IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2019-485-700
[2022] NZHC 1880

UNDER	the Declaratory Judgments Act 1908
AND	the Judicial Review Procedure Act 2016 and Part 30 of the High Court Rules 2016
IN THE MATTER OF	the Central North Island Forests Land Collective Settlement Act 2008
BETWEEN	CNI IWI HOLDINGS LIMITED Plaintiff / Counterclaim First Respondent
AND	TŪHOE ESTABLISHMENT TRUST First Defendant/ Counterclaim Second Respondent
	TE RŪNANGA O NGĀTI MANAWA Second Defendant/ Counterclaim applicant
	TE MANA O NGĀTI RANGITIHI Third Defendant/ Counterclaim Third Respondent
	TŪWHARETOA SETTLEMENT TRUST Fourth Defendant/ Counterclaim Fourth Respondent
	TE KŌMITI NUI O NGĀTI WHAKAUE Fifth Defendant/ Counterclaim Fifth Respondent
	TE RŪNANGA O NGĀTI WHARE Sixth Defendant/ Counterclaim Sixth Respondent
	RAUKAWA SETTLEMENT TRUST Seventh Defendant/ Counterclaim Seventh Respondent
	TE PŪMAUTANGA O TE ARAWA TRUST Eighth Defendant/ Counterclaim Eighth

Respondent

MOANA JACKSON AND WAYNE NGATA
Counterclaim Ninth Respondents

AND

NGĀTI TAHU-NGĀTI WHAOA RŪNANGA TRUST
Intervener

Hearing: 19-23 July 2021

Appearances:
P Radich QC and L Van Dam for Plaintiff / Counterclaim First Respondent
D Neutze for First Defendant/Counterclaim Second Respondent and Fourth Defendant / Counterclaim Fourth Respondent
J B Orpin-Dowell, M R G van Alphen Fyfe, R Zwaan for Second Defendant / Counterclaim Applicant
No appearance for Third Defendant / Counterclaim Third Respondent
No appearance for Fifth Defendant / Counterclaim Fifth Respondent
J Ferguson and C Conroy-Mosdell for Sixth Defendant / Counterclaim Sixth Respondent
F Barton and A Clark-Tahana for Seventh Defendant / Counterclaim Seventh Respondent
M Ferrier and A Leggat for Eighth Defendant / Counterclaim Eighth Respondent
P F Majurey for the Intervener

Judgment: 2 August 2022

JUDGMENT OF GWYN J

Solicitors:
Gibson Sheat, Wellington
Te Aro Law, Wellington
Brookfields, Auckland
Kāhui Legal, Wellington
Anderson Lloyd, Dunedin
Minter Ellison Rudd Watts, Wellington
Clifton Chambers, Wellington
GFS Risk Ltd, Auckland
Atkins Holm Majurey Ltd, Auckland

TABLE OF CONTENTS

Introduction

[1] In 2008, the Crown and eight Central North Island Iwi (CNI Iwi) reached a Treaty settlement of their historical claims under the Treaty of Waitangi. Under the settlement, the Crown agreed to transfer 176,000 ha of Central North Island Forests Land (CNI forests land) to CNI Iwi, through their respective post-settlement governance entities (PSGEs). The settlement was given effect to by the Central North Island Forests Land Collective Settlement Act (the Act).

[2] Under the settlement the Crown also agreed to transfer $223 million in rentals that had accumulated from the Crown Forestry Licences (CFLs) attaching to the CNI forests land and the rights to ongoing rentals from the CFLs. The Crown transferred the CNI forests land and accumulated rentals to CNI Iwi Holdings Limited (the Company). The shares and directorships of the Company are held equally by the PSGEs of the CNI Iwi.

[3] The Company's role is to hold and administer the land and to distribute the ongoing rentals from the forestry licences as trustee for CNI Iwi in accordance with the Act, the CNI (Central North Island) Forests Iwi Collective Deed of Settlement of the historical claims of CNI (Central North Island) Forests Iwi Collective to the Central North Island Forests Land, of 25 June 2008 (Settlement Deed) and the Trust Deed and Shareholders' Agreement of 30 June 2009 (TD & SA).[1]

[4] The accumulated rentals from the CFLs are allocated to the CNI Iwi in accordance with the allocation percentages in sch 3 of the Act.[2] The ongoing rentals and other income derived from the land continue to be paid to the Company and must be allocated and distributed according to the Collective's agreed proportions in the TD & SA[3] until the Collective's final allocation date (as defined in the deed of trust) – 2043 (or earlier by unanimous agreement of all iwi).[4] After the Collective's final

---

1 The provisions of the Act, the Deed of Settlement, the Trust Deed and Shareholders' Agreement and the Company's constitution are set out in an earlier, related High Court decision *Te Runanga o Ngāti Manawa v CNI Iwi Holdings Ltd* [2016] NZHC 1183 at [9] – [35] [the earlier High Court decision].

2 See also cl 7.2(a) of the Trust Deed and Shareholders' Agreement of 30 June 2009 (TD & SA).

3 The Central North Island Forests Land Collective Settlement Act 2008 (Act) sch 2, cl 7.3(b).

4 Under the TD & SA, in 2043 the rentals become an entitlement of the CNI Iwi to whom that part of the land is distributed under the final allocation agreement: cl 7.3 read together with cl 1.1.

allocation date, the ongoing rentals become an entitlement of the iwi "to whom that part of the land is distributed", i.e. the income will "run with the land".[5]

[5] As part of the settlement, CNI Iwi agreed on a process to allocate the CNI forests land amongst themselves. Allocation under this Tikanga-based resolution process, is to be on the basis of mana whenua.[6]

[6] At the completion of the Tikanga-based resolution process, the Company is to prepare a final allocation agreement, which records the outcome of the resolution process and is final and binding.[7] After completion of the final allocation agreement, on receiving a written request from a PSGE, the Company must transfer the CNI forests land to that CNI Iwi or nominee, in accordance with the final allocation agreement and the TD & SA.[8]

Parties

[7] The Company, the plaintiff in this proceeding, has seen its role in the proceeding as assisting the Court by providing an objective overview of the factual narrative and of the applicable legal principles. It has identified for the Court the principal issues and the positions of the parties, as the Company understands them to be, based on the pleadings filed.[9]

[8] The PSGEs are the first to eighth defendants in this proceeding. The ninth defendants are the members of the Adjudication Panel appointed under the Tikanga-based resolution process. It is the Adjudication Panel's decision that is subject to judicial review in this proceeding. As is usual, the Panel did not take an active part in the proceedings. Nor did the sixth defendant, Ngāti Whakaue.

[9] Ngāti Tahu-Ngāti Whāoa was granted leave to intervene in the proceeding in relation to an agreement between Ngāti Tahu-Ngāti Whāoa and Ngāti Manawa (the

---

5 Act, sch 2, cl 7.3(b).
6 The Tikanga-based resolution process is recorded in sch 2 to the Act, read together with the TD & SA .
7 Act, sch 2, cl 7(1)-(2).
8 Schedule 2, cl 7(3).
9 The Company acknowledges that the parties' positions may ultimately differ from or be more nuanced than as recorded by the Company.

second defendant) and because of the likelihood that the Court's determination will affect Ngāti Tahu-Ngāti Whāoa's direct interest. The application for leave was unopposed.

[10] The broad issue before the Court is whether stage three of the Tikanga-based resolution process has been completed in accordance with the Act and the TD & SA and, if not, what further steps should be directed.

Tikanga-based resolution process

[11] The Tikanga-based resolution process, set out in sch 2 of the Act and sch 3 of the Settlement Deed, comprises three stages:

(a) the identification of mana whenua interests;

(b) kanohi ki te kanohi negotiations amongst CNI Iwi;[10] and

(c) in the absence of agreement following negotiations, mediation or adjudication to determine the allocation of the disputed lands.

Stage one: Identification of mana whenua interests

[12] The first stage requires CNI Iwi to provide maps to the Company indicating the extent of their mana whenua interests in the 23 parcels of CNI forests land.[11]

[13] The test of mana whenua is the mana that iwi traditionally held and exercised over land, determined according to tikanga, including but not limited to, take whenua, ahi kā roa, ahi tahutahu and ahi mātaotao.[12]

---

10 Kanohi ki te kanohi means face to face.

11 Act, sch 2, cl 4(1). The legal descriptions of each of the 23 blocks comprising the CNI forests land are set out at sch 1 of the Act.

12 Schedule 2, cl 4(2). Take whenua refers to the origin or source of an iwi's rights in land, for instance, through ancestry or conquest and occupation of land; ahi kā roa is where the fire has burned continuously and an iwi's connection to the land has been maintained steadily through intergenerational occupation; ahi tahutahu is where the connection has been maintained in an intermittent or semi-permanent way; ahi mātaotao is where the fire has become cold because the connection to the land has not been maintained.

[14] The first stage of the tikanga-based resolution process was completed in the middle of 2009. In accordance with the Act, the Company then prepared a chart setting out CNI Iwi claims over all of the CNI forests land. The chart reveals that there are cross claims for every piece of land; there are no areas of land in which, in accordance with the claims of the CNI Iwi, any of the CNI Iwi has exclusive mana whenua interests.

Stage two: Kanohi ki te kanohi negotiations

[15] The second stage of the tikanga-based resolution process requires CNI Iwi to embark on kanohi ki te kanohi negotiations with iwi with whom they have overlapping claims.[13] Those negotiations were conducted by representatives appointed by the PSGEs.

[16] Iwi were encouraged to "endeavour to reach consensus on the allocation of the CNI forests land in question, having regard to the strength of the mana whenua interests."[14] The kanohi ki te kanohi negotiations commenced in September 2009.

[17] The only agreements reached by all iwi claiming mana whenua in the land related to Marotiri and Tihoi (Pureora South). The balance of the CNI forests land was deemed to be "disputed land". Mediation was not possible because the timeframe stipulated in the Act ran out before a mediator could be agreed upon.[15] The Board of the Company then appointed adjudicators for the stage three process, but the members of the adjudication panel resigned because they would not be able to complete their work within the required statutory timeframe.[16]

[18] In June 2011, the High Court issued a declaratory judgment, sought by the Company, confirming that the PSGEs could amend the timeframes in the Act for the Tikanga-based resolution process.[17]

---

13 Schedule 2, cl 5(1).
14 Schedule 2, cl 5(3).
15 Schedule 2, cl 6(5).
16 Schedule 2, cl 6(14).
17 *CNI Iwi Holdings Ltd v Raukawa Settlement Trust* HC Wellington CIV-2011-485-982, 14 June 2011 at [25].

[19] In 2013, the CNI Iwi agreed unanimously to extend the time to complete the mana whenua process to 1 July 2014 and to refer only nine of the 23 blocks of CNI forests land for adjudication. Those nine were Caves, Flaxy Creek, Headquarters, Matea, Northern Boundary, Reporoa, Tōtara, Wairapukao and Whirinaki.

Stage three: Adjudication

[20] The third stage of the resolution process, where mediation is not possible or not successful, requires the appointment of an adjudication panel by the Board of the Company, comprising at least three members who are independent of the dispute and not members of any of the iwi involved in the dispute and who satisfied certain statutory criteria.

[21] In December 2013, the Company appointed Moana Jackson, Wayne Ngata and Tahu Potiki as the Adjudication Panel.

[22] On 12 February 2014, the CNI Iwi each submitted an individual statement of position which, when read together, were to be regarded as the "Agreed Joint Statement" to the Adjudication Panel required under the Act.[18]

[23] The Adjudication Panel advised the CNI Iwi, by letter dated 17 February 2014, of the proposed procedure, including its request for written submissions and evidence from each of the CNI Iwi.

[24] The Adjudication Panel conducted hearings between 14 April and 8 May 2014. Each of the CNI Iwi, except for Ngāti Whare, presented evidence and submissions and questioned witnesses. Ngāti Whare attended the Panel hearings but did not present any evidence as to its mana whenua interests in the disputed lands. Ngāti Whare advised the Panel that "Ngāti Whare is not in adjudication with any other of the 7 Iwi involved in this process. We have signed agreements with these Iwi around Ngāti Whare's areas of interest." At the completion of the hearings, Ngāti Whare, together with the other CNI Iwi, made a closing submission.

---

[18] Act, sch 2, cl 6(13)(a).

[25] The Adjudication Panel presented its decision to the Company at a special hui on 26 June 2014 (the 26 June 2014 Decision).[19] The Board of the Company passed a unanimous resolution to receive the decision.

[26] The Adjudication Panel summarised its conclusions as to substantive, medial and limited mana whenua interests in the nine disputed CNI forests land blocks in the terms set out at Appendix One of this judgment.[20]

[27] In 2015 Ngāti Manawa brought judicial review proceedings against the Adjudication Panel, alleging that it had failed to exercise its powers to allocate the disputed lands.

[28] The High Court agreed with Ngāti Manawa that, although the Panel had determined the mana whenua interests of each iwi, it had failed to take the additional or consequential step of allocating the disputed lands as required under the Act.[21]

[29] The High Court made declarations that:

(a) In the absence of an allocation decision by the Panel, the Company could not complete the final allocation agreement as it was required to do by cl 7.1 of the sch 2 process;[22]

(b) The Company has the power to reconvene the Panel and to require it to complete the adjudication process and to allocate the disputed lands.[23]

[30] Justice Ellis went on to say: [24] "For the avoidance of doubt, I also declare that the part of the Panel's determination which has determined the mana whenua interests remains a valid (partial) adjudication decision."

---

19 The Findings of the Adjudication Panel in the Mana Whenua Process. Convened by the Central North Island Iwi for Te Kaingaroa A Haungaroa Crown Forest Licences, 26 June 2014.
20 The table at Appendix one is compiled by counsel for the Company.
21 The earlier High Court decision, above n 1, at [99].
22 At [99(c)].
23 At [99(e)].
24 At [100].

[31] On 9 September 2016, the Adjudication Panel members agreed to reconvene "to complete the adjudication process to determine disputes over the allocation of CNI forests land as between the iwi forming part of the CNI iwi collective."

[32] Mr Jackson and Mr Ngata released a decision in November 2016 (the Jackson/Ngata Decision). Mr Potiki was seriously ill but in November 2017 he agreed to reengage in the resolution process and on 1 August 2018 he issued his report (the Potiki Addendum), which was intended to supplement the Jackson/Ngata Decision.

Claims before this Court

[33] The Company has filed an amended statement of claim dated 18 May 2020 in which it seeks a declaratory judgment on the validity of each decision made in the Second Adjudication Panel Decision (collectively the Jackson/Ngata Decision and the Potiki Addendum) or, in the alternative, judicial review to set aside decisions made by the Adjudication Panel.

[34] Ngāti Manawa's counterclaim seeks judicial review of the Second Adjudication Panel Decision on four grounds, detailed later in this judgment.

[35] Te Pumautanga o Te Arawa Trust (TPT) seeks declarations that it is a governance entity representing a collective group under the Act and that, as such, TPT rather than any of its affiliate iwi, is the appropriate entity to be allocated settlement proceeds under the Act.

[36] The intervener, Ngāti Tahu-Ngāti Whāoa, seeks an order from the Court that the Company transfer certain settlement assets to Ngāti Tahu-Ngāti Whāoa directly, rather than through TPT.

[37] There is substantial disagreement amongst the parties as to whether the third stage of the Tikanga-based resolution process has been carried out in accordance with the statutory requirements. For that reason, the Company has not yet recorded the Second Adjudication Panel Decision in a final allocation agreement, as it is required to do under sch 2, cl 6(6) of the Act.

[38] The Company, with the agreement of the PSGEs through their Directors, now seeks direction from the Court as to whether the Adjudication Panel has made procedural errors and, following from that, whether the Company is able to record the Second Adjudication Panel Decision – either in its current form or subject to any modifications prescribed by the Court – in a final allocation agreement.

Issues

[39] The parties are agreed that the broad issue for the Court is whether stage three of the Tikanga-based resolution process has been completed in accordance with the Act and the TD & SA and, if not, what corrective steps ought to be taken.

[40] The parties are also agreed that the Court should consider the following discrete issues, arising from the Company's Amended Statement of Claim, Ngāti Manawa's counterclaim and the Ngāti Tahu-Ngāti Whoa intervention.

(a) *Issue one*: whether the process whereby two adjudicators made a decision, with the third adjudicator incorporating his views at a later time, complied sufficiently with the requirements of the Tikanga-based resolution process.

(b) *Issue two:* whether the decision to continue to have all of the land held in one title and retained by the Company was a decision that the Adjudication Panel had the power to make under the Tikanga-based resolution process.

(c) *Issue three:* whether the decision to convert the substantive, medial and limited interests of each iwi in the CFLs into percentage shares for each iwi in each CFL was valid.

(d) *Issue four*: whether the decision to change the allocation of the rental proceeds received by the first to eighth defendants for each of the CFLs from the percentages set out in Schedule 3 of the Act was valid.

(e) *Issue five*: whether the decision to give immediate effect to the changed rental allocations was valid.

(f) *Issue six*: whether Table Two in the Jackson/Ngata Decision altered the mana whenua interests determined by the Adjudication Panel in the first panel decision and affirmed as valid in the High Court decision.

(g) *Issue seven*: whether the Adjudication Panel failed to give substantive recognition to Ngāti Manawa's mana whenua interests.

(h) *Issue eight*: whether the Adjudication Panel erred in failing to give effect to the agreement between Ngāti Manawa and Affiliate Te Arawa Iwi/Hapu.

[41] I consider each of those issues in turn.

Issue one: whether the process whereby two adjudicators made a decision, with the third adjudicator incorporating his views at a later time, complied sufficiently with the requirements of the Tikanga-based resolution process

[42] Following the High Court decision, at a Board meeting on 2 September 2016, the Board approved a letter to reengage the Panel members, the adjudication work programme and the adjudication panel budget. Mr Potiki indicated that he wished to remain involved in the process but that his health might dictate otherwise. In that knowledge, the Board members accepted that they were comfortable with a two-person Panel. Tūwharetoa's representative was not present at that time. Subsequent legal advice to the Board was that it was only the PSGEs who had the power to amend the three-person requirement and so the resolution of 2 September 2016 did not satisfy the requirements of the Act.

[43] The re-engagement letter was sent to all three Panel members on 9 September 2016. It referred to their task as being "to complete the adjudication process"; the "only remaining task is to determine, having regard to the mana whenua interests they have determined already, the way in which the forests land should be allocated to the iwi." The Panel members agreed to reconvene "to complete the adjudication process

to determine disputes over the allocation of CNI forests land as between the iwi forming part of the CNI iwi collective."

[44] Mr Potiki was in very poor health and was unable to participate in the process. On 18 November 2016, Moana Jackson and Wayne Ngata issued the decision of the two of them (the Jackson/Ngata Decision).

