carrington) cultural health indicator monitoring at Kutai rock*



*Photo (Ari Carrington) hikoi at Pariwaka Waipū Cove*

**PART SIX: CONCLUSIONS TE AO MĀORI/ KI UTA KI TAI.**

30. Patuharakeke continue to exercise tikanga in relation to Te Akau/Bream Bay, Ruakākā, Waipū and Rohe Moutere (the outer islands).
31. While no longer owners of the whenua along the coastal margin, we have been constant in challenging the Crown regarding past and contemporary acts which alienate us from our ancestral whenua. While most of the coastal whenua now sits under the mantle of DOC, this has not hampered our tikanga practices, and in the main, supports continuation of our kaitiakitanga. We will continue to seek out ways of activating and strengthening connections to our takutai moana, cultural landscapes and seascapes, wāhi tupuna and continue to prepare our tamariki and mokopuna for an ever-increasing role in the governance and management of our spaces.

**AFFIRMED** at Whangārei this 2<sup>nd</sup> of February 2024.

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**Juliane Kathryn Chetham**

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Before: Justice of the Peace/ Solicitor / Registrar of the High Court,