IN THE HIGH COURT OF NEW ZEALAND **WELLINGTON REGISTRY** **I TE KŌTI MATUA O AOTEAROA** **TE WHANGĀNUI-Ā-TARA ROHE**	**CIV-2009-488-205** **CIV-2017-404-537** **CIV-2017-404-554** **CIV-2017-404-555** **CIV-2017-404-563** **CIV-2017-404-566** **CIV-2017-404-573** **CIV-2017-404-579** **CIV-2017-485-281** **CIV-2017-485-283** **CIV-2017-485-305** **CIV-2017-485-398** **CIV-2017-485-515** **CIV-2017-485-799**

UNDER THE	**the Marine and Coastal Area (Takutai Moana) Act 2011**
IN THE MATTER OF	**Te Uri o Hau Settlement Trust on behalf of the hapū of Te Uri o Hau (CIV-2009-488-205)**

Cont.

ATTORNEY-GENERAL'S CLOSING SUBMISSIONS FOR WHANGĀREI COAST (STAGE 1(B)) HEARING

3 October 2024

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AND	**J Kingi on behalf of Ngāpuhi Nui Tonu, Ngāti Rāhiri, Ngāi Tāhuhu and Ngāitawake (CIV-2017-404-537)**
AND	**K Rata on behalf of Ngā Hapū O Ngāti Wai (CIV-2017-404-554)**
AND	**N Macdonald on behalf of Te Whānau o Hōne Papita Rāua Ko Rewa Ataria Paama (CIV-2017-404-555)**
AND	**Te Rūnanga o Ngāti Whātua on behalf of Ngāti Whātua (CIV-2017-404-563)**
AND	**P Mahanga on behalf of Te Waiariki, Ngāti Kororā, Ngāti Takapari Hapū/Iwi of Niu Tireni (CIV-2017-404-566)**
AND	**M Honetana on behalf of Ngāti Tu ki Ngāpuhi (CIV-2017-404-573)**
AND	**W Kingi on behalf of Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai (CIV-2017-404-579)**
AND	**Patuharakeke Te Iwi Trust Board on behalf of Patuharakeke (CIV-2017-485-281)**
AND	**Ngātiwai Trust Board on behalf of Ngātiwai (CIV-2017-485-283)**
AND	**T Paki on behalf of Te Parawhau Hapū (CIV-2017-485-305)**
AND	**L Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398)**
AND	**E Reti on behalf of the Reti whānau (CIV-2017-485-515)**
AND	**Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799)**
AND	**Attorney-General**
	INTERESTED PARTY

AND	**J Kingi on behalf of Ngāpuhi hapū and Ngāpuhi-nui-tonu (MAC-01-01-50)**
	INTERESTED PARTY
AND	**K Hopkins for and on behalf of Ngunguru Marae Trust on behalf of Ngāti Takapari whānau and hapū (CIV-2017-485-279)**
	INTERESTED PARTY
AND	**Channel Infrastructure NZ Ltd**
	INTERESTED PARTY
AND	**Northport Ltd**
	INTERESTED PARTY
AND	**Seafood Industry Representatives**
	INTERESTED PARTY
AND	**Langs Beach Society and others**
	INTERESTED PARTY
AND	**NZ Transport Agency Waka Kotahi**
	INTERESTED PARTY

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MAY IT PLEASE THE COURT:

INTRODUCTION

1. In this stage 1(b) proceeding, the Court is asked to determine whether a number of applicant groups are entitled to orders recognising customary marine title (**CMT**) and/or protected customary rights (**PCRs**) under te Takutai Moana Act 2011 (**the Act**) in respect of the Whangārei Coast. The specific hearing area is between Bream Head and Bream Tail and out to sea including Taranga and Marotere (the Hen and Chicken Islands).[1]

2. Ten applicant groups are advancing applications for recognition orders in this proceeding[2] on behalf of the following iwi and hapū:

   2.1 *Te Parawhau:* two applications for CMT and PCRs have been brought on behalf of Te Parawhau hapū in respect of the entire hearing area. One by Tamihana Paki (CIV-2017-485-305),[3] and the other by Korokota Marae (CIV-2017-485-799).[4] The applications are supported by Te Rūnanga o Ngāti Whātua on behalf of Ngāti Whātua (CIV-2017-404-563). Te Rūnanga's originating application overlaps with the hearing area[5] but it is not seeking to be the holder of any recognition orders in respect of the area.[6]

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1 Minute of Churchman J dated 1 July 2022 at [143]. The southern boundary of this area was again confirmed in a judgment issued on 18 April 2023, with the Court confirming the hearing area would exclude the application area of Ngāti Manuhiri (CIV-2017-404-545): *Re Te Parawhau* [2023] NZHC 804 at [17] and [21]. An indicative map of the hearing area was attached to a memorandum of counsel for the Attorney-General dated 28 July 2023. The hearing boundaries as shown in that map were confirmed by the Court in a minute dated 8 December 2023 (and again confirmed by the Court in an oral direction made on 21 August 2024).

2 During the course of the hearing, the Trustees of Te Uri o Hau Settlement Trust on behalf of Te Uri o Hau (CIV-2009-4898-205) (whose application overlaps the south-eastern end of the hearing area: see notice of originating application for order for territorial customary rights dated 24 April 2009 **[[601.00001]]**) confirmed they are not seeking recognition orders from the Court in respect of the hearing area but are instead pursuing their application through Crown engagement: memorandum of counsel for Te Uri o Hau dated 16 August 2024. Nicola MacDonald, an applicant on behalf of Te Whanau o Hone Papita Raua Ko Rewa Ataria Paama (CIV-2017-404-555) (whose application for CMT and PCRs overlaps with the north-eastern corner of the hearing area: see originating application for recognition orders dated 3 April 2017 **[[601.00012]]**) did not participate in the hearing.

3 Originating application for recognition orders dated 3 April 2017 **[[101.00222]]**.

4 Originating application for recognition orders dated 3 April 2017 **[[101.00265]]**.

5 Fourth amended originating application by Te Rūnanga o Ngāti Whātua (on behalf of Ngāti Whātua) dated 21 August 2023 **[[101.00060]]**.

6 Te Rūnanga has entered into a memorandum of understanding with Tamihana Paki on behalf of Te Parawhau hapū (CIV-2017-485-305), Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799), and Stephen Panoho on behalf of Te Rae Ahu Whenua Trust (CIV-2017-485-239). See Exhibit AR-01 to the Affidavit of Alan Riwaka dated 21 August 2023 **[[303.00925]]**; Exhibit AR-03 to the Affidavit in reply of Alan Riwaka dated 11 December 2023 **[[323.10594]]**; and Exhibit 1 produced by Tamihana Paki during the hearing **[[501.00001]].** The memorandum records that Ngāti Whātua is not intending to be the holder of any orders made: see [7] of the memorandum of understanding ("Te Rūnanga o Ngāti Whātua will not seek to hold any customary marine titles or protected customary rights in the stage 1 (a) and stage 1 (b) Whangarei Harbour and Bream Bay Coast hearing areas except

2.2 *Ngāti Tū:* two applications for CMT and PCRs have been brought on behalf of Ngāti Tū. One by Maia Honetana (CIV-2017-404-573), seeking recognition orders in respect of the entire hearing area;[7] and the other by Waimarie Kingi (CIV-2017-404-579), seeking recognition orders in respect of most of the entire hearing area, except for the south-western corner.[8]

2.3 *Ngāti Kahu:* an application for CMT and PCRs has been brought by Waimarie Kingi on behalf of Ngāti Kahu (CIV-2017-404-579) in respect of most of the entire hearing area, except for the south-western corner.[9]

2.4 *Te Waiariki, Ngāti Kororā, Ngāti Takapari:* an application for CMT and PCRs has been brought by Pereri Mahanga on behalf of Te Waiariki, Ngāti Kororā, Ngāti Takapari (CIV-2017-404-566), in respect of an area in the north-eastern side of the hearing area.[10]

2.5 *Patuharakeke:* an application has been brought by Patuharakeke Te Iwi Trust Board on behalf of Patuharakeke (CIV-2017-485-281), seeking recognition of CMT in respect of the western side of the hearing area.[11]

2.6 *Ngātiwai hapū:* two applications for CMT and PCRs have been brought on behalf of Ngātiwai hapū in respect of the entire hearing area. One by Kare Rata (CIV-2017-404-554),[12] and the other by the Ngātiwai Trust Board (CIV-2017-485-283).[13] The Trust

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through Te Parawhau"). See also the synopsis of oral submissions for Te Rūnanga o Ngāti Whātua dated 21 August 2024 at [3].

7 Amended originating application for recognition orders dated 17 August 2022 **[[101.00098]]**.

8 Amended originating application for recognition orders dated 11 December 2023 **[[101.00122]]**.

9 Amended originating application for recognition orders dated 11 December 2023 **[[101.00122]]**.

10 Amended originating application for recognition orders dated 11 December 2023 **[[101.00079]]**. The application area is depicted in a map appended to a memorandum of counsel for the applicant dated 16 May 2019 **[[101.00075]** at **[[101.00078]]**.

11 Patuharakeke Te Iwi Trust Board initially filed an application for PCRs in respect of this area: originating application for PCRs dated 3 April 2017 **[[101.00190]]**. The applicant indicated through a memorandum of counsel dated 11 December 2023 that it is now seeking to have its PCR application "considered as a CMT application" instead (in reliance on s 107 of the Act) **[[101.00203]]**. See also the opening submissions for Patuharakeke Te Iwi Trust Board dated 3 August 2024 at [20]-[22] confirming this approach. The application area is depicted in two maps appended to that memorandum of counsel **[[101.00207]** and **[[101.00208]]**.

12 Originating application for recognition orders dated 3 April 2017 **[[101.00019]]**. The applicant entered into a relationship accord with Ngāti Wai Trust Board and Patuharakeke Te Iwi Trust on 24 January 2024 **[[501.00166]]**.

13 Originating application for recognition orders dated 3 April 2017 **[[401.00021]]**.

Board does not seek to hold any recognition orders in respect of the hearing area.[14]

2.7 *Ngāpuhi-nui-tonu:* two applications for CMT and PCRs have been brought on behalf of Ngāpuhi-nui-tonu in respect of the entire hearing area. One by Louisa Collier (CIV-2017-485-398)[15] and the other by Joseph Kingi (CIV-2017-404-537).[16] This application is supported by an interested party: Joseph Kingi and others on behalf of Ngāpuhi hapū and Ngāpuhi-nui-tonu.[17]

3. In addition, there is an application for PCRs only – brought on behalf of the Reti whānau (CIV-2017-485-515) – in relation to the entire hearing area.[18]

OVERVIEW OF ISSUES

4. The Attorney-General's opening submissions (filed on 12 August 2024) included an overview of the law applicable to this proceeding.[19] Those submissions are not repeated here.

5. The Attorney-General does not take a formal position in relation to whether any of the applications before the Court meet the test for CMT or PCRs (with the exception of the submissions below on substantial interruption). However, she considers that a number of the applicant groups face challenges in meeting the test for CMT.

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14 This was confirmed in a Relationship Accord entered into in January 2024 by the Ngātiwai Trust Board, Patuharakeke Te Iwi Trust Board, and Ngā Hapū o Ngātiwai **[[501.00166]]** at paragraph G: "The NTB has since resolved that it will not seek to hold any formal rights available under the [Act] (i.e. CMT's or PCR's), but will support Ngatiwai whanau and hapu applicants in principle to hold such rights at the local level. NTB will take a neutral but supportive position, encouraging engagement between overlapping Ngātiwai related whanau and hapu applicants" **[[501.00168]].** See also the opening submissions for the Ngātiwai Trust Board dated 2 August 2024 at [7] for confirmation of the Board's position that it is not the appropriate entity to hold CMT or PCRs. The Board also says that in stage 1(b), there should be recognition of Ngātiwai-affiliated hapū Patuharakeke's mana tuku iho (together with other hapū, where that mana is shared) in respect of the coastal area of Poupouwhenua and Bream Bay; but in respect of the areas around Taranga and Marotere and the offshore waters north and south of them, it is "Ngātiwai whānau and hapū (Ngātiwai whānau whānui katoa)" who hold mana over those areas: at [5]-[6].

15 Amended originating application for recognition orders dated 13 December 2017 **[[101.00234]]**. Louisa Collier's application is formally on behalf of Ngāti Kawau and Te Waiariki Kororā, although the evidence filed by the applicant appears to instead be advancing the application on behalf of "Ngāpuhi-nui-tonu" rather than specific hapū.

16 Amended originating application for recognition orders dated 17 October 2023 **[[101.00010]]**.

17 This is a Crown engagement applicant who also has a High Court application that is being heard in this proceeding (through CIV-2017-404-537). The Court granted leave for this interested party's participation in the hearing in December 2023: Minute of Harvey J dated 8 December 2023 at [25].

18 Originating application for recognition orders dated 3 April 2017 **[[101.00250]]**. While the originating application seeks recognition of both PCRs and CMT, the applicant clarified (in a memorandum of counsel dated 7 March 2022) that it is not seeking CMT in relation to the Whangārei Coast. This is reflected in a map that was appended to the 7 March 2022 memorandum.

19 See the overview from [15]-[72] of the opening submissions dated 12 August 2024.

6. The Attorney-General makes the following general observations:

6.1 There is a lack of detail in much of the evidence as to the nature and location of use and occupation by applicant groups, which makes it difficult to assess whether some areas are currently held in accordance with tikanga and have been continuously used and occupied since 1840. In particular, the level of detail about groups' customary activities and use and occupation appears to be concentrated on the northern stretch of the coastline around Poupouwhenua (particularly for Patuharakeke) but appreciably decreases towards the southern part of the coast (particularly in the area south of Waipū and through to Langs Beach). In terms of the seaward extent of groups' use and occupation, the evidence also appears to be less detailed in areas further out to sea (as opposed to along the mainland coast).

6.2 Unlike the situation in respect of the Whangārei Harbour[20] (or indeed any other hearing area considered by the High Court to date),[21] none of the land abutting the stage 1(b) hearing area has the status of Māori land under Te Ture Whenua Māori Act 1993 and applicants did not lead evidence that they own abutting land. While the presence or absence of abutting land owned by the applicant group is not determinative of a CMT application, where (as here) there is also a general lack of detail about groups' activities and presence in the hearing area, this is likely to present a challenge for groups in establishing continuous use and occupation of the area since 1840.

6.3 Another distinguishing feature of this hearing area – compared to the harbour[22] – is that specific kāinga that were occupied by

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20 See map 4(a) in the mapbook prepared by Richard Jennings for the stage 1(a) hearing **[[3110.52808]]**.

21 In all other hearing areas considered by the High Court to date, Māori land has abutted at least part of the specified area (in terms of the definition set out in s 59(4) of the Act): *Re Tipene*, *Re Edwards*, *Re Ngāti Pāhauwera*, *Re Clarkson*, *Re Reeder (stage 1), Re Reeder (stage 2), Tokomaru Bay, Wairarapa 1(a), Re Ngai Tai, Wairarapa 1(b)* and *Kapiti-Manawatu 1(a).* The status of abutting land within these hearing areas can be identified on Kōrero Takutai, an online mapping tool developed by Te Arawhiti: <korerotakutai.tearawhiti.govt.nz>. In *Re Clarkson*, Māori land abutted a reserve (and the reserve abutted the common marine and coastal area), and so this fell within the definition of "land abutting all or part of the specified area" in s 59(4)(b). See *Re Clarkson* [2021] NZHC 1968 at [10], [174] and [194].

22 See the map of kāinga around the Whangārei Harbour that was recorded by William Colenso when he visited

groups in around 1840 along the Bream Bay coastline (and on the offshore islands) do not appear to have been documented or described in the evidence. The particular geography of the hearing area may be a reason for this – a point alluded to in Waimarie Kingi's evidence when she stated that "kāinga were never on the flat", as "you would have been taken out".[23]

6.4 In respect of Taranga and Marotere, specifically, the evidence appears to suggest that historical use (at least in the years before and after 1840) was largely seasonal, although there may have been some permanent or semi-permanent occupation of the islands in the distant past. This is likely to present challenges for groups in demonstrating continuous use and occupation since 1840. It may also be difficult for the Court to be satisfied there is sufficient evidence to permit an inference of exclusivity as at 1840.[24] In terms of contemporary customary authority, the evidence appears to suggest a reasonably strong Ngātiwai presence (as an umbrella group[25] for all its hapū).

7. The Attorney-General raises an issue of substantial interruption in relation to a discrete part of the hearing area: the area occupied by the commercial shipping channel (the use of which is regulated by the Navigation Safety Bylaw 2017).

8. In relation to PCRs:

8.1 In some instances, there does not appear to be any evidence put forward by applicants to demonstrate that activities claimed as PCRs are (or have been) carried out by the applicant group in the hearing area.

8.2 There is a lack of clarity in some of the evidence as to the location of the particular area where activities that are claimed as PCRs are

Whangārei in the late 1830s: **[[201.00301]]**.

23 NOE Vol 1, p 351, lines 1-2 (cross-examination of Ms Kingi by Mrs Golightly).

24 See *Re Ngā Hapū o Tokomaru Ākau* [2024] NZHC 682 at [199].

25 See further at [15] below.

carried out. It is also unclear whether some of the activities that are claimed as PCRs take place within the common marine and coastal area (**CMCA**).

8.3 It is unclear on some of the evidence whether some of the activities that are claimed as PCRs continue to be exercised in the present day.

8.4 The nature of the PCRs being sought by some applicants is unclear.

8.5 Some of the PCRs that are applied for are not available under the Act, either because they are specifically prohibited or are otherwise inconsistent with the scheme of the Act.

9. These matters are addressed in more detail below from [17].

APPLICANT GROUPS AND REPRESENTATION

10. It also appears there are as-yet-unresolved representation issues before the Court, as it is not clear who is the appropriate representative to seek recognition orders under the Act where more than one applicant group purports to represent the same hapū/iwi.

11. As set out in the Attorney's openings,[26] recognition of CMT and PCRs requires an "applicant group" to meet the statutory tests.[27] An application must name the person who will be the holder of the order "as the representative of the applicant group".[28] Should there be any controversy about whether a named applicant has the authority to seek an order on a group's behalf, the Court will need to be satisfied that they do represent the applicant group.[29]

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26 Opening submissions dated 12 August 2024 at [37]-[38].

27 "Applicant group" is defined in s 9 of the Act as: "1 or more iwi, hapū, or whānau groups" that seek recognition of their PCRs or CMT by a recognition order or an agreement; and includes a legal entity or natural person appointed to represent that group in its application.

28 Section 101(f).

29 *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504, [2023] 3 NZLR 252 [*Edwards*] **[[BOA Tab 16]]** at [203(b)] per Miller J; and [360] per Cooper P and Goddard J. Miller J confirmed that the Act treats representative status as a question of fact for the Court, and it is implicit in s 101 of the Act and the definition of "applicant group" that the applicant must have the mandate of the group: at [275] per Miller J; [360] per Cooper P and Goddard J. The Act does not prescribe any particular representation process. However, representation issues have been considered in a number of decisions under the Act to date, from which a number of principles can be distilled. These were summarised at [64] of the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024.

12. In this proceeding, multiple applications have been advanced on behalf of the same hapū or iwi group. As summarised above, more than one application has been brought on behalf of Te Parawhau,[30] Ngāti Tū,[31] Ngātiwai hapū,[32] and Ngāpuhi-nui-tonu.[33] It also appears that Ms Kare Rata's application is being advanced (at least in part) on behalf of Patuharakeke, despite the Patuharakeke Te Iwi Trust Board advancing a separate application on behalf of the same hapū.[34] In addition:

12.1 Wider issues of mandate are engaged by the applications brought on behalf of Ngāpuhi-nui-tonu,[35] in terms of whether these applicants have the authority to represent all 110 hapū of Ngāpuhi as well as the "four walls of the house" of Ngāpuhi which include (among others) the iwi of Ngāti Whātua.[36] During the hearing, it was suggested to the witnesses for these applicants that they did not have a mandate to speak for all of these hapū and iwi.[37] Arthur Mahanga responded by saying that he did not need to seek a mandate, because "[m]y whakapapa is my mandate".[38] A similar answer was given by Aorangi Kawiti.[39] Louisa Collier claimed to have been through a mandating process with each of those iwi

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30 Tamihana Paki on behalf of Te Parawhau Hapū (CIV-2017-485-305) and Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799). See the opening submissions for Tamihana Paki (on behalf of Te Parawhau) dated 2 August 2024 at [6.5] indicating that the two specific Te Parawhau applicants will continue to take a united approach (in accordance with the record of agreement dated 21 August 2023) in respect of stage 1(b) (see also the joint memorandum of counsel on behalf of Tamihana Paki and Korokota Marae dated 2 August 2024). However, it remains unclear how exactly these applicants intend on resolving the issue of representation.

31 Maia Honetana on behalf of Ngāti Tu ki Ngāpuhi (CIV-2017-404-573) and Waimarie Kingi on behalf of Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai (CIV-2017-404-579).

32 Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554) and Ngātiwai Trust Board on behalf of Ngātiwai whānau, hapū and iwi (CIV-2017-485-283).

33 Joseph Kingi on behalf of Ngāpuhi nui tonu, Ngāti Rāhiri, Ngāi Tāhuhu and Ngāitawake (CIV-2017-404-537) and Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398) (see fn 15 above).

34 Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554) and Patuharakeke Te Iwi Trust Board on behalf of Patuharakeke (CIV-2017-485-281). While the former application does not specify which hapū of Ngātiwai the application is brought on behalf of, the applicant's evidence appears to be given at least in part on behalf of Patuharakeke: Brief of evidence of Kare Rata dated 26 March 2024 **[[701.00041]]**.

35 Joseph Kingi on behalf of Ngāpuhi nui tonu, Ngāti Rāhiri, Ngāi Tāhuhu and Ngāitawake (CIV-2017-404-537) and Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398).

36 See, similarly, the discussion in the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [60].

37 See for example NOE Vol 2, p 354, lines 7-22 (cross-examination of Ms Collier by Mr Enright).

38 NOE Vol 2, p 369, lines 19-25 (cross-examination of Mr Mahanga by Mr Enright).

39 She said that she considers she has a mandate to speak on behalf of the hapū and iwi that comprise Ngāpuhi and Ngāpuhi-nui-tonu because this comes from "the mana [m]otuhake I refer to and it is gifted as a taonga tuku iho from our tūpuna": NOE Vol 2, p 398, lines 10-11 (cross-examination of Ms Kawiti by Mr Enright). She went on to say, "Mandates tricky to understand in tikanga Māori. This is what I'm actually trying to express. It doesn't start or end, you get asked to join and there is no end, until your last breath": NOE Vol 2, p 398, lines 29-31.

and hapū,[40] despite her position during the Whangārei Harbour (stage 1(a)) hearing that it was unnecessary to hold hui-a-hapū with all of the hapū of Ngāpuhi in order to obtain a mandate.[41]

12.2 Ms Honetana raised – for the first time – an objection to Waimarie Kingi's mandate to represent Ngāti Tū in these proceedings.[42] This is despite advising the Court during the stage 1(a) hearing that she and Riki Solomon (a witness who provided evidence in support of Ms Kingi's application) had been endorsed at a hui-a-hapū held in April 2024 to act as co-representatives for Ngāti Tū.[43] It remains unclear to the Attorney-General what effect this co-representation arrangement is intended to have on the two separate applications that have been advanced by Ms Honetana and Ms Kingi.[44]

13. Similar issues arose in the stage 1(a) hearing.[45] These representation issues need not prevent the Court from considering whether recognition orders should be made. As a practical way forward, the Court is entitled to focus on the hapū and iwi groups with applications before it and consider whether it is satisfied that those particular hapū and iwi have met the relevant tests for recognition orders. Issues of representation would then fall to be addressed prior to the finalisation of any orders, in particular to determine who will be named to hold any orders.[46] This was the approach taken by Cull J in *Re Ngā Hapū o Tokomaru Ākau*.[47]

14. A further issue arises in this proceeding in relation to the identity of those Ngātiwai hapū who are seeking CMT in respect of the offshore areas (including around Taranga and Marotere) that are not covered by

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40 NOE Vol 2, p 354, lines 17-22 (cross-examination of Ms Collier by Mr Enright).

41 NOE from Whāngarei Harbour hearing, p 1654, lines 6-16.

42 Maia Honetana said that Ms Kingi does not have the mandate to speak on behalf of Ngāti Tū and that a hui has never taken place for Ngāti Tū which has established Ms Kingi as "the spokesperson" on behalf of Ngāti Tū: NOE Vol 2, p 346, lines 32-34 and p 347, lines 1-14 (re-examination of Ms Honetana).

43 Joint affidavit of Maia Honetana and Riki Solomon **[[403.01264]]**.

44 See the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [58].

45 The Attorney-General's submissions on these representation issues are set out at [53]-[61] of her closing submissions for the Whangārei Harbour hearing dated 26 April 2024.

46 Section 109(2)(c) of the Act requires that a recognition order name the holder of the order.

47 See *Re Ngā Hapū o Tokomaru Ākau* [2024] NZHC 682 at [62] and [68]-[69].

Patuharakeke Te Iwi Trust Board's application area (on behalf of Patuharakeke). Ms Rata is advancing an application on behalf of Ngā Hapū o Ngāti Wai in respect of that area, and the Board has also advised the Court that it considers CMT in respect of the offshore areas around Taranga and Marotere should be held exclusively by "Ngātiwai whānau and hapū (Ngātiwai whānau whānui katoa)".[48] The Attorney understands both Ms Rata and the Board to be saying that *all of the hapū* of Ngātiwai should hold CMT in respect of this area.[49] If that is the position, all of the hapū of Ngātiwai would need to satisfy the test for CMT and PCRs. This presents a challenge for the recognition of a hapū-level CMT because: neither Ms Rata[50] nor the Board have named all of the hapū of Ngātiwai who they say meet the test for CMT in respect of the area; and no specific evidence has been put forward by (self-identifying)[51] hapū of Ngātiwai (other than Patuharakeke, through Ms Rata's evidence) in respect of the offshore areas surrounding Taranga and Marotere.

15. Alternatively, if the Court is satisfied on the evidence that Ngātiwai (as an iwi) meets both limbs of the s 58 test, it is open to the Court to make a finding that te iwi o Ngātiwai as an "umbrella" group meet the test in respect of the offshore islands. It could then be left for the group to determine – as a matter of tikanga – who the holder of the order will be

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48 Opening submissions for the Ngātiwai Trust Board dated 2 August 2024 at [5]-[7]. The evidence is somewhat equivocal concerning the exact geographic scope of Ngātiwai's claim to exclusive interests in respect of the offshore area. Harry Maki-Midwood (a witness for both the Ngātiwai Trust Board and the Patuharakeke Te Iwi Trust Board), when asked about this, said that Ngātiwai hapū have exclusive interests in respect of the entire stage 1(b) hearing area: NOE Vol 2, p 46, lines 1-7 (cross-examination of Mr Maki-Midwood by Mrs Golightly). Ms Rata, when asked where the boundary of the "exclusive area to Ngātiwai should be", did not respond directly but instead said that this would involve a series of hui hui among the hapū of Ngātiwai to work through: NOE Vol 2, p 183, lines 20-30 and p 184, lines 1-16 (cross-examination of Ms Rata by Mr Erskine).

49 Aperahama Kerepeti-Edwards, chairman of the Ngātiwai Trust Board, was asked by Mr Hockly whether there are particular hapū of Ngātiwai that connect with Taranga and Marotere. He replied, "No. All of our hapū have an interest up there, in these particular motu. Some of the other motu are not like that. Some of the other motu, yes, we all have an interest, but there are hapū that have a more primary sort of interest": NOE Vol 2, p 26, lines 31-34. See also NOE Vol 2, p 56, lines 14-18 ("Q: Did I hear you to say that it would be all of these hapū of Ngātiwai who would have the interest in the 1(b) area and not just Patuharakeke, for example? A: Yes, which is why we would umbrella ourselves as Ngātiwai under the marumaru of Ngātiwai").

50 Ms Rata was asked to name all the hapū of Ngātiwai who access Taranga and Marotere and said she was unable to list all of them: NOE Vol 2, p 178, lines 31-32 and p 179, line 1. She instead listed the hapū who are "relevant to [her], as in [her] direct whakapapa" as Patuharakeke, Ngāti Rehua, Te Aki Tai, and Te Whānau Whero: NOE Vol 2, p 179, lines 1-11. She said she was unaware of how many hapū of Ngātiwai there are in total: NOE Vol 2, p 179, lines 12-15 ("I'm not even going to try and take a guess at it").

51 While some of the evidence given on behalf of Pereri Mahanga's application on behalf of Te Waiariki, Ngāti Kororā and Ngāti Takapari concerned Taranga and Marotere (see [122] below), Mr Mahanga made it clear in his evidence that he does not consider Te Waiariki to be a hapū of Ngātiwai: NOE Vol 1, p 260, lines 2-18 (cross-examination of Mr Mahanga by Mrs Golightly).

(i.e. either the Board – as set out in the Board's originating application[52] – or some other entity or person appointed by the iwi, hapū and whānau).

