

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

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

**CIV-2017-485-232  
CIV-2017-485-259  
CIV-2017-485-224  
CIV-2017-485-221  
CIV-2017-485-260  
GROUP M, STAGE 2(A)  
[2026] NZHC 1365**

UNDER THE Marine and Coastal Area (Takutai Moana)  
Act 2011

IN THE MATTER OF an application for an order recognising  
Customary Marine Title and Protected  
Customary Rights

continued...

Hearing: 28–29 April 2025

Appearances: D C F Naden and H J Fletcher  
for Nga Uri O Ngāi Tūmapūhia ā Rangi Hapū  
T Bennion for Ngāti Hinewaka  
C Mataira for Rangitāne Tū Mai Rā Trust  
M Houra for Te Ātiawa  
B Lyall and H Swedlund for Kawakawa 1D2 Ahu Whenua Trust  
B A Scott for the Seafood Industry Representatives  
J Prebble and D Kleinsman for the Attorney-General  
F R Wedde for the Greater Wellington Regional Council

Judgment: 22 May 2026

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**JUDGMENT OF GWYN J  
[Stage Two hearing – final orders]**

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BY

Ngāi Tūmapūhia-a-Rangi Hapū  
Incorporated, on behalf of Nga Uri O Ngāi  
Tūmapūhia ā Rangi Hapū (CIV-2017-485-  
232)

Ngāti Hinewaka Me Ōna Hapū Karanga  
Charitable Trust on behalf of Ngāti  
Hinewaka (CIV-2017-485-259)

The Rangitāne Tū Mai Rā Trust, on behalf of  
the hapū of Rangitāne o Wairarapa and  
Rangitāne o Tamaki nui-ā-Rua  
(CIV-2017-485-224)

Trustees of the Ngāti Kahungunu ki  
Wairarapa Tāmaki nui-ā-Rua Settlement  
Trust on behalf of Ngāti Kahungunu ki  
Wairarapa Tāmaki nui-ā-Rua (CIV-2017-  
485-221)

Te Ātiawa ki Te Upoko o Te Ika a Maui  
Pōtiki Trust on behalf of Te Ātiawa  
(CIV-2017-485-260)

INTERESTED PARTIES Sue Taylor for Ngāi Tūmapūhia-ā-Rangi ki  
Mōtūwairaka Incorporated and Sam Morris,  
Lynall Morris, and Jason Morris for Ngāi  
Tūmapūhia-ā-Rangi ki Ōkautete  
Incorporated

Kawakawa 1D2 Ahu Whenua Trust

Seafood Industry Representatives

Attorney-General

Greater Wellington Regional Council

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## Introduction

[1] In *Re Ngāi Tūmapūhia-Rangi Hapū Inc* (the Stage One Judgment), I awarded customary marine title (CMT) in favour of hapū represented by or related to the six applicant groups, under s 98 of the Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act).<sup>1</sup>

[2] CMT was recognised over five discrete areas within the hearing area as follows, four of them jointly held, one exclusively held. They are set out at [169] below.

[3] In addition, in the Stage One Judgment, I found that the applicants had satisfied the test for a number of Protected Customary Rights (PCRs).<sup>2</sup>

[4] Subsequently, in *Re Ngāi Tūmapūhia–a-Rangi Hapū Inc (No 2)* (the Wāhi Tapu Judgment), I found that 11 of the areas sought by Ngāti Hinewaka and Ngāi Tūmapūhia (and one by the Kawakawa 1D2 Ahu Whenua Trust) were capable of being recognised as wāhi tapu or wāhi tapu areas under s 78 of the Takutai Moana Act, subject to the provision of further evidence and submissions on certain matters.<sup>3</sup>

[5] This hearing concerned the confirmation of the details in relation to the CMT, PCRs and wāhi tapu protections granted in the earlier judgments, for the purposes of finalising recognition orders, pursuant to s 109 of the Takutai Moana Act. In particular, the purpose of the hearing was to finalise:

- (a) the exact boundaries of the CMT areas;
- (b) the physical extent of wāhi tapu areas;
- (c) the prohibitions and/or restrictions sought in respect of each wāhi tapu;
- (d) the extent and conditions of all of the PCRs sought; and

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<sup>1</sup> *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc* [2024] NZHC 309 [Stage One Judgment] at [815(a)–(e)].

<sup>2</sup> At [816(a)–(e)].

<sup>3</sup> *Re Ngāi Tūmapūhia–a-Rangi Hapū Inc (No 2)* [2025] NZHC 68 [Wāhi Tapu Judgment] at [381(a)–(l)].

(e) the appropriate entities to hold the recognition orders.

[6] The final orders contained in this judgment reflect the decisions made by this court under the Takutai Moana Act as it was at the time of the earlier hearings and judgments. The Takutai Moana Act has been subsequently amended, by the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Act 2025 (Amendment Act). The Amendment Act does have the effect that certain specified judgments, including the Stage One Judgment, are “altered and overridden”, “to the extent that they express reasoning and conclusions about the requirements for recognition of customary marine title, and aspects of the law specified in section 59A” of the Amendment Act.<sup>4</sup>

[7] However, the Amendment Act does not affect the terms of these final orders. References to the Takutai Moana Act in this judgment are references to that Act prior to the Amendment Act.

[8] The six applicants have worked together to finalise draft recognition orders and made joint submissions before me, reflecting the mutual recognition outlined in the mana moana agreement, an agreement between the applicants as to area and hapū and coastal demarcation points within the hearing area, in six coastal rohe.<sup>5</sup> The applicants continue to endorse the mana moana agreement. The applicants submit that the orders now to be finalised reflect the tikanga of the Wairarapa hapū, being one of shared whakapapa, kōrero and mana over the takutai moana, as reflected in the mana moana agreement.

### **Customary Marine Title**

[9] In the Stage One Judgment I strongly encouraged the applicants to kōrero with each other in accordance with tikanga in relation to the form of the proposed recognition orders.<sup>6</sup>

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<sup>4</sup> Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act), s 59B(1)(d), as inserted by the Marine and Coastal Area (Customary Marine Title) Amendment Act 2025, s 16.

<sup>5</sup> Stage One Judgment, above n 1, at [120].

<sup>6</sup> At [819].

[10] The applicants have now filed draft orders proposing that CMT will be jointly held, and PCRs exercised, by the following entities:

- (a) Ngāti Hinewaka me ōna Hapū Karanga Charitable Trust (CMT 1, 2, 3 and 4);
- (b) Te Ātiawa ki te Upoko o te Ika a Māui Pōtiki Trust (CMT 1);
- (c) Te Kauae O Te Ika Trust (Ngāi Tūkoko and Ngāti Moe) (CMT 1 and 2);
- (d) Ngāti Hāmua Takutai Moana Trust (CMT 1, 2 and 4);
- (e) Ngāi Tūmapūhia-a-Rangi Hapū Incorporated (CMT 4 and 5).

[11] Some applicant groups are currently represented by existing hapū-based legal entities. The existing legal entities are as follows:

- (a) Ngāi Tūmapūhia-a-Rangi Hapū Incorporated (Ngāi Tūmapūhia);
- (b) Ngāti Hinewaka me ōna Hapū Karanga Charitable Trust (Ngāti Hinewaka); and
- (c) Te Ātiawa ki te Upoko o Te Ika a Māui Pōtiki Trust (Te Ātiawa)

[12] In addition, the applicants were at the time of hearing in the process of setting up two hapū-based entities as the legal entities for Ngāti Hāmua (including Ngāti Maahu and Ngāti Meroiti) and Ngāi Tūkoko/Ngāti Moe. At the outset of the hearing the applicants advised that the new entities will be private trusts established for the primary purpose of managing CMT and PCRs on behalf of their hapū. The beneficiaries of each trust will be the members of the respective hapū. The Trust Deeds will provide processes and requirements for the ongoing election/appointment of trustees by the beneficiaries. Those Trust Deeds will ensure accountability and transparency back to the beneficiaries, including dispute resolution provisions and general meeting requirements.

[13] By the time of closing submissions, the Ngāti Hāmua Takutai Moana Trust Deed had been finalised and signature and execution of the Deed was imminent. The election of Trustees for Ngāi Tūkoko and Ngāti Moe’s Te Kauae O Te Ika Trust had taken place and signature of the Trust Deed was imminent.

#### *Mandate*

[14] The Attorney-General proposed that, as in *Re Ngā Hapū o Tokomaru Ākau* (*Tokomaru*), each hapū might provide the Court with a signed acknowledgment confirming that their named person or entity has the authority to represent each of them as the holder of the orders.<sup>7</sup>

[15] The Attorney-General’s submission was that such an acknowledgment might be useful, given the recognition of hapū that were not directly or actively party to this proceeding, based on the mana moana agreement.

[16] This submission harked back to the Attorney-General’s supplementary submissions made on 6 November 2023 where the Attorney-General indicated a view that there appeared to be an absence of direct participation by, or evidence of the contemporary interests of, eight hapū recognised by the mana moana agreement (Ngāti Rua, Ngāti Rākairangi, Ngāti Ngapu o te Rangi, Ngāti Rangaranga, Ngāti Pārera, Ngāi Te Ao, Ngāti Te Aokino, and Ngāti Meroiti).

