

MARSDEN POINT TERMINAL PROPOSAL

CULTURAL ASSESSMENT

Views of Tangata Whenua

in respect of the

Proposed Port Development

at Marsden Point

A Report Prepared for the

PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT

by

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Dr Margaret Mutu was a member of the Technical Review Panel established by the Parliamentary Commissioner for the Environment to undertake the assessment of the EIA documentation accompanying the Northland Port Corporation's application to develop a port terminal at Marsden Point. The report *Marsden Point Terminal Proposal Technical Review Panel Report*, (Parliamentary Commissioner for the Environment, December 1994) contains the review of civil engineering, water quality and ecology, hydrodynamic, traffic and transportation, landscape and noise aspects of the proposed development.

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CONCLUSIONS AND RECOMMENDATIONS

Based on the information supplied and consultation with *tangata whenua* and the Northland Port Corporation (NPC), I can conclude that although Northland Port Corporation has sought the views of *tangata whenua* in relation to the proposed port development, to date it does not appear to have addressed any of their expressed concerns.

On the information supplied to me by Patuharakeke, several approaches have been made to NPC with a view to having the concerns of *tangata whenua* adequately addressed. Patuharakeke are particularly concerned that, should the proposal proceed, they will still be able to carry out their *kaitiaki* responsibilities (which are specifically provided for by section 7(a) of the Act). They have made detailed recommendations on the specific matters which must be addressed pursuant to sections 6(e), 7(a) and 8 of the Act. Some of the recommendations require significant changes to the current proposal. All their concerns and recommendations were provided in the Midwood Report (which was commissioned by NPC and included in the EIA). Patuharakeke have also discussed with NPC a practical manner in which this can be achieved (via a substantial shareholding in the Corporation and the appointment of a *Kaiwhakahaere* (Liaison Officer) within NPC).

The documentation supplied by both Patuharakeke and NPC indicates that not only has NPC not addressed any of the specific issues raised in the Midwood report, they have also rejected all of Patuharakeke's suggested methods for addressing NPC's responsibilities in respect of their obligations to *tangata whenua* as set out in Part II of the Act. NPC have, however, continually stated that they are prepared to continue consulting with *tangata whenua*.

As a result of the information received both orally and in written form from NPC, Patuharakeke and Ngatiwai Trust Board, the following specific conclusions have been reached (and are copied here from Section IV of this report):

1. That information supplied in the EIA on Maori cultural issues and the impacts of the proposal on *tangata whenua* contain several inaccuracies. The information initially supplied by Patuharakeke (the Midwood Report) is accurate and adequate for the aspects that Patuharakeke felt competent and well-informed enough to comment on. However, the report raised several informational queries and recommended several courses of action which have not been responded to in either the EIA or subsequent documentation. As a result information on several relevant Maori matters have not been included in the EIA. Such information will not be available to NPC until such time as it has carried out the necessary and adequate consultation with *tangata whenua*.
2. As presently proposed there are adverse environmental effects identified by *tangata whenua* (and others), in particular the destruction of marine life in the reclamation

area, which will not be avoided, remedied or mitigated. The EIA has identified an alternative to the reclamation which will have less negative impact on the environment.

There will be many other adverse environmental effects caused by dredging, traffic, construction and operation, water (sea and fresh) usage and waste disposal. These, along with some social issues such as employment, are not confined within the immediate vicinity of the proposal, and in particular affect other *hapuu* of Ngatiwai. Some effects are still to be investigated. Others require further discussion (see Section 3 of this report and the *The Marsden Point Terminal Proposal Technical Review Panel Report*).

3. That in respect of Maori issues, the EIA does not meet the requirements of sections 6(e), 7(a) and 8 of Part II of the Resource Management Act 1991, and needs further work to meet the requirements of 1(d, g & h) and 2(c) of the Fourth Schedule of that Act.
4. The EIA does not describe the Maori cultural aspects of the proposal clearly or appropriately. In particular the proposal does not describe how *tangata whenua* will be able to carry out their *kaitiaki* responsibilities for the area involved in the proposed port and the neighbouring areas of the harbour and coast which will also be affected by the proposal. This is a direct result not only of the recommendations of the Midwood Report not having been followed up, but also of not having established communications with Ngatiwai Trust Board.
5. That although NPC has sought the views of *tangata whenua* in relation to the proposed port development, to date it has not addressed any of their expressed concerns. NPC's response to *tangata whenua* has been most inadequate.
6. Given from the inadequacy of the documentation supplied by NPC to date and their misinterpretation of at least some of the information supplied by Patuharakeke, it is quite clear that NPC do not currently have the expertise required to carry out the necessary consultation with *tangata whenua* adequately. It is highly improbable that the current impasse between *tangata whenua* and NPC will be resolved without NPC availing itself of the necessary expertise.

RECOMMENDATIONS

Both Patuharakeke and Ngatiwai Trust Board (who are supported by Te Kotahitanga o Te Taitokerau Resource Management Committee) have approved the following recommendations:

1. That NPC, on the recommendation of *tangata whenua*, namely Patuharakeke along with Ngatiwai Trust Board representing other *hapuu* directly affected by the proposed port, engage, as a matter of urgency, at least two people suitably qualified in the field of Maori issues and the *tikanga* of Patuharakeke and other

***hapuu* of Ngatiwai in the immediate area to:**

- **Establish and maintain a meaningful and on-going consultation process between Northland Port Corporation and *tangata whenua* in respect of the proposed port.**
 - **Address each of the issues raised in the Midwood Report in order to reach resolution of them with *tangata whenua*.**
- 2. That NPC give further, serious consideration to alternatives to the present proposal which do not pose a serious threat to the *mauri* of the Whangarei Harbour.**

Section 1:

INTRODUCTION

The Parliamentary Commissioner for the Environment received a request in February 1994 from the Northland Regional Council to assist in the process of considering the application by the Northland Port Corporation to develop a port terminal at Marsden Point.

The Commissioner undertook, as provided for in s.92 (2)(c) of the Resource Management Act 1991, to review the Environmental Impact Assessment (EIA) provided in the application. The Commissioner established a Technical Review Panel to undertake the assessment of the EIA documentation. The Northland Port Corporation agreed not to request notification of their application until the results of the Commissioner's review were received.

Among the issues of major concern identified during the Commissioner's visit to Whangarei in February 1994 was the impact of the proposal on iwi and consultation undertaken. A process involving consultation with *tangata whenua* and consent agencies was undertaken to recommend to the Commissioner a person to review Maori consultation and *tikanga* issues.

Dr Margaret Mutu was the member of the Review Panel responsible for Maori consultation and *tikanga* issues.

1.1 TANGATA WHENUA

The *tangata whenua* of the Marsden Point area who will be immediately and directly affected by the proposal are the *hapuu* Patuharakeke who have affiliations to Ngati Whatua, Ngatiwai and Ngapuhi tribes. Their marae is Takahiwai Marae located at Takahiwai some four kilometres north west of Marsden Point. They are descended from Manaia, the ancestor of many tribes of Te Tai Tokerau.

Tangata whenua of neighbouring *hapuu* who will also be directly affected by the proposal are Ngati Pukenga, Ngati Korora, Ngati Kahu and Tetarewa, along with Te Akitai and Koiwi. These *hapuu* all have representatives on Ngatiwai Trust Board.

The proposal will also impact upon other neighbouring *iwi*, in particular Ngati Whatua and Ngapuhi, along with the other tribes of Te Taitokerau. Most of these tribes (including Ngati Whatua and Ngapuhi) have representatives on Te Kotahitanga o te Taitokerau Resource Management Committee.

This report in draft form was subject to amendment and approval of *tangata whenua* who discussed and finalised it at two *hui* of Patuharakeke and at a meeting with Ngatiwai Trust Board's resource management division, each called specifically for this purpose. It is based on the statutory requirements relevant to these matters, in particular Part II and Schedule 4

of the Resource Management Act, the *New Zealand Coastal Policy Statement*, and the Draft Northland Regional Policy Statement.

The information available in the EIA and provided in subsequent documentation on the views of the *tangata whenua* and how their concerns have been addressed is inadequate in terms of the statutory requirements. As a result this report is fairly detailed in order to clearly indicate the information that is required.

1.2 SOURCES

This report is based on information and documentation provided by the Northland Port Corporation (NPC), by the *tangata whenua* of the Marsden Point area and the south side of the Whangarei Harbour, namely Patuharakeke, by the *tangata whenua* of the north side of the harbour who are neighbouring *hapuu* to Patuharakeke, and by associated tribal authorities of the area proposed for the development, namely the Ngatiwai Trust Board and the Resource Management Committee of Te Kotahitanga o te Taitokerau.

Information and documentation was provided as follows:

- (i) The three-volume report by Den Ouden Associates entitled *Marsden Point Terminal Proposal - Environmental Impact Assessment* (June 1993), which contains a report commissioned by NPC from *tangata whenua* on the proposal (the Midwood Report)
- (ii) A visit to Whangarei and the general site on 25 and 26 July 1994 with the rest of the Review Panel during which time meetings were held with representatives from Northland Port Corporation, consent authorities, concerned members of the public, and Ngatiwai Trust Board including Patuharakeke representatives. A visit was also made on 27 July 1994 to Te Kotahitanga o Te Taitokerau Resource Management Committee.
- (iii) NPC's response of 12 September 1994 to specific questions relayed to Northland Port Corporation on 16 August 1994 by the Review Panel relating to both the EIA and the Midwood report (Response to Review Panel). The questions and the responses are included at appendices 3 and 4 of the *Marsden Point Terminal Proposal Technical Review Panel Report* (Review Panel Report).
- (iv) Two *hui* of Patuharakeke convened at Takahiwai Marae. The first was on 11 September 1994 to discuss the proposal and previous consultation by NPC, and the proposed content of this report. The second was on 26 February 1995 to discuss and approve the final draft of this report for release to the Parliamentary Commissioner for the Environment. In the interim there were also discussions with several individuals of Patuharakeke.
- (v) An interview with the chief executive of NPC held on 9 March 1995.

- (vi) One meeting held on 9 March 1995 with the Resource Management division of Ngatiwai Trust Board representing the concerns of other *hapuu* of Whangarei Harbour directly effected by the proposal, along with earlier meetings and discussions with representatives of Ngatiwai Trust Board, and Te Runanga o Ngati Whatua.
- (vii) Copies of correspondence between Patuharakeke and NPC, and Ngatiwai Trust Board and NPC (see appendix 5).
- (viii) Public submissions.

Section 2:

WHAT SHOULD HAVE BEEN DONE?

(IN RESPECT OF CONSULTATION WITH TANGATA WHENUA)

The minimum requirements for what should have been done are determined from the relevant statutory considerations, in this case, the Resource Management Act 1991 (the Act), the *New Zealand Coastal Policy Statement* 1994 (NZCPS), the *Proposed Regional Policy Statement for Northland* and the *Whangarei County Council District Scheme* (1987). Although NPC has quoted the sections of the Part II of the Act which specifically apply to Maori and *tangata whenua* issues in its EIA, neither that document nor their responses to the Review Panel's questions indicate that they have been able to properly interpret these and produce the type of assessment of Maori issues that meets the requirements of the Act. They have recognised the need to incorporate the relevant sections of the *Regional Policy Statement for Northland* in the EIA, but have omitted any reference to the NZCPS from which the regional coastal plan is being drawn up.

The *New Zealand Coastal Policy Statement* guides local authorities in their day-to-day management of the coastal environment. Although it was not gazetted until May 1994, a draft was first released in 1991, with a second one in 1992. Section 62(2) of the Act requires that regional policy statements not be inconsistent with the NZCPS. Reference to the relevant Maori sections of this statement will greatly assist NPC with the present proposal. As such I have quoted both the relevant sections of the Act and relevant principles and policies from the NZCPS below in full and then provided further clarification and explanation as a means of explaining the list of matters still to be addressed by NPC in respect of *tangata whenua* and Maori issues.

2.1 The Resource Management Act 1991

Part II of the Act, which sets out the Principles and Purposes of the Act, determines those matters which must influence all decisions relating to the use of natural resources. In respect of matters specifically relating to Maori interests these are given at Ss. 6(e), 7(a) and 8 although there is considerable overlap in practice between these subsections and all other subsections of Part II.