16. Finally, to the extent that Ngātiwai witnesses have referred to Te Waiariki, Ngāti Kororā and Ngāti Takapari as hapū of Ngātiwai,[53] and Ngāpuhi-nui-tonu witnesses have referred to Te Waiariki Kororā as a hapū of Ngāpuhi-nui-tonu,[54] additional mandate issues appear to arise. This is because Te Waiariki, Ngāti Kororā and Ngāti Takapari are separately advancing an application (through Pereri Mahanga's application) before this Court for recognition orders.[55] (And the Court will recall that in stage 1(a) an issue arose as to whether Mr Mahanga's application was appropriately mandated to represent Ngāti Takapari.[56]) The issue of who has the authority to represent Te Waiariki, Ngāti Kororā and Ngāti Takapari will need to be resolved prior to the finalisation of any orders (if granted).

ASSESSMENT OF CMT APPLICATIONS

17. The requirements of the test for CMT in s 58 were described in detail in the Attorney-General's opening submissions and are not repeated here.[57] In summary, the majority in *Edwards* articulated the requirements of s 58 as follows:[58]

    17.1 The applicant group must currently hold the relevant area as a matter of tikanga. That is, the group must show that as a matter of tikanga it has the authority to use and occupy the area, and to control access to and use of that area by others.

    17.2 In 1840, prior to the proclamation of British sovereignty, the applicant group (or its tikanga predecessor(s)) must have used and

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52 At **[[101.00216]]**.

53 See NOE Vol 2, p 50, lines 26-34 and p 51, lines 1-2 (cross-examination of Mr Maki-Midwood by Mrs Golightly).

54 See Brief of evidence of Louisa Collier dated 27 March 2024 **[[701.00331]]**.

55 Similar issues were apparent during the stage 1(a) hearing. See [53] of the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024.

56 See [53] of the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024. See also NOE Vol 2, pp 52-53 (cross-examination of Mr Kerepeti-Edwards by Mrs Golightly).

57 Opening submissions dated 12 August 2024 at [41]-[72].

58 *Edwards* **[[BOA Tab 16]]** at [434]-[435] per Cooper P and Goddard J.

occupied the area, and had sufficient control over the area to exclude others if it so wished.

17.1 Post-1840, that use and occupation must not have ceased or been interrupted because the group's connection with the area and control over it was lost as a matter of tikanga, or was substantially interrupted by lawful activities carried on in the area pursuant to statutory authority.

18. Relevantly for this proceeding, the majority made some observations about the establishment of CMT in offshore areas as opposed to inshore areas. The majority emphasised that the use of a particular resource in an area will not, without more, amount to exclusive use and occupation. It said that (when assessing exclusive use and occupation as at 1840), there must have been a "strong presence" in the area, manifesting itself in acts of occupation that could reasonably be interpreted as demonstrating the area in question belonged to, was controlled by, or was under the exclusive stewardship of the applicant group.[59] It said:[60]

> [This] will be more difficult to demonstrate in respect of offshore areas visited only occasionally (for example, to fish) than shallower areas close inshore that could be (and were) observed and controlled from coastal settlements, and used on a regular basis (for example, coastal inlets frequently used for collection of shellfish and shallow-water fish species, transport, rongoā (medicine) and other activities).

19. The Court of Appeal in *Edwards* also confirmed that the concept of shared exclusivity is accommodated under the Act, enabling multiple groups with applications before the Court to combine to form one applicant group and have CMT recognised across the same area on the basis they jointly exercise exclusive use and occupation in relation to an area.[61]

20. The Attorney-General does not take a formal position on whether any of the applicant groups have met the test for CMT (with the exception of the submissions below on substantial interruption). However, the Attorney-General considers that, overall, there is limited evidence to support

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59 *Edwards* **[[BOA Tab 16]]** at [422] per Cooper P and Goddard J.

60 *Edwards* **[[BOA Tab 16]]** at [422] per Cooper P and Goddard J.

61 *Edwards* **[[BOA Tab 16]]** at [439] per Cooper P and Goddard J; and [208]-[209] per Miller J.

findings that the groups satisfy the requirements of limb one; and limited evidence of continuous use and occupation of the entirety of the hearing area (particularly the southern portion of the hearing area south of Waipū). The Attorney-General observes the evidence appears to be stronger for Patuharakeke, in respect of the mainland coast (and particularly around Poupouwhenua and stretching down to Waipū); and perhaps for Ngātiwai (as an umbrella group for all its hapū), in respect of the offshore areas around Taranga and Marotere.

21. The Attorney-General also observes that – because the foreshore of Taranga and Marotere is classified as a nature reserve[62] – the foreshore is excluded from the CMCA[63] and so cannot be included in an award of CMT.

22. The submissions below do not consider whether Ngāti Whātua meets the test for CMT in respect of any part of the stage 1(b) hearing area. This is because the Attorney-General does not understand Te Rūnanga o Ngāti Whātua (on behalf of Ngāti Whātua)[64] to be pursuing an iwi-wide application for recognition orders in respect of the harbour. However, the evidence – insofar as it is said to support a CMT held by Ngāpuhi-nui-tonu – is addressed below. The Attorney-General's understanding of the opening submissions collectively delivered on 17 September 2024 on behalf of the "Ngāpuhi-nui-tonu applicants" is that the applicants are seeking a CMT order to be held by Ngāpuhi-nui-tonu.[65] The position of Ngātiwai (as an umbrella group for all its hapū) is considered below.

23. For completeness, the Attorney-General observes at the outset that – unlike the situation in respect of the Whangārei Harbour[66] – there is limited evidence to suggest that customary authority in respect of the stage 1(b)

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62 Taranga and Marotere were classified as a nature reserve in 1977 under the Reserves Act 1977. The foreshore of a nature reserve is deemed to be included within that designation: s 20(3) of the Reserves Act 1977 states that, "where the foreshore of any nature reserve which is an island or part of an island does not form part of the reserve which it adjoins, the foreshore shall be deemed to form part of the reserve". See fn 514 and 515 below.

63 See paragraph (b)(iii) of the definition of "common marine and coastal area" in s 9 of the Act.

64 See [2.1] above.

65 See [12] and [33] of the opening submissions filed on behalf of the Ngāpuhi-nui-tonu applicants dated 16 September 2024. See also the Affidavit of Louisa Collier dated 27 March 2024 **[[701.00331]]** at [25] **[[701.00338]]**, where Ms Collier said she considers any title issued by the Court ought to be held "collectively by Ngāpuhi-nui-tonu by those groups who can demonstrate their tikanga connection and their responsibility for looking after our Whangārei Coast".

66 See the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [17]-[18] and [100]-[103].

hearing area is shared among a number of hapū. While there is some evidence before the Court to suggest the use of *resources* within the hearing area is shared,[67] and that some kaitiaki activities are undertaken collectively,[68] there was limited evidence of groups mutually recognising each other as having *customary authority* in respect of the stage 1(b) area.[69]

24. The Attorney-General also makes the general observation that, although some witnesses described instances in the past where rāhui had been imposed by their hapū in parts of the stage 1(b) hearing area,[70] the evidence did not appear to identify specific instances where rāhui have been placed in respect of the area south of Waipū (through to Langs Beach). This is despite evidence before the Court of a number of incidents of drownings or whale strandings in the Langs Beach area in the last couple

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67 See for example, NOE Vol 2, p 232, lines 31-34 and p 233, lines 1-7 (cross-examination of Mr Maki-Midwood by Mr Enright), where Mr Maki-Midwood acknowledged Te Parawhau's entitlement to fish and gather kaimoana ("Yes … it's somewhat a general area and … many people fish in those areas"), but said that generally Ngātiwai hapū will undertake rāhui themselves (but may call upon Te Parawhau for assistance). See also NOE Vol 2, p 343, lines 26-30 (cross-examination of Ms Honetana by Ms Roff), where Ms Honetana said there are no rocks or fishing grounds that are culturally significant just to Ngāti Tū in the Bream Bay area because the area is used by a collective of hapū, including Te Parawhau and Patuharakeke.

68 Relevantly, Ngāti Kahu, Ngāti Tū, Patuharakeke and Te Parawhau have gazetted rohe moana in respect of the hearing area and have appointed kaitiaki to oversee and authorise customary catch permits within the area. See fn 92 below for further detail. See also NOE Vol 1, p 94, lines 29-32 (re-examination of Mr Walker), referring to Te Uri o Hau, Patuharakeke and Te Parawhau working with local authorities and developers in respect of resource management processes; and NOE Vol 1, p 54, lines 13-14 (evidence-in-chief of Dr Kepa), referring to the sharing of pest strategy data with Patuharakeke and Ngāti Whātua.

69 While mutual recognition is not a *requirement* for a finding of shared exclusivity, acknowledgements are nonetheless relevant. See the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [126]. The Attorney-General has identified the following acknowledgements of mutual interests in respect of the stage 1(b) hearing area: NOE Vol 1, p 54, lines 21-32 (evidence-in-chief of Dr Kepa) ("it's a shared rohe" between Te Parawhau and Patuharakeke); Affidavit of Pari Walker dated 1 February 2024 **[[701.00354]]** at [6] **[[701.00355]]**; NOE Vol 1, p 104, lines 23-28 (cross-examination of Mr Walker by Mrs Golightly); NOE Vol 1, p 121, lines 5-9 (evidence-in-chief of Mr Tuhiwai by Mr Enright); Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [129] **[[701.00161]]** and at [61] **[[701.00142]]**; Brief of evidence of Te Whareumu Hori Kingi dated 2 February 2024 **[[701.00079]]** at [24] **[[701.00084]-[701.00085]]** and NOE Vol 1, p 371, lines 15-24 (cross-examination of Mr Kingi by Mr Enright) and p 379, lines 6-13 (re-examination of Mr Kingi) (identifying the four hapū named on the gazetted rohe moana as having the mana in Whangārei). See also NOE Vol 1, p 338, lines 15-28 (cross-examination of Ms Kingi by Mr Kahukiwa) and NOE Vol 1, p 425 lines 3-14 (cross-examination of Mr Solomon by Mr Kahukiwa), where both Ms Kingi and Mr Solomon said they would be prepared to "admit" Te Waiariki and Ngātiwai into the 2021 gazetted rohe moana. See also Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01671]]** at [16]-[17] **[[804.01671]]** and at [149] **[[804.01710]]**; NOE Vol 2, p 230, lines 6-10 (cross-examination of Ms Chetham by Mr Enright), where Ms Chetham was prepared to accept Te Parawhau within a shared CMT order "[i]f their evidence bears that out". Compare, however: NOE Vol 2, p 72, lines 1-19 (cross-examination of Mr Parata by Enright), where Mr Parata was prepared to acknowledge the interests of Te Parawhau within the harbour and out to its entrance, but not "over the whole of the area"; NOE Vol 2, p 172, lines 13-17 and p 173, lines 4-14 (cross-examination of Ms Rata by Mr Hockly) ("If it's a general claim of Te Parawhau katoa, I would have to disagree with that. It doesn't resonate well with me. If it's certain families that also belong to Te Parawhau as I do, then they do have an access point through us all being also Patuharakeke. And that's the significant access point"). See also NOE Vol 2, p 230, lines 20-22 and p 232, lines 21-27 (cross-examination of Ms Chetham by Mr Enright); and NOE Vol 2, p 232, lines 28-30 (cross-examination of Mr Maki-Midwood by Mr Enright), where both Ms Chetham and Mr Maki-Midwood spoke about a layering or hierarchy of interests in the area, with Ngātiwai interests being the strongest.

70 See [30], [60] and [69] below.

of decades.[71]

Assessment of evidence in relation to limb one

Te Parawhau

25. In relation to Te Parawhau, evidence was provided on behalf of two applicants: Tamihana Paki and Korokota Marae. Six witnesses who were to be called by Mr Paki were unavailable for cross-examination during the hearing. The Court ruled on 21 August 2024 that their affidavits would be admitted (provided they are all sworn), although the weight to be given to them will be impacted by the inability to test the evidence.[72]

26. The whakapapa of Te Parawhau was described in detail in the stage 1(a) evidence. Their whakapapa connects them to the ancient tribe of Ngāi Tāhuhu.[73] The name Te Parawhau was adopted by the tribal group that emerged from the conflict of the late 1700s and early 1800s in the district.[74] Te Tirarau was the leading rangatira of Te Parawhau in the years before and after 1840.[75]

27. The stage 1(b) evidence of Te Parawhau's connections with the hearing

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71 See supplementary statement of Glenn Clark dated 17 September 2024 **[[901.00220]]** at p 2 **[[901.00221]]**. Mr Clark (a witness called on behalf of the Langs Beach Society) located 16 media reports detailing incidents of drownings or whale strandings in Bream Bay since 2006, and media reports including details of a rāhui for seven of those incidents. He said that, in every case where a rāhui was reported, the boundaries as reported in the media did not extend south of Waipū Cove. See also NOE Vol 2, p 474, lines 26-33 and p 475, lines 1-19 (cross-examination of Mr Clark by Ms Roff), where Mr Clark clarified that two of the 16 reported incidents had occurred in the Langs Beach area specifically (a drowning at Ding Bay, and a drowning at Lang Cove). The historian called by the Langs Beach Society, Craig Innes, observed in his report on the history of land use and occupation in Langs Beach and southern Bream Bay **[[809.04118]]** that "[a] somewhat sombre indication of the popularity of Langs Beach as a recreation area can be seen in the number of reports of drownings that have occurred there": p 139 **[[809.04257]]**. Mr Innes was asked how many reports of drownings he had located in the Langs Beach area. He was unable to quantify this (and clarified he mainly looked at the period leading up to WWII) but said there were enough incidents "to remark upon". He was asked whether he found any reports of rāhui being imposed in that area during the period he examined, and replied that he had not: NOE Vol 2, p 498, lines 1-20 (cross-examination of Craig Innes by Ms Roff). Justin Nops, another witness called on behalf of the Langs Beach Society, said he was unaware of any rāhui having been placed at Langs Beach over the last fifty years: NOE Vol 2, p 510, lines 10-14 (re-examination of Mr Nops) p 510, lines 22-25 (further cross-examination of Mr Nops by Mr Hockly).

72 The affidavits have all been sworn: Affidavit of Carlton James Te Kateni Smith dated 2 February 2024 **[[701.00245]]**; Affidavit of John William Pitman dated 2 February 2024 **[[701.00251]]**; Affidavit of Selwyn Norris dated 2 February 2024 **[[701.00271]]**; and Affidavit of Allen Smith dated 3 February 2024 **[[701.00276]]**; Affidavit of Colin George Lowe dated 17 September 2024 **[[701.00295]]**; and Affidavit of Owen Latimer, undated **[[701.00306]]**.

73 Affidavit of Marina Fletcher dated 21 August 2023 **[[203.01149]]** at [14] **[[203.01152]]**.

74 Bruce Stirling indicated in his stage 1(b) report **[[801.00270]]** that significant parts of his stage 1(a) evidence are relevant to customary interests in the stage 1(b) area (at [1]). Relevantly, Mr Stirling explained in his stage 1(a) report how in the mid-1700s Ngāi Tāhuhu came under pressure from Ngāpuhi groups to the north (particularly Ngāti Ruangaio) which resulted in a heavy defeat on Ngāi Tāhuhu at Whangārei. Despite this, Ngāi Tāhuhu roots in the land were maintained (through inter-marriage) and the main tribal group to emerge from these connections was Te Parawhau: "Whangārei Harbour Tribal Landscape Overview" report prepared by Bruce Stirling **[[303.00939]]** at [6]-[8] **[[303.00944]]**. See also at [74]-[75] **[[303.00962]]**, where he says that the name Te Parawhau was adopted by the people of Te Tirarau (I) (descendants of Ruangaio) after he was killed in combat. Out of respect, his body was wrapped in whau leaves. See also Affidavit of Marina Fletcher dated 21 August 2023 **[[203.01149]]** at [45] **[[203.01158]]**.

75 Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [14]-[17] **[[701.00259]]**; and "Whangārei Harbour Tribal Landscape Overview" report prepared by Bruce Stirling **[[303.00939]]** at [78] **[[303.00963]]**.

area described a range of customs and practices that are observed by members of the hapū, particularly in relation to fishing and gathering kaimoana.[76] Witnesses described how Te Parawhau demonstrate manaakitanga through the sharing of kaimoana with whānau, local marae and the wider community,[77] and evidence was also provided of traditional knowledge being passed down from generation to generation.[78]

28. Some evidence was given of Te Parawhau members acting as kaitiaki in relation to the takutai moana and adjacent whenua.[79] For example, Tangiwai Kepa described her engagement with local groups, territorial authorities and the Department of Conservation on various matters in relation to the Bream Bay coast,[80] and Riripeti Norris spoke of

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[76] Customs and practices described by Te Parawhau witnesses included: returning the first catch as an offering to Tangaroa; performing karakia before/after fishing (although compare affidavit of Pari Walker dated 18 August 2023 **[[203.01289]]** at [15] **[[203.01293]]** and NOE Vol 1, p 46, lines 20-29 (cross-examination of Ms Kay by Mr Enright); not scaling or gutting fish at sea (compare Affidavit of Pari Walker dated 18 August 2023 **[[203.01289]]** at [6] **[[203.01293]]**); and using maramataka. See Affidavit of Margaret Kay, August 2024 **[[901.00037]]** at [18], [20]-[21] and [23] **[[901.00040]]**; Affidavit of Opania George dated 2 February 2024 **[[701.00265]]** at [29]-[30] **[[701.00270]]**; Affidavit of Bobby James Tuhiwai dated 1 February 2024 **[[701.00348]]** at [26] **[[701.00352]]**.

[77] Bobby Tuhiwai described the sharing of kai as a long-standing customary practice of Te Parawhau and explained that helping others upholds the mana of Te Parawhau: Affidavit of Bobby James Tuhiwai dated 16 August 2023 **[[203.01257]]** at [4] **[[203.01258]]**, [8] **[[203.01259]]** and [15]-[16] **[[203.01260]-[203.01261]]**. See also Affidavit of Opania George dated 2 February 2024 **[[701.00265]]** at [5]-[7] **[[701.00266]]**; Affidavit of Margaret Kay, August 2024 **[[901.00037]]** at [44] **[[901.00043]]**.

[78] Riripeti Norris said her knowledge of Te Parawhau's history and traditions was passed down to her from her elders across generations: Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [2] **[[701.00257]]**. Opania George's father taught him how to dive and fish: Affidavit of Opania George dated 2 February 2024 **[[701.00265]]** at [13] **[[701.00267]]**. Tangiwai Kepa was taught the way of coastal living by her late grandparents and her father and his siblings: Affidavit of Tangiwai Mary Appleton Kepa dated 24 January 2024 **[[701.00222]]** at [5] **[[701.00223]]**. Mr Kay has passed down his fishing and diving knowledge to his sons and Mrs Kay said her grandmother taught her how to make kete out of harakeke which they used to catch herrings and gather pipi: Affidavit of Margaret Kay, August 2024 **[[901.00037]]** at [45] **[[901.00043]]**. Mr Tuhiwai said he will pass his knowledge of the moana to his grandsons as the old people did for him: Affidavit of Bobby James Tuhiwai dated 16 August 2023 **[[203.01257]]** at [23] **[[203.01262]]**. See also NOE Vol 1, p 76, lines 5-16 (cross-examination of Mr George by Ms Corbett).

[79] Pari Walker said, "All along the Whangārei coastline and in the moana offshore extending out to the Taranga and associated islands … were places we shared in terms of Kaitiakitanga obligations and was exercised with many other Hapu as a collective right": Affidavit of Pari Walker dated 2 February 2024 **[[701.00354]]** at [6] **[[701.00355]]**. See also at [8] **[[701.00355]]**. See also Affidavit of Tangiwai Mary Appleton Kepa dated 24 January 2024 **[[701.00222]]** at [2]-[7] **[[701.00223]]**; and Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [11] **[[701.00258]]**.

[80] See Affidavit of Tangiwai Mary Appleton Kepa dated 24 January 2024 **[[701.00222]]** at [20] **[[701.00226]]** and [23] **[[701.00227]]** (Dr Kepa made submissions in support of Patuharakeke Te Iwi Trust Board's requests to the Ministry for Primary Industries for temporary closures for the taking of shellfish at Mair Bank and Marsden Bank); at [28] **[[701.00228]]** (in 2022, she responded to an application by Waipū Horse adventures, seeking a concession for horse trekking at Uretiti Beach); at [32] **[[701.00229]]** (she supported Waipū Riding Residents and Ratepayers Association Incorporated's action to ban vehicles from Bream Bay beaches); at [41] **[[701.00230]-[701.00231]]** (she responded to an application to the Department of Conservation seeking to undertake guided walks in the Waipū area); and at [49] (she notified the Department of Conservation, local Māori and Pākeha organisations, and interested people after observing 'wasteful and degrading conduct' by fishers offshore at Te Akau (Bream Bay). See also NOE Vol 1, p 64, lines 17-33 and p 69, lines 1-6 (cross-examination of Dr Kepa by Ms Roff), where Dr Kepa clarified that she engages in these matters on behalf of Te Parawhau or her whānau as opposed to doing so in an individual capacity. Dr Kepa is also the lead convenor of a volunteer group established to control pests in the hills, forest, farmland and coastal dunes and beach along Bream Bay: Affidavit of Tangiwai Mary Appleton Kepa dated 24 January 2024 **[[701.00222]]** at [16] **[[701.00225]-[701.00226]]**. See NOE Vol 1, pp 52-54 (evidence-in-chief of Dr Kepa) for further information. Dr Kepa's kaitiaki work was also briefly addressed by Riripeti Norris: see NOE Vol 1, p 30, lines 23-29 (re-examination of Ms Norris). See also Affidavit of Bobby James Tuhiwai dated 1 February 2024 **[[701.00348]]** at [23] **[[701.00352]]**, where Mr Tuhiwai spoke of an instance more than ten years ago when he approached the Waipū Fishing Club over his concerns about the number of boats fishing and depleting existing fish stocks. However, he noted this was not followed up by the Club: at [23] **[[701.00352]]**.

conducting environment checks of the coastline.[81] Ms Norris also said she conducts checks (as her grandmother once did) on Te Parawhau's wāhi tapu around Uretiti and Waipū as part of her kaitiakitanga responsibilities.[82]

29. During cross-examination, however, Dr Kepa commented on the lack of visibility and presence of Māori at Langs Beach and said that Te Parawhau do not exercise kaitiakitanga in that area.[83] She said:[84]

> Basically, we're not there because we're not rich enough. … [W]e cannot afford those houses. It's a white place, there's no place for Māori at Wairahi. I mean even the names disappeared, so that tells you. Wairahi, that's what it is and that's when Māori were there. But it has been Langs Beach for the whole of my life. Langs Beach … was a place for surfing and then you went home. You didn't stay there, and you don't stay there now.

30. There was limited evidence of Te Parawhau placing customary restrictions on access and the taking of resources within the hearing area. Margaret Kay said that rāhui "would be placed on an area after … death" but did not provide further detail about where or when this has occurred in the hearing area.[85] Pari Walker gave an example of Te Parawhau imposing a rāhui after a drowning occurred at Uretiti,[86] however, this appeared to have been at the invitation of Patuharakeke.[87] Opania George

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81 Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [36]-[38] **[[701.00263]]** and [42] **[[701.00264]]**. When asked whose responsibility is it to maintain Te Parawhau tikanga and kaitiakitanga, Ms Norris said, "Well, it should be all those who are Parawhau, but I don't see them there doing it day in and day out. At the moment, we do have kaitiaki, and that is our cousin Mere Kepa and she is there continually": NOE Vol 1, p 30, lines 18-29 (re-examination of Ms Norris).

82 Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [39]-[41] **[[701.00263]-[701.00264]]**. These wāhi tapu sites include the burial places of three wāhine toa who were former tohunga and kaitiaki for Te Parawhau. Ms Norris said the legacy of these wāhine toa was maintained by Waipū Pita of Te Parawhau (who is of Ms Norris' grandmother's generation), who was recognised as a leading tohunga and kaitiaki for Bream Bay: at [40] **[[701.00264]]**. Ms Norris also said she keeps an eye on "any nearby developments or proposals from private landowners or the government to ensure these areas are safe": at [41] **[[701.00264]]**.

83 NOE Vol 1, p 57, lines 9-10 (cross-examination of Dr Kepa by Mr Enright). Dr Kepa said, however, that she still considers Langs Beach part of Te Parawhau's rohe "in a general sense", over which Te Parawhau have exercised rangatiratanga, because she can "see it" and she has "been there": NOE Vol 1, p 57, lines 15-19.

84 NOE Vol 1, p 57, lines 1-8. In response to questions from the Court, Dr Kepa said that she does not visit Langs Beach regularly. On average, she said she goes there about six times a year: NOE Vol 1, p 59, lines 9-20.

85 Affidavit of Margaret Kay, August 2024 **[[901.00037]]** at [19] **[[901.00040]]**.

86 NOE Vol 1, p 94, lines 4-17 (evidence-in-chief of Pari Walker). Mr Walker explained that when a rāhui is laid, it is not just at that specific point. Rather, "that rāhui goes right out across Paepae Atua, as well as reaching out towards the Hen and Chicks": NOE Vol 1, p 93, lines 31-32. See also NOE Vol 1, p 102, lines 33-34 and p 103, lines 1-4 (cross-examination of Mr Walker by Mr Mathias); and at p 105, lines 26-34 and p 106, lines 1-4 (cross-examination of Mr Walker by Mrs Golightly). Mr Walker confirmed that the area of a rāhui imposed by Te Parawhau includes the approach channel, and the northern and southern anchorages: NOE Vol 1, p 106, lines 5-14 (cross-examination of Mr Walker by Mrs Golightly). He said the public in general respect the rāhui: NOE Vol 1, p 106, lines 29-30 (cross-examination of Mr Walker by Mrs Golightly).

87 See NOE Vol 1, p 93, lines 24-27 ("in this case, Patuharakeke do a lot of rāhui, and in some cases, they can't get there because of other things that happen within the rohe. So what they do is they ring around and they call on us for assistance to go and do it, which we do"). Mr Walker also agreed under cross-examination that he had not provided

was asked whether a rāhui had ever been declared at Langs Beach, and he said this had not occurred.[88] When asked who would declare a rāhui in the event of a drowning or death in the water at Langs Beach, he said:[89]

> A. I would think it'd be the local hapū.
>
> Q. Who is the local hapū?
>
> A. Well that could be anybody, I couldn't give you a name on the local hapū out there, but I know we have a – Parawhau have a connection to over there, so does Takahiwai. There's also the hapū on the other side of the Brynderwyns – have a connection in there as well.
>
> Q. Would it be –
>
> A. It'll probably the local ones down that would put one on.
>
> Q. That wouldn't be you?
>
> A. No. No, I wouldn't do that. They'll have a kaumātua down there or a kaumātua they could contact if there's a drowning or something like that or someone's gone missing, and they haven't found them. I would say they would contact them.

31. Dr Kepa was asked whether she could provide examples of rāhui that she has observed in the stage 1(b) area, and she replied, "I have not seen a rāhui that is practised as at Tōrere, never seen that, in my lifetime on Bream Bay, never. So, I think I would draw on the metaphor that my cousin presented, only a plastic rāhui".[90] She also commented more generally on whether other Māori groups recognise and respect Te Parawhau's interests within the stage 1(b) area: "I'm very … concerned about Māori from Whangārei who come out there and rape our mussel beds and have no regard for us".[91]

32. Evidence of Te Parawhau's involvement as tangata kaitiaki for two rohe moana in the hearing area (described in detail in the stage 1(a) evidence) that were gazetted pursuant to the Fisheries (Kaimoana Customary Fishing) Regulations 1998 (**Kaimoana Regulations**) in 2009 and 2021 was also

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any examples of Te Parawhau notifying people at Langs Beach of a rāhui extending to that area: NOE Vol 1, p 104, lines 13-15 (cross-examination of Mr Walker by Mr Mathias).

88 NOE Vol 1, p 85, lines 1-5 (cross-examination of Mr George by Ms Roff).

89 NOE Vol 1, p 85, lines 7-19 (cross-examination of Mr George by Ms Roff). Mr George also went on to say that the police have a list of names to call upon for this sort of thing, which would include Te Parawhau as well as other hapū: NOE Vol 1, p 85, lines 21-26.

90 NOE Vol 1, p 45, lines 12-22 (cross-examination of Dr Kepa by Mr Enright).

91 NOE Vol 1, p 53, lines 20-22 (evidence-in-chief of Dr Kepa).

given.[92] Two members of Te Parawhau were appointed as tangata kaitiaki for the 2009 rohe moana, and Mr George issues customary authorisations as a tangata kaitiaki (on behalf of Te Parawhau) with respect to the 2021 rohe moana.[93] However, Mr George said under cross-examination that he is not aware of any customary permits having been authorised for the taking of kaimoana in the Bream Bay coastal area.[94]

33. Bobby Tuhiwai gave evidence that, although not appointed as a tangata kaitiaki under either of these rohe moana, he issues customary permits in respect of the 1(b) hearing area (including Taranga and Marotere) along with other Korokota Marae representatives on behalf of Te Parawhau.[95] Riki Solomon's evidence during stage 1(a), however, was that Mr Tuhiwai is in breach of the Fisheries (Amateur Fishing) Regulations by issuing these permits[96] and that "he's been notified of that".[97]

34. Mr Tuhiwai said there have been instances where he has been challenged by "local Māori" when fishing in the stage 1(b) hearing area.[98] He confirmed this includes occasions where members of another hapū have challenged him for fishing in their particular rohe.[99] He said he has always replied, "I am Te Parawhau and this is our area".[100] He did not wish to disclose who had made these challenges (or the hapū they affiliate with).[101]

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92 The first rohe moana was gazetted in 2009. The gazette notice is at **[[327.12731]]**. The second rohe moana was gazetted in 2021. The gazette notice is at **[[323.11163]]**. See also a map of the two rohe moana (as they relate to the stage 1(b) hearing area) at **[[811.05435]]**.