[17] Counsel for the Attorney-General notes that in the Court of Appeal decision in *Edwards*, Miller J confirmed that should there be any controversy about whether an applicant has the authority to seek an order on a group’s behalf, the Court will need to be satisfied the applicant does represent the applicant group.<sup>8</sup> Justice Miller confirmed that the Takutai Moana Act treats representative status as a question of fact for the Court and it is implicit in s 101 of the Act and the definition of “applicant group” that the applicant must have the mandate of the group.<sup>9</sup>

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<sup>7</sup> *Re Ngā Hapū o Tokomaru Ākau* [2024] NZHC 682 [*Tokomaru*] at Part VIII (Directions), (1)(iii).

<sup>8</sup> *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252 at [203(b)].

<sup>9</sup> At [275]–[276] per Miller J and [360] per Cooper P and Goddard J.

[18] In response, the applicants say that such acknowledgements of support from each hapū are unnecessary and create additional hurdles not based on the Takutai Moana Act. Mr Te Whaiti confirmed in the course of his evidence that all of the hapū of Ngāti Hinewaka, including the hapū listed at [16] above and Ngāti Meroiti, were involved in an extensive ratification process in 2017 when establishing the Post Settlement Governance Entity for Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua, which is a hapū-based settlement. Mr Te Whaiti also confirmed that Ngāi Meroiti is a hapū included in the Rangitāne Tū Mai Rā (Wairarapa Tāmaki nui-ā-Ra) Claims Settlement Act 2017.<sup>10</sup>

[19] On this question I observe that the facts of the *Tokomaru* decision were very different. There, the two relevant hapū had not presented their case on a joint or agreed basis, but the Court found CMT was jointly held. In those circumstances it was sensible to require a signed acknowledgment from each hapū to confirm that the new entities set up to represent both hapū had the mandate to do so. That factor distinguishes that case from the situation before me, where the parties have signed the mana moana agreement.

[20] I have concluded that it is not necessary for each hapū to provide a signed acknowledgment confirming that the representative entity has the authority to represent each of them as the holder of the relevant orders.

#### *Memorandum of understanding*

[21] In light of the connected whakapapa and shared interests along the Southern Wairarapa coastline, as reflected in the mana moana agreement, the applicants have held several hui regarding the practical management of the CMT and PCR orders. Those hui have also included the relevant interested parties, Ngāi Tūmapūhia-a-Rangi ki Mōtūwairaka Incorporated, Ngāi Tūmapūhia-a-Rangi ki Ōkautete Incorporated; and Kawakawa 1D2 Ahu Whenua Trust (Kawakawa Trust).

[22] Reflecting the spirit of the mana moana agreement, the parties indicated that all joint order holders intended to enter into a single Memorandum of Understanding

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<sup>10</sup> Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Ra) Claims Settlement Act 2017, s 13(1)(c)(xxiv).

(MoU) or similar tikanga-based document to record practical aspects of their relationships and engagement with one another along the coastline.

[23] The applicants advise that the MoU will cover:

- (a) the overarching nature of the MoU and its purpose;
- (b) processes and protocols for engagement amongst the joint CMT order holders, including meeting frequency, administrative details and communication protocols;
- (c) decision-making processes and requirements, in particular in respect of exercising CMT rights and responsibilities;
- (d) funding and resourcing details, including in respect of potential collective administrative support;
- (e) any other matters that arise in respect of the takutai moana, as appropriate.

[24] The applicants advise that the MoU is intended to be for the benefit of the CMT order holders themselves, rather than for third parties. It will sit behind the Recognition Orders.

[25] The applicants will advise the Court when the MoU is finalised. As I indicated during the hearing, I do not think it is necessary for the Court to view the MoU.

### *Boundaries*

[26] The parcel boundaries used for the production of the maps included in the draft orders are sourced from Land Information New Zealand (LINZ) records. As a result, and as acknowledged in the disclaimer statement included in the maps and in the applicants' submissions, "the exact relationship between the line of [mean high-water springs (MHWS)] and adjacent parcel boundaries defining the landward extent of the common marine and coastal area (CMCA) requires validation by legal survey".

Therefore a legal survey will be required to confirm the precise landward boundaries of the CMCA and various CMT orders.

[27] In addition, the evidence and submissions for the Seafood Industry Representatives (SIRs) urged that all boundaries, particularly for all wāhi tapu areas, should be defined in a manner that can be used and understood by those who need to comply with the requirements of the Takutai Moana Act. The SIRs say that, while terrestrial (cadastral) survey co-ordinates for each mark may satisfy the surveying requirements of the Surveyor-General, commercial fishers and the wider public require conventional nautical longitude and latitude co-ordinates. They submit that all boundaries and marks should be defined on the survey maps using nautical co-ordinates (longitude and latitude) for each survey mark. As the SIRs note, in the *Tokomaru* proceedings, the surveyor accepted that nautical co-ordinates could also be shown on the maps without difficulty.<sup>11</sup>

[28] Before me, Hudson Moody, who provided evidence for the applicants in his capacity as a cadastral surveyor and produced maps of the CMT areas, PCRs and wāhi tapu areas, said this is a matter most appropriately dealt with during the preparation of a final cadastral survey, in collaboration with the Surveyor-General.

[29] Under s 9 of the Takutai Moana Act, the landward boundary of the marine and coastal area, and accordingly the CMT area, is the line of mean high-water springs (MHWS), with exceptions in those instances where there are river mouths along the foreshore.<sup>12</sup> Mr Moody's affidavit outlines his methodology in depicting CMT and addresses various associated technical matters, particularly in relation to discrepancies between historical site plans and modern data.

[30] The applicants say that Mr Moody's affidavit demonstrates that carrying out a cadastral survey following the disposal of appeals will be greatly beneficial in ensuring the establishment of accurate landward boundaries for the CMT area. I agree. I also accept Mr Moody's recommendation that the inclusion of nautical coordinates be left

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<sup>11</sup> *Tokomaru*, above n 7.

<sup>12</sup> Takutai Moana Act, s 9 definitions of "common marine and coastal area" and "marine and coastal area"; and Resource Management Act 1991, s 2 definition of "coastal marine area".

for the final cadastral survey (in collaboration with the Surveyor-General) and I direct accordingly.

### *Seaward Boundary*

[31] In the Stage One Judgment I found that the seaward extent of CMT varied between CMT areas, being three kilometres for CMT Areas 1, 2 and 3,<sup>13</sup> and 10 kilometres in CMT Areas 4 and 5.<sup>14</sup> The draft recognition orders depict these seaward extents on the maps provided.

### **Protected Customary Rights**

[32] In the Stage One Judgment I made orders recognising a number of PCRs under s 98 of the Takutai Moana Act:<sup>15</sup>

#### For Rangitāne

- (a) collection of water (for ceremonial purposes, medicinal properties, and for use when returning inland) at Waikekeno, Glenburn and Te Unuunu;

#### For Ngāti Hinewaka me ōna Hapū Karanga

- (b) collection of sand and stones, shingle and detritus in the area from north of Waikekeno to Kakau;
- (c) gathering driftwood, in its application area;

#### For Ngāi Tūkoko and Ngāti Moe

- (d) a general right of kaitiakitanga over its application area for the purposes of conservation measures and practices;

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<sup>13</sup> Stage One Judgment, above n 1, at [815(a)–(c)].

<sup>14</sup> At [815(d) and (e)].

<sup>15</sup> At [816(a)–(e)].

- (e) collection of driftwood at Lake Ōnoke, harakeke at Matakitaki-a-Kupe and hāngī stones at Tūranganui River;
- (f) catching īnanga at Lake Ōnoke and Whāngaimoana Beach;
- (g) conducting traditional practices including the use of the maramataka, within its application area;

For Ngāi Tūmapūhia-a-Rangi Hapu Inc

- (h) a general right of kaitiakitanga over its application area for the purposes of conservation measures and practices;
- (i) the taking, use, management and/or preservation of rocks, driftwood and shells at Te Unuunu and Uriti;
- (j) catching īnanga at Kaihoata and at Pāhaoa River;
- (k) collection of water (for rongoa purposes) in the application area;
- (l) use of the maramataka, within its application area; and

For Te Ātiawa

- (m) a general right of kaitiakitanga over its application area for the purposes of conservation measures and practices.

[33] The submissions for the Attorney-General raised a series of issues with the applicant's draft orders for PCRs, or inconsistencies between them and the Court's findings.

[34] First, the Court recognised a PCR in favour of Rangitāne for the collection of water at Waikekeno, Glenburn and Te Unuunu.<sup>16</sup> The Attorney-General says the draft order appears to provide for the exercise of this PCR by Ngāti Hāmua.

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<sup>16</sup> At [785].

[35] The applicants reply that Rangitāne is the iwi and Ngāti Hāmua is a hapū of Rangitāne. The PCR application by the Rangitāne Tu Mai Rā Trust was advanced primarily on behalf of Ngāti Hāmua and Ngāti Hāmua will exercise the PCR. For clarity I accept the applicants’ proposal that the draft orders be amended to say “Ngāti Hāmua on behalf of Rangitāne”.

[36] The second and third issues relate to Te Unuunu. The Court recognised a PCR in favour of Rangitāne for the collection of water at this site (as above),<sup>17</sup> and a PCR was recognised in favour of Ngāi Tūmapūhia, for the taking, use, management and/or preservation of rocks, driftwood and shells at the site (as above).<sup>18</sup> However, the initial maps filed with Mr Moody’s affidavit dated 11 April 2025 (which the Attorney-General refers to as the “draft order”) appear to have provided for these activities in an area extending from the coast out to approximately 1,700 metres offshore. The Attorney-General submits that it was not apparent on the evidence that the relevant PCRs were exercised this far offshore, nor was it apparent on the face of the Court’s findings that it intended to provide for the exercise of the rights so far offshore.

