



Environmental
Protection Authority
Te Mana Rauhi Taiao

Ngā Kaihautū Tikanga Taiao Report – EEZ100019

In accordance with section 56 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the Act).

Application from Beach Energy Resources NZ (Holdings) Limited for a marine discharge consent to discharge trace amounts of harmful substances in to the waters of the exclusive economic zone within the Canterbury Basin offshore of the South Island of New Zealand.

Executive Summary

Ngā Kaihautū Tikanga Taiao is the statutory Māori Advisory Committee to the Environmental Protection Authority. The responsibility of Ngā Kaihautū Tikanga Taiao (hereon Ngā Kaihautū) is to provide advice and assistance, from a Māori perspective, to the Environmental Protection Authority on matters relating to policy, process and decision-making and to provide advice to a marine consent authority when sought under section 56(1)(b) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

This report is in response to the request dated 10 June 2020 from the Decision-Making Committee for the Beach Energy Resources NZ (Holdings) Limited application to provide advice on matters related to the application to discharge harmful substances. Specifically, the following advice is being sought from Ngā Kaihautū:

- *Beach Energy has identified existing (and cultural) interests in Section 5 of the Impact Assessment, and in its response to a further information request under section 56 of the EEZ Act in relation to recent case law. Is there anything else that the DMC should inquire about with respect to Māori existing interests? Please provide commentary as to the cultural or tikanga context of the existing interests identified by Beach Energy and any other that are identified by NKTT.*
- *The key effects of the proposed activity that could be expected to be of concern to Māori/iwi and which the DMC should explore when considering the application. Please provide commentary as to the cultural and/or tikanga context of the key effects. This information will assist the DMC in respect of how to consider submissions, and other evidence received.*
- *Beach Energy has proffered conditions of consent (Section 8 of the Impact Assessment and Appendix B) but, given their assessed limited extent of adverse effects, have not included any conditions specifically targeted at Māori/iwi. Please review the conditions and provide advice on:*
 - *What, if any, additional conditions (including reporting) might be appropriate to manage relevant effects of the proposed activities from a Māori/iwi perspective. Please provide reasoning for such conditions and how they relate to the key effects identified.*

It is important to outline that Ngā Kaihautū has prepared this report and provided its Māori perspective and advice without sighting any submissions on the marine discharge application from iwi/rūnanga, hapū/papatipu rūnanga or any Māori organisations.

The Chairperson for the Beach Energy Decision-Making Committee acknowledges in its letter to Ngā Kaihautū that any advice will not necessarily cover specific matters that iwi/rūnanga, hapū/papatipu rūnanga or a Māori organisation might raise through submissions. With this

recognition, we wish to affirm that this is a limitation of the Ngā Kaihautū report, and that the views and matters expressed in submissions from iwi/rūnanga, hapū/papatipu rūnanga or a Māori organisation are supported by Ngā Kaihautū.

After reviewing the application, and undertaking investigations regarding the scope of the request from the Decision-Making Committee, it is viewed by Ngā Kaihautū that:

1	<p>Beach Energy’s Impact Assessment report does not fully describe the current state of the area, and its surrounding environment, where the proposed discharge activity will occur.</p> <p>Although the Impact Assessment provides bio-physical descriptions, it does not provide for, nor consider, the whanaungatanga and kaitiakitanga (the relationships between Māori/iwi and the natural environment), or broadly the holistic and integrated Māori/iwi worldview and the role and practices of kaitiaki, in the area and surrounding environment.</p> <p>This was a key matter and ruling of the Court of Appeal decision on the Trans-Tasman Resources Limited application with regards to scope of existing interests and the information required for consideration by the Decision-Making Committee.</p> <p>Ngā Kaihautū suggest to the Decision-Making Committee that it should inquire with Beach Energy to demonstrate/articulate the activities and expertise they employed to gather, understand and apply information regarding the whanaungatanga and kaitiakitanga relationship between the affected iwi/rūnanga, hapū/papatipu rūnanga or a Māori organisation and the natural environment.</p> <p>Clearly describing the Māori perspective(s) of the marine environment, eg as an ancestor or other form of embodiment, will lead to improved understanding regarding the extent of the effects on iwi/rūnanga, hapū/papatipu rūnanga or any Māori organisation in the area and surrounding environment beyond that of the scope and jurisdiction of statutory acknowledgements and the like currently identified in the Impact Assessment.</p>
2	<p>There is uncertainty whether the concerns and outcomes sought by the listed Māori groups that were engaged by Beach Energy have been addressed, accommodated and/or agreed to as there was no evidence (whether by letter or cultural impact assessment report) outlining support or acknowledgement that consultation/engagement between parties.</p> <p>Ngā Kaihautū wish to advise the Decision-Making Committee that it should inquire with Beach Energy on presenting information/records/evidence of its consultation and engagement with the listed Māori groups and identify and demonstrate how the concerns and outcomes were considered.</p>