[45] The Jackson/Ngata Decision concluded that:

> To further advance and promote kotahitanga we find that the mana whenua interests of each Iwi in the particular circumstances of the CNI forests lands are best recognised and served by continuing to have all the lands held in one title and retained by the Company.
>
> …
>
> Consequent upon the finding that the lands should continue to be held in one title we have decided that the "other way of recognising mana whenua interests" requires an allocation of the rentals from the CFL's in a different way. We therefore determine that -
>
> 1.The mana whenua interests of Iwi in each of the relevant CFL's shall henceforth be recognised according to its percentage share in the CFL concerned as determined in Table Two above.
>
> 2. In order to effect such recognition the distribution of income (the rentals from the CFL's) shall henceforth be allocated according to the percentage share of each Iwi's mana whenua interest in each of the CFL's concerned. Thus, as an example, a mana whenua interest of 40% in a CFL shall be equated with a 40% share of the rentals from that CFL.
>
> 3. The new allocation of income (the rentals from CFL's) as an expression of mana whenua interests should take effect from the date of this Statement.

[46] On 20 January 2017 the Board raised concerns with Mr Jackson and Mr Ngata about three aspects of the Jackson/Ngata Decision:

(a) whether the Panel had the power to change the rental allocations with immediate effect;

(b) whether the second schedule to the Act required three members of the Panel, rather than two, to make a decision; and

(c) whether the inclusion of Ngāti Whare in Table Two was consistent with the High Court's direction that the mana whenua interests determined in the Panel's 26 June 2014 Decision remained valid.

[47] The Company convened the PSGEs on 20 July 2017 to consider amending the Tikanga-based resolution process to allow for two Panel members instead of three.[25] The majority of the PSGEs did not agree to that change, as required under the Act and the TD & SA.[26]

[48] On 16 November 2017, the Company contacted Mr Potiki to ask if he was able to reengage with the resolution process. The letter from the Company to Mr Potiki said:

> Unfortunately due to unforeseen events around your health at the time, only two adjudicators signed off on the additional adjudicated Statement. This is a breach of the CNI Deed that requires a three man panel or a unanimous resolution of all eight iwi to pass in order to accept the two man panel.
>
> …
>
> … we make contact with you to determine whether you would agree, as the third member of the adjudication panel, to participate in the adjudication process with the aim to sign-off on the 18 November statement as the third adjudicator.

[49] On 19 November 2017, his health having improved, Mr Potiki responded that he was willing to re-engage with a view to getting a resolution that allowed the CNI Iwi to move forward.

[50] Mr Potiki sought copies of the legal advice that had been provided to the Company on the Jackson/Ngata Decision and, on 27 February 2018, he raised some issues for discussion with the Company's legal advisor. Amongst Mr Potiki's questions was:

> If the third panel member was to agree with some of the decisions but not others would that constitute a Collective Allocation Agreement based on only those decision unanimously agreed upon? Or would it in effect render the entire Agreement null and void as a consensus on all matters was not reached?

---

25 Schedule 2, cl 6(10) of the Act requires a panel comprising at least three members.

26 Act, sch 2, cl 3(3); and TD & SA, sch 1, cl 13.

[51] A response was provided by the Company's legal advisor on 29 March 2018:

> If the third Adjudicator (Tahu Potiki) was to only agree with the other two Adjudicators on some of the decisions relating to the 9 CFL Blocks under the 18 November 2016 Statement, then that would be a valid adjudication decision under the Resolution Process where all three Adjudicators reached agreement, and in the situation where the third Adjudicator did not agree with the decision of the other two Adjudicators those decisions of the other two Adjudicators would still be valid as the Resolution Process does not require the unanimous agreement of all three Adjudicators in their decision but there must be three Adjudicators participating under the Resolution Process.

[52] On 27 May 2018, Mr Potiki provided the Company with a draft of his decision. The decision was finalised on 1 August 2018 (the Potiki Addendum). Mr Potiki stated that his decision was intended to supplement the Jackson/Ngata Decision.

[53] In his addendum, Mr Potiki agreed with the mana whenua interests expressed in the Jackson/Ngata Decision, but he disagreed that the Panel had the power to make changes to the forestry rental scheme prescribed in the Act and in the TD & SA. In Mr Potiki's view, based on the legal advice received, the Adjudication Panel did not have the authority to change rental proportions or the final allocation date without the approval of all the CNI PSGEs.

[54] Mr Potiki did not refer to that part of the Jackson/Ngata Decision, which they described as "a substantive finding that is prefatory to the actual allocations", where they concluded that all the CNI forests land should be held in one title and retained by the Company.

[55] The question is whether the Jackson/Ngata Decision, together with the Potiki Addendum, complied sufficiently with the requirements of the Tikanga-based resolution process and was a "decision of the adjudication panel".

[56] The Company, Ngāti Manawa, Ngāti Whare and Raukawa would answer Issue one, "Yes". Tūhoe, Tūwharetoa and TPT, on the other hand, say it is implicit in sch 2 of the Act that the three adjudicators will make the decision at the same time and on the basis of the same information. Two separate decisions, almost two years apart, and based on different information and discussions, do not comply with sch 2 to the Act and sch 3 to the Settlement Deed.

[57] While Tūhoe and Tūwharetoa acknowledge that there is no requirement in sch 2 of the Act and sch 3 of the Settlement Deed for decisions of the Panel to be unanimous, they say that the Jackson/Ngata Decision cannot be characterised as a "majority" decision of the Adjudication Panel when it was made without any input from or consultation with the third member of the Adjudication Panel.

[58] TPT submits that even majority decisions are made following discussion and the exchange of views among the decision-makers collectively. Although Mr Potiki did engage in discussions with Mr Jackson and Mr Ngata after his health improved in November 2017, their 18 November 2016 report was already final, so it was not possible for his views to influence theirs. For that reason, and as Mr Potiki's own decision recognised, "in reality, [his] opinion amounts to a mere formality of process as the finding of [his] fellow adjudications (sic) constitutes majority regardless of [his] view." TPT also submits that it was not sufficient that all three Panel members were involved in the earlier steps of the process, because it was the final step that was the vital one; it was the only reason for the Panel's reappointment.

[59] Tūhoe and Tūwharetoa also note that the Potiki Addendum does not mention that part of the Jackson/Ngata Decision that determines that the lands shall remain with the Company.

[60] Ngāti Manawa, on the other hand, says that the procedure adopted was sufficient to comply with the Tikanga-based resolution process. Ngāti Manawa also argues that other iwi are estopped from challenging the Second Adjudication Panel Decision on the basis of the alleged failure in process. All iwi were informed of the process being followed and no objections were raised at the 2 September 2016 Board meeting.

[61] Ngāti Manawa submits that company law principles can be applied by analogy: where the formal consent of shareholders is required, informal consent can apply.[27]

---

[27] For example, Peter Watts, Neil Campbell, and Christopher Hare *Company Law in New Zealand* (2nd ed, LexisNexis, Wellington, 2016) at 245; and *Westpac Securities Ltd v Kensington* [1994] 2 NZLR 555 (CA) at 563.

[62] Ngāti Whare too says that the process sufficiently complied with the Tikanga-based resolution process. There is nothing in the statutory process or the terms of appointment or re-engagement of the adjudicators that requires the Adjudication Panel's decision to be unanimous or the views of the Panel members to be issued contemporaneously or in a single report. While Mr Potiki was, due to ill health, unable to have direct input into the Jackson/Ngata Decision, he subsequently reengaged in the process, countersigned on 5 August 2018 the letter from the Company confirming the reengagement of the Panel, reviewed the Jackson/Ngata Decision and engaged in discussions with Mr Jackson and Mr Ngata and issued his addendum comprising his views as an adjudicator. Ngāti Whare says that was sufficient.

Discussion

[63] Schedule 2 to the Act provides that "adjudication panel means the adjudication panel comprising at least 3 members appointed in accordance with cl 6(10) of this schedule to determine the dispute."[28] Clause 6(10) in turn provides:

> (10) If a dispute over disputed land is referred to adjudication, the board of the company will appoint an adjudication panel that comprises at least 3 members to determine the dispute.

[64] As Mr Porima's evidence for Ngāti Manawa notes, the directors who endorsed the two-person panel at the 2 September 2016 hui were appointed by the PSGEs and held senior positions within their iwi and/or PSGE structures and there was significant commonality between the directors who approved the two-person panel, on the one hand, and the PSGE representatives who subsequently objected, after receipt of the Jackson/Ngata Decision. However, while the PSGEs may, by unanimous resolution, amend the Tikanga-based resolution process, unanimity was not achieved when the PSGEs voted on the proposal to reduce the number of Panel members from three to two on 20 July 2017.[29] For that reason, it was not sufficient that the Board of the Company made a decision at its hui on 2 September 2016 that a two-person panel was satisfactory. Such agreement could not override the statutory requirement that the PSGEs approve such a change.

---

28 Act, sch 2, cl 1(2).
29 See [47] above.

[65] Ngāti Manawa's argument that the other parties are nevertheless estopped from insisting on a three-person panel as a result of the earlier agreement of the Board has some attraction. However, two factors weigh against accepting that view. First, the decision on 2 September 2016 was not unanimous, as Tūwharetoa was not represented at the time. Second, I am not convinced that the situation is directly analogous to the authorities cited on behalf of Ngāti Manawa to the effect that where the formal consent of a company's shareholders is required, informal assent can suffice. Those authorities assume an exact identity between those who would formally have assented and those who do informally assent. That is not the case here. This was a resolution by the Board of the Company, not a resolution of the PSGEs. While there was some commonality of individual representation, and all PSGEs would undoubtedly have been aware of the Board resolution on 2 September 2016 and had not previously demurred from it, that was not sufficient to create an estoppel.

[66] Nor does cl 6(13) of the second schedule to the Act assist. That provision gives the Adjudication Panel a degree of discretion in the process:

> (13) The adjudication panel will have complete discretion to determine the process and timetable for the hearing, subject to the following requirements:
>
> (a) the iwi will provide an agreed joint statement to the adjudication panel outlining the nature of the dispute; and
>
> (b) each iwi will have the opportunity to provide a written submission to the adjudication panel stating their mana whenua interests in the disputed lands and their position concerning the dispute; and
>
> (c) the iwi involved will file written evidence; and
>
> (d) each iwi claimant is entitled to a right of reply; and
>
> (e) there is a right to question witnesses; and
>
> (f) parties are entitled to have lawyers attend to present submissions on behalf of iwi to the adjudication panel, but lawyers will not be permitted to cross-examine witnesses.

[67] But the discretion in cl 6(13) is a narrow one. The words "process" and "timetable" both relate to "the hearing". The discretion did not extend to the adjudicators being able to dispense with the requirement for three panel members to "determine the dispute".

[68] However, while the Adjudication Panel must comprise three members (subject to unanimous agreement of the PSGEs otherwise), there is no requirement in sch 2 of the Act or sch 3 of the Settlement Deed, or the terms of appointment or re-engagement of the adjudicators, that requires the Adjudication Panel's decision to be unanimous or the views of the Panel members to be issued contemporaneously or in a single report.

[69] There were, ultimately, three Panel Members who participated in the decision-making process. I accept that, consistent with general principles, in the absence of a prescribed contrary process, the Panel was entitled to make decisions by majority.[30] The essential question is whether what occurred here – where the decisions of the Panel members were not reached at the same time, as part of a contemporaneous collective discussion – can be accurately characterised as a decision by the majority.

[70] To answer that question, it is necessary to look first at what the Adjudication Panel was required to do.

[71] The task of the Adjudication Panel is set out in cl 6 of the second schedule. It is to:

(a) hear the claims of the iwi interested in the disputed land (cl 6(12));

(b) reach a decision on allocation of the disputed lands in accordance with the mana whenua test (cl 6(14)); and

(c) give a decision with reasons (cl 6(15)).

[72] All three Panel members had collectively engaged in the earlier stages of the Panel adjudication process. All three had received all of the written material, attended the hearings and had reached a decision on the mana whenua interests of the CNI Iwi, as contained in the 26 June 2014 Decision. As the earlier High Court decision found, what the Panel had failed to do was to allocate the CNI forests land on the basis of

---

30 *Grindley v Barker* (1798) 126 ER 875; *Atkinson v Brown* [1963] NZLR 755 (CA) at 765, 766, 768 and 769; *McColl v Horne* (1888) 6 NZLR 590 (SC) at 591; and *Picea Holdings Ltd v London Rent Assessment Panel* [1971] 2 QB 216 at 222-225.

those mana whenua interests. It was only that aspect of the process that remained to be determined.

[73] There is no dispute that the Panel members did not meet at this final stage. The decision of Mr Jackson and Mr Ngata was concluded and issued without discussion with Mr Potiki. It appears Mr Jackson and Mr Ngata were unable to consult with Mr Potiki before they delivered their report, because of his ill health. However, Mr Potiki notes that in arriving at his determination of 1 August 2018, he had read the Jackson/Ngata Decision and had engaged in discussion with his fellow adjudicators and he had read the earlier High Court decision and correspondence from the Company's lawyers, Gibson Sheat. He had also had conversations with Owen Mitai-Wells, who provided day-to-day administrative support to the Company; Bronco Carson, as chair of CNI Iwi Holdings Limited; and Temuera Hall, as Deputy Chair of CNI Iwi.

[74] Further, although there was a considerable time lag between the Jackson/Ngata Decision and the Potiki Addendum, in the overall context where the Collective Final Allocation Date is not until the 35th anniversary of the Settlement Date, that was not as significant as it would be in other contexts.[31]

[75] While decision-making by a body generally requires collective consideration by its members (whether or not that results in a unanimous or majority decision), that requirement depends to some extent on the character of the decision-making body and the extent to which (if at all) its members have engaged collectively.

[76] In *Muir v Franklin Licensing Committee*,[32] the Court was considering a decision of a licensing committee which was challenged on the basis, amongst other grounds, that of those members of the Committee who adjudicated on the application and made the decision, one was absent during a substantial part of the hearing. That member took part in the deliberations of the Committee when it retired at the close of

---

31 The Settlement Date is 1 July 2009: Act, s 4.

32 *Muir v Franklin Licensing Committee* [1954] NZLR 152 (SC), Auckland.

the hearing and was a party to its decision and present when the decision was announced by the Chairman. The Court said:[33]

> Licensing Committees are quasi-judicial bodies, and it is proper that all the members taking part in any decision of such Committee should be present during the whole of the hearing of that particular matter; their proceedings, however, are not subject to any stricter rules or practices than are considered necessary in the Courts themselves. Where such a lapse has occurred, it is not necessarily fatal to the validity of the decision, if no protest was made and no objection was taken, and if no injustice has been done.

[77] Similarly, in *Turner v Allison*[34] the Court of Appeal concluded that there was a difference between a tribunal such as the Town Country and Planning Appeal Board and a judicial officer. Both *Muir* and *Turner* proceeded on the basis that the decision-making bodies in each case were not judicial bodies. The Courts found it was appropriate for them to be held to less stringent procedural standards than a Court.

[78] The present case is very different from *R v Taito* where the Privy Council said:[35]

> [18] … The three Judges did not function as a division of the Court of Appeal hearing a case. The Judges never met to discuss the cases under consideration. The relevant file was simply circulated from one Judge's chambers to the next, with each Judge independently appending a note why legal aid should be refused… The circulation of written notes between three Judges did not satisfy minimum requirements of judicial adjudication by an appellate Court for the taking of a decision effectively determining an appeal as of right… In the result the discipline involved in the three Judges having to grapple collectively with the issues was absent. The dynamics of three Judges separately expressing their concluded individual views are quite different from a decision arrived at in face-to-face discussions.

[79] *Taito* concerned applications by appellants in criminal cases to the Registrar of the Court of Appeal to determine whether they would have legal aid for their appeals. The Registrar was obliged to consult a Judge of the Court of Appeal. The practice of the Court was that the Judge would forward the application to two colleagues. The Privy Council found that the Judges' practice of circulating the files from one to another failed to comply with the provision for sittings of a division of the Court of Appeal under the Judicature Act when the Judges announce their opinions when giving

---

33 At 152.
34 *Turner v Allison* [1971] NZLR 833 (CA).
35 *R v Taito* [2003] 3 NZLR 577, at [18].

judgment and also failed to satisfy the requirements of the Crimes Act. The process at issue was judicial adjudication of an applicant's right to legal aid. The process did not satisfy minimum requirements of judicial adjudication by an appellate Court for the taking of a decision effectively determining an appeal as of right.

[80] This case is also different from *Te Rangi v Jackson,*[36] which concerned the process followed to appoint the members of an Independent Maori Statutory Board.[37] There the Court of Appeal said:[38]

> … The statutory requirement is for "the body", not individual members, to take account of mataawaka views. The legislature plainly expected that "the body" acting in this way would undertake a collective assessment of each candidate's merits, with members exchanging, debating and evaluating individual views guided by the overriding consideration of what appointments would best serve the Board's purpose, function and powers; and that by sharing the information, knowledge and experience possessed by its individual members the selection body would reach a decision on the best candidate.

[81] In *Te Rangi v Jackson* each member of the selection panel severally decided who should be appointed to the Board. They did so by secret ballot and without any prior discussion between the members of the panel.

[82] The Adjudication Panel is not a judicial body. Nor was this a case where not all members of the decision-making body had participated in the hearing.[39] As I have noted, the three members of the Adjudication Panel had already, collectively, undertaken a significant portion of their task. While Mr Potiki did not discuss the Jackson/Ngata Decision with Mr Jackson and Mr Ngata before it was finalised, he did have the benefit of their decision in reaching his views and he did have discussions with Mr Jackson and Mr Ngata. He did not arrive at his report in a vacuum and without previous engagement with the other members of the Panel.

[83] The issue, as posed by the parties, is whether the process "complied sufficiently" with the requirements of the Tikanga-based resolution process. While,

---

36 *Te Rangi v Jackson* [2015] NZCA 490.
37 A body established by the Local Government (Auckland Council) Act 2009.
38 *Te Rangi v Jackson*, above n 36, at [24].
39 See, for example, *Reg v Jeffreys* (1870) 22 TLR 786; and *Reg v Brown* (1878) 4 VLR 138.

as Ellis J observed in the earlier High Court decision:[40] "…The Panel's job was to adjudicate having regard to tikanga, not to substitute a tikanga based process for an adjudication.", that did not mean that the adjudication process could not accommodate tikanga. As all three members of the Adjudication Panel observed in the Executive Summary of the 26 June 2014 Decision:

> Although the Panel is mandated to make decisions in relation to often complex and conflicting situations the Report is not presented as a Pākehā-style judgement or Court decision. We hope that it is reasoned and logical, because there is an inherent reason and logic in tikanga, and we hope too that its considered conclusions are both fair and mindful of our whakapapa relationships because tikanga demands nothing less.

[84] Mr Potiki's ill-health and the likelihood that his engagement in the final stage of the process might be limited was acknowledged at the outset, when the Panel members were re-engaged. The parties must have been aware that standard processes where, for example, all three Panel members physically met together, or where decisions of the Panel members (if not the same) were issued contemporaneously, were unlikely to occur. The Adjudication Panel was reappointed in the full knowledge that Mr Potiki would not be able to take a full role in their further process.