[37] The applicants propose that the seaward boundary of the Te Unuunu PCRs should be revised to mirror that for the wāhi tapu granted in these areas. The draft orders now appear to reflect this, as depicted in maps S25-0061-PCR16c and S25-0061-PCR17c. The applicants submit that the consistency in seaward boundaries will assist the public in abiding the restrictions and prohibitions, and their enforcement.

[38] I agree with counsel for the Attorney-General that the evidence did not establish that these activities were exercised as far offshore as the applicants’ original draft orders proposed. Logically, both the collection of water and the collection of rocks, driftwood and shells would occur from or on the beach, or not far offshore. I am persuaded that a slightly further seaward boundary, consistent with the wāhi tapu boundaries,<sup>19</sup> is appropriate.

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<sup>17</sup> At [785];

<sup>18</sup> At [807]–[810].

<sup>19</sup> At [139] below.

[39] Fourth, the Attorney-General submits that Ngāi Tūmapūhia’s PCR for īnanga at Kaihoata may be inconsistent with the ability to impose a rāhui.

[40] Dr Smith’s evidence addressed this concern — as he emphasised, collection of īnanga would never occur during a rāhui. The applicants have added a limitation to the draft Recognition Order to reflect that. I accept that appropriately resolves the question.

[41] For completeness I note that a further issue raised by the Attorney-General in opening submissions, concerning the PCR granted to Ngāi Tūkoko and Ngāti Moe for the collection of harakeke, was resolved by my minute of 17 April 2024, which clarified that the area for collection is from Ngāwi to Kawakawa Point, not at Matakītaki-a-Kupe.<sup>20</sup>

### **Wāhi tapu**

[42] One of the rights conferred by CMT is the right to protect wāhi tapu and wāhi tapu areas.<sup>21</sup> A CMT group may seek to include recognition of a wāhi tapu or wāhi tapu area in a CMT order.<sup>22</sup>

[43] Under s 78(2) of the Takutai Moana Act, the Court may recognise a wāhi tapu protection right if there is evidence to establish:

- (a) the area is a wāhi tapu or a wāhi tapu area, as defined in the Heritage New Zealand Pouhere Taonga Act 2014.<sup>23</sup> This means that it is sacred to Māori in the traditional, spiritual, religious, ritual or mythological sense.<sup>24</sup>

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<sup>20</sup> *Minute of Gwyn J (Re Stage 1(a) Judgment – corrections under Rule 11.10 High Court Rules 2016)* dated 17 April 2024 at [19].

<sup>21</sup> Takutai Moana Act, s 62(1)(c).

<sup>22</sup> Section 78. A CMT group means a group that has been awarded CMT: see the definition of “customary marine title group” in s 9.

<sup>23</sup> See the definition of “wāhi tapu” and “wāhi tapu area” in s 9.

<sup>24</sup> Heritage New Zealand Pouhere Taonga Act 2014, s 6 definition of “wāhi tapu”.

- (b) the group has a connection with the wāhi tapu or wāhi tapu area in accordance with tikanga;<sup>25</sup> and
- (c) the group requires the proposed prohibitions or restrictions on access to protect the wāhi tapu or wāhi tapu area.<sup>26</sup>

[44] Under ss 26 and 27 of the Takutai Moana Act, rights of access of every individual to, and rights of navigation of every person within, the CMCA, are subject to any prohibitions and restrictions to protect wāhi tapu imposed under ss 78 and 79.

[45] The Takutai Moana Act prescribes the wāhi tapu conditions that must be set out in a CMT order:<sup>27</sup>

- (a) the location of the boundaries of the wāhi tapu or wāhi tapu area;
- (b) the prohibitions or restrictions on access that are to apply, and reasons for them; and
- (c) any exemption for specified individuals to carry out a PCR in relation to, or in the vicinity of, the wāhi tapu or wāhi tapu area, and any conditions applying to the exercise of the exemption.

[46] Wāhi tapu conditions may affect the exercise of fishing rights, but must not prevent fishers from taking their lawful entitlement in a quota management area or a fisheries management area.<sup>28</sup>

[47] The enforcement and compliance provisions are set out in ss 80 and 81 of the Takutai Moana Act.

[48] In the Wāhi Tapu judgment I identified a number of sites capable of being recognised as wāhi tapu under the Takutai Moana Act, subject to evidence of precise

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<sup>25</sup> Section 78(2)(a).

<sup>26</sup> Section 78(2)(b).

<sup>27</sup> Section 79(1).

<sup>28</sup> Section 79(2)(a).

locations and boundaries and further evidence and/or submissions on what prohibitions and restrictions are necessary to protect the wāhi tapu in the common marine and coastal area (CMCA). Those sites were:<sup>29</sup>

For Ngāti Hinewaka :

- (a) Ngā Rā a Kupe;
- (b) Matakītaki-a-Kupe;
- (c) Titirangi;
- (d) Pararaki;
- (e) Te Awaiti;
- (f) Kārearea; and
- (g) Te Kopi.

For Ngāti Tūmapūhia:

- (h) Waipupu;
- (i) Kaihoata;
- (j) Karaka Bay;
- (k) Te Unuunu; and
- (l) Te Awaiti.

[49] In addition, the Court urged that discussions occur between Ngāti Hinewaka and the Kawakawa Trust, including as to whether the Punaruku site, for which the

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<sup>29</sup> Wāhi Tapu Judgment, above n 3, at [381(a)–(l)].

Kawakawa Trust seeks recognition, might be advanced by Ngāti Hinewaka as a wāhi tapu.<sup>30</sup>

[50] Subsequently, Ngāti Hinewaka and Ngāi Tūmapūhia have filed evidence addressing the matters outlined above.

[51] The outstanding matters that were raised in the Wāhi Tapu Judgment were, broadly:

- (a) the boundaries of wāhi tapu or wāhi tapu areas;
- (b) the status of wāhi tapu outside the CMCA; and
- (c) whether proposed prohibitions and restrictions are required to protect the wāhi tapu.

[52] I briefly recap why these matters are important.

#### *Boundaries of wāhi tapu or wāhi tapu areas*

[53] It is necessary to identify the boundaries of wāhi tapu in a way that achieves certainty as to the location of each individual wāhi tapu.<sup>31</sup> That certainty is necessary because the wāhi tapu protection right represents the sole limitation on public rights of access and navigation that the Takutai Moana Act otherwise guarantees,<sup>32</sup> and because the mechanisms in the Takutai Moana Act governing sanctions for breaching wāhi tapu restrictions need to be capable of enforcement.<sup>33</sup>

#### *Wāhi tapu outside the CMCA*

[54] The Court's jurisdiction to recognise wāhi tapu and wāhi tapu areas relates only to sites that are within the CMCA and within the relevant CMT order.<sup>34</sup>

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<sup>30</sup> At [380].

<sup>31</sup> *Re Edwards (Whakatōhea Stage Two) No 7* [2022] NZHC 2644 [*Whakatōhea Stage Two*] at [18].

<sup>32</sup> At [108].

<sup>33</sup> At [18] and [113].

<sup>34</sup> At [16].

[55] In *Whakatōhea Stage Two*, Churchman J considered whether a wāhi tapu on land may extend or “radiate” into the CMCA. Justice Churchman found that tikanga evidence was required to establish.<sup>35</sup>

- (a) that the relevant wāhi tapu extends or radiates into the CMCA;
- (b) how far that wāhi tapu goes; and
- (c) that the proposed prohibitions or restrictions on access are connected to the protection of the wāhi tapu.

[56] I addressed this issue in the Wāhi Tapu Judgment.<sup>36</sup>

*Are prohibitions and restrictions “required” to protect the wāhi tapu?*

[57] The prohibitions or restrictions on access must be required to protect the wāhi tapu — that is, there must be a connection between the proposed prohibitions or restrictions and the protection of the wāhi tapu.<sup>37</sup>

### **The wāhi tapu prohibitions and protections sought by the applicants**

[58] Before addressing each of the eleven sites that I recorded in the Wāhi Tapu Judgment as “capable of being recognised as wāhi tapu”,<sup>38</sup> as well as Punaruku, it is necessary to discuss at a general level the prohibitions or restrictions on the wāhi tapu that are sought by the applicants.

[59] The proposed wāhi tapu prohibitions and restrictions fall within the following categories:

- (a) the ability to impose rāhui upon a triggering event, so as to prohibit or restrict access to wāhi tapu;

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<sup>35</sup> At [130].

<sup>36</sup> *Wāhi Tapu Judgment*, above n 3, at [31]–[33].

<sup>37</sup> At [133], citing *Whakatōhea Stage Two*, above n 31, at [144].

<sup>38</sup> *Wāhi Tapu Judgment*, above n 3, at [381].

- (b) a prohibition on the erection of new structures or infrastructure within a wāhi tapu;
- (c) a prohibition on damage to, modification of, or removal of materials from, a wāhi tapu.

*Ability to impose rāhui*

[60] The Attorney-General submits that, if the reasons for imposing rāhui in relation to a wāhi tapu are limited to events which would trigger rāhui in respect of the coastline generally, this is insufficient to establish that such a condition is necessary to protect the wāhi tapu as such.

