

COMMENTARY ON DR KAHOTEA'S CULTURAL INTERESTS ASSESSMENT

a. Purpose

1. The purpose of this document is to review the cultural interests assessment prepared by Dr Des Kahotea and Shadrach Rolleston for the application by the owner of MV Rena for a resource consent. It is designed to identify and discuss the strengths and weaknesses of the assessment to assist in the deliberations by the Crown on the consent application. This is a robust review of Dr Kahotea's assessment, intended to ensure the Crown is in the best position to consider cultural interests in this process. Much of my focus is on the assessment of effects of the proposal on cultural values and the conclusions reached in the assessment. The overview of tangata whenua, engagement and general discussion of cultural values is not generally controversial.

b. Summary of Key Issues

2. The following issues are considered in this review:
 - **Debate:** Dr Kahotea frames the discussion among tangata whenua about the future disposition of the wreck, in the absence of any concrete proposal from the owner or evidence about the impact of any proposal, as a debate. However, the evidence presented in his report appears to suggest there is general agreement tangata whenua about how the wreck should be dealt with and also indicates there is little debate. His references to alternative views are generally vague and speculative. They lack the type of detail required to sustain the case for a debate or the conclusions which he reaches. Dr Kahotea also acknowledges in his report that his contact with tangata whenua has been limited. Indeed, it appears he reaches his main conclusion, which contradicts other statements, in the absence of evidence;
 - **Fallacious / Loaded Questions:** Dr Kahotea poses questions which he states tangata whenua need to consider which emphasise the risk and environmental damage which might follow from wreck removal. However, there are many other questions tangata whenua might also consider relevant, which are only addressed in Dr Kahotea's report to the extent that they are contradicted by the technical evidence prepared as part of the owner's application;
 - **Mauri:** Dr Kahotea argues that the mauri of the reef and the wreck can be reconciled but this is problematic conclusion given the nature of mauri and how it exists in the natural world;
 - **Approach:** Dr Kahotea's approach to considering cultural interests examines only marginally the impact of the proposal on cultural interests associated with the reef (the proposal being to leave part of the wreck in the marine environment, subject to ongoing monitoring, mitigation and further reduction in the debris field). Rather, it draws on other technical evidence prepared for the application to conclude that because the proposal is the least damaging for the marine environment, it will therefore have the least impact on cultural

values. It should be noted that this evidence is untested and anticipates what might happen in the future in a marine environment which appears highly dynamic. It is unclear how controversial this evidence is, particularly given the somewhat unique circumstances of the wreck and the reef, and it is important to emphasise that it is not observable scientific data but presumably the best guess of what might happen in the future;

- **Conclusion:** Dr Kahotea's conclusion on p. 39 appears somewhat contradictory in that he claims that the impact on cultural values is limited while noting that the impact on spiritual values is more difficult to determine. Given so much of the report focuses on mauri, a core spiritual value connected to the reef, and that cultural values incorporate spiritual values (for example, mauri and kaitiakitanga are inextricably linked), it is difficult to see how the impact on cultural values is limited.

c. Debate?

3. Dr Kahotea frames the discussion over the future of the wreck as a 'debate' and argues that there have been diverse opinions expressed about the cultural impact of this proposal on tangata whenua. However, his report suggests that the debate has been between the owner and their representatives and tangata whenua rather than among tangata whenua. In particular, he suggests that '[f]orming an authoritative opinion on the Proposal has been difficult, given the contrasting views and opinions of tangata whenua, and the issues associated with wreck removal activities' but goes on to note that there is widespread agreement among tangata whenua about how the wreck should be dealt with:

Most affected iwi have publicly called for the complete removal of the wreck from the Reef to restore the Reef to its 'pre-Rena state'.¹

4. While Dr Kahotea acknowledges this is a general consensus among tangata whenua, he goes on to suggest that there is 'conditional support' for the applicant's proposal:

Some iwi have expressed conditional support for the wreck to remain. There is a view that the risk of further damage to the Reef and increasing risk to salvage divers from full wreck removal, means that the process of restoration with the wreck remaining in place should be investigated further.²

5. Elsewhere he states that the 'majority of tangata whenua groups continue to hold the public view that the wreck should be removed, whilst in private some have indicated to the owner that they recognise this might be extraordinarily difficult to achieve'.³ He goes on to argue:

¹ *ibid.*, p. 4.

² *ibid.*

³ *ibid.*, p. 5.

