IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2017-485-160; CIV-2017-485-214
CIV-2017-485-229; CIV-2017-485-273
CIV-2017-485-511; CIV-2017-485-261
CIV-2017-485-248

Group N, STAGE 1(a)
[2025] NZHC 2554

UNDER	the Marine and Coastal Area (Takutai Moana Act) 2011
IN THE MATTER OF	of applications for orders recognising Customary Marine Title and Protected Customary Rights
BY	William James Taueki on behalf of behalf of Ngāti Tamarangi hapū of Muaūpoko iwi (CIV-2017-485-160) Continued…

Hearing:	13 May 2024 – 27 June 2024 29 October 2024 – 8 November 2024 Final submissions: 7 February 2025
Appearances:	A K Irwin and O T H Neas for Ngāti Tamarangi hapū of Muaūpoko iwi No appearance for Margaret Morgan-Allen for David Morgan Whānau N R Coates, P Walker and T I M Hautapu for Ngāti Raukawa ki te Tonga B R Lyall, M R G van Alphen Fyfe and H L B Swedlund for Patrick Seymour on behalf of Te Whānau Tima (Seymour) and Ngā Ahi Kā o Te Hapū o Te Mateawa Continued…
Judgment:	4 September 2025

JUDGMENT OF GRICE J
(Applications for protected customary rights)

Appearances

C Shenton (self-represented) for Te Rūnanga o Ngā Wairiki Ngāti Apa
T H Bennion, E A Whiley and Kudrat for Muaūpoko Tribal Authority Incorporated
A M Cameron, T N Ahu and A J Samuels for Te Āti Awa ki Whakarongotai Charitable Trust
E K Rongo and Z JMPNR Tait for Te Rūnanga o Toa Rangatira Incorporated
D A Ward, D O Kleinsman and A H Ou for Attorney General
F R Wedde and C E Bulow for Manawatū-Whanganui Regional Council, Wellington Regional Council and Kāpiti Coast District Council
L L Black for Te Patutokotoko
C F Finlayson KC and D E Parfitt for Rangitāne o Manawatū Settlement Trust
B A Scott, T D Smith and R J J Wales for Seafood Industry Representatives
C M Hockly for Horowhenua 11 (Part) Reservation Trust

BY	Margaret Morgan-Allen for David Morgan Whānau (CIV-2017-485-214)
BY	Rachael Ann Selby on behalf of Ngāti Raukawa ki te Tonga (CIV-2017-485-229)
BY	Patrick Seymour on behalf of Te Whānau Tima (Seymour) and Ngā Ahi Kā o Te Hapū o Te Mateawa (CIV-2017-485-273)
BY	Chris Shenton on behalf of Te Rūnanga o Ngā Wairiki Ngāti Apa (CIV-2017-485-511)
BY	Muaūpoko represented by Muaūpoko Tribal Authority Incorporated (CIV-2017-485-261)
BY	Trustees of Te Ātiawa ki Whakarongotai Charitable Trust on behalf of Te Āti Awa ki Whakarongotai (CIV-2017-485-248)

INTERESTED PARTIES	Te Rūnanga o Toa Rangatira Incorporated on behalf of the iwi of Ngāti Toa Rangatira (Crown engagement) MAC-01-12-021
	Attorney-General

	Manawatū-Whanganui Regional Council, Wellington Regional Council and Kāpiti Coast District Council
	Te Patutokotoko represented by Christopher Henare Tahana, Edward (Fred) Clark, Hayden Tūroa, and Novena McGuckin (CIV-2017-485-254) (Intervener)
	Rangitāne o Manawatū Settlement Trust (applied)
	Seafood Industry Representatives
	Horowhenua 11 (Part) Reservation Trust

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Introduction

[1] The Marine and Coastal Area (Takutai Moana) Act 2011 (the Takutai Moana Act) provides for the recognition of three types of legal interest in the marine and coastal area, which is the area between high-water springs and the 12 nautical mile limit of the territorial sea.[1] The first of these interests is a right to participate in conservation processes; the second is customary marine title (CMT); and the third is a protected customary right (PCR).[2] These legal interests may be granted to iwi, hapū, and whānau groups.[3]

[2] The hearing area runs from the northern bank of the Rangitīkei River to Whareroa (north of Paekākāriki), often referred to as the Kapiti Coast,[4] as well as covering Kapiti Island and its islets. This judgment deals with PCR applications in the common marine and coastal area (CMCA), or the takutai moana. These were heard at the same time as a number of applications for CMT, which are the subject of a separate judgment dated 9 June 2025.[5]

[3] The CMT judgment provides the context and detailed background to this decision and should be read in conjunction with it.[6] I do not propose to repeat the

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1 Marine and Coastal Area (Takutai Moana) Act 2011 [Takutai Moana Act], s 9(1) definition of "marine and coastal area". The Takutai Moana Act is also referred to as "MACA" in various other sources cited throughout this judgment.
2 At Part 3.
3 Section 9(1) definition of "applicant group".
4 Macrons: as noted in the CMT judgment, there remains some controversy over whether Kapiti should retain its name without the macron or adopt the macron. Generally, the macron is not used when referring to Kapiti in this judgment, however it is retained when used in quotations. The same issue arises in relation to a number of other words, which I do not specifically highlight. All quotations in this judgment are reproduced in their original form, including the omission or otherwise of macrons.
5 *Re Taueki (Ngāti Tamarangi)* [2025] NZHC 1488 [CMT judgment].
6 The conventions adopted in the CMT judgment also apply here. For instance, footnotes are omitted from all quotations unless otherwise stated.

factual background here, except as is necessary to determine the issues now before the Court.

[4] Not all applicants for CMT also sought PCRs. Mr Taueki successfully applied for CMT, but made no application for PCRs. The applicants for PCRs are:

(a) Rachael Ann Selby on behalf of Ngāti Raukawa ki te Tonga (CIV-2017-485-229) (Ngāti Raukawa).

(b) Trustees of Te Ātiawa ki Whakarongotai Charitable Trust on behalf of Te Ātiawa ki Whakarongotai (CIV-2017-485-248) (Te Ātiawa).

(c) Muaūpoko Tribal Authority Incorporated on behalf of Muaūpoko (CIV-2017-485-261) (Muaūpoko).

(d) Patrick Seymour on behalf of Te Whānau Tima (Seymour) and Ngā Ahi Kā o Te Hapū o Te Mateawa (CIV-2017-485-273) (Mr Tima).

(e) Chris Shenton on behalf of Te Rūnanga o Ngā Wairiki Ngāti Apa (CIV-2017-485-511) (Ngāti Apa).

(f) Ms Morgan-Allen on behalf of David Morgan Whānau (CIV-2017-485-214) (David Morgan Whānau).

[5] **Attachment 1** sets out the list of applications for CMT and PCRs that were the subject of the hearing.[7] **Attachment 2** sets out those who appeared as interested parties, as well as other Māori groups seeking recognition of CMT and PCRs in the hearing area outside the court application process, through direct negotiations with the Crown.

[6] The Attorney-General appears as an interested party, noting that she acts in the interests of all the public (including Māori). Dr Ward notes that the Attorney-General's role is to assist the Court in interpreting and applying the Takutai Moana Act, assuming

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7 Attachment 1 is reproduced from the CMT judgment, above n 5, at [6]–[10].

an "independent aloofness" and not advocating for any sectional interest. The Attorney-General's submissions must be "accurate, objective and restrained, and founded firmly on a tenable exposition of the applicable legal principles".

[7] Representatives of the Seafood Industry appeared as an interested party to give evidence in relation to the seaward extent of the applicants' claims.[8] The following local authorities in the area also appeared as interested parties: the Kāpiti Coast District Council; the Greater Wellington Regional Council (GWRC); and the Manawatū-Whanganui Regional Council (Horizons).[9] They seek to ensure that any CMT and/or PCR areas are clearly and accurately surveyed, and only include areas that fall within the definition of the takutai moana, as well as that the scope of any wāhi tapu protection rights, once determined, is clear.

Background

[8] By way of historical overview, the iwi descendants of the Kurahaupō waka — for present purposes, Muaūpoko and their allies, Ngāti Apa and Rangitāne — had occupied the Kapiti area for many hundreds of years prior to the 1820s, and are still there today.[10]

[9] Māori groups today represented by Te Ātiawa, Ngāti Raukawa, and Ngāti Toa came from Waikato and Taranaki in the 1820s and 1830s to settle in the hearing area. The groups from the north arrived in the Kapiti region in a series of migrations, or heke, and are therefore collectively referred to as the Hekenga iwi. Te Ātiawa, Ngāti Raukawa, and Ngāti Toa are separate iwi, but are closely related by whakapapa and collaborate to their mutual advantage on various issues under the umbrella of the ART Confederation.

[10] The disruption to the existing order through the arrival of Ngāti Toa and Te Ātiawa in the significant heke of the early 1820s resulted in battles between the new arrivals and the incumbents, as well as peace-making efforts. The 1824 battle of

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8 CMT judgment, above n 5, at [1044]–[1047].

9 The areas of responsibility of the various local authorities are outlined in the CMT judgment, above n 5, at [187]–[198].

10 The detailed historical and tribal narratives are set out in detail in the CMT judgment, above n 5.

Waiorua (on Kapiti Island) is generally regarded as a significant victory for Ngāti Toa and Te Ātiawa. Ngāti Raukawa arrived in subsequent heke at the behest of Ngāti Toa. By the early 1830s, the Hekenga iwi had settled across the hearing area, where they remain to the present day.

[11] In the CMT judgment, determinations were made in favour of five applicants who were entitled variously to shared exclusive and exclusive CMT in relation to specified locations in the hearing area. Those findings were as follows:

> [1171] …I have concluded that the applicants have met the test for CMT in the following areas:
>
> (a) Exclusive CMT for Te Ātiawa over the takutai moana from Whareroa to Kukutauaki, subject to shared exclusive CMT:
>
> (i) with Ngāti Toa at the Whareroa boundary (if they are granted CMT for that area through the Crown negotiation pathway); and
>
> (ii) with Ngāti Raukawa at the Kukutauaki boundary.
>
> (b) Exclusive CMT for Ngāti Raukawa over the takutai moana from Kukutauaki to the Rangitīkei River, subject to shared exclusive CMT:
>
> (i) with Te Ātiawa at the Kukutauaki boundary;
>
> (ii) with Mr Tima from the Ōhau River to the Waikawa River;
>
> (iii) with Muaūpoko over the takutai moana from the Hōkio Stream to Ngā Manu (at the north-western corner of the Waitārere Forest); and
>
> (iv) with Mr Taueki over the takutai moana from Te Uamairangi to Ngā Manu (at the north-western corner of the Waitārere Forest).
>
> (c) Shared exclusive CMT for Muaūpoko over the takutai moana:
>
> (i) with Ngāti Raukawa from the Hōkio Stream to Ngā Manu (at the north-western corner of the Waitārere Forest); and
>
> (ii) with Mr Taueki from Te Uamairangi to Ngā Manu (at the north-western corner of the Waitārere Forest).
>
> (d) Shared exclusive CMT for Mr Taueki over the takutai moana from Te Uamairangi to Ngā Manu (at the north-western corner of the Waitārere Forest) with Muaūpoko and Ngāti Raukawa.

(e) Shared exclusive CMT for Mr Tima over the takutai moana from the Ōhau River to the Waikawa River with Ngāti Raukawa.

[1172] The seaward extent of the various CMT areas to be held as exclusive and shared exclusive CMT as indicated above, is as follows:

(a) For Muaūpoko, one nautical mile out to sea from the mean high-water springs from the Hōkio Stream to Ngā Manu (at the north-western corner of the Waitārere Forest).

(b) For Mr Taueki, one kilometre out to sea from the mean high-water springs running from Te Uamairangi to Ngā Manu (at the north-western corner of the Waitārere Forest).

(c) For Ngāti Raukawa, one nautical mile from the mean high-water springs running from Kukutauaki to the northern bank of the Rangtīkei River.

(d) For Mr Tima, one nautical mile from the mean high-water springs running from the Ōhau River to the Waikawa River.

(e) For Te Ātiawa:

(i) from the Waikanae River to Wharemauku on the mainland across the Te Rau o Te Rangi Channel to Kapiti Island; and

(ii) one nautical mile from the mean high-water springs on the claimed mainland coast not abutting the channel.

[12] Before considering the detailed PCR claims, I set out the statutory framework, legal principles established to date, and tikanga relevant to applications for PCRs.

Legal framework

[13] PCRs are rights granted under the Takutai Moana Act. A PCR recognises a customary "activity, use or practice" which has been exercised by an iwi, hapū or whānau since 1840, continues to be exercised in accordance with tikanga, and is not extinguished as a matter of law.[11] The effect is to protect the underlying right, enabling the group to continue to exercise it without restriction.[12]

[14] The definition of a PCR is set out in s 51(1), as follows:

51 Meaning of protected customary rights

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11 Takutai Moana Act, ss 51 and 9 definition of "protected customary right".
12 Section 52.

(1) A **protected customary right** is a right that—

(a) has been exercised since 1840; and

(b) continues to be exercised in a particular part of the common marine and coastal area in accordance with tikanga by the applicant group, whether it continues to be exercised in exactly the same or a similar way, or evolves over time; and

(c) is not extinguished as a matter of law.

[15] Section 51(2) specifically excludes certain activities from being recognised as a PCR:

(2) A **protected customary right** does not include an activity—

(a) that is regulated under the Fisheries Act 1996; or

(b) that is a commercial aquaculture activity (within the meaning of section 4 of the Maori Commercial Aquaculture Claims Settlement Act 2004); or

(c) that involves the exercise of—

(i) any commercial Māori fishing right or interest, being a right or interest declared by section 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 to be settled; or

(ii) any non-commercial Māori fishing right or interest, being a right or interest subject to the declarations in section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; or

(d) that relates to—

(i) wildlife within the meaning of the Wildlife Act 1953, or any animals specified in Schedule 6 of that Act:

(ii) marine mammals within the meaning of the Marine Mammals Protection Act 1978; or

(e) that is based on a spiritual or cultural association, unless that association is manifested by the relevant group in a physical activity or use related to a natural or physical resource (within the meaning of section 2(1) of the Resource Management Act 1991).

(3) An applicant group does not need to have an interest in land in or abutting the specified part of the common marine and coastal area in order to establish protected customary rights.

[16] A group that has a PCR is entitled to exercise the protected right described in the location specified without a resource consent, despite any prohibition, restriction, or imposition that would otherwise apply under the Resource Management Act 1991 (the RMA) and without paying certain charges under the RMA.[13] If applications for resource consents are made in relation to an area where a PCR is held, a consent authority must not grant a resource consent if that activity is likely to have adverse effects that are more than minor on the exercise of the PCR, unless the group holding the right gives its written approval.[14]

[17] A PCR does not confer any right to control the relevant area.[15] Nor does it confer an exclusive right to any relevant resource. The Minister of Conservation has the authority to impose controls over a PCR should its exercise have an adverse effect on the environment.[16]

[18] In addition, the court may specify terms, conditions, or limitations on the scale, extent and frequency of the activity in a PCR recognition order.[17]

[19] There is no prohibition on the recognition of PCRs within an area in which CMT is held by another group.[18] Furthermore, there may be multiple overlapping awards of PCRs.[19] In addition, an applicant group need not have existed in its present form in 1840 — the customary rights of the original group as at 1840 may have continued to be exercised by its successor, or, for instance, a whānau with whakapapa connections to the original group. In that regard, the Court of Appeal has noted:[20]

> The legislation contemplates that PCRs may be recognised for groups which did not exist in 1840, so long as someone to whom the applicant has a relevant connection has continuously exercised the relevant customary right in the particular area since then and has done so in accordance with tikanga. That

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13 Sections 52(1) and (2).
14 Section 55(2).
15 Takutai Moana Act, s 54.
16 Section 56.
17 Section 54(2)(a)
18 *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252 [*Re Edwards* (CA)] at [333] per Miller J and [445] per Cooper P and Goddard J.
19 At [341] per Miller J. There was no challenge in the Court of Appeal to awards of PCRs made on that basis.
20 At [341]. This was upheld in relation to the relevant applicant group by the Supreme Court in *Whakatōhea Kotahitanga Waka (Edwards) v Ngāti Ira o Waioweka* [2025] NZSC 104 [*Re Edwards* (SC No 2)] at [250].

> policy decision may be taken to reflect post-1840 changes in Māori society which are well illustrated in these appeals.