3	<p>The assessment of effects on the cultural environment described in section 7.3.5 of the Impact Assessment report is informed by a non-Māori perspective, eg bio-physical methodology, to measure and qualify the proposal's effects on the cultural environment, and subsequently advise that the adverse effects on mauri are temporary and negligible.</p> <p>Ngā Kaihautū wish to advise the Decision-Making Committee that iwi/rūnanga and hapū/papatipu rūnanga are better placed to determine and confirm the qualities and metrics of mauri. Ngā Kaihautū also note that mauri impacts can, but do not necessarily, equate with bio-physical impacts. There is no evidence in the Impact Assessment that iwi/rūnanga and hapū/papatipu rūnanga (or expertise employed/commissioned by Beach Energy) have participated in any assessment and qualification.</p>
4	<p>There is some uncertainty because the marine discharge application is one (the first) of a suite of applications to be lodged by Beach Energy for its Exploration and Appraisal Drilling (EAD) programme.</p> <p>The concern is that not all the information is available for full consideration of the whole proposal and therefore certainty of the specific harmful substances being managed by Beach Energy are not clear. Case in point is in section 3.4.2 of the Impact Assessment, Beach Energy state that they are unable to confirm which specific harmful substances will be stored and used because it has yet to contract its drilling operation.</p> <p>The adverse effects of harmful substances discharged into the aquatic/marine environment cannot be clearly known until it is confirmed by Beach Energy (noting that sodium hypochlorite was identified as the most ecotoxic harmful substance and likely harmful substance on the mobile offshore drilling unit. The effects are associated with the use and introduction of foreign substances to the natural environment (which includes taonga species) irrespective of quantity of the discharge, and the bio-physical methodology and measurement of the impact of discharging harmful substances.</p> <p>There is potential for a variation to the marine discharge consent (should it be granted consent) once the full EAD programme activities are confirmed and lodged via applications for approvals by Beach Energy with the Environmental Protection Authority. This is not a helpful outcome in providing advice from a Māori perspective on a proposal especially if there is a likelihood that the marine discharge consent for the proposal is later varied to potentially address an increase in discharge or actual magnitude of effects.</p>

5	<p>The conditions of consent proffered by Beach Energy Resources were reviewed. We note that there are not conditions to address cultural effects or conditions to accommodate existing interests of Māori.</p> <p>Although the measures to manage the address effects on the bio-physical qualities of the environment and protect the environment from pollution, they do not however manage on cultural qualities of the natural environment. Ngā Kaihautū are of the view that any condition (should the application be granted consent) be developed with iwi/rūnanga, hapū/papatipu rūnanga.</p>
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Overall, there is available information without unreasonable cost, effort or time, to Beach Energy and the DMC to access, and thereafter to assist, with its understanding and appreciation of the cultural environment (and its effects) and identification and assessment of existing interests in the area.

Until a full description of the area is undertaken, the proposal has failed to address the effects on kaitiakitanga.