[61] In response to that submission, the applicants say the ability to enforce rāhui outside of the sites under consideration is not relevant to the tikanga that requires the ability to control rāhui at the wāhi tapu sites. While as a matter of practice the declaration of a rāhui is likely to be over a wider area than a specific wāhi tapu site or sites, those wāhi tapu sites are of heightened significance and it remains necessary to have the ability to enforce rāhui in relation to them. The applicants emphasise the significance of a legally enforceable right under the Takutai Moana Act; other legal or non-legal processes that might enable the imposition of rāhui are not relevant to the tikanga.

[62] I accept that a condition enabling the imposition of a rāhui in respect of a wāhi tapu may be required even where events might trigger a rāhui in respect of the coastline generally.

*Prohibition on damage, physical alteration and removal of natural material; prevention of erection of new structures*

[63] The applicants seek to prevent damage, physical alteration and removal of natural materials from the wāhi tapu. The applicants also say that a prohibition on new structures is necessary for some sites, where permanent coastal infrastructure such as wharves, pipes, buoys and associated seabed anchors are a possibility.

[64] In relation to all of the wāhi tapu for which protections are sought, the Attorney-General says there is a lack of evidence as to why proposed restrictions on the erection of new structures or infrastructure or damage, modification, removal or destruction of physical features, are necessary to protect the claimed wāhi tapu.

[65] At a general level I accept the applicants' submission that, given they are willing to permit public access to their wāhi tapu, the necessary corollary of that is an ability to enforce kawa and respect. That is particularly so at sites where there has been a history of interference by road and farm works. I acknowledge that, as kaitiaki, the applicants are required by tikanga to protect the tapu of the various wāhi tapu so that they remain sacred.

[66] Further, as the applicants submit, to allow erection of new structures would interfere with the tapu of the site on an ongoing basis. It would also add complication in the event of the imposition of rāhui.

[67] In addition to the submission that the evidence does not support the conditions and restrictions sought, the Attorney-General suggests that s 12 of the Resource Management Act 1991 (RMA), which provides for relevant restrictions on use of the coastal marine area (CMCA), provides adequate protection. The Attorney-General notes that there are no national environmental standards or rules in the Wellington Regional Coastal Plan that expressly allow any of these restricted activities or uses within the areas for which the applicants seek wāhi tapu protection rights.

[68] The Attorney-General also submitted that the recognition of CMT means it is unlikely that the activities the applicants seek to restrict would be allowed in any event. The Attorney points to the RMA permission right (ss 66–70 of the Takutai Moana Act) and the right of a CMT group to prepare a planning document (under ss 85–87 and 93 of the Takutai Moana Act).

[69] The underlying questions raised by the Attorney-General's submissions — whether restrictions are “necessary” when the activity concerned is already the subject of regulation — were discussed and determined in the Wāhi Tapu judgment.<sup>39</sup>

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<sup>39</sup> At [134]–[146].

In essence, my conclusion was that the “necessity” test must relate to the Takutai Moana Act and its purposes, including the purpose of recognising the “mana tuku iho exercised in the marine and coastal area by iwi, hapū, and whānau as tangata whenua”.<sup>40</sup>

[70] The Wahi Tapu Judgment also addressed whether the powers associated with a grant of CMT represented a commensurate level of protection to that provided by wāhi tapu protection.<sup>41</sup> I accepted that there were limitations on the CMT rights, including that the right of a CMT holder to veto resource consents is not an unrestricted right.

[71] In the Wahi Tapu Judgment, I cited Churchman J’s decision in *Whakatōhea Stage Two*, where he recorded Ngāi Tamahaua’s submission that the protections being sought were “matters which are intrinsically Māori concepts regulated by tikanga Māori as law.”<sup>42</sup> I accepted that it will sometimes be the case that protections sought will be “intrinsically Māori concepts” and for that reason other forms of regulation may not be appropriate or adequate.

[72] I do not propose to relitigate those conclusions.

### **Further wāhi tapu evidence**

[73] The applicants have filed further evidence relating to wāhi tapu, from Dr Takirirangi Clarence Smith for Ngāi Tūmapūhia and Haami Te Whaiti for Ngāti Hinewaka. In addition, Tā Kim Workman has filed evidence specifically addressing the Kawakawa Trust’s kōrero with Ngāti Hinewaka regarding Punaruku. Also, as noted above, Mr Moody has produced maps depicting the location and extent of the wāhi tapu sought, based on this evidence.

[74] I address each of the wāhi tapu sites in the order they are listed in the draft orders and maps, from #1 to #12. Aside from Punaruku, they are arranged from southwest to northeast.

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<sup>40</sup> At [139] citing the Takutai Moana Act, s 4(1)(b).

<sup>41</sup> At [141]–[142].

<sup>42</sup> At [145]–[146] citing *Whakatōhea Stage Two*, above n 31, at [236].

*Te Kopi (Wāhi Tapu #1)*

[75] In the Wāhi Tapu Judgment I found that there was evidence of the landward boundaries of this site corresponding to the known urupā, but a lack of evidence of signs or markers to define the wāhi tapu at Te Kopi generally.<sup>43</sup> I also concluded that there was insufficient evidence of the locations of urupā that are partially eroded or submerged by the ocean, or evidence that the seaward boundaries are known. As the judgment recorded, on this site the road cuts between the known urupā and the CMCA, and an additional intervening area sits between the road and the northern boundary of the known urupā.<sup>44</sup> An amended map and further evidence were sought.

[76] Ngāti Hinewaka has now provided a more precise map defining the seaward boundary and reducing the wāhi tapu area to “the immediate inshore area to reflect the core area close to the urupā”.

[77] Mr Te Whaiti’s evidence is that both the road and sea have undermined and cut into the urupā. More burials have been exposed between the sea and Part Te Kopi 2, 5 Block (the urupā) suggesting the Te Kopi urupā extends beyond the title. Mr Te Whaiti’s evidence is that this urupā is one of the earliest to be formed in the post-colonial period, as Te Kopi was a refuge for Ngāti Hinewaka returning from the Hawkes Bay during 1839–1840. Overlooking the urupā is Horewai Pā, which featured in the history of Ngāti Hinewaka and Ngāti Rua.

[78] As well as reducing the area sought to be designated as a wāhi tapu, Ngāti Hinewaka now no longer seeks a proposed restriction on power boating. The conditions and restrictions now sought are the ability to apply a rāhui, a prohibition on damage to physical features and a ban on new structures.

[79] I am satisfied that wāhi tapu status should be granted to this site, with the conditions and restrictions detailed in the preceding paragraph.

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<sup>43</sup> At [220].

<sup>44</sup> At [221].

*Pararaki (Wāhi Tapu #2)*

[80] In the Wāhi Tapu Judgment I found that this site includes a coastal urupā, established through historical burial practices, with kōiwi buried in the sand dunes and a real possibility of those washing into the moana.<sup>45</sup>

[81] I concluded that if the location of the site could be more precisely defined, it would be appropriate to grant the power to impose rāhui to protect the wāhi tapu.<sup>46</sup>

[82] In Mr Te Whaiti's further evidence he affirms that Pararaki is the site of a significant coastal papakāinga of Ngāti Hinewaka. As with many papakāinga sites, there is an urupā nearby which lies near the mouth of the river. At Pararaki, the urupā site is directly at the edge of the beach. This urupā is a wāhi tapu of Ngāti Hinewaka and has substantial spiritual and cultural significance to the community.

[83] The site has been registered as an archaeological site with Heritage New Zealand and is included as a site of Māori significance in the proposed Wairarapa Combined District Plan.

[84] The New Zealand Archaeological Association (NZAA) site record forms for the two sites identified as burials were attached to Mr Te Whaiti's evidence. The records describe large areas of burials which are now threatened by erosion. The gardens and other Māori heritage values at Pararaki, as with most of the heritage sites on this coastline, have been carbon dated to Aotearoa's earliest settlement period. This makes them particularly important to Ngāti Hinewaka. In the further evidence before the Court the boundaries of the site have been reduced to the immediate foreshore and seabed near the burials and where kōiwi are likely to accumulate. Ngāti Hinewaka now seeks only the ability to impose rāhui and restrictions on defacing of physical features at the site.

[85] On the further evidence provided, I am satisfied that wāhi tapu status should be granted for this site, with conditions allowing for the imposition of rāhui and restrictions on the defacing of physical features at the site. The Attorney-General does

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<sup>45</sup> At [200].

<sup>46</sup> At [202].

not oppose granting wāhi tapu status for this site, subject to the submission above regarding conditions and restrictions.

*Kārearea (Wāhi Tapu #3)*

[86] Kārearea Pā is a site of cultural and archaeological significance, including an urupā overlooking the sea. In the Wāhi Tapu Judgment I concluded that there was a lack of evidence as to how the claimed Kārearea wāhi tapu area corresponds to the site of the burial exposure and a lack of evidence to support the claims that burials are likely in sand dunes along this particular coastal area.<sup>47</sup>

[87] The further evidence filed by Mr Te Whaiti notes that this wāhi tapu protects the mouth of the Otakaha Stream. The Kārearea Pā overlooks the site and is a significant location for Ngāti Hinewaka. According to the evidence of Ngāti Hinewaka tīpuna, recorded in Native Land Court minutes, this site is where battles were fought and Ngāti Hinewaka were never defeated. There are recorded burials nearby.

[88] Ngāti Hinewaka has reduced the offshore boundaries of the area sought to be protected, as well as the southern end to focus on the area adjacent to the stream mouth and pā, where the battle events are in the forefront of the memory of Ngāti Hinewaka when they visit the area. The application also removes the restrictions on power boating and water skiing that were previously sought.