The Fourth Schedule of the Act sets out the matters which should be considered when preparing an assessment of the effects a proposal will have on the environment. These include cultural effects, any effects on ecosystems, and any effect on natural and physical resources having spiritual or cultural value for present or future generations. This Schedule requires that in making an assessment of effects on the environment those persons interested in or affected by the proposal should be identified, as should be the consultation undertaken and any response to the views of those consulted. Furthermore a description of the mitigation measures to be undertaken to help prevent or reduce the actual or potential effect should be included in the assessment.

The full text of the sections which specifically relate to Maori and *tangata whenua* matters and are also specifically relevant to the present proposal are:

Section 6. *Matters of national importance* - *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

Section 7. *Other matters* - *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to -*

- (a) *Kaitiakitanga:*

Section 8. *Treaty of Waitangi* - *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*

The above sections specifically relate to matters which must influence any decisions of the Northland Regional Council, the Planning Tribunal and other authorities in respect of the present application. The nature of the documentation supplied by NPC indicates a need to provide explanations not only of the meaning of these sections and the words in them but also the practical implementation of them in respect of the current proposal. Such an explanation will be provided below following the list of other relevant statutory requirements. Particular attention will be paid to the principles and policies laid down in the NZCPS.

The Fourth Schedule of the Act lists matters that should be included (at 1.) and considered (at 2.) by the applicant in an assessment of effects on the environment and matters that should be considered when preparing an assessment of effects on the environment. In relation to *tangata whenua* issues the following sections are particularly relevant:

- 1(d) *An assessment of the actual or potential effect on the environment of the proposed activity:*
- 1(g) *A description of the mitigation measures (safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect:*
- 1(h) *An identification of those persons interested in or affected by the proposal, the consultation undertaken, and any response to the views of those consulted:*
- 2(a) *Any effect on those in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects:*
- 2(b) *Any effect on ecosystems, including effects on plants or animals and any physical*

disturbance of habitats in the vicinity:

- 2(c) *Any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural, or other special value for present or future generations:*

The Fourth Schedule is subject to the provisions of any policy statement or plan. At the date of writing the most relevant policy statement in respect of *tangata whenua* issues is the NZCPS. The Proposed Regional Coastal Plan for Northland, which is being drawn up following the guidelines provided in the national policy statement, will also be specifically relevant once notified.

2.2 The New Zealand Coastal Policy Statement

The NZCPS has several sections on Maori issues which are directly relevant to the present proposal and hence provides clear guidelines and instructions on matters to be considered not only in the process of drawing up the proposal but also in the process of considering the resource consent application. In quoting each of the relevant sections below, I will comment on how each applies in practical terms to the port proposal and how it should be reflected in the EIA¹.

The NZCPS commences with a set of principles for the sustainable management of New Zealand's coastal environment. In addition to Part II of the Act, there are 14 general principles for which regard shall be had. They include

6. *The protection of habitats of living marine resources contributes to the social, economic and cultural well-being of people and communities.*

The area proposed for the port development contains extensive and significant living marine resources. It is unclear from the EIA and other documentation provided by NPC that the social, economic and cultural importance of the proposed area to *tangata whenua* and other Maori who live in and visit the area is appreciated by NPC.

On three separate occasions when the author visited the site at low tide, Maori people were collecting shellfish there. The Midwood Report emphasises the fact that this is a customary use which has never ceased despite the depletion of the resource in recent years. The tribes living on and around the harbour have never ceased to exercise their customary fishing rights, which include a substantial commercial interest. The right of all coastal tribes to have their shellfish beds and fisheries habitats protected is largely undisputed these days, especially

¹ The Department of Conservation has published a companion document to the NZCPS entitled *Commentary of the New Zealand Coastal Policy Statement 1994* (hereafter referred to as The Commentary). It relates the reasoning which underlies the gazetted NZCPS (as determined by the Board of Inquiry into the draft NZCPS) and aims to help local authorities and the public in putting the NZCPS into practice. Comments made in this report are further expanded on in The Commentary.

following the recommendations of the Waitangi Tribunal² on the matter and subsequent government actions and legislation recognising the right.

Customary fishing rights³, including tribal commercial fishing, are protected by the Treaty of Waitangi. The Ngatiwai Trust Board (on which Patuharakeke is represented) has indicated that it is concerned to prevent the proposed development disturbing any fisheries habitats or fisheries either in or outside the harbour. It fails to see, for example, how the major scouring of the harbour proposed (through dredging) could fail to affect its fisheries habitats. Any disturbance would constitute a major infringement of Ngatiwai's customary fishing rights and hence their social, economic and cultural well-being. The EIA should include measures to be taken to ensure the protection of these habitats.

8. *Cultural, historical, spiritual, amenity and intrinsic values are the heritage of future generations and damage to these values is often irreversible.*

This section is self-explanatory, although it should be noted that Maori culture demands as a high priority that the rights of future generations be protected. This is ensured through the role of *kaitiaki* which is dealt with in principle 9.

9. *The tangata whenua are the kaitiaki of the coastal environment.*

It is clear from the documentation provided by NPC that the Corporation does not understand the term *kaitiaki*, (and thus is unable to adequately interpret S.7(a) of the Act). The Midwood report is written in terms of the responsibilities of Patuharakeke as *kaitiaki*, but does not specifically detail those responsibilities⁴. It simply lists in a very practical and pragmatic manner certain surface aspects which must be addressed. These aspects have been identified through the responsibility that the *kaitiaki* has. It is NPC's responsibility to address each matter in consultation with *tangata whenua* and report the results of the consultation in the EIA. However, to do so adequately NPC will require the expertise of a person with a sound knowledge of the principles and practicalities of *kaitiakitanga* as practised by Patuharakeke and its neighbouring *hapuu* and *iwi*.

In order to assist NPC in gaining a better understanding of the responsibilities of *kaitiaki*, an explanation provided in the report of the Board of Inquiry into the New Zealand Coastal Policy Statement and repeated in The Commentary has been provided at Appendix 1 of this

² See in particular the *Motunui-Waitara Report*, *Manukau Report*, *Mohaka River Report*, and the *Kaituna Report*.

³ In discussing Policy 3.2.8 of the NZCPS, The Commentary suggests that local authorities will need to consider any customary fisheries regulations (when promulgated) pursuant to the *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992*, particularly the provisions to establish *maaitai* reserves.

⁴ NPC's response to 16(a) of the Review Panel's questions refers to the Midwood report as "[Patuharakeke's] view of *kaitiaki*". The comment implies that others may have differing views of the responsibilities of *kaitiaki*. While this may be true of other *hapuu* in other areas, only Patuharakeke can determine the role of *kaitiaki* in its *rohe*. It is incorrect to imply, as the response does, that anyone else may be able to state a "differing view" of that role in Patuharakeke's *rohe*.

report. It provides a very clear, but also a very simplified and generalised explanation of the term.

Chapter 1 of the NZCPS deals with policies aimed at preserving the natural character of the coastal environment from inappropriate use and development. Policy 1.1.3 states

It is a national priority to protect the following features, which in themselves or in combination, are essential or important elements of the natural character of the coastal environment:

- (b) *characteristics of special spiritual, historical or cultural significance to Maori identified in accordance with tikanga Maori.*

The RMA gives examples of some of the types of characteristics which will come into this category. It lists *waahi tapu*, *tauranga waka*, *mahinga maataitai* and *taonga raranga*. NPC is aware that the proposed port site is an area of significance to Patuharakeke as a seafood gathering and fishing area, that is, a *mahinga maataitai*⁵. It is also an area in which weaving materials (pingao in particular) grow. These are *taonga raranga*. The Midwood report identifies the historical and spiritual significance of the area. It is NPC's responsibility to ensure that the proposal includes mechanisms for providing the necessary protection for these characteristics of the natural character of the coastal environment on and near the proposed site.

Chapter 2 deals with the protection of the characteristics of the coastal environment of special value to the *tangata whenua*. Policy 2.1.1 states

Provision shall be made for the identification of the characteristics of the coastal environment of special value to the tangata whenua in accordance with tikanga Maori. This includes the right of tangata whenua to chose not to identify all or any of them.

Policy 2.1.2 states:

*Protection of the characteristics of the coastal environment of special value to the tangata whenua should be carried out in accordance with tikanga Maori. Provision should be made to determine, in accordance with tikanga Maori, the means whereby the characteristics are to be protected.*⁶

NPC's commissioning of the Midwood report as part of the process of drawing up the EIA was consistent with Policy 2.1.1. The EIA indicates an intention to start meeting some *tangata whenua* concerns by stating that the appointment of a *Kaiwhakahaere* (Liaison

⁵ See footnote 3 above.

⁶ The Commentary (pages 13-16) makes additional helpful comments on these policies.

Person) could effectively achieve this. Following this through will help ensure that NPC's proposal is consistent with Policy 2.1.2.

Chapter 3 deals with activities involving the development of the coastal environment. Policy 3.2.8 states:

Provision should be made for the protection of the habitats (in the coastal marine area) of species which are important for commercial, recreational, traditional and cultural purposes⁷.

Patuharakeke and Ngatiwai Trust Board have identified species of shellfish, *taonga raranga* (particularly pingao), and commercial fish species whose habitats will either be destroyed or adversely effected by the present proposal, a major infringement of the customary fishing rights of *tangata whenua*. NPC needs to amend its proposal to ensure that these habitats are protected.

Chapter 4 deals with the Crown's interests in land of the Crown in the coastal marine area. Policy 4.2.1 states

All persons exercising functions and powers under the Act in relation to land of the Crown in the coastal marine area shall recognise and facilitate the special relationship between the Crown and the tangata whenua as established by the Treaty of Waitangi⁸.

The current proposal involves land of the Crown, although Patuharakeke disputes the Crown's title. Although NPC currently holds the title to land on the proposed site, the Crown's original title to it is in dispute for several reasons, one of which is the original confiscation of land in 1854 (Midwood Report; p.12). With respect to the seabed area, NPC currently leases it from the Crown. There appears to be no record of the Crown having acquired the area of seabed concerned from Patuharakeke or any other tribe. Patuharakeke does not accept that the Crown has acquired any title or right to the seabed from them as the holders of the aboriginal title, and as such considers that all requests to use the seabed need to be made through Patuharakeke.

Although the Crown's title to the seabed in the proposed area is by no means clear and is vigorously disputed by Patuharakeke, the Crown's assertion of title imposes the responsibility stated in Policy 4.2.1 above on Northland Regional Council as the resource consent granting body in the first instance.

The relationship between *tangata whenua* and the Crown is that of partners to the Treaty of Waitangi. It is a relationship which, at the very least, demands mutual respect for each other's concerns. In brief the Treaty was drawn up by the Queen of England to indicate her intention to ensure that in return for her being permitted to oversee the peaceful migration

⁷ ibid page 22.

⁸ ibid p.32.

to and settlement of her subjects in New Zealand (through a right to govern), she would protect all the *hapuu* of the country from any negative effects of that settlement, recognise and respect the status of the chiefs as equal to hers, recognise and respect the rights of the tribes to exercise their own self management, and, in addition, grant to all Maori all the rights of British citizens. A full copy of the text of the Treaty in its original form, along with a translation by Sir Hugh Kawharu, is provided at Appendix 2. A copy of the English version (which does not accurately translate the original) is provided there as well. Appendix 3 contains summaries of various statements from the Waitangi Tribunal and the Court of Appeal on the principles of the Treaty of Waitangi⁹.

That relationship between the Crown and Maori is a very special relationship. It accords Maori special rights and consideration in this country. The fact that those rights have been honoured more in the breach in the past 155 years does not change the nature of the right, nor the responsibility of the Crown and its agents to whom it delegates responsibility to uphold those rights. In recent years those rights have been acknowledged throughout the legal system of this country and by the Privy Council.

Northland Regional Council is required to ensure that *tangata whenua* are accorded respect and consideration of their concerns in respect of the proposal. Section 14 (in particular) of the Proposed Regional Policy Statement for Northland indicates that the Council is well aware of this requirement and has policies which it will implement to achieve this. In light of the fact that neither the Midwood report nor Patuharakeke itself has indicated to date that it intends to oppose the proposal, and that they are simply requiring certain conditions to be met, NPC would do well to work closely with a potentially very important ally.