[85] At the hui on 20 July 2017 the PSGEs were unable to reach a unanimous decision on the proposal to proceed with two, rather than three, members of the Panel. As I have concluded above, no question of estoppel therefore arises in relation to that decision. However, in the absence of unanimous agreement to a change to the Panel numbers, the hui proceeded to discuss the consequent need to re-engage Mr Potiki. The meeting appears to have concluded on the basis that this would occur. The Jackson/Ngata Decision had already been issued. Plainly the three Panel members would not be conferring and reaching a Panel decision in the "usual" way.

[86] In *Turner,* the Court said:[41]

> A party who has acquiesced in the hearing of a matter by a tribunal one or more of the members of which has not sat throughout the hearing is normally precluded from raising objections afterwards.

---

40 The earlier High Court Decision, above n 1, at [89].
41 *Turner v Allison*, above n 34, at 855.

[87] Similarly, in *Muir*,[42] the Court noted that, where a [procedural] lapse had occurred, "it is not necessarily fatal to the validity of the decision, if no protest was made and no objection was taken, and if no injustice has been done". The Court in *Muir* relied on a number of earlier cases where there had also been acquiescence in this sense.[43]

[88] Here, the PSGEs did acquiesce in Mr Potiki's reengagement, to satisfy the requirement for a three-member Adjudication Panel, in the knowledge that it would necessarily be a modified Panel process. While Mr Potiki could have regard to the Jackson/Ngata Decision in forming his views, the process would not result in one decision being issued by the Panel as a whole.

[89] In addition to that acquiescence, the reality of the situation and the understanding of what tikanga required, was reflected in the 16 February 2017 response from Mr Jackson and Mr Ngata to a concern raised by the Board on 20 January 2017 as to whether the Panel had to comprise at least three members. They said:

> We would have expected that in tikanga, and indeed human terms, Tahu's situation would have been acknowledged with some sympathy and a degree of compassion manaaki. We would also have hoped that because of his illness the remaining two adjudicators would be trusted to deliberate in a considered, fair, and reasonable manner. Tikanga requires that we do just that and we consider that we have discharged our responsibility accordingly.
>
> If the Adjudicator's findings are now to be questioned because of Tahu's absence that is in our view to impugn our integrity. More importantly it is to subject Tahu's illness to a narrow Pakeha legal test that is both unconscionable and unnecessary.

[90] The Panel members were chosen for their expertise and knowledge in tikanga. This was not a "judicial" adjudication, but an adjudication grounded in tikanga. It is appropriate that some deference be given by the Court to the process followed by the Panel members.

---

42 *Muir*, above n 32, at 154.

43 *Reg v Jeffreys* (1870) 22 TLR 786; *Whittle v Whittle* [1939] 1 All ER 374; *Reg v Brown* (1878) 4 VLR 138.

[91] In conclusion on Issue one, in the context of this legislation and the particular facts of this case, I am satisfied that the process whereby all three adjudicators heard evidence and submissions from the parties and reached an initial decision, followed – after the earlier High Court decision – by a process where two adjudicators made a decision based on the evidence and submissions heard earlier, with the third adjudicator incorporating his views at a later time, did comply sufficiently with the requirements of the Tikanga-based resolution process.

Issue two: whether the decision to have all of the land held in one title and retained by the Company was a decision that the adjudicators had the power to make under the tikanga-based resolution process[44]

[92] The first finding of the Jackson/Ngata Decision was stated as a substantive finding "prefatory to the actual allocations." That finding was:

> To further enhance and promote kotahitanga we find that the mana whenua interests of each Iwi in the particular circumstances of the CNI Forest lands are best recognised and served by continuing to have all the lands held in one title and retained by the Company.

[93] The Potiki Addendum does not address this issue.

[94] All of the parties to the proceeding acknowledge that keeping the land in one title, retained by the Company, was an option that iwi could have agreed to at the kanohi ki te kanohi negotiation stage of the resolution process. The Company, Tūhoe, Tūwharetoa and Raukawa submit that it was an option open to the Panel at the adjudication stage of the resolution process too.

[95] They say that all iwi agreed to the Tikanga-based resolution process which, when read as a whole, envisages this possibility. They point first to a combination of provisions in sch 2 which gave the Panel this power. Clause 5(3) provides:

> **5 Stage 2: Kanohi ki te kanohi negotiation: 1 October 2009 to 30 June 2010**
>
> (1) Following Stage 1, iwi must embark on kanohi ki te kanohi negotiations with iwi with whom they have overlapping claims, to reach agreement on allocation of the CNI forests land in question.
>
> …

[44] Issue two is closely linked to Issue seven (whether the Adjudication Panel failed to give substantive recognition to Ngāti Manawa's mana whenua interests).

(3) The iwi concerned in each process will endeavour to reach consensus on the allocation of the CNI forests land in question, having regard to the strength of the mana whenua interests. Innovative solutions that reflect tikanga, whanaungatanga, manaakitanga and kotahitanga, and the complexity of mana whenua interests could include, but are not limited to—

(a) joint or multiple ownership of land as tenants in common, either divided in equal shares or proportionally according to the respective interests of the iwi; and

(b) subdividing land and allocating the subdivided portions to each iwi; and

(c) agreeing to "exchange" interests in more than 1 block, so that exclusive interests can be granted to each of the blocks; and

(d) one iwi becoming the owner, but acknowledging the relationship of other iwi with the land in an agreed manner; and

(e) **agreeing not to transfer title of the land from the company, but acknowledging mana whenua interests in a manner agreed by the iwi.**

(emphasis added)

[96] Second, cl 7(6) of the second schedule which, those parties say, also anticipates the possibility of title to the land being retained with the Company. Clause 7 provides:

7 Final allocation agreement

(1) The board of the company will complete the final allocation agreement by 1 July 2011.

(2) The final allocation agreement will be final and binding.

(3) After 1 July 2011, on receiving a written request from a governance entity, the company will transfer the CNI forests land to that governance entity or nominee in accordance with the final allocation agreement and the deed of trust, provided that—

(a) the Crown's consent is obtained as required by the deed of trust, if the transfer is prior to the expiry of the Crown initial period; and

(b) the ongoing rentals and other income derived from the land will continue to be paid to the company and distributed according to the Collective's agreed proportions until the Collective's final allocation date (as defined in the deed of trust). After the Collective's final allocation date, income will run with the land.

(4) If iwi have acquired satellite CNI forests land (that is, land outside Kaingaroa Forest) and wish to transfer the CNI forests land and the right to the ongoing rentals and other income from the company to the

iwi prior to the Collective's final allocation date, then in order to maintain the principles of fairness and equity—

(a) economic analysis on the impact of taking that action on the Collective and the iwi must be undertaken; and

(b) the conditions of transfer shall be agreed; and

(c) the transfer is subject to unanimous approval of the shareholders of the company.

(5) If for any reason aspects of the final allocation agreement are not finalised, or are subject to litigation, that will not prevent the transfer to iwi after 1 July 2011 of areas of CNI forests land for which final agreement has been reached.

(6) **If agreement is reached not to transfer areas of the CNI forests land, or iwi do not request a transfer in writing, then the company will retain title, subject to the vested beneficial entitlement of iwi in accordance with the final allocation agreement and the deed of trust**.

(7) On completion of the Crown initial period, any remaining CNI forests land that is vested in the company in accordance with the deed of trust will be subject to the resolution process in this schedule, with any appropriate modifications to the time lines and process determined by the board of the company.

(emphasis added)

[97] The Company and others say that cl 6(14)(e) of the second schedule builds on cls 5(3) and 7(6) and empowers the Panel to take that proposal of one title and "modify" it.

[98] Clause 6(14) provides:

(14) The adjudication panel will reach a decision on allocation of the disputed lands by 25 June 2011, in accordance with the mana whenua test set out at clause 4(2). The adjudication panel will have the power to—

(a) allocate the land to 1 iwi; or

(b) allocate the land to more than 1 iwi in joint or multiple ownership as tenants in common in a block, either divided in equal shares or proportionally according to the respective interests of the iwi; or

(c) subdivide the block and allocate the subdivided portions to individual iwi; or

(d) allocate the land to 1 iwi, but acknowledge the relationship of the other iwi with the land in a specified manner; or

(e) **implement any other solutions proposed by 1 or more of the parties, subject to any modifications determined by the adjudication panel.**

(emphasis added)

[99] At the kanohi ki te kanohi stage, a number of iwi proposed that the land be retained in one title. In their Agreed Joint Statements to the Panel, all of Ngāti Whakaue, Ngāti Rangitihi, Ngāti Raukawa, Tūhoe, Tūwharetoa and Ngāti Whare proposed the amalgamation of the nine CFLs into one single title, to be held by the iwi as tenants in common. Among the reasons expressed were that the structure of collective and shared ownership was historically accurate and best reflected the nature of the mana whenua interests in the area and the relationship between the iwi; it would avoid further fragmentation of the land; and it would allow iwi to maximise economic returns from the land.

[100] Accordingly, the Company, Tūhoe, Tūwharetoa and Raukawa say the Adjudication Panel has done exactly what is anticipated by the statutory process – it has taken a solution proposed by some iwi, at the kanohi ki te kanohi stage, and "modified" that proposal, as provided for by cl 6(14)(e).

[101] The Company, Tūhoe, Tūwharetoa and Raukawa also observe that Ellis J, in the earlier High Court decision, following a discussion of what "allocation" requires, expressly envisaged leaving the land in one title, vested in the Company.[45] While Tūhoe, Tūwharetoa and Raukawa do not argue that finding is binding in this proceeding, they endorse that view.

[102] Tūhoe and Tūwharetoa say that leaving title with the Company is consistent with tikanga and a recognition of mana whenua. For Tūhoe, Tamati Kruger's evidence was that Ngai Tūhoe's position was to try find other Māori-based solutions that were not based on (Pākehā) land division concepts, such as division of title. Mr Kruger says "from Tūhoe's perspective, title, is a mechanism which undermines Māori tikanga and mana whenua."

---

[45] The earlier High Court Decision, above n 1, at [80] and [96].

[103] The evidence of William Temuera Hall for Ngāti Tūwharetoa was that the Panel's decision to retain title in the Company was:

> … no doubt a recognition of the fact that no one Iwi could claim exclusive mana whenua rights in any of the disputed CFLs. Further, to some extent, the concept that exclusive rights leading to individual title is a modern-day Pākehā concept, so it may not have been attractive to the adjudicators.

[104] Ngāti Manawa, Ngāti Whare and TPT, on the other hand, say that the Panel did not have power to direct that the land be retained by the Company; that can occur only with the consent or acquiescence of all iwi. While at the negotiation stage, iwi might agree not to transfer title to the land from the Company,[46] that plainly required the agreement of all iwi and there is no such reference to retention by the Company as an option available to the Panel in the adjudication stage. Ngāti Whare submits that the only means specified in the Act by which any of the land may continue to be retained by the Company after the Final Allocation Agreement is "if agreement is reached not to transfer areas of the CNI forests land, or iwi do not request a transfer in writing".[47]

[105] They say retaining title in the Company is contrary to iwi understandings at the time of the negotiations, and at the time the Settlement Act was passed, as to how land would be allocated. Those understandings were reflected in Treasury advice to the select committee and the select committee report.

[106] Ngāti Whare says that retention of the land by the Company is antithetical to the fundamental bargain and balance that underpinned the settlement, that relied on the differentiation between the commercial benefits of the CNI forests land (the rentals) and the ownership of the land itself. The settlement that is legislated in the Act, although collective, is of individual iwi Treaty claims. The settlement provided that those iwi who, based on population and other factors, would have received significant commercial/financial redress under their individual historical Treaty settlements, were to receive the significant, but time-limited, financial benefit of a larger share of the accumulated rentals and of the ongoing rentals for the first 35 years. However, from 2043 the forests land would be allocated to iwi on the basis of mana

---

46 Act, sch 2, cl 5(3)(e).
47 Schedule 2, cl 7(6).

whenua determined in accordance with tikanga and, from that point, rental income would "run with the land".[48]

[107] Ngāti Manawa observes that the CNI forests land is the only land over which it has mana whenua. It relied solely on the Tikanga-based resolution process to provide substantive land as redress for breaches of te Tiriti. Ngāti Manawa's direct settlement provides only small pockets of culturally significant sites. Unlike any other iwi involved in the settlement, the entirety of its rohe sits within the boundaries of the CNI forests land. There is no other area from which it could seek land as settlement for redress.

[108] All three of Ngāti Whare, Ngāti Manawa and TPT emphasise that land is at the heart of the settlement process, which was directed at the restoration of traditional lands to iwi, in accordance with the principle *I riro whenua atu me hoke whenu mai* (as land is taken, so should it be returned). Retention of the land by the Company would mean that CNI Iwi who have substantive mana whenua interests in particular CFLs effectively lose discrete decision-making authority in respect of that land and iwi with no, or more limited, mana whenua interests in such CFLs could potentially carry the day. Iwi are deprived of their mana whenua in a process intended to restore it. That cannot have been the intention of the CNI Settlement or the Act.

[109] Loss of decision-making authority is also contrary to the concept of mana whenua and inconsistent with tikanga. Evidence from Dr Carwyn Jones and Professor Margaret Mutu supported that submission. Dr Jones notes that, to be consistent with the principle of mana whenua, the allocation of land would need to provide iwi with "the ability to exercise decision-making authority in relation to those lands over which they hold mana whenua". Dr Jones' view was:

> It is not consistent with mana whenua to require land to be held by a broader collective if there is no consent to do so from those who are recognised as exercising mana whenua. This would shift the site of authority away from the sources of take tupuna and ahi kā roa and would not be consistent with the concept of mana whenua.

---

[48] TD & SA, cl 7.3(b).

[110] In Professor Mutu's words, an outcome that leaves the land in the Company "tramples on their mana, denies their rangātiratanga and is a recipe for disagreement, conflict and division".

[111] Ngāti Manawa also relies on *Mercury NZ Limited v Waitangi Tribunal*,[49] in support of this proposition. In *Mercury,* this Court considered whether a decision made by the Waitangi Tribunal proposing to return an area of land to Ngāti Kahungunu, where the land in question was within the traditional rohe of other iwi (Raukawa and Ngāti Tūwharetoa), was consistent with tikanga.

[112] TPT also points to a problem specific to TPT. It is required to manage its assets on behalf of its Affiliates. One aspect of this is its devolution process, under which it will manage devolution of all TPT collective assets, including cultural redress, commercial redress and other assets, such as the CNI forests land and rental proceeds. If title is retained by the Company, TPT cannot devolve the land over which it has established mana whenua on behalf of Affiliates.

[113] These three iwi argue that the Company was only ever intended to be an interim owner of the CNI forests land whilst the steps necessary for allocation of land to Iwi took place. That understanding was reflected in the interim nature of the Company: it is not equipped to be a trustee of the disputed lands indefinitely, particularly in circumstances where the proportions of mana whenua interests have been determined to be markedly different from the Agreed Proportions. Neither the TD & SA nor the constitution of the Company contemplate or accommodate the complexity of that outcome.

[114] These factors mean that there would be a need for material amendment to the TD & SA to provide for ongoing rentals and distribution of assets on winding up. That requires unanimous resolution of all iwi.[50] Nor does the TD & SA provide the internal machinery necessary for the Company to deal with disputes.

---

49 *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654.
50 TD & SA, cl 23.1(c).

[115] Ngāti Manawa and Ngāti Whare say that Ellis J's comments in the earlier High Court decision about the extent of the Company's powers to allocate were necessarily obiter. The issue before the Court in the earlier proceeding was whether the Panel's decision to leave allocation to the collective constituted an "allocation" by the Panel. The comments that followed were not part of the logic of the judgment on the issue before the Court. The comments were not the subject of any declarations by the Court. It was not open to Ngāti Manawa, or any other party, to appeal those obiter comments. No question of res judicata arises.

Discussion

[116] The starting point for the discussion of Issue two are the overarching principles of the Tikanga-based resolution process, in cl 2 of sch 2. Clause 2 provides:

> **2 Principles of resolution process**
>
> (1) The CNI forests land will be allocated to iwi on the basis of mana whenua and the agreements reached between iwi in a kanohi ki te kanohi process or otherwise determined by the resolution process provided for in this schedule.
>
> (2) The CNI Iwi Collective is committed to the iwi deciding upon the allocation of CNI forests land for themselves, on their own terms, answerable to one another.
>
> (3) The iwi acknowledge their commitment to a resolution process that—
>
> (a) enhances and promotes the mana and integrity of all iwi; and
>
> (b) is open and transparent; and
>
> (c) promotes whanaungatanga, manaakitanga, and kotahitanga amongst the iwi; and
>
> (d) recognises the desirability of post-settlement collaboration between them in the collective management of assets.
>
> (4) Allocation of CNI forests land will be to iwi only, or their nominees (acknowledging that it is up to iwi whether they make their own internal arrangements with hapū or other entities).
>
> (5) The CNI Iwi Collective acknowledges its intention to respect any existing arrangements between iwi and district or regional councils, Heritage New Zealand Pouhere Taonga, or Crown forestry licensees.

[117] What is plain from those principles, and embodied in the specific processes that follow, is that the land must be *allocated,* to *iwi* and *on the basis of mana whenua.*

[118] Schedule 2 of the Act, at cls 4-6, sets out the three stages for the Tikanga-based resolution process: identification of mana whenua interests, kanohi ki te kanohi negotiation, and finalising an allocation agreement.

[119] The earlier stages of the process focus on reaching an agreed outcome. In the absence of agreement, the process moves to an adjudication phase, under cl 6(10)-(14). An adjudication panel is appointed by the Board of the Company, having regard to certain requirements.[51] These include that the panel members must be independent of the dispute and not be members of any of the iwi involved in the dispute.