93 Affidavit of Opania George dated 2 February 2024 **[[701.00265]]** at [25] **[[701.00269]]** and [28] **[[701.00270]]**. See also affidavit of Marina Fletcher dated 8 February 2024 **[[701.00279]]** at [80]-[82] **[[701.00293]-[701.00294]]**. Mr George said he had not issued any customary permits for the gathering of scallops and pipi since closures for the taking of shellfish have been in place (these closures were referred to in the stage 1(a) evidence: see [113.6] and [144.2] of the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024). As for permits for customary fishing, he said he has only issued these to whānau that have had a passing in their whānau or for the purposes of an unveiling: NOE Vol 1, p 74, lines 8-17 (cross-examination of Mr George by Ms Loader).

94 He said, "Not in the Bream Bay, no. No, only in the fishing areas inside Whangārei Harbour … usually just down there outside Onerahi where they come in or outside out by the Heads there and for those I've only issued two permits": NOE Vol 1, p 74, lines 18-23 (cross-examination of Mr George by Ms Loader).

95 Affidavit of Bobby James Tuhiwai dated 1 February 2024 **[[701.00348]]** at [5] **[[701.00349]]**, [14] **[[701.00350]]** and [24]-[25] **[[701.00352]]**; and NOE Vol 1, p 120, lines 13-18 (evidence-in-chief of Mr Tuhiwai). See also Affidavit of Bobby James Tuhiwai dated 16 August 2023 **[[203.01257]]** at [5]-[8] **[[203.01258]-[203.01259]]**.

96 See reg 51(2)(b) of the Fisheries (Amateur Fishing) Regulations 2013, which states that an authorised representative may not issue an authorisation if a tangata kaitiaki/tiaki has been appointed under the Fisheries (Kaimoana Customary Fishing) Regulations 1988 for the area to which the authorisation relates.

97 Whangārei Harbour NOE at p 896, lines 18-22. See fn 556 of the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024.

98 NOE Vol 1, p 136, lines 1-4.

99 NOE Vol 1, p 136, lines 13-18 (cross-examination of Mr Tuhiwai by Ms Roff).

100 Affidavit of Bobby James Tuhiwai dated 7 February 2024 **[[701.00348]]** at [11] **[[701.00350]]**.

101 NOE Vol 1, p 136, lines 17-18 (cross-examination of Mr Tuhiwai by Ms Roff).

He said he had never similarly challenged someone else from a different hapū from fishing in an area he considers to be Te Parawhau's rohe.[102]

35. On balance, the Attorney-General considers the evidence provided by Te Parawhau to suggest that the hapū has the authority (as a matter of tikanga) to control access to and use of the hearing area vis-à-vis other Māori groups is limited. This is likely to present a challenge in demonstrating the first limb of s 58 has been met.

Te Waiariki, Ngāti Kororā and Ngāti Takapari

36. The stage 1(a) evidence described the whakapapa connections of Te Waiariki, Ngāti Kororā and Ngāti Takapari to the Whangārei area. The hapū descend from Ngāi Tāhuhu.[103] Their whakapapa derives from the two key marriages of Te Waiariki by Te Uhi o Te Rangi and Tūkaiteuru, to the Ngāi Tāhuhu sisters Te Huaki and Te Kahuwhero (daughters of Tuatahi).[104] Specifically, Te Waiariki source their identity, mana and territory in their tupuna Te Mawe.[105]

37. Some stage 1(a) evidence touched on the customs and practices that are observed in the stage 1(b) hearing area by members of Te Waiariki: Ripeka Read's stage 1(a) evidence referred to toka huna (submerged tidal rocks) around Te Whara, in respect of which specific customary practices are observed (never turning one's back on Tangaroa while fishing, and using the appropriate fishing line and matau (hook)).[106]

38. The Attorney-General has not identified any evidence of Te Waiariki exercising customary authority in their application area through the placing of rāhui. Mr Paraone-Kawiti was asked about rāhui that have been imposed

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102 NOE Vol 1, p 136, lines 19-26.

103 "Te Waiariki, Ngāti Kororā, Ngāti Takapari Stage 1 MACA Report" prepared by Ripeka Read **[[323.10945]]** at p 7 [[**323.10951]]**.

104 "Te Waiariki, Ngāti Kororā, Ngāti Takapari Stage 1 MACA Report" prepared by Ripeka Read **[[323.10945]]** at p 6 **[[329.10950]]**. There was a key marriage between Te Kahuwhero and Te Uhi o Te Rangi (of Te Waiariki), who begat Te Mawe. The other key marriage was between Te Huaki and Tukaiteuru (of Te Waiariki): Affidavit of Pereri Mahanga dated 29 August 2023 **[[201.00237]]** at [10] **[[201.00240]]**. See also Affidavit of Mitai Paraone-Kawiti dated 2 February 2024 **[[701.00063]]** at [3] **[[701.00064]]**.

105 Affidavit of Mitai Paraone-Kawiti dated 2 February 2024 **[[701.00063]]** at [4] **[[701.00064]]**. See also Affidavit of Pereri Mahanga dated 29 August 2023 **[[201.00237]]** at [4] **[[201.00238]]**. Mr Mahanga said that Te Mawe was bestowed the mana over the region by Tuatahi: at [20.1] **[[201.00243]]**.

106 "Te Waiariki – Ngāti Kororā – Ngāti Takapari Stage 1 MACA Report" prepared by Ripeka Read **[[323.10945]]** at pp 149-150 **[[323.11093]-[323.11094]]**. A map showing the location of these toka huna can be found on p 180 **[[323.11124]]**.

by Te Waiariki in Bream Bay, but his answer was unclear and he did not appear to describe any rāhui placed in respect of the takutai moana.[107]

39. Some witnesses did not acknowledge the customary interests of Te Waiariki, Ngāti Kororā and Ngāti Takapari in the hearing area.[108] Waimarie Kingi said that Ngāti Kororā do not have acknowledged rights within the hearing area.[109] Riki Solomon said that he does not consider Te Waiariki to be tangata whenua within the hearing area.[110]

40. Overall, the Attorney-General considers that the limited nature of the evidence given on behalf of Te Waiariki, Ngāti Kororā and Ngāti Takapari presents a real challenge for this hapū in establishing it has the necessary authority as a matter of tikanga to meet limb one of the s 58 test.

Ngāti Tū

41. Evidence on behalf of Ngāti Tū was provided by two applicants: Maia Honetana and Waimarie Kingi.

42. The origins of Ngāti Tū were described in the stage 1(a) evidence. Ngāti Tū descend from the ancient tribe, Ngāi Tāhuhu,[111] which – by the early 1700s – had become dominant in the region and had established pā at Whangārei.[112] Over the years, due to internal strife, Ngāi Tāhuhu divided into two main hapū: Ngāti Rangi and Ngāti Tū.[113] In around the mid-1700s, Ngāpuhi sent a war party down to Whangārei to attack Ngāti Tū, and Ngāti Tū land was divided up among the (Ngāpuhi) conquerors.[114] Despite

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107 He said, "Well, I believe that whole area was put on the rāhui. They were reserves. Nobody was meant to build in those areas. But of course, through the whole Whangārei heads has been populated, but for our people, it was a wāhi tapu": NOE Vol 1, p 267, lines 13-32 (evidence-in-chief of Mr Paraone-Kawiti).

108 As Miller J observed in *Edwards* (albeit in the context of discussing the concept of exclusivity), "acceptance by other iwi, hapū or whānau groups of an applicant group's right to speak for a specified part of the common marine and coastal area is powerful evidence of exclusivity": *Edwards* **[[BOA Tab 16]]** at [171] per Miller J.

109 NOE Vol 1, p 334, lines 1-8 (cross-examination of Ms Kingi by Mr Kahukiwa).

110 NOE Vol 1, p 423, lines 18-20 (cross-examination of Mr Solomon by Mr Kingi). See also lines 21-34, p 424, lines 1-34, and p 425, lines 1-5. In relation to Taranga, he said he would be prepared to include Te Waiariki as "a collective hapū" that should have been included in the rohe moana gazetted in 2021: NOE Vol 1, p 425, lines 11-14.

111 Technical historical report of Georgina Craw **[[201.00283]]** at p 7 **[[201.00289]]**. See also Brief of evidence of Wiremu Puke dated 21 August 2023 **[[202.00564]]** at [151] **[[202.00604]]**. Bruce Stirling described Ngāti Tū as descending from Tuhukea, who was an early ancestor of Tahuhunuiorangi, the ancestor for Ngāi Tāhuhu: "Whangārei Harbour Tribal Landscape Overview" report prepared by Bruce Stirling **[[303.00939]]** at [94] **[[303.00968]]**. Riki Solomon explained that Ngāti Tū descends from Hikurangi, the paramount chief. His waka landed and he established Ngāi Tāhuhu. Ngāti Tū was a separation that occurred when Ngāi Tāhuhu travelled to Tāmaki Makaurau. At that point, Hikurangi left his son, Tū, to continue and establish a hapū in Whangārei: Brief of evidence of Riki James Solomon dated 21 August 2023 **[[202.00694]]** at [39] **[[202.00702]]**.

112 Technical historical report of Georgina Craw **[[201.00283]]** at p 10 **[[201.00292]]**.

113 Technical historical report of Georgina Craw **[[201.00283]]** at p 10 **[[201.00292]]**.

114 Technical historical report of Georgina Craw **[[201.00283]]** at p 11 **[[201.00293]]**.

this event, historian Georgina Craw said that the Ngāti Tū hapū retained power and influence over parts of their Whangārei rohe, particularly the area at Parua Bay.[115]

43. The Attorney-General has identified limited evidence of Ngāti Tū carrying out practices linked to customary values and principles in the stage 1(b) hearing area. Maia Honetana said she performs purea (cleansing) at Langs Beach whenever she visits Whangārei.[116] Mark Hawkins said that, since he was a child, he and his whānau have always "fished and spent a lot of time on the water" from Whangārei down to Bream Bay.[117] He said they would do this as often as the weather permitted,[118] and that the practices of netting, diving and fishing had been passed down to him by members of his whānau and had since been passed on to his children and cousins.[119]

44. The Attorney-General has been unable to identify any specific evidence of Ngāti Tū exerting customary authority in the hearing area, such as through the imposition of rāhui. Ms Honetana was asked whether she was aware of any rāhui being imposed by Ngāti Tū in the Bream Bay area, to which she answered, "No, nothing's come to my attention that has happened recently" and, "If it has, I haven't been notified – myself personally".[120] Waimarie Kingi was unable to recall any occasions when Ngāti Tū had imposed a rāhui in the Bream Bay area.[121] Mr Solomon said Ngāti Tū (and Ngāti Kahu) impose rāhui where necessary, but did not provide specific examples of this having been done within the stage 1(b) hearing area. He also noted that rāhui had been "plainly disregard[ed]" by others in the past.[122]

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115 Technical historical report of Georgina Craw **[[201.00283]]** at p 14 **[[201.00296]]**.

116 NOE Vol 2, p 343, lines 6-12 (cross-examination of Ms Honetana by Ms Roff). When asked how often she visits the Bream Bay area and goes into the water, Ms Honetana said "As often as I can" and "this year alone, probably about 20 times": NOE Vol 2, p 343, lines 13-21.

117 NOE Vol 1, p 299, lines 13-21 (evidence-in-chief of Mr Hawkins).

118 NOE Vol 1, p 299, lines 22-25 (evidence-in-chief of Mr Hawkins).

119 NOE Vol 1, p 299, lines 29-33 and p 300, lines 1-5 (evidence-in-chief of Mr Hawkins).

120 NOE Vol 2, p 345, lines 1-7 (cross-examination of Ms Honetana by Ms Roff).

121 NOE Vol 1, p 356, lines 2-20 (cross-examination of Ms Kingi by Ms Roff).

122 NOE Vol 1, p 397, lines 1-6 (evidence-in-chief of Mr Solomon). See in particular lines 2-5: "… we've already experienced it where those who do not perhaps affiliate to tikanga Māori, don't recognise its importance. But there are also those who just plainly disregard it because there [are] no consequences".

45. Juliane Chetham (a witness for Patuharakeke) was asked by the Court whether she considers Ngāti Tū to be a "current functioning, operating hapū".[123] She replied, "I think they are, but not in our area. So, I think on the northern side of the harbour they certainly function in that way, but in our rohe they come through Patuharakeke and potentially others".[124]

46. There was limited evidence provided of Ngāti Tū exercising kaitiakitanga in the Bream Bay area. Ms Honetana said, "Myself personally, I don't do it, but Ngāti Tū does it and other members of Ngāti Tū express how they do".[125] Mark Hawkins, when asked to describe his kaitiaki role in the Bream Bay area, said:[126]

> Well, … not only me but other whānau had concerns of the recent algae blooms that have been happening over the years. They seem to be coming more frequent. Especially Waipu Cove, I'm not sure if it's because of the geographical setting of it, but it always seems it ends up down from Ruakaka, down to Uretiti and always in Waipu Cove. Which is, it just kills everything, like it affects everybody there, the locals, it affects tourism, it affects businesses. The last one was 2021 and it sat there for like weeks. No one, the Council wouldn't do anything. The locals wanted to do something. I think in the end, the locals went down and took it on themselves to remove it all. That's one of my concerns as a kaitiaki … whether it's gonna get worse or more frequent.

47. His answer appears to imply that members of Ngāti Tū did not form part of "the locals" who responded to the issue of algae bloom in Bream Bay.

48. That said, evidence of Ngāti Tū's involvement as tangata kaitiaki for the two gazetted rohe moana in the hearing area (referred to above at [32]) was given. Two members of Ngāti Tū (including Riki Solomon) were appointed as tangata kaitiaki for the 2009 rohe moana,[127] and Mr Solomon also issues customary permits as a tangata kaitiaki (on behalf of Ngāti Tū) with respect to the 2021 rohe moana.[128] Ms Honetana described

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123 NOE Vol 2, p 212, lines 32-33.

124 NOE Vol 2, p 213, lines 1-3 (Ms Chetham in response to questions from the Court).

125 NOE Vol 2, p 343, lines 1-5 (cross-examination of Ms Honetana by Ms Roff).

126 NOE Vol 1, p 300, lines 8-18 (evidence-in-chief of Mr Hawkins).

127 The gazette notice is at **[[327.12731]]**.

128 The gazette notice is at **[[323.11163]]**. See Mr Solomon's evidence about issuing customary permits below at [53].

Mr Solomon's role as a tangata kaitiaki as an exercise of kaitiakitanga for Ngāti Tū in the outer Bream Bay area.[129]

49. There was limited evidence of engagement between Ngāti Tū and third parties, such as local authorities and groups, in connection with the stage 1(b) hearing area specifically. Ms Honetana was asked if she could provide any examples of engagement that she had carried out on behalf of Ngāti Tū with local authorities in respect of the area. She said, "Me personally? No I, haven't been engaged personally".[130] Ms Kingi said that Ngāti Tū does not have any engagement with the Department of Conservation in relation to Taranga and Marotere.[131] Mr Solomon said that Ngāti Tū are working with the Whangārei District Council to identify culturally significant sites, however, he said this work was specifically carried out in respect of Parua Bay (which is on the northern side of the Whangārei Harbour).[132] He also said that occasionally, Ngāti Tū has been contacted by the Ministry for Culture and Heritage following the discovery of archaeological items in the Whangārei area.[133] The particular example he gave related to a taonga found in Parua Bay.[134] Under cross-examination, he was asked whether he had been contacted by the Ministry in respect of taonga found within the stage 1(b) hearing area.[135] He replied, "No, I don't believe that to my knowledge … there has been any kind of unearthing in the outer harbour".[136]

50. On balance, the Attorney-General does not consider the evidence that has been presented by Ngāti Tū – in respect of any part of the hearing area – is likely to be sufficient to demonstrate the first limb of the s 58 test has been met.

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129 NOE Vol 2, p 348, lines 13-18 (re-examination of Ms Honetana).

130 NOE Vol 2, p 344, lines 7-10 (cross-examination of Ms Honetana by Ms Roff).

131 NOE Vol 1, p 353, lines 9-11 (cross-examination of Ms Kingi by Ms Roff).

132 Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [34]-[35] **[[701.00105]-[701.00106]]**.

133 Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [36] **[[701.00106]]**.

134 Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [36] **[[701.00106]]**, referring to an email from the Ministry of Culture and Heritage dated 12 September 2023 concerning a taonga discovered in Parua Bay **[[804.01651]]**.

135 NOE Vol 1, p 434, lines 32-33 (cross-examination of Mr Solomon by Ms Roff).

136 NOE Vol 1, p 435, lines 1-2 (cross-examination of Mr Solomon by Ms Roff).

Ngāti Kahu

51. The whakapapa of Ngāti Kahu o Torongare was described in detail in the stage 1(a) evidence. Their whakapapa connects them to Ngāi Tāhuhu, with the "distinctive identity" of Ngāti Kahu o Torongare deriving from Ngāti Tū.[137] Their ancestor Torongare married Hauhauā, who descended from Ahuaiti (a descendant of Tahuhunuiorangi),[138] and their children married into Ngāti Tū lines.[139] Both Torongare and Hauhauā descended from Rahiri, giving them Ngāpuhi whakapapa.[140] The name Ngāti Kahu o Torongare derives from a gesture of peace offered by Torongare when a Ngāti Tū chief sought utu for the slaying of his kinsmen.[141]

52. In stage 1(b), evidence of Ngāti Kahu customs and practices that are undertaken in relation to the takutai moana was given by Riki Solomon and Te Whareumu (Hori) Kingi.[142] Mr Kingi also spoke of a long-standing rāhui that prohibits members of Ngāti Kahu from fishing for or consuming tāmure (snapper) within the moana around Bream Head.[143]

53. Witnesses gave evidence of Ngāti Kahu members exercising kaitiakitanga over customary fisheries within the hearing area, through the issuing of customary fishing authorisations by appointed tangata kaitiaki within the 2009 and 2021 gazetted rohe.[144] Riki Solomon is also an honorary fishery

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137 "Ngāti Kahu o Torongare and Whangārei Harbour" report prepared by Rowan Tautari **[[328.12989]]** at p 25 **[[328.13013]]**.

138 "Ngāti Kahu o Torongare and Whangārei Harbour" report prepared by Rowan Tautari **[[328.12989]]** at p 23 **[[328.13011]]**.

139 "Ngāti Kahu o Torongare and Whangārei Harbour" report prepared by Rowan Tautari **[[328.12989]]** at p 23 **[[328.13011]]**.

140 "Ngāti Kahu o Torongare and Whangārei Harbour" report prepared by Rowan Tautari **[[328.12989]]** at p 23 **[[328.13011]]**.

141 Brief of evidence of Te Whareumu Hori Kingi dated 21 August 2023 **[[202.00740]]** at [111] **[[202.00764]]**; "Whangārei Harbour Tribal Landscape Overview" report prepared by Bruce Stirling **[[303.00939]]** at [94] **[[303.00968]]**; "Ngāti Kahu o Torongare and Whangārei Harbour" report prepared by Rowan Tautari **[[328.12989]]** at p 22 **[[328.13010]]**. Ms Tautari said it is difficult to say whether Ngāti Kahu o Torongare came into existence before or after the fighting over resources in the harbour between Ngāi Tāhuhu and Ngāti Ruangaio: at p 26 **[[328.13014]]**.

142 Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [28]-[29] **[[701.00104]-[701.00105]]**. Mr Solomon said his father would say karakia before entering the water and would also on occasion recount whakapapa in recognition of Ngāti Tū and Ngāti Kahu tūpuna. He said that he also recites blessings to ask for safety and good favour upon those who are gathering, however, as he is not fluent in te reo, he does so in English. Other customs include: never shelling scallops at the place they were harvested (at [51] **[[701.00110]]**); and use of the maramataka (at [58] **[[701.00111]-[701.00112]]**). See also Brief of evidence of Te Whareumu Hori Kingi dated 2 February 2024 **[[701.00079]]** at [26] **[[701.00085]]** and [40] **[[701.00089]]**.

143 Brief of evidence of Te Whareumu Hori Kingi dated 2 February 2024 **[[701.00079]]** at [16] **[[701.00083]]**.

144 Brief of evidence of Te Whareumu Hori Kingi dated 2 February 2024 **[[701.00079]]** at [48]-[63] **[[701.00092]-[701.00095]]**; Brief of evidence of Waimarie Kingi dated 2 February 2024 **[[701.00126]]** at [134]-[147] **[[701.00162]-[701.00166]]**; and Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [59]-[88] **[[701.00112]-[701.00118]]**. See also NOE Vol 1, p 367, lines 19-25 (cross-examination of Mr Kingi by Ms Loader); and NOE Vol 1, p 410, lines 11-27 (cross-examination of Mr Solomon by Ms Dixon).

officer.[145] Hori Kingi confirmed he receives enquiries from hapū members for customary fishing authorisations in respect of the "outer harbour area".[146] Mr Solomon said that his responsibility as a tangata kaitiaki is not limited to issuing authorisations, but also extends to offering advice to people on where to acquire kaimoana.[147] He said this sometimes involves "closing the gate" and telling people they cannot take kaimoana from certain areas.[148] He also said his role as tangata kaitiaki involves working with agencies such as the Department of Conservation, National Institute of Water and Atmospheric Research (NIWA), and the Ministry for Primary Industries.[149] Mr Solomon also noted that the Kaimoana Regulations are not always respected,[150] and spoke of how himself, Hori Kingi and Opania George have been working closely with the Ministry for Primary Industries regarding a breach of a permit that was issued within the gazetted rohe moana.[151]

54. Outside of the above examples, limited evidence was provided of Ngāti Kahu members acting as kaitiaki in connection with the stage 1(b) hearing area:

54.1 Waimarie Kingi said that "[t]hese days we are asked to consult on all manner of projects, developments", but noted that "often we are contacted *after* significant mahi has been done and not at the start of the process".[152] As an example, she said Ngāti Kahu was belatedly made aware of a consultation hui in December 2023 between Northport Ltd and hapū in relation to a project concerning marine spatial planning in the wider Bream Bay area. She said she only became aware of the hui on the day that it

145 Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [70]-[71] **[[701.00114]]**.

146 NOE Vol 1, p 367, lines 16-18 (cross-examination of Mr Kingi by Ms Loader).

147 NOE Vol 1, p 393, lines 20-23 (evidence-in-chief of Mr Solomon).

148 NOE Vol 1, p 393, lines 20-23 (evidence-in-chief of Mr Solomon). See also NOE Vol 1, p 401, lines 14-18 (evidence-in-chief of Mr Solomon).

149 NOE Vol 1, p 393, lines 28-31 and p 394, lines 1-9 (evidence-in-chief of Mr Solomon).

150 Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [83] **[[701.00117]]**: "Some people who are ignorant, and unwilling to recognise us as tangata kaitiaki don't realise that we have set aside areas of abundant kaimoana to facilitate those needs in times of tangihanga or hui important to our hapū. Some go into areas where the kaimoana are small and over-harvested. This destroys the taonga and reduces our duty to properly host and feed our manuhiri, our manaakitanga on our marae".

151 NOE Vol 1, p 394, lines 26-31 (evidence-in-chief of Mr Solomon).

152 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [154] **[[701.00167]]** (original emphasis).

happened, after being informed by her whanaunga, Mira Norris.[153]

54.2 Riki Solomon said that central and local government agencies (including the Ministry for Primary Industries, Department of Conservation, the Whangārei District Council, and the Northland Regional Council), as well as local groups, seek out Ngāti Kahu "for discussion".[154] He provided some specific examples of engagement, but none appeared to relate to the stage 1(b) hearing area[155] or concern Ngāti Kahu specifically (as distinct from Ngāti Tū).[156] Despite this, Mr Solomon did not accept the proposition that his engagement with local and central government agencies has predominantly concerned his hapū's interests within the Whangārei Harbour.[157]

55. Finally, there was limited evidence of Ngāti Kahu placing customary restrictions on access and the taking of resources within the hearing area. As noted at [44], Mr Solomon said Ngāti Kahu impose rāhui where necessary, but did not provide specific examples of this having been done within the 1(b) hearing area. He also noted that rāhui had been "plainly disregard[ed]" by others in the past.[158] He commented, however, that the

153 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [155] **[[701.00167]]**.

154 Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [101] **[[701.00120]-[701.00121]]**.

155 As noted above, Mr Solomon said that Ngāti Kahu (and Ngāti Tū) are working with the Whangārei District Council to identify culturally significant sites, however, he said this work was specifically carried out in respect of Parua Bay (which is located within the Whangārei Harbour): Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [34]-[35] **[[701.00105]-[701.00106]]**; NOE Vol 1, p 394, lines 7-16 (evidence-in-chief of Mr Solomon).

156 Brief of evidence of Riki Solomon dated 6 February **[[701.00099]]** at [101]-[104] **[[701.00120]-[701.00121]]** (referring to engagement between local and government bodies and Ngāti Tū).

157 NOE Vol 1, p 435, lines 11-23 (cross-examination of Mr Solomon by Ms Roff). Mr Solomon offered – seemingly as an example of engagement between Ngāti Kahu and local government in respect of the stage 1(b) hearing area – the example of Patuharakeke recently "doing a similar project with the council" (in respect of an area that extended "right through to Waipu, Ruakākā, Bream Bay") and Ngāti Kahu coming together with Patuharakeke to "share our mutual findings".

158 NOE at 397, lines 1-6 (evidence-in-chief of Mr Solomon). See in particular lines 2-5: "… we've already experienced it where those who do not perhaps affiliate to tikanga Māori, don't recognise its importance. But there are also those who just plainly disregard it because there [are] no consequences". When asked about the enforcement of rāhui under tikanga Māori in the absence of legislative controls, Mr Solomon said this might involve "a conversation with those persons who are disregarding that rāhui in some form or another": NOE Vol 1, p 426, lines 13-14 and p 427, lines 2-3 (cross-examination of Mr Solomon by Ms Ellis). He gave the example of being engaged in a discussion with an urban marae "about their continuation to disrespect the restrictions that we have endorsed": NOE Vol 1, p 427, lines 2-7 (cross-examination of Mr Solomon by Ms Ellis). See, similarly, NOE Vol 1, p 344, lines 5-16 (cross-examination of Ms Kingi by Ms Ellis): "Q: So, what you're saying is that you have had experiences of people not obeying the rāhui in some cases, is that right? A. That's right. You know like I'll use an example, this is not from Ngāti Kahu but I'm talking about Te Waiariki. We lost two people at what they call the gap, but it's Te Awa at Taiharuru. They were Indian gentlemen but one, they found his body but never found the other one. You know what I mean. But people will continue to go out in that same area, carry on like nothing's happened. Well, you don't do that ..."

temporary closure mechanisms under s 186A of the Fisheries Act 1996 help to give environmental rāhui (for example, to preserve fish stocks) more "teeth".[159] Waimarie Kingi said Ngāti Kahu has the ability to exclude others from the area through rāhui,[160] but said there had not been any rāhui placed (following a death) in the stage 1(b) area by Ngāti Kahu recently.[161] Further, when asked who would be responsible for declaring a rāhui in those circumstances, she agreed the response would not just be from Ngāti Kahu or Ngāti Tū.[162] She said, "you've got to get someone to do the mahi",[163] even if they are from a hapū whose rohe is outside the stage 1(b) coastal area.[164] Historian Rowan Tautari said she had not located any record of Ngāti Kahu having declared a rāhui in respect of the hearing area.[165]

56. Overall, as with the groups discussed above, the Attorney-General does not consider that strong evidence has been provided to demonstrate Ngāti Kahu has authority (as a matter of tikanga) to control the hearing area vis-à-vis other Māori groups. The Attorney also notes that no specific evidence appears to have been provided of Ngāti Kahu exercising customary authority (to control access to and use of the area by others)[166] in respect of Taranga and Marotere.

Patuharakeke

57. The whakapapa of Patuharakeke, described in detail in the stage 1(a) evidence, connects them to one of the two sub-tribes of Ngāi Tāhuhu (Ngāti Tū), the original, dominant tribe of the Whangārei Harbour prior to the early 1700s.[167] In the present day, the "epicentre" of Patuharakeke's

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159 Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [95] **[[701.00119]]**; and NOE Vol 1, p 396, lines 30-31 and p 397, lines 1-7 (evidence-in-chief of Mr Solomon). See also NOE Vol 1, p 425, lines 21-27 (cross-examination of Mr Solomon by Ms Ellis).