The most logical course of action for NPC at present, given that both the Crown and Patuharakeke claim ownership to at least part of the proposed site, and given the requirements of that Act and the NZCPS, is to treat equally with both partners as owners. It should be noted that as owners, as well as *kaitiaki*, Patuharakeke are more than entitled to a fair share of the economic return from any development, even more so than the the Crown is, given their prior right. Their recommendations for implementing this have been very modest in terms of the authority they hold for the proposed site.

It is not sufficient, as suggested by NPC chairman Jack Guy in his letter of 29 August 1994 to Patuharakeke Te Iwi Trust, to place the onus on Patuharakeke to keep putting proposals to NPC in respect of *tangata whenua* issues. In terms of the Act, the responsibility lies with NPC to address these in respect of its own proposal.

Policy 4.2.2 of the NZCPS states

All persons exercising functions and powers under the Act in relation to land of the Crown in the coastal marine area should follow these general guidelines:

⁹ These statements concerning the principles of the Treaty of Waitangi are attempts that have been made by these bodies to reconcile the differences between the original Treaty and its English version. Both statements confirm the special status of Maori in this country and their status as equal partners with the Crown.

- (a) *Take into account the principles of the Treaty of Waitangi;*
- (b) *make provision for consultation with tangata whenua which is early, meaningful and on-going, and which is as far as practicable in accordance with tikanga Maori;*
- (e) *where practicable, and with the consent of tangata whenua, incorporate ... in the consideration of applications for resource consents, Maori customary knowledge about the coastal environment, in accordance with tikanga Maori.¹⁰*

This policy again applies, in the first instance, to Northland Regional Council. (a) directly reflects section 8 of the Act and has been discussed above.

NPC has by all accounts made some effort to try to carry out (b) but has severely handicapped itself by not having sufficient expertise of its own to be able to do this "in accordance with *tikanga Maori*" as required. It came very close to that requirement when it commissioned the Midwood report. It was a good initiative which needs to be supported and expanded to employing either Mrs Midwood or whoever else Patuharakeke along with Ngatiwai Trust Board thinks is appropriate to follow through the recommendations of her report. It would be most inappropriate and unfair to ask such a person to work alone on this matter, since *tikanga Maori* requires that there be more than one person in many of the situations that will arise in the type of work needed to be carried out to follow up Mrs Midwood's recommendations.

2.3 The Proposed Regional Policy Statement for Northland

The contents of the NZCPS principles and policies detailed above are to be considered along with the relevant Maori sections in the *Regional Policy Statement for Northland* and the *Whangarei County Council District Scheme*. The EIA and responses to the Review Panel's questions indicate that NPC has attempted to follow through the policies in the *Regional Policy Statement*, but has again been restricted by its lack of expertise in the area. NPC recognised this short-coming but chose to address it by attempting to place the onus for the responsibility on the Northland Regional Council. It did so by requesting the services on its Maori Liaison Officer. Northland Regional Council quite correctly refused the request. NPC must contract expertise which is capable of acting independently of the consent authority.

2.4 The Whangarei County Council District Scheme (1987)

The District Scheme makes no specific provision in respect of Maori cultural and spiritual values in respect of the coastal environment, or in respect of developments at Marsden Point. It is a serious deficiency in the Scheme which arises from the fact that it has interpreted the

¹⁰ See The Commentary, pages 33-4 for discussion and case references.

provisions of section 3(1)(g) of the *Town and Country Planning Act 1977* far too narrowly. It has assumed that the term "ancestral lands" applies only to land currently owned by Maori. This interpretation has been deemed invalid by the courts. The term "ancestral land" as it applies to Maori applies to all land in New Zealand. As such the Scheme should make provision for Maori cultural and spiritual values for land throughout the district.

Section 3:

WHAT HAS BEEN DONE?

ISSUES RAISED BY TANGATA WHENUA & NPC RESPONSES

It was of concern to the Review Panel that although Patuharakeke had listed its concerns quite specifically, there did not appear to have been any clear response to them. As such NPC was specifically asked by the Review Panel to detail how each of the issues raised in the Midwood Report had been addressed. NPC chose not to answer almost all of the questions asked. It appears that NPC has interpreted the Midwood Report more along the lines of a wish list from an interest group rather than a serious requirement arising directly from Ss. 6(e), 7(a) and 8 of the Act. In this section, therefore, I will outline each of the issues raised by the Report, providing commentary on the views of Patuharakeke and Ngatiwai Trust Board (who support Patuharakeke on each of the specific issues), ascertain NPC's response from either the EIA or other documentation or verbal undertakings at *hui*, and comment on the progress made by the two parties towards resolving each issue.

3.1 TITLE OF THE LANDS AND SEABED INVOLVED (Midwood Report; pp.5-12)

Patuharakeke View:

The nature of the issue is that Patuharakeke consider that they are still the owners of the seabed involved in and effected by the proposal and that there are serious questions as to whether their aboriginal title to the lands involved was ever properly extinguished. These questions arise in particular because of the confiscation of part of the Takahiwai Block. This is documented on the map which accompanied the deed. There are also irregularities in the purchase of the Poupouwhenua block (over which Ngatiwai Trust Board has recently filed a separate claim).

In the matter of the seabed, there is no evidence at all that the Crown ever acquired it from Patuharakeke. Patuharakeke has examined all the documentation relating to this matter and remains of the firm opinion that they still own the seabed, despite Crown proclamations to the contrary.

These matters are currently before the Waitangi Tribunal as claim WAI 121 and the more recent claim still to be notified.

Ngatiwai Trust Board View:

The Board supports Patuharakeke and notes its own submission to Northland Regional Council's Proposed Regional Policy Statement states

That Section 19 explicitly incorporate policies and methods which recognise that where are existing or pending Treaty claims exist, local authorities should take such claims into account, and as far as practicable ensure that proven grievances are not exacerbated.

In explanation the Board states that the implications of resource management decisions on Treaty claims are important considerations to be taken into account, helping avoid future Treaty grievance, and saving time and cost to all parties.

In respect of the current proposal the Board states

We believe the application should not be notified at least until the regional policy statement has been established.

NPC View:

NPC's response has been that the Crown owns the seabed via "the reception of English law in New Zealand" and by the passage of Acts of Parliament vesting it in various bodies. It has also stated that this issue is irrelevant to the proposal. NPC currently leases parts of the seabed concerned from the Crown.

NPC considers that this is a "Treaty issue" and states "the RMA does not impose Treaty obligations on consent authorities. It follows then, that the applicant is not under a duty to give consideration in its application to the Treaty issues raised." (Response to Review Panel; p.10).

Comment:

No discussion has taken place between NPC and Patuharakeke on this issue and it remains unresolved. It needs to be made clear here that Patuharakeke is not intending that NPC address the question of ownership of the land and seabed *per se*. That matter will be addressed by the Crown through the Waitangi Tribunal. Rather the issue is that Patuharakeke consider that they are the owners of the seabed (at the very least) and as such NPC requires their permission to use it.

In respect of Treaty issues and the above statement, and NPC's lack of response to Patuharakeke, these are clearly inconsistent with Part II of the RMA quoted above and in particular, inconsistent with Policy 4.2.1 of the NZCPS.

NPC's assertion that the Crown title derives from a fiction it refers to as "the principle of eminent domain of the Crown via the Treaty of Waitangi" (Response to Review Panel; p.8) is simply false and no further comment will be made on this particular point other than to refer NPC to the numerous reports of the Waitangi Tribunal on this very matter.

3.2 ARCHAEOLOGICAL SITES (AND WAAHI TAPU) (Midwood Report; p.14)

Patuharakeke View:

There are known archaeological sites in the area. Patuharakeke wishes to ensure that they are not disturbed. There are also many *waahi tapu*, a lot being areas where people have been killed or blood spilt in battle. These areas must also not be disturbed.

NPC View:

NPC has acknowledged the need to protect these sites and that steps to mitigate any adverse effects should be taken. It has undertaken in respect of "*waahi tapu*" to cease work should any be discovered, advise the *hapuu* and also contact the NZ Historic Places Trust.

Comment:

If NPC does in fact mean "*waahi tapu*" then this issue may well have been resolved.

However, given the context "be discovered" which NPC has used, I strongly suspect that NPC is referring to archaeological sites, which are sites containing physical remains, rather than *waahi tapu* in its response to question 14(d) of the Review Panel's questions. If this is the case then NPC does not understand that archaeological sites and *waahi tapu* are not the same thing. Some archaeological sites are *waahi tapu*, some are not. Many *waahi tapu* are not archaeological sites because there are no detectable physical remains. Areas such as *tauranga waka*, old battle grounds, resting places for the dead, places where disasters have occurred, are examples of some of the many types of *waahi tapu* which are not archaeological sites in themselves. They are referred to in the Midwood report (p.14) and require protection. Knowledge of their location is held by Patuharakeke who may or may not chose to divulge that knowledge to NPC or any other body (see Policy 2.1.1 of the NZCPS).

3.3 PATUHARAKEKE ABILITY TO PARTICIPATE IN DECISION-MAKING ABOUT THE PORT PROPOSAL (Midwood Report p.15)

Patuharakeke View:

Patuharakeke has many members who have been very highly educated, qualified and experienced in the Pakeha world, including the area of business and development, as well as in the Maori world. They are more than capable of making sound decisions in respect of the proposed development which would benefit both cultures. Patuharakeke expects to have significant influence in the proposal (given that Patuharakeke resources are being used) and to play a full role in the decision-making process. A substantial shareholding in the corporation has been suggested.

Ngatiwai Trust Board View:

The Board supports Patuharakeke and is particularly disturbed at NPC's response to them on this matter. The Board believes that *tangata whenua* needs to have 51% control of NPC by right. They refer to "Hone Heke's reaction to Hobson assuming the right to collect berthage fees - the first wrongful assumption of the boundaries of kawanatanga over rangatiratanga" and comment "NPC is the modern manifestation of this wrongly assumed right to pocket docking fees".

NPC View:

It is not appropriate for Maori participation in the proposed development to be by way of a decision-making role such as a share-holding in the Corporation (letter from Semenoff to Paki; 3 December 1993). NPC refuses to discuss the matter any further.

Comment:

The parties have reached an impasse on this issue. NPC appears to have not understood that within the terms of the *kaitiaki* responsibilities Patuharakeke and the other *hapuu* of Ngatiwai have, a meaningful role in decision-making concerning the proposal, be it in Maori or Pakeha cultural terms, is essential. Patuharakeke's and Ngatiwai's expertise in *tangata whenua* terms cannot be questioned. But NPC does not appear to appreciate the level of ability in (Pakeha) business matters that Patuharakeke and Ngatiwai can draw on from within their own *hapuu*. Thus a further and also appropriate suggestion is that Patuharakeke and Ngatiwai have at least two directors of their own choosing on the Corporation itself.

3.4 THE MARAE AS THE SPIRITUAL AND CULTURAL CENTRE OF PATUHARAKEKE (Midwood Report p.16)

Patuharakeke View:

All decisions made on behalf of Patuharakeke are made on the marae, under the guidance of the tribal ancestors and according to the *tikanga* (correct and appropriate way of conducting such matters) of the *hapuu*. On a matter such as the present proposal, binding decisions can only be made after much open discussion and debate with all the necessary information available to everyone. Decisions made on the marae are made by consensus and, for a major issue such as this proposal, will necessarily take several *hui* and at least several months. Although discussions between NPC and individuals of Patuharakeke can take place, any conclusions reached are not binding on the *hapuu* until such time as the full discussion process has taken place according to *tikanga*, and consensus reached.

NPC View:

NPC's view on this issue has been ascertained from its actions in respect of the marae. Their view would appear to be that because an undertaking has been made on the marae, and particularly by a *kaumatua*, it will bind the entire *hapuu*. The fact that the *hui* at which the undertaking was made is very poorly attended does not appear to have been considered relevant. Pursuant to that decision it appears to have been considered not inappropriate to call others who express an interest together on the marae to convey the decision already made. Further discussion on the marae with other members of Patuharakeke appears to have been considered unnecessary once the initial undertaking had been made.