[89] The Attorney-General's submissions suggested a need to further demonstrate the connection between the urupā and the wāhi tapu area sought. Mr Te Whaiti's evidence in response was that the taking of gravel in the river flats and beach area below the urupā had been restricted for about 20 years because of sensitivity about the presence of burials. He said there had been recent discussions with the local authority about continuing with that restriction. The applicants say this evidence demonstrates that an area well beyond the urupā site is considered sensitive; this has been known to, and respected by, third parties for decades.

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<sup>47</sup> At [214]–[215].

[90] Mr Te Whaiti also confirmed that the area is not sought as a “buffer”, as suggested by counsel for the Attorney-General, but rather reflects the cultural and spiritual significance of the area, which has seen “intense occupation” including use in historic times as a tauranga waka and battles at the stream mouth.

[91] Accordingly, I conclude that the criteria for a wāhi tapu are satisfied in respect of the area now sought by Ngāti Hinewaka.

[92] Against the background of Mr Te Whaiti’s further evidence, I find there are grounds to infer that Ngāti Hinewaka requires the ability to impose rāhui to protect the wāhi tapu, noting the proximity of the urupā and burial grounds and likelihood of kōiwi exposure.

[93] I conclude that the other restrictions sought, being a prohibition on damage to physical features and a ban on the erection of new structures, are necessary for the protection of the wāhi tapu.

*Ngā Rā a Kupe (Wāhi Tapu #4)*

[94] As noted in the Wāhi Tapu Judgment,<sup>48</sup> Ngā Rā a Kupe is the site where Kupe and his companion Ngake contested to see which of them could make a sail in the shortest time. Kupe completed his sail first and both sails are still visible today as the rock formation and are considered to be wāhi tapu by Ngāti Hinewaka. The rock formation extends underwater, into the ocean itself.

[95] Ngā Rā a Kupe are very prominent and unique features, with prominence to Kupe as the earliest Polynesian explorer to Aotearoa. In his additional evidence, Mr Te Whaiti has provided an aerial image of Ngā Rā a Kupe where the rockface can be clearly seen descending into the sea.

[96] In the Wāhi Tapu Judgment I found that the wāhi tapu at this site extends under water and into the ocean, and the area is amenable to being clearly identified with boundaries drawn (on the assumption that the rock structure forms these boundaries).<sup>49</sup>

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<sup>48</sup> At [170].

<sup>49</sup> At [172].

I directed that the applicant file a revised map showing the extension of the rock formation in the CMCA and the clearly delineated boundaries of the wāhi tapu area.

[97] Ngāti Hinewaka has now provided a more precise map defining the seaward boundary; this is one of the maps prepared by Mr Moody. The map indicates this boundary aligns to some extent with the rock formation in the CMCA. While there remains a degree of uncertainty around the precise alignment or extension of the CMCA, I am satisfied that the evidence sufficiently identifies and justifies the location of the wāhi tapu in the CMCA. The Attorney-General agrees that the statutory criteria are met.

[98] I am also satisfied that the prohibitions and restrictions sought in relation to this site are necessary for its protection. Those are:

- (a) the power to impose rāhui;
- (b) a prohibition on damage to physical features of the site; and
- (c) a ban on new structures being erected in the site.

[99] In relation to (b), as Mr Te Whaiti's evidence reiterates (and this was observed by the Court during a site visit in the course of the Stage 1(a) hearing), in the 1940s parts of Ngā Rā a Kupe were destroyed during the creation of a roadway, causing distress to Ngāti Hinewaka. Those past events and closeness of the site to the public road are why restrictions are sought on damage to features and on new structures.

[100] As discussed later in this judgment,<sup>50</sup> Ngāti Hinewaka and the SIRs have reached agreement on generic wording for the restrictions and prohibitions sought (which also satisfies concerns raised by the Greater Wellington Regional Council) and a protocol for the notification of a rāhui.

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<sup>50</sup> At [165]-[167], Annexures A and B.

*Matakitaki-a-Kupe (Wāhi Tapu #5)*

[101] As recorded in the Wāhi Tapu Judgment,<sup>51</sup> Matakitaki-a-Kupe is a site of cultural significance to Ngāti Hinewaka as it is where Kupe made landfall during his travel along the Wairarapa coast. Mr Te Whaiti’s evidence also notes the significance of the landmark as the place where Kupe grieved the departure of his daughter. The rocks contain Kupe’s blood and tears, as they were imprinted with “ngā toto me ngā roimata me te wai o te ihu” of Kupe in this moment of grief.

[102] The site has been registered as an Historic Area, a wāhi tapu, with Heritage New Zealand Pouhere Taonga and is included as a site of Māori significance in the proposed Wairarapa Combined District Plan.

[103] I recorded in the Wāhi Tapu Judgment that the specific site is not within the CMCA, but the tapu inherent in the site affects the adjacent takutai moana and means the broader site may be a wāhi tapu.<sup>52</sup> I asked that the applicant file a map more clearly defining the seaward boundary of the site. Mr Te Whaiti’s further evidence records that the rocks at Matakitaki-a-Kupe fully extend into the sea.

[104] Ōhinerua<sup>53</sup> is a tauranga waka site on the eastern side of the Matakitaki No 3 Fishing Reserve. In the wāhi tapu hearing, Ngāti Hinewaka sought wāhi tapu protection for Matakitaki-a-Kupe and Ōhinerua as two separate sites. In the wāhi tapu judgment I concluded that the statutory requirements of a wāhi tapu were not satisfied in respect of Ōhinerua.<sup>54</sup>

[105] Mr Te Whaiti’s evidence at this hearing was that separating the two sites was an error, and Ngāti Hinewaka should have sought wāhi tapu protection for one site, covering both Matakitaki-a-Kupe and Ōhinerua, because the two areas are interconnected, being part of a coastal fishing complex when the area was set aside as a reserve by the Native Land Court for a “fishing ground” in the 1890s. Wāhi tapu protection is now sought for one site, encompassing both.

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<sup>51</sup> Wāhi Tapu Judgment, above n 3, at [176].

<sup>52</sup> At [179].

<sup>53</sup> The applicants also referred to this site as Ōhinemuri in their closing submissions.

<sup>54</sup> At [182]–[185].

[106] As Mr Te Whaiti notes, Ngāti Hinewaka have made a number of efforts over the years to recognise the significance of the area to the iwi.<sup>55</sup> In 1890, Part Matakītaki No 3 Native Reserve was created as a fishing place for Ngāti Hinewaka. In 1940, the Native Land Court recommended that Matakītaki No 3 be set aside as a landing place and fishing ground for the common use of owners of Te Kōpi, Kawakawa and Matakītaki blocks, which was gazetted in 1941. Despite attempts by Ngāti Hinewaka to have an exclusive fishery recognised by the Crown, the Crown has been unwilling to do so. Mr Te Whaiti says that the landing place referred to in the gazetting is the Ōhinerua tauranga waka, which Ngāti Hinewaka says is also a wāhi tapu. As recorded by Foss Leach in his 2003 report to the Waitangi Tribunal:<sup>56</sup>

*Te Mawe* was a *tauranga waka* (safe canoe anchorage); also *Te Kirikiri*, *Te Karetu* and *Hinerua*. These were the chief landing places on that part of the coast.

[107] Daryl Sykes gave evidence on behalf of the SIRs. In his oral evidence before the Court, Mr Sykes confirmed his view, as a long-time resident of the South Wairarapa coast, that the two sites are perceived by the public as being a combined area of cultural significance for Ngāti Hinewaka. Mr Sykes indicated that Ōhinerua is well understood locally as being part of the Matakītaki fishing complex and the tauranga waka boundary can be readily seen.

[108] Ngāti Hinewaka has now included in the draft Recognition Orders a more precise map defining the seaward boundary of this composite wāhi tapu and indicating that the boundary aligns with the extension of the rock formation into the CMCA.

[109] Mr Sykes confirmed that he had discussed the boundaries of the site (incorporating Ōhinerua) and was satisfied that the site with the agreed boundaries was indeed of immense cultural significance. The Attorney-General did not take issue with the amended map.

[110] I am satisfied on the further evidence that this site should be recognised as encompassing both Matakītaki-a-Kupe and Ōhinerua and that it should be granted

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<sup>55</sup> As recorded in Foss Leach *Depletion and Loss of the Customary Fishery of Ngāti Hinewaka* (Report presented to the Waitangi Tribunal, Document Wai-863-#A71, 2003) at 138–139.

<sup>56</sup> At 138. Mr Te Whaiti explained at the hearing that “Hinerua” refers to Ōhinerua.

wāhi tapu status. Ngāti Hinewaka should have the power to impose rāhui and a condition be imposed that, in order to protect, respect and restore Te Taiao of the wāhi tapu area including kaimoana and ecology, persons in the wāhi tapu area must not damage the site. In addition, it is appropriate to impose a condition that there be no erection of new structures or infrastructure within the boundaries of the wāhi tapu.

*Titirangi (Wāhi Tapu #6)*

[111] In the Wāhi Tapu Judgment I found that the rock formation associated with this site, representing Kupe's adze, is within the CMCA and that it appeared there was some alignment of the boundary with reef formations.<sup>57</sup> I directed that the requirements for a wāhi tapu may have been met, subject to the filing of a map that showed the boundaries more precisely.<sup>58</sup>

[112] Ngāti Hinewaka has now provided a more precise map, clearly defining the seaward boundary of this wāhi tapu and indicating that the boundary aligns with the reef formations in the CMCA.