1. Introduction

Purpose of Report

- 1.1. Pursuant to section 56(1)(b) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (hereon EEZ Act), advice from Ngā Kaihautū has been sought by the Beach Energy DMC on matters related to the marine consent application and marine discharge consent application lodged by Beach Energy Resources NZ (Holdings) Limited (hereon Beach Energy). It is understood that the advice will assist in the consideration of the application in accordance with section 59(3)(c) of the EEZ Act, as well as provide a Ngā Kaihautū perspective on the requirement to give effect to the principles of the Treaty of Waitangi¹.
- 1.2. The application lodged by Beach Energy is to obtain a marine discharge consent to discharge trace amount of harmful substances in the activity of exploration drilling which has yet to be lodged and assessed through a marine consent application process.
- 1.3. This report is in response to the request from the Beach Energy Decision-Making Committee (hereon DMC) dated 10 June 2020, to provide advice on:
 - a. Beach Energy has identified existing (and cultural) interests in Section 5 of the Impact Assessment, and in its response to a further information request under section 56 of the EEZ Act in relation to recent case law. Is there anything else that the DMC should inquire about with respect to Māori existing interests? Please provide commentary as to the cultural or tikanga context of the existing interests identified by Beach Energy and any other that are identified by NKTT.
 - b. The key effects of the proposed activity that could be expected to be of concern to Māori/iwi and which the DMC should explore when considering the application. Please provide commentary as to the cultural and/or tikanga context of the key effects. This information will assist the DMC in respect of how to consider submissions, and other evidence received.
 - c. Beach Energy has proffered conditions of consent (Section 8 of the Impact Assessment and Appendix B) but, given their assessed limited extent of adverse effects, have not included any conditions specifically targeted at Māori/iwi. Please review the conditions and provide advice on:
 - What, if any, additional conditions (including reporting) might be appropriate to manage relevant effects of the proposed activities from a Māori/iwi perspective.

¹ Section 12 of the Exclusive Economic Zone (and Continental Shelf) Act 2012

Please provide reasoning for such conditions and how they relate to the key effects identified.

Ngā Kaihautū Tikanga Taiao and its Māori Perspectives

- 1.4. Ngā Kaihautū is the statutory Māori Advisory Committee to the Environmental Protection Authority established under section 18 of the Environmental Protection Authority Act 2011.
- 1.5. The functions of Ngā Kaihautū are to provide advice and assistance to the Environmental Protection Authority (EPA) on matters relating to policy, process and decision-making, in particular whether, or how well, Māori perspectives are reflected in the proposal; and to provide advice to a marine consent authority when that advice is sought under section 56(1)(b) of the EEZ Act.
- 1.6. The EPA's Māori framework, He Whetū Mārama, and its protocol for Incorporating Māori Perspectives into Decision Making, outline the key objectives that frame the Ngā Kaihautū position on Māori perspectives.
- 1.7. It is important to advise that the Māori perspective offered by Ngā Kaihautū does not supersede or replace the distinct perspectives of whānau, hapū and iwi, but to ensure that those perspective(s) have been sought and considered by the EPA, and in this case the DMC on the Beach Energy application
- 1.8. On behalf of Ngā Kaihautū, James Whetu of Whetū Consultancy Group has reviewed the Beach Energy's Impact Assessment report, and its appendices, and had prepared an initial report for Ngā Kaihautū. That initial report was received and reviewed by all of the members on Ngā Kaihautū at that time. However, since the initial report four of the members stepped down because their term ended on 30th June.

This is the final version of the Ngā Kaihautū report, which was received and reviewed by the remaining members of Ngā Kaihautū.

2. Beach Energy Marine Discharge Consent Application

- 2.1. In preparing this report, Ngā Kaihautū were guided by the DMC as to information in the Beach Energy application and associated Impact Assessment report (hereon IA) that might be particularly relevant. These were:
 - Section 3 – describes the proposed activity
 - Section 4.4 – describes the cultural environment
 - Section 5 – describes existing interests and engagement (including engagement with iwi, Papatipu Rūnanga and other stakeholder groups in Section 5.2)