160 NOE Vol 1, p 343, lines 17-28 (cross-examination of Ms Kingi by Ms Ellis).

161 NOE Vol 1, p 356, lines 2-20 (cross-examination of Ms Kingi by Ms Roff).

162 NOE Vol 1, p 356, lines 21-30 and p 357, lines 1-17 (cross-examination of Ms Kingi by Ms Roff).

163 NOE Vol 1, p 357, lines 2-3 (cross-examination of Ms Kingi by Ms Roff).

164 NOE Vol 1, p 357, lines 5-17 (cross-examination of Ms Kingi by Ms Roff).

165 NOE Vol 1, p 459, lines 12-17 (cross-examination of Ms Tautari by Ms Roff).

166 *Edwards* **[[BOA Tab 16]]** at [435(a)] per Cooper P and Goddard J.

167 Affidavit of Gilbert Paki dated 16 August 2023 **[[202.00962]]** at [54]-[61] **[[202.00969]-[202.00970]]**. See also the technical historical report of Georgina Craw **[[201.00283]]** at **[[201.00292]]**. The evidence suggests that the name Patuharakeke emerged out of an event after Ngāpuhi's conquest of Ngāi Tāhuhu in the 1700s, during a battle with Ruangaio (a subtribe of Ngāpuhi). A chief of Takahiwai and a number of his warriors were killed among the harakeke, and from that time his people took the name Patu Harakeke (killed among the flax): Historical research report of

community is situated on the southern shores of the harbour, with Patuharakeke members primarily living at Takahiwai, where there is a marae and wharenui.[168]

58. Patuharakeke provided evidence of exercising kaitiakitanga in relation to the takutai moana and adjacent whenua, including through Patuharakeke Te Iwi Trust Board's engagement with Department of Conservation,[169] local authorities,[170] and community groups.[171] Patuharakeke has also been actively involved in resource management processes concerning the Bream Bay coastal area.[172] Kare Rata described Patuharakeke as the hapū

David Armstrong **[[350.23981]]** at [1] **[[350.23984]]**; and Affidavit of Gilbert Paki dated 16 August 2023 **[[202.00962]]** at [62]-[63] **[[202.00970]]**. Earlier Patuharakeke connections and whakapapa to the harbour trace back to Maui: Joint affidavit of Taipari Munro, Te Warihi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata and Aperahama Kerepeti-Edwards dated 16 August 2023 **[[202.00985]]** at [8]-[11] **[[202.00987]]**.

168 Traditional research report of Patuharakeke prepared by Juliane Chetham and Harry Maki-Midwood dated 21 August 2023 **[[353.25085]]** at [216]-[217] **[[353.25152]]**.

169 See Affidavit of Juliane Chetham dated 2 February 2024 **[[701.00174]]** at [17] **[[701.00182]]**, where she said, "Given that most of the Bream Bay coastal margin is held in the DOC estate … [the Trust Board] has held a long-term relationship with DOC for over three decades". She described recent examples of engagement between Patuharakeke and the Department of Conservation in relation to the Bream Bay area at [18]-[21] **[[701.00183]-[701.00184]]**, which involved Patuharakeke contributing to reserve and campground management plans at Waipū Cove and Ruakākā; approving names for the Poupouwhenua, Ruakākā and Uretiti scenic reserves in 2015; assisting with the building, maintenance and protection of fairy tern nesting sites at Waipū; and participating alongside the Department of Conservation in a beach advocacy programme. She also said that the Department of Conservation send all concession permit and renewal applications within Patuharakeke's rohe to Te Pou Taiao (a sub-committee of Patuharakeke Te Iwi Trust Board) for review and feedback: at [22] **[[701.00184]]**. See also Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [144]-[146] **[[804.01710]]**, where the authors said that, between 2018-2019, Te Pou Taiao sent Xzavier Watson to the islands as part of the Department of Conservation's island weeding team. He relayed traditional tauranga waka sites and ara that are still used today. At [147] **[[804.01710]]**, the authors noted that Te Pou Taiao is presently contracted to undertake various track maintenance work as well as weed management on the islands.

170 For example, Patuharakeke Te Iwi Trust Board partnered with the Northland Regional Council to complete a "State of the Environment" assessment for the Waipū estuary: Affidavit of Juliane Chetham dated 2 February 2024 **[[701.00174]]** at [26] **[[701.00186]]**. The Board is also involved in a dune monitoring programme and contracts to the Northland Regional Council to assess habitat and populations of mokomoko (native skinks) and katipō spiders. Dune monitoring has been carried out near the Ruakākā racecourse: at [27] **[[701.00188]]**. Patuharakeke Te Iwi Trust Board also prepared a Hapū Environmental Management Plan in 2014 to guide appropriate engagement and participation of Patuharakeke in planning and decision-making processes of councils, agencies, and developers with respect to their rohe. This plan has been lodged with the Northland Regional Council and Whangārei District Council: Brief of evidence of Juliane Chetham dated 21 August 2023 **[[202.01001]]** at [67]-[68] **[[202.01017]-[202.01018]]**.

171 Te Pou Taiao works closely with community groups such as the Bream Bay Coastal Care Group and Piroa Conservation Trust on dune maintenance and habitat enhancement, along the coastline between Waipū Cove, the Uretiti Scenic Reserve and the Ruakākā Wildlife Refuge: Affidavit of Juliane Chetham dated 2 February 2024 **[[701.00174]]** at [27] **[[701.00188]]**. Patuharakeke has also led education events with community groups for local kura on the importance of waterway restoration and has also been a key member of the Waipū River Walk Committee to enhance the connection of the village and community to the Waipū awa: at [28] **[[701.00188]]**. Ms Chetham also said in her evidence that Patuharakeke gave approval for a large property at Langs Beach to be named "Waiorahi": NOE Vol 2, p 266, lines 16-18 (cross-examination of Ms Chetham by Mr Mathias). Glenn Clark's evidence for the Langs Beach Society (in a supplementary statement filed on 17 September 2024) said that the name Waiorahi was devised from a collaboration several years ago between the property owner and a local resident of Māori descent, although recently Patuharakeke had suggested the name be refined to "Te Waiorahi" and that suggestion was accepted: supplementary statement of Glenn Clark dated 17 September 2024 **[[901.00220]]** at p 3 **[[901.00222]]**.

172 Juliane Chetham described key resource consent and plan change proceedings of relevance to the stage 1(b) hearing area that Patuharakeke Te Iwi Trust Board has been involved in: Affidavit dated 2 February 2024 **[[701.00180]]** at [15] **[[701.00180]-[701.00182]]**. For example, Patuharakeke engaged with the Whangārei District Council on the expansion and upgrade of the Ruakākā wastewater treatment plant, which involved the construction of an ocean outfall to discharge treated wastewater into Bream Bay. Patuharakeke were able to negotiate the inclusion of monitoring conditions that require the Council to periodically review the Ruakākā Wastewater Scheme and Strategy. In 2023, Patuharakeke initiated an Agreement in Principle with the Council to agree upon medium and long-term land disposal areas for the discharge of treated effluent from the plant: at [15(b)] **[[701.00181]]**. Patuharakeke have also conducted Cultural Values or Effects Assessments, Cultural Mitigation Plans / monitoring in respect of projects

that "takes matters to task" regarding significant changes in the rohe, and with the support of other iwi and hapū.[173] The Patuharakeke Te Iwi Trust Board (in collaboration with archaeologists) has also been mapping the locations of middens and investigating and recording archaeological information along the Bream Bay coastline to understand coastal change over the past century and also to retain taonga and kōrero associated with these sites.[174]

59. Evidence was provided of customary practices exercised by Patuharakeke in respect of stranded whales,[175] and in 2017, a memorial kōhatu (stone) was erected at Uretiti to signify a dedicated site for whale flensing and burial (Tahuna Tohorā).[176]

60. There is evidence of Patuharakeke exercising customary authority within the hearing area (in the inshore areas along the coastline) through the placing of rāhui following a drowning or a whale stranding.[177] Patuharakeke witnesses said a rāhui was placed "this summer" at Ruakākā beach after a drowning occurred.[178] Ms Chetham was asked whether

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such as proposed seawalls at Ruakākā and Waipū, and proposed upgrades to Civil Defence Tsunami Sirens at Waipū Cove, Langs Beach, Uretiti and Ruakākā among other locations: at [15(d)] **[[701.00182]]**.

173 Brief of evidence of Kare Rata dated 26 March 2024 **[[701.00041]]** at [72] **[[701.00055]]**. When asked who these hapū and iwi are who provide that support, Ms Rata said, "It could be Ngāpuhi, it could be Ngāti Whātua, of course Ngātiwai, Te Parawhau, it could be all of those surrounding hapū and iwi. If there is a significant change in our rohe": NOE Vol 2, p 196, lines 17-20 (cross-examination of Ms Rata by Ms Roff). See also NOE Vol 2, p 209, lines 12-17 (cross-examination of Ms Chetham by Ms Loader), where Ms Chetham said, "There is a history of cooperation, but certainly in the rohe moana, … the area that was put forward as PCR for us, we – certainly in my time we've always led the kaupapa, but we have called for tautoko from others".

174 Affidavit of Juliane Chetham dated 21 August 2023 **[[202.01001]]** at [118] **[[202.01028]]**.

175 See the Affidavit of David Milner dated 14 August 2023 **[[402.00493]];** Affidavit of Juliane Chetham dated 21 August 2023 **[[202.01001]]** at [120] **[[202.01029]]**. See also the Affidavit of Dr Guy Sinclair Gudex dated 30 March 2017 **[[202.00909]]** at [41] **[[202.00920]]** which notes Patuharakeke's development of a whale stranding guideline. See also Historical research report of David Armstrong **[[350.23981]]** at [269] **[[350.24098]]** in relation to Patuharakeke's involvement in response to whale strandings in Bream Bay. Under cross-examination, Mr Armstrong said he was unable to locate any information about Patuharakekeke's involvement in similar situations prior to 2006. He said, "there seems to be a hiatus in terms of Patuharakeke exploitation of or relationship with whales. But of course, that was if you like, revitalised in 2006": NOE Vol 1, p 192, lines 33-34 and p 193, line 1 (cross-examination of Mr Armstrong by Ms Roff).

176 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [112]-[113] **[[804.01700]]** and [95] **[[804.01695]]**; and Affidavit of David Milner dated 11 March 2024 **[[402.00493]]** at [28] **[[402.00504]]**. Mr Milner provided an image of the kōhatu at Uretiti and a map locating the site (p 23) **[[402.00515]]**.

177 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [84] **[[804.01689]]** and [114] **[[804.01700]-[804.01701]]**. See also Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(c)(ii)] **[[202.00935]]** (Patuharakeke continue to impose rāhui at Ruakākā Beach, Uretiti and Waipū Cove when drownings occur); and Brief of evidence of Kare Rata dated 29 August 2023 **[[201.00067]]** at [52] **[[201.00076]]** (Ms Rata said Patuharakeke have placed rāhui from her father's time and before in the event of drownings, usually out at Ruakākā) and [53] **[[201.00077]]** (Ms Rata said a rāhui was placed following a recent whale stranding, but further detail about when and where this occurred was not provided).

178 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [114] **[[804.01700]-[804.01701]]**.

Patuharakake have placed rāhui at Langs Beach.[179] Her understanding was that Patuharakeke have done so, following a drowning in that area, however she did not know when exactly the rāhui was placed (she suggested it may have occurred two or three years ago).[180] Patuharakeke's evidence was that rāhui for the purposes of replenishing kaimoana stocks were rarely if ever put in place along the Bream Bay coastline because kaimoana was so plentiful.[181]

61. Historian David Armstrong said, however, that he had not come across any documentary records showing Patuharakeke exercising authority or customary control over the area south of Waipū down to Langs Beach.[182]

62. Some of the evidence given on behalf of Patuharakeke appeared to suggest that other groups need to seek permission from Patuharakeke before using and accessing the area (depending on the particular purpose). Kare Rata suggested that other hapū/iwi[183] would need to ask for consent from her father and grandfather, as haukāinga, to access the area (including the area at Waipū)[184] for kaimoana gathering.[185] She went on to say that this would not necessarily be required if the kaimoana gathering was "at a very whānau level" to "get a bit of pipi".[186]

63. Some evidence was also presented of Patuharakeke's contemporary stewardship in terms of customary fishing and kaimoana gathering. Ms Chetham said that Patuharakeke monitor pipi at the Ruakākā river mouth estuary with contractors from the Ministry for Primary Industries.[187] The stage 1(a) evidence also described Patuharakeke's involvement as tangata whenua for the two gazetted rohe moana in the hearing area.[188]

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179 NOE Vol 2, p 266, lines 28-29 (cross-examination of Ms Chetham by Mr Mathias).

180 NOE Vol 2, p 266, lines 30-34 and p 267, lines 1-9 (cross-examination of Ms Chetham by Mr Mathias).

181 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [84] **[[804.01689]]**.

182 NOE Vol 1, p 192, lines 5-11 (cross-examination of Mr Armstrong by Ms Roff).

183 She identified these hapū/iwi as Te Parawhau, Ngāti Whātua and Ngāpuhi-nui-tonu: NOE Vol 2, p 171, line 30 (cross-examination of Ms Rata by Mr Hockly).

184 NOE Vol 2, p 172, lines 3-5 (cross-examination of Ms Rata by Mr Hockly).

185 NOE Vol 2, p 171, lines 11-33 and p 172, lines 1-2 (cross-examination of Ms Rata by Mr Hockly). See also NOE Vol 2, p 173, lines 9-14 (cross-examination of Ms Rata by Mr Hockly).

186 NOE Vol 2, p 171, lines 32-33 and p 172, lines 1-5 (cross-examination of Ms Rata by Mr Hockly).

187 NOE Vol 2, p 249, lines 3-14 (cross-examination of Ms Chetham by Mrs Golightly).

188 See the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [113.5].

64. On balance, the Attorney-General considers there is fairly good evidence to suggest limb one of the s 58 test is met in respect of some parts of Patuharakeke's application area. These areas appear to be concentrated around Poupouwhenua and stretching down to Waipū, and along the mainland coast (rather than further out to sea).

Ngātiwai

65. The general position of Ngātiwai witnesses was that only Ngātiwai hapū have customary authority or control in respect of Taranga and Marotere and its surrounding waters. For example, Mr Kerepeti-Edwards said that all Ngātiwai hapū have interests in Taranga and Marotere, distinguishing it from some other motu, which he said were "not like that".[189] When asked to identify which hapū he was suggesting ought to hold a CMT order, he said, "The hapū within each of [our] kāinga" and suggested there would need to be a tikanga-based process to discuss this.[190] When pressed to specify those hapū, he responded, "All of the Ngātiwai hapū".[191] Similarly, both Ms Rata[192] and Ms Chetham considered that all the hapū of Ngātiwai have rights and interests in and around the islands.[193] Ms Rata was unable to name all of the hapū of Ngātiwai (and did not know how many there are in total), but instead listed those she has direct whakapapa connections with.[194]

66. Various witnesses provided examples of the types of customary practices that are carried out by hapū of Ngātiwai in respect of Taranga and

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189 NOE Vol 2, p 26, lines 27-34 (cross-examination of Mr Kerepeti-Edwards by Mr Hockly). See also NOE Vol 2, p 55, lines 27-34 and p 56, lines 1-18 (cross-examination of Mr Kerepeti-Edwards by Mrs Golightly).

190 NOE Vol 2, p 55, lines 14-23 (cross-examination of Mr Kerepeti-Edwards by Mrs Golightly).

191 NOE Vol 2, p 56, line 1 (cross-examination of Mr Kerepeti-Edwards by Mrs Golightly). He said, "All of the Ngātiwai hapū have a connection to the islands and then of course Patuharakeke have more of an interest in terms of the onshore side": lines 1-3.

192 NOE Vol 2, p 180, lines 15-18 (cross-examination of Ms Rata by Mr Erskine). Ms Rata also said that Ngātiwai is the only iwi that "holds" the islands and the foreshore and seabed around the islands: Brief of evidence of Kare Rata dated 26 March 2024 **[[701.00041]]** at [68] **[[701.00054]]**. She had originally said in her brief of evidence that Ngātiwai is the "primary" iwi but clarified under cross-examination that it would be more accurate to say that Ngātiwai is the *only* iwi who holds the islands rather than the "primary" one: NOE Vol 2, p 179, lines 20-29 (cross-examination of Ms Rata by Mr Erskine). See also NOE Vol 2, p 165, lines 5-9 (evidence-in-chief of Ms Rata): "what I've been brought up understanding, … is that in the outer areas into the moana it is Ngātiwai, it's Ngā hapū o Ngātiwai, Ngātiwai iwi, however we want to look at it. And then toward the inshore it's Patuharakeke ki Ngātiwai. So Ngātiwai still hold with us but it's ki, it's of Patuharakeke hapū".

193 NOE Vol 2, p 271, lines 5-8 (cross-examination of Ms Chetham by Mr Erskine).

194 Ms Rata identified the following hapū: Patuharakeke, Ngāti Rehua, Te Aki Tai, and Te Whānau Whero: NOE Vol 2, p 178, lines 31-32 and p 179, lines 1-15 (cross-examination of Ms Rata by Mr Erskine). Historian Tony Walzl, who prepared a report on the 'Customary Associations of Ngātiwai with the Marotere and Taranga Islands' **[[804.01741]]** said under cross-examination that he did not know how many hapū of Ngātiwai there are, nor their names: NOE Vol 2, p 158, lines 14-19 (cross-examination of Mr Walzl by Mr Erskine).

Marotere, including:

66.1 customs and practices in respect of fishing and kaimoana gathering;[195]

66.2 customary practices in respect of wai whakaata (divining pools);[196]

66.3 protecting and maintaining wāhi tapu,[197] such as through the reinternment of kōiwi.[198]

67. Evidence was provided of Ngātiwai Trust Board's ongoing engagement with the Department of Conservation in relation to Taranga and Marotere.[199] For example, since the 1900s, the Board has collaborated with the Department of Conservation in respect of the management of kiore on certain islands.[200] In 1991, the Board secured an agreement with the

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195 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [26] **[[701.00036]]** (fishers would share their catch within the community. The women were in charge once it hit the shore and were responsible for sharing it around). See also Affidavit in reply of Phillip Wellington dated 18 July 2024 **[[701.00215]]** at [11]-[12] **[[701.00217]]** (traditional fishing knowledge was passed down through the generations of Mr Wellington's whānau); and Affidavit of Kare Rata dated 26 March 2024 **[[701.00041]]** at [58] **[[701.00052]]** (Ms Rata lived next to the sea and learnt matauranga from her grandparents). See also NOE Vol 2, p 114, lines 19-27 (cross-examination of Mr Piripi by Ms Dixon), in relation to the use of the maramataka.

196 Affidavit in reply of Morore Kai Piripi dated 15 July 2024 **[[701.00205]]** at [15]-[17] **[[701.00209]]**. Morore Piripi said he was taught that Ngātiwai became known by that name because of their use of wai whakaata (divining pools). See also NOE Vol 2, p 10, lines 14-34 and p 11, lines 1-3 (evidence-in-chief of Aperahama Kerepeti-Edwards): "The wai whakaataata is a part of an extremely sacred practice that we've maintained in Ngātiwai … What I will say is that the knowledge we hold around the wai whakaataata, not just the names of them but the practice around wai whakaataata is unique to Ngātiwai". See also NOE Vol 2, p 111, lines 25-32 and p 112, lines 1-25 (evidence-in-chief of Morore Piripi).

197 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [36] **[[701.00037]]**: "There are wāhi tapu and torer[e] on the islands and surrounding moana that are known and documented. These include burial caves and tōrere, but there are also others … The names of some wāhi tapu have been lost but some whānau have continued kaitiakitanga activities out there. Sites were looked at by kaumātua in the 1980s". See also at [38] **[[701.00037]-[701.00038]]**.

198 NOE Vol 2, p 65, lines 1-17 (evidence-in-chief of Mr Heteraka). Mr Heteraka said there are kōiwi on most of the islands and that himself and Hori Parata carry out this tikanga practice today. Mr Heteraka said the reinterment of kōiwi on the islands used to be done by Morere Piripi, Ngaronoa Mahanga, and Mohi Tito (who was of Parawhau). He noted, "[W]hen they went out to the islands they were under the Ngātiwai contingent. When they were inland here, they were under Parawhau tikanga": lines 11-13 (evidence-in-chief of Mr Heteraka). See also NOE Vol 2, p 83, lines 21-28 (cross-examination of Mr Heteraka by Ms Roff), where he said, "But when it comes to carrying out ceremonies over your kōiwi, we come together as one body. … And even recently, … the reburials that I've done out on Taranga myself, I bring members from Parawhau with me as well as Hori, myself, to continue that exercise of our ancestors".

199 'Customary Associations of Ngātiwai with the Marotere and Taranga Islands' report by Tony Walzl **[[804.01741]]** at [3.47] **[[804.01847]]**: "For the last thirty five years Ngātiwai have been actively working with government agencies in respect of their rohe moana". See also Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [143] **[[804.01709]]**: "Patuharakeke and our Ngātiwai whānaunga have worked hard at developing close relationships with DOC to assist in the management of these islands and the taonga species that reside on them". See also Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [38] **[[701.00037]-[701.00038]]** (referring to an agreement reached between Ngātiwai and the Department of Conservation in the early 2000s concerning restoration of flora and fauna on the islands), and [44] **[[701.00039]]** (referring to other examples of working with the Department of Conservation, including in respect of restoring vegetation and conducting research).

200 'Customary Associations of Ngātiwai with the Marotere and Taranga Islands' report by Tony Walzl **[[804.01741]]** at [3.48] **[[804.01847]]**. Ngātiwai Trust Board partnered with the Department of Conservation to eradicate kiore from

Department of Conservation that Ngātiwai Trust Board receive notification of all permits issued to land on Marotere.[201] Mr Williams also said that when he worked for the Department of Conservation for some 20 years, everyone at the Whangārei office knew that "you had to make contact with Ngātiwai and you better make sure you have a spare seat in the helicopter or on the boat for Hori or another iwi representative to come along".[202] Evidence was also provided of a protocol that has been agreed to between the Board and the Department of Conservation in respect of whale strandings in the Ngātiwai rohe,[203] and a permit that the Board has been issued under the Marine Mammals Protection Act 1978 to remove and hold the bone and teeth from dead marine mammals stranded in the Ngātiwai rohe.[204]

68. Ngātiwai witnesses also described specific arrangements that have made with the Department of Conservation that allow the Ngātiwai Trust Board to exercise a degree of control concerning the management of the islands. In 2010, Ngātiwai Trust Board was appointed to control and manage the Mauitaha and Araara islands (these two islands are within the Marotere island chain)[205] for the purposes of the Reserves Act 1977 and subject to the terms of a memorandum of agreement between the Minister of Conservation and the Board dated May 2010.[206] The kaumātua panel said

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Taranga and Marotere to protect the tuatara and birdlife. Eradication of kiore began on Māuiroto in 1993, Māuimua in 1994 and Māuipae in 1997. In 2009, after the detection of rats on Lady Alice and Whatupuke islands, the Board and the Department of Conservation collaborated on the creation of an eradication plan. Following negotiations, Ngātiwai agreed to allow the eradication of kiore on Taranga on the condition that the species be preserved on Mauitaha and Araara islands: at [3.48]-[3.49] **[[804.01847]-[804.01848]]**. See also Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [42]-[43] **[[701.00038]]**.

201 'Customary Associations of Ngātiwai with the Marotere and Taranga Islands' report by Tony Walzl **[[804.01741]]** at [3.47] **[[804.01847]]**. An internal memorandum was distributed to Department of Conservation staff on 14 October 1991 notifying them of the requirement to notify Ngātiwai of permits issued to land **[[801.00258]]**. The memorandum does not specifically list Taranga, but Reuben Williams said that – to his knowledge – Taranga was not treated differently from the other islands in terms of the Department's consultation with Ngātiwai: NOE Vol 2, p 96, lines 2-15. In response to a question from the Court, Reuben Williams confirmed that during his 20 years working for the Department of Conservation, he was aware that other iwi or hapū (including Te Uri o Hikihiki, Te Parawhau and Ngāti Manuhiri) made similar requests. When asked how those requests were treated, he said that from memory the Department made a "concerted effort to contact a lot of those people". See NOE Vol 2, p 94, lines 7-33.

202 Affidavit in reply of Reuben Dayal Williams dated 11 June 2024 **[[701.00198]]** at [11] **[[701.00200]]**. See also NOE Vol 2, p 90, lines 13-20 (evidence-in-chief of Mr Williams).

203 A copy of the protocol is at **[[801.00214]]**.

204 A copy of the permit is at **[[801.00239]]**. Mr Parata said that he was unaware of any other hapū or iwi within the Ngātiwai rohe having a similar agreement with the Department of Conservation: NOE Vol 2, p 87, lines 18-24 (re-examination of Mr Parata).

205 The islands are on the far-west side of the island chain. See Exhibit 7 **[[1001.00099]]** and map 2(b) **[[811.06547]]** map 2(b7) **[[811.05464]]** of Richard Jennings' mapbook.

206 'Customary Associations of Ngātiwai with the Marotere and Taranga Islands' report by Tony Walzl **[[804.01741]]** at

that, while Taranga and the other islands of Marotere are not covered by that arrangement, Ngātiwai "still exercise kaitiakitanga over them because we are out there among the islands looking after Māuitaha".[207] Mr Parata was asked about the scope of the activities that the Board can issue permits for pursuant to the 2010 memorandum of agreement. He agreed that permits can only be issued for "approved management activities and any other agreed ecological or cultural function".[208]

69. Some Ngātiwai witnesses described instances where rāhui (which witnesses said are always placed by a collective of kaumātua)[209] have been placed in respect of Taranga and Marotere:

69.1 Mr Kerepeti-Edwards said that Ngātiwai would be the ones to place rāhui if there was an event or an issue with stocks of fish or kaimoana. He said that when a rāhui is placed, a pānui is shared so that others are made aware of it.[210] He said he was not aware of other iwi or hapū declaring their own rāhui in respect of the area around the islands.[211] He also said that Ngātiwai would place a rāhui in respect of the southern extent of the stage 1(b) hearing area if an event such as a drowning or whale stranding occurred there.[212]

69.2 Morore Piripi said that his grandfather would place rāhui over the islands when the need arose. He disagreed with the evidence given on behalf of Arthur Mahanga (a Ngāpuhi-nui-tonu witness)[213] that suggested his tupuna Ngaranoa Mahanga was the

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[3.49] **[[804.01848]]**. The relevant gazette notice is at **[[801.00259]]**. The memorandum of agreement dated 25 May 2010 is at **[[808.04000]]**.

207 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [46] **[[701.00039]]**.

208 See the memorandum of agreement at [13.01] **[[808.04005]]**; and NOE Vol 2, p 84, lines 1-32 (cross-examination of Mr Parata by Ms Roff). Mr Parata also said that the Board does not issue permits very often, however, he noted, "I think that some people just go and help themselves [without getting a permit] and get away with it": NOE Vol 2, p 84, lines 33-34 and p 85, lines 1-4 (cross-examination of Mr Parata by Ms Roff).

209 Affidavit in reply of Morore Kai Piripi dated 15 July 2024 **[[701.00205]]** at [20] **[[701.00210]]**; Affidavit in reply of Hepi Rongopai Haika dated 15 July 2024 **[[701.00211]]** at [12] **[[701.00213]]**. Mr Haika was unavailable for cross-examination.

210 NOE Vol 2, p 58, lines 19-27 (cross-examination of Mr Kerepeti-Edwards by Ms Roff).

211 NOE Vol 2, p 58, lines 28-30 (cross-examination of Mr Kerepeti-Edwards by Ms Roff).

212 NOE Vol 2, p 59, lines 1-9 (cross-examination of Mr Kerepeti-Edwards by Ms Roff).

213 See Brief of evidence of Arthur John Mahanga dated 26 March 2024 **[[701.00322]]** at [32] **[[701.00329]]**. Mr Mahanga described his tūpuna, Ngaranoa Mahanga, as "the only one at the time that was able to use rāhui and put rāhui on

only person of his generation who held mana to place rāhui over the islands.[214] Mr Piripi also said that, if a drowning or similar event occurred within the wider stage 1(b) hearing area, the group responsible for imposing a rāhui would be a number of rangatira from within Ngātiwai.[215] He could not recall the last time a rāhui was imposed in the hearing area.[216]

69.3 Phillip Wellington recalled that a surfer drowned in the 1980s and his body washed up on one of the islands of Marotere. He said, "I don't recall whether a rāhui was placed but these days, it would be".[217] When cross-examined, Mr Wellington could not recall any instances of Ngātiwai imposing rāhui within the stage 1(b) hearing area.[218]

69.4 Harry Maki-Midwood said that Ngātiwai might call upon other hapū to assist in imposing a rāhui, if needed, but emphasised that it is Ngātiwai who have mana whenua and mana moana over the islands.[219]

69.5 Kare Rata said that the "first point of call" for responding to a significant event (for example, an oil spill) in respect of Taranga and Marotere would be Ngātiwai, and "any other hapū [or] iwi" who might be called upon to assist them.[220]

70. Ngātiwai witnesses described the relationship that other hapū and iwi have with Taranga and Marotere and its surrounds in this way:

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an area."