[20] In its first of two judgments, the Supreme Court in *Whakatōhea Kotahitanga Waka (Edwards) v Ngāti Ira o Waioweka* (*Re Edwards*) reformulated the test for CMT.[21] This is discussed in the CMT judgment.[22] The Supreme Court's second judgment was delivered on 15 August 2025.[23] This did not materially affect the law on PCRs. The Supreme Court in its second judgment largely confirmed the approach that had been taken by the High Court and the Court of Appeal in relation to PCRs.[24]

[21] Section 106 of the Takutai Moana Act sets out the burden of proof in relation to applications for CMT and PCRs.[25] While the Supreme Court did not specifically address the burden of proof in s 106 in relation to PCRs, its reasoning in relation to the test for CMT relied on the express wording of s 106(2) and its legislative history.[26] For CMT, applicant groups have the burden of proving the elements outlined in s 106(2) only. The burden is then on contradictors to adduce evidence of non-exclusivity or substantial interruption.[27] Applying this reasoning to ss 106(1) and 51(1) in relation to PCRs, the Attorney-General submits that the applicant groups have the burden of proving that a right:

(a) has been exercised in the specified area; and

(b) continues to be exercised by that group in the same area in accordance with tikanga.

[22] The Attorney-General submits that, subject to the evidence produced, establishing the two elements above may be sufficient for the Court to infer that the

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21 *Whakatōhea Kotahitanga Waka (Edwards) v Ngāti Ira o Waioweka* [2024] NZSC 164, [2024] 1 NZLR 857 [*Re Edwards* (SC No 1)].

22 CMT judgment, above n 5.

23 *Re Edwards* (SC No 2), above n 20.

24 I sought submissions from the parties in relation to the first Supreme Court judgment. However, further submissions were not sought in relation to the second Supreme Court judgment, as it did not materially affect the position articulated by the Court of Appeal on PCRs.

25 Sections 106(1), 106(2).

26 *Re Edwards* (SC No 1), above n 21, at [119]–[120]. See also the Court of Appeal's discussion of the burden of proof as it relates to CMT in *Re Edwards* (CA), above n 18, at [223]–[231] per Miller J and [435]–[437] per Cooper P and Goddard J.

27 See also Takutai Moana Act, s 106(3), which provides an express presumption that, absent proof to the contrary, a customary interest has not been extinguished.

s 51 test is met. That is, unless some other party demonstrates that the right has not been exercised "since 1840".

[23] In *Re Edwards*, the Court of Appeal upheld findings recognising PCRs even based on inferences that had been drawn from "relatively little evidence about exactly where activities took place, what tikanga was involved or whether the activities were continuous".[28] Miller J went on to say, in relation to the findings of the trial Judge:

> [337] …[the trial Judge] was prepared to draw inferences from the available evidence. He found there was evidence for the collection of driftwood, stones and shells, for whitebaiting and the growing and harvesting of certain aquatic plants. Ms Feint did not seek to persuade us that these findings were wrong. She did argue that there was no evidence these activities had been continuous since 1840. I am not persuaded that the Judge was wrong about that. The evidence sufficiently established that the practices were historic and there was no reason to doubt that they had been carried on in the relevant area (which he was prepared to accept was the entire rohe) since 1840.

[24] The Court of Appeal was prepared to make inferences that there was evidence of some historic activities which might not have been undertaken in the same way as they had previously, but nevertheless continued in some form. For instance, Miller J noted that where there was "some historic evidence of navigation, passage and the landing of waka but no evidence about how those activities might continue", the evidence of present-day fishing by boat would be sufficient to infer that the activities had been continuous.[29] The Judge was prepared to infer on that basis that the activities continued "much as they have always done".[30]

[25] In the absence of a challenge, the Court of Appeal did not interfere with the High Court's determination that general evidence of a group exercising tikanga when venturing into the takutai moana was sufficient to support their PCR applications, despite there being "little evidence of particular tikanga associated with" the relevant activities.[31] The tikanga in that context included saying karakia, the exercise of manaakitanga, and not taking more of a resource than was needed.[32]

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28 *Re Edwards* (CA), above n 18, at [337].
29 At [347].
30 At [347].
31 At [338]–[339] and [342].
32 At [337].

[26] The Court of Appeal also determined that, contrary to the lower court's finding, the beds of navigable rivers are part of the takutai moana.[33] Therefore, evidence of whitebaiting supported a PCR in that case. In its second judgment, the Supreme Court confirmed that customary rights in the beds of navigable rivers were not extinguished by s 261(2) of the Coal Mines Act 1979,[34] and thus form part of the takutai moana.[35]

[27] The Court of Appeal, "consistent with the generally liberal approach the Judge took to PCRs", allowed the appeal to recognise PCRs for: "whitebait; aquatic plants; navigation, passage and the landing of waka; rituals such as karakia and karanga; the exercise of kaitiakitanga; and the gathering of sand, stones, shingle and detritus".[36] It noted that it was "not surprising" that the High Court had overlooked some of the evidence which had been latterly brought to the attention of the Court of Appeal regarding those activities, given "the mass of material before the Judge" and the fact that some of the relevant evidence had been offered by witnesses other than the applicant for the relevant PCRs.[37]

[28] Section 51(2)(e) provides that cultural or spiritual association with place is not sufficient to support a PCR, unless that association is manifested by the relevant group in a physical activity or use related to a natural or physical resource. This requires some degree of specificity. For that reason, kaitiakitanga, without some physical manifestation, cannot be the subject of a PCR. Examples of kaitiaki activities which are capable of recognition include replanting grasses, such as pīngao.[38] Furthermore, the High Court in *Re Edwards* noted that the passing down of traditional knowledge could only be protected by a PCR where that was manifested in a physical activity or use relating to a natural or physical resource.[39] Churchman J said:

> If members of the applicant group travel to the takutai moana and use the foreshore or the sea as part of the process of transferring mātauranga Māori to younger generations, the Court needs to be satisfied that this activity continues to be exercised "in a particular part of the common marine and coastal area".

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33 At [344].
34 Or its predecessor, the Coal-mines Act Amendment Act 1903, s 14(1).
35 *Re Edwards* (SC No 2), above n 20, at [93].
36 *Re Edwards* (CA), above n 18, at [350].
37 At [350].
38 *Re Edwards Whakatōhea (No 2)* [2021] NZHC 1025, [2022] 2 NZLR 772 [*Re Edwards* (HC)] at [564]–[565].
39 At [557].

[29] The exercise of kaitiakitanga over non-customary fisheries is also excluded from recognition as a PCR for two reasons. First, because it is an activity "regulated under the Fisheries Act 1996",[40] and second, because it involves the exercise of a non-commercial Māori fishing right or interest which is subject to the declarations in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act).[41]

[30] Examples of PCRs granted by the High Court in *Re Edwards* and *Re Ngāti Pāhauwera* include:

(a) gathering firewood, driftwood, wood for artwork, pumice, mud, rocks, sand, stones (including hāngi stones), shells, and gravel;[42]

(b) collecting karengo;[43]gathering flora and fauna that is not otherwise excluded from being the subject of a PCR;[44]

(c) collection and use of rongoā materials (including seawater) and wai tapu;[45] performing baptisms;[46]

(d) non-commercial fishing for whitebait (inanga);[47]

(e) landing vessels and making passage;[48]

(f) launching of boats and waka;[49]

(g) using the takutai moana for transport and navigation purposes;[50]

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40 *Ngā Hapū o Tokomaru Ākau v Te Whānau a Ruataupare ki Tokomaru* [2024] NZHC 682 at [498]; and Takutai Moana Act, s 51(2)(a).
41 Section 51(2)(c).
42 *Re Edwards* (HC), above n 38, at [669(a)(i), (b)(ii), (b)(iii), (b)(iv), (d)(ii), (d)(iii) and (d)(iv)]; and *Re Ngāti Pāhauwera* [2021] NZHC 3599 at [599(a)(i), (a)(ii) and (b)(iii)].
43 *Re Ngāti Pāhauwera*, above n 42, at [599(b)(v)].
44 *Re Edwards* (HC), above n 38, at [669(e)(iii)].
45 At [669(c)(ii) and (f)(i)]; and *Re Ngāti Pāhauwera*, above n 42, at [599(a)(iii) and (b)(i)].
46 *Re Edwards* (HC), above n 38, at [669(f)(ii)].
47 At [669(a)(ii), (b)(i), (c)(i) and (e)(i)]; and *Re Ngāti Pāhauwera*, above n 42, at [599(a)(iv) and (b)(iv)].
48 *Re Edwards* (HC), above n 38, at [669(b)(v)].
49 At [669(c)(vii)].
50 At [669(c)(iii)].

(h) managing, using and protecting tauranga waka;[51]

(i) travelling to certain locations for wānanga to pass down mātauranga to future generations;[52]

(j) traditional practices such as wānanga, hui, tangihanga, and burying of whenua;[53]

(k) planting of pohutukawa, harakeke, pīngao, spinifex and toitoi within the claimed takutai moana area as an exercise of kaitiakitanga;[54]

(l) carrying out kaitiakitanga practices relating to managing and supporting the health of the marine environment;[55] and

(m) kaitiaki activities such as the creation of maps for sites in the takutai moana using customary methods.[56]

[31] Other matters relevant to the assessment of PCRs include:

(a) A PCR cannot be granted to protect wāhi tapu.[57] Wāhi tapu protection rights flow from CMT.[58]

(b) Pursuant to s 51(2)(a), an applicant cannot obtain a PCR for the catching of "fish, aquatic life or seaweed",[59] or in relation to wildlife or marine mammals.[60]

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51 *Re Ngāti Pāhauwera*, above n 42, at [599(a)(v), (b)(ii)].
52 *Re Edwards* (HC), above n 38, at [669(c)(iv)].
53 At [669(c)(v) and (f)(v)].
54 At [669(c)(vi)].
55 *Re Ngāti Pāhauwera*, above n 42, at [599(c)(i)].
56 *Re Edwards* (HC), above n 38, at [669(f)(iv)].
57 *Re Ngāi Tumapuhia-a-Rangi Hapū Inc* [2024] NZHC 309 at [686(d)], citing *Re Edwards* (HC), above n 38, at [387]–[390].
58 *Re Edwards* (HC), above n 38, at [574].
59 *Re Ngāi Tūmapūhia-a-Rangi*, above n 57, at [765]–[771]. Even if a type of seaweed is subject to an exemption under the Fisheries Act 1996, it is still considered "regulated by the Fisheries Act", and therefore excluded from being the subject of a PCR.
60 Takutai Moana Act, s 51(2)(d).

(c) Whitebaiting may be the subject of a PCR, as it is subject to an exception under s 89(2)(d) of the Fisheries Act and does not fall within s 10 of the Settlement Act.[61]

(d) Driftwood and sand may be the subject of a PCR.[62] However, consideration must be given to whether a PCR for the protection and preservation of such resources may interfere with public rights of access and/or navigation specified under ss 26 and 27 of the Takutai Moana Act.[63] This is unlikely to be the case below the high-water mark.

(e) A PCR cannot be granted for the exercise of rāhui.[64] A rāhui interferes with public rights of access under s 26 and is better provided for through wāhi tapu protections.[65]

[32] PCRs for managing and using tauranga waka may be granted.[66] However, the PCR must be within the takutai moana and not limit public rights of access and navigation. Specific evidence is required.[67] There is also a recognition that tikanga will evolve over time. For instance, the launching of waka is in modern times replaced by the launching of boats.[68] Gwyn J, in *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc*, noted that there must be continuity between an activity, use or practice in 1840, and the activity, use or practice today, in order to grant a PCR.[69] However, the length of time that would render an activity, use or practice discontinued such as to prevent it being recognised as a PCR will depend on the activity and the circumstances.[70] It must be

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61 At [509].
62 At [514].
63 At [517].
64 *Re Edwards* (HC), above n 38, at [387]–[390] and [617]. The High Court noted that this does not prevent rāhui from being imposed and adhered to as a matter of tikanga. On appeal, the Court of Appeal confirmed that rāhui must be dealt with pursuant to CMT: *Re Edwards* (CA), above n 18, at [348].
65 *Re Ngāi Tūmapūhia-a-Rangi*, above n 57, at [716].
66 *Re Ngāti Pāhauwera*, above n 42, at [685]; and *Tokomaru*, above n 40, at [520].
67 *Tokomaru,* above n 40, at [528].
68 *Re Edwards* (HC), above n 38, at [571].
69 As noted above, although the applicant group may not itself have been continuous, it is necessary that someone was exercising the rights who has a relevant connection to that group.
70 *Re Ngāi Tūmapūhia-a-Rangi*, above n 57, at [682].

taken into account that some activities are intermittent by nature, for instance the collection of resources for rongoā.[71] The Judge further noted that:

> [683] One significant event could prevent the activity, use or practice from being exercised continuously in a particular area. Or it may be that there is no evidence that a certain activity, use or practice continues, as in *Re Edwards*.[72] In contrast, numerous small interruptions, even when combined, may not prevent an activity from being continuous because the interruptions are temporary, or because they were a result of, or consistent with, the tikanga of the applicant group.

[33] Finally, in a number of cases applications have been made to amend the nature and location of the PCR's sought.[73] These applications are advanced by applicants under the following provision:[74]

> **107 Court's flexibility in dealing with application**
>
> (1) The Court may, if it considers that an application for recognition of a protected customary right is more appropriately decided as an application for recognition of customary marine title, treat it as the latter.
>
> (2) The Court may, if it considers that an application for recognition of customary marine title is more appropriately decided as an application for recognition of a protected customary right, treat it as the latter.
>
> …

[34] As CMT and PCRs are not mutually exclusive, it follows that a holder of CMT is also entitled to hold a PCR in the same area. Therefore, I do not interpret s 107 as meaning that a PCR may only be granted as an alternative to a grant of CMT.

[35] CMT is the more extensive form of statutory right. As Miller J noted in *Re Edwards*, "CMT is a (non-alienable) interest in land. It is a territorial right, not

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71 At [684].

72 *Re Edwards* (HC), above n 38, at [506]–[507].

73 This section was also relied upon by Muaūpoko in an application seeking that its PCR applications which sought that various PCRs throughout the whole application area be treated as CMT application. That application was dismissed: *Re Muaūpoko Tribal Authority* [2024] NZHC 536 [MTA refusal of amendment judgment].

74 Applications for CMT and PCRs must be filed not later than six years from the Takutai Moana Act's commencement, 1 April 2011. This acts as a statutory bar to the exercise of the High Court's procedural and substantive jurisdiction to consider a new application under the Act: see MTA refusal of amendment judgment, above n 74, at [20] citing *Re Edwards* (CA), above n 18, at [214-[220].

merely a usage right."[75] PCRs are of a more usuary nature. Under tikanga, "rights are exercised by individuals (and groups) who claim back through the same descent lines. This includes whānau rights".[76]

[36] In the second *Re Edwards* judgment, the Supreme Court reiterated the balancing approach required in relation to the Takutai Moana Act, which it had set out in its first judgment. It said:[77]

> [6] MACA governs the recognition and legal expression of customary rights in the common marine and coastal area. Under MACA, the common marine and coastal area cannot be owned. However, the Act protects specified private property rights and activities, as well as public access, navigation and fishing rights. Importantly, MACA also allows iwi, hapū and whānau groups to apply (to the High Court or through Crown negotiations) for recognition of their extant customary rights in the claim area. The two types of recognition order are for CMT and protected customary rights (PCRs). The former is territorial in nature whereas the latter focuses on discrete activities and uses in an area. Section 58 sets out the test for CMT recognition and s 51 provides the test for PCRs.

Tikanga

[37] The relevant protected right must have been exercised in a particular area in accordance with tikanga, and continue to be so exercised, whether in the same manner or similarly, or in a way that has evolved over time.[78]

[38] The Court heard evidence from two pūkenga, Dr Robert Joseph and Ms Moe Milne. They were nominated by the parties and appointed as tikanga experts by the Court under s 99 of the Takutai Moana Act. The pūkenga's role is to assist the Court in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the proceeding.[79] The pūkenga in this case heard the parties' evidence and submissions, and were cross-examined on their report. They also travelled to view significant historical sites identified by the applicants in the hearing area.[80]

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75 See *Re Edwards* (CA), above n 18, at [134]. This was confirmed in *Re Edwards* (SC No 2), above n 20, at [305].
76 *Re Edwards* (SC No 2), above n 20, at [256].
77 *Re Edwards* (SC No 2), above n 20.
78 Takutai Moana Act, s 51(1).
79 Evidence Act 2006, s 25(1).
80 They were unable to view Kapiti Island due to funding constraints.

[39] Much of the tikanga evidence given by the experts was directed at the issue of CMT. One of the 10 questions posed to the pūkenga addresses PCRs.

[40] As I noted in the CMT judgment, Dr Joseph and Ms Milne filed two reports. Their second report responded to the questions agreed to by the parties.[81] That report contains a comprehensive, independent review of tikanga Māori generally, and the specific tikanga applying to the application area at various times.

[41] The evidence of the pūkenga is highly influential, but not determinative.[82] Any part of the report not accepted by all parties must be treated as information furnished to the Court and be given appropriate weight.[83] In cases where expert evidence given is conflicting, the Court must determine the conflict based on the evidence before it.[84]

[42] A summary of the pūkenga report is set out in the CMT judgment.[85] Question 10 focusses on PCRs, and is framed as follows: "Having regard to the evidence, what tikanga is relevant to the protected customary rights claimed by the applicants?"