[120] The Tikanga-based resolution process was developed in accordance with tikanga. All iwi agreed to the process. The Panel members were required to be fluent in te reo Māori, and knowledgeable on matters of tikanga, including in particular how mana whenua is held and exercised by iwi.[52]

[121] I acknowledge the submission that, by definition, an adjudication following failure by the parties themselves to agree a negotiated outcome, will likely result in a decision that some – possibly all – parties are unhappy with. That is the nature of an adjudication. And, as Ellis J observed in the earlier High Court decision:[53]

> [86] The right to have a dispute adjudicated when all else failed was a right specifically conferred on the eight iwi by both the Deed and the TD&SA and was confirmed by statute….
>
> [87] …The prospect of no resolution is, in my view, the opposite of what was intended by the provision for adjudication and the second schedule as a whole, …

[122] Having said that, allocation decisions by other than iwi are more tightly controlled than the options available to iwi at the kanohi ki te kanohi negotiation stage. The adjudicators' powers are to *allocate* the land, in various ways. The specific allocation powers are set out in cl 6(14). Clause 6(14)(e) must be exercised consistently with the purpose and statutory scheme. Mana whenua is still at the heart

---

51 Act, sch 2, cl 6(10).
52 Act, sch 2, cl 6(1)(a).
53 The earlier High Court Decision, above n 1, at [86]-[87].

of the process: the power must be exercised for the purpose of making an allocation of land to iwi on the basis of mana whenua.[54]

[123] I note at the outset my view that the observations in the earlier High Court decision about retention of title to the land remaining with the Company were obiter. The relevant passages in that judgment were:[55]

> [80] That said, however, it is clear from those examples, and from cl 7(6), that allocation need not be focussed on distribution of the land itself or the creation and transfer of new individual titles. Keeping the land in one title is plainly an available option, as is title to some or all of the lands remaining with the Company. That is made clear by:
>
> (a) clause 7.4 of the TD & SA which states that "*If* the Collective's Allocation Agreement has determined ultimate ownership of part or all of [the land] and led to agreement that [it] should be distributed… the Trustee must give effect to that agreement…"
>
> (b) section 14 of the Act, which provides that the CNI iwi may (in accordance with the sch 2 process) "agree among themselves *as to which* specific area or areas of the CNI forests land is or are to be transferred" from the Company to the iwi of the Collective;
>
> (c) sub-clause 5(3)(e) of the second schedule, which provides that one of the possible options for allocation during the negotiation stage is "agreeing not to transfer title of the land from the company, but acknowledging mana whenua interests in a manner agreed by the iwi";
>
> (d) The inclusion in sub-cl 6(14)(e) of the Panel's power to "implement any other solutions proposed by 1 or more of the parties, subject to any modifications determined by the adjudication panel" which is wide enough to include the power to not transfer title; and
>
> (e) Clause 7(6) of sch 2 which provides that:
>
> *If agreement is reached not to transfer* areas of the CNI forests land, or iwi do not request a transfer in writing, then the company will retain title, subject to the *vested beneficial entitlement of iwi in accordance with the final allocation agreement* and the deed of trust.[56]
>
> (footnotes omitted)

---

54 See, for example, cl 6(10)(a) of the Act with its express requirement that the Panel members be knowledgeable in how mana whenua is held and exercised by iwi.

55 The earlier High Court Decision, above n 1, at [80].

56 Emphasis added in the High Court judgment.

[124] Later in the judgment, Ellis J went on to say:

> [96] I emphasise that my finding that the Panel is required to make allocation decisions does not mean that the Panel must determine that title should be divided so that the land can legally be transferred in accordance with mana whenua interests. Quite plainly it has other options, including to determine that the land should be held in one title, and/or retained by the Company. But if those routes are followed it must find some other way of recognising mana whenua interests; merely stating that they exist does not suffice.

[125] The specific question in issue here was not a substantive issue before the Court at that time and I also accept that the Judge's reference to cl 6(14)(e) of sch 2 was not made specifically in the context of a discussion of the overarching principles of the statutory scheme. No question of res judicata arises.[57]

[126] What is significant in the earlier High Court judgment is the Court's observation that, even if the Panel had determined that title remain with the Company, it was still obliged to determine how mana whenua interests would be recognised – "merely stating that they exist does not suffice".[58] As I will come to, the Adjudication Panel attempted to give effect to that conclusion. What is also significant, is the Judge's conclusion that allocation need not be focused on distribution of the land itself or the creation and transfer of individual titles.[59] I agree that is so.

[127] Clause 6(14) of sch 2 sets out the Panel's powers. Subclauses (a) to (d) inclusive are all expressed in terms of "allocation" of the land. Subclause (e) gives the Panel the power to "implement any other solution proposed by 1 or more of the parties, subject to any modifications determined by the adjudication panel." The Company says that the approach of Ngāti Manawa and others to cl 6(14)(e) would rob that clause of meaning.

[128] While no iwi proposed that title to the CNI forests land be held in one title in the name of the Company, as already noted, a proposal put forward at the kanohi ki te kanohi stage was for the land to remain in one title, held by all eight iwi as tenants in common.

---

57 *Talyancich v Index Developments Ltd* [1992] 3 NZLR 28 (CA) at 37.
58 The earlier High Court Decision, above n 1, at [88] and [96].
59 At [80].

[129] I accept that, on a narrow and literal interpretation of cl 6(14)(e), the Adjudication Panel might be said to have implemented a solution proposed by one of the parties, with "modifications". The Panel decision retains the notion of a single title and thus addresses, for example, Tūhoe and Tūwharetoa concerns to find a Māori-based solution, not based on Pākeha land division concepts, and the fact that no one iwi had exclusive mana whenua in the Kaiangaroa lands.

[130] However, in substance the Panel decision to retain the land in a single title, held by the Company, is fundamentally different from a single title in which all iwi have a registered interest. This aspect of the Panel decision does not recognise mana whenua and nor is it an "allocation" of the CNI forests land. While the Panel also decided mana whenua interests, those are not reflected in the decision about ownership of the land. That decision does not even go so far as "mere identification" of the various mana whenua interests in the land.[60]

[131] If the land is held in one title by the Company, without more, iwi will (by virtue of the shareholding structure of the Company) lose their discrete decision-making authority in respect of the land in which they have mana whenua interests. Decision-making would sit with the majority which could mean that iwi with no, or limited, mana whenua interest in a CFL block have a decisive voice.

[132] The Company's response to this objection is that, while it would remain as the registered legal owner on the title for each of the land blocks, in the case of a particular block, the percentage shares of each CNI Iwi to whom the block has been allocated through the Tikanga-based resolution process would be recorded, through a deed of trust for that land, in a register of beneficial interests. As a beneficial owner with a defined percentage interest, that iwi would be able to make decisions in relation to land and, legally speaking, would have the right to sell those interests, subject to any pre-emptive rights. Owning a percentage beneficial share in land that is held by the Company itself comprises a substantive recognition of mana whenua interests.

---

[60] Ellis J noted that "mere identification" of the various mana whenua interests in the land does not constitute sufficient acknowledgement of those interests to qualify as "allocation": the earlier High Court Decision, above n 1, at [76].

[133] However, the possibility of something like a series of nine separate trusts, or possibly sub-trusts, one for each block of land, is simply not addressed in the Second Adjudication Panel Decision. The Company seems to say that it is implicit. I do not agree. Rather, the Decision contemplates that the land will continue to be held and managed together as a single unit. That is clear from what Mr Jackson and Mr Ngata described as their "prefatory" "substantive finding", which was intended to "further enhance and promote kotahitanga".

[134] Nor does the Company explain what power it proposes to exercise to create these new trusts; nor what the terms of the trusts would be. It is not apparent how only the iwi beneficially interested in each block would have the right to make decisions in relation to the land when it is proposed that the Company will act as trustee, and all eight iwi are represented on its Board.

[135] While retention of title to all the land in the Company is the kind of proposal that could have been made and agreed as part of the stage two negotiations, it is not a solution that can be imposed by the Adjudication Panel at stage three. It would have been open to the Panel to specifically state that the Company would hold the land on a series of trusts, or sub-trusts, in relation to each CFL block, with the beneficial interests in each determined by the Panel's findings as to each iwi's mana whenua interests and with the power for each iwi to exercise rights over the land in accordance with those interests. It did not do so. The Company itself cannot do so without the unanimous agreement of Iwi. Consequent questions arising from the Company's interim role – such as the lack of administrative machinery to, for example, resolve disputes or provide for exit – and the Trust's limited life, would then become relevant.

[136] For example, as identified by Ngāti Manawa:

(a) The Trust must wind up, at the latest, on the day before the 78th anniversary of the TD & SA.[61] At that point, the TD & SA provides that the assets must be realised and, after payment of costs, distributed to iwi in accordance with the Agreed Proportions.[62] On that basis, when

---

61 TD & SA, cl 24.

62 Clauses 25.3(b) and 25.6 (b).

the Trust is wound up, Ngāti Manawa, for example, would receive only six per cent of the value of the land, as opposed to the 34 per cent mana whenua interest the Adjudication Panel found.

(b) The TD & SA[63] provides that, from the Collective Final Allocation Date, ongoing rentals derived from the land become an entitlement to those iwi "to whom that part of the land is distributed". The Adjudication Panel's decision does not distribute any land.

[137] The Panel itself recognised in the Second Adjudication Panel Decision that something additional to its decision in relation to title remaining with the Company was necessary, in order to recognise the mana whenua interests of all iwi. The "more" it determined related to the allocation of rentals. As discussed under Issues four and five below, the Jackson/Ngata Decision changed the rentals received by CNI Iwi from the Agreed Proportions described in the TD & SA to new rates, determined by iwi mana whenua interests. The Panel's decision as to where title should reside is inextricably linked with its findings about allocation of rentals.

[138] As I conclude below, the Panel had no power to change the rental allocations. That leaves nothing in the Second Adjudication Panel Decision that constitutes allocation, to iwi, on the basis of mana whenua. The decision to leave the land in one title with the Company did not give substantive recognition to the mana whenua interests of any iwi.

[139] The Act and the Tikanga-based resolution process require the CNI forests land to be allocated to iwi on the basis of mana whenua. The allocation may be in the form of joint or multiple ownership as tenants in common with other CNI Iwi who also have mana whenua recognised in that CFL and proportionate to the extent of the iwi's mana whenua interest. The substantive recognition of mana whenua does not require that a particular CFL iwi receive exclusive title to a sub-divided portion of a CFL, although that was an option open to the Panel.[64]

---

63 Clause 7.3(b).
64 Act, sch 2, cl 6(14)(c).

[140] Each iwi, through that title, must have the right to participate – in a manner consistent with its relative interest – in decision-making regarding the management and use of the land within those CFLs. The ability to waive those mana whenua-based rights and agree to a different outcome is a matter for iwi.

[141] I find that retention of all of the CFL Forests land in one title, held by the Company, would have satisfied the requirements of the Tikanga-based resolution process if the Panel had gone on to require that, for example, title was to be held on the basis of separate trusts for each CFL block, with the beneficial interests of each iwi as determined being reflected. That decision would have been within the scope of cl 6(14)(e) of sch 2 and would have constituted an allocation, to iwi, on the basis of mana whenua.

[142] On Issue two I conclude that the decision to continue to have all of the land held in one title and retained by the Company was not a decision that the Adjudication Panel had the power to make under the Tikanga-based resolution process.

Issue three: whether the decision to convert the substantive, medial and limited interests of each iwi in the CFLs into percentage shares for each iwi in each CFL was valid

[143] In the 26 June 2014 Decision, the Panel provided weightings for the mana whenua interests it had determined.[65]

[144] The Jackson/Ngata Decision found "The mana whenua interests of Iwi in each of the relevant CFLs shall henceforth be recognised according to its percentage share in the CFL concerned as determined in Table Two above."

[145] In his Addendum of 1 August 2018, Tahu Potiki said:

> … I endorse entirely Recommendation 1 as made by my fellow adjudicators:
>
> The mana whenua interests of iwi in each of the relevant CFLs shall henceforth be recognised to its percentage share in the CFL concerned as determined in Table Two [of the 18 November 2016 Adjudication Panel Statement on Allocation].

---

65 As set out at Appendix One of this judgment.

[146] All CNI Iwi agree that the mere translation of those mana whenua weightings to percentages did not comprise a substantive change and that the decision of the Panel on this point was valid.[66]

[147] I agree that it was open to the Panel to convert the weighted interests into percentage shares for each CFL block as a step in making an ultimate allocation. The decision to do so was valid.

Issue four: whether the decision to change the allocation of the rental proceeds received by the first to eighth defendants for each of the CFLs from the percentages set out in Schedule 3 of the Act was valid

Issue five: whether the decision to give immediate effect to the changed rental allocations was valid

[148] As part of the settlement, the Collective agreed to separate methods of allocating rentals and land. Land is allocated on the basis of mana whenua; ongoing rentals are allocated in accordance with the Agreed Proportions,[67] until 2043 (or earlier by unanimous agreement). After that they run with the land.

[149] In the earlier High Court decision, Ellis J said that if the Panel decided that the land should be retained in one title and/or retained by the Company, it must "find some other way of recognising mana whenua interests; merely stating that they exist does not suffice".[68]

[150] The Jackson/Ngata Decision begins with the words "This Statement of Allocation seeks to give effect to the judgment of the High Court (Rebecca Ellis J) …". The "prefatory" substantive finding in the Jackson/Ngata Decision was that the mana whenua interests of the CNI Iwi were "best recognised and served by continuing to have all the lands held in one title and retained by the Company". The validity of that decision is discussed under Issue two above. The Jackson/Ngata Decision went on to say that "consequent upon that finding … we have decided that the 'other way

---

66 I accept Ngāti Manawa's submission that the conversion of weighted interests into percentage shares is not, in itself, an allocation of the disputed lands, in accordance with the tikanga-based resolution process.

67 TD & SA, sch 2.

68 The earlier High Court Decision, above n 1, at [96] and [88].

of recognising mana whenua interests' requires an allocation of the rentals from the CFL's in a different way." The Jackson/Ngata Decision does this by changing the rentals received by CNI Iwi from the rates described in sch 3 of the Act to new rates predicated on the CNI Iwi's relative mana whenua interests in the land.

[151] The Jackson/Ngata Decision said:

> 2. In order to effect such recognition the distribution of income (the rentals from the CFL's) shall henceforth be allocated according to the percentage share of each Iwi's mana whenua interest in each of the CFL's concerned. Thus, as an example, a mana whenua interest of 40% in a CFL should be equated with a 40% share of the rentals from that CFL.
>
> 3. The new allocation of income (the rentals from CFL's) as an expression of mana whenua interests shall take effect from the date of this Statement.

[152] Tahu Potiki did not agree with either the recommendation to change the allocation of the rental proceeds from the percentages set out in sch 3 of the Act, or to give immediate effect to that change.

[153] Mr Potiki said:

> Regarding Recommendation 2 and Recommendation 3 I am unable to concur with the recommendations of my fellow adjudicators. I recognise that the fact that my fellow adjudicators represent a majority and that consensus decisions are not a requirement of the deed.
>
> The reason that I find myself unable to agree with the other two recommendations is that I am advised that the adjudicators do not have the authority to change rental proportions or the allocation date without approval of all of the CNI PSGEs.

[154] It is the two conclusions in the Jackson/Ngata Decision, at [151] above, that give rise to Issues four and five. Although I have concluded that it was not open to the Panel to decide that title to all the CFL forests land should remain with the Company, for completeness I have gone on to consider the validity of this aspect of the Jackson/Ngata Decision that sought to recognise mana whenua interests.

[155] The Company, Tūhoe and Tūwharetoa agree that the tangible recognition of iwi's mana whenua interests that the earlier High Court decision said was necessary can be achieved by a change to the prescribed rates for the allocation of rentals to reflect the percentage shares of mana whenua interests determined by the Adjudication

Panel. Doing so, they say, would provide substantive recognition of CNI Iwi's mana whenua interests. They say that solution was open to the Panel under cl 6(14)(e), sch 2 of the Act, as a "modification" to a proposal by one or more of the parties – that is, the proposal by a number of iwi that the land be retained in one title. What is involved are two modifications to that proposal: one, title to be held by the Company; and two, a change to the prescribed rates.

[156] However, these parties acknowledge that under the Act and the TD & SA, the Company is required to allocate ongoing rentals at the rates prescribed in sch 2 of the TD & SA until 2043. The Company submits that changing the allocation of rental proceeds as of 2043 can be seen as a "distribution of net income" for the purposes of cl 7(3)(b) of the TD & SA and therefore in accordance with the Deed and consistent with the Act.

[157] All parties to the proceeding, including those who say "yes" to Issue four, agree that the Adjudication Panel did not have power under the Act and the TD & SA to give immediate effect to the changed rental allocations (Issue five).

[158] All of Ngāti Manawa, Ngāti Whare, Raukawa and TPT say that the Panel's decision to change the allocation of the rental proceeds, at any point, was outside its powers and not valid.

[159] Section 15 and sch 3 of the Act and the TD & SA circumscribe what can happen with the ongoing rental proceeds. Because the Jackson/Ngata Decision determined that the land would not be distributed to iwi and, instead, would continue to be held in one title, in the Company, the rental income would continue to be allocated in accordance with sch 3 of the Act, unless the iwi authorise a change of the TD & SA by unanimous resolution.

[160] Ngāti Whare and Ngāti Manawa submit that the decision to change the allocation of rentals was invalid, not only because of the specific terms of the Act and the TD & SA, but also because the Adjudication Panel is not granted power to modify rental allocations as part of its adjudication decision.

Discussion

[161] The Act records the principles and process by which the CNI forests land and rentals accruing from the forestry licences are to be allocated.[69]

[162] The Tikanga-based resolution process is about the allocation of the CNI forests land to iwi on the basis of mana whenua.[70] The Adjudication Panel's only role in that process is in relation to the allocation of the land; it is not about the allocation of the ongoing rentals from the CNI forests land. The process for allocating the ongoing rentals is governed by the Act, which provides that "the company must allocate the ongoing rentals to the CNI Iwi Collective in accordance with the deed of trust".[71] The TD & SA provides that:

(a) until the Final Allocation Date, distributions of net income [ongoing rental proceeds from the forest licences, less costs] will be made to the CNI Iwi in accordance with the Agreed Proportions;[72]

(b) from the Final Allocation Date, distributions of net income from any part of the CNI forests land will become an entitlement of the CNI Iwi to whom that part of the land is distributed under the Final Allocation Agreement (i.e., the rentals will run with the land);[73]

(c) the Final Allocation Date is 2043 (35 years after the Settlement Date) unless an earlier date is chosen by unanimous agreement of the CNI Iwi.[74]

[163] Clause 6(14)(e) of sch 2 to the Act does not give the Panel power to make decisions in relation to rentals. That power must be exercised for the purpose of adjudication, namely to make "a decision on allocation of the disputed *lands*".[75] As Ngāti Manawa and Ngāti Whare submit, the Panel's jurisdiction is limited to the

---

69 Section 3(b).
70 Act, s 14; and sch 2.
71 Section 15(2).
72 TD & SA, cl 7.3(b).
73 TD & SA, cl 7.3(b).
74 Clause 1.1, definition of "Collective's Final Allocation Date".
75 Emphasis added.

allocation of land, not rentals, on the basis of mana whenua. The Panel had no power – without the agreement of all CNI Iwi – to change the basis on which ongoing rentals are distributed by the Company nor alter the date from which any such "adjusted rentals" take effect.

[164] The only way to amend the principles for the allocation of rental proceeds is to amend the TD & SA itself. The Panel did not have power to change the TD & SA or to amend sch 2 to the Act. A change to the TD & SA of such significance would require a unanimous resolution of all Iwi.[76] There has been no such resolution. I agree with Ellis J's statement in the earlier High Court decision:[77]

> It may be observed that a Final Allocation Agreement and a distribution of the land pursuant to it are thus prerequisites to any change being made to the Agreed Proportions of CFL rentals, whether in 2043 or earlier.