- Section 7.3 – discusses the potential effects on the environment and existing interests
 - Section 8 and Appendix B – covers conditions proffered by Beach Energy
- 2.2. Ngā Kaihautū are not the assessors, and have accepted the legislative framework described in section 2.2 of the IA, and that the application outlines that it meets all the requirements of the EEZ Act, and anticipates that any potential impacts identified from routine or planned activities as negligible or minor.
- 2.3. To comprehend the scale and scope of the effects, especially to identify actual or potential effects on cultural values or Māori existing interests, all of section 7 of the IA was reviewed.
- 2.4. Additionally, to assist with the review and assessment, the relevant sections of the EEZ Act were reviewed, as well as the:
- Exclusive Economic Zone and Continental Shelf (Environmental Effects – Discharge and Dumping) Regulations 2015.
- 2.5. It is noted that the application outlines its recognition of the concerns shared by iwi in the project area, and evaluates the extent of adverse effects on cultural values if the proposed activities were undertaken. The application also outlines developing a relationship with Māori/iwi through engagement and information sharing as a measure to address cultural values.
- 2.6. A set of proposed conditions have been proffered for the publicly notified activity.

3. Ngā Kaihautū Tikanga Taiao Assessment and Advice

- 3.1. In the first instance, Ngā Kaihautū wish to reiterate that there is no uniform, single Māori perspective when it comes to resource and environmental management matters. Therefore, the perspectives of Ngā Kaihautū do not supersede nor replace the distinct perspectives of whānau, hapū, iwi.
- 3.2. The four (4) objectives developed by Ngā Kaihautū, and described in the EPA's *Incorporating Māori Perspectives into Decision-Making*, have been applied to frame Māori perspectives for Ngā Kaihautū.
- 3.3. Additionally, Ngā Kaihautū have adopted key points from the *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board*² Court of Appeal decision to support and recognise the approach to the Treaty of Waitangi, tikanga Māori and kaitiakitanga.

² TRANS-TASMAN RESOURCES LIMITED v TARANAKI-WHANGANUI CONSERVATION BOARD [2020] NZCA 86 [3 April 2020]

- 3.4. Also, with the application being notified, and that it is identified in the regulations as a Discretionary Activity, the assumption of Ngā Kaihautū is that the proposed activity (discharge of harmful substances) has a higher probability of significant adverse effect of the environment and existing interests, than that of permitted activities.

Review of Beach Energy's Impact Assessment

- 3.5. In the review of the IA, it is considered that section 4.4 Cultural Environment does not appropriately frame nor outline the Māori/iwi worldview, therefore does not contextualise the cultural environment in the area of interest and marine/moana very well. As a result, we posit that the consideration afforded to cultural values, and Māori/iwi rights and interests, in the IA is lacking and seem to be framed primarily around resource use and bio-physical impacts. It is considered that this is a limitation of the IA that needs addressing before a decision can be made.
- 3.6. There are other cultural practices such as sense of identity, whakapapa (genealogy), mātauranga and tikanga Māori not canvassed in the IA.
- 3.7. The importance of whakapapa and the interconnectedness of all living and non-living things is central to Māori/iwi life, Māori worldview and hence mātauranga. Any activity with an overarching environmental impact on this whakapapa relationship, and therefore to Māori identity, will be of concern to Māori.
- 3.8. The *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* Court of Appeal decision in para [172] to [174] refers to this notion and its importance for consideration and decision-making by the EPA. These paragraphs are stated below:

[172] The respondents are right to say that the focus of the DMC decision was on bio-physical effects. The DMC focused on the marine environment as a resource that Māori exploited to obtain food and other practical advantages. The difference between this perspective and the perspective of kaitiakitanga is neatly captured by the Waitangi Tribunal in its report: Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, explaining the central characteristics of the system of custom that Kupe brought with him to these islands:

Its defining principle, and its life blood, was kinship – the value through which the Hawaiians expressed relationships with the elements of the physical world, the spiritual world, and each other. The sea was not an impersonal thing, but an ancestor deity. The dots of land on which the people lived were a manifestation of the constant tension between the deities, or, to some, deities in their own right. Kinship was the revolving door between the human, physical, and spiritual realms. This culture had its own creation theories, its own science and technology, its own bodies of sacred and profane

knowledge. These people had their own ways of producing and distributing wealth, and of maintaining social order. They emphasised individual responsibility to the collective at the expense of individual rights, yet they greatly valued individual reputation and standing. They enabled human exploitation of the environment, but through the kinship value (known in te ao Māori as whanaungatanga) they also emphasised human responsibility to nurture and care for it (known in te ao Māori as kaitiakitanga).