[43] In answering question 10, the pūkenga draw from tikanga indicia referred to in their answers to earlier questions 2 and 3 in relation to CMT.[86] Also of note are the tikanga concepts that the pūkenga identify in question 1 as applying to the hearing area based on the evidence, which were set out in the CMT judgment as follows:[87]

> [51] The pūkenga gave a non-exhaustive list of specific tikanga Māori values, principles and fundamental signposts, which apply in the Kapiti Coast application area:
>
> (a) Whakapapa — genealogy and the intergenerational and interconnectivity of all humans and the natural world including all of the Kāpiti Coast claimant groups to each other and the respective takutai moana claimant area;
>
> (b) Wairuatanga — spirituality including placating the departmental Gods' respective realms such as Tangaroa over the takutai moana realm;

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81 Ms Moe Milne and Dr Robert Joseph *Pūkenga Report* (25 October 2024) [pūkenga report]. This report is attached in full at Attachment 6 of the CMT judgment.
82 *Re Edwards* (HC), above n 38, at [325].
83 High Court Rules 2016, r 9.38(4).
84 *Ngāti Whātua Ōrākei Trust v Attorney-General* [2020] NZHC 3120 at [39].
85 CMT judgment, above n 5, at [45]–[113].
86 Pūkenga report, above n 81, at [721]–[722].
87 CMT judgment, above n 5.

(c) Whānaungatanga — maintaining kin relationships with humans and the natural world, including through protocols of respect, and the rights, responsibilities and obligations that follow from the individual's place in the collective group;

(d) Mana — encompasses intrinsic spiritual authority as well as political influence, honour, status, control, and prestige of an individual and group with the takutai moana area;

(e) Tapu — restriction laws; the recognition of an inherent sanctity or a sanctity established for a purpose — to maintain a standard for example; a code for social conduct based upon keeping safe and avoiding risk, as well as protecting the sanctity of revered persons, places, activities and objects including rāhui and wāhi tapu over the takutai moana area;

(f) Noa — free from tapu or any other restriction such as rāhui and wāhi tapu; liberating a person or situation from tapu restrictions, usually through karakia and water;

(g) Utu — maintaining reciprocal relationships and balance with persons and nature including the takutai moana area;

(h) Mauri — recognition of the life-force of persons and objects in the takutai moana claimant area;

(i) Hau — respect for the vital essence of a person, place or object;

(j) Ohaoha — distribution and sharing of prosperity;

(k) Rangatiratanga — effective leadership; appreciation of the attributes of leadership including effective leadership in the takutai moana claimant area;

(l) Manaakitanga — enhancing the mana of others especially through sharing, caring, generosity and hospitality to the fullest extent that honour requires highlighting, inter alia, unfettered access to kai moana from the takutai moana claimant area;

(m) Aroha — charity, generosity; [and]

(n) Kaitiakitanga — stewardship and protection, often used in relation to natural resources including the takutai moana.

[44] Question 2 relates to the evidence which indicates the maintenance of a group's holding of part of the marine and coastal area, as a matter of tikanga. In assessing the relationship of a group with the takutai moana, the pūkenga refer to the application of a "taonga test".[88] This concerns the intensity of the Māori association with the area, including ancestral connections and ongoing cultural and spiritual relationships, as

[88] Pūkenga report, above n 81, at [143]–[149].

well as control and authority exercised over resources and obligations to conserve, nurture and protect the relevant taonga (such as a waterway).[89] Relevant criteria in determining whether a group has the reciprocal "stewardship" responsibilities over a taonga in the takutai moana include:[90]

> (a) whakapapa identifying a cosmological connection with the takutai moana;
>
> (b) exercise of mana or rangatiratanga over the takutai moana;
>
> (c) exercise of kaitiakitanga;
>
> (d) presence of a mauri (life force);
>
> (e) performance of kawa or rituals central to the spiritual life of the hapū and whānau;
>
> (f) identification of taniwha residing in the takutai moana;
>
> (g) celebration or references in waiata;
>
> (h) celebration or references in whakatauki;
>
> (i) reliance on the takutai moana as a source of food;
>
> (j) source of textiles or other materials;
>
> (k) use for travel or trade; and
>
> (l) a continuing recognised claim to land or territory in which the takutai moana is situated, and maintaining kaitiakitanga over some, if not all of the takutai moana area.

[45] Other tikanga concepts which the pūkenga recognise as relevant to PCRs are:[91]

> (a) Tika and Pono — being right or correct, true and genuine;
>
> (b) Rangatira ki te rangatira — leaders speaking directly to each other to address pressing matters;
>
> (c) Te mana o te kupu — the power of one's word which is binding;
>
> (d) Kawenata — covenant agreements that are binding on the mana of the group; [and]
>
> (e) Tatau pounamu — binding peace agreements to settle conflict and protracted disputes.

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89 See CMT judgment, above n 5, at [57].
90 At [59].
91 Pūkenga report, above n 81, at [150] and [722].

[46] Question 3 relates to evidence which indicates that a group no longer holds a part of the takutai moana as a matter of tikanga. In summary, the pūkenga say that the area will generally cease to be held in accordance with tikanga if the group no longer meets the taonga test, or no longer uphold their kawa protocols.[92]

[47] The pūkenga also note the importance of the maintenance of kawa as an indicia of a tikanga relationship. Examples of kawa were set out in the CMT judgment.[93] They include rituals such as karakia and practices that ensure resources are respected.

[48] There is an important distinction to be drawn between rights that have died away (ahi mātaotao) and those that have been merely impaired (ahi teretere) and may later be resurrected.[94]

[49] While questions 1 and 2 are focussed on territorial rights of the nature recognised by CMT, similar considerations apply to customary rights which may be recognised by PCRs. The importance of ancestral connections and the ability to resurrect a group's rights based on those connections is equally applicable to the tikanga in relation to PCRs. The customary rights and activities protected by PCRs are part of the complex of resource rights described in the pūkenga report:[95]

> [554] Major difficulties arise today when people — Māori and Pākehā — try to translate this customary tikanga network of rights and responsibilities, as well as connections — mana whenua and mana moana — into an environment of 'straight line' boundaries as the Waitangi Tribunal acknowledged in the 2004 *Turanga Tangata Report*:
>
> > Resource rights were complex, convoluted, and overlapping. They almost never phased cleanly from hapū to hapū as one panned across the customary landscape. Instead, most resource complexes had primary, secondary, and tertiary rights holders from different hapū communities, all with individual or whānau interests held in accordance with tikanga, and therefore by consent of their respective communities. All rights vested and were sustained by the currency of whakapapa.

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92 CMT judgment, above n 5, at [62].
93 At [60]–[61].
94 At [383], [946]–[947] and [983].
95 Pūkenga report, above n 81.

[50] The pūkenga report also refers to the comments of Sir Edward Durie on the complexity of the boundaries and networks:[96]

> Resource boundaries were conceived of lineally, and radially with rights or authority radiating from a central heart to uncertain fringes.
>
> The authority of a hapū in an area was not necessarily exclusive. Hapū claimed the resources of territories exclusively or conjointly with others. Many resources were shared by several hapū. Not all hapū areas were contiguous but were intersected by the use rights of others.

[51] The pūkenga further note that the nature of the rights are often debated and subject to negotiation:

> [596] Whenua tautohetohe or kainga tautohe lands although contested and debated were shared interests in the whenua and rohe moana involving one or more groups which situation resonates with some of the claimant groups in the current Kāpiti Coast High Court MACA hearings. …
>
> [597] What much of the historical accounts indicate is that resource interests under tikanga Māori were not certain but were amorphous, they were not individualised but were shared, collective, debated and negotiated as will be illustrated further in a number of other historical accounts.

[52] As I found in the CMT judgment, Muaūpoko had emerged from their heartland and were exercising activities beyond that area by 1839. There is no evidence they were prevented from doing so by Ngāti Raukawa, Te Ātiawa, or Ngāti Toa, who now object to Muaūpoko's claimed PCRs beyond their area of CMT. While Muaūpoko were unable to meet the test for CMT in parts of their application area, they have continued to exercise various types of customary rights since 1840. The customary activities which meet the statutory tests have been exercised without interference since that time, and the fact that Te Ātiawa and Ngāti Raukawa now say they do not acknowledge those rights at tikanga is not borne out by the evidence that Muaūpoko have continued to carry out the relevant activities to the present day.

[53] The pūkenga's conclusion was that in relation to the tikanga aspect of the test for CMT and PCRs, all of the applicant groups had "shown that their tikanga customary laws and institutions are flourishing, vibrant and that they are still relevant".[97] This suggests that the customary activities and uses which continue to be

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96 At [557], citing E T Durie "Custom Law" (draft paper for the Law Commission, January 1994).
97 At [731].

carried out to the present day are exercised according to tikanga. The ongoing expression of whakapapa connections to the takutai moana, and the operation of tikanga and kawa protocols have been established by the successful PCR applicant groups.

[54] From the pūkenga's conclusion, I infer the continuous operation of tikanga in relation to the activities and exercise of the discrete customary rights giving rise to PCRs, where the relevant activities have otherwise been continuously exercised by a PCR claimant. For example, there was substantial evidence of the saying of karakia before gathering resources or fishing, the exercise of manaakitanga and whanaungatanga through the sharing of resources, and the adherence to other kawa surrounding the activities for which PCRs are sought.

Approach to the present applications for PCRs

Submissions of the Attorney-General

[55] The Attorney-General notes that some PCRs sought by the applicants are excluded from eligibility under the Takutai Moana Act, while the nature and scope of others sought are unclear.

[56] She submits that "[t]he Court should not make a PCR order if the evidence has not established the particular physical activity, use or practice for which recognition has been sought". Furthermore, the Court needs to ensure that the activity or use occurs within the takutai moana (not on dry land), and that there is sufficient evidence to prove that the activity continues to be exercised, in order to find that s 51 is met.

[57] The Attorney-General suggests that a high degree of specificity is required regarding the location where the activity occurs, consistent with the effect of a PCR.[98] Not only may a PCR affect future resource consents in the area, but it is important that local councils are able to accurately identify potential impacts of other activities on the PCR.[99] The Attorney-General also notes that the Minister of Conservation has the

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98 *Re Ngāi Tūmapūhia-a-Rangi*, above n 57, at [681].
99 Takutai Moana Act, s 55.

authority to impose controls over a PCR, should its exercise have an adverse impact on the environment.[100]

[58] The Attorney-General notes the Takutai Moana Act is silent on how long a break in continuity would be in order to render a PCR discontinued, thereby preventing recognition. However, she suggests that a degree of regularity in the exercise of the activity is required. She notes that in *Re Edwards* a PCR sought in respect of growing pīngao and harakeke used for raranga and as rongoā was not granted because "[t]here was no direct evidence that the practice of growing harakeke continued".[101] Although some efforts had been made to re-establish its presence, it could not be inferred that the activities continued to be exercised presently. The Attorney-General adds that "numerous small interruptions" may not be fatal to the continuity requirement, if the applicant can nevertheless show the activity was consistently and continuously carried out in the context of the specified area, in accordance with tikanga.[102]

Submissions of the local authorities

[59] Section 52 of the Takutai Moana Act sets out the scope and effect of a PCR order. Section 109 provides that after the Court grants recognition of a PCR, the applicant must submit a draft order including a description of the right and a map to identify the area:[103]

> **109 Form of recognition order**
>
> (1) An applicant group in whose favour the Court grants recognition of a protected customary right … must submit a draft order for approval by the Registrar of the Court.
>
> (2) Every recognition order must specify—
>
> (a) the *particular area* of the common marine and coastal area to which the order applies; and
>
> (b) the group to which the order applies; and
>
> (c) the name of the holder of the order; and
>
> (d) contact details for the group and for the holder.

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100 Section 56.
101 *Re Edwards* (HC), above n 38, at [507].
102 See, for instance, at [640]–[642].
103 Emphasis added.

(3) A protected customary rights order must also include —

(a) a *description of the right,* including any limitations on the scale, extent, or frequency of the exercise of the right; and

(b) a *diagram or map* that is sufficient to identify the area.

[60] As noted above, the GWRC, Horizons, and Kāpiti Coast District Council, being local authorities with statutory responsibility for the takutai moana in the hearing area, participated in the hearing. I refer to them collectively as "the councils". They point out that they are neutral and do not take a position on the merits of whether the applicants have satisfied the legal test for PCRs under s 51(1) of the Takutai Moana Act.

[61] In their submissions, the councils emphasise their relevant mandatory functions in relation to PCRs. For instance, the regional councils (being GWRC and Horizons) must:

(a) ensure that any plan or proposed plan does not include a rule that treats an activity as a permitted activity if that activity will, or is likely to have, a more than minor adverse effect on a PCR.[104]

(b) not grant resource consent for any activity that will, or is likely to, have more than minor adverse effects on the exercise of such rights, unless the relevant group has provided its written approval or an exception applies.[105]

[62] The councils are interested in ensuring the final form of any PCR orders granted are clearly framed and workable. They emphasise that any PCR order must describe the location and the nature of the relevant PCR activity so that the councils can uphold and protect the PCRs through their designated statutory functions. The draft order and map to be submitted by a successful applicant for a PCR is usually considered at the next stage following the PCR determinations. Any PCR areas must be accurately surveyed and only include areas that fall within the definition of the

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104 Resource Management Act 1991 [RMA], s 85A.
105 Takutai Moana Act, s 55(2).

CMCA. The relevant PCR must be identified with adequate precision so that a council can fulfil its obligations of determining whether a proposed activity would have a more than minor adverse effect on that PCR.

[63] For the next stage, the councils submits that the Court could:

> …direct any successful applicants to provide further particulars on relevant matters (for example, on location and/or the nature/scope of the activity). This would provide the opportunity for the Councils to discuss directly with the relevant applicants the framing of the PCR orders to ensure that they are readily able to be implemented.

Mapping process for final PCR orders

[64] Some of the PCR applications are not supported by sufficient detail to enable an order to be made which properly identifies the particular area to which the application relates.[106] There are also some applications where there is insufficient evidence to support the making of the order at all, even on a generous approach.

[65] The conclusions in this judgment are, in effect, interim determinations. A detailed mapping and checking process will need to be undertaken, in consultation with the relevant local authority, in determining the final PCR orders. This process will involve the applicant filing a marked-up map showing the specific location(s) to the application relates, and precisely describing the particular activity insofar as it is undertaken below the mean high-water springs.[107] In some cases, where it is presently unclear exactly where the activity is conducted, or where there are concerns about whether the activity is able to be carried out (for instance due to river changes or other causes), only with more information will a final determination be possible. That is not to say exact precision is required on location in relation to all PCRs — the patchwork of interwoven customary rights may not be susceptible to precise delineation.[108] In most cases the marking of the locations should be uncontroversial. That said, there

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106 As required under s 101.

107 Under the Takutai Moana Act, PCRs are not recognised above that mark: see s 9 definition of "marine and coastal area".

108 *Re Edwards* (SC No 2), above n 20, at [200]–[201]. While the Supreme Court's comments were made in relation to CMT claims, the description can also be applied to customary rights more generally, including those capable of recognition through PCR orders.

may be some instances where the issue is contested and further discussions or evidence is necessary to identify the precise location for a determination.

[66] This process will ensure that all PCRs are properly particularised in terms of the requirements of the legislation, and the local authorities are able to carry out their relevant regulatory responsibilities. This is necessary for practical reasons, and reflects the policy behind the legislation, being the need to balance public access and related rights against the recognition and legal expression of customary rights in the takutai moana.[109]

Other preliminary comments

[67] Generally, as I held in the CMT judgment, there has been "no substantial interruption" by third parties affecting the hearing area from 1840 to the present day on the mainland coast.[110] That applies equally to the activities that are the subject of PCRs.

[68] PCRs only protect customary non-commercial activities and uses. I now deal with the applications for PCRs, considering each applicant in turn.

Ngāti Raukawa ki te Tonga

Leave to amend application

[69] Ngāti Raukawa seek various PCRs in the area between the Rangitīkei River in the north and Kukutauaki in the south. This is within the area in which they have been granted CMT, in part on an exclusive basis and in part on a shared exclusive basis.

[70] Ngāti Raukawa filed an amended application on 24 October 2024, removing some of the PCRs originally sought which the Attorney-General had identified were unavailable at law. For instance, PCRs relating to fishing of all species, seeding and harvesting of all shellfish, and rāhui were removed. No objection has been made to the amended application, and the activities and uses now claimed are within the

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109 At [6].
110 CMT judgment, above n 5, at [199]–[238].

description of those claimed in the 2017 application in any event. Leave to amend the application, if necessary, is granted.