214 Affidavit in reply of Morore Kai Piripi dated 15 July 2024 **[[701.00205]]** at [19] **[[701.00209]]**. See NOE Vol 2, p 114, lines 1-5 (cross-examination of Mr Piripi by Mr Kahukiwa), where he confirmed that to his knowledge, his grandfather and Ngaronoa Mahanga would meet together and do their tohunga mahi.

215 NOE Vol 2, p 116, lines 11-16 (cross-examination of Mr Piripi by Ms Roff).

216 NOE Vol 2, p 116, lines 24-26 (cross-examination of Mr Piripi by Ms Roff).

217 Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [35] **[[701.00220]]**.

218 NOE Vol 2, p 107, lines 27-30 (cross-examination of Mr Wellington by Ms Roff).

219 He said, "if we [Ngātiwai] needed their assistance, we would call on them. But otherwise we have the mana whenua, mana moana over those areas, and generally, speaking, we will enact those tikanga practices ourselves": NOE Vol 2, p 233, lines 1-6 (cross-examination of Mr Maki-Midwood by Mr Enright).

220 NOE Vol 2, p 196, lines 27-33 and p 197, lines 1-2 (cross-examination of Ms Rata by Ms Roff).

70.1 The joint kaumatua panel said that that Ngāpuhi and Ngāti Whātua are able to fish at the islands "through whanaungatanga", but emphasised that Ngātiwai "hold the ahi kā".[221]

70.2 Mr Hetaraka said that if Te Parawhau want to fish around Taranga they would first need to ask Ngātiwai for permission. He said, "They would come and talk to us, yes, it's a simple matter of courtesy."[222]

70.3 Mr Kerepeti-Edwards said that there is an expectation that other hapū will follow the protocols and customs of Ngātiwai when they go to the islands, and it would not be appropriate for them to go out there without Ngātiwai's blessing.[223] When asked whether groups would historically seek permission of Ngātiwai in order to access the areas around the islands to fish, he said, "Well there [would] be an acknowledgement".[224]

70.4 Hori Parata, however, considered that Te Parawhau would not need to seek permission from Ngātiwai if they wished to undertake customary fishing activities in the vicinity of Taranga and Marotere.[225] Similarly, Mr Maki-Midwood's evidence was that that area is "somewhat a general area" for fishing and gathering kaimoana,[226] and he did not refer to the need for permission to be sought from Ngātiwai (or Patuharakeke) before accessing the area for that purpose. That said, he considered that the interests of Te Parawhau in respect of the islands are not as strong as those of Ngātiwai.[227]

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221 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [28] **[[701.00036]]**.

222 NOE Vol 2, p 83, lines 13-15 (cross-examination of Mr Heteraka by Ms Roff).

223 NOE Vol 2, p 27, lines 9-15 (cross-examination of Mr Kerepeti Edwards by Mr Hockly).

224 NOE Vol 2, p 58, lines 8-18 (cross-examination of Mr Kerepeti-Edwards by Ms Roff). Mr Kerepeti-Edwards said an acknowledgement can be expressed in different ways and that sometimes it might involve a phone call, and at other times it might involve a visit.

225 NOE Vol 2, p 72, lines 20-24 (cross-examination of Mr Parata by Mr Enright).

226 NOE Vol 2, p 232, lines 31-34 and p 233, lines 1-2 (cross-examination of Mr Maki-Midwood by Mr Enright). See also NOE Vol 2, p 41, lines 19-24 (cross-examination of Mr Maki-Midwood by Mr Enright).

227 NOE Vol 2, p 232, lines 28-30 (cross-examination of Mr Maki-Midwood by Mr Enright).

70.5 Ms Chetham said that, in her experience over the last couple of decades, "the mahi with DoC and with Ngāti Trust Board, I haven't seen others specifically involved in that besides ourselves and Ngātiwai".[228]

71. Overall, the Attorney-General considers there is fairly good evidence to suggest limb one of the s 58 test is met in respect of the offshore area surrounding Taranga and Marotere, if the Court is satisfied the interests in that area are held at an iwi level by Ngātiwai (as an umbrella group for all Ngātiwai hapū)[229] rather than at a hapū level.

Ngāpuhi-nui-tonu

72. As set out above,[230] the Attorney-General's understanding is that the "Ngāpuhi-nui-tonu applicants" are seeking a CMT order to be held by Ngāpuhi-nui-tonu. However, it is worth noting at the outset that aspects of the evidence given on behalf of these applicants were difficult to reconcile with this position. Several witnesses appeared to suggest that only a particular subset of Ngāpuhi hapū (those who live in the hearing area and can establish their interests) should have their interests recognised by the Court.[231]

73. The evidence described customs and practices observed in relation to the takutai moana (for example, consulting tōhunga in respect of kaimoana gathering practices);[232] the exercise of kaitiakitanga;[233] and the placing of

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228 NOE Vol 2, p 271, lines 5-16 (cross-examination of Ms Chetham by Mr Erskine). Ms Chetham said, "I haven't come across information about others in my time or heard of it from traditional historical resources that I have seen".

229 See [15] above.

230 At [22] above.

231 Arthur Mahanga said, "The Ngāpuhi hapū that we [Ngāti Korora] recognise have interests and mana whenua over the Whangārei Coast would be Ngāti Korora, Ngāti Maru, Ngāi Tahuhu, Te Parawhau o Whangārei, Te Waiaiki and Patuharakeke": Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00332]]** at [10] **[[701.00324]]**. Aorangi Kawiti said, "For those of us of Ngāpuhi whakapapa *who live in and around the Whangārei area*, our customary mana moana interests extend throughout the Harbour and the Coast and are collective and indivisible": Affidavit of Aorangi Kawiti dated 16 September 2024 **[[90100159]]** at [2] **[[901.00160]]** (emphasis added). See also Brief of evidence of Louisa Collier dated 27 March 2024 **[[701.00332]]** at [25] **[[701.00338]]**, where Ms Collier said that "[a]ny Title received from the Court should be held collectively by Ngāpuhi-nui-tonu *by those groups who can demonstrate their tikanga connection and their responsibility for looking after our Whangārei Coast*" (emphasis added).

232 Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00322]]** at [20]-[23] **[[701.00326]-[701.00327]]** and [26] **[[701.00328]]**; Brief of evidence of Louisa Collier dated 26 March 2024 **[[701.00331]]** at [15]-[16] **[[701.00335]]**.

233 Brief of evidence of Louisa Collier dated 27 March 2024 **[[701.00332]]** at [24] **[[701.00337]]** (referring to involvement in resource consent matters and sustainability matters). Under cross-examination, Ms Collier said she opposed the resource consent applications made in around the 1960s relating to the construction of the oil refinery at Marsden Point. She appeared to suggest that Ngāpuhi-nui-tonu collectively opposed the resource consent application: NOE Vol 2, p 359, lines 24-30 and p 360, lines 1-24 (cross-examination of Ms Collier by Ms Ellis). See also Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00322]]** at [32] **[[701.00329]].**

rāhui.[234] However, the evidence was equivocal as to whether it was purporting to describe actions of Ngāpuhi-nui-tonu or specific Ngāpuhi hapū (to whom the witnesses have direct whakapapa connections).[235] Historian Dr Judith Pryor also confirmed that she had not found any examples of Ngāpuhi-nui-tonu collectively responding to issues concerning the Whangārei Coast.[236]

74. Given that one of the ways a group can demonstrate its mana over an area is by evidence of the recognition of that mana by others,[237] it is relevant in this context that a number of witnesses during the hearing were not prepared to accept that Ngāpuhi or Ngāpuhi-nui-tonu has customary authority in respect of the hearing area:

74.1 *Te Parawhau witnesses:* Pari Walker did not agree that Ngāpuhi or Ngāpuhi-nui-tonu exercises "customary obligations" in respect of the hearing area (including around Taranga and Marotere).[238] He said that in the early 1800s, Ngāpuhi never stayed in Whangārei and maintained a presence. He explained that Ngāpuhi would come to Whangārei as a taua, but then leave to go away to battle, and would be invited back as manuhiri.[239] Dr Kepa acknowledged that Ngāpuhi have a presence at Bream Bay,[240] but emphasised they are "not ahi kā".[241]

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234 Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00322]]** at [29] and [32] **[[701.00328]-[701.00329]]** (referring to his tūpuna, Ngaranoa Mahanga, as the "only one at the time that was able to" place rāhui on an area). Mr Mahanga also said it was his grandfather's job to retrieve koiwi from around the coast: at [12] **[[701.00324]-[701.00325]]**. Affidavit of Aorangi Kawiti dated 6 September 2024 **[[901.00159]]** at [39]-[45] **[[901.00169]-[901.00171]]**. However, under cross-examination, Ms Kawiti could not recall any examples of rāhui having been imposed by her hapū in the hearing area: NOE Vol 2, p 413, lines 15-20 (cross-examination of Ms Kawiti by Ms Roff).

235 Mr Mahanga said he is currently involved in sustainability issues within the rohe moana in Whangārei and does so in his capacity as a hapū representative for Ngāti Kororā, Te Waiariki. See Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00322]]** at [32] **[[701.00329]]**; and NOE Vol 2, p 377, lines 1-25 (cross-examination of Mr Mahanga by Ms Roff). See also Affidavit of Aorangi Kawiti dated 6 September 2024 **[[901.00159]]** at [49]-[50] **[[901.0171]-[901.00172]]**. Ms Kawiti was asked who she represents when acting as a kaitiaki. She said, "it would be every single hapū that we whakapapa too" and "[e]ven if we didn't know, just by being there, we were actually personally representing all of the whakapapa that was in us": NOE Vol 2, p 411, lines 20-34 and p 412, lines 1-3 (cross-examination of Ms Kawiti by Ms Roff). She said that a submission she had made in opposition to a resource consent for dredging had been made on behalf of "all [her] hapū": p 412, lines 4-6 (cross-examination of Ms Kawiti by Ms Roff).

236 NOE Vol 2, p 381, lines 27-32 and p 382, lines 1-18 (cross-examination of Dr Pryor by Mr Hockly).

237 As Miller J observed in *Edwards*, "acceptance by other iwi, hapū or whānau groups of an applicant group's right to speak for a specified part of the common marine and coastal area is powerful evidence of exclusivity": *Edwards* **[[BOA Tab 16]]** at [171] per Miller J.

238 NOE Vol 1, p 100, lines 11-24 (cross-examination of Mr Walker by Mr Johnson).

239 NOE Vol 1, p 116, lines 31-34 and p 117, lines 1-20 (re-examination of Mr Walker).

240 NOE Vol 1, p 55, lines 18-27 (cross-examination of Dr Kepa by Ms Corbett).

241 NOE Vol 1, p 56, lines 5-11 (cross-examination of Dr Kepa by Mr Enright).

74.2 *Ngāti Kahu and Ngāti Tū witnesses*: Hori Kingi did not accept that Ngāpuhi (as an iwi) has interests in the hearing area.[242] He said that in Whangārei, the mana belongs to the four hapū of Ngāti Kahu, Ngāti Tū, Patuharakeke and Te Parawhau.[243] When Waimarie Kingi was asked a similar question, she initially agreed that Ngāpuhi has an interest in the hearing area,[244] but clarified (in response to questions from the Court) that any Ngāpuhi interest is through its hapū.[245]

74.3 *Patuharakeke witnesses:* Harry Maki-Midwood was asked whether he would accept that Ngāpuhi (as an iwi, as well as a collection of hapū and whānau) exercises mana in and around the Whangārei coast area. He replied by noting that Ngāpuhi as an iwi "have long vacated this region",[246] and emphasised that the exercise of mana rests with each hapū.[247] Juliane Chetham said that Ngāpuhi's interests in the hearing area are expressed through the hapū that are active on the whenua and moana in Bream Bay.[248] She said, "they are here through us".[249]

74.4 *Ngātiwai witnesses:* Aperahama Kerepeti-Edwards did not accept that Ngāpuhi-nui-tonu have interests in Taranga and Marotere. He said that no other authority sits above Ngātiwai.[250] Phillip Wellington was asked whether he would accept that Ngāpuhi have interests in the hearing area entitling them to an order for CMT. He replied, "provid[ed] they also belong to a hapū that resides on the coast".[251] Ms Rata said in her evidence that Ngāpuhi does not "hold any title" to the Whangārei Coast area and that the

242 NOE Vol 1, p 373, lines 2-23 (cross-examination of Mr Kingi by Mr Kuddus).

243 NOE Vol 1, p 379, lines 2-13 (re-examination of Mr Kingi).

244 NOE Vol 1, p 327, lines 21-26 and p 328, lines 1-14 (cross-examination of Ms Kingi by Mr Johnson).

245 NOE Vol 1, p 328, lines 18-33 and p 329, lines 1-17 (cross-examination of Ms Kingi by Mr Johnson).

246 NOE Vol 2, p 240, lines 12-13 (cross-examination of Mr Maki-Midwood by Mr Johnson).

247 NOE Vol 2, p 240, lines 8-34 (cross-examination of Mr Maki-Midwood by Mr Johnson).

248 NOE Vol 2, p 241, lines 1-15 (cross-examination of Ms Chetham by Mr Johnson).

249 NOE Vol 2, p 240, lines 5-6 (cross-examination of Ms Chetham by Mr Johnson).

250 NOE Vol 2, p 35, lines 14-34 and p 36, lines 1-11 (cross-examination of Mr Kerepeti-Edwards by Mr Erskine).

251 NOE Vol 2, p 102, lines 31-33 and p 103, lines 1-13 (cross-examination of Mr Wellington by Mr Kuddus).

extent of Ngāpuhi's activities in the area is limited to "passing through our rohe".[252]

75. Overall, the Attorney-General does not consider the evidence that has been presented by the Ngāpuhi-nui-tonu applicants – in respect of any part of the hearing area – is likely to be sufficient to demonstrate the first limb of the s 58 test has been met.

Assessment of evidence in relation to limb two

76. As noted, the Attorney-General makes the general observation that the level of detail about groups' customary activities and use and occupation appears to be concentrated on the northern stretch of the coastline around Poupouwhenua (particularly for Patuharakeke) but appreciably decreases towards the southern part of the coast (particularly in the area south of Waipū and through to Langs Beach). In terms of the seaward extent of groups' use and occupation, the evidence also appears to be less detailed in areas further out to sea (as opposed to along the mainland coast).

77. Relevantly, the Waitangi Tribunal (in its 2006 *Kaipara Report*) made findings as to the nature of tribal groups' use and occupation of the Mangawhai block purchase area (which extends into the southern part of the hearing area) after the battle of Te Ika ā Ranganui in 1825.[253] The Tribunal rejected a claim by certain hapū groups (Ngāti Kahu, Te Parawhau, Te Waiariki, Ngāti Kororā) that their customary rights were ignored by John Grant Johnson (district land purchase commissioner) in respect of the Mangawhai purchase in 1854.[254] The Tribunal found that the groups had not produced evidence of "actual occupation or of stories about significant events on the land or landmarks connected with particular ancestors".[255] Instead, the Tribunal considered the interests of those groups were equivalent to use rights, finding that the hapū would periodically visit Mangawhai in the interests of whakawhānaungatanga and to maintain

252 Brief of evidence of Kare Rata dated 26 March 2024 **[[701.00041]]** at [15] **[[701.00044]]**.

253 For a map of the boundary between the Waipū and Mangawhai purchases, see **[[809.04158]]**. The area that is now known as Langs Beach falls within the area of the Mangawhai purchase: see NOE Vol 1, p 167, lines 16-19 (cross-examination of Mr Stirling by Mr Mathias).

254 Waitangi Tribunal *The Kaipara Report* (Wai 674, 2006) at [5.8.3] and [5.8.4].

255 Waitangi Tribunal *The Kaipara Report* (Wai 674, 2006) at [5.8.3].

access to fishing (and other resources).[256] The Tribunal's findings on the nature of groups' rights in the southern portion of the hearing area appear to be generally consistent with the thrust of the evidence heard in this proceeding.[257]

Exclusive use and occupation as at 1840

Te Parawhau

78. Some stage 1(a) evidence was provided that located Te Parawhau in the Whangārei Harbour at 1840,[258] but the evidence of Te Parawhau's specific presence in the stage 1(b) area at that time is more limited.

79. Historian Bruce Stirling described Te Parawhau's interests in land blocks abutting the hearing area in the context of pre-Treaty land transactions at Ruakākā and Waipū;[259] the forfeiture of land at Poupouwhenua to the Crown in 1845;[260] and subsequent purchases by the Crown of the Ruakākā,[261] Poupouwhenua,[262] Waipū,[263] and Mangawhai[264] landblocks in 1854.[265] He was asked whether he found any evidence that Te Parawhau

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256 Waitangi Tribunal *The Kaipara Report* (Wai 674, 2006) at [5.8.3]: "We do not dispute that, in the interests of whakawhānaungatanga and maintaining access to the fishing and other resources of the Mangawhai and Kaipara district, parties from each hapū periodically went on excursions there. We have not been persuaded, however, that this is a sufficient basis for these two hapū to claim rights equivalent to tangata whenua status at Mangawhai". This finding was also referred to by Dr Judith Pryor in her stage 1(b) historical research report for the Ngāpuhi-nui-tonu applicants: **[[801.00056]]** at [282] **[[801.00135]]**. See also NOE Vol 2, p 391, lines 22-33 (cross-examination of Dr Pryor by Mr Enright).

257 As noted in the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [272], s 129 of the Evidence Act 2006 permits reliance on Waitangi Tribunal reports for the purposes of evidence on matters of historical fact: *Te Runanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641 (CA) at 653; and *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* [2000] 1 NZLR 285 (HC) at 300.

258 See the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [134.1].

259 Report by Bruce Stirling – Bream Bay **[[801.00270]]** at [6]-[17] **[[801.00271]-[801.00273]]**.

260 Report by Bruce Stirling – Bream Bay **[[801.00270]]** at [18] **[[801.00273]]**.

261 Mr Stirling dealt with the Ruakākā deed specifically in his stage 1(a) report but summarised (in his stage 1(b) report) the customary interests of those who Commissioner Johnson dealt with as including Te Parawhau, Te Patuharakeke, Ngāi Tāhuhu, Te Uri o Hau, and others of Ngāti Whātua: Report by Bruce Stirling – Whangārei Coast **[[801.00270]]** at [19] **[[801.00274]]**.

262 Mr Stirling dealt with the Poupouwhenua deed specifically in his stage 1(a) report but summarised (in his stage 1(b) report) the customary interests of those who Commissioner Johnson dealt with as including Te Parawhau, Ngāti Tu and Te Patuharakeke: Report by Bruce Stirling – Whangārei Coast **[[801.00270]]** at [19] **[[801.00274]]**.

263 Report by Bruce Stirling – Whangārei Coast **[[801.00270]]** at [20]-[30] **[[801.00274]-[801.00277]]**. Stirling summarised the customary interests of those that Commissioner Johnson dealt with in respect of Waipū as follows: "Johnson dealt in particular with Te Parawhau and Te Patuharakeke interests for Waipū but recognised and addressed the interests of Ngai Tahuhu. The role of Ngāti Whātua in the history of contesting for the land was also recognised but – other than the inclusion of Ngai Tahuhu – a wider Ngāti Whātua interest was not addressed in the deed": see [30] **[[801.00276]-[801.00277]]**. Marina Fletcher included in her evidence Hone Heke's widow's lament, presented prior to the signing of the Waipū deed of sale: Affidavit of Marina Fletcher dated 8 February 2024 **[[701.00279]]** at [70]-[71] **[[701.00291]-[701.00292]]**. See also NOE Vol 1, p 33, lines 25-34 and p 34, lines 1-19 (evidence-in-chief of Ms Fletcher). Ms Fletcher said, "the people that she was talking about weren't Ngāpuhi, they were her people, and they were there to sign off the Waipū land block".

264 Report by Bruce Stirling – Whangārei Coast **[[801.00281]]** at [31]-[41] **[[801.00277]-[801.00281]**. See NOE Vol 1, p 158, lines 9-11, however, where Mr Stirling said that Te Tirarau had less influence towards Mangawhai by the 1850s.

265 For a map of these land blocks see **[[802.00304]]**. For a map of the boundary between the Waipū and Mangawhai purchases, see **[[809.04158]]**. As noted, the area that is now known as Langs Beach falls within the area of the

had been able to keep invaders out of that area during a period of inter-tribal battles in the 1820s and 1830s, and he said that he had not.[266]

80. Tamihana Paki was asked who had territorial control over the stage 1(b) hearing area during that battle period and replied, "it would be whoever's able to assert that [control] at any particular time" and that "between 1830 and up to immediately after the Treaty, Motutara[267] and Tirarau were asserting rights in that area".[268] When it was suggested to him that Te Tirarau was in the Bay of Islands at that time, he said, "They're very mobile, our ancestors".[269]

81. He was also asked whether there were kāinga within the stage 1(b) hearing area that his ancestors returned to, following that battle period. He identified areas "on the southern side of the harbour", "the Mangakahia Valley" and "places like Tītahi" (near Oakleigh, on the western side of the harbour), none of which are located within the hearing area.[270] He said he understood there "would've been" pre-1840 kāinga along the coast that belonged to Te Parawhau in the hearing area, but could not identify where they were.[271] He noted, however, that "the people had a liking for the inner harbour".[272]

82. Riripeti Norris located historical kāinga at Uretiti,[273] and at Poupouwhenua (where Wi Pou, the son of Kukupa, lived).[274] She did not know whether the kāinga at Poupouwhenua was ever temporarily abandoned during the

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Mangawhai purchase: see NOE Vol 1, p 167, lines 16-19 (cross-examination of Mr Stirling by Mr Mathias).

266 NOE Vol 1, p 169, lines 6-12 ("A. No, they didn't have a navy as such so you wouldn't expect them to engage invaders at sea at all. Q. Yes, and they weren't able to stop them using that area to enter onto the land anywhere along Paepae-o-Tū or Bream Bay at any point, that they so choose at that point? The invaders I mean. A. No, I think their focus would've been on stopping them once they tried to land").

267 Motutara was a Te Parawhau rangatira who was identified as one of Busby's vendors, and among those for whom he set aside the five reserves at Ruakākā and Waipū: Historical research report of Bruce Stirling **[[801.00270]]** at [15] **[[801.00273]]**.

268 NOE Vol 1, p 15, lines 19-23 (cross-examination of Mr Paki by Mrs Golightly).

269 NOE Vol 1, p 15, lines 24-27 (cross-examination of Mr Paki by Mrs Golightly).

270 NOE Vol 1, p 16, lines 5-30 (cross-examination of Mr Paki by Mrs Golightly).

271 NOE Vol 1, p 17, lines 10-11 (cross-examination of Mr Paki by Mrs Golightly). He was unsure whether there would have been permanent kāinga at Poupouwhenua at that time: NOE Vol 1, p 17, lines 31-34 (cross-examination of Mr Paki by Mrs Golightly).

272 NOE Vol 1, p 17, lines 11-12 (cross-examination of Mr Paki by Mrs Golightly).

273 NOE Vol 1, p 22, lines 4-22 (evidence-in-chief of Riripeti Mira Norris). Ms Norris said "we do have some old maps that show where the Waipū Golf Club is now, that was a kāinga" and then clarified the kāinga's exact whereabouts to be at Uretiti.

274 NOE Vol 1, p 22, lines 20-22 (evidence-in-chief of Riripeti Mira Norris). See also at NOE Vol 1, p 29, lines 33-34 (cross-examination of Ms Norris by Mrs Golightly).

period of battles that took place in the area from between 1824 and 1835.[275]

83. Pari Walker was asked whether Te Parawhau had territorial control over the stage 1(b) hearing area during this battle period.[276] He said this was a "very volatile" period but the rangatiratanga of Te Parawhau was not lost.[277] He was asked by the Court where Te Parawhau returned to after this volatile period and replied, "We stayed in Toetoe, we stayed in Otaika" (in the stage 1(a) area).[278] He also said that Te Parawhau had kāinga in 1840 "[a]ll over our estate".[279] When asked whether Te Parawhau had permanent kāinga at Poupouwhenua in 1840,[280] he did not directly respond to the question and instead said that Te Parawhau had "pā sites all around and some of those pā sites could quite possibly be abandon[ed] and then … re-occupied".[281] He added that Te Parawhau had some historic pā sites at Langs Beach as evidenced by "archaeological sites all over the place".[282]

84. Mr Stirling was asked whether he found any evidence of specific kāinga that Te Parawhau returned to within the stage 1(b) hearing after the inter-tribal battles, and said, "I didn't really find much evidence at all".[283]

85. As for the presence of culturally significant sites in the hearing area:

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275 See NOE Vol 1, p 29, lines 4-25 (cross-examination of Ripeti Mira Norris by Mrs Golightly). However, she noted that battles did not take place at Poupouwhenua, although warriors would prepare for battle there: NOE Vol 1, p 29, lines 15-17. When asked when Poupouwhenua became a kāinga of Wi Pou, Ms Norris said "Wi Pou was the son of Kukupa. So, Kukupa was 1700. Therefore, there would have been a village there that Wi Pou lived there also": NOE Vol 1, p 29, lines 7-13.

276 NOE Vol 1, p 110, lines 11-23 (cross-examination of Mr Walker by Mrs Golightly).

277 NOE Vol 1, p 110, lines 24-33 (cross-examination of Mr Walker by Mrs Golightly). He was asked where Te Parawhau re-settled following the period of battles and replied, "We never left. So, we had nowhere to come back to, we were already here": NOE Vol 1, p 111, lines 17-18 (cross-examination of Mr Walker by Mrs Golightly).

278 NOE Vol 1, p 113, lines 1-26.

279 NOE Vol 1, p 111, lines 24-25 (cross-examination of Mr Walker by Mrs Golightly).

280 NOE Vol 1, p 111, line 26 (cross-examination of Mr Walker by Mrs Golightly).

281 NOE Vol 1, p 111, lines 27-30 (cross-examination of Mr Walker by Mrs Golightly).

282 NOE Vol 1, p 112, lines 7-12 (cross-examination of Mr Walker by Mrs Golightly). He said that "[a] lot of them are recorded by our whanaunga at Patuharakeke, Te Uri o Hau": NOE Vol 1, p 112, lines 12-13.

283 NOE Vol 1, p 170, line 4 (cross-examination of Mr Stirling by Mrs Golightly). He expanded, "I'm only focused on customary interests rather than where people were living, and there isn't a lot of evidence. I mean that's the great difficulty with this part of the inquiry, this stage of the inquiry, is the lack of evidence due to the limited amount of Māori land that's there after 1855 which is virtually nothing": lines 4-8. He noted however that there are a large number of pā in the southern part of the stage 1(b) hearing area and a mahinga mātaitai in the area around Waipū Cove, so "I think there was definitely occupation there but just in terms of the historical documented sources, it's very little": lines 19-25.

85.1 Ms Norris said there are wāhi tapu along the Bream Bay coastline, including the burial places of three wāhine toa who she described as reflecting three generations of tōhunga and kaitiaki for Te Parawhau (one of whom was "a contemporary of Te Tirarau in his time").[284] When cross-examined, Ms Norris added that there are wāhi tapu sites where wāhine toa have been buried around Marsden Point (some of which have been removed due to the development that has occurred there) and also around the Poupouwhenua wetlands.[285]

85.2 Margaret Kay was asked whether there are any urupā in the stage 1(b) hearing area and said there are urupā at Takahiwai and by the Otaika River (which both fall outside the hearing area).[286]

Te Waiariki, Ngāti Kororā and Ngāti Takapari

86. There appears to be limited evidence of Te Waiariki, Ngāti Kororā and Ngāti Takapari's historical interests and presence in relation to their application area (insofar as it falls within the stage 1(b) hearing area) as at 1840.[287]

87. Pereri Mahanga was asked whether there are any sites of cultural significance to the hapū in the stage 1(b) hearing area and responded by identifying Te Onerua a Tane as a wāhi tapu.[288] Te Onerua a Tane was described in Mitai Paraone-Kawiti's evidence as Ocean Beach,[289] which is located north of the stage 1(b) hearing area.[290] In any event, Mr Mahanga

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284 Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [39]-[42] **[[701.00263]-[701.00264]]**. Ms Norris did not wish to give the precise location of these coastal wāhi tapu at this time: at [41] **[[701.00264]]**.

285 NOE Vol 1, p 29, lines 26-34 (cross-examination of Riripeti Norris by Mrs Golightly).

286 NOE Vol 1, p 49, lines 12-19 (cross-examination of Margaret Kay by Ms Roff).

287 Mitai Paraone-Kawiti did provide some reply evidence asserting Te Waiariki's customary interests in relation to Marotere and Taranga in the context of early land transactions and related claims arising in the latter half of the 1800s: Affidavit in reply of Mitai Paraone-Kawiti dated 6 August 2024 **[[901.00001]]** at [8]-[9] **[[901.00004]]**, [11] **[[901.00005]]** and [15] **[[901.00006]])**. However, Taranga and Marotere are located outside of Te Waiariki's application area.