In the most recent visit of the owner and its representatives there seems to be a discernible shift towards leaving the wreck on Otaiti. Te Kahui Kaumātua o Te Patuwai Council of elders met with the owner on Saturday 15 February 2014. At this meeting there was a clear shift in opinion amongst elders from their previous position of wanting the wreck removed. Now the majority of them indicated that they could understand the need to leave the wreck on the Reef. Te Arawa, through their CA report and engagement have also expressed conditional support for leaving the wreck on the Reef.⁴

6. The purpose of this type of statement, which is vague and lacks specificity, is difficult to understand. It suggests that tangata whenua are making public statements which they contradict in private and makes it very difficult to assess the response of tangata whenua to the proposal. It may also be that Dr Kahotea is making such claims for the purposes of obfuscating opposition to the proposal. Further clarity on who these iwi are and the nature of their support is required and is not presently provided in the report. Dr Kahotea refers to a hui of Te Kahui Kaumātua o Te Patuwai Council of Elders in February 2014 where the applicant's proposal was discussed but much greater information on the outcomes is required to support Dr Kahotea's claim of 'conditional support'. It would not be at all surprising for his understanding of the discussion at the hui to be disputed. He also identifies the Te Arawa cultural interest report and engagement with the owner as further evidence of 'conditional support' but again more detailed information is required to assess Dr Kahotea's claims.

d. Questions for Tangata Whenua

7. Dr Kahotea poses several questions regarding what he describes as an ongoing debate. However, they appear focused on the applicant's proposal when iwi may well prefer to consider alternatives. According to Dr Kahotea:

The greater question which tangata whenua are engaged in is; what impact will removing the wreck have on Otaiti itself? Should the wreck be removed regardless of any further damage inflicted on the Reef through potential removal strategies?

8. These are valid questions which tangata whenua may be considering but they might equally be considering other questions relating to the wreck, including:
 - What will be the long-term impact of leaving the wreck on Otaiti?
 - What damage might be caused to the reef if the wreck is left there?
 - What is the feasibility of removing the wreck?
 - Why will removing the wreck cause so much damage to the marine environment?
 - What is the cost of removing the wreck?
 - How will cost of removing the wreck be met?

⁴ *ibid.*

- Are the technical assessments of the impact of the wreck on the marine environment accurate and robust?
- Are the technical assessments of the environmental consequences of leaving the wreck on the reef accurate and robust?
- Is it clear that site will be able to be made safe for access if the wreck remains?
- Will the technical assessments be subject to independent peer review?
- What will happen if the impact of leaving the wreck on the marine environment is significant and the mitigation requirements put in place are unable to cope with the consequences?

9. This list of possible alternative questions is not comprehensive but is intended to show that there are many other possible questions which tangata whenua may wish to consider but that Dr Kahotea does not discuss in his assessment.

e. Mauri

10. Dr Kahotea's focus in the Executive Summary is on impact of the proposal on the mauri of the reef. However, he does not consider many other cultural values associated with the reef. In particular, he does not consider the impact of the proposal on kaitiaki and their role in protecting the reef and the mauri of the reef. This is a significant cultural value which must be considered in relation to the reef. The role of kaitiaki, together with other cultural values, are considered elsewhere in the report but in the Executive Summary, Dr Kahotea privileges mauri and does not consider other important cultural values. Mauri and kaitiaki have to be considered together and the failure to assess the role of kaitiaki in relation to the mauri of the reef is surprising and problematic.

11. In addition, there are questions on the way in which Dr Kahotea deals with the mauri of the reef. He states:

The obvious issue is: will leaving the wreck on Otaiti further derogate the spirituality of the mauri (ao wairua) or will the mauri impose itself on the wreck and make it a part of a wider physical structure including the Reef and the wreck?

12. His answer to this question is that the two can be 'reconciled':

Dr Desmond Kahotea concludes that leaving the wreck will not further affect the mauri and that full wreck-removal is likely to significantly impact on the physical and consequently spiritual aspects of the Reef. In other words, the mauri and the wreck can be reconciled.

13. There are two points to consider here. One requires greater consideration of the general nature of mauri. The other relates to the assumptions which underpin Dr

Kahotea's claim that removing the wreck will cause significant damage to the reef (which will be addressed in the next section of this review).