Comment:

On this issue, NPC has badly misinterpreted the *tikanga* of Takahiwai Marae and hence misread what has taken place there. This is most clearly demonstrated in the difference between NPC's interpretation of the response as largely positive (Vol 1;p.280) and the Midwood Report which interprets the response as conveying a large number of very serious concerns. One public submission has also noted this divergence in interpretation from the EIA alone (Armstrong; April 1994). This is an inevitable result of NPC not availing itself of the necessary expertise to be able to conduct itself in an appropriate manner in the marae situation and to correctly

interpret the proceedings.

3.5 CONSULTATION PROCESS IN RESPECT OF THE PRESENT PROPOSAL (Midwood Report;p.17)

Patuharakeke View:

Communication between NPC and Patuharakeke broke down very early in the process and has never been properly reinstated. Patuharakeke has been extremely disappointed at the difficulty it has experienced in accessing information on the proposal, and as a result feeling that they did not have enough information to make an informed decision. They are also very disappointed at NPC's attitude that the proposal is a *fait accompli* and in being told by NPC that they have no choice but to accept it. They are particularly disturbed by the fact that NPC refused to discuss the Midwood Report, even with its author. They have approached NPC several times to try to salvage the situation but have been rebuffed out of hand on every occasion (see in particular the correspondence between NPC and Patuharakeke attached at Appendix 5). Patuharakeke does not consider that there has been any meaningful discussions or consultation by NPC with them about this proposal and consider it unethical and immoral for NPC to intimate that consultation has taken place. They have recommended

That ongoing dialogue be maintained between Northland Port Corporation and the Tangata Whenua at all stages in the planning process, to ensure that all options are considered, to eliminate cultural Tangata Whenua offence. (Midwood Report;p.22)

Ngatiwai Trust Board View:

The Board was not approached by NPC before the draft EIA was published. Their records show a letter from Mr Terry Archer, 22 July 1993 inviting the Board to contact him for an appointment to discuss the draft EIA. This letter was the similar to others sent to the general public, e.g. to Whangarei Harbour Protection Society.

H.Parata recalls meeting with Mr Archer about another NPC application (slipway discharges). At this meeting aspects of the current proposal were discussed. Mr Parata's recollection was that the discussions were not productive and there were no further meetings.

In a statement entitled "Ngati Wai's Preliminary Response to the Northland Port Corporations Draft Environmental Impact Assessment for the Marsden Point Terminal Proposal" the position of the Ngatiwai Trust Board is stated as

Ngati Wai iwi exercise mana whenua and manawhenua ki te moana over the Whangarei harbour area. Consequently, Ngatiwai Trust Board must be notified and involved in the process of consultation that has taken place.

Te Kotahitanga o Te Taitokerau Resource Management Committee View:

Although this body holds an overall view for all northern tribes in respect of all resource management issues, has specific expertise in this area, is specifically

resourced to handle and facilitate such issues and has expressed an interest in the proposal, NPC has had no communication with them. Te Kotahitanga has instead been kept informed by Patuharakeke, Ngatiwai and, most particularly, Northland Regional Council and provides on-going support for Patuharakeke and Ngatiwai in this matter.

NPC View:

"[The applicant's] consultation with Tangata whenua has been in accordance with not only their wishes but with the spirit and intention of the RMA." (Response to Review Panel;p.14) "The consultation process began before any design or plans had been prepared. During the consultation process the port plans were altered or discussed with Tangata whenua before being developed (such as the Landscape amelioration plan). Therefore consultation began early on the port proposal development. As a consequence of this other consultants had also not completed their work and information was not complete until the draft EIA had been assembled. The completed draft work was forwarded to Patuharakeke, Ngatiwai and Ngapuhi." (Reponse to Review Panel;p.13).

Comment:

Information supplied in the EIA on this issue is inaccurate and misleading. For example, the first *hui* on Takahiwai Marae was not a *hui* with Patuharakeke *hapuu*, nor with its representatives. It involved a few specially invited individuals who belong to the *hapuu* and others who happened to be at the marae but were not aware that such a meeting was to be held. The second *hui*, which was much better attended, can not be considered a consultative *hui*. NPC came to the *hui* with its mind already made up that the proposal would proceed unaltered and presented it to those gathered there accordingly. Patuharakeke do not consider that any meaningful discussion took place.

From all accounts NPC has been extremely selective in whom it has chosen to consult within Patuharakeke at the outset and that has lead to a series of problems with the process. It may have also chosen to avoid talking to individuals it considered to be too forthright and whom it perceived as being abrasive. NPC needs to take careful note that these people, who as far as I can ascertain, have all been mandated to speak with NPC on behalf of Patuharakeke, are simply restating the same view of more mildly mannered speakers when they can clearly perceive that NPC has not correctly understood what those people are saying.

The process of consultation is inevitably going to produce concerns which need to be addressed and side-stepping them will not make them go away. It is clear from the documentation that NPC has consistently refused to address Patuharakeke's concerns. It has, however, stated on more than one occasion that it wishes "to have open and meaningful consultation on issues relevant to the effects of the proposed terminal on Tangata Whenua." (Chairman, NPC to Patuharakeke te Iwi Trust 29 August 1994). I have already noted that the onus rests on NPC to address these issues appropriately, not on Patuharakeke or Ngatiwai Trust Board. Nevertheless, *tangata whenua* expertise is required to resolve these issues and should be contracted by NPC in the same manner that NPC contracts all other expertise it does not have in-house.

This issue is a major issue which will take considerable time, patience, goodwill and expertise to resolve. To date the situation on this issue has been greatly exacerbated by NPC's lack of expertise in the Maori field. It should also be noted that this lack of expertise has resulted in the unfortunate and inappropriate nature of the responses to questions 13, 14, 15 and 16 of the Review Panel's questions.

3.6 RECLAMATION AND THE DESTRUCTION OF MARINE LIFE AND HABITATS (Midwood Report; p.18)

Patuharakeke View:

Great concern has been expressed by Patuharakeke about the destruction of marine life and habitats as a result of the proposed reclamation. They will not agree to such destruction and have stated that this must be avoided. They state categorically that they do not want the harbour changed. They consider that the amelioration measures suggested in the EIA (tree planting and walkways) are of a cosmetic nature only and as such totally ineffectual in protecting the marine life in the area. The area proposed for reclamation is *mahinga maataitai*¹¹ and contains *taonga raranga* all of which will be completely destroyed. They consider that the reclamation is unnecessary and that the existing land and an enlarged wharf area beyond the existing one would more than suffice. Patuharakeke does not accept that monetary considerations in respect of more acceptable alternatives (Vol 1;p.111) should be considered more important than the *mauri* (essential life force) of the harbour.

Ngatiwai Trust Board View:

The Board supports Patuharakeke and considers that the present proposal is untenable and that other options need to be offered, albeit more expensive ones.

NPC View:

The EIA reports in its cultural section that there is a need to come to a mutual agreement on this issue but it is not addressed anywhere in the EIA. NPC has informed Patuharakeke verbally that it refuses to avoid, remedy or mitigate any of these negative effects of constructing the reclamation and will make no attempt to protect the shellfish beds and fishing grounds or the rare pingao which grows on the beachfront which will be destroyed by the reclamation.

Comment:

NPC and Patuharakeke have reached an impasse on this issue. NPC's response is inconsistent with section 6 of the RMA and, in particular, inconsistent with Policies 1.1.3, 2.1.2 and 3.2.8 of the NZCPS. NPC's response to question 14(d) of the Review Panel's questions (concerning the protection of *waahi tapu*, *tauranga waka*, *mahinga maataitai* and *taonga raranga*) takes no account of either the shellfish beds and fishing grounds (which are *mahinga maataitai*) or the pingao (which is *taonga raranga*). Although these terms are defined in section 2 of the Act, it is possible that

¹¹ *Mahinga maataitai* will be subject to reserves provision protection under (still to be promulgated) customary fisheries regulations (see footnote 3 above).

without the necessary expertise, NPC has been unable to identify their presence on the proposed site.

The reclamation poses a very serious threat to the *mauri* of the harbour. Patuharakeke as *kaitiaki* has an onerous responsibility to protect the *mauri* of the harbour. The costs of not doing so have been and will be very high for Patuharakeke, and far outweigh any monetary consideration.

Like Issue 5, this is also a major issue and will require the same skills and commitment to resolve it.

3.7 WATER QUALITY (Midwood Report;p.18)

Patuharakeke View:

Concern has been expressed about pollutants/contaminants being discharged into the sea, particularly from ships in port. Patuharakeke has recommended that

Developers be required to make available their waste management plans to the *tangata whenua*.

and

Materials to be used and stored at the proposed site must be monitored by the *tangata whenua* representative at least every two (2) years, or less [where] environmental concerns are raised prior to this time.

Ngatiwai Trust Board View:

The Board points out that discharge of ballast water is particularly relevant to other *hapuu* around the harbour. The Board has not been consulted on this issue and states that untreated ballast water is unacceptable to the *hapuu* of the harbour and coast as *kaitiaki* of the receiving waters.

NPC view:

The EIA states that in respect of stormwater runoff, final treatment and discharge method is subject to further analysis and the completion of the final design of the system. The Review Panel raised concerns and NPC responded that the reports were still incomplete. The section on the effects tri-butyl tin from ships is to be rewritten, although there is currently no data on TBT in shellfish in the harbour. It is not intended that NPC prevent ships from discharging ballast water in port. It is hoped that ships will voluntarily discharge it in international waters (Response to Review Panel).

The EIA states that it "proposes to invite Tangata whenua to assist in the development of management plans for the construction operation and discharge permits in recognition of the vital and important Kaitiaki role the people of Patuharakeke have over the Marsden Point area." (Vol 1;p.290. See also p.125). Subsequently NPC has suggested "...that *inter alia* Patuharakeke have representation on a consultative group which vets both proposed management plans for construction and operation"

(Response to Review Panel;p.14). Such an approach has still to be made. A message conveyed verbally by NPC is that it does not intend to address Patuharakeke's concerns.

Comment:

The Review Panel has already indicated that the information available in respect of stormwater runoff and bark handling is insufficient. It has also indicated that further discussion is required on the possible effects of antifouling paints on the adjacent shellfish communities.

The Port operation is obviously going to cause pollution/contamination of the sea which is unacceptable to *tangata whenua*. Stronger mitigation measures will be required.

The EIA undertaking in respect of management plans and discharge permits is a positive step towards resolving this issue, although NPC should bear in mind that the effects of the proposal in this respect impacts on other *hapuu* as well who must also be consulted.

There appears to be some internal inconsistency in NPC's approach to these and other *tangata whenua* issues where information conveyed verbally (no intention to address issues) differs from that supplied in writing. However, the written undertakings have still to be followed up in practice.

3.8 SEWAGE DISPOSAL (Midwood Report;p.18)

Patuharakeke View:

Water pollution, especially by human waste, is extremely offensive both physically and spiritually. Discharge to the sea of such materials from both ships and the port itself must be avoided. The discharge of treated domestic waste from the activated sludge treatment plant to sea (Vol.1;p 315) must cease. Similarly, ships must not be permitted to discharge their sewage to the sea.

NPC View:

The present resource consent for the treatment plant allows discharge of treated sewage to the sea and this will continue (Vol 1;p.315). However, in contrast to this, the EIA suggests a condition of the consent be that "the consent holder not allow the discharge of sewage to the waters of Whangarei Harbour." (Response to Review Panel;p.4)

Comment:

Provided the condition is part of the consent, and that it relates to all sewage, both treated and untreated, this issue will have been resolved.

3.9 CUSTOMARY FISHERIES (Midwood Report;p.18)

Patuharakeke View:

The coastal marine area covered by the proposal has always been used customarily by Maori to harvest both shellfish and finfish. Apart from a substantial commercial fishing interest in the area held by the various *hapuu* of the harbour and a very strong economic and cultural dependence on locally harvested seafood (which remains an integral part of the Maori diet), these resources make a major contribution to upholding the *mana* of the marae. Although the shellfish resource in the proposed reclamation area was severely depleted as a result of the oil refinery development, shellfish is still gathered there for domestic, non-commercial purposes. No further damage to this resource can be sustained or permitted.