[165] I find that the Panel had no power to make decisions in relation to the allocation of ongoing rentals, either before or after the Collective's Final Allocation Date. Accordingly, under the Act and the TD & SA, the Company must allocate ongoing rentals at the rates prescribed in sch 2 of the TD & SA until 2043. After that date, the rentals must run with the land.

[166] Even if I had found that the Adjudication Panel did have power to make decisions in relation to the allocation of rentals, I would have concluded that the answer to Issue four is "no". Modifying the agreed rental allocation would, as Ngāti Manawa submitted, interfere with the essential structure of the Collective's settlement and the underlying compact between iwi, the essence of which is that ongoing rentals are initially allocated in accordance with the Agreed Proportions and, from 2043 (or earlier if unanimously agreed), run with the land. That structure was agreed by iwi to ensure that all iwi benefit from the collective settlement. It enables rentals to flow to larger iwi with little or no mana whenua for a limited (35 year) period, while preserving the ability of smaller iwi to obtain title to land, preserve their mana whenua and enjoy the commercial benefits of the land in the long term. That agreement would be fundamentally undermined. The Panel's decisions on Issues four

---

76 TD & SA, cl 23.1

77 The earlier High Court Decision, above n 1, at [14].

and five must stand or fall together. The Panel did not have power to alter the rental allocations, whether immediately on in 2043. I conclude that the answer to both Issues four and five is no.

[167] The Adjudication Panel's decisions on the allocation of rentals are integrally linked to its decision to retain title to the land in the Company. Together, those decisions comprised a package of measures to recognise mana whenua interests. They also stand or fall together. If the land were to be retained in one title, held by the Company, CNI Iwi's mana whenua interests had to be recognised in a tangible way. As Ellis J put it, there must be "some resulting beneficial interests" to iwi.[78] If, as I have concluded, the Panel had no power to change the Agreed Proportions for the purposes of allocation of rentals, even from the Collective's Final Allocation Date, then there is no aspect of the Second Adjudication Panel Decision that recognises mana whenua interests. The consequence is that there has been no "allocation" as required by the earlier High Court decision.

Issue six: whether Table Two in the Jackson/Ngata Decision altered the mana whenua interests determined by the adjudication panel in the first panel decision and affirmed as valid in the High Court decision

[168] The Adjudication Panel presented the 26 June 2014 Decision to the Company at a special hui on 26 June 2014.[79] The Board of the Company passed a unanimous resolution to receive and accept the Decision.

[169] The 26 June 2014 Decision characterised the allocations made by the Panel in the following way:[80]

(a) Substantive interests – interests based on a clear exercise of mana whenua in a clearly demarcated and unimpeded area.

(b) Medial interests – interests based on the clear exercise of mana whenua in a smaller area, that may overlap with others.

---

78 The earlier High Court Decision, above n 1, at [96].

79 The Findings of the Adjudication Panel in the Mana Whenua Process. Convened by the Central North Island Iwi for Te Kaingaroa a Haungaroa Crown Forest Licences. 26 June 2014.

80 26 June 2014 Decision, at p 11.

(c) Limited interests – interests based on a clear exercise of mana whenua that is recognisable but limited in extent and reach.

[170] The Panel gave weightings to each of those interests:

> Substantive interests will have a weighting of 4
>
> Medial interests will have a weighting of 2
>
> Limited interests will have a weighting of 1
>
> Therefore within a CFFL that one iwi with a substantive interest, two with a medial interest and one with a limited interest there would be, in effect, nine shares.

[171] The Adjudication Panel noted:

> We have given weightings to each of those interests which reflect the reality of the mana whenua each iwi asserted over a particular whenua based on our understanding of the kōrero given to us. We give detailed explanations of those weightings in the main Report.
>
> The weightings do not represent percentages based on population or other extrinsic matters but the tikanga matrix within which mana whenua might be acquired and held or acquired and lost.

[172] The Adjudication Panel summarised its conclusions as to mana whenua interests in the nine disputed CNI forests land blocks in the terms set out in Appendix One to this judgment.

[173] The Panel acknowledged in the 26 June 2014 Decision the existence of certain agreements between iwi, including between Ngāti Whare and Ngāti Manawa, reached before the adjudication had commenced. But the Panel noted that those agreements had not been agreed to by all CNI Iwi. In relation to Ngāti Whare, the Panel identified that the iwi had made an agreement with Ngāti Manawa "to share" and that Ngāti Whare's historical and cultural interest and their mana whenua interests "should be recognised in their agreement with Ngāti Manawa".

[174] What the 26 June 2014 Decision said about Ngāti Whare's mana whenua interests was as follows:

(a) Under "Summary of Mana Whenua Conclusions", in respect of each of Caves, Flaxy Creek, Matea and Whirinaki: "As well Ngāti Whare's historical and cultural interest/mana whenua] should be recognised in their agreement with Ngāti Manawa."

(b) In relation to Caves CFL specifically, under the heading Ngāti Manawa, it said, "They have come to some mutual agreements with other iwi with regards to Caves CFL whereby Te Pūmautanga o Te Arawa and Ngāti Whakaue, acknowledge that they have no mana whenua interest in Caves CFL, similarly Ngāti Whare, however the latter are recognised as having some historical and cultural interest in the area. These arrangements have not however been agreed to by all CNI Iwi." Under the heading Conclusion: "As well Ngāti Whare's historical and cultural interest should be recognised in their agreement with Ngāti Manawa".

(c) In relation to Flaxy Creek, under the heading Ngāti Manawa, the decision said, "They also state that they have equal mana whenua status in this area with Ngāti Whare." And under the heading Ngāti Whare, "Ngāti Whare have made it clear that they did not want to go to adjudication but have instead made arrangements with different iwi in respect of various CFLs. … They have also made an agreement in respect of this CFL with Ngāti Manawa to share."

(d) In relation to Matea, under the heading Ngāti Manawa, "Ngāti Manawa state that they have equal mana whenua status in this area with Ngāti Whare." Under the heading Ngāti Whare, "They have made an agreement in respect of this CFL with Ngāti Manawa to share." And under Conclusion, "As well Ngāti Whare mana whenua should be recognised in their agreement with Ngāti Manawa."

(e) In relation to Whirinaki, the Panel said, under the heading Ngāti Manawa, "Ngāti Manawa state that they have mana whenua status in this area with Ngāti Whare." Under the heading Ngāti Whare, "Ngāti Whare have made it clear that they did not want to go to

adjudication but have instead made arrangements with different iwi in respect of various CFLs. … They have also made an agreement in respect of this CFL with Ngāti Manawa to share." Under the heading "Conclusion" "As well Ngāti Whare mana whenua should be recognised in their agreement with Ngāti Manawa."

[175] After the Adjudication Panel presented its report to the special hui on 26 June 2014, Glenn Cash (the Company's then mana whenua project manager) sent an email to the Directors which attached the Panel's report, an executive summary of the findings, a press release and a PowerPoint presentation headed "CNI Mana Whenua Adjudication Panel Findings". The PowerPoint presentation set out the various mana whenua interests for each of the CFLs. Ngāti Manawa was recorded as "Substantive Interest" for each of Caves, Flaxy Creek, Matea and Whirinaki. None of the relevant pages referred to Ngāti Whare.

[176] On 29 June 2014, Tahu Potiki emailed to Ms Cash a table which comprised a breakdown of the mana whenua allocations into land areas for each block of disputed land, expressed in percentages. No percentage was allocated to Ngāti Whare. Ms Cash responded on 30 June 2014, asking the Adjudication Panel for "clarity if possible on how the agreements with Ngāti Whare and the other Iwi are factored into your report conclusions and the percentages …".

[177] In response, the members of the Panel expressed their views:

(a) Wayne Ngata said that Ngāti Whare "should receive equal shares as per agreements with N Manawa ie substantive interest as well".

(b) Tahu Potiki said "the panel were informed that [Ngāti Whare] were not a part of the adjudication process as they had already reached agreements in each of CFLs that they believed they had an interest. Therefore it was the view of the panel that all agreements reached with Ngāti Whare stand and will be included in the final allocation. … The Ngāti Whare agreements were outside of our brief. We could have made determinations on mana whenua but they did not present to us

with that in mind. We were of the view that their fortunes lay with those that they reached agreements with and that those agreements had some status in the process. The table would need to be adjusted accordingly."

(c) Moana Jackson replied "agree with everything already said. I too understood that Ngāti Whare had agreed not to be part of the process and therefore their position was not considered. I appreciated their input at the end but nothing in their submission affected our deliberations or the agreements they had already made. I really thought that was very well understood and accepted."

[178] Following that exchange, Ms Cash amended Tahu Potiki's table to include allocations for Ngāti Whare: a substantive interest for Ngāti Whare in each of Matea, Flaxy and Whirinaki. Ms Cash asked what weighting she should give Whare for Wairapukao. She sought confirmation from the Panel members that her updated table was correct.

[179] Mr Ngata responded that Ngāti Whare should be allocated substantive interests in Matea, Flaxy and Whirinaki and a medial interest in Wairapukao (subject to Ngāti Whare and Ngāti Manawa confirming details of their agreement) and a limited interest in Caves. Subsequently, Mr Ngata adjusted Caves to a limited interest, Mr Potiki queried whether "the Ngāti Whare agreements [were] accepted by all the other iwi implicated in the allocations?". Mr Ngata responded "no – the agreements were between Manawa and Whare. In terms of our conclusions however we conclude that those agreements should be ratified." Mr Jackson said he would be guided by Mr Ngata and Mr Potiki and would "accept the substantive interest for Matea, Flaxy and Whirinaki. Re Wairapukao the letters do not perhaps give much except general guidance but as I said I am happy to accept my colleague's assessment although happy to kōrero as stated earlier."

[180] Ms Cash then amended the PowerPoint presentation that the Panel had prepared when it issued its 26 June 2014 Decision, incorporating Mr Ngata's proposed allocations for Ngāti Whare – that is, a substantive interest in each of Flaxy Creek, Matea and Whirinaki and a limited interest in each of Caves and Wairapukao.

Ms Cash attached the amended PowerPoint presentation to an email which she sent to the members of the Panel, asking them to confirm that this "record[s] the final decisions and outcomes of adjudication?". All three members of the Panel agreed.

[181] On 30 June 2014, Ms Cash sent the amended table of allocations and amended PowerPoint presentation to the directors of the Company, as the final outcomes, with an explanation that adjustments had been made to "give effect to agreements reached between Ngāti Whare and other CNI Iwi" and that those documents had been "confirmed by the Adjudication Panel as the correct final allocation outcomes for the 9 adjudicated CFLs. This is the Adjudication decision given on 26 June 2014, with an adjustment to give effect to agreements reached between Ngāti Whare and other CNI Iwi." The Company executed a Final Allocation Agreement, which appended the 26 June 2014 Decision, on 1 July 2014.

[182] Concerns were raised by some of the Company directors that the incorporation of Ngāti Whare had the effect of diluting the interests of all other iwi and that CNI Iwi had not been included in the Adjudication Panel's 30 June 2014 (email) discussions, nor had the Panel explained the reason for their changes to the 26 June 2014 Decision.

[183] The Board then met on 9 July 2014. It recorded that it had previously resolved to receive and accept the Adjudication Panel's 26 June 2014 Decision. It also resolved that "each CFL that Ngāti Whare are named in are referred to respective iwi in those CFL's to decide kanohi ki te kanohi and in accordance with their respective agreements. CNI Holdings request feedback from PSGE's by 7/08/14. CFL's – Caves, Flaxy Creek, Whirinaki, Matea, Wairapukao."

[184] Against that background, the first determination in the Jackson/Ngata Decision is:

> The mana whenua interests of Iwi in each of the relevant CFL's shall henceforth be recognised according to its percentage share in the CFL concerned as determined in Table Two above.

[185] Table Two included interests for Ngāti Whare in each of Caves (limited interest – 1); Flaxy Creek (substantive interest – 4); Matea (substantive interest – 4); Whirinaki

(substantive interest – 4); and Wairapukao (medial interest – 2). In respect of each allocation for Ngāti Whare, Table Two records "(agreement with NM)".

[186] As discussed above,[81] the 30 June 2014 PowerPoint amended the outcome in the 26 June 2014 Decision to show a substantive interest for Ngāti Whare in each of Flaxy Creek, Matea and Whirinaki and a limited interest in Caves and Wairapukao. Table Two in the Jackson/Ngata Decision appears to be based on that amended PowerPoint, not on the 26 June 2014 Decision, with two changes. First, Ngāti Whare's mana whenua interest in Wairapukao is increased from a limited interest (with a weighting of 1) to a medial interest (with a weighting of 2). Second, TPT's interests in Headquarters and Reporoa are described in the Jackson/Ngata Decision as being "specifically Ngāti Tahu/Ngāti Whaoa and Tūhourangi", respectively.[82] There is no explanation of the changes.

[187] In his Addendum of 1 August 2018, Tahu Potiki said:

> … I endorse entirely Recommendation 1 as made by my fellow adjudicators:
>
> The mana whenua interests of iwi in each of the relevant CFLs shall henceforth be recognised to its percentage share in the CFL concerned as determined in Table Two [of the 18 November 2016 Adjudication Panel Statement on Allocation].

[188] The Company, Tūhoe, Tūwharetoa and TPT all say that the answer to issue six is "yes", the Jackson/Ngata Decision did alter the mana whenua interests as affirmed by the High Court. It was the mana whenua determinations in the 26 June 2014 Decision that were valid and affirmed by Ellis J. The Company points to those passages of the judgment where Ellis J referred to "its [the Panel's] determination on 26 June 2014."[83] and "No issue has been taken with that determination."[84] They say that it was on that basis that the Court made a declaration, "For the avoidance of doubt", "that the part of the Panel's determination which has determined the mana whenua interests remains a valid (partial) adjudication decision".[85]

---

81 At [180].
82 The second change is relevant to Issue eight below.
83 The earlier High Court Decision, above n 1, at [46].
84 At [75].
85 At [100].

[189] Accordingly, the Company says, Table Two in the Jackson/Ngata Decision, endorsed in the Potiki Addendum, altered those findings. It failed to give effect to the High Court declaration and amounts to an error of law. It cannot stand.

[190] Tūhoe and Tūwharetoa argue that issue estoppel applies to prevent Ngāti Manawa and Ngāti Whare from disputing the earlier High Court finding on this point.[86] Tūhoe and Tūwharetoa also say the Adjudication Panel can only give effect to agreements signed by everyone with an interest in the disputed land. They were not aware of the specifics of the agreements between Ngāti Manawa and Ngāti Whare, now relied on, at the time of the adjudication. Schedule 2 of the Act made it a mandatory requirement of the adjudication process that the iwi involved would file written evidence, each iwi claimant would have a right of reply and a right to question witnesses.[87] By choosing not to give evidence to the Panel of its claimed mana whenua interests, Ngāti Whare deprived Tūhoe and Tūwharetoa (and other iwi who claimed mana whenua interests in the relevant CNI blocks) of their express right of reply and the right to question witnesses.

[191] Raukawa does not take a position on this issue.

[192] Ngāti Manawa and Ngāti Whare say the answer to Issue six is "no": Table Two did not alter the 26 June 2014 Decision except for a minor change in Ngāti Whare's interest in Wairapukao.

[193] Ngāti Whare and Ngāti Manawa say the 26 June 2014 findings were expressed as subject to Ngāti Whare's interests; the Panel rightly clarified how it considered Ngāti Whare's interests should be recognised in percentage terms, for each iwi in each block, in its decision and issued a Final Allocation Outcome on 30 June 2014. The 30 June 2014 Final Allocation Outcome, together with the 26 June 2014 findings, comprise the First Panel Decision. Table Two in the Jackson/Ngata Decision did not alter the determinations of interest in the 26 June 2014 Decision, save for an apparent error in recording Ngāti Whare's interest in the Wairapukao CFL. Ngāti Whare says

---

86 C C Fraser *Laws of New Zealand* Estoppel Per Rem Judicatam; The Same Question Determined at [17]; and *Kameta v Nicholas* [2012] 3 NZLR 573 at [44].

87 Act, sch 2, cl 6(13)(c)-(e).

that, on review, it is apparent that the correct interest is a weighting of one (a limited interest), being 8.5 per cent.

[194] Ngāti Manawa acknowledges that the 26 June 2014 findings were an assessment of mana whenua weightings amongst those iwi who had presented evidence to the Panel and that Ngāti Whare did not present evidence. However, it did make closing submissions to the Panel. While the Panel did not provide a specific weighting for Ngāti Whare as it did for other iwi for each block in its 26 June 2014 findings, it expressly noted that Ngāti Whare's interests and mana whenua should be recognised in accordance with the agreement with Ngāti Manawa. Ngāti Manawa says that subsequently the Panel confirmed that recognising Ngāti Whare's interests in accordance with that agreement meant Ngāti Whare had the same weighted interest as Ngāti Manawa.

[195] Ngāti Manawa reached agreements with a number of iwi, including Ngāti Whare. The bilateral agreement with Ngāti Whare, reached as a result of the kanohi ki te kanohi process, was that Ngāti Manawa claimed mana whenua in the CFL blocks Flaxy Creek, Matea and Whirinaki in equal shares with Ngāti Whare. The agreements between Ngāti Manawa and other iwi were included in Ngāti Manawa's joint statement to the Adjudication Panel.

[196] Ngāti Manawa says that its agreement with Ngāti Whare reflected their intention that whatever extent of mana whenua Ngāti Manawa established, Ngāti Whare had the same. It was not an agreement that sought to share Ngāti Manawa's allocation, nor an agreement under which Ngāti Manawa shouldered the burden of proving Ngāti Whare's claims.

[197] Ngāti Manawa says the Panel was right to have regard to the Ngāti Manawa/Ngāti Whare agreement as the only rational way of reaching a just determination of all iwi's relative mana whenua interests. It says that does not dilute the interests of the other iwi in the relevant blocks as recorded in the 26 June 2014 Decision, because those interests were always expressed as subject to accommodating Ngāti Whare's interests.

[198] Ngāti Manawa and Ngāti Whare say the Company's reading of Ellis J's decision is too narrow, for two reasons. First, what exactly comprised the decision that determined mana whenua interests was not a matter before the Court and the Judge's decision (and declaration) cannot reasonably be read as excluding the weightings accorded by the Panel to Ngāti Whare on 30 June 2014. Second, Ellis J was clear it was a valid *partial* adjudication and did not limit the Panel's consideration of how the weightings were to be translated into each iwi's interest in the CNI forests land.

[199] In addition, Ngāti Whare says the 30 June 2014 Final Allocation Outcome was before Ellis J. In fact, by referring to Ngāti Manawa being found to have mana whenua interests totalling approximately 30 per cent across the nine CFLs that were subject to adjudication,[88] Ellis J must necessarily have been considering the 30 June 2014 Final Allocation Outcome.