14. The following discussion of mauri is not intended to be a comprehensive review of the scholarly literature but rather a consideration of fundamental principles for the purposes of assessing Dr Kahotea's suggestion that the mauri of the reef can 'impose itself on the wreck' and that the mauri of the reef and the wreck can be 'reconciled'. Professor Mead states:

The mauri is the life force that is bound to an individual and represents the active force of life which enables the heart to beat, the blood to flow, food to be eaten and digested, energy to be expended, the limbs to move, the mind to think and have some control over body systems, and the personality of the person to be vibrant, expressive and impressive. When the mauri leaves the body the activating force of life comes to a dead stop. Life systems cease to work and the mauri disappears.⁵

15. Professor Durie, with his particular focus on the health and well-being of people, provides a similar understanding of mauri:

Mauri, a major theme in this book, embodies two concepts. First, far from being static it implies a dynamic force; and second, it recognises a network of interacting relationships. Though the mauri of each object is separate, they share at least two commonalities: energy and vitality. No rock, or river, or tree, or person is entirely dead; shape and form are maintained by the spatial arrangements within cells, between cells, and across the whole, and the mauri may be conceptualised as a total energy package adding value to the individual components, creating as it were an integrated life force and conferring a meaning beyond the vision of the human eye. Moreover, in the end, the mauri of one object retains its momentum not because of its intrinsic qualities alone but because of its relationship with the mauri of others.⁶

16. According to Professor Mead, it is also possible for the mauri of an individual to be represented in a particular object:

According to Williams the mauri of an individual could be represented by a material symbol which was reinforced spiritually and then hidden away. Best reported that Tuta Nihoniho of Ngati Porou said that a stone or piece of wood was used to represent the mauri of a person. The stone or piece of wood (presumably carved) became a talisman and a tohunga was called to fortify it with karakia and to call spirits to protect it from witchcraft. This notion of abstracting the mauri and representing it in a talisman was a device to protect the real mauri from harm.⁷

17. Dr Merata Kawharu characterises mauri, this time with a particular focus on resource management, in a similar manner:

Resources such as a fishing area, a forest, sea, river or individual species each have their own mauri. Like tapu, it is the power of the gods that enables things to live

⁵ Hirini Moko Mead, *Tikanga Māori. Living By Māori Values*, Huia: Wellington, 2003, p. 54

⁶ Mason Durie, *Mauri Ora. The Dynamics of Māori Health*, Auckland: Oxford University Press, 2001, p. x.

⁷ Mead, pp. 53-54.

within the bounds of their existence, a force that binds together the spiritual dimension and physical body until death, when mauri separates from the body and returns to the realm of the spirits. Although this quality or principle is not created by humans, Maori believed they could instil mauri into objects that are seemingly 'lifeless' (such as a building or stone) by karakia. Perhaps more correctly, appropriate gods instil mauri through the medium of performance by specialists. Once imbued with mauri, the object or thing becomes the receptacle or vehicle for spiritual authorities to promote well-being within a specified object or area. Mauri itself, therefore, acts as a metaphysical kaitiaki when humans uphold customary management responsibilities.⁸

18. Mauri, therefore, is associated with living things but can be transferred by humans to inanimate objects through appropriate rituals. Given these characteristics of mauri, it is difficult to understand how the mauri of the reef could, as Dr Kahotea suggests, 'impose itself' on an inanimate object such as the wreck. Moreover, while the wreck is on the reef, it is a foreign object and the potential for further damage to the marine environment through pollution or instability remains. No mitigation plan can remove that risk. In consequence, it is unlikely tangata whenua would accept Dr Kahotea's assertion that 'the mauri and the wreck can be reconciled'.

f. Approach

19. Dr Kahotea's report deals with three matters:
 - Cultural values in relation to the reef (has far as he has been able to determine them in discussions with tangata whenua);
 - Commentary on the scientific evidence prepared to support the application for resource consent;
 - Assessment of the impact of the proposal on cultural values, *based on the expected impact of the proposal on the marine environment*.
20. Dr Kahotea's argument, reduced to its basic features, is that the impact on cultural values is limited, or no more than minor, because the environment is recovering, access to the reef will be restored and the environmental damage of removing the wreck would be greater than leaving it there. In developing this argument, he frequently relies on assumptions, supported by technical evidence, that insist the proposal is the least environmentally damaging option for dealing with the remains of the wreck.
21. As I understand it, this scientific evidence is yet to be tested and may be subject to review as part of the consenting process. In addition, it is important to emphasise that

⁸ Merata Kawharu, 'A Maori Anthropological Perspective of the Maori Socio-environmental Ethic of Resource Management', *Journal of the Polynesian Society*, 109:4 (2000), p. 357.

this scientific evidence is based on current knowledge of the marine environment and extrapolates from that to argue that the marine environment is stabilising, despite the presence of the wreck, and can be made safe. However, that conclusion is not based on observable data as the scientific evidence is unable to reach authoritative conclusions on what might happen in the future. Any manner of unexpected events may adversely affect the marine environment if part of the wreck remains. Dr Kahotea's conclusion on the impact of the proposal on cultural values, therefore, is problematic because it is based on assumptions and extrapolation about how the marine environment could be affected by the continuing presence of the remainder of the wreck rather than scientific knowledge. The impact the wreck may have in the future could profoundly affect the cultural values associated with the reef in quite unexpected ways.