[173] The inextricably linked concepts of whanaungatanga and kaitiakitanga in relation to the natural environment and its resources were helpfully summarised by Williams J, writing extra-judicially, in Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law:

... whanaungatanga might be said to be the fundamental law of the maintenance of properly tended relationships. The reach of this concept does not stop at the boundaries of what we might call law, or even for that matter, human relationships. It is also the key underlying cultural (and legal) metaphor informing human relationships with the physical world – flora, fauna, and physical resources – and the spiritual world – the gods and ancestors.

...

No right in resources can be sustained without the right holder maintaining an ongoing relationship with the resource. No relationship; no right. The term that describes the legal obligation is kaitiakitanga. This is the idea that any right over a human or resource carries with it a reciprocal obligation to care for his, her or its physical and spiritual welfare. Kaitiakitanga is then a natural (perhaps even inevitable) off-shoot of whanaungatanga.

[174] In this case the DMC needed to engage meaningfully with the impact of the TTR proposal on the whanaungatanga and kaitiakitanga relationships between affected iwi and the natural environment, with the sea and other significant features of the marine environment seen not just as physical resources but as entities in their own right — as ancestors, gods, whānau — that iwi have an obligation to care for and protect.

- 3.9. The Court further explains and emphasises in para [175] to [178] the appropriateness of ensuring the Māori perspective, via the contextualisation of the area and surrounding environment, is presented and analysed. Specifically, the Māori perspective of viewing the marine environment more than a physical resource and as an entity in its own right, and whether there is an obligation by Māori to care and protect it.
- 3.10. For example, Ngāi/Kai Tahu have pūrākau (narrative form of mātauranga) about Tangaroa/Takaroa (Māori God/deity of the Sea) and his relationship with Papatūānuku and Ranginui/Rakinui, and his siblings (Tanemāhuta etc). The cultural context of the environment is not outlined in the IA.

- 3.11. The cultural context described and presented in the IA limits the extent of the analysis duties of the DMC and therefore does not inform on the scale of the effects on environment and existing interests.
- 3.12. The narrow description of the area presented by Beach Energy, does not adequately identify, and therefore cannot provide an assessment of, the potential adverse effects on the environment and adverse effects on Māori/iwi existing interests.
- 3.13. For example, it was noted that of the nine (9) pages referring to the material/reports/information used to frame Beach Energy's Impact Assessment, only eight (8) of the 167 references were visibly about Māori.
- 3.14. Due to the lack of a well framed description of the cultural environment that considers the other above matters, it is our view that although an expert(s) has prepared the IA, this was not undertaken by an expert in cultural/Māori environment.

Key Effects on the Environment

- 3.15. For the environment, the key effects on the environment arising from the proposed activity that will be of concern to Māori/iwi are considered to be associated with the:
- Adverse effects on marine mammals, taonga species and other sensitive environs
 - Introduction of foreign substance to the natural environment
- 3.16. *Table 17 Summary of engagement undertaken with iwi and parties that have existing interest and Table 18 Summary of additional engagement*, outline consultation/engagement activities with Te Rūnanga o Ngāi Tahu, Te Rūnanga o Moeraki, Te Ohu Kaimoana, and papatipu rūnanga (via Aoraki Environmental Consultancy and Aukaha).
- The tables outline the topics of discussion and concerns and outcomes from those series of consultation/engagement.
- 3.17. Ngā Kaihautū are uncertain whether the concerns and outcomes sought by the listed Māori groups have been addressed, accommodated and/or agreed to as there was no evidence (by letter or updated cultural impact assessment report) outlining support or acknowledgement that consultation/engagement between parties is progressing to address effects and impacts on Māori/iwi values, interests and rights.
- 3.18. It is acknowledged that the IA refers to Schedule 97 and Schedule 98 of the Ngāi Tahu Claims Settlement Act 1998 which provides a list of taonga species to Kai/Ngāi Tahu, however there is no record in the IA that these matters were discussed and the measures proposed to

manage the effects of taonga species were supported and agreed to by the rūnanga and papatipu rūnanga.