288 NOE Vol 1, p 264, lines 8-19 (cross-examination of Mr Mahanga by Ms Roff).

289 Affidavit of Mitai Paraone-Kawiti dated 6 August 2024 **[[901.00001]]** at [3] **[[901.00002]]**.

290 See map 1(a) in Richard Jennings' mapbook **[[811.05443]]**.

said the wāhi tapu site is located on dry land.[291] He not identify any areas of cultural significance to Te Waiariki further south from that location.[292]

88. Mr Paraone-Kawiti was asked whether his Te Waiariki tūpuna based at Te Whara would have had sufficient control over the offshore waters surrounding Taranga and Marotere to stop others from coming into the area in the period just before 1840.[293] His response was somewhat unclear. He said, "I think given the way our people were there's a high likelihood of everyone that knew their whanaungatanga would know how to navigate this area, because without the whanaungatanga you couldn't really come in here, we would probably chase you out".[294] As for whether Te Waiariki had enough control over the area where the Parry Channel is located[295] "in that time just before 1840" to stop people from using it,[296] Mr Paraone-Kawiti said, "As far as I know we never had any complications in these areas or tried stopping anybody that I'd heard of".[297]

Ngāti Tū

89. The stage 1(a) evidence located Ngāti Tū on the northern shores of the Whangārei Harbour as at 1840[298] (particularly at Rāhuikuri in Parua Bay), but the evidence of a specific Ngāti Tū presence within the stage 1(b) hearing area at that point in time is more limited.

90. Ngāti Tū witnesses, historian Georgina Craw, and Maia Honetana, gave evidence of the involvement of Ngāti Tū rangatira (Ngahuru and Kaikou) in pre-Treaty land transactions at Waipū and Ruakākā,[299] and subsequent

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291 NOE Vol 1, p 264, lines 20-25 (cross-examination of Mr Mahanga by Ms Roff). Compare, however, the Affidavit in reply of Pereri Mahanga dated 6 August 2024 **[[701.00067]]** at [5] **[[701.00068]]**, where Mr Mahanga described Te Oneroa a Tane as "the Takutai moana situated between Te Whara (Bream Head end) and Tikitikikohe (Kauri Mountain)".

292 NOE Vol 1, p 264, lines 25-32 and p 265, lines 3-7 (cross-examination of Mr Mahanga by Ms Roff).

293 NOE Vol 1, p 286, lines 9-14 (cross-examination of Mr Paraone-Kawiti by Mrs Golightly).

294 NOE Vol 1, p 286, lines 17-20 (cross-examination of Mr Paraone-Kawiti by Mrs Golightly).

295 Parry Channel is marked on maritime charts and can be seen in Exhibit 1 **[[1001.00001]]**. Mrs Golightly referred Mr Paraone-Kawiti to Exhibit 1 and described Parry Channel as the area that "runs in between Paepae Atua, Bream Bay, … and in between the Taranga and Marotere Islands": NOE Vol 1, p 286, lines 27-30 (cross-examination of Mr Paraone-Kawiti by Mrs Golightly).

296 NOE Vol 1, p 286, lines 23-33 and p 287, lines 1-6 (cross-examination of Mr Paraone-Kawiti by Mrs Golightly).

297 NOE Vol 1, p 287, lines 7-9 (cross-examination of Mr Paraone-Kawiti by Mrs Golightly).

298 Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [136.1].

299 Technical Historical Report of Georgina Craw **[[201.00283]]** at pp 33-41 **[[201.00315]-[201.00323]]**; and NOE Vol 1, p 292, lines 16-34 and p 293, lines 1-17 (evidence-in-chief of Georgina Craw). See also Affidavit in reply of Maia Maria Honetana dated 29 July 2024 **[[701.00071]]** at [3]-[8] **[[701.00072]-[701.00073]]**.

Crown purchases in 1854 at Mangawhai and Waipū.[300] Ms Honetana accepted under cross-examination that tūpuna who were involved in Crown purchases may not necessarily reflect those who hold mana in a particular area.[301] Mr Stirling said that he had not encountered references to Ngāti Tū's involvement in land transactions with the Crown in respect of land in the stage 1(b) hearing area.[302] He saw their interests as stronger on the northern side of the harbour and said, "I haven't seen reference to them this far south".[303]

91. Witnesses were cross-examined on Ngāti Tū's retention of mana moana and territorial control after Ngāti Tū's land was divided up among Ngāpuhi conquerors in around the mid-1700s, and a subsequent period of inter-tribal battles in the 1820s to the mid-1830s.[304] While Georgina Craw said in her technical report that Ngāti Tū retained power and influence over parts of their Whangārei rohe, particularly the area at Parua Bay,[305] she acknowledged that the pre-1840 period was not a focus of her research.[306] Waimarie Kingi was asked whether Ngāti Tū and Ngāti Kahu retained territorial control of the entirety of the stage 1(b) hearing area following the battles that took place in the Whangārei area in the 1820s to 1830s. She replied, "No, no. No, they were – like, if you weren't part of the Ngāpuhi machine, they would've taken you out".[307] She said the only areas over which Ngāti Tū and Ngāti Kahu retained territorial control at that time were at Parua Bay and the eastern side of the inner harbour (which are within the stage 1(a) hearing area), and at Ocean Beach and

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300 Technical Historical Report of Georgina Craw **[[201.00283]]** at pp 41-45 **[[201.00323]-[201.00327]]**; and NOE Vol 1, p 293, lines 18-34 and p 294, lines 1-3 (evidence-in-chief of Georgina Craw). See also Affidavit in reply of Maia Maria Honetana dated 29 July 2024 **[[701.00071]]** at [9] **[[701.00073]]**.

301 NOE Vol 2, p 339, lines 3-12 (cross-examination of Ms Honetana by Mr Sharp).

302 NOE Vol 1, p 152, lines 5-20 (cross-examination of Mr Stirling by Mr Henderson).

303 NOE Vol 1, p 152, lines 25-30 (cross-examination of Mr Stirling by Mr Henderson).

304 See the discussion of these events in Technical Historical Report of Georgina Craw **[[201.00283]]** at pp 12-14 **[[201.00294]-[201.00296]]** and pp 16-18 **[[201.00398]-[201.00300]]**.

305 Technical Historical Report of Georgina Craw **[[201.00283]]** at p 14 **[[201.00296]]**.

306 NOE Vol 1, p 297, lines 10-21 (cross-examination of Ms Craw by Mrs Golightly). Nevertheless, she said "… but I would also then point to the fact that Busby is negotiating with them and so is the Crown in the 1840's and 50's. They're clearly still recognised by others as having authority".

307 NOE Vol 1, p 348, lines 25-35 (cross-examination of Ms Kingi by Mrs Golightly).

Mauitaha/Guano Islands (which are north of the stage 1(b) hearing area).[308]

92. Ms Honetana did not agree with Ms Kingi's evidence on this matter. She said, "There's things missing from that".[309] She emphasised that Ngāti Tū did not lose territorial control over its areas "because of [its] relationship with Ngāpuhi".[310] However, she appeared to accept that as at 1840, Ngāti Tū's interests/connection to the area were through their whakakapapa to Patuharakeke, rather than directly through Ngāti Tū's mana.[311]

93. Ms Honetana was asked whether Ngāti Tū had any kāinga in the area adjacent to the stage 1(b) hearing area as at 1840.[312] She did not respond directly but instead said, "you don't have to have a kāinga over there in order to use the moana".[313] When asked the question again, she replied, "It may not be my particular whānau, but Ngāti Tū is a very broad hapū and have kāinga all over the place. I can't tell you exactly where their kāinga is".[314]

94. Mark Hawkins was asked whether he was aware of any cultural sites of significance such as urupā or wāhi tapu within the stage 1(b) hearing area. He replied, "Not in the outer harbour, no. Inner harbour yes".[315] When asked whether there are any fishing grounds or rocks and reefs that are significant to Ngāti Tū in the area, he said, "No I can't speak to that".[316] Ms Honetana said there are no rocks or fishing grounds in the Bream Bay area that are culturally significant to just Ngāti Tū because "a collective of hapū … all use the area" to access resources.[317]

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308 NOE Vol 1, p 348, lines 25-35 and 349, lines 1-34 (cross-examination of Ms Kingi by Mrs Golightly).

309 NOE Vol 2, p 332, lines 15-17 (cross-examination of Ms Honetana by Mrs Golightly).

310 NOE Vol 2, p 332, lines 24-26 (cross-examination of Ms Honetana by Ms Golightly).

311 NOE Vol 2, p 339, lines 17-34 and p 340, lines 1-8 (cross-examination of Ms Honetana by Mr Sharp).

312 NOE Vol 2, p 334, lines 6-8 (cross-examination of Ms Honetana by Mrs Golightly).

313 NOE Vol 2, p 334, lines 16-19 (cross-examination of Ms Honetana by Mrs Golightly).

314 NOE Vol 2, p 334, line 34 and p 335, lines 1-2 (cross-examination of Ms Honetana by Mrs Golightly).

315 NOE Vol 1, p 303, lines 1-3 (cross-examination of Mr Hawkins by Ms Roff).

316 NOE Vol 1, p 302, lines 27-32 (cross-examination of Mr Hawkins by Ms Roff).

317 NOE Vol 2, p 343, lines 26-33 and p 344, lines 1-6 (cross-examination of Ms Honetana by Ms Roff). When asked to identify these other hapū she replied, "Te Parawhau, Patuharakeke, are the two other main hapū that use the area": NOE Vol 1, p 343, lines 32-33.

Ngāti Kahu

95. Evidence was provided in stage 1(a) that located Ngāti Kahu within the Whangārei Harbour as at 1840,[318] but the evidence that has been provided of Ngāti Kahu's specific presence in the stage 1(b) area at that time is more limited.

96. Historian Rowan Tautari summarised the involvement of Ngāti Kahu rangatira in pre-Treaty land transactions at Te Whara (Bream Head), Ruakākā, and Waipū.[319] She asserted that Ngāti Kahu's customary interests were overlooked in respect of the subsequent Crown purchase at Waipū,[320] as well as transactions undertaken in the early 1840s concerning Marotere.[321] However, she acknowledged that Ngāti Kahu rangatira were not among those recorded in 1842 as objecting to transactions involving Marotere.[322] Mr Stirling's view was that Ngāti Kahu (and Ngāti Tū) were "more associated with the northern side of the harbour",[323] and noted that he had not seen references to Hori Kingi (a Ngāti Kahu tupuna) identifying himself as Ngāti Kahu "south of the harbour".[324]

97. As noted above at [91], witnesses were cross-examined on Ngāti Kahū's retention of territorial control following the battles that took place in the Whangārei area in the 1820s to 1830s. Ms Kingi agreed that Ngāti Kahu would not have retained territorial control over the entirety of the stage 1(b) hearing area,[325] and said Ngāti Kahu only had territorial control at that time at Parua Bay and the eastern side of the inner harbour (within the stage 1(a) hearing area), and at Ocean Beach and Mauitaha/Guano Islands (north of the stage 1(b) hearing area).[326] She nevertheless maintained that

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318 Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [135].

319 "Ngāti Kahu o Torongare and Whāngārei Coast Stage 1(b) – Part 2" report prepared by Rowan Tautari **[[802.00300]]** at pp 4-9 **[[802.00303]-[802.00308]]**.

320 "Ngāti Kahu o Torongare and Whāngārei Coast Stage 1(b) – Part 2" report prepared by Rowan Tautari **[[802.00300]]** at p 9 **[[802.00308]]**.

321 "Ngāti Kahu o Torongare and Whāngārei Coast Stage 1(b) – Part 2" report prepared by Rowan Tautari **[[802.00300]]** at p 10 **[[802.00309]]**.

322 NOE Vol 1, p 442, lines 11-30 and p 443, lines 1-14 (cross-examination of Ms Kingi by Ms Inns).

323 NOE Vol 1, p 155, lines 10-11 (cross-examination of Mr Stirling by Mr Afeaki).

324 NOE Vol 1, p 155, lines 15-19 (cross-examination of Mr Stirling by Mr Afeaki). See also at lines 24-26: "just on the evidence that I've got it didn't seem that that's the basis of the rights he was claiming on the south side of the harbour".

325 NOE Vol 1, p 348, lines 25-35 (cross-examination of Ms Kingi by Mrs Golightly).

326 NOE Vol 1, p 348, lines 25-35 and 349, lines 1-34 (cross-examination of Ms Kingi by Mrs Golightly).

Ngāti Kahu still had mana in the lands around Whangārei after that battle period.[327]

98. Ms Tautari accepted that Ms Kingi's evidence concerning Ngāti Kahu's loss of territorial control was of some relevance to the conclusions she had drawn in her report about possible Ngāti Kahu interests in land at Ruakākā and Waipū.[328] When asked if it is "possible", "highly probable" or "not possible" that Ngāti Kahu's customary interests had already been extinguished by the time the Crown came to negotiating for land at Waipū, Ms Tautari replied, "I would say all three".[329]

99. Mr Solomon said he did not have any knowledge of whether Ngāti Kahu was able to exclude others from the takutai moana around Taranga and Marotere when Ngāti Kahu was not itself present on those islands.[330]

100. Ngāti Kahu's evidence referred to historical pā on Marotere[331] but did not appear to identify any historical kāinga or pā that were occupied in around 1840 within the stage 1(b) hearing area. Waimarie Kingi was asked whether Ngāti Kahu had any kāinga in the Ruakākā area in 1840. She replied, "Well you know their kāinga were never on the flat", as "you would have been taken out".[332] Instead, she said that Ngāti Kahu's kāinga were "up on pā, on hills".[333] When asked whether there are Ngāti Kahu marae and urupā in the stage 1(b) hearing area, Mr Solomon responded, "Rahuikiri, where I live" (which is in Parua Bay, on the northern side of the Whangārei Harbour).[334]

101. Limited evidence was provided of sites of particular cultural significance to Ngāti Kahu within the stage 1(b) hearing area:

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327 NOE Vol 1, p 358, lines 13-25 (re-examination of Ms Kingi).

328 NOE Vol 1, p 454, lines 19-30 and p 455, lines 20-27 (cross-examination of Ms Tautari by Mrs Golightly).

329 NOE Vol 1, p 456, lines 17-24 (cross-examination of Ms Tautari by Mrs Golightly).

330 NOE Vol 1, p 430, lines 8-11 (cross-examination of Mr Solomon by Mrs Golightly).

331 Waimarie Kingi said that "Whatupuke was a good meeting place for voyaging taua on their way south for war or on their way back north to Ngāpuhi. Our tūpuna had built defensible pā on Whatupuke and Whakahau islands showing that this territory was important to them": Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [89] **[[701.00148]]**.

332 NOE Vol 1, p 351, lines 1-2 (cross-examination of Ms Kingi by Mrs Golightly).

333 NOE Vol 1, p 351, lines 1-5 (cross-examination of Ms Kingi by Mrs Golightly).

334 NOE Vol 1, p 436, lines 1-5 (cross-examination of Mr Solomon by Ms Roff).

101.1 Riki Solomon said there are multiple places throughout Terenga Paraoa that are considered wāhi tapu.[335] However, when he was asked to identify wāhi tapu sites within the stage 1(b) hearing area, he said, "I don't have or don't know of that information".[336] When asked to identify culturally significant fishing grounds in the stage 1(b) area, he replied, "All of it [is] culturally significant to us".[337]

101.2 Ms Kingi said that Ngāti Kahu tūpuna had a "secret puna wai māori" on Whatupuke (one of the islands of Marotere), and that there were puna on other islands too.[338] She also gave evidence of Ngāti Kahu tūpuna carrying out big seasonal fishing harvests "[i]n the deep moana".[339] When asked to identify any culturally significant fishing grounds within the stage 1(b) area, she identified a deep-sea fishing ground in an area beyond the seaward extent of the stage 1(b) hearing area (in an area between Taranga and Marotere and Mokohinau Island).[340]

Patuharakeke

102. The stage 1(a) evidence primarily located Patuharakeke on the southern shores of the Whangārei Harbour (at Takahiwai) in the period leading up to 1840.[341] Poupouwhenua (Marsden Point) was also identified as an important tauranga waka for Patuharakeke historically.[342]

103. In stage 1(b), historian David Armstrong addressed the involvement of Patuharakeke tūpuna in the context of land dealings at Poupouwhenua, Ruakākā, and Waipū,[343] and subsequent Native Land Court claims brought

335 Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [32]-[33] **[[701.00105]]**.

336 NOE Vol 1, p 434, lines 6-14 (cross-examination of Mr Solomon by Ms Roff).

337 NOE Vol 1, p 434, lines 15-20 (cross-examination of Mr Solomon by Ms Roff).

338 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [63] **[[701.00142]-[701.00143]]**.

339 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [69] **[[701.00144]]**. Under cross-examination, Ms Kingi clarified these seasonal fishing harvests would be carried out by a collective of hapū ("all the hapū along the coast"): NOE Vol 1, p 354, lines 25-32 and p 355, lines 1-5 (cross-examination of Ms Kingi by Ms Roff).

340 NOE Vol 1, p 353, lines 12-28 (cross-examination of Ms Kingi by Ms Roff).

341 Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [133.1].

342 Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [133.5].

343 Historical research report of David Armstrong **[[350.23981]]** at [9] **[[350.23986]]**, [65]-[69] **[[350.24005]]-[350.24007]]**, [70]-[73] **[[350.24007]-[350.24008]]**, [76] **[[350.24010]-[350.24011]]** and [79]-[90] **[[350.24012]]-[350.24018]]**. See also Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [43]-[44] **[[804.01675]-[804.01676]]** and [67] **[[804.01682]]**. In respect of the forfeiture of land at Poupouwhenua, Mr Armstrong accepted that it would have been a loss to every hapū with an

by Te Pirihi.[344] He was asked whether he had come across any information that indicated Patuharakeke exercised authority or customary control over the southern part of the hearing area (south of Waipū to Langs Beach). He said he had not come across anything in the documentary record.[345]

104. During the hearing, some witnesses were cross-examined on whether Patuharakeke had emerged as an autonomous hapū prior to 1840 – a point which certain witnesses contested.[346] However, other evidence from stage 1(a) indicated Patuharakeke had emerged as a hapū prior to 1840,[347] and that was also the view of historians David Armstrong and Bruce Stirling in stage 1(b).[348]

105. In terms of the location of Patuharakeke's historical pā and kāinga, the evidence identified pā and kāinga at Waipū,[349] Ruakākā,[350] and Waionehu Valley.[351] Mr Maki-Midwood was asked whether these pā were occupied

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interest in that area: NOE Vol 1, p 187, lines 21-26 (cross-examination of Mr Armstrong by Mr Enright).

344 Historical research report of David Armstrong **[[350.23981]]** at [104]-[106] **[[350.24029]-[350.24030]]**. See also Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [35] **[[804.01674]]** and [54] **[[804.01680]-[804.01681]]**.

345 NOE Vol 1, p 192, lines 5-11. (cross-examination of Mr Armstrong by Ms Roff).

346 For example, Dr Mere Kepa said Patuharakeke did not emerge as an autonomous hapū until the Patuharakeke Trust Board was formed in 1987 and before that, they were "Patuharakeke of Te Parawhau": NOE Vol 1, p 61, lines 7-19 (cross-examination of Dr Kepa by Mrs Golightly). Tamihana Paki was asked whether he thought Patuharakeke had emerged as a separate or autonomous hapū prior to 1840. He replied, "I think it did not", but noted, "there are lots of many other hapū who have come into existence following the Treaty of Waitangi who have become important to have a unique identifier": NOE Vol 1, p 20, lines 5-13 (cross-examination of Mr Paki by Mrs Golightly).

347 See the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [133].

348 NOE Vol 1, p 181, lines 15-31, p 182, lines 1-34 and p 183, lines 1-3 (evidence-in-chief of Mr Armstrong). Mr Armstrong described instances where Patuharakeke had been named in different contexts between 1854 and 1900. He concluded, "in short, we know that people who later identified as Patuharakeke were living on the southern shores of Whangārei Harbour in around 1840 [a]s identified by Colenso and that their interests extended into Ruakākā. Especially north of the Ruakākā River and the Waipū Block": p 182, lines 30-33. See also NOE Vol 1, p 172, lines 8-34 and p 173, lines 1-34 and p 174, lines 1-3 (cross-examination of Mr Stirling by Mr Golightly). Bruce Stirling was also of the view that Patuharakeke had already emerged as an autonomous hapū by 1840 (with reference to Wiki Te Pirihi's claim in 1868 to the Te Mata block). He also said, "[it is] a big call to say they [Patuharakeke] [were] invented in 1980": NOE p 174, lines 6-7 (cross-examination of Mr Stirling by Mrs Golightly).

349 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [54]-[56] **[[804.01680]-[804.01681]]**, [72] **[[804.01683]]** and [130] **[[804.01705]]**. Mr Maki-Midwood located Te Paritu pā (the major pā in the Waipū area) at Waipū township, where number 10 is marked on the map of wāhi tūpuna included in the Traditional Research Report (at **[[804.01738]]**): NOE Vol 2, p 203, lines 17-19 (evidence-in-chief of Mr Maki-Midwood).

350 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [70], [73] **[[804.01683]]** and [116] **[[804.01701]]**. Mr Maki-Midwood said there was a large pā site, with "little sentinel pā among them" on the bank of the Ruakākā estuary, where the numbers 4 to 7 are marked on the map of wāhi tūpuna included in the Traditional Research Report (at **[[804.01738]]**): NOE Vol 2, p 203, lines 30-34 and p 204, line 1 (evidence-in-chief of Mr Maki-Midwood).

351 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [46]-[53] **[[804.01676]-[804.01680]]**. Mr Maki-Midwood located Waionehu Valley "about a kilometre to the west of Wairahi": NOE Vol 2, p 202, lines 8-13 (evidence-in-chief of Mr Maki-Midwood). He said there are several pā sites in Waionehu Valley, however, the major pā site is the one that "overlooks the Waionehu Valley, which is on the Cullen property out the back of Waipū:" NOE Vol 2, p 202, lines 17-20 (evidence-in-chief of Mr Maki-Midwood). Mr Maki-Midwood said that the north side of the Waipū river mouth was the site of a flat pā that was overrun by Ngāti Whātua, but the pā is no longer there (perhaps due to alterations to the Waipū river mouth at some stage): NOE Vol 2, p 204, lines 15-19 (evidence-in-chief of Mr Maki-Midwood).

by Patuharakeke during the period of battles between 1823 and 1835, to which he responded, "Not that pā, not [Te Paritu pā in Waipū]. The other ones, I'm not too sure about … I would suggest a number of them would have been".[352] When asked where Patuharakeke were specifically located as at 1840, he replied, "for the most part, in either Takahiwai, Ruakākā or Mangapai".[353]

106. Mr Maki-Midwood was asked whether Patuharakeke exercised sufficient territorial control over Bream Bay in the battle period prior to 1840 to the extent they could exclude other Māori groups from the area, if they wished to.[354] Mr Maki-Midwood replied, "In that period prior to 1840, in that window, no, we didn't. But we did have control over particular affairs … pertaining to our survival as a tribe".[355] In respect of Langs Beach specifically, it was put to Mr Maki-Midwood that no evidence has been provided of Patuharakeke having the necessary control or authority over that area as at 1840.[356] He replied, "[our] whole understanding of take tūpuna goes back to our whakapapa, our whakapapa … triangulates out to the islands and back up through to Whangārei Harbour".[357]

107. As for the presence of culturally significant sites in the hearing area:

107.1 Wāhi tūpuna were identified in Patuharakeke witnesses' evidence.[358] Mr Maki-Midwood also said there are burial sites

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352 NOE Vol 2, p 250, lines 30-34 and p 251, lines 1-3 (cross-examination of Mr Maki-Midwood by Mrs Golightly).

353 NOE Vol 2, p 269, lines 14-16 (re-examination of Mr Maki-Midwood).

354 NOE Vol 2, p 251, lines 30-34 and p 252, lines 1-30 (cross-examination of Mr Maki-Midwood by Mrs Golightly).

355 NOE Vol 2, p 253, lines 1-3 (cross-examination of Mr Maki-Midwood by Mrs Golightly). He explained further, "you're asking me, did we have the authority, did we have the power to resist other people in that period coming in and doing battle with us. They didn't come to seek to effect a conquest in terms of taking the land, so how does that matter? They came to battle us on account of old scores and settle scores. Then they went away, as is customary with Māori tūpuna. So yes, … we drew on a certain of our resources, the remnants, what we term the mōrehu, and we survived, and we came back. But were we able to repel all comers, obviously not": NOE Vol 2, p 254, lines 7-14.

356 NOE Vol 2, p 265, lines 2-5 (cross-examination of Mr Maki-Midwood by Mr Mathias).

357 NOE Vol 2, p 265, lines 15-17 (cross-examination of Mr Maki-Midwood by Mr Mathias).

358 See the table of key Patuharakeke wāhi tupuna in relation to the stage 1(b) hearing area included in the Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at pp 18-22 **[[804.01684]-[804.01688]]**. See also Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(c)(iv)] **[[202.00936]]**, where Ms Chetham identified Waipū river mouth as a wāhi tapu. When asked whether there are coastal wāhi tapu in the Bream Bay area, Ms Chetham said these have been mapped in Patuharakeke's evidence and "[t]here are ones probably down the Waipū end but I'm not clear where they are. That information is sensitive": NOE Vol 2, p 268, lines 17-25 (cross-examination of Ms Chetham by Ms Roff).

near Te Paepae a Tū (Bream Tail) and confirmed these are within the stage 1(b) hearing area.[359]

107.2 Ms Chetham was asked whether there are any sites of significance to Patuharakeke at Langs Beach. She said these include important mahinga mātaitai and have been mapped in Patuharakeke's evidence,[360] but "[t]hat is not to say that there are no other areas there that haven't necessarily been identified".[361] She noted that Patuharakeke are working hard to revitalise their connection with Pariwaka/Waipū Cove and Wairahi/Langs Beach.[362]

107.3 Patuharakeke witnesses also said that tauranga waka were historically located at the Ruakākā awa, Waipū awa, Waihoihoi awa (which runs through Waipū) as well as other locations at Waipū Cove, Wakatarariki and Wairahi/Langs Beach.[363] They also identified several traditional tauranga waka sites on Taranga and Marotere (at Dragon Mouth Cove and Wahine Bay on Taranga, and the West Bay landing beach on Māuiamua).[364]

Ngātiwai

108. The evidence provided by Ngātiwai witnesses did not appear to specifically identify Ngātiwai hapū who had sufficient control over Taranga and Marotere and its surrounds in 1840 to exclude others if they so wished. To the contrary, according to the witnesses' own evidence, "[t]here are no kōrero of specific hapū or rangatira being associated with the Marotere and Taranga".[365] The joint kaumātua panel also said that it did not seem likely that people occupied the islands year-round, but instead moved through the wider rohe throughout the year and harvested from the

359 NOE Vol 2, p 268, lines 26-30 (cross-examination of Mr Maki-Midwood by Ms Roff).

360 NOE Vol 2, p 259, lines 14-19 (cross-examination of Ms Chetham by Mr Mathias).

361 NOE Vol 2, p 259, lines 32-33 (cross-examination of Ms Chetham by Mr Mathias).

362 NOE Vol 2, p 259, lines 32-34 and p 260, lines 1-5 (cross-examination of Ms Chetham by Mr Mathias).

363 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [127] **[[804.01704]]** and [128] **[[804.01705]]**.

364 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [144] **[[804.01710]]**.

365 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [12] **[[701.00033]]**.

islands on a seasonal basis.[366] Witnesses referred to an "annual excursion" (haerenga) which would involve "island hop[ping]" from one island to the next,[367] with the destination being Whangaruru.[368] Mr Hetaraka said that this practice was taking place in 1840.[369]

109. When asked whether Ngātiwai were able to control that area of the takutai moana (around Taranga and Marotere) in the preceding battle period (in the 1820s and 1830s), Mr Hetaraka replied, "No but they [the invaders] weren't there for long".[370] Historian Tony Walzl was asked whether he had come across any documentary records to indicate whether Ngātiwai had territorial control over the waters surrounding the islands at that time.[371] He replied, "You just don't tend to find that material that much in documentary evidence".[372]

110. As for the historical position well before 1840, Ngātiwai witnesses referred to archaeological evidence uncovered in relation to the islands,[373] and said the islands would have been permanently or semi-permanently occupied "in the days of Ngāti Manaia and the earliest days of Ngātiwai".[374] Historian Tony Walzl quoted a source (an archaeologist) who said it was likely the islands were occupied over at least a 350-year period between 1450 and 1800.[375] He was cross-examined on the fact that his report does not

366 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [21] **[[701.00035]]**.

367 NOE Vol 2, p 77, lines 12-15 (cross-examination of Mr Hetaraka by Mrs Golightly).

368 NOE Vol 2, p 77, lines 17-18 (cross-examination of Mr Hetaraka by Mrs Golightly). Mr Hetaraka said, "And on the way they'd plant, they'd prepare gardens. And harvest, for many. On the way they'd prepare and on the way they harvest. Harvest what they've done, and the harvest could take place on the islands or in at Takahiwai or at Whananaki": lines 26-29. Under cross-examination historian Tony Walzl said that he had not come across anything in the historical record about annual voyages by Ngātiwai in respect of Taranga and Marotere: NOE Vol 2, p 160, lines 20-26 (cross-examination of Mr Walzl by Mrs Golightly). See also Affidavit in reply of Hepi Rongopai Haika dated 15 July 2024 **[[701.00211]]** at [5] **[[701.00212]]**. Mr Haika was unavailable for cross-examination.