[200] For those reasons, Ngāti Manawa says, it is not appropriate for the Court to amend the tables in the Jackson/Ngata Decision as proposed by the Company.

[201] Ngāti Whare too submits that the Jackson/Ngata Decision did not alter the mana whenua interests determined in the 26 June 2014 Decision and the earlier High Court judgment does not affect that.

[202] It says that the Ngāti Whare/Ngāti Manawa agreement recognised that Ngāti Whare has equal shares of mana whenua claims with Ngāti Manawa in the Flaxy Creek, Matea and Whirinaki CFLs; a part share interest in the Wairapukao CFL; and no mana whenua interest, but historical and cultural interests in Caves, Headquarters, Northern Boundary, Reporoa and Tōtara CFLs. Those interests of Ngāti Whare are separate interests from those of Ngāti Manawa, not interests held within the Ngāti Manawa mana whenua interest.

[203] Ngāti Whare decided, on the basis of its agreement with Manawa and related agreements with, or acknowledgments from, other iwi, that it would not enter into the

---

88 The earlier High Court Decision, above n 1, at [49].

adjudication with any of the other CNI Iwi involved. That decision was communicated to the Company and the Panel.

[204] Ngāti Whare says it is a reluctant participant in this proceeding. Historically, it has declined to engage in adversarial processes with its neighbouring iwi and whanaunga. It is committed to resolution and agreement, not dispute. Consistent with that philosophy, it took a position of relative neutrality in the adjudication hearings: it was present throughout the adjudication hearings and made a closing submission, but it did not otherwise actively participate. It relied instead on the Panel's recognition of the agreements that Ngāti Whare had reached with other CNI Iwi, which had been submitted to the Panel as part of the process.

[205] Ngāti Whare and Ngāti Manawa point to a number of resolutions of both the Board of the Company and the PSGEs, to support their position. First, at a meeting on 12 July 2012 the PSGEs unanimously resolved that:

> All written iwi agreements reached kanohi ki te kanohi which are signed by those iwi who have identified interests in the relevant lands shall be given effect to in the Final Allocation Agreement.

[206] On 26 September 2013 the Company resolved "[t]o formally receive the tabled written agreements signed by Ngāti Whare with each of the following iwi (Ngāti Manawa, Raukawa, Tūhoe, TPT, Ngāti Whakaue, TST and Ngāti Rangitihi) and notes that (as a result) Ngāti Whare do not have any disputes for adjudication."

[207] Both the 12 July 2012 and 26 September 2013 resolutions were noted in a letter from the Company to the PSGEs dated 8 October 2013 which summarised the Tikanga-based resolution process to date and the next steps in terms of the Panel. The 12 July 2012 resolution was included within the terms of appointment of the Panel in December 2013.

[208] At a meeting on 16 October 2013 the PSGEs unanimously resolved "That any CFLs not subject to a written iwi agreement, signed by all iwi who claimed MW interest in that block in stage 1, by 13 January 2014 will go to adjudication." However, Ngāti Whare submits that this later resolution did not overturn the 12 July

2012 resolution: "It merely confirmed that, where all CNI Iwi claiming interests in a CFL had not agreed, the relevant CFL would be the subject of adjudication."

[209] Ngāti Whare accepts that any kanohi ki te kanohi agreements between CNI Iwi that were submitted to the Panel were still required to be considered and given effect to by the Panel in the adjudication process. It accepts that where other CNI Iwi are also claiming interests in a relevant CFL the Panel must also consider, in accordance with tikanga, the interests claimed by the other iwi in that CFL and any other relevant information before making its final decision on relative mana whenua interests in the CFL. But, it says, that is exactly what the Panel did when it recognised the interests of Ngāti Whare in certain CFLs with reference to the Ngāti Whare/Ngāti Manawa Agreement and also recognised the mana whenua interests of other CNI Iwi.

[210] Finally, Ngāti Manawa and Ngāti Whare says that while the Company did initially resolve to approve the 26 June 2014 findings and subsequently did not resolve to accept the 30 June 2014 Final Allocation Outcome, the Panel's decision is not subject to Company approval; instead, the Act provides that the "decision of the Adjudication Panel will be final and binding on all the parties."[89]

Discussion

[211] The parties' submissions raise a number of questions:

(a) What did the sch 2 process require of the Adjudication Panel?

(b) Was the sch 2 process amended by the 12 July 2012 PSGE resolution?

(c) Was the material sent out on 30 June 2014 and later included in Table Two of the Jackson/Ngata Decision simply an amplification or elaboration of what was contained in the 26 June 2014 Decision?

(d) What was the effect of the Board's acceptance of the 26 June 2014 Decision?

---

89 Schedule 2, cl 6(15).

(e) What was Ellis J referring to when she held that "the Panel's determination which has determined the mana whenua interests of each iwi in the disputed lands", was "a valid (partial) adjudication decision"?

What did the Schedule 2 process require?

[212] The starting point is the statutory process that governed the adjudication. Clauses 6 (12) and (13) of sch 2 provide:

> (12) The adjudication panel will hear the claims of the iwi interested in the disputed land.
>
> (13) The adjudication panel will have complete discretion to determine the process and timetable for the hearing, subject to the following requirements:
>
> (a) the iwi will provide an agreed joint statement to the adjudication panel outlining the nature of the dispute; and
>
> (b) each iwi will have the opportunity to provide a written submission to the adjudication panel stating their mana whenua interests in the disputed lands and their position concerning the dispute; and
>
> (c) the iwi involved will file written evidence; and
>
> (d) each iwi claimant is entitled to a right of reply; and
>
> (e) there is a right to question witnesses; and
>
> (f) parties are entitled to have lawyers attend to present submissions on behalf of iwi to the adjudication panel, but lawyers will not be permitted to cross-examine witnesses.
>
> (emphasis added)

[213] While the Adjudication Panel had some latitude to determine its own process, it is clear that the steps at cl 6(13) (a) to (e) were obligatory, subject only to amendment by unanimous resolution of the PSGEs.

Was the Schedule 2 process amended by the 12 July 2012 PSGE resolution?

[214] Ngāti Manawa and Ngāti Whare rely on the 12 July 2012 PSGEs' unanimous resolution – set out at [205] above - and say it had the effect of amending the sch 2 resolution process.

[215] I do not read the 12 July 2012 resolution in the way that Ngāti Manawa and Ngāti Whare do. The 12 July resolution prescribes that "all written iwi agreements … shall be given effect to …". On its face, this would require the Panel to give effect to all bilateral agreements, irrespective of the mana whenua interests of other iwi in the relevant blocks who are not party to those agreements.

[216] But while, as the Company concedes, the 12 July resolution refers to "those iwi" rather than "all iwi", as in the 16 October 2013 resolution, in context the words "all of" those iwi who have identified interests in the relevant lands must be read into the 12 July resolution. It would be unworkable (and, as the Company contends, possibly ultra vires) otherwise. The Adjudication Panel can only be compelled to give effect to a written agreement in circumstances where there is agreement from "all of" those iwi who have identified interests in the relevant lands. For the Panel to give recognition to a bilateral agreement would be completely at odds with the statutory direction in sch 2, cl 6(14) that the Panel "will reach a decision on allocation of the disputed lands … *in accordance with the mana whenua test*." Clause 6(14) is fundamental to the Tikanga-based resolution process and cannot be overridden by bilateral agreement. If the 12 July 2012 resolution were intended as an amendment to the mandatory statutory process set out in cl 6(13) it would have required much clearer terms.

[217] Read in the way I have determined, the 12 July 2012 resolution is consistent with the 16 October 2013 resolution that any blocks not subject to an agreement signed by all iwi who claimed mana whenua interest in that block would go to adjudication.

[218] Ngāti Whare did not file written evidence of its claimed mana whenua interests in the Crown forests land, for the reasons I have addressed at [204] above. Because it did not do so, other iwi did not have the opportunity to question Whare's witnesses, or a right of reply. The Adjudication Panel therefore was not in a position to make any findings about Ngāti Whare's mana whenua interests and its 26 June 2014 Decision did not do so.

[219] The Adjudication Panel presented its decision to the Company at a special hui on 26 June 2014, which also included PSGE representatives. The directors (including

the directors appointed on behalf of Ngāti Whare and Ngāti Manawa) unanimously resolved to receive and accept the 26 June 2014 Decision. An executive summary of the findings and the PowerPoint presentation of them were emailed to the directors on 26 June 2014. No substantive, medial or limited mana whenua interests were allocated to Ngāti Whare in these documents.

Amplification of 26 June 2014 Decision?

[220] Ngāti Whare and Ngāti Manawa say that, in effect, the subsequent detail of Ngāti Whare's mana whenua interests in the 30 June 2014 PowerPoint was merely an elaboration, or a working out of the detail, of what the Panel had found in the 26 June 2014 Decision, bearing in mind the Panel's references in that Decision to the Manawa/Whare agreement.

[221] Because I have found that the Panel did not have the power to modify its process under cl 6(13) and that the PSGE Board resolution of 12 July 2012 had not modified that process, strictly speaking I do not need to consider this question. But, in any event, I do not agree with Ngāti Whare and Ngāti Manawa's interpretation.

[222] The Panel's 26 June 2014 Decision said that Ngāti Whare's interests "should be recognised in their agreement with Ngāti Manawa", reached at the kanohi ki te kanohi stage of the process. I accept that there is a degree of ambiguity in that statement. It might mean that Whare and Manawa would share Ngati Manawa's interest or, alternatively, that each would have the same weighted interest in the relevant CFLs, in which case the detail in the amended PowerPoint of 30 June 2014 and Table Two of the Jackson/Ngata decision was merely a spelling out of that conclusion.

[223] I have considered Mr Jackson and Mr Ngata's 16 February 2017 memorandum to the Company, which Ngāti Manawa and Ngāti Whare point to in support of their submission, where they said:

> As explained at the meeting of January 20, 2017 it was important to articulate and quantify what we considered to be Ngāti Whare's position in various CFLs. This was to ensure that agreements with Ngāti Whare were explicitly stated in a way that is consistent with their agreements and our tikanga obligations.

[224] Mr Potiki repeated that statement and said:

> I concur with this statement and believe that this is consistent with the 2014 Ngāti Whare decision to align their fate with that of Ngāti Manawa in the CFL blocks in which they declared an interest.

[225] However, that is a view expressed by the Panel members with the benefit of hindsight. As I will come to, while it captures the overall purpose and spirit of the Tikanga-based resolution process, in relation to this question it is not enough that the Panel members articulated their position on the Ngāti Whare agreements after the adjudication process had ended. The statutory process required that all iwi have the opportunity to hear evidence from Ngāti Whare as to its asserted mana whenua interests, to question and respond to it. I conclude that the better view is that the 26 June 2014 Decision meant that Ngāti Whare's interests were included within Ngāti Manawa's interests, that is, they would share. The word "share" is in fact used in several places in the Decision. That interpretation is consistent with the detail of the Decision which showed no separate allocation for Ngāti Whare. It is also consistent with the email correspondence between the Panel members and Ms Cash, between 26 June and 30 June 2014 where, for example, they acknowledged that the Ngāti Whare agreements were not accepted by all other iwi (although Mr Ngata proposed that nevertheless the Panel should "ratify" those agreements). Both Tahu Potiki and Moana Jackson recorded that:

(a) the Ngāti Whare agreements were outside their brief;

(b) they could have made determinations on mana whenua but Ngāti Whare did not present to them with that in mind;

(c) Ngāti Whare's fortunes lay with those they had agreements with; and

(d) Ngāti Whare had agreed not to be part of the process.

[226] The 30 June detail was not part of the 26 June 2014 Decision. It was not the result of the Panel working through the sch 2 cl 6(13) process in respect of the Ngāti Whare mana whenua interests and I do not accept that it was merely a spelling out of what the Panel had intended in the 26 June 2014 Decision.

Effect of the Board's acceptance of the 26 June 2014 Decision

[227] Tūhoe and Tūwharetoa say that from the point at which the 26 June 2014 Decision was received and accepted by the directors, it was not open to the Panel to change the mana whenua findings. It could only do so if it followed the process in sch 2, cl 6(13), allowing for submissions, evidence, a right of reply and the questioning of witnesses. That process would have required evidence from Ngāti Whare of its mana whenua interests.

[228] As I have concluded above, the Panel was required to follow the cl 6(13) process to reach its mana whenua findings. It did not do so in relation to Ngāti Whare's interests. It is on that basis that I have concluded that Table Two in the Jackson/Ngata Decision did alter the mana whenua interests as determined by the Adjudication Panel in the 26 June 2014 Decision. However, nothing turns on the Board's "acceptance" of the Panel decision on 26 June 2014. The Board had no power, by its acceptance, to alter the status of the Panel Decision. Nor did the Board resolution render the Panel functus.

Meaning and effect of Ellis J conclusion

[229] The way in which Issue six is framed assumes that the mana whenua interests determined by the Adjudication Panel in the 26 June 2014 Decision are the same mana whenua interests affirmed in the earlier High Court decision, but the question is, what were the mana whenua interests that Ellis J found had been determined? Was it the determination on the face of the 26 June 2014 Decision, which did not include mana whenua interests for Ngāti Whare? Or was it the amended PowerPoint presentation of 30 June 2014, which did include mana whenua interests for Ngāti Whare, as reflected in Table Two of the Jackson/Ngata Decision, with the change noted at [193] above?

[230] The documents before Ellis J included the updated Allocation Outcomes Table which showed percentage shares for Ngāti Whare and the updated PowerPoint presentation, including Ngāti Whare's interest in the relevant CFL blocks. On that basis it might be said, as Ngāti Whare submits, that the Judge was referring to the 30 June 2014 details.

[231] However, the Court in the earlier case was focused on the question whether the Panel had reached a decision on "allocation". It was not concerned with the specific question now in issue – did the Panel's 26 June 2014 Decision provide for Ngāti Whare's mana whenua interests – nor was it asked to consider that question (although the way in which Issue six is framed before this Court might suggest otherwise).

[232] It is not possible (or in my view necessary) to decide in hindsight what the High Court thought it was affirming as valid.

[233] The real question, as already discussed, is what were the Panel's powers under the Tikanga-based resolution process. Specifically, did it have power to include Ngāti Whare's mana whenua interests in its ultimate findings, when those interests had not been subject to the rigour of the sch 2, cl 6(13) process? I conclude that it did not.

[234] I conclude that Table Two in the Jackson/Ngata Decision did alter the mana whenua interests determined by the Panel in the 26 June 2014 Decision and cannot stand. What therefore remains is the Decision as presented by the Panel on 26 June 2014.

[235] I recognise that this outcome is detrimental to Ngāti Whare. Ngāti Whare had reached agreements which it thought meant it could maintain its non-adversarial stance and did not need to participate in the adjudication process. However, there is also potential unfairness to other iwi if the Ngāti Whare interests contained in Table Two were to be upheld: the interests of the other iwi would be diluted without them having had the right, as provided in sch 2, to scrutinise and question Ngāti Whare's evidence of its mana whenua interests and to reply.

[236] While Ngāti Whare's asserted mana whenua interests have not been subject to scrutiny in the normal way as they would have been had Ngāti Whare fully participated in the hearing process before the Panel, to exclude any possibility of recognition of those interests would be contrary to the very purpose of the Tikanga-based resolution process: to allocate the CNI forests land to iwi on the basis of the mana whenua of all CNI iwi. The 30 June 2014 detail and Table Two in the Jackson/Ngata Decision, as

endorsed by the Potiki Addendum, while not enforceable, represented a recognition by the Panel members that tikanga required all mana whenua interests to be recognised. Similarly, Mr Jackson and Mr Ngata's 16 February 2017 memorandum to the Company, referred to above.[90]

[237] In order to achieve a just settlement of the relevant mana whenua interests of all CNI iwi, the next iteration of the Tikanga-based resolution process should have regard to Ngāti Whare's mana whenua interests, in accordance with the Tikanga-based resolution process (or such other process as all iwi may agree). I will address that question in my conclusions.

[238] In summary in relation to Issue six, the mandatory statutory process required that other iwi have a chance to respond to Ngāti Whare's assertions of mana whenua, but they did not. The 26 June 2014 Decision did not make any allocations for Ngāti Whare, nor could it have. Correspondence between Panel members in the immediate aftermath indicate that they (two of them at least) did not think they could, or think they had done so. Although not functus, it was outside the Panel's powers to purport to make an allocation for Ngāti Whare later. Table Two did alter the mana whenua interests determined in the first panel decision and cannot stand.

Issue seven: whether the adjudication panel failed to give substantive recognition to Ngāti Manawa's mana whenua interests

[239] Ngāti Manawa says that the effect of the Adjudication Panel's decision is simply to state that Ngāti Manawa's mana whenua interests exist, but as Ellis J found, "merely stating that they exist does not suffice."[91] The Decision gives no substantive recognition to Manawa's mana whenua interests. That is so, for two reasons:

(a) It does not result in the return of land and Ngāti Manawa are therefore unable to exercise the mana that they traditionally held and exercised over the land. Rather, control of the land sits with the Company.

---

90 At [223].

91 The earlier High Court Decision, above n 1, at [96].

(b) It does not change the allocation of rentals from the land, since the Panel had no jurisdiction to do so.

[240] Ngāti Whare acknowledged and accepted Ngāti Manawa's view that the Panel did not give substantive recognition to Ngāti Manawa's mana whenua interests.

[241] As already discussed, the Company submitted that it was valid for the Adjudication Panel to use the allocation of forestry rental proceeds to give substantive recognition to the CNI Iwi's mana whenua interests. It says that owning a percentage beneficial share in land that is held by the Company itself comprises a substantive recognition of mana whenua interests. Tūhoe and Tūwharetoa supported the Company's position. They agreed that all CNI Iwi's mana whenua interests can be recognised in a tangible way by changing the rental rates prescribed in sch 2 from 1 July 2044, to reflect the mana whenua interests in the 26 June 2014 Decision, after converting them to percentages.

Discussion

[242] My findings in relation to Issues two (whether the Panel had the power to decide the land should be held in one title and retained by the Company) and four and five (whether the Panel had the power to change the allocation of the rental proceeds received by iwi for each of the CFLs from the percentages set out in sch 3 of the Act) are determinative in relation to Issue seven also.

[243] What is required for Ngāti Manawa (and other iwi) is an allocation of interests that would provide a right to participate in decision-making regarding the management and use of the land within the relevant Crown forest lands, in a manner consistent with its relative interest. As I have concluded, leaving title to all of the land in the Company without more does not provide that right and the Panel's decision in relation to the allocation of rentals was not within its power to make.

[244] I conclude that the Adjudication Panel did fail to give substantive recognition to iwi mana whenua interests, including Ngāti Manawa's mana whenua interests.