- 3.19. Therefore without having viewed the full minutes and/or records of consultation/engagement with Māori/iwi and the lack of evidence that Māori/iwi support the proposed activity and/or acknowledge the engagement efforts of Beach Energy, it is considered that at this stage³ Beach Energy have not adequately considered and accommodated for the effects on the cultural context of the two effects identified above.
- 3.20. The IA focuses on the bio-physical qualities of the natural environment (eg water quality), and bio-physical metrics to qualify the scale and magnitude of the effects (eg negligible). This approach is transposed to measure and qualify the proposal's effects on the cultural environment, and subsequently advise that the adverse effects on mauri are temporary, therefore effects are negligible.
- 3.21. Ngā Kaihautū do not believe 8-9 years of discharging harmful substances (on basis that discharge consent will expire on 7 November 2029) is temporary. Ngā Kaihautū are of the view that the effects of the discharge are only viewed as temporary when it is compared to, and potentially operating in, a 30+ year EAD programme.
- 3.22. Although it could be viewed as temporary, Ngā Kaihautū are of the opinion that the discharge of harmful substances into the marine environment may have a lasting effect because it introduces foreign substances to the natural environment over the 8-9 year period.
- 3.23. This opinion is consistent with the work published in 2011, *Implementing Māori indigenous knowledge (mātauranga) in scientific paradigm: Restoring mauri to Te Kete Poutama*, which outlined:
- “When considering the impact on mauri, for contaminants at Te Kete Poutama, e.g. dioxins and PCB (both proven carcinogens), the level of concentration was irrelevant – the presence of any amount of these toxins have a significant negative impact upon mauri due to the carcinogenic nature of these contaminants.”⁴*
- 3.24. It is noted that Beach Energy refers to previous decisions of the EPA for discharges of harmful substances in section 7.3.5, and suggest as a comparison that those decisions found that the effects on cultural values as negligible.
- 3.25. Ngā Kaihautū believe this statement and its reference to previous decisions to qualify the IA assessment on cultural environment reinforces the view that Beach Energy do not

³ During public notification and therefore prior to sighting any submissions from the listed Māori groups

⁴ Hikuroa DCH, Slade A, Gravley D. 2011. Implementing Maori indigenous knowledge (matauranga) in scientific paradigm: Restoring mauri to Te Kete Poutama. Mai Review, 3

understand the cultural context of the area and surrounding environment, and have likely inadequately addressed/accommodated the concerns and outcomes shared by the listed Māori parties they had engaged with.

- 3.26. Ngā Kaihautū wish to advise the DMC that iwi/rūnanga and hapū/papatipu rūnanga are better placed to determine and confirm the qualities and metrics of mauri. There is no evidence in the IA that iwi/rūnanga and hapū/papatipu rūnanga (or expertise employed/commissioned by Beach Energy) of such assessment and qualification.
- 3.27. Also, it is important to advise the DMC that Ngā Kaihautū understands that the marine discharge consent application is one (the first) of a suite of applications to be lodged by Beach Energy, and accordingly have concerns that not all the information is available to understand and consider the whole proposal (activities in the marine environment) and its impacts on the mauri and on the cultural environment.
- 3.28. We acknowledge that this is an approach provided for under the EEZ, and that the individual merits of the marine discharge application is to be considered by the EPA/DMC.
- 3.29. Ngā Kaihautū wish to advise that the practice of kaitiakitanga is not compartmentalised between the individual process for a marine discharge consent and the individual process to consent a marine activity. The activity being undertaken by Beach Energy is its EAD programme, therefore it is considered important that iwi/rūnanga and hapū/papatipu rūnanga comment and participate on the whole proposal to truly understand the effects on the environment.
- 3.30. It is in this manner that Ngā Kaihautū wish to avoid a potential variation to the marine discharge consent as a result of the outcome of the full EAD programme being considered, processed and decided on, should Beach Energy be granted marine discharge consent.