369 NOE Vol 2, p 77, lines 30-32 (cross-examination of Mr Hetaraka by Mrs Golightly).

370 NOE Vol 2, p 78, lines 29-31 (cross-examination of Mr Hetaraka by Mrs Golightly).

371 NOE Vol 2, p 161, lines 5-8 (cross-examination of Mr Walzl by Mrs Golightly).

372 NOE Vol 2, p 161, lines 9-19 (cross-examination of Mr Walzl by Mrs Golightly).

373 'Customary Associations of Ngātiwai with the Marotere and Taranga Islands' report by Tony Walzl **[[804.01741]]** at pp 26-33 **[[804.01766]]-[804.01773]]** (archaeological evidence recorded on Taranga) and pp 34-50 **[[804.01774]-[804.01790]]** (archaeological evidence recorded on Marotere). See also Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [12] **[[701.00033]]** and [22] **[[701.00035]]**; and Affidavit in reply of Reuben Dayhal Williams dated 11 July 2024 **[[701.00198]]** at [9] **[[701.00200]]**.

374 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [12] **[[701.00033]]**. The panel suggested that the occupants would have been "drawn from the mainland communities, but charged with maintaining ahi kā on the islands": at [12] **[[701.00033]]**.

375 'Customary Associations of Ngātiwai with the Marotere and Taranga Islands' report by Tony Walzl **[[804.01741]]** at

address the period immediately preceding 1840.[376] In the course of answering those questions, he acknowledged that the "archaeological evidence itself does not ascribe who the people were" who occupied the islands.[377]

111. Mr Walzl's evidence also examined Ngātiwai's interests and associations (in particular, through the actions of a Ngātiwai rangatira, Tawatawa) in the context of post-1840 land dealings in respect of Taranga and Marotere (when a settler named Polack proposed to purchase Marotere).[378] He maintained under cross-examination that the evidence suggested that Ngātiwai had exclusive, or at least predominant interests, in the Marotere islands at that time.[379]

112. The joint kaumatua panel said there are wāhi tapu (including burial caves and tōrere) on Taranga and Marotere that are known to kaumātua and documented.[380] Aperahama Kerepeti-Edwards confirmed that some of these wāhi tapu sites are located below the high water mark and that some members of Ngātiwai continue to look after those sacred places.[381] Ngātiwai witnesses also gave evidence of a wai whakaata (divining pool) on Marotere, which was used by Ngātiwai warriors before they went to battle.[382]

Ngāpuhi-nui-tonu

113. The Attorney-General considers there is a lack of evidence to support a distinct "Ngāpuhi" or "Ngāpuhi-nui-tonu" presence as at 1840 in respect of the hearing area. The evidence provided appeared to concern the position of specific Ngāpuhi hapū only. For example:

[1.35] **[[804.01773]]**.

376 NOE Vol 2, p 140, lines 32-34, p 141, lines 1-34, and p 142, lines 1-26 (cross-examination of Mr Walzl by Mr Enright).

377 NOE Vol 2, p 140, lines 32-34 and p 141, lines 1-11 (cross-examination of Mr Walzl by Mr Enright).

378 See 'Customary Associations of Ngātiwai with the Marotere and Taranga Islands' report by Tony Walzl **[[804.01741]]**.

379 NOE Vol 2, p 137, lines 1-6 (cross-examination of Mr Walzl by Mr Enright).

380 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [36]-[39] **[[701.00037]-[701.00038]]**. See also Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [32] **[[701.00220]]**, who said that Hori Parata told him there are bones of tūpuna atop Taranga, however, he does not know whose bones they belong to.

381 NOE Vol 2, p 16, lines 12-20 (evidence-in-chief of Aperahama Kerepeti-Edwards). See also NOE Vol 2, p 57, lines 12-23 (cross-examination of Mr Kerepeti-Edwards by Ms Roff).

382 Affidavit in reply of Morore Kai Piripi dated 15 July 2024 **[[701.00205]]** at [16]-[17] **[[701.00209]]**. See also NOE Vol 2, p 10, lines 14-34 and p 11, lines 1-3 (evidence-in-chief of Aperahama Kerepeti-Edwards).

113.1 Aorangi Kawiti said that in 1840, Te Waiariki, Ngāti Kororā and Ngāti Taka lived along the outer Whangārei coastline.[383] (Under cross-examination, she was unable to specify whereabouts these hapū lived within the Bream Bay area. Nor was she able to identify particular historical kāinga in the area.[384])

113.2 Arthur Mahanga said that, since well before 1840, Ngāti Korora has gathered kai from the Whangārei Coast and did so without needing permission from anyone outside their tribe, as they were the kaitiaki with whakapapa connections and held mana to do so.[385]

114. No particular sites within the hearing area of cultural significance to Ngāpuhi-nui-tonu appear to have been described in the evidence. Mr Mahanga said there are many such sites within the hearing area but did not wish to disclose where they are located.[386]

Continuity of use and occupation from 1840 to the present day

Te Parawhau

115. In terms of whether Te Parawhau own land abutting the stage 1(b) area,[387] Mr Stirling noted that no Māori land remains in the hearing area[388] and Te Parawhau witnesses did not lead any evidence of their ownership of land within the area.

116. As for the exercise of non-commercial customary fishing rights in the hearing area,[389] a number of Te Parawhau witnesses gave evidence about customary fishing activity (describing species caught, locations for fishing and gathering kaimoana, and kaimoana harvesting methods) within the Bream Bay area and around Taranga and Marotere.[390] Bobby Tuhiwai

383 Affidavit of Aorangi Kawiti dated 6 September 2024 **[[901.00159]]** at [19] **[[901.00164]]**.

384 NOE Vol 2, p 410, lines 5-32 and p 411, line 1 (cross-examination of Ms Kawiti by Ms Roff). Ms Kawiti clarified that her knowledge of the Bream Bay area is confined to events concerning her and her parents' lifetime, "[n]ot so much back in 1840": p 410, lines 15-16.

385 Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00322]]** at [31] **[[701.00329]]**.

386 NOE Vol 2, p 376, lines 20-34 (cross-examination by Mr Mahanga by Ms Roff).

387 Section 59(1)(a)(i) of the Act.

388 Report by Bruce Stirling – Bream Bay **[[801.00270]]** at [42] **[[801.00281]]**.

389 Section 59(1)(a)(ii) of the Act.

390 Affidavit of Bobby James Tuhiwai dated 1 February 2024 **[[701.00384]]** at [5] **[[701.00349]]**, [10] **[[701.00350]]** [16]-[21] **[[701.00351]]**. Bobby Tuhiwai said Te Parawhau's gathering authority is derived from longstanding practices of their tūpuna who "would collect seabirds and abundant kaimoana via their waka in areas across the 'Stage 1B' coastal

explained that river mouths (including the Waipū awa and Ruakākā awa) are often used, both for fishing and launching vessels.[391] Evidence was also given about the use of landmarks to assist with navigation when fishing and locating fishing grounds.[392]

117. Te Parawhau members use the coastline for recreational activities such as swimming, diving and surfing,[393] and for the customary collection of resources such as seaweed and driftwood.[394] However, several witnesses described how Te Parawhau's recreational and customary use of Langs Beach has decreased over time, particularly from around the 1950s onwards. For example, Pari Walker said that he and his whānau used to camp at Langs Beach every Christmas, but this practice ceased in around the 1960s.[395] Tamihana Paki described gathering kina from "a coastal spot overlooking the sea on the north side of the white sands of Langs Beach", but said his visits to that kina spot have ceased.[396]

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and marine area" (at [16] **[[701.00351]]**), and that he has personally "fished and dived for more than five decades in the moana and coastal area from Bream Head to Bream Tail and right down to Mangawhai" (at [5] **[[701.00349]]**). Attached to Mr Tuhiwai's affidavit is a map of the various fishing grounds and notable coastal navigation landmarks used by Te Parawhau: **[[808.04025]]**. See also Affidavit of Pari Walker dated 1 February 2024 **[[701.00354]]** at [8] and [11] **[[701.00356]]**; Affidavit of Tamihana Paki dated 1 February 2024 **[[701.00237]]** at [7]-[8] **[[701.00241]-[701.00242]]**; Affidavit of Margaret Kay, August 2024 **[[901.00037]]** at [10] **[[901.00039]]**, [34], [37] **[[901.00042]]**, [40], [42] **[[901.00043]]**, [47], [51]-[52], [55] and [60] **[[901.00044]-[901.00045]]**; Affidavit of Opania George dated 2 February 2024 **[[701.00265]]** at [3]-[4] **[[701.00266]]**, [13] **[[701.00267]]** and [17]-[20] **[[701.00268]]**; Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [42] **[[701.00264]]**. See also NOE Vol 1, p 49, lines 25-33 and p 50, lines 1-6 (re-examination of Margaret Kay).

391 Affidavit of Bobby James Tuhiwai dated 1 February 2024 **[[701.00348]]** at [20] **[[701.00351]]**.

392 See Affidavit of Opania George dated 2 February 2024 **[[701.00265]]** at [11] **[[701.00267]]** where Mr George said that – before the advent of GPS – landmarks such as Old Woman, the Refinery Chimney, and the Power Station Chimney at Marsden Point would be used to navigate home after fishing out at Marotere. See also Affidavit of Margaret Kay, August 2024 **[[901.00040]]** at [29]-[31] **[[901.00041]]**; Affidavit of Bobby James Tuhiwai dated 1 February 2024 **[[701.00348]]** at [19] **[[701.00351]]**.

393 Affidavit of Margaret Kay, August 2024 **[[901.00040]]** at [5] **[[901.00038]]**, [8]-[9] and [12] **[[901.00039]]**; Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [37] **[[701.00263]]**.

394 Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [36] **[[701.00263]]** (describing the collection of driftwood from Marsden Point prior to 1965). She said that this practice was moved to Johnson's Point (at the mouth of the Waipū River) after the construction of the oil refinery at Marsden Point: NOE Vol 1, p 27, lines 26-32 (cross-examination of Ms Norris by Mr Simmons). Pari Walker said that Johnson's Point is two kilometres north of Waipū Cove: NOE Vol 1, p 95, lines 1-2 (evidence-in-chief of Mr Walker). See also map 1(a5) in Richard Jennings' mapbook **[[811.05448]]**.

395 See Affidavit of Pari Walker dated 1 February 2024 **[[701.00354]]** at [8] **[[701.00356]]**, where he said they would camp at Langs Beach every Christmas, although "[w]e are now blocked by Statutory Authorities changing the layout restricting access". Mr Walker explained in evidence-in-chief that this practice ceased after the Council created a lagoon which blocked access to the camping ground: NOE Vol 1, p 96, lines 5-14. Under cross-examination, Mr Wallker clarified that this activity probably took place until "around about the 1960's": NOE Vol 1, p 101, lines 17-23 (cross-examination of Mr Walker by Mr Mathias).

396 Affidavit of Tamihana Paki dated 1 February 2024 **[[701.00237]]** at [7]-[8] **[[701.00241]-[701.00242]]**. In his evidence-in-chief, Mr Paki said, "we did visit that place I remember till I was about 16 years of age" and explained visitations slowed down due to "civilisation and the building of holiday batches etcetera": NOE Vol 1, p 3, lines 17-20. He said that he instead started to collect kina from the south side of Langs Beach and still goes there to visit those sites on occasion: NOE Vol 1, p 3, lines 20-23.

118. As for Te Parawhau members' use and occupation of the area around Taranga and Marotere, while witnesses said they fish around the islands, Mr Tuhiwai said that members of Te Parawhau were told never to go onto the islands because there had been a lot of fights there in the past and because it is used as a bird sanctuary.[397]

Te Waiariki, Ngāti Kororā and Ngāti Takapari

119. The land abutting Te Waiariki's application area (to the extent it falls within the stage 1(b) hearing area) is reserve land.[398]

120. Limited evidence was provided of customary fishing[399] within Te Waiariki's application area. Mitai Paraone-Kawiti said that Te Waiariki has fishing grounds at the entrance to the harbour and the "sea lands leading to and from it", from which he has harvested kai.[400]

121. In his evidence-in-chief, he described his experience of walking along the coastline of Te Whara. He said, "There's a track that takes you, if you're … divers like us, we walk along the edge of the tops of the rocks to get to the ends of those. Then it becomes big pools and going around to the front where we call it Te Kuia. The old woman, the old lady. That's a fishing area that we sometimes go to".[401]

122. Mr Paraone-Kawiti also said that the entirety of Te Whara is a wāhi tapu and was "all part of a pakanga from the times of the battle of Oparakau".[402] He also described Taranga and Marotere (which fall outside Te Waiariki's application area) as wāhi tapu sites since before 1840.[403] He said that

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397 Affidavit of Bobby James Tuhiwai dated 7 February 2024 **[[701.00348]]** at [15] **[[701.00351]]**.

398 See map 4(a1) in the mapbook prepared by Richard Jennings **[[811.05516]]**.

399 Section 59(1)(a)(ii) of the Act.

400 Affidavit of Mitai Paraone-Kawiti (undated) **[[701.00063]]** at [5] **[[701.00064]]**. Mr Paraone-Kawiti explained that he had been shown these grounds by his father (who had been taken there by his parents). Mr Paraone-Kawiti also said that members of Te Waiariki fish in other areas, such as north of Te Whara (outside the stage 1(b) hearing area) (at [1]-[3] **[[701.00067]-[701.00068]]**) and around Taranga and Marotere (outside Te Waiariki's application area) (NOE Vol 1, p 283, lines 19-34 and p 284, lines 1-32 (cross-examination of Mr Paraone-Kawiti by Mrs Golightly)). He also said, in relation to Bobby Tuhiwai's map of fishing grounds in the stage 1(b) area (**[[808.04025]]**), "Te Waiariki use these places too for getting kai, as we have done so for centuries": Affidavit in reply of Mitai Paraone-Kawiti dated 6 August 2024 **[[901.00001]]** at [19]-[21] **[[901.00006]]**.

401 NOE Vol 1, p 266, lines 18-24 (evidence-in-chief of Mr Paraone-Kawiti).

402 NOE Vol 1, p 266, lines 25-32 (evidence-in-chief of Mr Paraone-Kawiti). Mr Paraone-Kawiti was asked whether Te Waiariki was involved in the battles of Oparakau to which he responded, "I believe when they came to us, probably we didn't participate in such things. Our people are more of a tohunga tribe…": NOE Vol 1, p 266, line 33 and p 267, lines 1-9 (evidence-in-chief of Mr Paraone-Kawiti).

403 NOE Vol 1, p 282, lines 17-32 (cross-examination of Mr Paraone-Kawiti by Mrs Golightly).

Te Waiariki have adhered to this status ever since, by not setting foot on the islands,[404] although this does not prevent members of the hapū from fishing around the islands.[405]

123. Some evidence was provided of Te Waiariki's connections with an area to the north of Te Whara (outside the stage 1(b) area), namely Te Oneroa a Tane (Ocean Beach).[406]

Ngāti Tū

124. In terms of whether Ngāti Tū own or reside on land abutting the stage 1(b) area, Maia Honetana said she is not personally aware of any Ngāti Tū whānau who live in the Bream Bay area.[407] However, she said that her grandparents owned land along Ruakākā "for a long time".[408]

125. Some evidence was provided of members of Ngāti Tū fishing within the Bream Bay area,[409] carrying out recreational activities such as surfing and swimming,[410] and collecting resources such as shells and driftwood,[411] and

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404 NOE Vol 1, p 282, lines 24-32 and p 283, lines 1-2 (cross-examination of Mr Paraone-Kawiti by Mrs Golightly). He accepted that any evidence of cultivation on the islands would relate to "pre-historical times": NOE Vol 1, p 283, lines 3-18.

405 NOE Vol 1, p 283, lines 19-34 and p 284, lines 1-32 (cross-examination of Mr Paraone-Kawiti by Mrs Golightly). A newspaper article dated 5 April 1966 was provided by Pereri Mahanga titled "Maori Claims Ownership of Hen, Chickens Is", which concerned a hearing before the Maori Land Court. The article records, "Mr Ngaranoa Mahanga, of Taiharuru, near Whangārei is claiming the title as a direct descendant of the original owners of the islands, the Greater Ngāpuhi Tribe": Affidavit in reply of Pereri Mahanga dated 6 August 2024 **[[701.00066]]** at [13]-[14] **[[701.00069]-[701.00070]]**. The article is attached as "Exhibit PM 566 2/1" **[[801.00299]]**. The corresponding Māori Land Court minute (dated 7 June 1966) concerning this claim was produced as Exhibit 6 **[[1001.00098]]**. However, Mr Mahanga accepted in cross-examination that the article's title was incorrect as the Maori Land Court minute indicated the claim concerned the Bream Islands (located outside of the stage 1(b) hearing area), not Taranga and Marotere. See NOE Vol 1, p 256, lines 6-33 and p 257, lines 1-18 (cross-examination of Mr Mahanga by Ms Inns). See also the evidence of Tony Walzl in NOE Vol 2, pp 123-125 (cross-examination of Mr Walzl by Mr Kahukiwa).

406 Affidavit in reply of Mitai Paraone-Kawiti dated 6 August 2024 **[[901.00001]]** at [3] **[[901.00002]]**. Mr Paraone-Kawiti provided a copy of a survey office plan entitled "Plan of the Outside Heads Whangārei" which shows various Crown takings. Mr Paraone-Kawiti noted, "It is hard to tell what year this was made. It seems to be well after the Mair plan [referring to a hand drawn plan of Mair's claim which Mr Paraone-Kawiti addressed at [2] of his affidavit] and it could be of the 1930's, or 40's": at [3] **[[901.00002]]**. He observed at [3], "I can also [see] the [William] Ryland name on land near to Te Oneroa a Tane (known by Pakeha as Ocean Beach). The Rylands married into Te Waiariki". The plan is on p 10 **[[901.00010]]**. The area Mr Paraone-Kawiti located on the plan as 'Te Oneroa a Tane' is located north of the stage 1(b) hearing area.

407 NOE Vol 1, p 347, lines 30-34 (re-examination of Ms Honetana).

408 NOE Vol 1, p 347, lines 33-34 (re-examination of Ms Honetana).

409 Affidavit in reply of Mark Hawkins, undated **[[701.00076]]** at [4]-[6] **[[701.00077]]**. Mr Hawkins said kaimoana is gathered on the shores from Ruakākā to Bream Tail and that offshore fishing occurs from Smugglers Cove out to Bream Head, to Taranga and Marotere, and off Bream Tail. He said these fishing and kaimoana gathering practices were carried out by his grandfather, as well as "[h]is children, my uncles and aunties … me and my cousins and our children": at [7]-[8] **[[701.00077]]**.

410 Mark Hawkins said he has surfed and has swum from as far south as Mangawhai: Affidavit in reply of Mark Hawkins, undated **[[701.00076]]** at [6] **[[701.00077]]**.

411 Maia Honetana spoke of collecting shells and driftwood from Langs Beach in the 1970s while on summer holidays: Affidavit in reply of Maia Maria Honetana dated 29 July 2024 **[[701.00071]]** at [14]-[15] **[[701.00074]]**.

hāngi stones.[412] Ms Honetana also said she performs purea (cleansing) at Langs Beach whenever she visits Whangārei.[413]

Ngāti Kahu

126. Ngāti Kahu witnesses gave evidence about non-commercial customary fishing activity (describing species of fish and shellfish caught, and locations for fishing and gathering kaimoana) within the Bream Bay area and around Taranga and Marotere.[414]

127. In terms of Ngāti Kahu's use and occupation of the Bream Bay coastal area, Mr Kingi said that Ngāti Kahu had tauranga waka along the entire coastline.[415] However, Ms Kingi said these tauranga waka are no longer in use today (whether for cultural purposes or for launching boats).[416] Mr Solomon identified various locations from which he would launch to go fishing with his father,[417] but none of them appear to be located within the stage 1(b) hearing area.

128. There was limited evidence of Taranga and Marotere being used and occupied by members of Ngāti Kahu, particularly in more contemporary times:

128.1 Waimarie Kingi said the main tauranga waka that was used by Ngāti Kahu on the islands was Kaione on Whatupuke (one of the islands of Marotere), as the other islands did not have good

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412 Wiremu Puke said during the stage 1(a) hearing that Ngāti Tū continue to gather (and share) hāngi stones found in Smugglers Bay for the preparation of umu hangi (earth ovens): Brief of evidence of Wiremu Puke dated 21 August 2023 **[[202.00564]]** at [174] **[[202.00611]]**.

413 NOE Vol 1, p 343, lines 6-12 (cross-examination of Ms Honetana by Ms Roff). When asked how often she visits the Bream Bay area and goes into the water, Ms Honetana said "As often as I can" and "this year alone, probably about 20 times": NOE Vol 2, p 343, lines 13-21. See also Affidavit in reply of Maia Maria Honetana dated 29 July 2024 **[[701.00071]]** at [15] **[[701.00074]]**.

414 In relation to fishing locations, see Brief of evidence of Riki Solomon dated 6 February 2024 **[[701.00099]]** at [23] **[[701.00103]-[701.00104]]**, [42]-[44] **[[701.00107]-[701.00108]]**, [53] **[[701.00110]]** and [56] **[[701.00111]]**; and Brief of evidence of Te Whareumu Hori Kingi dated 2 February 2024 **[[701.00079]]** at [24]-[26] **[[701.00084]-[701.00085]]**, [32] **[[701.00088]]**, [35] **[[701.00088]]** and [38] **[[701.00089]]**. In relation to species, see Brief of evidence of Te Whareumu Hori Kingi dated 2 February 2024 **[[701.00079]]** at [35]-[37] **[[701.00088]]**. See also Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [69] **[[701.00144]]**; and NOE Vol 1, p 412, lines 25-30 (cross-examination of Mr Solomon by Ms Loader).

415 Brief of evidence of Te Whareumu Hori Kingi dated 2 February 2024 **[[701.00079]]** at [21] **[[701.00084]]**.

416 NOE Vol 1, p 355, lines 13-31 (cross-examination of Ms Kingi by Ms Roff).

417 NOE Vol 1, p 433, lines 24-33 and p 434, lines 1-5 (cross-examination of Mr Solomon by Ms Roff): "Taurikura, Parua Bay, the jetty across from Parua Bay. McLeods Bay, Urquharts, all the way up and down various places at the harbour. On the other side of the harbour, at Urquharts was a great place to launch, because you got very quick access out through the channel and out into those more open waters. Moving around to the left, down to Kauri Mountain, Ocean Beach, further to the right through up into Bream Bay".

landing areas.[418] She said Kaione would also be used by Ngāti Kahu tūpuna as a seasonal nohoanga,[419] and that tūpuna would gather resources from the islands such as flax and ōi (mutton bird).[420] However, as noted above, she clarified that these tauranga waka are no longer in use today (whether for cultural purposes or for launching boats).[421]

128.2 Ms Kingi initially said that some of her whānau still go to Taranga and Marotere to harvest ōi.[422] However, she clarified that she was referring to her father's time,[423] and that it was a seasonal practice ("they always left in the month of June") that only occurred on Whatupuke.[424] She also said that Ngāti Kahu now buy their ōi from Ngāi Tahu in the South Island rather than harvesting them directly from the islands.[425]

128.3 Ms Kingi said that her father, Haane Kingi, described Taranga as a 'Mecca' for Ngāti Kahu to meet and trade goods with other hapū,[426] but did not describe any contemporary use or occupation of the CMCA around Taranga by Ngāti Kahu (apart from fishing trips).[427]

128.4 Mr Solomon said he did not have detailed knowledge of whether Ngāti Kahu used or occupied the islands from 1840.[428]

128.5 Ms Kingi confirmed that Ngāti Kahu does not have any engagement with the Department of Conservation in relation to Taranga and Marotere.[429]

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418 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [63] **[[701.00142]-[701.00143]]**.

419 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [64] **[[701.00143]]**.

420 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [63]-[64] **[[701.00142]-[701.00143]]**.

421 NOE Vol 1, p 355, lines 13-31 (cross-examination of Ms Kingi by Ms Roff).

422 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [63] **[[701.00143]]**.

423 NOE Vol 1, p 351, lines 28-32 and p 352, lines 1-35 (cross-examination of Ms Kingi by Ms Roff).

424 NOE Vol 1, p 352, lines 1-12 (cross-examination of Ms Kingi by Ms Roff).

425 NOE Vol 1, p 352, lines 18-33 (cross-examination of Ms Kingi by Ms Roff).

426 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [62] **[[701.00142]]**.

427 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [63] **[[701.00142]]**.

428 NOE Vol 1, p 429, lines 18-25 (cross-examination of Mr Solomon by Mrs Golightly).

429 NOE Vol 1, p 353, lines 9-11 (cross-examination of Ms Kingi by Ms Roff).

Patuharakeke

129. Patuharakeke members do not own land abutting the stage 1(b) hearing area.[430]

130. Some evidence was provided of non-commercial customary fishing within the hearing area (describing species of fish and shellfish that are harvested, and locations for fishing and gathering kaimoana),[431] particularly in the inshore parts of the coastline. However, it appears that some of these activities are no longer undertaken (or are carried out less frequently) at certain sites due to the complete or partial depletion of certain species.[432] For example, Kare Rata said that shellfish (such as scallops, crabs and big tuatua) would be gathered from Marsden Point down to Ruakākā,[433] and that "a bucket full could be collected in minutes".[434] She clarified, however, that she no longer gathers kaimoana in those areas and did not think other people should continue to collect kaimoana either, to allow the stocks to replenish.[435]

131. Patuharakeke members carry out recreational activities along the Bream Bay coastline such as swimming, diving and surfing,[436] and collect resources such as hāngi stones and driftwood.[437] Ms Chetham was asked about Patuharakeke's customary use of a "strip" of land between Channel

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430 Brief of evidence of Juliane Chetham dated 2 February 2024 **[[701.00174]]** at [31] **[[701.00192]]**. Two maps showing the status of abutting land in the hearing area were produced in the Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at pp 73-74 **[[804.01739]-[804.01470]]**.

431 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [107] **[[804.01697]]**, [108]-[110] **[[804.01698]]**, [123]-[124] **[[804.01704]]**, [129] **[[804.01705]]**, [131] **[[804.01705]]**, [134]-[137] **[[804.01706]-[804.01707]]**. The report includes two maps of Patuharakeke's mahinga mātaitai areas within the Bream Bay coastal area (pp 70-71) **[[804.01736]-[804.01737]]**. See also Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(a)(iii)-(iv)] **[[202.00931]-[202.00932]]**, [20(b)(vi), (vii)-(ix)] **[[202.00933]-[202.00934]]**.

432 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [137] **[[804.01707]]** (where the report writers say that the rocky coastline between Pariwaka/Waipū Cove and Wairahi/Langs Beach is still an important location for kina, koura and kūtai, however "like other areas in the rohe moana kaimoana has experienced significant decline"). Ms Chetham said Ruakākā estuary and Waipū estuary were once areas abundant with pipi, cockles and kōkota. While still present, she noted the stocks are severely depleted: Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(b)(vi)] **[[202.00933]-[202.00934]]**.

433 NOE Vol 2, p 190, lines 25-31 (cross-examination of Ms Rata by Ms Ellis).

434 Brief of evidence of Kare Rata dated 26 March 2024 **[[701.00041]]** at [52] **[[701.00050]]**.

435 NOE Vol 2, p 190, lines 32-34 and p 191, lines 1-4 (cross-examination of Ms Rata by Ms Ellis).

436 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [111] **[[804.01698]]**, [127] **[[804.01704]]** and [138] **[[804.01707]]**.

437 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [126] **[[804.01704]]**: "Hāngi stones and driftwood were collected at all river outlets along the coast and inside the Harbour eg. Waipū, Ruakākā estuaries, and Mangawhati/Skull Creek. To this day, whānau continue to use these areas for hangi stone collection as the type of rocks located here are most suitable and do not split with heat". See also Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(f)(i)] **[[202.00937]]**.

Infrastructure's site and the moana.[438] She described various activities that Patuharakeke undertake in that area, such as monitoring kōkota, pīngao restoration, attending to stranded marine mammals, and management and research related to archaeological middens along the dunes in that area.[439] She said, "[w]e're down [on] that stretch of beach, if not [on] a daily basis, a weekly basis doing mahi".[440] Ms Chetham also gave evidence in stage 1(a) of Patuharakeke Te Iwi Trust Board running educational programmes for tamariki along the Bream Bay coastline.[441]

132. Witnesses were cross-examined on Patuharakeke's use and occupation of the Langs Beach area:

132.1 Mr Armstrong described the area of coastline from Langs Beach down to Bream Tail as "rugged and largely inaccessible".[442] When asked whether these features would have impacted contemporary and historical access by people in that area to the takutai moana, Mr Armstrong said, "Well, they'd be hindered in doing so if it was rugged and largely inaccessible".[443]

132.2 Ms Chetham was asked whether she would agree that there is little or no visibility of Māori in the area from Waipū Cove through to Langs Beach.[444] She replied that, in her and her father's lifetime, Patuharakeke "certainly… have commonly utilised that area".[445] She accepted, however, that there was nothing in her evidence about Patuharakeke members seeding or harvesting shellfish at Langs Beach,[446] apart from a reference in the traditional research

438 NOE Vol 2, p 245, lines 3-11 (cross-examination of Ms Chetham by Ms Ellis). The area is marked as a green strip surrounding the area marked as "Precinct 6" on the Whangārei District Council's district plan map. A map of this area was shown to Ms Chetham (NOE Vol 2, p 245, lines 3-9) but not introduced as an exhibit. The map can be found online at <https://eplan.wdc.govt.nz/plan/>.