In respect of the finfisheries, after more than a century of fighting to reclaim the right to take fish for commercial purposes and having only recently won it back and re-established that economic base, neither Patuharakeke nor any other *hapuu* on the harbour is going to be forced give it up even part of it again without due and appropriate consideration being given to them.

Patuharakeke has not been consulted by NPC on this issue.

Ngatiwai Trust Board View:

The Board has expressed the same concerns as Patuharakeke on this issue. NPC has not provided any information the effect the proposal will have on fisheries, and on the Snake and Mair Bank shellfish resources.

NPC View:

NPC acknowledges that both shellfish and finfish resources and habitat will be destroyed. It considers that because the shellfish resource in the proposed reclamation area has been depleted, it is no longer worth protecting (Vol 1;p.213, p.221). Information supplied in the EIA is that most of the area has no edible cockles or pipi (Vol 1; p.213). The EIA notes that there is considerable concern about the negative impacts on the shellfish resource on several sand banks in the vicinity (Vol 1; p216-7).

With respect to the fin fisheries, NPC has advised Patuharakeke and other *hapuu* and *iwi* of the harbour to look elsewhere for the fish they presently take from the proposed port area (Vol 1; p.222).

Comment:

The information supplied in the EIA about the availability of edible shellfish in the proposed reclamation area is incorrect. There are still sufficient stocks to supply regular meals for local households.

The EIA does not address the mitigation of the negative effects on any of these resources. It has not been able ascertain the likely effect of pollution/contamination on the remaining shellfish stocks.

When asked (question 14(e)), "How will the proposal affect the customary fishing rights of Patuharakeke in the area?" NPC responded quite inappropriately by stating

"the resources have significantly diminished since the 1960's. Information supplied by tangata whenua is that fishing occurs throughout areas of the harbour including the subject site." The facts are that shellfish are still gathered from the proposed site, fish are still caught there and that the current proposal for the port will destroy all the shellfish beds and prevent any fishing in the proposed port area. It will also impact negatively on the fisheries resources in at least the immediate proximity of the port, including shellfish resources on the harbour's sandbanks close to the port. NPC has yet to discuss these impacts with Patuharakeke or any other effected *hapuu* (through the Ngatiwai Trust Board in the first instance).

Each of the responses NPC has given on this issue is inconsistent with policy 3.2.8 of the NZCPS. Because of Patuharakeke's cultural and economic dependence on its customary fisheries resources, this is another major issue to be resolved before the proposal can proceed with *tangata whenua* support.

3.10 DEPLETION OF RIVER AND STREAM FLOWS (Midwood Report;p.17)

Patuharakeke View:

The history and experiences of other major developments in the area have alerted Patuharakeke to the need to take an extremely cautious approach in respect of preserving river and stream flows. Many believe that depletion of these freshwater sources contributed to the depletion of the shellfish resources. Further depletion cannot be permitted. Patuharakeke is aware that Ngatiwai Trust Board is currently investigating this matter, but is very concerned that the proposed port will make far too heavy a demand on what is a fairly small resource in the area. They do not consider there is enough water in the streams to meet the requirements of the proposed port.

Ngatiwai Trust Board view:

The Board is currently undertaking a comprehensive scientific survey of the the present life-supporting capacity of Ngatiwai's natural resources, including all natural freshwater supplies in its *rohe*, for resource consents, among other things. The research is being carried out with the support of the School of Biological Sciences at the University of Auckland.

The current life-supporting capacity of the streams around the proposed port area has not yet been established as far as the Board is aware. The Board considers that this work must be a prerequisite to any hearing committee ruling on the application because it is impossible to predict the effect of an activity on the life-supporting capacity of an ecosystem if you do not know what that capacity is to start with (see s.5 of the Act).

NPC View:

The cultural section makes no comment on this matter. Neither does it appear to have been mentioned anywhere else in the EIA.

Comment:

Further investigation into and discussion concerning this issue is required. The Review Panel has already concluded that the effect(s) of the development on adjacent groundwater is inadequately discussed and requires further detailed investigation.

3.11 CONSTRUCTION DREDGING (Midwood Report;p.17)

Patuharakeke View:

The *kaumatua* who expressed strong general support for the port proposal has stated in a tribal meeting that in light of the information given to him on the adequacy of the depth of the harbour at Marsden Point, there is absolutely no need to dredge the area at all if the proposal has been properly thought through. He and other members of Patuharakeke are very concerned about and strongly opposed to any major dredging programme and any disturbance to the *mauri* of the harbour (which will be the inevitable result of such a major disturbance). They have not been consulted on this matter by NPC.

Concerns have also been raised about where excess dredged materials will be disposed of, especially given that the currently proposed site will be filled by 1998.

Ngatiwai Trust Board

Ngatiwai supports Patuharakeke but has not been advised of any proposal to dispose of dredged material anywhere within its *rohe*, including Hikurangi. The Board refers NPC and Northland Regional Council to *Haddon v Auckland Regional Council* for Ngatiwai's view on the removal of sands, and notes the already extensive sand extraction business interests in and around Whangarei.

NPC View:

Extensive dredging has to be carried out. There are no alternatives. A verbal undertaking to find a site at Hikurangi for disposal of dredgings has been made.

Comment:

Further discussion and consultation is required on this issue. This is another issue which directly threatens the *mauri* of the harbour and which Patuharakeke and other Ngatiwai *hapuu* as *kaitiaki* of the harbour cannot permit. Once again, considerable expertise, patience and goodwill will be required to resolve this major issue.

In respect of the land disposal of the dredgings at Hikurangi, *tangata whenua* from that area do not appear to have been consulted, although it seems possible that at least some of it is considered saleable. Should this be the case and should dredging occur to an extent that makes this feasible, ownership of the sand resource will become a major issue.

3.12 TRAFFIC (Midwood Report;p.19)

Patuharakeke View:

Considerable concern has been expressed at the effects of the huge increases in traffic loadings which will result from proposed development, in particular the effects of logging trucks and the proposed rail link. The traffic report was requested but never received.

NPC View:

There will be major impacts from increased traffic loadings, particularly in noise and pavement wear. Mitigation of pavement wear will be by strengthening some existing pavement surfaces. The need to mitigate the effects of noise on local residents has been acknowledged although specific mitigation measures will be carried out in only a few selected homes. For others, the increased noise level is considered acceptable.

Comment:

The Review Panel has already concluded that further investigation of traffic related matters is required. Patuharakeke living at and around Takahiwai and Ruakaka, that is, the *ahi kaa*, will be subjected to the effects of increased traffic loadings 24 hours a day. As such further discussion between NPC and Patuharakeke is required to ensure that the negative effects on the *ahi kaa* in particular are minimised.

3.13 NOISE (Midwood Report;p.19)

Patuharakeke View:

Concern has been expressed at the increased noise which will result from both construction and operation of the proposed port.

NPC View:

It is acknowledged that there will be increased noise levels but these will only be problematic at night. That noise will probably be screened from the residential area by the ships and log piles. No specific structures to screen these excessive night noise is planned.

Comment:

The Review Panel has indicated that further investigation of the noise levels is required, including how they are influenced by meteorological events, especially the wind. It has also questioned the effectiveness of the proposed noise barrier.

As with the traffic impacts, *ahi kaa* will be subjected to intrusive noise 24 hours a day. Discussion between NPC and Patuharakeke is required to ensure that negative effects of this on *ahi kaa* are kept to an absolute minimum.

3.14 EMPLOYMENT (Midwood Report;p.19, pp.22-3)

Patuharakeke View:

Undertakings made about this issue to Patuharakeke in respect of other developments in its *rohe* (tribal area) have not always been kept. They do not wish to see outsiders being brought in as they have been in the past to do jobs which Patuharakeke can either do immediately or be trained for. As such Patuharakeke has pursued this issue

vigorously to ensure that undertakings in respect of training and employment for Patuharakeke will be honoured. Their recommendations are:

- In training and preparation of the workforce a serious attempt must be undertaken as soon as possible to ensure that local Maori are given the opportunity to be employed at all levels of the project.
- The highest priority be given to the employment of local people (Tangata whenua).
- That priority be given to local firms for the supply of materials, wherever possible.
- That priority be given to locals for the contracting/sub contracting wherever possible.
- That a representative (Kaiwhakahaere) as mentioned previously, be negotiated with the Takahiwai Marae Committee to liaise with management of the Northland Port Corporation and to monitor the labour situation and training programme.

NPC View:

"NPC is committed to the employment of local labour where possible, and has given this commitment at several public meetings and *hui*..." (Vol 1;p.270). There is no commitment to give priority to *tangata whenua* (Response to Review Panel;p.15) or to local Maori in general. NPC will not appoint a liaison person because "The Environmental Impact Assessment (EIA) that accompanies the proposal does not "seek to establish" a liaison officer position. The EIA documents a request by Takahiwai Marae Committee that the Northland Port Corporation invite the Tangata Whenua to select a liaison person (vol 1,3.10.4.13)." (letter Chairman, NPC to Takahiwai Marae Committee; 26 May 1994).

Comment:

Further meaningful discussion is required on this issue. Patuharakeke's recommendations are entirely reasonable, to the extent that consideration for locals other than themselves is also recommended.

NPC's response in respect of the liaison officer is unfortunate. The recommendation in the Midwood Report and its reporting in the main body of the EIA make it quite clear that NPC should appoint a liaison person selected by Takahiwai Marae Committee (see Issue 15).

3.15 CONTACT PERSON (Midwood Report;p.20)

Patuharakeke View:

Patuharakeke are of the view that this position is absolutely key to the successful resolution of the existing impasse between themselves and NPC. Patuharakeke is well aware of the qualifications and qualities required in a person who could facilitate

communications between themselves and NPC for the mutual benefit of both parties. That person must also be accountable to Patuharakeke. The requirements of the RMA and the NZCPS make it extremely difficult for NPC to comply without availing itself of at least one properly qualified expert not only in Maori matters, but also in the *tikanga* of Patuharakeke and its neighbouring *hapuu*. Such a person will also require a knowledge of the (Pakeha) bureaucratic and corporate world.

Patuharakeke is willing to find a suitably qualified person to fill this position which will be funded by NPC. It has made the following recommendation:

It is recommended that the Northland Port Corporation invite the Takahiwai Marae Committee to select a liaison person (kaiwhakahaere) for appointment by the Northland Port Corporation. The role of the person appointed would help;

1. Establish contact and communication between Northland Port Corporation and Tangata whenua.
2. Establish Te Roopu Kaumatua (Kaumatua group)
3. Monitor the labour situation and training programmes.
4. Attend to any matters concerning Northland Port Corp business with Tangata whenua and the wider Maori community that may arise in respect of this proposed development.

Costs

The Northland Port Corporation would be expected to finance the services rendered by the Kaiwhakahaere and Te Roopu Kaumatua whilst engaged in their duties and should offer to do so at the earliest [possible opportunity].

Ngatiwai Trust Board View:

The Board has experienced some difficulty relating to iwi liaison people within Pakeha institutions. It sees the potential for problems if a *tangata whenua* representative working within and from NPC premises and paid by NPC is to liaise with the Board and *hapuu* of Ngatiwai.

The Board's preferred option is to have an iwi liaison person within NPC (not necessarily Maori), plus a salary and other costs provided by NPC for an NPC liaison person based within a *tangata whenua* organisation, selected by *tangata whenua* and accountable to them. This latter position would be able to be reviewed by *tangata whenua* at any time and the person replaced at any time.

The Board goes on to suggest that the person within NPC could well be one of its directors who has responsibility for *tangata whenua* concerns.

NPC View:

The EIA (which includes the above quotation) does not request that NPC "establish

a position" as stated in the letter of 27 April 1994 from the Takahiwai Marae Committee to NPC. NPC wishes to address "relevant areas of concern to Tangata Whenua" (letter Chairman, NPC to Takahiwai Marae Committee; 26 May 1994).

Comment:

NPC's response to Takahiwai Marae Committee when they pursued this matter (see letter quoted at Issue 14) indicates that NPC considers that this, like other issues already noted above, is irrelevant.