[71] The PCRs sought by Ngāti Raukawa are as follows:

(a) fishing whitebait, specifically at river mouths;

(b) activities related to spiritual practices (e.g. karakia ceremonies, karanga, wānanga);

(c) planting and cultivating all plant species;

(d) extracting non-nationalised minerals;

(e) catching whitebait at the river mouths;

(f) collecting hāngī stones;

(g) collecting driftwood and other natural resources; and

(h) using, managing, preserving and/or developing tauranga waka (sea-craft launching/mooring places).

Whitebaiting

[72] The whitebaiting application is referred to in the closing submissions for Ngāti Raukawa as relating to "the catching and harvesting of whitebait". It covers the following streams and rivers where whitebait harvesting occurs: Mangaone Stream; Ōtaki River; Waitohu Stream; Waikawa River; Waiwiri Stream; Hōkio Stream; Manawatū River; Kaikokopu Stream; Rangitīkei River; Mangapouri Stream; Ōhau River; Blind Creek (Ōhau tributary); Te Hakari (Ōhau tributary); and Kuku Stream (Ōhau tributary).

[73] Ngāti Raukawa produced evidence of the iwi whitebaiting historically. Dr Vincent O'Malley, the expert historian called for Ngāti Raukawa, refers to the transformation of the iwi, which had immigrated from inland Waikato in the 1820s-1830s, to become a coastal tribe that relied on resources from the takutai moana to feed its population. Ms Rachael Selby produced "He Iti Nā Mōtai", a record of oral histories that referred to historical uses of resources in a tabulated schedule. This referenced fishing, for instance by Te Whatanui at Hōkio Beach.

[74] O'Malley refers to Ngāti Raukawa fishing for inanga in the Rangitīkei River. He also refers to a 1927 petition brought on behalf of Ngāti Raukawa, which described Lake Whakapuni as the "life water from [their] ancestors" and a place where they obtained whitebait.[111] Regulations were introduced in September 1932 which banned whitebaiting on a drain across the foreshore of the Manawatū River. In 1957, there was talk of blocking Pākehā access across the Hōkio Stream.

[75] Evidence was also given of whitebaiting being practiced to the present day, and being grounded in tikanga, whanaungatanga, kaitiakitanga and manaakitanga.[112] In more recent decades, whitebait numbers have fallen in the Manawatū and Ōtaki rivers. Figures for average whitebait takes from the 1940s–1980s in the Ōtaki area were produced by Mr Pātaka Moore. Mr Moore outlined a number of locations where whitebait was caught, as well as the takes and sizes of the whitebait, specifically in the Ōhau and Waiwiri area. He said inanga was caught at a number of significant sites, including Kaikokopū Stream, Himatangi, Koputara Stream mouth, Waiwiri Stream, Hōkio Stream, and Wairarawa Stream mouth. He also referred to whitebaiting between the 1940s and 1980s at Waitohu Stream, Mangapouri Stream, Ōtaki River, Waikawa Stream, Lake Horowhenua, Pauatahanui/Paremata Mudflats, Ōhau River, Blind Creek, Te Hakari, Kuku Stream, Waiwiri Stream and Lake Papaitonga.

[76] Mr Andrew Karatea gave evidence of whitebaiting using a "tipi" system taught to him by his uncle, which he continued to use until 10–15 years ago. He said that since 1955, whānau had fished from the mouth of the Rangitīkei River to Hōkio Beach, and sometimes near the Turakina River. Mr Karatea said around 20 whānau had kāinga along the Rangitīkei River. The swamps had been breeding grounds for whitebait until they were drained by farmers. He also commonly went to Waitārere Beach as a child.

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111 The petition sought removal of Crown restrictions on the stream flowing from Whakapuni Lake (near the mouth of the Manawatū River) which prohibited whitebait fishing. However, other Māori supported the restrictions in order to increase whitebait populations. Those bringing the petition also noted that the lake had been specifically reserved from sale to the Crown so that their people could fish from it.

112 For instance, permission must be sought before harvesting whitebait from those who have used the area for generations, and fishing must only take place when the time is right according to the maramataka (Māori lunar calendar).

[77] Mr Dennis Emery says that in the past his people would go whitebaiting off the Rangitīkei River (from the Tangimoana side). However, they "noticed over the years it got harder and harder". A devastating flood in 2004 meant they were unable put their "Blue Marae back up out there", and they had to go to stores to buy the same kai.

[78] Mr Wayne Kiriona says that when he was young, he and his father had whitebait nets set up between Whirokino, Koputaroa and Waitārere. Ms Selby also refers to catching whitebait from the Hōkio Stream when available. In addition, Mr Caleb Royal describes Ngāti Raukawa fishing "right up and down [their] rivers, including in and around the river mouths", and lists whitebait as one of the species caught. He also notes that this is governed by tikanga, in that you can only fish if you are from the area or obtain permission from tangata whenua. He refers to key awa of Ngāti Raukawa for catching fish.[113] Mr Royal says whitebaiting continues to be "part and parcel" of who his whānau are. He remembers whitebaiting all along the Waitohi Stream when he was a child, including at the mouth of the river.

[79] Mr Te Kenehi Teira refers to white-baiting from Ōtaki, the mouth of the Waiwiri Stream, Ōhau, the Manawatū River, and Tapuiwaru swamp. He says his kuia whitebaited "at all times" on the Manawatū River. Mr Tewera Hēnare refers to using waka to whitebait along the Ngāti Raukawa coastline, particularly in the river mouths.

[80] The Attorney-General agrees that non-commercial whitebaiting is an activity capable of recognition by a PCR.[114] However, she submits that the evidence appears to indicate whitebaiting has been impacted in certain areas, such as on the Tangimoana side of the Rangitīkei River and in swamps that have now been drained by farmers, and that locations of whitebaiting at river mouths are generally non-specific. Furthermore, she notes that some locations referred to are outside the takutai moana, such as Whirokino, Koputaroa, and the "Cut" (in relation to the Manawatū River).

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113 These include the Mangaone Stream, Ōtaki River, Waitohu Stream, Ōhau River, Waiwiri Stream, Hōkio Stream, Manawatū River, Kaikokopu Stream and Rangitīkei River.

114 It is within the scope of s 51 of the Takutai Moana Act and does not fall within the s 51(2) exceptions. Non-commercial whitebait fishing is not regulated by the Fisheries Act, nor is it subject to declarations under s 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. PCRs for whitebait-related activities were granted in: *Re Edwards* (HC), above n 38, at [669]; and *Re Ngāti Pāhauwera*, above n 42, at [599].

[81] However, I am able to infer from the substantial evidence adduced that Ngāti Raukawa have been whitebaiting in the rivers across their rohe on the sites claimed where whitebait runs from 1840 to the present day. This practice is carried out in accordance with tikanga practices, as the evidence indicates. There is no evidence that this activity has been interfered with up to the present time, apart from the specific issues relating to drainage and lack of whitebait referred to above. While whitebait may now be harder to find in some locations, it appears the activity has nevertheless continued up to the present time across Ngāti Raukawa's rohe. Of course, a PCR may not be granted in areas outside the takutai moana.

[82] Accordingly, I consider that, subject to the mapping and checking process set out above at [65], the PCR sought by Ngāti Raukawa for whitebaiting is supported by the evidence and the inferences I have drawn. The next stage of the process will include identifying specific locations and confirming that the activity occurs within the takutai moana.

Activities related to spiritual practices

[83] Karakia is a regular part of the way that Ngāti Raukawa engage with the takutai moana. Evidence was given of karakia being recited before and after gathering kai (including fishing). A number of witnesses offered evidence in support of this practice continuing as a customary activity. For instance, Mr Justin Tamihana said they would karakia and mihi before fishing, and would put back the first fish they caught, in accordance with tikanga. Mr Moore also emphasised these tikanga practices. In addition, Karakia are said in a variety of other circumstances, including when people are going through difficult times and in cases of death.

[84] Other examples of spiritual practices include seasonal karakia during the migration of the kuaka bird at the Manawatū River mouth, and to welcome the birds back from their migratory journeys. The evidence also refers to karanga and hautapu ceremonies during Matariki at Ōtaki and Foxton Beaches.

[85] The witnesses also gave examples of wānanga being held for various purposes, including re-establishing dune systems and sailing. Consultations were held on

protecting the health of the Paetawa and Kōwhai streams and environmental monitoring. Mr Moore refers to wānanga taking place at Tangimoana Beach.

[86] Mr Moore describes hautapu and other whakahaere (ceremonies) carried out on the beach, in a way that has been done for generations. These often involve lighting a fire and saying karakia. He refers in particular to hautapu ceremonies undertaken for Matariki in 2023, held at Ngātokowaru marae.

[87] Mr Moore also refers to various sites as wai ora (a source of wellness). However the nature of the associated activity is not clear, nor are the exact locations specified, many of which appear to be outside the takutai moana.

[88] References were also made to rāhui in evidence and closing submissions. However, as noted above, recognition of rāhui is no longer sought in the amended application for PCRs, given that such recognition is unavailable at law.

[89] Karakia and other spiritual and cultural rituals must be manifest in a physical activity or use related to a natural or physical resource.[115] This might, for instance, be by "…members of the applicant group going down to the takutai moana to perform a karakia or going to the takutai moana for the purpose of wānanga, tangihanga or sharing mātauranga Māori".[116]

[90] The Attorney-General notes that often the nature and scope of the spiritual activity for which Ngāti Raukawa seeks recognition is unclear. Further, in relation to whakahaere, it is unclear if it occurs in the application area.[117] The councils also add that a PCR must be particularised by reference to place and the specific physical activities or uses associated with those spiritual practices.

[91] In many instances, the way in which the activities under this head are said to physically manifest are not sufficiently specific to form the basis for a PCR.

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115 Takutai Moana Act, s 51(2)(e). See also, RMA, s 2(1) definition of "natural and physical resources" which includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures.

116 Re *Edwards* (HC), above n 26, at [381].

117 For example, Mr Moore refers to Mangapōuri as a location for carrying out whakahaere.

Furthermore, there is not sufficient clarity over the exact locations where these activities occur.

[92] That said, the evidence supports the physical manifestation associated with wānanga at Tangimoana beach, ceremonies involving lighting of fires, as well as hautapu ceremonies at Ōtaki and Foxton Beaches and ceremonies for the migration and return of the kuaka bird at the Manawatū River mouth. PCRs are granted for those activities subject to the mapping and checking process to ensure they are described with adequate precision, including the locations and frequency of the activities.

Planting and cultivating all plant species

[93] In relation to plant species, Ngāti Raukawa's submissions focus particularly on pīngao, an indigenous taonga. Pīngao grows naturally on sand dunes and is a good stabiliser. Ngāti Raukawa have made efforts to restore it along the coastline, for instance at Waitārere Beach.

[94] O'Malley records that:

> Besides harakeke, various other plants often used for weaving — including pingao, toetoe, and kiekie — were historically abundant in the area. Large volumes of these were used for the elaborate tukutuku panels adorning Raukawa wharenui at Ōtaki when it was constructed in the 1930s.

[95] O'Malley also refers to harakeke being used to make a sweet drink, and as rongoā, a skin treatment, a disinfectant, and a laxative. More widely known is the use of scraped flax leaves for weaving. He notes that in the 1850s rope-makers purchased fibre along Manawatū River. Later, a number of flax mills were established, with the last of these closing down in 1974.

[96] Mr Teira referred to a kōrero describing how pīngao came out of the sea and formed lines of growth along the sand dunes, acting as a sign for where to find toheroa and tohemanga. He also gave evidence of cultivating pīngao at Foxton Beach; people gathering pīngao at Foxton Beach; and pīngao being located at Waiwiri River mouth and at Hōkio (up to Pukepuke). He noted that growth has been knocked back as a result of four-wheel drives and dune buggies.

[97] Mr Moore refers to hapū collecting pīngao growing on sand dunes, and notes that a kuia recalled her mother collecting it from Himatangi Beach. In addition, he and Mr Royal attempted to grow pīngao at Ōtaki Beach and in dunes, with the aim of re-establishing it for weavers and dune restoration. He also refers to pīngao growing at the south of the Wairarawa Stream.

[98] In addition, Mr Tamihana refers to planting spinifex and pīngao on the dunes to replace "marram" plant (an introduced species), and provided photographs of this replanting at Waitārere Beach in October and December 2022. Mr Tūroa Karatea describes gathering plants for home healing. He Iti Nā Mōtai also refers to historical uses of resources in a tabulated schedule, such as pīngao grass for weaving. An example was given in that report of the use of pīngao from the beach and kiekie from Omarupapako (Round Bush) to create tukutuku panels at Motuiti.

[99] The councils and the Attorney-General note that it appears spinifex and pīngao planting and cultivation takes place above the mean high-water springs, and therefore outside the takutai moana. In addition, the Attorney-General submits it is unclear if spinifex planting continues today.

[100] No PCR can be granted above mean high-water springs, therefore the dune areas are excluded. Nor can I grant a PCR generally over "all plant species".

[101] However, I am satisfied on the evidence that there are customary rights which have been exercised within the takutai moana and may be protected by PCRs as follows:

(a) pīngao planting and gathering in Waitārere Beach, Foxton Beach, Waiwiri River mouth, Hōkio (up to Pukepuke), Himatangi Beach, Otāki Beach, and Wairarawa Stream south; and

(b) harakeke planting at Ōtaki Beach and the Manawatū River.

[102] These are subject to determining the precise locations and ensuring the areas are within the takutai moana, following the mapping and checking process set out at [65].

Extracting non-nationalised minerals

[103] Ngāti Raukawa did not adduce specific evidence or particularise the minerals or locations for which PCRs were sought, except in relation to kōhatu (which I deal with below).

Collecting kōhatu/hāngī stones

[104] Kōhatu (stones) were found in midden sites and continue to be collected and used for hāngī today. In particular, Mr Tamihana refers to smaller stones that wash up on Waitārere Beach being used.

[105] I grant Ngāti Raukawa a PCR for collecting kōhatu at Waitārere Beach in the application area. The size of the stones are limited to hāngī stones and smaller stones. Consideration needs to be given to the description of the size of the stones in determining the conditions of the order. The location and description will also be subject to the mapping and checking process set out at [65] above.

Collecting driftwood and other natural resources

[106] O'Malley gave historical evidence of Ngāti Raukawa gathering driftwood to use as firewood and for the construction of temporary camp sites along the beach during fishing expeditions. While not explicitly referred to, as it is clearly so commonplace, I can infer that this is likely to have occurred across a number of locations. This includes, for example, at Hōkio Beach near the residence of Te Whatanui and his people. Driftwood continues to be used today to prepare the fire for hāngī, for instance, at Ngatokowaru marae. This is important in enabling practices of manaakitanga on marae.

[107] Driftwood was also commonly used for carving. For instance, Mr Tamihana gave evidence that when Matau marae was rebuilt in 1985, "[a]ll of the totara wood used for the carvings were picked up off the local coast and beach", having washed up

there from the Manawatū River. This still happens from time to time today. In addition, Mr Kiriona referred to gathering totara for carvings to rebuild their marae in 1985.

[108] Because of the nature of this activity, PCRs for gathering driftwood have been granted in other decisions without particularised location.[118] Similarly, in this case identification of a precise location is unnecessary, as it is able to be inferred that this is an activity which has continuously occurred across the rohe.

[109] Therefore, I grant Ngāti Raukawa a PCR for collecting driftwood in the takutai moana from the Rangitīkei River in the north to Kukutauaki in the south, subject to the council mapping and checking process described at [65] above.

Collecting resources for rongoā purposes and wai ora activities

[110] Mr Moore refers in his evidence to collection of puna rongoā (rongoā source) and puna raranga (weaving material), as well as wai ora (wellness) sites. Mr Karatea says he was taught to seasonally gather rongoā (plants and leaves) for home healing.

[111] I am satisfied that a PCR should be granted for the collection of rongoā materials and wai ora activities at the locations referred to in the evidence, being Hōkio Beach and the Rangitīkei River (including the river mouth), subject to the council mapping and checking process being completed as above at [65]. As noted above in relation to plants, there must be some specificity regarding the type of plant collected and its general location, which must be within the takutai moana.

Using, managing, preserving and developing tauranga waka

[112] Waka were historically used as a mode of transport, and mātauranga around this activity has been passed down through generations. Mr Hēnare gave evidence that his ancestors used waka taua (war canoe), waka tangata (people's canoe), and waka rā (ceremonial craft for karakia) as vehicles to traverse the ocean. Waka would be used to gather kai for whānau and for trading at Ōtaki River and Te Awahou. Mr Teira also gave evidence of his tūpuna using waka for travelling (through rivers

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118 See, for instance, *Re Ngāi Tūmapūhia-a-Rangi*, above n 57, at [814(b)(ii)].

and along the coast) and for trading of goods. There were numerous landing sites, including at Foxton Heads, Ahuarahi, Whakapuni, and Matakarapa/Kapahaka (at Foxton itself). He said there could be up to 40 waka lined up outside the trading stall at Te Awahou on a daily basis.