[113] As Mr Te Whaiti's evidence notes, the boundaries previously sought for this wāhi tapu have been reduced by removing part of the northern extent and focusing on the rocks of the headland and immediate surrounds, as the key site of the wāhi tapu.

[114] This headland, including the reef, at the base of Tītīrangi Pā, is Te Kakau a Kupe, which translates as the handle of Kupe's adze. This is a reference to the weapon Kupe used to slay the octopus, Te Wheke o Muturangi. Te Kakau is a key marker on the coast and is also the southern end of the PCRs granted to Ngāti Hinewaka on this part of the coast.

[115] The further evidence provided satisfies the requirements for a wāhi tapu. The Attorney-General takes no issue with an order being granted for this site but, as discussed above, submits that the necessity of the particular conditions sought is not made out.

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<sup>57</sup> Wāhi Tapu Judgment, above n 3, at [186], [187] and [189].

<sup>58</sup> At [190].

[116] I accept that the prohibitions and restrictions sought by Ngāti Hinewaka are necessary, being:

- (a) the power to impose rāhui in respect of the sites;
- (b) a direction that persons in the wāhi tapu area must not [damage] the site;
- (c) that there be no new structures or infrastructure erected within the boundaries of the wāhi tapu.

*Te Awaiti (Wāhi Tapu #7)*

[117] Te Awaiti is the site of the significant coastal papakāinga of Ngāti Hinewaka. A coastal reserve was set aside here for the hapu to preserve the access to the takutai moana. There is an urupā nearby which is a wāhi tapu of Ngāti Hinewaka, holding substantial spiritual and cultural significance to the community. As with Te Kopi, the urupā at Te Awaiti is being eroded by the ocean.

[118] This site has been registered as a wāhi tapu with Heritage New Zealand and is included as a site of Māori significance in the proposed Wairarapa Combined District Plan.

[119] The Wāhi Tapu Judgment accepted that there is a known urupā at Te Awaiti, with a direct landward boundary, but concluded there was a lack of evidence at that stage as to how the larger claimed wāhi tapu area corresponds to the smaller landward boundaries of the known urupā site.<sup>59</sup> I also concluded that there was then a lack of evidence to justify the extension of the wāhi tapu from the site of the known urupā into the CMCA.<sup>60</sup>

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<sup>59</sup> At [208].

<sup>60</sup> At [208].

[120] I accepted that the nature of historic burials in the proximity of the urupā to the coast means the wāhi tapu does extend into the CMCA, but concluded that greater clarity was required as to the seaward boundary and the basis for it.<sup>61</sup>

[121] Ngāti Hinewaka has provided a more precise map defining the seaward boundary and reducing the wāhi tapu area “to the beach immediately in front of the urupā where greatest caution and activities that should be undertaken is required”. Mr Te Whaiti’s evidence is also that the urupā at Te Awaiti was created during the post-colonial settlement period when the hapū were living on a small reserve area set aside from the Te Awaiti Crown purchase. The urupā has been eroding into the adjacent sea and a wāhi tapu is necessary to protect the urupā from future development in the CMCA.

[122] I am satisfied that the boundaries of this wāhi tapu area are now sufficiently defined, it should be granted wāhi tapu status and it is necessary to grant the restrictions/conditions sought, which are the ability to apply a rāhui, a prohibition on damage to physical features and a ban on new structures.

*Punaruku (Wāhi Tapu #8)*

[123] The Kawakawa Trust has appeared in this proceeding as an interested party. The Trust owns whenua abutting Ngāti Hinewaka’s application area, on behalf of the descendants of Hemi Te Miha. At the previous hearing, the Kawakawa Trust sought to have a wāhi tapu area around Punaruku Lagoon and the adjoining wetlands included as a designated wāhi tapu under the Act.

[124] In the Wāhi Tapu Judgment I recorded two questions in relation to whether the Punaruku site could be advanced further as a wāhi tapu. First, I questioned whether the Kawakawa Trust has standing to seek recognition of a wāhi tapu within a CMT.<sup>62</sup> I urged Ngāti Hinewaka to engage with the Kawakawa Trust as to whether this site might be advanced by Ngāti Hinewaka as a wāhi tapu site. Second, I noted that it was

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<sup>61</sup> At [209].

<sup>62</sup> At [378], referring to s 78(1) of the Takutai Moana Act.

not clear from the evidence whether the site extends into the CMCA, so that a wāhi tapu order could be made, if the applicant had standing.<sup>63</sup>

[125] Ngāti Hinewaka now advances the Punaruku site as a wāhi tapu and seeks associated restrictions. The application is supported by the Kawakawa Trust, which accepts that it would come within Ngāti Hinewaka's CMT. Both Mr Te Whaiti, for Ngāti Hinewaka, and Tā Kim Workman for the Kawakawa Trust, gave evidence in this hearing of kōrero and fruitful discussions between the Kawakawa Trust and Ngāti Hinewaka. Mr Te Whaiti states that "the local people say that they have always viewed the area as wāhi tapu, including the adjoining area in the CMCA".

[126] Accordingly, I am satisfied that the first issue raised about Punaruku in the Wāhi Tapu Judgment is resolved.

[127] As to the second question, Tā Kim's evidence in this hearing set out further information about Punaruku which Mr Te Whaiti had made available, including that Punaruku was Kupe's daughter, that Elsdon Best's retelling of the killing of the wheke by Kupe includes a moteatea (chant or lament) in which Punaruku is named, and the Native Land Court minutes refer to Punaruku as a taupahi, or a temporary encampment, most probably while fishing. As Tā Kim observed, it would make sense to camp close to a fresh water source.

[128] Tā Kim noted that, in addition to that compelling mythology, the trustees and beneficiaries of the Kawakawa Trust regard Punaruku as a wāhi tapu because of its traditional and ecological significance. As Tā Kim said, "It has withstood earthquakes, flooding and natural disasters over hundreds of years, and in the event of a future disaster, may well remain as the single source of fresh water to the Ngāwi community". Tā Kim's further evidence describes the wāhi tapu site as "on [Kawakawa Trust] land... around Punaruku Lagoon and the adjoining wetlands".

[129] Tā Kim's evidence is that while the freshwater source is pinpointed above the CMCA, it is the Trust's view that the flow of water from the site into the sea means that the area which requires protection extends into the abutting moana. "The kōrero

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<sup>63</sup> At [379].

that we have known is that the surrounding area would have been used by those first arrivals in the regions as an ancient occupation site of considerable cultural importance, and the rocky shore would be a suitable launching point for boats and used for gathering seafood and marine mammals”.

[130] Tā Kim’s evidence reiterates the work that the Kawakawa Trustees have already done to protect and preserve the sacred nature of the site which, in their view, is not limited to the spring itself, but also includes the adjoining Key Native Ecosystem.

[131] Tā Kim says that those factors support recognition of the protection area within the CMCA in order to protect the wāhi tapu in its entirety, through the imposition of rāhui in the event of emergency, environmental contamination or death.

[132] The Attorney-General’s submission is that it remains unclear whether the flow of water from the wetland into the sea means that tapu radiates into the CMT at Punaruku, or rather that the wāhi tapu remains above MHWS and the concern is to ensure protection response to a trigger event, including the surrounding sea.

[133] Tā Kim did not accept that, because only the area around the spring has been fenced, that must be treated as the “core wāhi tapu site”. As Tā Kim explained in cross-examination, the area was fenced for practical reasons — it is the area where the Trust had a joint project with the Greater Wellington Regional Council and “the preservation of that area was paramount”. But from a cultural perspective, he said, the whole area is wāhi tapu. Efforts have been taken by the Trust to protect the whenua and its surrounds. The physical boundary of the Kawakawa whenua runs below the MHWS into the CMCA. The applicants’ submission is that it would be artificial and contrary to tikanga to draw a line in the way proposed by the Attorney-General and the SIRs.

[134] Although the issue is not without difficulty, I am persuaded that it would be artificial to acknowledge that the area above mean high water springs is tapu, but that the tapu ends at the MHWS line. I accept that the area sought to be designated is one integrated area. As Tā Kim noted, “... if there’s a flood, if there’s any contamination

of water et cetera, that will seep into the sea itself and for our purposes we see those two areas as being merged. ...It's exactly part of the whole".

[135] I conclude that it is appropriate to grant wāhi tapu status to the area as a whole. The only restriction or condition sought is the ability to impose rāhui on a triggering event. I conclude that such a condition is necessary.

*Te Unuunu (Wāhi Tapu #9)*

[136] In the Wāhi Tapu Judgment I noted that Te Unuunu was a site capable of recognition under the Takutai Moana Act by way of wāhi tapu protection rights, but observed a lack of evidence as to the claimed seaward extent of the wāhi tapu.<sup>64</sup> On that basis I directed Ngāi Tūmapūhia to file revised maps with more precise and confined boundaries.

[137] Ngāi Tūmapūhia has filed further evidence that Te Unuunu was named by Kupe when he visited and Ngāi Tūmapūhia's eponymous ancestor Tūmapūhia also settled there for a time, utilising its resources.

[138] The applicants submit that the wāhi tapu is centred around the reef formation that extends off the coast. The various reef systems have been given the traditional names "toka" and "rua" by Ngāi Tūmapūhia, as have the kelp varieties found there. Dr Smith's evidence notes that retrieval of these different types of kelp remains a test to demonstrate skill in the use of karakia. In addition, this area includes a channel in which taniwha sometimes reside.