The RMA makes it quite clear that adequate consultation with *tangata whenua* is required in respect of resource consent applications, as is a sound knowledge of Maori custom, protocol and culture in carrying out that consultation. NPC does not have such expertise in-house and therefore needs to acquire it. It will have to pay for that expertise in exactly the same manner it pays for other expertise such as planning, engineering, scientific, legal. Once again, Patuharakeke's recommendation is sound and very reasonable and is well supported by Ngatiwai Trust Board.

This issue needs to be addressed urgently in order to commence meaningful consultation with *tangata whenua*. It is noted here that the Review Panel has already made an interim recommendation in this respect.

3.16 ROOPU KAUMATUA (GROUP OF TRIBAL ELDERS/LEADERS)
(Midwood Report;p.22)

Patuharakeke View:

The following recommendation has been made:

That a Roopu Kaumatua (Kaumatua group) be set up to deal with cultural matters of protocol and ceremonies and advise on any archaeological finds that may occur.

NPC View:

NPC has not expressed a view. Apart from the above recommendation (from the Midwood Report) there is no mention of this issue in the EIA.

Comment:

Discussion of this issue is required to ensure that, at the very least, when NPC does consult concerning archaeological sites as promised (see Issue 2), it does so correctly.

3.17 DEVELOPMENT LEVY (Midwood Report;p.21)

Patuharakeke View:

In the past the benefits from development levies for major projects (refinery etc.) in the Marsden Point-Ruakaka area have by-passed Tangata whenua, going instead to other areas experiencing less impact than this district...While it is recognised that [Whangarei] District Council controls this matter, should this development proceed, the Tangata whenua, Patuharakeke hapu, would wish to share in any benefits that may be derived from it.

The following recommendation is made:

That should this proposed Port Development at Marsden Point proceed local authorities recognise the Tangata whenua and namely Takahiwai Marae Committee as an appropriate authority for the distribution of such funding.

That the Takahiwai Marae Committee consult with other sections of the community to determine priorities for allocation of the above resources.

Ngatiwai Trust Board View:

The Board considers that the levy be called an "Environmental Bank" in accordance with some overseas practices, and that it be set aside for environmental restoration and enhancement work within the same ecosystem as the development.

NPC View:

NPC has indicated verbally to Patuharakeke that they should pursue this issue themselves with the Whangarei District Council.

Comment:

Patuharakeke's recommendation is again very reasonable as in the Trust Board's suggestion. These should be further discussed with appropriate parties.

Section 4:

WHAT HAS STILL TO BE DONE?

There is a very clear need to establish meaningful and on-going consultation between NPC and *tangata whenua*. There is no evidence in the documentation supplied nor in the discussions I have had with any party that such consultation has taken place to date. The issues listed in the previous section are simply those raised by Patuharakeke in the very initial phase of the consultation. There are possibly other issues which will be raised once sufficient information is provided and proper consultation has been undertaken.

All of the issues listed in the previous section are specifically and directly relevant to the proposed port at Marsden Point and the effects it will have on both *tangata whenua* themselves and their *taonga*. There is no doubt that the impacts of the proposal on both *tangata whenua* and their *taonga* will be extensive. Patuharakeke has not only identified relevant issues, it has also recommended means of addressing them. They are strongly supported by Ngatiwai Trust Board. Only one, or maybe two of the 17 issues listed has possibly been potentially resolved; the discharge of sewage and, maybe, the protection of *waahi tapu* and archaeological sites. The rest still need to be addressed by NPC in consultation with *tangata whenua*.

The documentation supplied to date indicates that NPC does not currently have available to it the necessary expertise to either understand the nature of the issues raised by Patuharakeke or to carry out the consequential consultation required adequately. The need to contract such expertise has been urgent for some time now.

In an attempt to facilitate the initiation of meaningful consultation between NPC and *tangata whenua* I have indicated by way of comment in section 3 how each of the issues can, at least initially, be addressed. However, I have also commented that for several major issues, time, patience, goodwill and considerable expertise will be required to reach resolution on them. This comment may well also apply to all the other issues. In the long term, such an approach taken at this early stage in the resource consent application process will certainly prove the most economical for all concerned.

Section 5:

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The terms of reference for the Review Panel set a number of specific tasks. In respect of the Maori cultural assessment required of me I can conclude:

1. That information supplied in the EIA on Maori cultural issues and the impacts of the proposal on *tangata whenua* contain several inaccuracies. The information initially supplied by Patuharakeke (the Midwood Report) is accurate and adequate for the aspects that Patuharakeke felt competent and well-informed enough to comment on. However, the report raised several informational queries and recommended several courses of action which have not been responded to in either the EIA or subsequent documentation. As a result information on several relevant Maori matters have not been included in the EIA. Such information will not be available to NPC until such time as it has carried out the necessary and adequate consultation with *tangata whenua*.
2. As presently proposed there are adverse environmental effects identified by *tangata whenua* (and others), in particular the destruction of marine life in the reclamation area, which will not be avoided, remedied or mitigated. The EIA has identified an alternative to the reclamation which will have less negative impact on the environment.

There will be many other adverse environmental effects caused by dredging, traffic, construction and operation, water (sea and fresh) usage and waste disposal. These, along with some social issues such as employment, are not confined within the immediate vicinity of the proposal, and in particular affect other *hapuu* of Ngatiwai. Some effects are still to be investigated. Others require further discussion (see Section 3 and the *Marsden Point Terminal Proposal Technical Review Panel Report*).

3. That in respect of Maori issues, the EIA does not meet the requirements of sections 6(e), 7(a) and 8 of Part II of the *Resource Management Act* 1991, and needs further work to meet the requirements of 1(d, g & h) and 2(c) of the Fourth Schedule of that Act.
4. The EIA does not describe the Maori cultural aspects of the proposal clearly or appropriately. In particular the proposal does not describe how *tangata whenua* will be able to carry out their *kaitiaki* responsibilities for the area involved in the proposed port and the neighbouring areas of the harbour and coast which will also be affected by the proposal. This is a direct result not only of the recommendations of the Midwood Report not having been followed up, but also of not having established communications with Ngatiwai Trust Board.

5. That although NPC has sought the views of *tangata whenua* in relation to the proposed port development, to date it has not addressed any of their expressed concerns. NPC's response to *tangata whenua* has been most inadequate.
6. Given the inadequacy of the documentation supplied by NPC to date and their misinterpretation of at least some of the information supplied by Patuharakeke, it is quite clear that NPC do not currently have the expertise required to carry out the necessary consultation with *tangata whenua* adequately. It is highly improbable that the current impasse between *tangata whenua* and NPC will be resolved without NPC availing itself of the necessary expertise.

RECOMMENDATIONS

Both Patuharakeke and Ngatiwai Trust Board (who are supported by Te Kotahitanga o Te Taitokerau Resopurce Management Committee) have approved the following recommendations:

1. That NPC, on the recommendation of *tangata whenua*, namely Patuharakeke along with Ngatiwai Trust Board representing other *hapuu* directly affected by the proposed port, engage, as a matter of urgency, at least two people suitably qualified in the field of Maori issues and the *tikanga* of Patuharakeke and other *hapuu* of Ngatiwai in the immediate area to:
 - Establish and maintain a meaningful and on-going consultation process between Northland Port Corporation and *tangata whenua* in respect of the proposed port.
 - Address each of the issues raised in the Midwood Report in order to reach resolution of them with *tangata whenua*.
2. That NPC give further, serious consideration to alternatives to the present proposal which do not pose a serious threat to the *mauri* of the Whangarei Harbour.

APPENDIX 1

TERMS OF REFERENCE

The Parliamentary Commissioner for the Environment has requested that the Technical Review Panel "evaluate the adequacy of information...as contained in the Environmental Impact Assessment documents." The terms of reference for the Review Panel are:

To study documentation for the environmental impact assessment on the proposed Marsden Point port development to determine whether:

- information provided in the assessment is adequate and accurate;
- public consultation has been adequate
- the development and operation of the proposal is capable of avoiding, remedying or mitigating any adverse environmental effects, including those identified in public submissions;
- the proposal meets all requirements of Part II and Schedule IV of the Resource Management Act 1991.

The Commissioner further states that the Panel is expected to evaluate:

1. Whether all aspects of the proposal have been clearly and appropriately described and all required consents and statutory approvals identified;
2. Whether all actual and potential effects of the proposal on the environment have been identified; and where there are likely to be significant adverse effects on the environment, whether alternatives have been identified;
3. Whether the assessment of the actual or potential effects of the proposed activity on the environment, including assessment of the risks likely to arise from the use of hazardous substances and installation, is adequate.

The Commissioner has also asked Panel members to have particular regard to:

- whether the proposal is consistent with any relevant policies and plans of the Minister of Conservation, the Northland Regional Council and the Whangarei District Council; with any relevant heritage orders or designations, or requirements for them; or with any other matters which the consent authorities have identified as being relevant to the proposal;
- whether appropriate criteria were established for establishing the significance of any adverse effects and appropriate management;
- whether appropriate management, including mitigation measures, safeguards, contingency plans and, where relevant, a monitoring programme, has been identified for any adverse effects and discussed with affected parties;
- what measures have been taken to identify persons interested in or affected by

the proposal; what formal opportunities for public input have been provided and whether the information available at those times was sufficient to enable informed and appropriate public involvement;

- the adequacy of the response by the applicant to public concerns relating to the environmental effects of the proposal, including effects on the wider community, social, economic and cultural effects, and factors relating to health and safety of the community.

The brief for the Cultural Assessment included the instruction:

...to establish whether the views of tangata whenua have been sought in relation to the proposed port development and whether their concerns have been appropriately addressed.

APPENDIX 2
Kaitiakitanga
extracted from
The Report of the Board of Inquiry into
The New Zealand Coastal Policy Statement

Pages 16 - 18

(b) 'Kaitiakitanga'

Several submissions asked that Maori terms, such as tangata whenua and kaitiaki, be translated and/or explained in English. Others asked for sections of the NZCPS to be written in Maori. Many of the submissions from tangata whenua groups clearly demonstrated that the manner in which they were using terms such as kaitiaki and kaitiakitanga involved much more than the words used in the interpretation at Section 2 of the Act would indicate.

These matters have serious implications for the successful implementation of the NZCPS. The Board felt that it would be helpful to provide an explanation of *kaitiakitanga* in order to demonstrate how the term is understood by Maori.

The interpretation of kaitiakitanga provided at Section 2 is

'Kaitiakitanga means the exercise of guardianship; and in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself'

Having regard for the submissions of almost every tangata whenua group, this interpretation can only be adequately understood when placed in the following context (which in Maori terms is only a very simplified version of the explanation of the term):

Kaitiakitanga is the role played by kaitiaki. Traditionally, kaitiaki are the many spiritual assistants of the gods, including the spirits of deceased ancestors, who are the spiritual minders of the elements of the natural world. All the elements of the natural world, the sky father and earth mother and their offspring; the seas, sky, forests and birds, food crops, winds, rain and storms, volcanic activity, as well as people and wars are descended from a common ancestor, the supreme god. These elements, which are the world's natural resources are often referred to as taonga, that is, items which are greatly treasured and respected. In Maori cultural terms, all natural, and physical elements of the world are related to each other, and each is controlled and directed by the numerous spiritual assistants of the gods.

These spiritual assistants often manifest themselves in physical forms such as fish, animals, trees or reptiles. Each is imbued with mana, a form of power and authority derived directly from the gods. Man being descended from the gods is likewise imbued with mana although that mana can be removed if it is violated or abused. There are many forms and aspects of mana, of which one is the power to sustain life.

Maoridom is very careful to preserve the many forms of mana it holds, and in particular is very careful to ensure that the mana of kaitiaki is preserved. In this respect Maori become one and the same as kaitiaki (who are, after all, their relations), becoming the minders for their relations, that is, the other physical

elements of the world.

As minders, kaitiaki must ensure that the mauri or life force of their taonga is healthy and strong. A taonga whose life force has been depleted, as is the case for example with the Manukau Harbour, presents a major task for the kaitiaki. In order to uphold their mana, the tangata whenua as kaitiaki must do all in their power to restore the mauri of the taonga to its original strength.