[113] While there is historical evidence of use of waka, evidence of present day tauranga waka is scant. That said, some evidence of use of seagoing craft was given, particularly for fishing but also as a means of teaching rangatahi kawa and tikanga generally. Mr Emery explained how he and Mr Karatea would take groups of rangatahi out in a canoe around Tangimoana Beach and the mouth of the Rangitīkei River, teaching them the tikanga and kawa of fishing, as well as their whakapapa connections and the history of the beach. Mr Hēnare noted that waka are now used to teach people how to sail and for gathering kai. He said "the moana was and is our waka highway".

[114] Mr Moore gave evidence of tauranga waka sites, including Puru Raruhe kāinga, Kaikokopu Stream, and Rangiuru pā (called Okatea/Ōkatia). Dr Mahina-a-rangi Joy Baker also listed various waka sites. However, Mr Royal noted while Ngāti Raukawa previously had tauranga waka at Okatea to connect Rangiuru pā and the Ōtaki River, access is now restricted due to floodgates.

[115] Ngāti Raukawa have provided a list of locations where tauranga waka continue to be used to the present day and for which PCRs are sought.[119] However, some of those may not be able to be used today or are outside the takutai moana. For instance, it is not clear that the new jetty at the Rangitīkei River is located within the relevant area. Similarly, as noted, Okatea (Ōtaki River mouth) access is now restricted. Therefore I exclude that site from recognition.

[116] As Ngāti Raukawa acknowledge, tauranga waka cannot limit public rights of access and navigation under ss 26 and 27 of the Takutai Moana Act.[120] Boundaries of

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119 Okatea (Ōtaki River mouth); Foxton Beach; Te Papa Ngāio Pā (south bank of the Manawatū River mouth); Puru Rarauhe (Manawatū River mouth); Kuititanga Pā (Waikanae River mouth); Te Wī (Ōhau beach); Rangitīkei River mouth; Himatangi; Ōhau River mouth; and Waikawa Stream mouth. Ngāti Raukawa also refer to other sites in their evidence, but these are unlikely to still be used today.

120 *Re Ngāi Tūmapūhia-a-Rangi*, above n 57, at at [710].

a tauranga waka must be clear and precise before an order is made.[121] Evidence was given of continuous use of waka by the iwi for fishing and other practices to the present day. I am able to infer that the following sites over which the PCR order is sought continue to be used today for boat launching: Foxton Beach; Te Papa Ngāio Pā (south bank of the Manawatū River mouth); Puru Rarauhe (Manawatū River mouth); Kuititanga Pā (Waikanae River mouth); Te Wī (Ōhau beach); Rangitīkei River mouth; Himatangi; Ōhau River mouth; and Waikawa Stream mouth. However, these must be specifically mapped according to the process outlined at [65], including marking the specific sites that are within the takutai moana.

Te Ātiawa ki Whakarongotai

Leave to amend application

[117] Te Ātiawa's original application for PCRs was subsequently amended in October 2024, to remove the following activities which were not claimable at law:

(a) non-commercial fishing (utilising nets and lines to catch pelagic fish in the rohe including kahawai, herring, flounder, sole, mullet, red cod, hoki, frostfish and snapper);

(b) the implementation and maintenance of rāhui; and

(c) gathering edible and aquatic plants including seaweeds and kelp.

[118] Te Ātiawa continue to seek PCRs in respect of: planting and cultivating plant species in CMCA wet margins; extracting non-nationalised minerals for non-commercial purposes, in particular, kōhatu that are used for mauri stones and commemorative purposes; and driftwood collection for non-commercial purposes.

[119] In addition, before closing, Te Ātiawa sought leave to amend its application to include whitebaiting and tauranga waka launching on various sites. Mr Cameron, for Te Ātiawa, did not elaborate on the application for amendment, save to submit that the courts had taken a flexible approach to PCRs, and the evidence supported recognition of the additional PCRs relating to driftwood collection, whitebaiting, and maintenance and launching of waka at tauranga waka. All PCRs sought are within the CMT area and there was no opposition to the amendment.

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[121] *Tokomaru*, above n 40, at [524] and [525].

[120] In this case, there is no discernible prejudice to the other parties, the amendment is not significant, and it seeks PCRs within the Te Ātiawa CMT area.

[121] Accordingly, leave to amend the application is granted.

Planting and cultivating plant species

[122] Evidence was given that, historically, flax was traded at the Waikanae River mouth. Whareroa Pā was also used as a trading post, where harakeke was traded with local whalers. There is evidence of harakeke being used for rope and kete at Whareroa and on both sides of the Waikanae River.

[123] Mr Tony Walzl, the historical expert called for Te Ātiawa, gave evidence that more recently:

> Lois McNaught described how her grandmother Hauaa and her sisters were taught by her mother Ngapera Wi Parata Te Kākākura to identify various species of harakeke and what they most suitable for. It was noted that: "Specific styles of kete were made from specific harakeke for a specific purpose be it for holding food or gathering and collecting pupu, angiangi, pipi, toheroa from the beaches" as well as others for edible and medicinal resources found in the bush.

[124] Ms Sharlene Maoate-Davis referred to Te Ātiawa and the ART Confederation providing advice on mātauranga-a-iwi approaches to wai/hydrology, whakatupu whenua/native plants, and restorative models. She included a photograph of the plant nursery at Whareroa in 2023. Mr John Barrett referred to restoration efforts, such as replanting on the Waikanae River Estuary in 2016. Ngārara Stream (Kawakahia) and the Waikanae River mouth/estuary are recorded as "pā harakeke" sites in the Natural Resources Plan for the Wellington region.

[125] However, as the Attorney-General points out, the Waikanae estuary is not part of the takutai moana, therefore activities carried out there cannot be the subject of a PCR order.[122]

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[122] The Attorney-General refers specifically to the Waikanae Scientific Reserve.

[126] Te Ātiawa have adduced evidence sufficient to support a PCR for planting and cultivating harakeke at Ngārara Stream (Kawakahia) and the Waikanae River (excluding the Waikanae Scientific Reserve). That, however, is subject to the mapping and checking process, and ensuring that the specific locations are within the takutai moana, as set out at [65] above.

Gathering kōhatu

[127] Mr Parata explained that Te Ātiawa "people have at different times taken large kōhatu or stones that appear on the beach as mauri stones". For example, after an iwi member passed away in 2015, his whānau found a large mauri stone at Paraparaumu Beach where he had passed. Arrangements were then made for the stone to be erected on the river as a whakamaumahara, or commemorative mauri stone, for people to touch when using the river.

[128] The location of the taking of large stones needs to be specified. Therefore, a PCR will be granted in relation to removal of mauri stones from Paraparaumu Beach, subject to the provision of a description of size and the mapping and checking process as set out above at [65].

Gathering driftwood

[129] Te Ātiawa submit that they carry out a customary practice of taking driftwood from beaches within the takutai moana, but particularly at Whareroa Pā and Peka Peka Beach.

[130] Collecting driftwood for various domestic uses would have been a common occurrence across the CMT area of the applicants in the past, and evidence was given of its continuation to the present.

[131] Mr Parata noted that when he was growing up in Waikanae, his whānau used firewood for cooking, as they did not have gas. Mr Barrett said Te Ātiawa had always gathered resources like driftwood for non-commercial purposes. Ms Maoate-Davis also referred to "driftwood collected from the shoreline", and noted that small driftwood kindling would be dried and used in outdoor fires. However, during

cross-examination, when Ms Maoate-Davis was questioned about whether the driftwood is collected at the high-water mark, she responded:

> It will be whenever we go to collect it. It will be whatever comes in off the sea and so it would usually be what's left after high tide, but … we don't distinguish between that.

[132] Mr Parata said there was less driftwood in the area north of the Waikanae awa. Mr Mullen recalled his father collecting wood for hāngī off the beach between Te Horo and Peka Peka. Mr William Carter referred to "collecting driftwood for firewood from the coastline", with the "best logs" being at Peka Peka Beach, coming down from the Ōtaki River. They would also relocate driftwood from the beach near the Whareroa Pā to the damaged sand slope to prevent public access and preserve that pā site.

[133] Te Ātiawa have provided sufficient evidence to support the grant of a PCR for collecting driftwood. As I have noted above, the activity is so commonplace for Māori, that I am able to infer that driftwood was gathered traditionally and this practice has continued to the present day, on the evidence adduced.

[134] I can infer the collection occurs across the rohe from Whareroa to Kukutauaki, and a PCR is granted for that area. Again, this is subject to the completion of the council mapping and checking process referred to at [65] above.

Whitebaiting

[135] The application seeks PCRs for whitebait fishing over the Whareroa coastal marine area, Waikanae River mouth, and Waimeha River mouth.

[136] Dr Baker refers to the Whareroa Stream (river mouth), Waikanae River mouth, and Waimeha River mouth as being significant mahinga kai sites for whitebait. She also describes placing a rāhui over the use of sock nets on the Waikanae River mouth in 2018 to preserve whitebait stocks. In addition, she refers to protocols developed with the support of the Department of Conservation (DOC), requiring fishing permits to gather whitebait in the DOC Scientific Reserve.

[137] Historically, Whareroa Stream had a pā near the river mouth, and a kāinga located on its southern banks. Over 100 Te Ātiawa are recorded as living at Whareroa Pā in 1850, and it is an important site for harvesting inanga. Mr Walzl recounts Mr Parata's recollection of whitebaiting as a child in the "Black drain", which ran into the Waimeha. Mr Walzl also refers to Mr Rapatu Solomon whitebaiting in the Waimea Stream. Ms Maoate-Davis recalls her father going whitebaiting around northern Waiorongomai.

[138] Mr Barrett refers to significant mahinga kai sites, including the Whareroa River mouth, Whareroa coastal marine area, Paraparaumu coastal marine area, and Waikanae River mouth and coastal marine area. He specifically refers to Waimeha River mouth as a significant mahinga kai site for whitebait stocks. Dr Baker, Mr Parata, and Mr Solomon all refer to recently whitebaiting in the Waimeha Stream.

[139] The evidence shows that whitebaiting in the past and to the present day has incorporated mātauranga Māori, manaakitanga, whanaungatanga, mahinga kai and whakapapa principles. For example, whitebait would be provided to kaumātua for Christmas, tangihanga and other special events. Dr Baker said that "when the whitebait was running in the Waikanae River", they would show manaakitanga by inviting whanaunga from outside the rohe to come and fish there. Mr Parata also emphasised the importance of the tikanga surrounding fishing practices — everything gathered (including whitebait) was to sustain their families, and kaumātua would be given priority for receiving kaimoana.

[140] In 2015, Te Ātiawa submitted 33 sites of significance that it wished to register in the Natural Resources Plan for the Wellington Region, including, in relation to whitebaiting: Whareroa River mouth; Mangakōtukutuku (west); Waikanae (Te Rere); Waikanae River mouth; Waikanae estuary; Waimeha River mouth; Ngārara (Kawakahia wetland); and Ngārara (Totara wetland/Black Drain).

[141] I am satisfied on the evidence that Te Ātiawa is entitled to a PCR for whitebait fishing at Whareroa Stream, Waikanae River mouth, and the mouth of the Waimeha Stream.[123] This is subject to all those areas being in the takutai moana (and

[123] I note that other sites are referred to in evidence, but these are the specific locations applied for.

not excluded by the DOC Scientific Reserve), and Te Ātiawa undertaking the council mapping and checking process referred to at [65] above.

Utilising, managing and preserving tauranga waka

[142] This application is made in relation to tauranga waka located at Te Uruhi, Whareroa Pā, Whareroa coastal marine area, and Paraparaumu coastal marine area. Te Ātiawa's evidence is that waka have been maintained and launched from those sites from 1840 to today.

[143] Dr Baker refers to Whareroa Pā as an "extremely significant tauranga waka (training area) due to the excellent access from the South Island, Kāpiti Island, and further north". In addition, Whareroa coastal marine area was "historically important for tauranga waka (landing site)", with accounts of ten waka taua being drawn up at the south end of the beach, and serving in the 1800s as part of the "old coach road", being the main arterial route along the Kapiti Coast. Paraparaumu coastal marine area was also a "significant tauranga waka site", and reference is made to Te Uruhi access/Paraparaumu Boat Club as a current "launching site for Kāpiti Island".

[144] Mr Barrett similarly notes that the Whareroa coastal marine area, Paraparaumu coastal marine area, and Waikanae estuary were important historical tauranga waka sites. The Whareroa coastal marine area, Waikanae coastal marine area, and Paraparaumu coastal marine area are listed as sites of significance to Te Ātiawa for tauranga waka in the Natural Resources Plan. However, Mr Barrett notes that the Waikanae River is "less navigable by waka now".

[145] Dr Baker notes that Ngāti Toa sought agreement from Te Ātiawa when they wanted to record Te Uruhi as a historical waka launching site in the Natural Resource Plan, as they recognised that this was within Te Ātiawa's rohe. She says Ngāti Puketapu (who associate with Te Ātiawa) have rangatiratanga over Te Uruhi, and while Te Ātiawa are responsible for resource management matters (and may get advice from Ngāti Toa when needed), they defer to Ngāti Puketapu should they wish to take a lead role.

[146] There is sufficient evidence to support Te Ātiawa's application for a PCR for tauranga waka in the Whareroa coastal marine area (including Whareroa Pā), and Paraparaumu coastal marine area (including Te Uruhi).

[147] The application is granted subject to specification of the relevant locations and checking that these are within the takutai moana. This is to take place in accordance with the mapping and checking process referred to at [65] above.

Mr Tima on behalf of Te Whānau Tima and Te Mateawa

[148] Mr Tima seeks PCRs for rāhui, whakatō kai, whakatere waka, kaitiaki taio/taniwha (environmental care and protection, expressed through physical action), and tunu kai and tahu ai. In addition, he applies for PCRs in relation gathering of the following resources:

(a) wahie (firewood);

(b) wai;

(c) rākau for hānga wharau (shelter) and wero pātaki;

(d) harakeke for hīnaki (eel traps), kete (baskets), tautau, raranga (weaving), and kupenga (nets);

(e) mahi rongoā;

(f) hāngi stones;

(g) tuna rau rēkau;

(h) ika/tuna pāwhara and related; and

(i) whitebait.

Rāhui

[149] While Mr Tima's application lists rāhui as a customary practice for which a PCR is sought, this was not pursued in his closing submissions. As noted above, rāhui, without more, is not capable of being recognised as a PCR. Therefore, that application is declined.

Whakatō kai

[150] Mr Peter McBurney, the historical expert for Mr Tima, refers to Te Peina Tahipara cultivating land, dressing flax, and establishing rāhui to protect the flax. Te Peina also sold flax off the land. Pini Te Konga, of Te Mateawa, gave evidence in the Native Land Court 1881 in relation to the partition of the Ōhau No. 3 block. He explained that Te Rauparaha had given the land to his family, and they had lived at and cultivated Te Hakiri. In the mid-1930s, the historian Leslie Adkin mapped out the cultivations.

[151] Mr Tima describes gardening along the beaches and "planting species such as grasses to stop erosion". At the hearing, he clarified that this occurs below the high-water mark along Ōhau River mouth.

[152] The Attorney-General submits that it is unclear how or what gardening occurs within the takutai moana and the evidence of location is unclear. As the local authorities note, a PCR order can only apply to the takutai moana, so cannot apply above the mean high-water springs.

[153] Mr Tima refers generally to planting grasses along the Ōhau River mouth. He will need to provide more detail about the type of grasses planted and the specific location of the planting (noting that it must be below the mean high-water springs). Subject to that further specification, the PCR for planting specified species, will be granted in relation to the takutai moana within Mr Tima's area of CMT. This will require the completion of the mapping and checking process set out at [65].

Whakatere waka

[154] Mr Tima refers only generally to "whakatere waka" (launching, voyaging, and landing of waka). There is no specific evidence given in relation to whakatere waka that could support the granting of a PCR in relation to this activity.

Gathering firewood

[155] Mr Tima says that firewood used to be gathered from Kuku Beach to fuel their coal range, and is still gathered today.

[156] The Attorney-General notes in relation to the gathering of firewood that although evidence was adduced, it is unclear whether this is gathered from within the takutai moana, given the natural preference for dry wood. However, I am able to infer that at least some of the wood is likely gathered on the takutai moana and dried out.

[157] I grant Mr Tima a PCR for gathering firewood on Kuku Beach (below the mean high-water springs), subject to him completing the council mapping and checking process as set out above at [65], including in respect of location.

Gathering stones and shells

[158] McBurney refers to Mr Tima's evidence of finding shell middens, which act as a record of the species harvested and consumed by local Māori over many generations. There were also middens from an old settlement pertaining (in part) to Te Mateawa including "broken rock … from the hangi stones from the fires". Mr Tima said that when he was a child, he found "beautiful taonga, all coloured kōhatu, stones, polished, smooth as smooth can be". He and his cousins gathered them up, but they had to return them as they were tapu. It appears those may have been from outside Mr Tima's CMT area.