[139] Ngāi Tūmapūhia has revised the boundaries, changing the boundary lines to straight lines and reducing the seaward extent. It does appear from the revised map filed by the applicants that the wāhi tapu area now more closely reflects the Te Unuunu reef system.

[140] On that basis, I am satisfied it should be designated as a wāhi tapu.

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<sup>64</sup> At [338].

[141] The proposed prohibitions and restrictions are the ability to impose rāhui in certain circumstances, a prohibition on wilful damage, defacement or material alteration of the natural and physical features of the area, a prohibition on removal of natural materials and/or any taonga or kōiwi from the wāhi tapu, and a ban on new structures, with an exemption for minor Regional Council works and a provision concerning commercial fishing uses. I am satisfied those are necessary.

*Waipupu (Wāhi Tapu #10)*

[142] In the Wāhi Tapu Judgment I noted that the Waipupu site was capable of recognition under the Takutai Moana Act by way of wāhi tapu protection rights but observed a lack of evidence as to the extension of the wāhi tapu from the site of the historical urupā into the CMC.<sup>65</sup> As with Te Unuunu, I directed Ngāi Tūmapūhia to file revised maps with more precise and confined boundaries.

[143] The draft orders now filed do include more precise maps of these wāhi tapu areas. However, the map filed by Mr Moody at the beginning of the hearing showed that the boundaries of Waipupu had not been narrowed.

[144] Dr Smith's evidence for Ngāi Tūmapūhia in the wāhi tapu hearing and this hearing addressed why the applicant say the wāhi tapu should encompass an area within the CMCA:

- (a) The area was an ūranga waka, where Ngāi Tūmapūhia landed their waka;
- (b) The urupā near the shoreline south of the Kororiki Stream is at risk of erosion into the takutai moana;
- (c) The presence of rocky outcrops ("papa kōhatu") from which karengo was collected. These extend out into the takutai moana;

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<sup>65</sup> At [315].

- (d) The link of the famous Ngāi Tūmapūhia kōrero regarding Pouhokio ordering the women of the hapū to dress up as men and perform a haka to a warring taua in the takutai moana. This took place north of the Kororiki Stream;
- (e) The location of a kāinga area between the Waipupu and Kororiki Streams.

[145] Dr Smith's evidence was that the important Ngāi Tūmapūhia tīpuna, Pouhokio, is said to be buried in this urupā, which is at risk of erosion into the takutai moana. Ngāi Tūmapūhia has a history of protecting this wāhi tapu for over half a century — Dr Smith gave evidence of his mother's aunt opposing local landowners encroaching upon the urupā in the 1960s, a kōrero endorsed by a Rangitāne kaumatua, Piri Te Tau, in the CMT hearing. Pouhokio's legacy is central to Waipupu's designation as a wāhi tapu. The kōrero of Ngāi Tūmapūhia women dressing as men and performing a haka to scare off a rival war party of waka at Waipupu, under the command of Pouhokio, continues to be passed down from generation to generation.<sup>66</sup>

[146] The Attorney-General had questioned the extension of the claimed wāhi tapu into the CMCA and also whether the southward and seaward extent of the wāhi tapu was justified on the evidence.

[147] During the course of the hearing, the applicants revised the southern boundary of the Waipupu wāhi tapu, capturing those areas with specific associated kōrero, but not all of the wider ūranga waka area initially sought to be protected.<sup>67</sup> The seaward extent of the wāhi tapu is sufficient to ensure that the papa kōhatu are included within the wāhi tapu.

[148] Having heard the additional evidence and taking account of the revised map I am satisfied that Waipupu should be designated a wāhi tapu.

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<sup>66</sup> At [280].

<sup>67</sup> The amended southern boundary is reflected in map S25-0061-WT10d in the Recognition Orders.

[149] The proposed prohibitions and restrictions are the same as for Te Unuunu. I am satisfied those are necessary.

*Kaihoata (Wāhi Tapu #11)*<sup>68</sup>

[150] In the Wāhi Tapu Judgment I identified Kaihoata as capable of recognition under the Takutai Moana Act by way of wāhi tapu protection rights, but noted a lack of evidence at that time to establish the location of the urupā at Kaihoata and the risk of kōiwi being washed into the moana.<sup>69</sup>

[151] I directed Ngāi Tūmapūhia to file a revised map clarifying the proximity of the urupā, in order to justify recognition of the directly adjacent takutai moana as wāhi tapu.

[152] The draft orders filed by the applicants do contain more precise and confined boundaries in respect of the claimed wāhi tapu at Kaihoata, but the map does not clarify the location or proximity of the urupā.

[153] Dr Smith has filed further evidence to show that Kaihoata is extremely significant because Ngāi Tūmapūhia's eponymous ancestor lived here, and that makes the very whenua in the area wāhi tapu. That evidence also discusses why the tapu of the site is linked to the takutai moana. The tapu arises not only from the urupā, with the risk of kōiwi being washed into the sea, but also the rituals and karakia carried out in the beach area to the south of the river mouth, which affected the warriors transitioning into a different state for battle, as opposed to peace time. They would undergo this process when leaving to and returning from a battle.

[154] In addition, Ngāi Tūmapūhia consider the fossilised tree stumps within the moana itself and the rock formations in front of the river mouth to be tīpuna. There is a well-known kōrero that if you see one of the stumps at the surface of the water and it is black in colour, you need to get out of the water. Dr Smith's evidence was that the proposed seaward extent of the wāhi tapu is necessary to protect the rock formations which extend out this far. These are named for tīpuna.

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<sup>68</sup> Also referred to as Kaiwhata.

<sup>69</sup> Wāhi Tapu Judgment, above n 3, at [329].

[155] I am satisfied that this evidence does sufficiently demonstrate that the tapu extends into the takutai moana and that the proposed boundaries of the wāhi tapu are appropriate.

[156] The proposed restrictions and conditions are the same as for Te Unuunu. I am satisfied they should be imposed.

*Karaka Bay (Wāhi Tapu #12)*

[157] Similarly, in the Wāhi Tapu Judgment I identified Karaka Bay as capable of recognition as a wāhi tapu but noted a lack of evidence to establish the location of the site of the washing up of kōiwi at Karaka Bay and why the area of wāhi tapu should extend beyond that (undefined) area.<sup>70</sup> As with Kaihoata I directed that Ngāi Tūmapūhia file a revised map clarifying the proximity of the urupā.

[158] The draft orders filed do depict more precise and confined boundaries for Karaka Bay. Dr Smith also provided additional evidence that the kōiwi is now a part of the beach at Karaka Bay, and this is why the area is tapu. Dr Smith talked about the possibility that kōiwi could be scattered along the bay. He also referred to particular drownings that have occurred there.

[159] The Attorney-General notes that the evidence shows that the site was never set apart or declared a wāhi tapu in the past.

[160] As I recorded in the Wāhi Tapu judgment, the view expressed by Dr Robert Joseph, the pūkenga in this case, was that that continued public access to sites is not inconsistent with them being wāhi tapu.<sup>71</sup> On that basis, I do not think it is fatal that this area at Karaka Bay has not previously been set aside.

[161] Overall, I am satisfied that the criteria for a wāhi tapu are met in relation to the Karaka Bay site.

[162] The conditions and restrictions granted are the same as for Te Unuunu.

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<sup>70</sup> At [334].

<sup>71</sup> At [81].

### **Exceptions to prohibitions and restrictions**

[163] One of the PCR rights granted is in respect of catching īnanga at the Kaihoata river mouth. The Attorney-General submitted that the exercise of this PCR might be inconsistent with the imposition of a rāhui in the same area.

[164] Dr Smith addressed this issue, noting that collection of īnanga would never occur during a rāhui. The applicants have agreed the Recognition Orders should be amended to make this clear. That resolves the issue.

### **Agreed wording on restrictions and protocol re rāhui**

[165] At the outset of the hearing, the SIRs raised a number of concerns about the wāhi tapu protections and restrictions sought by the applicants, including their potential to materially affect commercial fishing; the likelihood that some conditions would prevent or limit the ability to launch or retrieve vessels from a ramp of beach landing locations; a lack of clarity about the phrases “natural materials”, “interference with mauri”, “alteration to the natural environment” and “damaging or modifying”; a non-exhaustive list of events that might trigger a rāhui; and a lack of translation of te reo terms.

[166] After discussions between representatives of the applicants and Mr Sykes for the SIRs, revised conditions were agreed between the SIRs and each of Ngāti Hinewaka and Ngāi Tūmapūhia. Mr Sykes confirmed that, in his view, the wāhi tapu areas were sufficiently identifiable. Further, he was satisfied that the revised conditions would not prevent fishers from taking their lawful entitlement in the quota management area and the revised conditions can be adequately followed and enforced. The revised, standard conditions, as agreed, are attached to this judgment as Annexure A (I note that not all conditions set out in the standard conditions will apply to all wāhi tapu). The applicants have also agreed with the SIRs wording of a protocol to govern the imposition of a rāhui (rāhui protocol). The rāhui protocol is attached to this judgment as Annexure B.

[167] At the outset, the Greater Wellington Regional Council raised concerns as to the potential consequences of the wāhi tapu conditions being sought on Council

activities, including RMA compliance and enforcement, environmental monitoring, environmental restoration, biosecurity and pest control, maritime safety, catchment management and flood protection. The Council noted those consequences may have been inadvertent and, following discussions with the applicants, the concerns have been satisfactorily resolved in the revised conditions.