In specific terms, each whanau or hapu (extended family or subtribe) is kaitiaki for the area over which they hold mana whenua, that is, their ancestral lands and seas. Should they fail to carry out their kaitiakitanga duties adequately, not only will mana be removed, but harm will come to the members of the whanau and hapu.

Thus a whanau or a hapu who still hold mana in a particular area take their kaitiaki responsibilities very seriously. The penalties for not doing so can be particularly harsh. Apart from depriving the whanau or hapu of the life sustaining capacities of the land and sea, failure to carry out kaitiakitanga roles adequately also frequently involves the untimely death of members of the whanau or hapu.

An interpretation of kaitiakitanga based on this explanation must of necessity incorporate the spiritual as well as physical responsibilities of tangata whenua, and relate to the mana not only of the tangata whenua, but also of the gods, the land and the sea.

Local authorities and consent authorities need to be aware that tangata whenua read far more into the interpretation of kaitiakitanga expressed in Section 2 than just the surface meaning of the words written in English.

It must always be borne in mind that the value system associated with mana, kaitiakitanga, taonga, mauri, whanau and hapu is a system deeply embedded in the Maori culture. As such, these terms can best be understood within that cultural context. Local authorities and consent authorities should be aware of and able to accommodate what, to the uninformed, may seem to be stubborn refusal to compromise the principles of kaitiakitanga. For in reality, compromise most often simply is not an option for tangata whenua.

The example above perhaps also illustrates why translations into English of any of the Maori terms used in the NZCPS can never adequately explain the terms. The English translation of kaitiaki is 'guardian, caretaker, trustee'. The translation of kaitiakitanga is 'guardianship, trusteeship'. None of these words comes even close to matching the explanation given above. Quite simply, each of the Maori terms used in the NZCPS has been used because there is no equivalent term in English. If there had been an equivalent term, it would have been used.

APPENDIX 3
The Treaty of Waitangi
The Wording of the Original Document
with a translation by Professor Sir Hugh Kawharu
and a copy of the 1840 English version

The Maori Text
(from the Treaty of Waitangi Amendment Act 1985)

Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani - kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahi katoa o te Wenua nei me nga Motu - na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakarite te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua ahau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu - te Kawanatanga katoa o o ratou wenua.

Ko te tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua -ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

Translation of Maori Text (Professor Sir Hugh Kawharu)

Victoria, the Queen of England, in her concern to protect the Chiefs and subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it necessary to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson a Captain in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England forever the complete government over their land.

The second

The Queen of England agrees to protect the Chiefs, the Subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand (i.e. the Maori) and will give them the same rights and duties of citizenship as the people of England.

The English Text (from the Treaty of Waitangi Act 1975)

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great many of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands - Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her Subjects has been graciously pleased to empower and authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederation and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the first

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article the second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the Individual Chiefs yield to her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

APPENDIX 4
Principles of the Treaty of Waitangi
in
The Waitangi Tribunal and the Court of Appeal

The following are extracted from *Taking Into Account the Principles of the Treaty of Waitangi - Ideas for Implementation of Section 8 Resource Management Act 1991* published by the Ministry for the Environment, 1993. These particular sections also derive from *Environmental Management and the Principles of the Treaty of Waitangi* published by the Parliamentary Commissioner for the Environment, 1988.

Principle One: The Essential Bargain

The Waitangi Tribunal: The rights of the Crown to make laws was exchanged for the obligation to protect Maori interests.

The Court of Appeal: The cession by Maori of sovereignty to the Crown was in exchange by the Crown of Maori rangatiratanga.

Principle Two: Tribal Self-Regulation

The Waitangi Tribunal: The Crown has an obligation to legally recognise tribal rangatiratanga.

The Court of Appeal: Maori were to retain chieftainship rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship.

Principle Three: The Treaty Relationship

The Waitangi Tribunal: The Treaty implies a partnership, exercised with utmost good faith.

The Treaty is an agreement that can be adapted to meet new circumstances.

The courtesy of early consultation is a partnership responsibility.

The needs of both Maori and the wider community must be met, which will require compromises on both sides.

The Court of Appeal: The Treaty requires a partnership and the duty to act reasonably and in good faith.

The responsibilities of the parties are analogous to fiduciary duties.

The Treaty does not authorise unreasonable restrictions on the Crown's right to govern.

Principle Four: Active Protection

The Waitangi Tribunal: The Maori interest should be actively protected by the Crown.

The Crown right of pre-emption imposed reciprocal duties to ensure that the tangata whenua retained sufficient for their needs.

The Crown cannot evade its Treaty obligations by conferring an inconsistent jurisdiction on others.

The Court of Appeal: The duty is not merely passive, but extends to active protection of Maori people in the use of their resources and other guaranteed taonga to the fullest extent practicable.

The obligation to grant at least some form of redress for grievances where these are established.

APPENDIX 5

COPIES OF CORRESPONDENCE BETWEEN NPC AND PATUHARAKEKE

PATUHARAKEKE TE INI TRUST
P.O. BOX 63

15 September 1994

DR. MARGARET MUTU
Technical Review Panel
Proposed Marsden Point Port Development

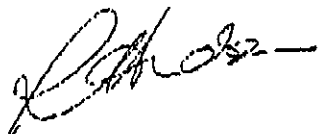
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25-11-94	JACK GUY	1	E
03-12-94	INWARD SEMENOFF	2	F
27-04-94	GEN MANAGER MARAE COMMITTEE	1	G
26-05-94	INWARD J R GUY	1	H
29-08-94	INWARD J.R. GUY	2	I

14 PAGES plus cover letter

Hope these arrive in an orderly fashion.

kia ora



Rina Hudson

1/34

PATUHARAKEKE TE IWI
P.O BOX 63
RUAKAKA

PHONE 09 4328390

27 August 1993
T.W. Archer
General Manager
Northland Port Corporation
P.O. Box 348
WHANGAREI

IWI PARTICIPATION IN MARSDEN POINT PORT TERMINAL
DEVELOPMENT. PROPOSAL FOR SETTLEMENT OF TANGATAWHENUA
CONCERNS.

MAIN POINTS:

1. Patuharakeke are the Manawhenua and Tangatawhenua of the development area.
2. The Patuharakeke tribe is represented by the Patuharakeke Te Iwi trust.
3. Consultation between Patuharakeke and Northland Port Corporation is necessary to address tangatawhenua concerns regarding the development and to resolve those issues.
4. Following meetings between the parties on 28 July 1993 17 July 1993 Patuharakeke identified major areas of concern which as Kaitiaki of the area responsibility fell upon them to deal with.
5. The proposed port development will impact devastatingly upon the spiritual and physical existence of the site as we know it today. The interference will effect permanent and irreversible changes. The physical and spiritual loss will be substantial. The loss of a

2/3A

fisheries resource is one which can be quantified in monetary terms. The loss in spiritual terms is much wider. The Kaitiaki stand to lose both their mana and self respect should their Kaitiakitanga in respect of the development area be lost.

6. It is possible for these major concerns to be addressed in a way which will allow the Kaitiakitanga role of the tangatawhenua to remain intact, albeit in a new and innovative form.
7. Patuharakeke is aware of Northland Port Corporation's commitment to the economic advancement of Whangarei and of the Northland Region as a whole.

SHARE ALLOCATION

8. Patuharakeke are keen and eager to play an effective role in advancing the opportunity for economic development at Marsden Point and in Northland.
9. A stake in the Port development through a significant allocation of shares in the Northland Port Corporation will afford the mechanism through which the Patuharakeke tribe will be able to continue to effectively maintain its role of Kaitiaki in the development area and at the same time work toward sustaining the economic wellbeing of the community.
10. Taking into account all matters arising from Patuharakeke giving its sanction to the project, an allocation of fully paid up shares comprising not less than one per cent of the authorised share capital in Northland Port Corporation will go a long way toward returning to tangatawhenua something that the project

3/3A

will take away forever.

PRE -SETTLEMENT MATTERS

11. Further discussions are contemplated in reaching a final settlement. The above proposal we believe to be in the interests of both parties. There is no doubt in our minds that Patuharakeke are poised to make a valuable contribution to the advancement of our region and to the investment value of Northland Port Corporation shares. Patuharakeke's involvement in the project should be properly seen as a partner. A not insignificant shareholding amounting to only one per-cent can if given favourable consideration by the major shareholder have the potential to advance considerably the interests of Northland Port Corporation.

27 August 1993
PATUHARAKEKE TE IWI

disk ok 15/9/94

[Signature]

all the best to you and your family

1118

PATUHARAKEKE TE IWI
P.O. BOX 63
RUAKAKA

Phone 09 4328390

12 October 1993

T w Archer
General Manager
Northland Port Corporation
P.O. Box 848
WHANGAREI

Re: PATUHARAKEKE TE IWI - TANGATAWHENUA PROPOSAL
ON MARSDEN POINT PORT TERMINAL

Further to our proposal submitted under cover of our letter to you dated 27 August 1993 (copy attached), we note the following:

1. It was an outcome of the joint working party meeting held at your office on 17 August that Patuharakeke prepare a proposal as to how Tangatawhenua concerns could be resolved.
2. Our proposal was duly forwarded to you under cover of our letter of 27 August.
3. We have not received any acknowledgement that you have received our correspondence.
4. It has come to our attention from information received that the content of our proposal appears to be common knowledge amongst some members of the Whangarei business community and we are concerned that there may have been a breach of aspects of confidentiality on the part of your Port Company.

A meeting of the working party, including our chairman and your chairman is called for urgently to address the matters raised herein and for the purposes of advancing the application process. Please phone the writer to arrange an urgent conference.

Yours faithfully,
PATUHARAKEKE TE IWI

Rina Hudson (Co-ordinator)

R. Hudson Dik. 15/9/94

1/2C

PATUHARAKEKE TE IWI
P.O. BOX 63
RUAKAKA

Phone: 09 4328390

20 October 1993

T W Archer
General Manager
Northland Port Corporation
P.O. Box 848
WHANGAREI

Tena Koe,

Re: Marsden Point Port Terminal-Consultation with
Tangatawhenua.

Our correspondence to you of 27 August 1993 and 12 October 1993 refers. I comment as follows:

1. We have not been blessed with the courtesy of an acknowledgement of receipt of our correspondence to you.

2. In terms of the Resource Management Act it is reasonable for Tangatawhenua to expect a response to our concerns and recommendations under the Fourth Schedule 1(h). Please note that under Section 17, every person has a duty to avoid, remedy or mitigate any adverse effects on the environment. The Treaty of Waitangi principle of consultation is to be complied with.

We refer you to the decision in the Haddon v Auckland Regional Council (1993) BCL 1668.

That case concerned an application in respect of resource consents to take Pakiri offshore sands to Mission Bay.

I quote from the report in Butterworths Current Law:

"The Pakiri offshore sands were part of the Tribal rohe of the Tangatawhenua. The council had failed to recognize and provide for the ancestral relationship of the hapu with their waters and resources and no particular regard was paid to the mana whenua of the hapu of the area. The Treaty of Waitangi principle of consultation was not complied with sufficiently early in the process.

Regard was had to the culture and traditions of the tangatawhenua only in the moving of the development area away from the outlet of the stream which washed down the sandhills where Waahi tapu were buried. More was required. The Treaty of Waitangi principle of recognition of the customary

2/26

authority of the hapu in the area needed to be formalized in some way. There needed to be cultural sensitivity about the transferring of the sands of the appellant's tribal rohe onto the beaches of another...there should be longterm monitoring of the effects of the activity on the seabed, and the hapu should be involved in this process as one way of restoring customary authority. In the future, the hapu should be involved in the development, management and protection of the sand resource as Kaitiakitanga"

3 A joint working party comprising representatives of Port Corp and Patuharakeke Te Iwi was established at a meeting held at your offices Port Road on 23 July 1993: in attendance were Hester Den Ouden, Jack Guy, Terry Archer, Stan Semenoff. Patuharakeke representatives included Joanne Hammon, Grant Pirihī, Wi Pirihī, Pauline Smith and Tamihana Pahi.