Issue eight: whether the adjudication panel erred in failing to give effect to the agreement between Ngāti Manawa and Affiliate Te Arawa Iwi/Hapu

[245] It is convenient to consider two issues under Issue eight:

(a) the status of the agreement reached between Ngāti Manawa and Ngāti Tahu-Ngāti Whaoa during the kanohi ki te kanohi negotiations; and

(b) the identification in the Second Adjudication Panel Decision of Ngāti Tahu-Ngāti Whaoa as the TPT Affiliate Iwi/Hapū having recognised mana whenua in specified CFL blocks and the associated question, to whom should TPT Affiliate Iwi/Hapū mana whenua interests be allocated.

Ngāti Manawa/Ngāti Tahu-Ngāti Whaoa agreement

[246] In its counterclaim, Ngāti Manawa alleges that the Adjudication Panel erred by failing to consider and give effect to the agreement reached during the kanohi ki te kanohi negotiations between Ngāti Manawa and Ngāti Tahu-Ngāti Whaoa. Ngāti Manawa seeks a declaration that the Panel was wrong in law and fact to allocate to Te Pūmautanga o Te Arawa Trust interests in Headquarters, Tōtara and Wairapukao.

[247] Ngāti Tahu-Ngāti Whaoa's agreement with Ngāti Manawa was the result of negotiations in early September 2013 and recorded in an agreement of 17 September 2013 (the 17 September agreement).

[248] Ngāti Manawa says it entered those negotiations on the basis of Ngāti Tahu-Ngāti Whaoa's representation that they were the iwi/hapu of the Affiliate Te Arawa Iwi/Hapu that held mana whenua in the relevant area. The 17 September agreement was recorded in the following terms:

(a) Ngāti Tahu Whaoa do not have mana whenua Claims in Caves, Flaxy Creek, Headquarters, Matea, Northern Boundary, Tōtara and Whirinaki CFL land blocks.

(b) Ngāti Manawa do not have mana whenua claims in Pukuriri, Waimaroke and Waimihia North and South CFL land blocks.

(c) Ngāti Manawa have culturally significant wāhi tapu sites in Waimaroke and in recognition of those sites the parties would develop an accord for access rights and other acknowledgements.

(d) Ngāti Tahu-Ngāti Whaoa have culturally significant wāhi tapu sites on the fringes of the Wairapukao block and in recognition of those sites the parties would develop an accord for access rights and other acknowledgements.

(e) The parties do not have any dispute in relation to the mana whenua in the above CFLs and do not require adjudication over their respective mana whenua interests.

A copy of the 17 September agreement was provided to the Adjudication Panel.

[249] As a result of the 17 September agreement, Ngāti Manawa did not maintain its claims in relation to the Waimaroke CFL block before the Adjudication Panel, at stage three of the Tikanga-based resolution process.

[250] Ngāti Manawa says the Panel ought to have given effect to the 17 September agreement but failed to do so. It says the Panel's Second Adjudication Decision was inconsistent with the 17 September agreement in that it:

(a) allocated to TPT (specifically Ngāti Tahu-Ngāti Whaoa) limited interests in Headquarters, where Ngāti Tahu-Ngati Whaoa agreed it did not have mana whenua claims;

(b) allocated to TPT limited interests in Tōtara, despite Ngāti Tahu-Ngāti Whaoa agreeing it did not have mana whenua claims there and the Panel noting that TPT had provided no evidence to prove mana whenua; and

(c) allocated to TPT a substantive interest in Wairapukao (relying on Ngāti Tahu-Ngāti Whaoa's mana whenua interests), when Ngāti Tahu-Ngāti Whaoa had agreed that significant sites on the fringes of the block would be addressed by an accord with Ngāti Manawa.

[251] The 17 September agreement was signed for Ngāti Tahu-Ngāti Whaoa by Mr Eru George on behalf of "TPT Mana Whenua Team"[92] and Mr Roger Pikia, the Chairman of the Ngāti Tahu-Ngāti Whaoa Rūnanga Trust.

[252] Ngāti Tahu-Ngāti Whaoa says that the 17 September agreement was made in accordance with tikanga and was specifically recorded and relied on by the Panel in its 26 June 2014 Decision. It also notes that the agreement was not challenged by any party in the earlier High Court hearing before Ellis J and was, in effect, recognised in the Jackson/Ngata Decision.

[253] Ngāti Tahu-Ngāti Whaoa says it was entitled to enter into kanohi ki te kanohi negotiations with Ngāti Manawa, as it is a member of the CNI Iwi Collective in its own right. It relies on the definition of "iwi" in the Act. "Iwi" is defined as "an iwi of the CNI Iwi Collective":[93]

> **CNI Iwi Collective or Collective —**
>
> (a) means together each of the following iwi and collective groups defined by that name in Schedule 1 of the deed of settlement:
>
> (i) Ngāi Tūhoe; and
>
> (ii) Ngāti Manawa; and
>
> (iia) Ngāti Rangitihi; and
>
> (iii) Ngāti Tūwharetoa; and
>
> (iv) Ngāti Whakaue; and
>
> (v) Ngāti Whare; and
>
> (vi) Raukawa; and
>
> (vii) the Affiliate Te Arawa Iwi/Hapu; and

---

92 Mr George was the then recently retired TPT Chair.

93 Act, sch 2, cl 1.

(b) includes the governance entity that represents a collective group; and

(c) also includes every individual of which a collective group is composed and who is included in the definition of the group in Schedule 1 of the deed of settlement.

[254] Schedule 1 of the CNI Deed of Settlement confirms:

The Affiliate Te Arawa Iwi/Hapu

1.7 The Affiliate Te Arawa Iwi/Hapu has the meaning given to it in the TPT Settlement Deed.

[255] The TPT Settlement Deed states:

1.5 Affiliate Te Awara Iwi/Hapu

1.5.1 means the iwi and hapu of Te Arawa affiliated to the Te Pumautanga Trust comprising the following 11 collective groups defined by that name in the Claimant Definition Schedule:

…

(h) Ngāti Tahu-Ngāti Whaoa;

…

[256] In response to Ngāti Manawa and Ngāti Tahu-Ngāti Whaoa, the Company and TPT advance two arguments as to why the 17 September agreement should not be given effect by the Adjudication Panel. First, under the Act the CNI forests land must be allocated to iwi[94] and iwi is defined as "an iwi of the CNI Iwi Collective".[95] Further, the Act prescribes that iwi must be represented in the Tikanga-based resolution process by their governance entity.[96]

[257] The second reason is that the Adjudication Panel can only give effect to agreements signed by everyone with an interest in the disputed land. That submission is discussed further below.[97]

[258] Tūhoe and Tūwharetoa, although not directly involved in this issue, support the Company's submissions.

---

94 Act, sch 2, cl 2(1).
95 Schedule 2, cl 1(2).
96 Schedule 2, cl 3(1).
97 At [267]-[270] below.

[259] Ngāti Whare says that the Panel should have considered and given effect to any agreements reached between iwi and placed before the Panel, but acknowledges that, in doing so, the Panel must consider and have regard to tikanga and the interests of other CNI iwi claiming mana whenua interests in relevant CNI blocks

[260] Raukawa acknowledges it is not affected by Issue eight and made no submission on it.

[261] TPT's primary submission is that, under the Act, CNI forests land must be allocated to iwi. "Iwi" is defined as "an iwi of the CNI Iwi Collective", which in turn means one of Ngāi Tūhoe, Ngāti Manawa, Ngāti Rangitihi, Ngāti Tūwharetoa, Ngāti Whakaue, Ngāti Whare, Raukawa and the Affiliate Te Arawa Iwi/Hapu. Ngāti Tahu-Ngāti Whaoa is not encompassed by that definition. For this purpose "iwi" means the Affiliate Te Arawa Iwi/Hapu.

[262] Second, the Act prescribes that iwi must be represented in the Tikanga-based resolution process by their governance entity. TPT is the governance entity for the Affiliate Te Arawa and therefore represents Ngāti Tahu-Ngāti Whaoa. Ms Karen Vercoe, Chief Executive of Te Arawa Lakes Trust and the Chair of Te Pumautanga o Te Arawa Trust (TPT), gave evidence for TPT. TPT is a PSGE formed to receive, hold and manage assets negotiated on behalf of Te Arawa iwi and hapu. Under the Act,[98] it is the body mandated to represent iwi in the Tikanga-based resolution process. TPT represents 11 affiliate iwi and hapu, including Ngāti Tahu-Ngāti Whaoa.[99] Each of TPT's Affiliates have between one and three representatives which sit on TPT's Board of Trustees. The TPT Board is currently made up of Ms Vercoe, a Deputy Chair, and 13 other representatives of TPT's Affiliates. TPT's decision-making process is set out in its Trust Deed (TPT Trust Deed).[100]

[263] TPT has had a representative on the Board of the Company since CNI's incorporation in 2008. TPT has participated in stages 1-3 of the Tikanga-based resolution process for CNI forests land, as set out in sch 2 to the Act. It made written

---

98 Act, sch 2, cl 3(1).
99 Deed of Settlement of the Historical Claims of the Affiliate Te Arawa Iwi/Hapu, cl 1.5.
100 Deed of Trust Te Pumautanga O Te Arawa Trust (TPT Trust Deed).

statements and oral presentations to the Adjudication Panel on behalf of its Affiliates, during stage 3.

[264] TPT says that any kanohi ki te kanohi negotiations at stage 2 of the tikanga-based resolution process were to be conducted through the appointed representatives of the PSGE of each iwi,[101] minutes of each hui at which kanohi ki te kanohi negotiations took place were to be taken and confirmed by the iwi participating,[102] and agreements reached were to be signed in writing by the governance entities of each iwi.[103]

[265] Third, any kanohi ki te kanohi agreements between Affiliates and other iwi must be formalised. In accordance with those requirements, under TPT's mana whenua process, negotiators or communicators of TPT Affiliates could not sign off on any final agreement reached at stage 2 of the tikanga-based resolution process and TPT's Trust Deed required any such agreements to come before TPT's Board to be formalised. The proposed agreement between Ngāti Manawa and Ngāti Tahu-Ngāti Whaoa was not formalised and representatives of Ngāti Tahu-Ngāti Whaoa do not have the ability to bind TPT. TPT did not nominate Ngāti Tahu-Ngāti Whaoa to receive allocation of the mana whenua for the Headquarters or Reporoa CFLs. In those circumstances, TPT cannot be bound by any such agreement.

[266] TPT seeks declarations that:

(a) TPT is the governance entity defined as an "iwi" representing Affiliate Te Arawa Iwi/Hapu under the Act.

(b) As such an entity, TPT is the only appropriate entity to be allocated CNI Forest lands and settlement proceeds (in the first instance).

[267] The second reason advanced by the Company, and supported by TPT, Tūhoe and Tūwharetoa, for opposing the declarations sought by Ngāti Manawa is that the Adjudication Panel can only give effect to agreements signed by everyone with an

---

101 Act, sch 2, cl 5(2).
102 Act, sch 2, cl 5(4).
103 Act, sch 2, cl 5(5).

interest in the disputed land. The Act provides that if, following kanohi ki te kanohi negotiations, there are "any remaining areas of CNI forests land for which agreement has not been reached amongst the iwi who claimed mana whenua interests in that area",[104] those areas are deemed to be "disputed lands" which must then be referred to either mediation or adjudication.[105]

[268] As discussed in relation to Issue six,[106] the Company says that statutory position was affirmed by the PSGEs in their resolutions of 12 July 2012 and 16 October 2013.

[269] The 17 September agreement is said to relate to Caves, Flaxy Creek, Headquarters, Matea, Northern Boundary, Tōtara and Whirinaki. A number of the CNI Iwi have claimed mana whenua interests in those pieces of land. In the absence of agreement from each of those iwi, the land is deemed to be "disputed land" and, accordingly, subject to allocation at the direction of the Adjudication Panel.

[270] In those circumstances, the Company says, it would not have been open to the Adjudication Panel to give effect to any negotiated agreement in the absence of agreement from all CNI Iwi who had claimed a mana whenua interest in that land.

Identification in Second Panel Decision of specific Ngāti Tahu-Ngāti Whaoa mana whenua interests

[271] Ngāti Tahu-Ngāti Whaoa asks the Court to uphold the Second Adjudication Panel Decision's specific recognition of Ngāti Manawa-Ngāti Whaoa's mana whenua in the Crown Forests land (Headquarters – CFL and rentals; Reporoa – CFL and rentals, along with Tūhourangi, and Wairapukao – CFL and rentals). It also asks that the Company be directed to allocate those interests directly to Ngāti Tahu-Ngāti Whaoa, rather than through TPT.

[272] Ngāti Tahu-Ngāti Whaoa submits that in the 26 June 2014 Decision the Adjudication Panel recognised its mana whenua findings in relation to each of the

---

104 Schedule 2, cl 6(1)(b).
105 Schedule 2, cl 6(3).
106 At [216] above.

Headquarters, Reporoa, Wairapukao and Tōtara CFL blocks. It says that, where a TPT interest was acknowledged, specifically or by implication it meant Ngāti Tahu-Ngāti Whaoa's interest – TPT is shorthand for Ngāti Tahu-Ngāti Whaoa.

[273] Ngāti Tahu-Ngāti Whaoa says the earlier High Court decision confirmed the findings of the mana whenua interests in the 26 June 2014 Decision,[107] declaring the relevant part of the decision to be a valid (partial) adjudication decision, and declared that the Company may direct the Panel to reconvene to then allocate the CFLs.[108]

[274] Table One in the Jackson/Ngata Decision (endorsed by the Potiki Addendum) recorded the mana whenua interests. In relation to Headquarters, the interest was recorded as Te Pūmautanga o Te Arawa (TPT) – specifically Ngāti Tahu-Ngāti Whaoa; in relation to Reporoa, "TPT – specifically Ngāti Tahu-Ngāti Whaoa and Tūhourangi"; in relation to Wairapukao and Tōtara, as "TPT". Table Two of the Jackson/Ngata Decision, which calculates the recognised interests as a percentage, repeats the wording from Table One in relation to Headquarters and Reporoa.

[275] Ngāti Tahu-Ngāti Whaoa says that Table One is simply a reformatting or clarification of the mana whenua interests recognised in the 26 June 2014 Decision, not a substantive change, although to be consistent, the Second Decision should have specified the mana whenua interests of Ngāti Tahu-Ngāti Whaoa in the Wairapukao CFL [for Wairapukao the 26 June 2014 Decision said: "TPT …Ngāti Tahu-Ngāti Whaoa submit …"]. Accordingly, Ngāti Tahu-Ngāti Whaoa say that the Second Adjudication Panel Decision is valid in the expression of mana whenua interests of TPT being specific to Ngāti Tahu-Ngāti Whaoa.

[276] Ngāti Tahu-Ngāti Whaoa says that, as an iwi of the Collective in its own right, it is a potential recipient of Settlement Assets. The customary rights of Ngāti Tahu-Ngāti Whaoa under tikanga require land to which it has mana whenua be returned directly to Ngāti Tahu-Ngāti Whaoa. TPT has conceded that it does not hold mana whenua in any of the Crown forests land and there is nothing in the TPT Trust Deed that provides a basis for TPT receiving any assets that are determined to be the mana

---

107 The earlier High Court Decision, above n 1, at [100].
108 At [100] and [99(e)].

whenua of Ngāti Tahu-Ngāti Whaoa. Nor did the CNI Settlement instruments provide a basis.

[277] Accordingly, any allocation of lands to TPT, which are required to be allocated "on the basis of mana whenua", would not be tika.

[278] Ngāti Tahu-Ngāti Whaoa holds a concern that the lands in respect of which its mana whenua has been recognised may be appropriated by TPT and redistributed to other Te Arawa affiliate iwi, who are not mana whenua. It points to what it says is a lack of actual commitment from TPT to transfer the interests in the four identified CFL blocks to Ngāti Tahu-Ngāti Whaoa. TPT relies on a "devolution policy" but has not progressed that policy since 2009, nor specifically undertaken to return lands to the mana whenua iwi directly (and not reallocate to other iwi who do not hold mana whenua).

[279] Ngāti Tahu-Ngāti Whaoa relies on *Mercury NZ Limited v the Waitangi Tribunal,*[109] where Cooke J found that, in exercising the resumption powers for compensation of specific loss of mana whenua, the Waitangi Tribunal could not award land to which the iwi had no connection in order to provide compensation for more general breaches of the Treaty of Waitangi.[110] In that decision, Cooke J anticipated a close nexus between the breach and the return of the land.[111] The Court noted that if the proposed resumption orders were given force this would give rise to a fresh breach of the Treaty.[112]

[280] In Ngāti Tahu-Ngāti Whaoa's submission, the action of the Waitangi Tribunal in *Mercury* is directly analogous to enabling TPT to receive lands to which Ngāti Tahu-Ngāti Whaoa have mana whenua and distribute them to other non-mana whenua iwi through the TPT devolution policy.

---

109 *Mercury NZ Limited v the Waitangi Tribunal*, above n 49. Wairarapa Moana Ki Pouākani Incorporation's appeal of this decision was heard by the Supreme Court on 9-10 February 2022 but no decision has yet been issued.

110 At [80].

111 At [88].

112 At [113].

[281] TPT rejects Ngāti Tahu-Ngāti Whaoa's submission. It says that no reason was given by the Panel for the change as between the 26 June 2014 Decision and the Second Adjudication Panel Decision, despite the requirement for reasons.[113] TPT never "nominated" Ngāti Tahu-Ngāti Whaoa and Tūhourangi as related entities to receive CNI forests land. Its role as a governance entity representing a collective is clear from its Trust Deed, and was well-understood throughout the kanohi ki te kanohi and adjudication processes. That was demonstrated by the 26 June 2014 Decision which recognised mana whenua interests for TPT as a body. That is consistent with its role to manage its assets on behalf of Affiliates. That position is also consistent with the agreement of the TPT Board in February 2009 that: "This process internally must remain under the mantle of TPT […] TPT is officially the body representing the interests of all the affiliates on CNI." TPT's internal mana whenua process is described at [262]-[265] above.

Discussion

[282] Issue eight raises a number of questions for decision:

(a) Could the Adjudication Panel lawfully give effect to the 17 September agreement? That requires answering two further questions:

(i) Is Ngāti Tahu-Ngāti Whaoa a member of the CNI Iwi Collective in its own right, for the purposes of the Act? If yes, what is the effect of that?

(ii) In any event, could the Adjudication Panel give effect to a bilateral mana whenua agreement, consistent with the statutory Tikanga-based resolution process?

(b) As to the mana whenua interests of TPT and/or its Affiliate iwi/hapū recognised by the Panel:

---

[113] Act, sch 2, cl 6(15).

(i) Were the interests changed as from the 26 June 2014 Decision to the Second Adjudication Panel Decision?

(ii) To whom should identified mana whenua interests be allocated?