Key Effects on Existing Interests - Kaitiakitanga (the practice and expression of Tikanga)

- 3.31. We consider that the key effects on existing interests are associated with the ability of Māori/iwi to exercise customary authority and hence the ability for them to exercise kaitiakitanga (the principle of intergenerational sustainability and the practices undertaken to achieve that) over the natural resources in the Area of Interest, and more widely, the exclusive economic zone (hereon EEZ).
- 3.32. It is viewed that the exercise of guardianship and stewardship practices by Māori/iwi as kaitiaki, are lawfully established existing activities, whether or not authorised by or under any Act or regulations.

- 3.33. The Waitangi Tribunal, in their report, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*⁵, explain that kaitiakitanga is the obligation, arising from the kin relationship, to nurture and care for a thing it has a spiritual aspect, encompassing not only an obligation to care for and nurture not only physical well-being but also mauri. Kaitiaki have a responsibility to exercise their mana in accordance with the values of kaitiakitanga – to act unselfishly, with right mind and heart, and with proper procedure.
- 3.34. Mana and kaitiakitanga go together as right and responsibility, and that kaitiakitanga responsibility can be understood not only as a cultural principle but as a system of law. Where kaitiaki obligations exist, they do so in relation to taonga – that is, to anything that is treasured; taonga including tangible things such as people, land, waters, plants, wildlife and cultural works; and intangible things such as language, identity, and culture, including mātauranga Māori itself.
- 3.35. It is important to understand that for Māori, their kaitiakitanga responsibility to maintain the mauri (*the life principle or living essence contained in all things, animate and inanimate*) and manage the balance of natural resources on land, and within the moana, is for the benefit of future generations. This requires an inter-generational, long-term view to ensure the protection of taonga (*a treasured possession, including people and property, resources, and abstract concepts such as language, cultural knowledge, and relationships*).
- 3.36. Additionally, it is considered that the recent New Zealand Environment Court (hereon NZEC) decision on a resource consent under the Resource Management Act 1991 (hereon RMA) is relevant as to stating the appropriateness for kaitiakitanga to be considered as an existing interest. The 2018 NZEC decision was *Tūwharetoa Māori Trust Board v Waikato Regional Council NZEnvC 93*.
- 3.37. The Court did not think that ownership was determinative of how it must have regard to kaitiakitanga (section 7(a) of the RMA) and the principles of the Treaty of Waitangi, and found that the association of Māori/iwi (Tūwharetoa) with land affected by the applications will result in adverse cultural effects.
- 3.38. It is considered that the concept of kaitiakitanga applied to the management of the natural environment in the EEZ is similar to the above RMA example where ownership (or consents

⁵ Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi, p23, Downloaded from www.waitangitribunal.govt.nz

and other forms of granted rights) does not preclude the exercise of guardianship in accordance with tikanga Maori by Māori/iwi associated with the moana in Canterbury Basin.

- 3.39. In recognising kaitiakitanga as an existing interest, the effects on this existing interest can be appropriately managed. In our view, currently the measures to mitigate, remedy and avoid, do not consider nor provide for the wider, holistic, and integrated environmental and cultural perspective of Māori/iwi, and the matters described in iwi management plans, iwi documents and in Treaty settlements legislation and documents.

Conditions of Consent Proffered by Beach Energy

- 3.40. The set of proposed conditions outlined in Appendix B – Proffered Conditions were reviewed.
- 3.41. We note that there are not conditions to address cultural effects or conditions to accommodate existing interests of Māori.
- 3.42. Ngā Kaihautū does not believe it is in a position to advise on the appropriateness of the conditions, nor suggest additional conditions from a Māori/iwi perspective until after the public notification process and the sighting of any submissions from iwi/rūnanga, hapū/papatipu rūnanga or a Māori organisation.

Ngā Kaihautū Tikanga Taiao

Signed by Ngā Kaihautū 6 July 2020



Dr Daniel Hikuroa, Kaihautū



Rick Witana, Kaihautū