## **Orders**

[168] On the joint application of Ngāi Tūmapūhia-ā-Rangi Hapū, Ngāi Tūkoko and Ngāti Moe, Ngāti Hinewaka, Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua, Rangitāne Tū Mai Rā Trust and Te Ātiawa ki Te Upoko o Te Ika a Maui Potiki Trust, I make the following orders.

### *Customary Marine Title*

[169] Orders recognising customary marine title pursuant to section 98 of the Takutai Moana Act in respect of:

- (a) a jointly held CMT for Ngāti Hinewaka, Ngāti Rua, Ngāi Tūkoko, Ngāti Moe, Ngāti Rakaiwhakariri, Ngāti Rākairangi, Ngāti Ngapu o te Rangi, Ngāti Hinetauira, Ngāti Hāmua and Te Ātiawa hapū over the area between Tūrakirae Head in the west and Mukamukaiti in the east, from the mean high-water springs out to a line parallel to mean high water springs three km out to sea (“**CMT Area 1**”). The particular area to which the customary marine title order applies is shown in survey plans S25-0061-AP1c, S25-0061-R11c, S25-0061-R101c, S25-0061-R102c, S25-0061-R103c and S25-0061-R104c, at Appendix 1;
- (b) a jointly held CMT for Ngāi Tūkoko and Ngāti Moe, Ngāti Hinewaka hapū, Ngāti Rua, Ngāti Rakaiwhakairi, Ngāti Rākairangi, Ngāti Ngapu o te Rangi, Ngāti Hinetauira and Ngāti Hāmua over the area between Mukamukaiti in the west and Kawakawa Point in the east from the mean high-water springs out to a line parallel to mean high-water springs three km out to sea (“**CMT Area 2**”). The particular area to

which the customary marine title order applies is shown in survey plans S25-0061-AP1c, S25-0061-R21c, S25-0061-R22c, S25-0061-R201c, S25-0061-R202c, S25-0061-R203c, S25-0061-R204c, S25-0061-R205c, S25-0061-R206c, S25-0061-R207c, S25-0061-R208c, S25-0061-R209c, S25-0061-R210c, S25-0061-R211c, S25-0061-R212c, S25-0061-R213c, S25-0061-R214c, S25-0061-R2D1c, S25-0061-R215c, S25-0061-R216c, S25-0061-R217c, S25-0061-R218c, S25-0061-R219c, S25-0061-R220c, S25-0061-R221c, S25-0061-R222c and S25-0061-R224c, at Appendix 2;

- (c) a jointly held CMT for Ngāti Hinewaka hapū, Ngāti Rangaranga and Ngāi Tuohungia over the area between Kawakawa Point in the west and Āwhea River in the east from the mean high-water springs out to a line parallel to mean high-water springs three km out to sea (**CMT Area 3**). The particular area to which the customary marine title order applies is shown in survey plans S25-0061-AP1c, S25-0061-R31c, S25-0061-R301c, S25-0061-R302c, S25-0061-R303c, S25-0061-R304c, S25-0061-R305c, S25-0061-R306c, S25-0061-R307c, S25-0061-R308c, S25-0061-R309c, S25-0061-R310c, S25-0061-R311c, S25-0061-R312c, S25-0061-R313c, S25-0061-R314c and S25-0061-R315c, at Appendix 3;
- (d) a jointly held CMT for Ngāi Tūmapūhia, Ngāti Rongomaiaia, Ngāti Māhu, Ngāti Kawekairangi, Ngāi Te Ao, Ngāti Te Aokino, Ngāti Pārera, Ngāti Meroiti and Ngāti Hāmua over the area between Āwhea River in the south-west and Te Unuunu in the north-east from the mean high-water springs out to a line parallel to mean high-water springs 10 km out to sea (“**CMT Area 4**”). The particular area to which the customary marine title order applies is shown in survey plans S25-0061-AP1c; S25-0061-R41c, S25-0061-R42c, S25-0061-R43c, S25-0061-R44c, S25-0061-R401c, S25-0061-R402c, S25-0061-R403c, S25-0061-R404c, S25-0061-R405c, S25-0061-R406c, S25-0061-R407c, S25-0061-R408c, S25-0061-R409c, S25-0061-R410c, S25-0061-R411c, S25-0061-R412c, S25-0061-R413c, S25-0061-

R414c, S25-0061-R415c, S25-0061-R416c, S25-0061-R417c, S25-0061-R418c, S25-0061-R419c, S25-0061-R420c, S25-0061-R421c, S25-0061-R422c, S25-0061-R423c, S25-0061-R424c, S25-0061-R425c and S25-0061-R426c, at Appendix 4; and

- (e) an exclusively held CMT for Ngāi Tūmapūhia over the area between Te Unuunu in the south-west and Whareama in the north-east from the mean high-water springs out to a line parallel to mean high-water springs 10 km out to sea (“**CMT Area 5**”). The particular area to which the customary marine title order applies is shown in survey plans S25-0061-AP1c, S25-0061-R51c, S25-0061-R52c, S25-0061-R53c, S25-0061-R501c, S25-0061-R502c, S25-0061-R503c, S25-0061-R504c, S25-0061-R505c, S25-0061-R506c, S25-0061-R507c, S25-0061-R508c, S25-0061-R509c, S25-0061-R510c, S25-0061-R511c, S25-0061-R512c, S25-0061-R513c, S25-0061-R514c, S25-0061-R515c, S25-0061-R516c and S25-0061-R517c, at Appendix 5.

### *Wāhi tapu*

[170] Orders recognising wāhi tapu pursuant to s 98 of the Takutai Moana Act in the CMT Areas, at:

#### CMT Area 2

- (a) Te Kopi — depicted in survey plan S25-0061-WT1C;
- (b) Pararaki — depicted in survey plan S25-0061-WT2C;
- (c) Kārearea — depicted in survey plan S25-0061-WT3C;
- (d) Punaruku — depicted in survey plan S25-0061-WT8C;

#### CMT Area 3

- (e) Ngā Rā a Kupe — depicted in survey plan S25-0061-WT4C;

(f) Matakītaki-a-Kupe — depicted in survey plan S25-0061-WT5C;

(g) Titirangi — depicted in survey plan S25-0061-WT6C;

#### CMT Area 4

(h) Te Awaiti — depicted in survey plan S25-0061-WT7C;

#### CMT Areas 4 and 5 (spanning both CMT Areas)

(i) Te Unuunu — depicted in survey plan S25-0061-WT9D;

#### CMT Area 5

(j) Waipupu — depicted in survey plan S25-0061-WT10D;

(k) Kaihoata — depicted in survey plan S25-0061-WT11C; and

(l) Karaka Bay — depicted in survey plan S25-0061-WT12C.

The wāhi tapu to which the orders apply are identified and defined by the boundaries shown in the survey plans, as part of Appendices 2 to 5.

[171] A table of all wāhi tapu is attached as Appendix 7.

#### *Protected Customary Rights*

[172] Orders recognising protected customary rights pursuant to s 98 of the Takutai Moana Act are made in respect of:

(a) Ngāti Hāmua, on behalf of Rangitāne: collection of water (for ceremonial purposes, medicinal properties, and for use when returning inland) at Waikekeno, Glenburn and Te Unuunu (depicted in survey plans S25-0061-PCR14B, S25-0061-PCR15B and S25-0061-PCR16B);

- (b) Ngāti Hinewaka: collection of sand and stones, shingle and detritus in the area from north of Waikekeno to Kakau (depicted in survey plan S25-0061-PCR9B); and gathering driftwood, in its application area (depicted in survey plan S25-0061-PCR1B).
  
- (c) Ngāi Tūkoko and Ngāti Moe: a general right of kaitiakitanga over the application area for the purposes of conservation measures and practices (depicted in survey plan S25-0061-PCR3B); collection of driftwood at Lake Ōnoke (depicted in survey plan S25-0061-PCR5B) and harakeke at Mātakitaki-a-Kupe (depicted in survey plan S25-0061-PCR8B); catching of īnanga at Lake Ōnoke and Whāngaimoana Beach (depicted in survey plans S25-0061-PCR6B and S25-0061-PCR7B); and conducting traditional practices including the use of the maramataka, within its application area (depicted in survey plan S25-0061-PCR4B).
  
- (d) Ngāi Tūmapūhia: a general right of kaitiakitanga over the application area for the purposes of conservation measures and practices (depicted in survey plan S25-0061-PCR10B); the taking, use, management and/or preservation of rocks, driftwood and shells at Te Unuunu (depicted in survey plan S25-0061-PCR17C); catching īnanga at Kaihoata (with the limitation that this is not to occur while a rāhui is in place) and at Pāhāoa River (depicted in survey plan s-25-0061-PCR13B); collection of water (for rongoa purposes) in the application area (depicted in survey plan S25-0061-PCR12B); and use of the maramataka, within the application area (depicted in survey plan S25-0061-PCR11B).
  
- (e) Te Ātiawa: a general right of kaitiakitanga over the application area for the purposes of conservation measures and practices (depicted in survey plan S25-0061-PCR2B).

[173] A table setting out all PCRs granted is attached as Appendix 6. Survey plans of the areas and locations where the protected customary rights can be exercised under these orders are included within Appendices 1 to 5.

[174] There is no limitation on the scale or frequency of the exercise of the protected customary rights.

### **Conclusion**

[175] The award of customary marine title, the wāhi tapu and the protected customary rights are to be administered and/or exercised in accordance with tikanga.

[176] These recognition orders are final orders but such orders cannot be sealed under the Takutai Moana Act until the expiry of the appeal period or the disposal of any appeal from the applicant group.

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**Gwyn J**

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