[159] There is sufficient evidence to support a PCR for gathering small and medium stones and shells for hāngī and non-commercial purposes on Kuku Beach, which is granted subject to the completion of the mapping and checking process as set out above at [65], including the size specification of the stones.

Whitebaiting

[160] Mr Tima produced a photo of his mother whitebaiting at the mouth of the Ōhau River in 1970, as well as a photo of his father. He explains that each whānau has their own "possie" along the river, and have fished in the same spots "for generations". He says "[i]t is a tikanga through which many whānaunga keep in touch with the land and beach by returning each year during the whitebait season", and that it brings whānau and hapū together. Mr Tima notes that they have done whitebait surveys at Tahamata and found a large breeding area there, as well as many other breeding areas, including on the Manawatū River. He concludes by noting that their whānau and hapū "catch whitebait in the same way that [their] ancestors did". McBurney notes that Mr Tima knows the Kuku Beach coast intimately, and that he fishes the river for whitebait in season.

[161] I am satisfied that sufficient evidence of activities relating to whitebaiting in the Kuku Beach/Ōhau River area has been adduced to support the grant of a PCR. A PCR is awarded, subject to the provision of specific locations within the takutai moana through the council mapping and checking process as set out above at [65].

Other resource gathering

[162] The councils suggest that it would be useful for Mr Tima to confirm a translation of the relevant activities as well as the specific location of the activity.

[163] The Attorney-General says that except for firewood gathering and whitebaiting, there is "little or no evidence" in relation to the other activities applied for. The Attorney-General comments that the scope of the activity is unclear in relation to wai and mahi rongoā. Similarly, for tuna raurēkau and ika/tuna pāwhara, the scope of the activities are unclear. In any event, fishing is excluded under ss 51(2)(a) and 51(2)(c)(ii) (except whitebait).

[164] In addition, there is insufficient evidence in relation to wai, rākau, and mahi rongoā. For harakeke, there was some historical evidence of use, but no evidence of current use.

[165] Thus, there is insufficient evidence in relation to the balance of the resource gathering claims to support a PCR.

Kaitiaki taiao/taniwha

[166] McBurney refers to kaitiakitanga as a term encapsulating customary practices with respect to the natural environment.

[167] The recognition of taniwha can be a manifestation of kaitiakitanga. McBurney refers to two girls who drowned in the Ōhau River in 1880, which Mr Tima said was an incident involving a taniwha and a breach of tapu. He also referred to another taniwha named Mukukai, which takes the form of a log and travels from the Wairarapa to the Ōhau River.

[168] However, s 51(2)(e) prevents a PCR from being recognised over an activity that is based on a spiritual or cultural association, unless that association is manifested by the relevant group in a physical activity or use related to a natural or physical resource. I do not consider that the PCR sought here has a qualifying manifestation. Accordingly, no PCR is granted under this head.

Tunu kai and tahu ahi

[169] As the local authorities note, this appears to include the lighting of cooking fires, a practice which Mr Tima only briefly mentions. There is insufficient evidence to grant a PCR for these activities.

General comment

[170] Of course, Mr Tima's whānau/hapū has been awarded CMT over the awa in which the PCRs are sought. Therefore, in practical terms the lack of PCRs in relation to specific activities is unlikely to make a material difference.

Muaūpoko

[171] In its original application for CMT and PCR orders dated 30 March 2017, Muaūpoko sought orders for various PCRs over the application area. An amended

application was filed on 24 October 2024, which indicated that Muaūpoko sought to specify in more detail the orders sought, as follows:

> **With respect to whitebait —**
>
> (a) Muaūpoko has the right, in accordance with tikanga, to gather, harvest and remove whitebait at the Hōkio, Ōhau, Manawatū Rivers, to the extent those rivers are within the common marine and coastal area that lies within the claimed area;
>
> **With respect to aquatic plants —**
>
> (b) Muaūpoko has the right, in accordance with tikanga, to gather, harvest and remove aquatic plants within the common marine and coastal area that lies within the claimed area;
>
> **With respect to navigation, passage and the landing of waka —**
>
> (c) Muaūpoko has the right, in accordance with tikanga, to land vessels within the common marine and coastal area that lies within the claimed area and to undertake sea passage to the islands and fishing grounds throughout the claimed area;
>
> **With respect to rituals such as karakia and karanga —**
>
> (d) Muaūpoko has the right, in accordance with tikanga, to undertake rituals such as karakia and karanga within the common marine and coastal area that lies within the claimed area;
>
> **With respect to exercise of kaitiakitanga —**
>
> (e) Muaūpoko has the right, in accordance with tikanga, to exercise kaitiakitanga within the common marine and coastal area that lies within the claimed area, and to be recognised as a kaitiaki group within that area;
>
> **With respect to the gathering of sand, stones, shingle and detritus —**
>
> (f) Muaūpoko has the right, in accordance with tikanga, to collect and remove sand, stones, shingle, and detritus from within the common marine and coastal area that lies within the claimed area. The natural materials subject to this right are to be used in the carrying out of functions to sustain the way of life of Muaūpoko.

[172] The amended application does not seek recognition for a number of activities which had been listed in the original application and for which PCRs would not be available. These include, for instance, fishing, the taking of seabirds, and designation of wāhi tapu areas. Nevertheless, the activities specified in the 2024 application fall within the general description of the activities set out in the 2017 application.

[173] Mr Bennion, for Muaūpoko, handed up a table of evidence supporting the PCRs claimed by Muaūpoko. Many of the listed PCR claims relate to the Horowhenua area. However, some relate to places outside the area in which Muaūpoko met the test for CMT. The Muaūpoko PCR applications are opposed by members of the ART Confederation.

Submissions of the ART Confederation on Muaūpoko PCR applications

[174] Ngāti Raukawa say that Muaūpoko's PCR applications fail to meet the threshold under s 51, and they have provided insufficient evidence of exercising the relevant rights beyond their CMT area.[124] They say Muaūpoko did not exercise any rights in relation to this broader area outside of the Horowhenua after 1830. Furthermore, if Muaūpoko did continue to exercise rights after 1840, they did not do so "in accordance with tikanga", as required by s 51(1)(b). Ngāti Toa support Ngāti Raukawa's position on these matters.

[175] Te Ātiawa generally submit that Muaūpoko's claimed PCRs fail to meet the threshold under s 51, in that:

(a) Muaūpoko has failed to provide evidence of wāhi tapu or rāhui. Although the Court can infer the location of tikanga practices,[125] that should not save an applicant where no evidence is filed.

(b) There is insufficient evidence of Muaūpoko continuing to exercise those rights within the Te Ātiawa application area, as prior to 1840 including after the battle of Waiorua, they retreated to Horowhenua.

(c) Even if Muaūpoko continued to exercise activities after 1840, they did not do so "in accordance with tikanga", as required by s 51(1)(b), because Waiorua extinguished their customary rights in the area. Further, there is no evidence of agreement with Te Ātiawa about taking materials or undertaking other activities in the area.

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124 They note that whitebaiting was the only PCR which was not sought over the entire hearing area.
125 See *Re Edwards* (HC), above n 38, at [505].

[176] Te Ātiawa also note that in *Re Edwards*, PCRs were granted by the High Court to an applicant group in an area where CMT had been granted to another applicant group. However, they distinguished this from the present case on the basis that in *Re Edwards* there were strong kin-based relationships between the groups,[126] whereas here there is no close whakapapa association that forms the basis for exercising the claimed PCRs. Furthermore, they say that the commonality of whakapapa, which is the manifestation under tikanga of the requirement for "relevant connection", has not been emphasised by either group.

[177] However, the point that Court of Appeal was making was that the present applicant group for a PCR must have a relevant connection to those exercising that customary right continuously since 1840. A PCR applicant group must have that continuity of connection in relation to the relevant activity. That does not mean the PCR applicant is required to have a whakapapa connection to the CMT holder in the area. Customary rights held within a "matrix" of intersecting rights in an area are not necessarily defined by whanaungatanga, although in many cases they will be.[127] What is required is a context-specific analysis to ascertain what groups were exercising customary rights, within what has been referred to as a "crazy patchwork of use-rights".[128]

General comments on Muaūpoko's application

[178] I have referred specifically to the evidence or inferences I have made concerning Muaūpoko's customary rights. I accept that there was a disruption to the exercise of many customary rights in the years following the turbulent events of the 1820s and 1830s, however the evidence suggests at least some of their customary rights were reasserted after that date.

[179] The evidence indicated that while Muaūpoko retreated to their heartland around Punahau and the Hōkio Stream following the battles of the 1820s and 1830s, they were moving about the hearing area again by 1839.[129] While I found that they

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126 *Re Edwards* (CA), above n 18, at [340].
127 *Re Edwards* (SC No 2), above n 20, at [316].
128 At [201].
129 CMT judgment, above n 5, at [1091].

had met the test for CMT between the Hōkio Stream and Ngā Manu (at the north-western corner of the Waitārere Forest), that determination relates to a territorial right, and does not delineate the geographical limits of customary usage rights. Muaūpoko's entitlement to customary rights of the nature contemplated by PCRs may extend to beyond the CMT area, if the evidence supports that. The retained customary rights, manifested in customary activities and uses, have evolved over time but nevertheless continue to be practiced today.

[180] I am also satisfied that the Muaūpoko witnesses who gave evidence supporting the PCR applications have continued to practice tikanga and observe kawa in relation to the relevant customary activities for which PCRs are sought.

Whitebaiting

[181] A whitebaiting PCR is sought in relation to the Hōkio, Ōhau, and Manawatū rivers.

[182] Mr David Armstrong and Mr Bruce Stirling, historical experts called for Muaūpoko, refer to the comments of a surveyor in around 1901 (who had been despatched to lay off a township at Hōkio), noting that the lower Hōkio Stream was an area valued by Muaūpoko for its access to whitebait. They also refer to the importance of Lake Horowhenua for whitebaiting.

[183] In more recent times, legislation has vested the bed of the Hōkio Stream and Punahau (Lake Horowhenua) in trustees on behalf of Muaūpoko.[130] This protects their fishing rights. Muaūpoko can ask others using the lake or the stream to leave if they are not beneficial owners.

[184] Ms Sillena McGregor remembers her koro whitebaiting at the Hōkio "before the mouth". Mr Bruce Murray, Mr Dean Wilson and Ms Sandra Williams all refer to catching whitebait from the Hōkio Stream. Mr Wilson indicated that whitebaiting takes place over the entire river mouth and beyond the Hōkio Stream. Mr Wiremu-Matakātea also said he would whitebait at the mouth of the Hōkio Stream

130 Reserves and Other Lands Disposal Act 1956, s 18.

"when they would run upstream", as well as "all along the coast at the main rivermouths". He described digging channels for the whitebait to follow into and dropping his net on the incoming tide.

[185] Mr Murray refers to catching whitebait at the Ōhau River. Evidence was also given by a number of witnesses of fishing in the Manawatū River.

[186] I am satisfied that Muaūpoko have been engaged in whitebaiting activities around the Hōkio Stream from 1840 to the present time in accordance with tikanga. This is supported by the evidence. Similarly, evidence was given in relation to whitebaiting at the Ōhau River. However, there is little evidence in relation to that activity outside those areas. It is not clear whether the activity at the Manawatū River is within the takutai moana. Nevertheless, subject to determining whether those locations are within the takutai moana (in particular in the Ōhau and Manawatū River mouths), I am satisfied that there is sufficient evidence from which I can infer that customary rights for whitebaiting exist in those areas, as well as the Hōkio Stream. That is also subject to the mapping and checking process set out at [65], which must be completed to identify the exact locations within the takutai moana to which the PCR relates.

Planting, gathering and harvesting aquatic plants

[187] Customary activities in relation to aquatic life and seaweed are excluded from recognition by way of PCRs under s 51(2). In order to grant a PCR, more specificity is required. Evidence was adduced in relation to some plants, however, apart from pīngao, the activities appear to be largely outside the takutai moana.

[188] Mr Wiremu-Matakātea notes that:

> The iwi would plant and collect pingao for their whare, between Waitarere and Ōhau beach. Iwi members would decorate their whare with the pingao, use it for tukutuku and those sorts of things. Other iwi would also come as well, over from Ngāti Kahungunu and those from Te Urewera. But the pingao disappeared when they planted pine trees along the coast…

[189] Mr Mark Moses refers to the gathering of pīngao for weaving and tukutuku panels, as well as the use of shells as tools. Mr Wilson recounts showing his children

the presence of pīngao grass on the dunes from Tangimoana to Foxton. He also notes that most of the pīngao is in front of Hōkio Beach, which links to the presence of tohemanga.

[190] Armstrong and Stirling refer to fern root gathering at Maungariki (north of the Waiwiri Stream), Te Tokitoki, Kopua, Kaihinau, Te Puke-o-te-hakiri (near Ōtaki), Puke-aruhe, Maunu-wahine, Taumata-o-te-whatui, and Ara-paepae.

[191] Reference is made to activities at Hapuakorari (Tararua), an important flax gathering area, including at "Lake Hollow". Lake Horowhenua was also a flax dressing area. Porotutakeroa is also referenced as an area for cultivation and flax dressing.

[192] Mr Russell Packer refers to use of harakeke today to wrap fish and for breaking lines for drop anchors. However, the growing and gathering of harakeke and fernroot appear to be outside the takutai moana.

[193] The evidence supports the customary planting, collection, and use of pīngao from Hōkio Beach to Waitārere Beach. A PCR for these activities is granted in that area, subject to completing the mapping and checking process as set out at [65].

Navigation, passage and the landing of waka

[194] Mr Moses describes "tauranga waka" as "a place to launch and land your canoe or your boat". He says that traditional launching sites were located near "prominent dune hills," and were also fishing stations (for instance at Te Uamairangi) which had streams, lagoons, or rivers nearby. He refers to launching boats at freshwater sites, including Hōkio, Waitārere, Wairarawa, Waiwiri, and Ōhau.

[195] Armstrong and Stirling provide extensive evidence about tauranga waka sites, including many historical sites around Lake Horowhenua. They include a 1910 photograph of the Puke-aruhe site. Other tauranga waka referred to include:[131] Tapae Miratu; Motu-kowhai; Puapua; Te Rongo-ara-pawa; Kawiu; Te Kapa;

[131] These names are reproduced as written in Armstrong and Stirling's report.

Ngurunguru; Waitui (Waituhi); Pahua; Te Mokomoko; Titirangi; Ti; Tauranga-a-Puka; Te Riri; Mangawawari; Wai-koukou; Whakatupuki; Te Hou; O-taiwa; Korupu; Te Kawe; O-tahinga; Tu-mai-te-uru; Aratangata; and Ruapua. Professor Jonathan Procter refers to the presence of waka going up and down the coast as "a given" during the period between the 1820s and 1840s. He also gives evidence of sea-going waka travelling to Kapiti, and notes that a number were found buried in dunes.

[196] More recently, Mr Moses refers to boat ramps at Raumati, Paraparaumu, and Kapiti Island. He notes the importance of having a safe way to get your boat on and off the shore, and needing to know where the currents are in order to plan your travel accordingly. He refers to a tauranga as "a place for safe anchorage", from which you can navigate to a tauranga ika (fishing ground).

[197] The Attorney-General submits that some of the detail of Muaūpoko's tauranga waka is not specific enough, and some sites may not be in the takutai moana. A general right of navigation would not be susceptible to specification required in a PCR. There is evidence of Muaūpoko navigating to fishing grounds, although they were not able to be precisely located. There is also evidence of fishing generally, as well as Mr Moses' evidence of navigating to Kapiti Island.

[198] The evidence supports the existence and continuing use of tauranga waka in the areas around the Hōkio, Waitārere, Wairarawa and Waiwiri streams, as well as Ōhau River, Raumati, and Paraparaumu. The historical evidence suggests Muaūpoko had customary rights to land and launched waka along the coast. While they retreated to and remained settled in their heartland surrounding Punahau, by 1840 the evidence suggests they were undertaking customary activities in the takutai moana more broadly. For instance, they were using waka to navigate and fish, and have continued to do so to the present day using boats. Although the exercise of these customary rights may have been in abeyance or impaired for some time, Muaūpoko were entitled to reassert their right to carry out various activities and have since maintained relevant practices.

[199] However, landing rights on Kapiti Island are now restricted, as it is a protected nature reserve, with boats prohibited from landing on the island unless authorised by

a permit. This is borne out by Ms Montgomery Nuetze's narration of her visit to the island on a DOC boat. She had to obtain a permit to visit the island.[132] Given that it is no longer possible to independently land boats on the island without permission, it would not be appropriate to grant a PCR for that activity, as that customary right can no longer be exercised.

[200] A PCR for the use of tauranga waka is granted in respect of the locations listed above at [198], subject to the completion of the council mapping and checking process as set out at [65], to establish the precise locations and ensure they are within the takutai moana.