22. There are many examples of how this approach is developed in the assessment. In relation to water contamination, Dr Kahotea cites a report on water quality:

Tangata whenua have raised concerns about remnant cargo from the vessel and the potential contamination of the Reef environment now and into the future. The technical assessment prepared by Cawthron Institute on Water Quality (2014) considers that the Proposal is expected to have minor effects and no identified long term significant effects.⁹

23. He also comments on the impact of kaimoana resources:

However, Ecotoxicity and Health Assessments, based on 2013 sampling results, indicate that the Proposal will not adversely impact on kaimoana resources of Otaiti. On-going monitoring and the provision of contingencies in the event of unexpected results are provided as a condition of consent. The Fisheries and Ecological Assessment (Bioresarches, 2014) notes that the environment has largely recovered but will be affected by any full removal process impacting on the structure of Otaiti and its ecosystems.

The remnant cargo from the vessel has always been a concern to tangata whenua. Early indications from dive surveys suggest that of the 36 originally shipped dangerous goods containers in the aft section, most have broken up and their contents have dispersed. Cawthron Institute systematically assessed all cargoes as listed in the ship manifest to determine whether the contents could pose a risk to the environment. All cargoes are considered to cause no long term environmental effects, except one container of copper clove (shavings) which is expected to have the least effect if left in place. If the vessel were to be removed, there is a high likelihood this copper would be discharged en masse into the environment creating a problem for marine life.

The antifouling, particularly TBT, on the wreck has also been assessed by Cawthron Institute and is considered to have a no more than minor water quality effect. The main potential effect of TBT is if antifouling paint is released into sediments through abrasion or further cutting of the wreck associated with full wreck removal. An assessment of the antifouling paint undertaken by Safinah (2014) considers that paint flakes will not enter the sediments in significant quantities from abrasion of the aft

⁹ *ibid.*, p. 34.

section as it is in a lower hydrodynamic environment than the bow section (which is less likely to have TBT containing paint remaining).¹⁰

24. On the possibility of further salvage work to remove the wreck, Dr Kahotea assumes that further salvage operations will lead to more damage and loss of life:

Te Patuwai and Te Whānau ā Tauwhao kaumatua have conducted karakia at the Reef to protect the salvors and the operational activities onsite. Leaving the vessel on the Reef minimises the potential long term health and safety risks to salvage divers and salvors.

...

Interestingly enough, this raises the question of further affecting the mauri of the Reef if the vessel were to be removed. Tangata whenua may argue this is a matter of balance and that removing the vessel has a lesser long term impact on mauri than abandoning the wreck on the Reef. Ongoing salvage works will create further permanent damage to the Reef and that is why the option of leaving the wreck on the Reef and allowing the environment to recover naturally is preferred.¹¹

25. In most instances, however, Dr Kahotea avoids considering alternative scenarios which may or may not be just as plausible as those he presents. For example, he assumes that the site will be able to be made safe for access if the wreck remains. I am unclear if this is the case and, in any event, it is my understanding that neither the owner nor the consenting authority are responsible for a decision on this question. It is, nevertheless, a point of some importance in Dr Kahotea's thinking. Another example is his comments on health and safety which assume that risks cannot be addressed by appropriately skilled and experienced professionals who have the time, resources and equipment to undertake the work safely.

26. In general, Dr Kahotea is of the view that the scientific data indicates the marine environment is improving and he emphasises the importance of ongoing monitoring:

Advice from the scientific experts indicates that if there were going to be issues such as contamination from the vessel, this would occur within a short term timeframe. However, there has been a desire expressed through engagement with tangata whenua for monitoring to be undertaken over a longer period. At the time of lodging the resource consent application the vessel has been on Otaiti over 2 1/2 years and monitoring under the sampling programme is occurring at approximately six monthly intervals (since July 2013). It is expected that there will be at least 3 comprehensive monitoring rounds completed by the time the consent application is considered. Monitoring under the consent is proposed to continue at six-monthly intervals for the first 2 years of the consent – which will provide a further 4 monitoring rounds. On review of the results of monitoring it is proposed that monitoring will thereafter reduce to annual monitoring, with provision for the scope and frequency of monitoring to be reviewed by the consent holder every 2 years during the term of the consent. Following consultation, the originally proposed term of consent sought (5 years) has been extended to a term of 10 years. As a result, it's expected that there will be a significant amount of monitoring information on the state of the reef

¹⁰ *ibid.*, p. 35.