Ngāti Manawa/Ngāti Tahu-Ngāti Whaoa agreement

[283] The 17 September agreement between Ngāti Manawa and Ngāti Tahu-Ngāti Whaoa was a bilateral agreement. It related to CFL blocks in which a number of other iwi asserted mana whenua interests. The agreement therefore had the potential to impact adversely on those other iwi. The Act provides that if, following kanohi ki te kanohi negotiations, there are "any remaining areas of CNI forests land for which agreement has not been reached amongst the iwi who claimed mana whenua interests in that area",[114] those areas are deemed to be "disputed lands" which must then be referred to either mediation or adjudication.[115] The Adjudication Panel could only give effect to agreements signed by all iwi with an interest in the relevant land.

[284] The statutory position was affirmed by the PSGEs in their resolutions of 12 July 2012 and 16 October 2013:

(a) That all iwi agreements reached kanohi ki te kanohi which are signed by those iwi who have identified interests in the relevant lands shall be given effect to in the final allocation agreement.

(b) That any CFLs not subject to a written iwi agreement, signed by all iwi who claimed mana whenua interests in that block in stage one, by 13 January 2014 will go to adjudication.

[285] As discussed in relation to Issue six, I agree with the submission for the Company that the 12 July 2012 resolution does not amend the statutory process. While that resolution refers to "those iwi" rather than "all iwi", as in the 16 October 2013 resolution, in context the words "all of" those iwi who have identified interests in the relevant lands must be read into the 12 July resolution. It would be unworkable

---

114 Act, sch 2, cl 6(1)(b).
115 Schedule 2, cl 6(3).

otherwise. For the Panel to give recognition to bilateral agreements would be completely at odds with the statutory direction in sch 2, cl 6(14) that the Panel "will reach a decision on the allocation of the disputed lands … *in accordance with the mana whenua test*". Clause 6(14) is fundamental to the Tikanga-based resolution process and cannot be overridden by bilateral agreement. The Adjudication Panel can only be compelled to give effect to a written agreement in circumstances where there is agreement from "all of" those iwi who have identified interests in the relevant lands.

[286] Ngāti Tahu-Ngāti Whaoa submit that the 17 September agreement was specifically recorded and relied on by the Panel in the 26 June 2014 Decision. While it is correct that the 26 June 2014 Decision recorded the mana whenua agreement, it also noted (in two separate places) that the terms of that agreement "presumes that all other iwi agree with this arrangement, which is not the case, and that Ngāti Manawa show that it has mana whenua in the area."

[287] I conclude that (as in relation to Issue six) recognition by the Panel of a bilateral agreement as to mana whenua interests is inconsistent with the mandatory statutory process.

[288] Second, although it is arguable that Ngāti Tahu-Ngāti Whaoa in its own right satisfies the definition of "iwi" for the purpose of the Tikanga-based resolution process, I do not need to decide that question, because of my conclusion about the statutory role of the PSGEs. Clause 3 of sch 2 to the Act provides:

> **3 Governance of process**
>
> (1) Each iwi will be represented by their governance entity in the resolution process.
>
> (2) The resolution process will be governed by the company and the governance entities, in their capacity as shareholders in the company.
>
> (3) The governance entities may amend the resolution process from time to time by unanimous resolution, passed in accordance with the procedures set out in the deed of trust.
>
> ….

[289] It is clear that the role of the PSGEs was central to the Tikanga-based resolution process: any kanohi ki te kanohi negotiations at stage 2 of the tikanga-based resolution process were to be conducted through the appointed representatives of the PSGE of each iwi;[116] minutes of each hui at which kanohi ki te kanohi negotiations took place were to be taken and confirmed by the iwi participating;[117] and agreements reached were to be signed in writing by the governance entities of each iwi.[118]

[290] Even if Ngāti Tahu-Ngāti Whaoa was recognised as an iwi of the Collective in its own right, the sch 2 process required that it be represented in the resolution process by its governance entity. It was in fact represented by the TPT PSGE. The Panel was entitled to rely on PSGEs as the authorised representative bodies. It was the TPT PSGE that was mandated by its affiliate iwi/hapu to participate, and did participate, in the Tikanga-based resolution process, on their behalf.

[291] I accept the submission for TPT that TPT's representation/execution processes are not artificial. They reflect the requirements of sch 2 and are fundamental to TPT performing its functions under the TPT Trust Deed. As TPT points out, as a governance entity representing all Affiliates, it had a responsibility during the course of the Tikanga-based resolution process to manage the interests of all of its affiliate iwi/hapu and to ensure that any kanohi ki te kanohi agreements did not favour one Affiliate to the exclusion or detriment of another which might also claim mana whenua in any particular CFL block. That was a valid concern and a proper role and is separate from the question raised by Ngāti Tahu-Ngāti Whaoa as to allocation of mana whenua interests once those have been identified by the Panel.

[292] Ngāti Tahu-Ngāti Whaoa puts some reliance on the fact that no other party challenged the 17 September agreement in the earlier High Court proceeding. However, the focus of the proceeding before Ellis J was of a different nature. As the Court recorded, the critical issues in that proceeding were:[119]

> [61] …the parties were essentially agreed that the critical issues related to certain aspects of the Deed and the Act and, in particular:

---

116 Act, sch 2, cl 5(2).
117 Act, sch 2, cl 5(4).
118 Schedule 2, cl 5(5).
119 The earlier High Court Decision, above n 1, at [61].

(a) the obligations cast on the adjudication Panel established pursuant to the Deed and the Act, including whether:

(i) the Panel has "allocated" the disputed lands; and

(ii) the Panel's decision to refer the dispute back for further negotiation was permitted by cl 6(14)(e); and

(b) the obligations cast upon the Company in relation to the adjudication process, including whether:

(i) in light of the Panel's determination, it was able to "complete" the Final Allocation Agreement as it did; and

(ii) if not, what steps it can and should take to rectify the position.

[293] In that context, it was hardly surprising that no party challenged the 17 September agreement. In my view, nothing turns on that.

[294] I conclude that the Adjudication Panel did not err in failing to give effect to the agreement between Ngāti Manawa and Ngāti Tahu-Ngāti Whaoa.

Specific identification by the Panel of Ngāti Tahu-Ngāti Whaoa mana whenua interests

[295] The 26 June 2014 Decision contained the following relevant references:

- *Headquarters:* "TPT have [a] limited interest".
- *Reporoa:* "TPT has proven mana whenua substantive interests".
- *Northern Boundary:* TPT "claim no mana whenua interest".
- *Tōtara:* "TPT have a limited interest".
- *Caves:* no reference to TPT.
- *Flaxy Creek:* "Ngāti Tahu-Ngāti Whaoa in their agreement with Ngāti Manawa indicated that they do not have mana whenua claims in Flaxy Creek". no interests recognised.

- *Matea:* no reference.

- *Whirinaki:* no reference.

- *Wairapukao:* "Ngāti Tahu-Ngāti Whaoa submit that they have ancestral and usage associations with Wairapukao …". "… Ngāti Manawa and TPT have mana whenua substantive interests in Wairapukao CFL, …".

[296] The Second Adjudication Panel Decision recorded the mana whenua interests in Table One:

> *Headquarters* "Te Pūmautanga o Te Arawa (TPT) – specifically Ngāti Tahu/Ngāti Whaoa"
>
> *Reporoa* "TPT – specifically Ngāti Tahu/Ngāti Whaoa and Tūhourangi"
>
> *Wairapukao* "TPT"
>
> *Tōtara* "TPT".

[297] The Jackson/Ngata Decision did not alter the mana whenua interests set out in the 26 June 2014 Decision, in relation to TPT. What Table One and Table Two in the Jackson/Ngata Decision did do was to specify that the TPT interests in Headquarters and Reporoa derived from Ngāti Tahu-Ngāti Whaoa's mana whenua interests. The Jackson/Ngata Decision did not make any change to substantive mana whenua interests; it did not impact on other iwi or change the overall balance of mana whenua interests. I accept Ngāti Tahu-Ngāti-Whaoa's submission that it simply spelled out that the relevant TPT mana whenua interests were those of Ngāti Tahu-Ngāti Whaoa and Tūhourangi.

[298] That conclusion is consistent with the substance of TPT's own evidence and submission that it did not itself claim to have mana whenua interests in the Crown forests land. Implicitly at least, it recognises that Ngāti Tahu-Ngāti Whaoa (and Tūhourangi) do have mana whenua interests in the relevant Crown forests land blocks.

To whom should identified mana whenua interests be allocated?

[299] Ngāti Tahu-Ngāti Whaoa's essential complaint is about the ultimate allocation of any mana whenua interests held by Ngāti Tahu-Ngāti Whaoa and recognised by the Panel. It is concerned that those recognised interests will be allocated to TPT and that TPT will not then allocate those interests to Ngāti Tahu-Ngāti Whaoa.

[300] TPT says that the Tikanga-based resolution process is predicated on allocation to "an iwi of the CNI Iwi Collective". That, it says, is TPT, not Ngāti Tahu-Ngāti Whaoa. TPT, as the governance entity, rather than Ngāti Tahu-Ngāti Whaoa (and Tūhourangi), is the appropriate entity (a least in the first instance) to receive the allocation of those mana whenua interests.

[301] TPT does not assert that it is the mana whenua or that it has mana whenua interests in any of the CFL blocks. On the contrary, in its closing submissions to the Adjudication Panel in June 2014, it advanced its case on the basis of the mana whenua interests of Ngāti Tahu-Ngāti Whaoa (and also, to a lesser degree, Tūhourangi-Ngāti Wāhiao). It drew on detailed evidence supporting Ngāti Tahu-Ngāti Whaoa's claims to mana whenua. As Mr Pikia's evidence notes, TPT's case (to the Panel) relied on those Affiliate Te Arawa iwi/hapū who actually have mana whenua in the CFLs, including Ngāti Tahu-Ngāti Whaoa. That evidence and submissions is reflected in the 26 June 2014 Decision.

[302] Ms Vercoe's initial evidence on behalf of TPT was that mana whenua interests will come back to TPT, as the PSGE, in the first instance, not to its Affiliates. Then an internal asset devolution process, yet to be developed, will result in allocation of the assets (land and rentals). Ms Vercoe said, "… land and rentals may be allocated along mana whenua lines, or there may be some equitable variations in order to provide some land to affiliates which would otherwise receive no land" and "it may be that in exchange for this some Affiliates give up some land in which they have mana whenua". Ms Vercoe's initial evidence went on to say: "…actual allocation of the [mana whenua] interests would then be determined according to TPT's internal process."

[303] That position was subsequently amended and Ms Vercoe's supplementary evidence, was that: "TPT's devolution process, while yet to be developed, will not involve reallocation of mana whenua interests or allocation of land as determined in accordance with the Act."

[304] It is not entirely clear what that means. If there is to be no "reallocation" of mana whenua interests, then there would appear to be no need to await the development of TPT's devolution process before committing to allocate interests in accordance with the interests recognised by the Panel. I agree with Mr Pikia that TPT's devolution policy is not relevant**.**

[305] I accept that Ngāti Tahu-Ngāti Whaoa, on the face of the information before the Court, has a legitimate concern that its mana whenua interests might not ultimately come back to it.

[306] As I have concluded, there is a proper role for the TPT Trust during the course of the Tikanga-based resolution process, but that does not have application once TPT comes to the allocation of mana whenua interests to its Affiliates. The role of the PSGE/TPT Trust in the Tikanga-based resolution process does not override the tikanga of mana whenua. Ngati Tahu-Ngāti Whaoa relies on the evidence of tikanga given for Ngāti Manawa by Dr Carwyn Jones and Professor Margaret Mutu, which I accept. I acknowledge Ms Vercoe's evidence that TPT will not "reallocate" mana whenua interests, but for the avoidance of doubt, I conclude that it is not for TPT to "nominate" which of the TPT affiliate iwi/hapū receives land in which the Panel has determined mana whenua interests; it cannot redistribute mana whenua.

Result

[307] I summarise my conclusions in relation to the eight issues before the Court as follows:

(a) *Issue one:* The process whereby two adjudicators made a decision, with the third adjudicator incorporating his views at a later time, did comply sufficiently with the requirements of the Tikanga-based resolution process.

(b) *Issue two:* The decision to continue to have all of the land held in one title and retained by the Company was not a decision that the adjudicators had the power to make under the Tikanga-based resolution process.

(c) *Issue three:* the decision to convert the substantive, medial and limited interests of each iwi in the CFLs into percentage shares was valid.

(d) *Issue four:* the decision to change the allocation of the rental proceeds received by the first to eighth defendants for each of the CFLs from the percentages set out in Schedule 3 of the Act was not valid.

(e) *Issue five:* The decision to give immediate effect to the changed rental allocations was not valid.

(f) *Issue six:* Table Two in the Jackson/Ngata Decision altered the mana whenua interests determined by the Adjudication Panel in the 26 June 2014 Decision and that alteration was invalid.

(g) *Issue seven:* the Adjudication Panel did fail to give substantive recognition to the mana whenua interests of any iwi, including Ngāti Manawa's mana whenua interests.

(h) *Issue eight:* The Adjudication Panel did not err in failing to give effect to the agreement between Ngāti Manawa and Affiliate Te Arawa Iwi/Hapu.

[308] While this was not part of the issues as framed by the parties, I note that Ngāti Tahu-Ngāti Whaoa has established mana whenua interests in certain of the Crown forests land. These mana whenua interests are not contested by TPT. In those circumstances it would be contrary to tikanga for TPT to redistribute those interests to any other TPT affiliate.

Relief

[309] It is not possible to remit the decision back to the Adjudication Panel. Sadly, Mr Potiki died in 2019, and Mr Jackson died after the hearing of this proceeding but before the finalisation of this judgment.

[310] I am very conscious that the parties have already spent significant time and resources in this and the prior litigation and may be reluctant for the process to start afresh.

[311] I am also mindful of the fact that the outcome of the Tikanga-based resolution process represents a material part of the redress negotiated between the Crown and Iwi for the settlement of their historical Treaty of Waitangi claims. The Tikanga-based resolution process sought to uphold tikanga and establish a fair and equitable balance between the benefits received during the first 35 years of the CNI Settlement (comprising accumulated rentals together with a negotiated share of the rental proceeds for that period) with the benefits to be received beyond that 35 year period (comprising the allocation of interests in land and rentals proceeds that run with the land). Any relief provided by this Court should uphold the integrity of the CNI Settlement and not threaten its intergenerational durability.

[312] While it would be open to the Court to direct the Company to appoint a new adjudication panel to determine the dispute, having regard to the findings in this judgment, that leaves open the question whether a new panel would determine the issues afresh, or take as a starting point the mana whenua interests identified in the Panel's 26 June 2014 Decision (consistent with my finding in relation to Issue six). If the latter then it is inevitable that some or all of Ngāti Manawa, Ngāti Whare and Ngāti Tahu-Ngāti Whaoa are disaffected and there is no enduring settlement.

[313] At the conclusion of the hearing, counsel for Ngāti Whare urged that the Court should allow the parties the opportunity to consider the findings in this judgment and explore options for resolution amongst themselves, before the Court makes directions. I agree that is the most appropriate course. I invite the parties to confer and I direct that they file a memorandum or memoranda as to the outcome of that process and whether they wish the Court to proceed to make declarations reflecting the findings in

this judgment and to make a direction about the appointment of a new Adjudication Panel, by **1 November 2022**.

Costs

[314] I did not receive submissions from the parties as to costs. Costs are reserved until after the Court has considered the parties' responses as directed above.

Gwyn J

Solicitors:
Gibson Sheat, Wellington
Te Aro Law, Wellington
Brookfields, Auckland
Kāhui Legal, Wellington
Anderson Lloyd, Dunedin
Minter Ellison Rudd Watts, Wellington
Clifton Chambers, Wellington
GFS Risk Ltd, Auckland
Atkins Holm Majurey Ltd, Auckland

Appendix One: Mana whenua interests identified in 26 June 2014 Decision

Headquarters	Ngāti Manawa – medial interest
	Ngāti Rangitihi – medial interest
	TPT – limited interest
Reporoa	TPT – substantive interest
	Ngāti Rangitihi – substantive interest
	Ngāti Tuwharetoa – limited interest
	Ngāti Manawa – limited interest
Northern Boundary	Ngāti Manawa – substantive interest
	Ngāti Rangitihi – medial interest
	Tūhoe – medial interest
Tōtara	Ngāti Manawa – substantive interest
	Ngāti Rangitihi – medial interest
	Tūhoe – medial interest
	Ngāti Tūwharetoa – limited interest
	TPT – limited interest
Caves	Ngāti Manawa – substantive interest
	Ngāti Rangitihi – medial interest
	Tūhoe – medial interest
	Ngāti Tūwharetoa – limited interest
Flaxy Creek	Ngāti Manawa – substantive interest
	Tūhoe – medial interest
	Ngāti Rangitihi – limited interest
	Ngāti Tūwharetoa – limited interest
Matea	Ngāti Manawa – substantive interest
	Tūhoe – medial interest

	Ngāti Tūwharetoa – medial interest
Whirinaki	Ngāti Manawa – substantive interest
	Tūhoe – medial interest
	Ngāti Rangitihi – limited interest
Wairapukao	Ngāti Manawa – substantive interest
	TPT – substantive interest
	Ngāti Rangitihi – medial interest
	Ngāti Tūwharetoa – limited interest

Appendix Two: Table Two from Jackson/Ngata Decision

CFL	**Iwi (PSGE)**	**Interest**	
		Substantive = 4 Medial = 2 Limited = 1	As a %
Headquarters	Ngāti Manawa	2	40
	Ngāti Rangitihi	2	40
	Te Pūmautanga o Te Arawa (TPT) – specifically Ngāti Tahu/Ngāti Whaoa and Tuhourangi.	1	20
Reporoa	TPT – specifically Ngāti Tahu/Ngāti Whaoa and Tuhourangi.	4	40
	Ngāti Rangitihi	4	40
	Tūwharetoa Settlement Trust (TST)	1	10
	Ngāti Manawa	1	10
Northern Boundary	Ngāti Manawa	4	50
	Ngāti Rangitihi	2	25
	Tūhoe	2	25
Tōtara	Ngāti Manawa	4	40
	Ngāti Rangitihi	2	20
	Tūhoe	2	20
	TST	1	10
	TPT	1	10
Caves	Ngāti Manawa	4	40
	Ngāti Rangitihi	2	20
	Tūhoe	2	20
	TST	1	10

	Ngāti Whare (agreement with NM)	1	10
Flaxy Creek	Ngāti Manawa	4	33
	Ngāti Whare (agreement with NM)	4	33
	Tūhoe	2	17
	Ngāti Rangitihi	1	8.5
	TST	1	8.5
Matea	Ngāti Manawa	4	33
	Ngāti Whare (agreement with NM)	4	33
	Tūhoe	2	17
	TST	2	17
Whirinaki	Ngāti Manawa	4	36
	Ngāti Whare (agreement with NM)	4	36
	Tūhoe	2	19
	Ngāti Rangitihi	1	9
Wairapukao	Ngāti Manawa	4	31
	TPT	4	31
	Ngāti Rangitihi	2	15.4
	Ngāti Whare (agreement with NM)	2	15.4
	TST	1	7.2