[201] Customary fishing rights and permits are not able to be the subject of PCRs. However, the Court of Appeal has indicated a generous attitude toward navigation PCRs, including the inference of continued navigation based on general evidence of fishing by boat in the present day.[133] Muaūpoko's evidence demonstrated that their waka went to sea for fishing and to visit the South Island. On that basis, the continued evidence of Muaūpoko fishing by boat in the area supports the recognition of customary navigation by a PCR in the moana within their application area extending from the tauranga waka listed above. While this crosses into the CMT areas of other applicants, it is only a use right, and does not carry with it the rights and obligations attached to territorial rights. As I noted earlier, the overlapping of a PCR with CMT and other PCRs is not disqualifying.

[202] While, as noted above, a PCR for landing waka at Kapiti Island cannot be granted, there is evidence of visits to the island to collect stones. There appears no reason why that activity cannot be the basis of a PCR, and an order as such is granted below.

[203] None of the applicants in this proceeding have been awarded CMT over Kapiti Island. This is being sought by Ngāti Toa in its negotiations with the Crown.[134] Ms Montgomery-Nuetze agreed that when her group visited the island they were

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132 CMT judgment, above n 5, at [422].

133 At [347].

134 Ngāti Toa opposed the claim by Te Ātiawa for CMT in relation to Kapiti Island. Ngāti Toa's claim to the island is outlined in the CMT judgment, above n 5, at [245]–[299].

greeted by Ngāti Toa, but she asserts that it was Muaūpoko's customary rights that allowed them to visit and collect stones. It was not contested that Muaūpoko have an historical and ancestral connection with the island. While Muaūpoko's overlapping and intersecting customary rights may not necessarily be recognised by mana whenua, they were nevertheless welcomed by Ngāti Toa when carrying out their customary activities. There is no reason why the activity associated with the visit should not be protected by a PCR, despite Ngāti Toa's opposition.[135] However, tikanga dictates the relationship between Ngāti Toa and Muaūpoko. The parties will need to consider how that is reflected in the grant of the PCR. Again, this will be subject to the description and mapping requirements as set out at [65] above.

[204] In addition, the Attorney-General points out that ss 26 and 27 of the Takutai Moana Act protect public rights of access and navigation, therefore it is not clear that a PCR order is required to protect a general right of navigation and passage in the application area. It does appear to be the case that PCRs for navigation add little if anything to those general rights. Nevertheless, they are based on customary rights and there is no reason why they should not be recognised by a PCR.

Undertaking rituals such as karakia and karanga

[205] Evidence was given of karakia and waiata being recited and sung in various places. For instance, Mr Packer describes saying karakia while fishing off the coast of Levin. Mr Moses refers to saying karakia when going to and from the beach (for fishing, collecting, and diving). Mr Wilson also refers to saying karakia when looking out to sea. In addition, he describes going to the ocean "to whakanoa", particularly at Wharekohu on the southern side of Kapiti Island. Mr Timothy Tukapua notes that "when gathering kaimoana we would do karakia and give the first one back, that was what we were taught and I still do that today".

[206] Mr Moses and Ms Montgomery-Nuetze also refer to waiata about tūpuna, in particular one composed when Wakanui drowned in Te Moana o Raukawakawa. Muaūpoko developed tikanga following such events to try to prevent drowning.

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135 Analogy may be drawn with the fact that the Supreme Court has confirmed that CMT may be granted jointly to groups even where one does not recognise the rights of the other: *Re Edwards* (SC No 2), above n 20, at [141]–[143].

Ms Montgomery-Nuetze also refers to "He oriori mō Tūteremoana", a waiata that is well-known by iwi along the coast.

[207] Professor Procter refers to Muaūpoko naming places and sites of significance from Manawatū to Pukerua Bay.

[208] Mr Wilson also refers to rāhui being placed on the coast, and specifically at Waitārere and the mouth of the Manawatū "when bodies have turned up". In addition, he notes that a rāhui was placed when a whanaunga fisherman passed away on the Ōhau River.

[209] As stated above, any spiritual association must be accompanied an activity and location to enable it to be protected as a PCR.[136] However, as the Attorney-General notes, there is little evidence of where karakia occurs or its specific relationship to a natural or physical resource.

[210] Although these karakia, rituals, and waiata relate to fishing or preventing drowning at sea, those activities per se will not attract a PCR. Karanga, karakia, waiata and rituals, are spiritual or cultural associations which fall within s 51(2)(e) of the Takutai Moana Act. As noted above, a qualifying manifestation might be, for instance, members of the relevant group going to the takutai moana to perform karakia as part of a group activity.[137]

[211] Muaūpoko have not pointed to a physical activity or use related to these spiritual activities, as required under s 51(2)(e), nor provided specific location details of where these activities take place to enable their recognition by PCR. Therefore, no PCRs are able to be granted under this head.

Kaitiakitanga

[212] Mr Moses generally comments in relation to the meaning of kaitiaki that:

> The maintenance and exercise of rights as kaitiaki may come in various forms, and the practices which have also evolved over time. Iwi and hapū with

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136 Takutai Moana Act, s 51(2)(e).
137 *Re Edwards* (HC), above n 38, at [381].

> overlapping interests may not recognise or acknowledge each other's interests in an area, but this does not mean they do not exist.
>
> …
>
> Recognition, acknowledgement, and respect go both ways. You cannot trust someone to adhere to tikanga if they do not recognise your mana and role as kaitiaki. It is difficult to have a tikanga based discussion with people who only see themselves as being "tika".

[213] Muaūpoko make a number of references to acts of kaitiakitanga and ongoing efforts in that regard, for instance:

(a) Mr Murray refers to burying a whale that washed up on Hōkio Beach, and treating it as a taonga. Ms Montgomery-Nuetze noted that the baleen from the whale was recovered, and wānanga were presently taking place regarding appropriate use of the material.

(b) Ms Williams notes that in 2016, the Lake Horowhenua trustees put a fish pass in at the Hōkio Stream (around both sides of a weir installed by the Crown), and have engaged in various efforts to clean up the lake.

(c) Ms Williams has been a "kaitiaki" under the permit system since 2017. This allows kaitiakitanga to be exercised by managing permits for customary fishing used for tangi from Rangitīkei to Turakirae. The area includes Kapiti and Mana islands.

(d) Mr Wilson refers to reseeding tohemanga and removing sea spurge to prevent damage to the dunes along the coastline.

[214] The Attorney-General notes the requirement for manifestation of a spiritual or cultural association in a physical activity under s 51(2)(e). She also refers to the recognition of kaitiakitanga under s 47 of the Takutai Moana Act through protection of a general right to participate in conservation processes in the takutai moana. She notes the exclusion under s 51(2)(a) for activities regulated under the Fisheries Act. The Attorney-General further notes that the applicant has not specified which activities fall within "exercising kaitiakitanga", nor given examples of physical activities as a manifestation of kaitiakitanga.

[215] Kaitiakitanga falls within s 51(2)(e) of the Takutai Moana Act, and therefore must have some physical manifestation. Qualifying manifestations of kaitiakitanga include the planting of pīngao within an area[138]. Otherwise, kaitiakitanga in general, which was described by the Supreme Court as the corollary of mana,[139] is a spiritual or cultural association.

[216] In relation to the specific PCRs listed under the kaitiakitanga heading the following issues arise:

(a) Burying whales is excluded from recognition as a PCR.

(b) Evidence of granting customary fishing permits relate to the catching of fish for which a PCR cannot be granted.

(c) The reseeding of tohemanga on the dunes. Tohemanga are shellfish so are excluded from being recognised through a PCR. In any event, the dunes are outside the takutai moana area.

(d) Rāhui cannot be recognised through a PCR.[140]

[217] Ngāti Raukawa also express particular concern about the general PCR claimed for kaitiakitanga, in light of the pūkenga's comments that it is "a concept that is an incident of mana".[141] They say that while Muaūpoko have historical connections, they do not have mana whenua in respect of a vast majority of the application area. It would be "deeply insulting" to grant Muaūpoko a "kaitiakitanga" PCR across the rohe moana of Ngāti Raukawa, in areas which have been the primary responsibility of other hapū that have been living at those places for 200 years.

[218] The CMT determination recognised that Muaūpoko is entitled to exercise kaitiakitanga on a shared basis with the other CMT holders in that area. However, kaitiakitanga, without evidence of a specified activity and location, cannot be the

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138 *Re Edwards* (HC), above n 38, at [380].
139 *Re Edwards* (SC No 1), above n 21, at [141].
140 *Re Edwards* (CA), above n 18, at [348].
141 Pūkenga report, above n 81, at [191].

subject of a PCR. As a corollary of mana, kaitiakitanga generally suggests a holistic relationship with the takutai moana which is more consistent with recognition through CMT, rather than as a "collection of unconnected activities or uses".[142]

[219] In those circumstances, a PCR for kaitiakitanga generally across the application area cannot be granted.

Collecting and removing sand, stones, shingle, and detritus (including driftwood, shells and feathers)

[220] Ms Montgomery-Nuetze, relevantly to this application, is an artist, designer, and weaver. She gave evidence as a ringatoi practitioner, or cultural practitioner. She described going to Kapiti Island to obtain stones for ritual purposes related to the whare tīpuna for which she was involved in doing the mahi toi (whakairo, tukutuku, and kōwhaiwhai).[143] She gave evidence, as did others, about visiting the caves on the island in which Muaūpoko ancestors are buried. She referred to collecting kōhatu, onewa, and pakohe stone from "the bay" at Kapiti Island for the whare tīpuna.

[221] The burial caves at Wharekōhu have been identified in the evidence as wāhi tapu. While the recognition of a wāhi tapu site cannot be the subject of a PCR, nor is this sought, Ms Montgomery-Nuetze's group's visit and the collection of stones on Kapiti Island gives rise to a manifestation of a customary right based on the Muaūpoko ancestral links to the island. This is an identifiable activity. However, it is not clear that the stones were collected within the takutai moana, given Ms Montgomery-Nuetze's reference to "the bay".

[222] Ms Williams and Mr Wilson refer to collecting pumice (for rubbing heels and as floats). Mr Moses also refers to using pumice as a pōito (float for nets) and as a kārewa (float for fishing line), noting that it could be collected from Waikanae, Paraparaumu, and possibly up to Ōtaki. In his experience, pumice had been found from Ōtaki to Pukerua Bay (which lies south of the hearing area). Mr Packer also refers to pumice used as buoys and floats when fishing from Tangimoana to the Ōtaki River mouth. I am satisfied this collection is a commonplace activity which I

142 *Re Edwards* (SC No 1), above n 21, at [140].
143 Carving, woven panels, and painted patterns.

am able to infer dates back to 1840, and the evidence suggests it continues until the present day. Therefore, I grant Muaūpoko a PCR for the collection of pumice from Waikanae, Paraparaumu, and from Ōtaki to Whareroa (the southern extent of the hearing area), subject to it completing the council mapping and checking process set out at [65].

[223] Mr Moses describes mixing sand with soil, gravel, and charcoal to create good soil for growing vegetables. Professor Procter refers to sand as a useful resource, particularly for building projects, and notes that "sand is everywhere in the Horowhenua". He also refers to collecting gravel from Ōtaki to use as a building material, and collecting coal washed up on the beach between Hōkio and Ōhau.

[224] The Attorney-General notes that while there is no specific evidence as to the location of these activities, it can be inferred that the activities occur in various vicinities. Muaūpoko are entitled to a PCR for the collection of sand (from the Horowhenua takutai moana), gravel (from Ōtaki) and washed-up coal (over the beach between Hōkio and Ōhau), subject the completion of the mapping and checking process to identify the precise locations of these activities on the takutai moana, as set out at [65]. While there is no specific evidence of the sand, gravel and washed-up coal collection being carried out as at 1840, it is a commonplace activity and unlikely to have been the subject of much commentary. There is no doubt on the evidence before me that it occurred. In view of that, and the evidence of intergenerational use of the materials, I am prepared to infer that it was collected in the specified areas of the takutai moana.

[225] Evidence was also given concerning the gathering of driftwood. Ms Williams refers to taking driftwood to use for the fireplace, fires on the beach, and fishhooks. Mr Wilson refers to the use of driftwood for heating, but said it was not good for cooking. Mr Moses says driftwood is "everywhere", and it is about "having the eye to pick what kind of wood to use for what", which comes from experience. Ms Montgomery-Nuetze refers to using driftwood which I take to relate to Tangimoana, Waikanae, Ōtaki and Hōkio for breaking up garden beds.

[226] Professor Procter refers to using driftwood from the Manawatū and Ōhau rivers for building, fortifications, firewood, and carving waka and pou. Mr Marakopa Wiremu-Matakātea says he gets driftwood off the beach, mainly for fires, now primarily pine. Mr Packer describes making a traditional dredge and kite using materials from the takutai moana. He refers to using driftwood for the dredge, flax for the netting, flax kites for anchors (filled with sand and rocks), and pumice for the buoys.

[227] In view of the evidence of the wide areas over which driftwood is collected, I grant Muaūpoko a PCR for collecting driftwood from the Manawatū River, Tangimoana, Waikanae, Ōtaki, Hōkio, Ōhau River, and Ōtaki River. That is subject to completion of the council mapping and checking process set out at [65], including confirmation that the relevant areas are within the takutai moana.

[228] Ms Williams refers to the use of pipi shells (as a knife) and toheroa shells (to scrape flax), which she collected from the Manawatū River and down to Waiwiri. Mr Moses refers to use of shells as a tool to cut and strip flax to make muka, as well as for clothing, aho, and nets. Ms Montgomery-Nuetze says she uses shells (like pipi and tuatua) from Tangimoana, Waikanae, Ōtaki, Hōkio for gathering, harvesting, and holding pigments, as well as for making jewellery.

[229] A PCR is granted for shell collecting from the Manawatū River down to Waiwiri, as well as at Tangimoana, Waikanae, Ōtaki, and Hōkio, subject to the completion of the checking and mapping process set out at [65] above.

[230] Ms Montgomery-Nuetze is skilled in the use of natural materials to create intergenerational taonga. She gathers natural materials according to tikanga, and notes the importance of understanding the whakapapa and mauri of the materials in her practice.

[231] Ms Montgomery-Nuetze refers to working with natural materials such as stone, bone, pounamu, fish/tuna skin, natural fibres, clay/earth pigments, shells, and feathers gathered from the takutai moana. She notes that toi Māori is "intrinsically entwined with tikanga, aronga and whakapapa". She explains that this practice has been

interrupted through legislation controlling how materials are to be harvested and collected. Ms Montgomery-Nuetze emphasises that Muaūpoko know their whakapapa to their rohe, including "[w]here and when it is tika to gather resources and where and when it is not". She looks largely within her own rohe, gathering materials from Tangimoana, Waikanae, Ōtaki, and Hōkio.

[232] Ms Montgomery-Nuetze also refers to old baleen floaters from the Kapiti region. She describes collecting kōhatu, onewa, and pakohe stone deposits from the bay near Wharekōhu at Kapiti Island. She uses kōhatu for toi Māori, hāngī stones, and māra (gardening), and collects them from Waikanae, Ōtaki, Tangimoana, and Hōkio. She gathers and processes earth pigments from Horowhenua to use as paint, and gave an example of a green pigment used to paint a huia.

[233] No PCRs may be granted in relation to collecting seaweed, materials from fish/tuna skin,[144] and baleen from whales.[145] Similarly, detritus related to wildlife such as feathers, skin/leather, natural fibres and bones are excluded under s 51(2)(d) of the Act.[146] Additionally, no PCR is available for the collection of pounamu, which was mentioned but is not found within the application area.

[234] However, PCRs are granted for the collection of detritus and kōhatu, excluding bones, skin/leather, and feathers, natural animal fibres, in the takutai moana in Waikanae, Ōtaki, Tangimoana and Hōkio. A PCR is also granted for collection of clay/earth pigments in the takutai moana adjacent to the Horowhenua. In addition, PCRs are granted for collecting kōhatu, onewa and pakohe stone deposits from Wharekohu (near the Muaūpoko urupā) on Kapiti Island.

[235] The PCRs indicated in this section are all subject to the completion of the council checking and mapping process set out at [65] above, including the determination of any outstanding issues by the Court.

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144 Excluded under Takutai Moana Act, ss 51(2)(a) and (c).

145 Marine Mammals Protection Act 1978, s 2, definition of "marine mammal" includes "a whale" and "any part of any marine mammal" therefore it includes "baleen".

146 Wildlife Act 1953, s 2 definition of "wildlife": "means any animal that is living in a wild state; and includes any such animal or egg or offspring of any such animal held or hatched or born in captivity…"

Ngāti Apa

Non-commercial seeding and harvesting of shellfish

[236] Mr Shenton refers to whitebaiting and fishing. Mr Francis Huwyler refers to his consistent support of Ngāti Apa's non-commercial fishing rights and shellfish gathering along the coast. Mr Huwyler refers to a current project seeking to re-seed toheroa on the coastline.