4 The above meeting was followed up with a meeting at Port Corp Offices on 17 August 1993 attended by Terry Archer, Herbert Rata and Tamihana Pahi. It was decided at that meeting that Patuharakeke should present a proposal to Port Corp on how tangatawhenua concerns could best be addressed and resolved.

5 By cover of letter dated 27 August 1993 a proposal for discussion was forwarded to the Port Corp offices.

6 A further copy of the proposal was forwarded under cover of letter dated 12 October 1993.

7 No acknowledgement has been received to date from you.

We are now obliged to ask you, Mr Archer whether or not you are the person authorised by Northland Port Corporation to consult with tangatawhenua in respect of the Marsden Port Terminal Resource Consents. If you no longer hold any authority to consult with the tangatawhenua please advise immediately who in your office is presently responsible to carry out that function.

In conclusion an immediate response from you would be both courteous and expected in view of the major and dramatic physical changes your proposal would have upon the mana moana, mana whenua and kaitiakitanga of the Patuharakeke Tribe - tangatawhenua of Marsden Point.

Kia ora

Rina Hudson
Coordinator



**Northland Port
Corporation** (NZ) Ltd

Port Road,
P.O. Box 848,
Whangarei,
New Zealand.

Telephone 0-9-438 1279
Facsimile 0-9-438 7067

3 November 1993

Ms Rina Hudson
Co-ordinator
Patuharakeke Te Iwi
PO Box 63
RUAKAKA

Dear Ms Hudson,

MARSDEN POINT FORESTRY TERMINAL

Firstly I must apologise for the fact that your letters of 27 August and 12 October have unfortunately not been acknowledged, through a misunderstanding within our organisation and a change of personnel in dealing with this matter. To compound this I have been out of the country since 13 October, and as your letter was addressed directly to me your letter of 12 October again has only just come to my attention.

At a Directors Meeting of the Marsden Point Development Committee it was resolved that in view of the significance of the cultural issues surrounding this project that it would be appropriate that the Chairman of the Northland Port Corporation should address the issues with the Maori people.

In light of this decision I have handed your most recent correspondence to Mr Jack Guy, and I would imagine that he will be in touch with you very shortly.

Once again I apologise for the oversight that has arisen, and I accept full responsibility for this.

Yours sincerely,


P.W. Archer
GENERAL MANAGER



Northland Port
Corporation (NZ) Ltd

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New Zealand.

Telephone 0-9-438 1279
Facsimile 0-9-438 7067

3 December 1993

T A Paki
Patuharakeke Te Iwi Trust
P O Box 63
RUAKAKA

Dear Mr Paki

LOGGING PORT PROPOSAL : IWI CONSULTATION

I refer to your fax of 25 November 1993 and respond as follows:

1. We note and appreciate that Patuharakeke Te Iwi are discussing the impact of the proposal with your neighbouring Iwi. It has always been our view that the impact and benefits of the proposal are relevant to the wider Taitokerau.
2. We assure you that your concerns as Tangatu Whenua, in so far as they are relevant to the proposal, will be given sufficient consideration.
3. The Port Company welcomes the opportunity for further consultation with Tangata Whenua.
4. The Port Company does not share the view that Maori participation in the development should come by way of a transfer of a portion of shares in the Company. Given that this proposition has been the subject of previous discussions; given also that you are aware of our position, we will not be seeking "further exploration" of this matter.

Further to the above; the Port Company, as part of the resource consent application process, has sought to assess the effects of the proposal on the Tangata Whenua.

A report, written by Mrs Zona Midwood, was commissioned and forms part of the proposal's environmental impact assessment. This report and its assessment by Den Ouden Associates were done in consultation with Patuharakeke as Tangata Whenua.

Cont/...

2/2F

The Port Company considers that the issues of concern to Tangata Whenua as described in the report and other relevant issues that may arise out of further consultation, should be addressed. In this regard the Resource Management Act provides the appropriate framework for further discussion, mediation and resolution where possible.

Furthermore, as Directors, we have no ability to transfer a portion of Port Company shares to Patuharakeke or any other organisation.

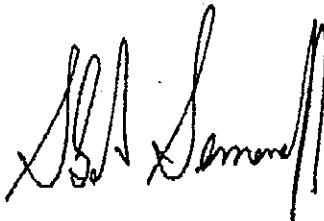
In conclusion I reiterate that the Port Company:

- seeks further meaningful consultation on issues relevant to the environmental effects of the proposal on Tangata Whenua;
- can not consider further the transfer of shares to Tangata Whenua as a form of redress for any impacts of the proposal on Tangata Whenua.

I look forward to your reply.

Yours faithfully

S G A Semenoff
DEPUTY CHAIRMAN for
Jack Guy
CHAIRMAN

A handwritten signature in black ink, appearing to read 'S G A Semenoff', written over a horizontal line.

1119
P.O. Box 343
Whangarei.

Copy only

The General Manager
Northland Forestry Corporation

Takahimai Merano Committee
P.O. Box 63
Rukaka

April 27 1974.

Dear Sir,

I wish to refer to your Environmental Impact Assessment, which seeks the establishment of a liaison officer position at paragraph 3.10-4.13 of the report. Please advise what progress you are making towards establishing the appointment of a Takahimai Representative as a Liaison Officer.

The writer would be pleased to discuss proposals covering services required and remuneration. In view of your decision to proceed with the project your urgent attention to this matter should be viewed as a positive commitment towards addressing Tangata Whenua concerns.

Yours Faithfully

Secretary
Diane Kapa.

Errors corrected

Dist. B:



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26 May 1994

Ms Diane Kepa
Secretary
Takahiwi Marae Committee
P O Box 63
RUAKAKA

Dear Madam

LOGGING PORT PROPOSAL - IWI CONSULTATION

I refer to your letter of 27 April 1994.

The Environmental Impact Assessment (EIA) that accompanies the proposal does not "seek to establish" a liaison officer position.

The EIA documents a request by the Takahiwi Marae Committee that the Northland Port Corporation invite the Tangata Whenua to select a liaison person (vol 1, 3.10.4.13).

This request is presented in the EIA in context with other relevant issues of concern to the Tangata Whenua, as set out in Section 3.10.4.

I enclose a copy, for your information, of the latest correspondence from us to Patuharakeke Te Iwi; this was in response to a fax from Mr Paki on 25 November 1993 (also enclosed). To date we have not had a reply to our letter.

For us, the central issue is to address any relevant areas of concern to the Tangata Whenua. I reiterate here our desire to, if required, have further meaningful consultation on issues relevant to the effects of the proposal.

Yours faithfully

J R Guy
CHAIRMAN

4350444

Tom: (wk.)

1/21

Herb:

Grant:

Paulie:



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29 August 1994

119/84

Ms Rina Hudson
The Coordinator
Patuharakeke Te Iwi Trust
P O Box 63
RUAKAKA

Dear Madam

RE: MARSDEN POINT TERMINAL PROPOSAL

On 3 December 1994, Mr Stan Semenoff wrote to the Patuharakeke Te Iwi Trust. The letter was in response to a request from Mr Tom Paki to revisit your trust's proposal of 27 August 1993 for settlement of Tangata Whenua concerns.

The Secretary of the Takahiwai Marae Committee wrote on 27 April 1994 requesting the appointment of a liaison person. In reply, we declined, at that stage, to make an appointment. The reason was that we did not consider the gifting of Port Corporation shares to be an appropriate means of settling Tangata Whenua concerns. We also enclosed copies of correspondence between ourselves and Mr Paki and reiterated our wish to have further meaningful consultation.

According to our records, we have not yet received any replies to those letters.

We have received from the Parliamentary Commissioner's review panel, and we understand that you will receive a copy, a request for further information on the proposal. We are in the process of preparing the requested information, some of which will relate to Tangata Whenua concerns.

It appears, from the points raised by the review panel, that there exists a view that we have not consulted widely enough with Iwi Maori. Specifically, we have been asked to account for any consultations with the Ngati Wai Trust Board; the Nga Puhi and Ngati Whatua runanga, and Te Kotahitanga O Te Taitokerau.

Notwithstanding this, it is our view that we have acted appropriately in seeking to consult the Tangata Whenua through the Patuharakeke Trust and the Takahiwai Marae Committee. This in fact, is consistent with the Midwood Report's advice, the advice that we have from the consent authorities, and we believe, with the spirit and intention of the Resource Management Act 1991.

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Page Two

However, recognising the manawhenua of Patuharakeke and in order that effective Iwi consultation take place, we are happy to consult wider with the aforementioned trust board and runanga if required to do so by your trust.

In this regard, we reiterate our wish to have open and meaningful consultation on issues relevant to the effects of the proposed terminal on Tangata Whenua and seek from your trust a proposal to further Tangata Whenua consultation on the proposal.

We look forward to your proposal; in the meantime, please do not hesitate to contact me.

Yours faithfully

J R Guy
CHAIRMAN

July 22, 1993



**Northland Port
Corporation** (NZ) Ltd

Mr H Parata
Convenor Resource Management
Ngati Wai Trust Board
171 Lower Dent Street
WHANGAREI

Port Road,
P.O. Box 848,
Whangarei,
New Zealand.

Telephone 0-9-438 1279
Facsimile 0-9-438 7067

Dear Mr Parata

**RE: DEVELOPMENT PLANS FOR MARSDEN POINT EXPORT
TERMINAL**

Attached is a copy of a comprehensive Draft Environmental Impact Assessment report that has been prepared as part of the Northland Port Corporation's application for planning approval to proceed with the development of an export terminal at Marsden Point.

As you know, Northland Port Corporation some time ago recognised the need to develop another terminal to most effectively accommodate current and potential customers needs'. We have been mindful of the fact that the channel into the port at Whangarei is already too shallow to allow full capacity loads and that under the Resource Management Act, we will soon have dredging restrictions at our current site. Some years ago we purchased approximately 200 hectares of industrial-zoned land at Marsden Point with a view to developing a deep water port and associated handling and storage facilities. Now, after 18 months of research and gathering independent economic, environmental and trading analyses, we have prepared a Draft Environmental Impact Assessment which we want to fully discuss with interested groups and individuals, prior to finalising our presentation with our application to an independent planning committee.

We appreciate that there will be some questions arising from the report. I would be happy to discuss these with you personally and will be available with appropriate company staff during the week commencing 26 July 1993. I suggest you contact Janette Henry to arrange an appointment time.

Our formal application for the Resource Consents will be made on 12 August 1993 and we would therefore appreciate any comments by 5 August 1993.

We look forward to discussing this proposal with you in more detail and hearing your views.

Yours sincerely

**Terry Archer
GENERAL MANAGER**

encl.

L1307B1

**Ngati Wai's Preliminary Response to the Northland Port
Corporation Draft Environmental Impact Assessment for the
Marsden Point Terminal Proposal.**

Introduction

The issues identified in the Draft Environmental Impact Assessment have implications beyond those of the immediate area of Marsden Point. Issues such as dredging, water quality, noise, aquatic life, traffic, employment and visual impacts are not confined within the immediate vicinity of the proposal, and therefore will affect all Ngati Wai in some way.

Other Hapu and Whanau Interests

For example, in addition to Patuharakeke being the traditional occupants on the south side of Whangarei harbour, other Ngati Wai hapu (Ngati Pukenga, Ngati Korora, Ngati Kahu, and Tetarewa) are the traditional occupants on the north side of Whangarei harbour, therefore they would be concerned with the issues involved, with regard to this development proposal.

In addition, there are two well known whanau at Takahiwai who are members of both Te Akitai and Koiwi hapu, which are in turn hapu of Ngati Wai, Ngati Whatua and Nga Puhi.

Position of Ngati Wai Trust Board

Ngati Wai iwi exercise mana whenua and manawhenua ki te moana over the Whangarei harbour area. Consequently, Ngati Wai Trust Board must be notified and involved in the process of consultation that has to take place.

Conclusion

We were not formally consulted during the initial preparation of the draft document. However we propose to make submissions even at this late stage and we advise that our solicitor, Mr. Wayne Peters of Thomson Wilson Barristers and Solicitors, P.O. Box 1042, Whangarei, will be attending to these matters in addition to ourselves.

Yours faithfully,

RP BM Neal
Elliot Khan
Manager.