¹¹ *ibid.*, p. 36.

environment and how it is recovering over time. Indications from monitoring results to date indicate a general improvement in the environment.¹²

27. While ongoing monitoring of the marine environment would provide reassurance to tangata whenua, it does not guarantee access to the reef and I would expect tangata whenua would not feel reassured by monitoring which appears to be based on the expectation that the marine environment will continue to recover. Dr Kahotea provides no explanation of the impact on cultural values if the wreck degrades at a faster rate than the marine environment can absorb and the marine environment is further polluted to the point where intervention is required. He later refers to ‘unexpected events’ and ‘appropriate contingencies’. He emphasises the importance of tangata whenua participating in future monitoring for the purposes of exercising their kaitiaki responsibilities but it is unclear what ‘appropriate response’ might be available to ‘identified issues’:

It is important that tangata whenua participate in on-going monitoring to facilitate their role as kaitiaki. Monitoring of potential effects on cultural values will facilitate the restoration of the toka and mauri enabling an appropriate response if there are identified issues. The formation of a Kaitiakitanga Reference Group with representatives of the kaitiaki of Otaiti will assist by recognising and restoring the mana of kaitiaki. The establishment of the Kaitiakitanga Reference Group will enable active participation and input to monitoring, enhancing the mauri of the Reef, future engagement and reporting. Further discussion is required with tangata whenua on the preparation of culturally appropriate protocols for monitoring and the sharing of information.¹³

28. Tangata whenua might consider that the mauri of the reef cannot be ‘enhanced’ while the wreck remains there. In addition, they may expect the wreck to cause further damage to the marine environment if they expect the reef, swell and storms will destroy what remains of the wreck (that is, it *cannot* be stabilised in its current location). Tangata whenua may also be of the view that they prefer short-term adverse impact on the marine environment to long term and ongoing effects on the marine environment if the wreck remains. They might consider this a better way to protect and enhance the mauri of the reef and exercise their role as kaitiaki. These are all important considerations which tangata whenua could bring to their consideration of the owner’s proposal but these are not matters considered by Dr Kahotea in his assessment.

¹² *ibid.*, p. 38.

¹³ *ibid.*, p. 42.

g. Conclusion

29. Dr Kahotea proceeds to the following conclusion:

It is the opinion of the authors, however, that on balance from a cultural perspective, effects of leaving the vessel on the physical environment of Otaiti and the surrounding area are less than would result from full wreck removal. *The spiritual effects of the proposal are less definitive.*

...

On the basis that these strategies are implemented the potential adverse effects on cultural values of the Proposal are considered to be *no more than minor*.¹⁴

30. Dr Kahotea bases this conclusion on a number of factors, including that the environment at Otaiti (Astrolabe Reef) is recovering and would be allowed to continue to recover, the risk to salvors is reduced, further damage to the reef and additional contamination is minimised, and the exclusion zone around the wreck could be lifted earlier. However, as discussed above, tangata whenua may have doubts about the validity of many of these factors. Dr Kahotea also notes that the proposal has generated two general responses from tangata whenua: either full wreck removal is required to restore the mauri of the reef or a 'pragmatic response and resolution to the issue' is required given the 'challenges of wreck removal'.¹⁵ It is unclear from the assessment, though, who of the interested tangata whenua have responded 'pragmatically' as Dr Kahotea provides very limited and likely controversial evidence on this point.
31. Dr Kahotea's conclusion appears somewhat contradictory in that he claims that the impact on cultural values is limited while noting that the impact on spiritual values is more difficult to determine. Given so much of the report focuses on mauri, a core spiritual value connected to the reef, and that cultural values incorporate spiritual values (for example, mauri and kaitiakitanga are inextricably linked), it is difficult to see how the impact on cultural values is limited. It is important to note that Dr Kahotea reaches this part of his conclusion on the basis that the impact on the marine environment in leaving part of the wreck on the reef is less than alternatives but this conclusion is based on his understanding and analysis of the technical reports prepared for the application and his assessment does not particularly consider alternatives to the proposal contained in the application.

¹⁴ *ibid.*, 39. Emphasis added.

¹⁵ *ibid.*, p. 3.