[237] The Attorney-General points out that Ngāti Apa has not identified any specific evidence of undertaking these activities. In addition, PCRs are not available in relation to non-commercial fishing and shellfish generally.[147] Therefore no PCRs are available under this head.

Activities related to spiritual practices

[238] Mr Shenton confirmed that Ngāti Apa has not imposed a rāhui within the hearing area south of the Rangitīkei River. In any event, PCRs are not available in respect of rāhui generally.[148]

Planting and cultivating spinifex and pīngao

[239] Mr Shenton gave evidence of his planting and cultivating spinifex and pīngao occurring along the coastline from Turakina to Rangitīkei, including in the Santoft Forest sand dunes (which is outside the application area). He confirmed that the planting did not go right down to the bank of the Rangitīkei River, nor to the south of the Rangitīkei.

[240] The evidence is that the planting of spinifex and pīngao occurs outside the application area and therefore I am unable to grant a PCR for these activities.

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147 Takutai Moana Act, s 51(2)(a), (c)(i) and (c)(ii).
148 Section 51(2)(e).

Collecting whale remains

[241] A whale is a marine mammal. No PCR can be granted where the activity relates to a marine mammal, under the s 51(2)(d)(ii) exclusion.

David Morgan Whānau

[242] Margaret Morgan-Allen applied for orders recognising the PCRs of the David Morgan Whānau (the Whānau) on 31 March 2017. As the Whānau did not apply for CMT, their application was not discussed in the previous judgment.

[243] The applicant group is described as follows:

> The David Morgan Whanau whakapapa to Te Paea, Rangiuira, Matiria, and David Morgan. Rangiuira was born on the land attached to that coastal area, Margaret Morgan-Allen was appointed to make this application for and on behalf of the David Morgan Whanau on 20th August 2016.

[244] The application area is described as the common marine and coastal area that is bounded:[149]

> (a) on the landward side by the line of mean high-water springs;
>
> (b) on the seaward side by the outer limits of the territorial sea;
>
> (c) on the North ward side by a line that extends from the coast abutting Hokio Stream to the outer limits of the territorial sea; and
>
> (d) on the South ward side by a line that extends from the coast abutting Ohau River to the outer limits of the territorial sea.

[245] The PCRs sought to be recognised are listed in the application as follows:

> (a) non-commercial fishing — utilising nets, hinaki and hand-lines to catch kuaka (snipe), kanae (mullet), kahawai, araara (trevally), patiki (flounder), mackeral, terakihi, tamure (snapper), whitebait, eels, mango (gummy sharks), sand sharks and other fish;

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[149] A further memorandum was filed on 18 April 2018 by Mr McGhie, counsel for the applicant at that stage, annexing a topographical map with "application boundaries marked". However, the topographical map boundaries marked do not align with the description of the boundaries in the original application. In particular, the map draws a line showing the seaward boundary at about *500 m* offshore and indicates that the lateral boundaries are the *south bank* of the Ōhau River to the *north bank* of the Hōkio Stream. The Attorney-General used the description in the original application for the purposes of the consolidated application map showing the overlapping High Court applications.

(b) non-commercial harvesting of shellfish (including pipi, cockles, karahu, toheroa, tuatua, tuangi);

(c) activities related to spiritual practices (such as rahui);

(d) planting and cultivating plant species in CMCA wet margins (such as flax, tikouka, pingao);

(e) gathering edible and aquatic plants;

(f) collecting driftwood and other natural resources for non-commercial purposes;

(g) temporary camp-sites for ceremonial activities in the CMCA; [and]

(h) waka launching.

[246] The grounds in support are set out as follows:

(a) David Morgan Whanau being a coastal group has relied heavily on eel, flat fish, pipi, toheroa, tuatua, crabs, whitebait and wetland food stocks foraged by whānau in the estuaries and coastal margins; and

(b) Whanau fishermen sought the deep water fish terakihi leather jacket and john dory that were not available around the inner shoreline; and

(c) David Morgan Whanau also undertakes the following activities in the common marine and coastal area: such as rongoā collecting, bird snaring, transport, transfer of knowledge of hapu marine culture, trade, communication, seasonal kaimoana exchange, access to gardens on land, bird snaring, tangihana, social interaction, manaakitanga and ope mara; [and]

(d) David Morgan Whanau has undertaken these activities listed above since 1827 and continues to undertake these activities in the application area, albeit in some instances using modern equipment, and in accordance with tikanga.

[247] The application indicated that the Whānau would provide more information once funding for research and legal representation was secured. The address for service set out in the application has been used in these proceedings. Unfortunately, the applicant has taken no steps since filing the application and the affidavit.[150]

[248] Nevertheless, I consider the material I do have, but note that it has not been tested in the hearing. Dennis Raymond Morgan gave an affidavit in support of the

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[150] The last step taken in this matter was the filing of a memorandum of counsel by Mr Beaumont, dated 24 May 2023. That stated that the Whānau was engaging in hearing planning, pūkenga nominations and preparing evidence which indicated they would be participating in Stage 1(a) of the hearing. Nothing further has been heard.

application dated 1 April 2017. He is the brother of Margaret Morgan-Allen and confirmed the application. Mr Morgan said he lived in Levin when he was young and his father took all the whānau to the beach between Hōkio and Waiwiri Stream to gather pipi, toheroa, and patiki (flounder) by netting in the waves. He said his father often spoke of his brothers who had gone to war, and Mr Morgan understood that his father's whānau had visited the beach area since they were young. Mr Morgan said despite initially moving to Ōtaki, he returned to the beach to fish by surf casting or sending out a long line with a kontiki to catch mango, other types of shark, tamure, kahawai, araara, and other fish.

[249] Mr Morgan said he later moved away but often visited the area to see family and the older people who lived there. When he returned to visit his brother, he made a habit of going out to the beach to fish. He said they also fished in the deepwater using a small 16-foot boat where they caught more shark, terakihi, leather jacket and John Dory but otherwise caught similar fish in shallower waters. He also caught whitebait in the Hōkio Stream (where his uncle lived), and eels from the Ōhau River, streams and channels which flowed into it.

[250] The pūkenga report refers to Mr Morgan, highlighting the tikanga regarding fishing, noting for instance that his whānau always threw back the first fish as it was understood to be an offering to the gods. The pūkenga also refer to Mr Morgan saying that his whānau had always had a close connection with the coast in the area of the application. They thought they had rights to that area because of the history and connection to tūpuna who had lived in the area. They considered they had mana whenua in that region, and exercised customary rights such as gathering food (including between Hōkio and the Waiwiri Stream) and launching waka.[151]

[251] The applicants have not participated in the hearing. While the material filed in relation to the application supports the Whānau using the beach and Mr Morgan's connection through whānau to the application area, the applicant has not provided the Court with evidence supporting the claims to satisfy the statutory tests.

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[151] Pūkenga report, above n 81, at [96] and [266].

[252] Accordingly, the application under s 98 of the Takutai Moana Act by Ms Morgan-Allen on behalf of David Morgan Whānau is declined.

Conclusion

[253] The evidence supports the grant of PCRs in relation to the applications and activities listed below. However, before PCRs are granted the locations and details in some cases need to be identified with further specificity. Due to imprecision in many of the locations of the activities, resource gathering, further mapping and checking must take place before final orders are made. In some cases, there may be an issue as to whether the activity is in fact in the takutai moana. If not, a PCR cannot issue.

[254] In addition, in relation to kōhatu (stones), some indication of dimensions is required in relation to the PCRs which will recognise their collection. Therefore, draft conditions in consultation with the relevant local authority should be prepared for inclusion in the final orders. I will leave the parties to consult on a timetable for these matters to be further considered.

PCR orders

[255] The following PCRs are supported by the evidence subject to the comments above:

[256] Ngāti Raukawa:

(a) Gathering, harvesting and removing whitebait at river mouths across the application area, particularly: Mangaone Stream; Ōtaki River; Waitohu Stream; Waikawa River; Waiwiri Stream; Hōkio Stream; Manawatū River; Kaikokopu Stream; Rangitīkei River; Mangapouri Stream; Ōhau River; Blind Creek (Ōhau tributary); Te Hakari (Ōhau tributary); and Kuku Stream (Ōhau tributary) (being the locations sought in Raukawa's closing submissions).

(b) Planting and gathering pīngao at Waitārere Beach; Foxton Beach; Waiwiri River mouth; Hōkio (up to Pukepuke); Himatangi Beach; Otāki Beach; and Wairarawa Stream south.

(c) Planting and cultivating harakeke at Ōtaki Beach and the Manawatū River.

(d) Collecting hāngī stones at Waitārere Beach.

(e) Collecting driftwood within the application area.

(f) Collecting rongoā materials and carrying out wai ora activities at Hōkio Beach and the Rangitīkei River (including the river mouth).

(g) Using, managing, preserving and developing tauranga waka at: Foxton Beach; Te Papa Ngāio Pā (south bank of the Manawatū River mouth); Puru Rarauhe (Manawatū River mouth); Kuititanga Pā (Waikanae River mouth); Te Wī (Ōhau beach); Rangitīkei River mouth; Himatangi; Ōhau River mouth; and Waikawa Stream mouth.

[257] Te Ātiawa:

(a) Planting and cultivating harakeke at the Ngārara Stream (Kawakahia) and the Waikanae River (excluding the Waikanae Scientific Reserve).

(b) Gathering kōhatu used as mauri stones from Paraparaumu Beach.

(c) Collecting driftwood in the takutai moana from Whareroa to Kukutauaki.

(d) Gathering, harvesting and removing whitebait at Whareroa Stream, Waikanae River mouth, and the mouth of the Waimeha Stream.

(e) Utilising, managing and preserving tauranga waka in Whareroa coastal marine area (including Whareroa Pā), Waikanae River mouth

(excluding the Waikanae estuary and Waimeha River mouth), and Paraparaumu coastal marine area (including Te Uruhi).

[258] Mr Tima:

(a) Planting grasses within the application area.

(b) Gathering firewood on Kuku Beach.

(c) Gathering stones and shells on Kuku Beach.

(d) Gathering, harvesting and removing whitebait from Kuku Beach and the Ōhau River.

[259] Muaūpoko:

(a) Gathering, harvesting and removing whitebait in the Hōkio Stream, Ōhau River, and Manawatū River.

(b) Planting, collecting, and using pīngao from Hōkio Beach to Waitārere Beach.

(c) Use of tauranga waka in the areas around the Hōkio, Waitārere, Wairarawa and Waiwiri streams, as well as the Ōhau River, Raumati, and Paraparaumu.

(d) Customary navigation within their application area, extending from the tauranga waka sites listed above.

(e) Collecting pumice from Waikanae, Paraparaumu, and from Ōtaki to Whareroa (the southern extent of the hearing area).

(f) Collecting sand (from Horowhenua), gravel (from Ōtaki) and washed-up coal (over the beach between Hōkio to Ōhau).

(g) Collecting driftwood from the Manawatū River, Tangimoana, Waikanae, Ōtaki, Hōkio, Ōhau River, and the Ōtaki River.

(h) Collecting kōhatu and detritus excluding bones, skin/leather and feathers, natural animal fibres, from Waikanae, Ōtaki, Tangimoana and Hōkio.

(i) Collecting clay/earth pigments in the takutai moana adjacent to the Horowhenua.

(j) Collecting kōhatu, onewa and pakohe stone deposits from Wharekohu (near the Muaūpoko urupā) on Kapiti Island.

Grice J

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Attachment 1–Applications

Excerpt from the CMT judgment setting out the applications for CMT and PCRs, interested parties and parties in Crown engagement negotiations

The applicants and interested parties

[6] The southern boundary of the hearing area aligns with the southern boundary of the application area of Trustees of Te Ātiawa ki Whakarongotai Charitable Trust on behalf of Te Ātiawa ki Whakarongotai. The northern boundary of the hearing area aligns with the northern boundary of the claim by Rachael Ann Selby on behalf of Ngāti Raukawa ki te Tonga. The applications before the Court are as follows:

(k) William James Taueki on behalf of Ngāti Tamarangi hapū of Muaūpoko iwi (CIV-2017-485-160) seeking recognition of CMT in the CMCA, between defined points adjacent to the Waitārere Forest and out to defined points about one kilometre offshore (Mr Taueki and Ngāti Tamarangi).

(l) Rachael Ann Selby on behalf of Ngāti Raukawa ki te Tonga (CIV-2017-485-229) seeking recognition of CMT and PCRs in the CMCA between the Rangitīkei River and Kukutauaki from the mean high-water springs and out to the territorial sea limit (Ngāti Raukawa).

(m) Trustees of Te Ātiawa ki Whakarongotai Charitable Trust on behalf of Te Ātiawa ki Whakarongotai (CIV-2017-485-248) seeking recognition of CMT and PCRs in the CMCA between Kukutauaki and Whareroa, from the mean high-water springs to the territorial sea limit (Te Ātiawa).

(n) Muaūpoko Tribal Authority Incorporated on behalf of Muaūpoko (CIV-2017-485-261) seeking recognition of CMT from the Manawatū River to the Kukutauaki block and seeking recognition of PCRs from the Rangitīkei River to Whareroa (MTA and Muaūpoko).

(o) Patrick Seymour on behalf of Te Whānau Tima (Seymour) and Ngā Ahi Kā o Te Hapū o Te Mateawa (CIV-2017-485-273) seeking recognition of CMT and PCRs in the CMCA between the Ōhau River and the Waikawa River (Mr Tima, Te Whānau Tima and Te Mateawa).

(p) Chris Shenton on behalf of Te Rūnanga o Ngā Wairiki Ngāti Apa (CIV-2017-485-511) seeking recognition of CMT and PCRs in the CMCA between Motu Karaka and Omarupapako, from the line of mean high-water springs to the outer limits of the territorial sea (Mr Shenton and Ngāti Apa).

[7] David Morgan Whānau did not appear at the hearing. As their application relates only to PCRs, I deal with that claim in the PCR judgment and do not address it further in this judgment.

[8] There are also 15 interested parties in these proceedings:

(a) The Attorney-General;

(b) Te Rūnanga o Toa Rangatira Incorporated on behalf of the iwi of Ngāti Toa Rangatira (Ngāti Toa);

(c) Christopher Henare Tahana, Edward (Fred) Clark, Hayden Tūroa, and Novena McGuckin on behalf of Te Patutokotoko (CIV-2017-485-254);

(d) Rangitāne o Manawatū Settlement Trust (Rangitāne);

(e) Edward Penetito and Donald Koroheke Tait of Ngāti Kauwhata;

(f) Manawatū-Whanganui Regional Council;

(g) Wellington Regional Council;

(h) Kāpiti Coast District Council;

(i) Landowners Coalition Incorporated;

(j) Seafood Industry Representatives;

(k) Simon Austin;

(l) Carol Hardie;

(m) Waitārere Beach Progressive and Ratepayers Association Incorporated;

(n) New Zealand Transport Agency Waka Kotahi; and

(o) Horowhenua 11 Part (Lake) Reservation Trust.

[9] Ten groups have made applications to the Crown to pursue an alternative process under the Takutai Moana Act in relation to the hearing area. They seek recognition of CMT and PCRs, not by way of application to the High Court, but through direct negotiation with the Crown. This is referred to as the Crown engagement pathway. The groups who have made applications under the Crown engagement pathway are:

(p) The Waiorua Bay Ahu Whenua Trust on behalf of the owners of Waiorua Bay Kapiti and some of the owners of Motungarara (MAC-01-11-001);

(q) George Davis for Ngā Hapū o Himatangi (MAC-01-11-004);

(r) Huia Marae Committee and Matau Marae Committee for Ngāti Huia (MAC-01-11-006);

(s) Kikopiri Marae Reservation Trustees on behalf of Ngāti Huia ki Kikopiri (MAC-01-11-007);

(t) Donald Tait on behalf of Ngāti Kauwhata (MAC-01-11-008);

(u) Kereru Marae on behalf of Ngā Hapū o Kereru Ngāti Takihiku, Ngāti Hinemata, Ngāti Ngārongo (MAC-01-11-009);

(v) Rangitāne o Manawatū Settlement Trust on behalf of Rangitāne o Manawatū (MAC-01-11-013);

(w) Te Iwi o Ngāti Tukorehe Trust on behalf of Te Iwi o Ngāti Tukorehe me onā hapū, whānau hoki (MAC-01-11-016);

(x) Ropata Williams Miratana for Te Kotahitanga o Te Iwi o Ngāti Wehi Wehi (MAC-01-11-017); and

(y) Te Rūnanga o Toa Rangatira on behalf of Ngāti Toa Rangatira (MAC-01-12-021).

[10] Two of those Crown engagement applicants, Rangitāne and Ngāti Toa, also took an active part in the hearing as interested parties.