439 NOE Vol 2, p 245, lines 12-31 (cross-examination of Ms Chetham by Ms Ellis).

440 NOE Vol 2, p 245, lines 27-28 (cross-examination of Ms Chetham by Ms Ellis).

441 Affidavit of Juliane Chetham dated 21 August 2023 **[[202.01001]]** at [114]-[115] **[[202.01027]]**. See Appendix A **[[353.25079]]** at p 3 **[[353.25081]]** (figures 7 and 8 are images of tamariki surveying pipi at Ruakākā estuary) and p 4 **[[353.25082]]** (figure 9 is an image taken of the Patuharakeke afterschool surfing programme at Waipū Cove). See also Affidavit of Juliane Chetham dated 2 February 2024 **[[701.00174]]** at [29] **[[701.00189]-[701.00190]]** (an image is provided of a Patuharakeke tamariki surfing lesson at Waipū Cove).

442 Historical research report of David Armstrong **[[350.23981]]** at [57] **[[350.24000]]**.

443 NOE Vol 1, p 191, lines 1-7 (cross-examination of Mr Armstrong by Ms Roff).

444 NOE Vol 2, p 212, lines 4-8 (cross-examination of Ms Chetham by Ms Loader).

445 NOE Vol 2, p 212, lines 9-11 (cross-examination of Ms Chetham by Ms Loader).

446 NOE Vol 2, p 261, lines 27-34 and p 262, lines 1-6 (cross-examination of Ms Chetham by Mr Mathias).

report she prepared with Mr Maki-Midwood to trips that Patuharakeke kaumātua used to take at Christmas to the Pariwaka/Waipū Cove and Wairahi/Langs Beach area to gather kaimoana.[447] (She went on to say that these trips were not "restricted just to Christmas Day" but would occur more regularly.[448]) She also accepted there were no contemporary examples she could point to concerning the cultivation and planting of plant species at Langs Beach.[449] Harry Maki-Midwood accepted that the traditional research report did not identify contemporary examples of Patuharakeke collecting hāngi stones, driftwood or establishing temporary camp sites at Langs Beach.[450]

Ngātiwai

133. The joint kaumatua panel said that Taranga and Marotere and its surrounding waters are still regarded as belonging to the hapū of Ngātiwai[451] and continue to be used for non-commercial fishing (customary and recreational),[452] as well as commercial fishing.[453] Ngātiwai witnesses said there is always a safe anchorage to be found around the islands, and plenty of places to go ashore.[454] Ms Rata said, "[w]e had

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447 NOE Vol 2, p 263, lines 1-15 (cross-examination of Ms Chetham by Mr Mathias). See Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [134] **[[804.01706]-[804.01707]]**.

448 NOE Vol 2, p 263, lines 14-15 (cross-examination of Ms Chetham by Mr Mathias).

449 NOE Vol 2, p 262, lines 1-6 (cross-examination of Ms Chetham by Mr Mathias).

450 NOE Vol 2, p 262, lines 16-19 (cross-examination of Mr Maki-Midwood by Mr Mathias).

451 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [30] **[[701.00036]]**.

452 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [23]-[26] **[[701.00035]-[701.00036]]**. See also Brief of evidence of Kare Rata dated 26 March 2024 **[[701.00041]]** at [35] **[[701.00048]]** (Ms Rata's father would fish at Whatupuke (an island in Marotere) and Taranga and also dive for crayfish and paua), [39] **[[701.00048]]** (Ms Rata's father and grandfather knew where the fishing grounds were over at the islands), [46] **[[701.00049]]** (there are snapper feeding grounds close to the island), [47] **[[701.00049]]** (hāpuka are found in the deep waters around the islands), [55] **[[701.00051]]** (Ms Rata's father told her the best crayfish were around "little Chick Island", however, the grounds have been raided over time) and [57] **[[701.00052]]** (Taranga and Marotere was always the place where sharks were caught). See also Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [16]-[20] **[[701.00218]]** and [24]-[28] **[[701.00219]]**. Mr Wellington included a chart of fishing spots that he has visited over the last 70 or so years **[[808.04020]]**; NOE Vol 2, p 98, lines 20-31 and p 99, lines 1-32 and p 100, lines 1-26 (evidence-in-chief of Mr Wellington); and Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [140] and [142] **[[804.01709]]**.

453 Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [3] **[[701.00216]]** and [21]-[24] **[[701.00218]-[701.00219]]**. Mr Wellington said he worked as a commercial fisher for more than 30 years and was based mainly around Bream Bay and Taranga and Marotere. See also NOE Vol 2, p 97, lines 13-15 (evidence-in-chief of Mr Wellington).

454 Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [29] **[[701.00219]]**. See also Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at

several members from our hapū who went out to the islands regularly fishing" and said that she would go with other members of her whānau to the islands by boat.[455] Mr Hetaraka said that there are fishing grounds that are sacred to the whole of Ngātiwai around the islands,[456] but clarified that "a lot them" were grounds that his father had discovered,[457] and that the grounds are shared with other hapū such as Te Parawhau.[458]

134. Some evidence was provided of hapū of Ngātiwai (aside from Patuharakeke) undertaking recreational activities on the islands themselves. Phillip Wellington (who affiliates to Ngāti Takapari and Te Waiariki hapū)[459] said that as a teenager,[460] he would go to Taranga and Marotere to go fossicking around the rocks and into caves.[461] Several witnesses (with affiliations to Te Uri o Hikihiki, Ngāti Takapari and Te Waiariki) described harvesting muttonbird from the islands,[462] as a seasonal activity by reference to the maramataka.[463]

Ngāpuhi-nui-tonu

135. There is a general absence of evidence to support a distinct "Ngāpuhi" or "Ngāpuhi-nui-tonu" presence from 1840 to the present day in relation to the stage 1(b) hearing area. Instead, some limited evidence was provided

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[32] **[[701.00037]]**.

455 Brief of evidence of Kare Rata dated 26 March 2024 **[[701.00041]]** at [40] **[[701.00048]]**. She said there are fishing grounds around Taranga and Marotere too: NOE Vol 2, p 197, lines 6-29 (cross-examination of Ms Rata by Ms Roff).

456 When asked whether the fishing grounds are concentrated around the islands, he replied, "Around the islands, in closer, you can follow from Urquharts, all the way around, all the way around to the kuia, you know, the old – old kuia at Te Whara … [s]traight out to the Tarakihi grounds, and then out to the fishing grounds around Taranga and around Maui mua, Māui taha, Māui – and then the Hāpuka grounds, out towards Pokohinu, and that's from – from Taranga": NOE Vol 2, p 82, lines 9-16 (cross-examination of Mr Wellington by Ms Roff).

457 NOE Vol 2, p 82, lines 22-27 (cross-examination of Mr Wellington by Ms Roff).

458 NOE Vol 2, p 82, lines 28-34 and p 83, lines 1-12 (cross-examination of Mr Hetaraka by Ms Roff).

459 Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [1] **[[701.00216]]**.

460 NOE Vol 2, p 106, lines 10-16 (cross-examination of Mr Wellington by Ms Roff).

461 Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [28] **[[701.00219]]**.

462 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [34] **[[701.00037]]**; and Affidavit in reply of Morore Piripi dated 15 July 2024 **[[701.00205]]** at [9]-[10] **[[701.00207]]**. Mr Piripi said that when he was little, his brothers and father would regularly go out to the coastal islands, including Taranga and Marotere, to go muttonbirding and fishing. He began joining them on these excursions when he got a little older. See also Affidavit in reply of Phillip Wellington dated 18 July 2024 **[[701.00215]]** at [29] **[[701.00219]-[701.00220]]**.

463 NOE Vol 2, p 114, lines 24-27 (cross-examination of Mr Piripi by Mr Dixon) and p 115, lines 11-12 and lines 21-24 (cross-examination of Mr Piripi by Ms Roff).

of customary fishing,[464] recreational use,[465] and the undertaking of customary practices[466] within the Bream Bay coastal area by members of specific Ngāpuhi hapū.

136. In relation to Taranga and Marotere, Mr Mahanga's evidence was that these islands are "tapu tapu" and so he does not go there.[467] Ms Kawiti described a trip to the islands that she took in 2023 with members of Ngāti Kahu to monitor the state of kina.[468] Under cross-examination, she noted that it was her first time visiting the islands.[469]

137. Mr Mahanga also said that he believes the entire area of the Whangārei Coast is tapu because of battles that took place in the past.[470] However, it is unclear from the evidence whether other witnesses on behalf of Ngāpuhi-nui-tonu were of the same understanding.[471] For example, Ms Kawiti did not refer to any tapu areas when describing kaimoana-gathering along the Whāngarei coastline.[472]

Substantial interruption

The commercial shipping channel

138. The commercial shipping channel extends into part of the stage 1(b)

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464 Brief of evidence of Louisa Collier dated 27 March 2024 **[[701.00332]]** at [17]-[18] **[[701.00335]-[701.00335]]**. Ms Collier said she would gather kaimoana from most parts of Bream Bay (including up and around Poupouwhenua), depending on the time of the tide: NOE Vol 2, p 356, lines 31-34 and p 357, line 1 (cross-examination of Ms Collier by Ms Ellis). Ms Collier said there was a range of areas where her father would go fishing in the Bream Bay coastal area, however, she noted that her father fished out there in the 1950s and the 1960s and many of those areas are probably not there anymore: NOE Vol 2, p 357, lines 10-34 and p 358, lines 1-10 (cross-examination of Ms Collier by Ms Ellis). See also Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00322]]** at [12] **[[701.00324]-[701.00325]]** and NOE Vol 2, p 377, lines 26-34 and p 378, lines 1-8 (cross-examination of Mr Mahanga by Ms Roff), where Mr Mahanga confirmed he does not fish within the southern part of the hearing area because it is too far. See also Affidavit of Aorangi Kawiti dated 6 September 2024 **[[901.00159]]** at [31]-[32] **[[901.00167]]** and [34]-[35] **[[901.00168]]**; and NOE Vol 2, p 411, lines 2-19 (cross-examination of Ms Kawiti by Ms Roff).

465 Mr Mahanga said that in the early 1980s into the early 1990s, he taught young Māori tamariki to sail throughout Northland, including in parts of Whangārei coast: Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00322]]** at [16] **[[701.00325]]**.

466 Ms Kawiti described rongoā practices that Te Waiariki continues to undertake within their rohe, although she did not identify specific locations where these practices take place: Affidavit of Aorangi Kawiti dated 6 September 2024 **[[901.00159]]** at [15] **[[901.00163]-[901.0164]]**.

467 NOE Vol 2, p 371, lines 11-21 (cross-examination of Mr Mahanga by Mrs Golightly).

468 Affidavit of Aorangi Kawiti dated 6 September 2024 **[[901.00159]]** at [46] **[[901.00171]]**.

469 NOE Vol 2, p 404, lines 27-34 and p 405, lines 1-32 (cross-examination of Ms Kawiti by Ms Loader).

470 Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00322]]** at [24] **[[701.00327]]**. See also NOE Vol 2, p 375, lines 16-24 (cross-examination of Mr Mahanga by Ms Roff). When he was asked whether he generally avoids collecting kaimoana along the coastal area, he replied: "I'm going to tell you this honestly, I've dived … all the way up this coast, all up around the whole area here, and I've got kai from everywhere": NOE Vol 2, p 376, lines 5-19 (cross-examination of Mr Mahanga by Ms Roff).

471 For example, Aorangi Kawiti did not refer to any tapu areas when describing kaimoana-gathering along the Whāngarei coastline: Affidavit of Aorangi Kawiti dated 6 September 2024 **[[901.00159]]** at [31]-[32] **[[901.00167]-[901.00168]]** and [34]-[35] [**[901.00168]]**.

472 Affidavit of Aorangi Kawiti dated 6 September 2024 **[[901.00159]]** at [31]-[32] **[[901.00167]-[901.00168]]** and [34]-[35] [**[901.00168]]**.

hearing area.[473]

139. The use of commercial shipping lanes is a matter that is subject to regulation through the Northland Regional Council's Navigation Safety Bylaw 2017 (the regional council is empowered to make navigation bylaws by virtue of s 33M(1) of the Maritime Transport Act 1994). The bylaw prohibits the obstruction of access to any navigation channel within the harbour (without the prior written authorisation of the Harbourmaster),[474] and prohibits anchoring, engaging in fishing or the laying of fishing equipment in any part of a navigation channel marked by buoys and beacons.[475]

140. Evidence of vessel movements transiting the commercial shipping channel was provided by Northport and Channel Infrastructure.[476] A "heat map" showing the intensity of fishing activity in the hearing area was also provided by Daryl Sykes (a witness for the Seafood Industry Representatives).[477] Under cross-examination, Mr Sykes agreed that the area of the commercial shipping channel correlates with an area where (according to the heat map) comparatively less fishing takes place.[478]

141. In the main, witnesses accepted that the commercial shipping channel has impacted on their use and occupation of that area and/or confirmed they do not fish within those areas:

141.1 *Te Parawhau witnesses:* Opania George said that he does not fish in the commercial channel, although he does travel up and down

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473 The evidence of Northport in stage 1(a) included a map depicting the entire commercial shipping channel. See Exhibit GJB-1 to the Affidavit of Gregory Blomfield dated 24 October 2023 **[[372.34071]]** at p 876 **[[373.34949]]**. Marsden Maritime Holdings Ltd holds a current consent for navigation aids to occupy the coastal marine area in respect of the commercial sea channel: Exhibit 46 **[[501.00245]]**. In stage 1(a), Northport also produced a plan [[**373.34949]]** showing navigation aids that it owns in the area of the entire commercial channel: Affidavit of Gregory Blomfield dated 9 July 2024 **[[701.00436]]** at [11] **[[701.00438]]**.

474 Northland Regional Council's "Navigation Safety Bylaw 2017", rule 2.9.1 **[[384.39818]]**.

475 Northland Regional Council's "Navigation Safety Bylaw 2017", rule 2.13.4(e) **[[384.39820]]**.

476 Gregory Blomfield (the terminal facilities manager at Northport) provided tables and heatmaps (based on Harbour Radio data) showing inbound and outbound vessel movements into/from Whangārei Harbour and specific ports: Affidavit of Gregory Blomfield dated 9 July 2024 **[[701.00436]]** at [18]-[24] **[[701.00439]-[701.00442]]**. For example, the image at [23] shows all commercial traffic to Channel Infrastructure, Northport and Golden Bay (with some movements to Port Nikau) in 2023-2024. See also Affidavit of Riaan Scott Elliot dated 15 April 2024 **[[701.00361]]** at [22] **[[701.00365]]** and [25] **[[701.00367]]**; and Affidavit of Kelly Maree Stevens dated 2024 **[[701.00448]]** at [4]-[7] **[[701.00449]]**.

477 See **[[809.04633]]**, which depicts the distribution of catch across the hearing area for nine fishing years between October 2014 and September 2023.

478 NOE Vol 2, p 454, lines 25-34, p 455, lines 1-5 and p 456, lines 13-20 (cross-examination of Mr Sykes by Mrs Golightly).

it to get in and out of the harbour.[479] Tamihana Paki initially said he fishes along the approach to Marsden Point in the commercial channel.[480] However, he went on to say, "I could have been somewhere near … the channel … [I] could have been in that channel area, could have been outside it".[481] He confirmed that when vessels use the approach channel, he makes sure to avoid them.[482] Bobby Tuhiwai initially said that he dives and fishes within the commercial channel,[483] but later clarified that he does this in the area closer to Smugglers Bay rather than in the channel itself.[484]

141.2 *Te Waiariki, Ngāti Kororā, Ngāti Takapari witnesses:* Mitai Paraone-Kawiti described the shipping lanes as a "significant disturbance" to Te Waiariki's fishing grounds.[485] He agreed the commercial shipping lanes have interfered with customary activities and practices.[486] He nevertheless said he continues to fish in that area.[487] He said he was unaware of the Navigation Safety Bylaw that prohibits fishing in that area, and would only avoid fishing in the area if he saw "a big ship coming".[488] Pereri Mahanga said that he and other whānau he knows fish on the side of the shipping lanes (which he described as a "no-go zone").[489]

141.3 *Ngāti Tū witnesses:* Mr Hawkins confirmed he does not fish in the commercial shipping channel.[490] He explained this was due to

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479 NOE Vol 1, p 85, lines 28-33 and p 86, lines 1-5 (re-examination of Mr George). See also NOE Vol 1, p 84, lines 3-9 (cross-examination of Mr George by Mrs Golightly), where Mr George confirmed that he does not fish in the approach channel shown in Exhibit 1 **[[1001.00001]]**.

480 NOE Vol 1, p 18, lines 12-16 (cross-examination of Mr Paki by Mrs Golightly).

481 NOE Vol 1, p 18, lines 18-20 (cross-examination of Mr Paki by Mrs Golightly).

482 NOE Vol 1, p 19, lines 6-9 (cross-examination of Mr Paki by Mrs Golightly).

483 NOE Vol 1, p 122, lines 26-34 (evidence-in-chief of Bobby Tuhiwai); and NOE Vol 1, p 128, lines 7-8 (cross-examination of Mr Tuhiwai by Ms Ellis).

484 NOE Vol 1, p 132, lines 20-33 and p 133, lines 1-5 (cross-examination of Mr Tuhiwai by Mrs Golightly).

485 Affidavit of Mitai Paraone-Kawiti undated **[[701.00063]]** at [6] **[[701.00065]]**.

486 NOE Vol 1, p 281, lines 13-16 (cross-examination of Mr Paraone-Kawiti by Ms Ellis).

487 NOE Vol 1, p 281, lines 17-25 (cross-examination of Mr Paraone-Kawiti by Ms Ellis).

488 NOE Vol 1, p 281, lines 26-32 (cross-examination of Mr Paraone-Kawiti by Ms Ellis). He described navigation aids as "things you tie your boat too, so we can moor" and commented that a lot of fish are attracted to those: NOE Vol 1, p 281, line 33 and p 282, lines 1-4 (cross-examination of Mr Paraone-Kawiti by Ms Ellis).

489 NOE Vol 1, p 251, lines 4-14 (evidence-in-chief of Mr Mahanga).

490 NOE Vol 1, p 301, lines 14-17 (cross-examination of Mr Hawkins by Ms Ellis); and lines 25-33 and p 302, lines 1-3 (cross-examination of Mr Hawkins by Mrs Golightly).

changes to the current following the last port expansion and disagreed when asked whether his ability to use the area had been impacted by large vessels traversing the channel.[491]

141.4 *Ngāti Kahu witnesses:* Mr Kingi said he issues customary fishing authorisations for the area occupied by the commercial channel.[492] He said that he personally used to fish and scuba dive in the commercial channel, "when the times are right and the tides are right".[493] He accepted that the presence of large vessels within the channel affects one's ability to fish, however, he noted that people continue to fish and anchor in the commercial channel regardless.[494] He accepted that the presence of vessels stops people from diving in that area, however.[495] Riki Solomon said he does not dive for tipa (scallops) in the approach channel to Marsden Point. He said this is because there is better access to tipa at other nearby locations (such as Smugglers Bay and Urquharts Bay) rather than because the area is a shipping lane.[496] However, he said that he sometimes fishes in the channel and said he was unfamiliar with the bylaw that prohibits fishing in that area.[497] When asked if he would continue to fish there in the future now that he knows it is unlawful, he replied, "I may do, yes".[498] When asked whether the presence of large vessels in the channel impacts his ability to fish in that area, he said this only has an effect "[f]or a brief moment in time".[499]

141.5 *Ngātiwai witnesses:* Te Warahi Hetaraka confirmed he fishes in the commercial shipping channel and said, "every boat that goes out there fishes in there".[500] He said he was unaware it is unlawful

491 NOE Vol 1, p 302, lines 2-15 (cross-examination of Mr Hawkins by Mrs Golightly).

492 NOE Vol 1, p 375, lines 5-34 (cross-examination of Mr Kingi by Mrs Golightly).

493 NOE Vol 1, p 376, lines 2-4 (cross-examination of Mr Kingi by Mrs Golightly).

494 NOE Vol 1, p 376, lines 19-33 and p 377, lines 1-2 (cross-examination of Mr Kingi by Mrs Golightly).

495 NOE Vol 1, p 377, lines 23-33 and p 378, lines 1-8 (cross-examination of Mr Kingi by Mrs Golightly).

496 NOE Vol 1, p 431, lines 20-28 (cross-examination of Mr Solomon by Mrs Golightly).

497 NOE Vol 1, p 432, lines 2-9 (cross-examination of Mr Solomon by Mrs Golightly).

498 NOE Vol 1, p 432, lines 15-19 (cross-examination of Mr Solomon by Mrs Golightly).

499 NOE Vol 1, p 433, lines 2-4 (cross-examination of Mr Solomon by Mrs Golightly).

500 NOE Vol 2, p 81, lines 3-12 (cross-examination of Mr Hetaraka by Mrs Golightly).

to fish in that area.[501] When asked whether he would continue to fish in the shipping channel now that he is aware it is unlawful, he replied "I will have to consult my elders".[502] When asked whether he fishes in that area when large vessels are present, he said that he stays away from them, but their presence is "only temporary".[503] Mr Wellington said he has fished in the commercial shipping channel in the past but has not done so for a long time.[504] When asked why he had stopped fishing in that area, he said it was because he has retired (as a commercial fisherman) and because there are "[l]ots of other places" to fish.[505] Kare Rata was asked whether she fishes, dives or gathers kaimoana within the commercial channel. She said she personally does not, but "can imagine people do it and maybe not know … the restrictions around that".[506] When asked whether the bylaw's restrictions on fishing in that area are the reason why she does not fish there, she disagreed.[507] Despite this, she acknowledged the need to avoid large vessels navigating in and out of the harbour.[508]

141.6 *Ngāpuhi-nui-tonu witnesses:* Arthur Mahanga said he would not fish in the commercial shipping channel because the area is tapu and has been since before 1840.[509]

142. The Attorney-General considers there is evidence to support a finding of substantial interruption with respect to the commercial shipping channel as it relates to the stage 1(b) hearing area.[510] The use of the channel is

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501 NOE Vol 2, p 81, lines 13-14 (cross-examination of Mr Hetaraka by Mrs Golightly).

502 NOE Vol 2, p 81, lines 15-17 (cross-examination of Mr Hetaraka by Mrs Golightly).

503 NOE Vol 2, p 81, lines 18-24 (cross-examination of Mr Hetaraka by Mrs Golightly).

504 NOE Vol 2, p 104, lines 3-10 (cross-examination of Mr Wellington by Ms Ellis).

505 NOE Vol 2, p 104, lines 11-14 (cross-examination of Mr Wellington by Ms Ellis).

506 NOE Vol 2, p 189, lines 12-16 (cross-examination of Ms Rata by Ms Ellis).

507 NOE Vol 2, p 189, lines 17-19 (cross-examination of Ms Rata by Ms Ellis).

508 NOE Vol 2, p 189, lines 27-29 (cross-examination of Ms Rata by Ms Ellis).

509 NOE Vol 2, p 370, lines 11-33 (cross-examination of Mr Mahanga by Mrs Golightly). Ms Collier was earlier asked whether her father fished in the area of the commercial channel, however, she ultimately deferred to Mr Mahanga to give evidence on this point: NOE Vol 2, p 358, lines 6-34 (cross-examination of Ms Collier by Ms Ellis).

510 The Attorney-General notes that shipping lines were considered to have amounted to a substantial interruption in the *Re Ngāti Pāhauwera* proceeding. In awarding CMT, the Court said in its stage one judgment that this would "obviously … not extend into the shipping lanes": *Re Ngāti Pahauwera* [2021] NZHC 3599 **[[BOA Tab 9]]** at [511]. Churchman J characterised this statement as a finding of substantial interruption in his stage two judgment: *Re Ngāti Pāhauwera* [2023] NZHC 15 **[[Supp BOA Tab 7]]** at [30(f)] (and see also at [66] and [73]).

subject to regulation through the Navigation Safety Bylaw and is "authorised by legislation".[511] The bylaws prohibit anchoring or fishing in the channel and prohibit persons from obstructing access within it. Most tangata whenua witnesses who were questioned about their use of the commercial shipping channel accepted that it is not an area in which they fish. Nor was the shipping channel the subject of any specific evidence suggesting that applicant groups – as a matter of tikanga – presently have the authority to use and occupy the area, and to control access to and use of the area by others (in other words, evidence to satisfy limb one of the s 58 test). To the extent the Court heard limited evidence of fishing taking place within the channel, the Attorney-General maintains the submission made in the Whangārei Harbour hearing that activities in breach of legislation cannot sustain a claim of continuous use and occupation in an area.[512]

Other relevant factual circumstances

143. Other relevant factual circumstances which appear to have had some impact on applicant groups' continuous use and occupation of the hearing area are identified below.[513] The Attorney-General sets these matters out not because she asserts they have substantially interrupted applicant groups' exclusive use and occupation of the hearing area. Rather, on the applicants' own evidence, some parts of the stage 1(b) hearing area do not appear to have been continually used and occupied by applicant groups, for various reasons. In those circumstances, it is not clear that the applicants have discharged the burden of proving their use and occupation of those areas has been continuous from 1840 to the present.

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511 Refer to *Edwards* **[[BOA Tab 16]]** at [428] per Cooper P and Goddard J. Bylaws made by a local authority are secondary legislation for the purposes of the Legislation Act 2019: s 161A of the Local Government Act 2002. The definition of "legislation" in s 5 of the Legislation Act includes both Acts and "any secondary legislation".

512 See the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024 at [197]. See also at [189.3].

513 Most of these matters were identified in the Attorney-General's opening submissions dated 12 August 2024 at [80]. While [80.2] of the Attorney's submissions noted that Phillip Wellington (a witness for the Ngātiwai Trust Board) said he does not fish or anchor in an area (located between Taranga and Marotere and the Mokohinau Islands) known as the "Cable Protection Zone" (Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [20] **[[701.00218]]**), Mr Wellington clarified in his evidence-in-chief that the Cable Protection Zone is not located within the stage 1(b) hearing area: NOE Vol 2, p 97, lines 28-32 and p 98, lines 1-5.

Nature reserve classification of Taranga and Marotere

144. Taranga and Marotere are nature reserves under the Reserves Act 1977,[514] a designation which extends to the foreshore of the islands.[515] The Reserves Act empowers the Minister of Conservation to name and classify a reserve[516] as a nature reserve for the purposes of:[517]

> … protecting and preserving in perpetuity indigenous flora or fauna or natural features that are of such rarity, scientific interest or importance, or so unique that their protection and preservation are in the public interest.

145. It is an offence, under the Reserves Act, for a person to enter the nature reserve without a proper permit or authority.[518] In the case of a nature reserve that is an island, the expression "enter the reserve" is deemed to include:[519]

> … any physical contact with the land by a boat; and for this purpose any physical contact with the land shall be deemed to include the attaching (by rope or otherwise) of a boat to the reserve or to a wharf constructed on or partly on the reserve

146. Section 94 sets out various offences in relation to nature reserves.[520] These include: removing or wilfully damaging any plant, stone, mineral, gravel, or "thing of any kind" without authorisation;[521] and taking or destroying or wilfully injuring any animal or bird or other fauna, or nests and eggs without authorisation.[522]

147. As noted at [21] above, because the foreshore of Taranga and Marotere is deemed to be part of the nature reserve, the Court has no jurisdiction to

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514 In 1920, Taranga and Marotere were classified as 'scenic reserves'. The foreshore of Taranga and Marotere was deemed to be included within the area classified as reserve land in 1970. They were then re-classified as a nature reserve in 1977. See the third-party use and occupation report prepared by Dr Terence Green dated 29 April 2024 **[[812.06063]]** at [21] **[[812.06072]]**, [27] **[[812.06075]]** and **[[812.06078]]**, [42] **[[812.06084]]**, [209] **[[812.06158]]** and [272]-[273] **[[812.06185]-[812.06186]]**.

515 Section 20(3) of the Reserves Act 1977 states "where the foreshore of any nature reserve which is an island or part of an island does not form part of the reserve which it adjoins, the foreshore shall be deemed to form part of the reserve".

516 Reserves Act 1977, s 16.

517 Reserves Act 1977, s 20(1).

518 Reserves Act 1977, s 20(2)(c) states "…no person shall enter the reserve, except under the authority of a permit granted under section 48A or section 57 or in accordance with a notice given under section 57(2)…". The Minister, or administering body of any nature reserve, may also prohibit the anchoring or mooring of boats within the marine area around a nature reserve, if they consider that is necessary for the purposes specified in s 20(1): s 57(3).

519 Reserves Act 1977, s 20(2)(c).

520 The penalties for any person who commits an offence under the Reserves Act are set out in s 103.

521 Reserves Act 1977, s 94(1)(f).

522 Reserves Act 1977, s 94(1)(i). Section 50 permits the Minister to authorise the taking or killing of fauna in certain circumstances.

grant CMT in respect of the foreshore of the islands. The focus of the Court's inquiry – when considering whether groups have met the s 58 test – should therefore be on groups' use and occupation of the waters *around* the islands.

148. When considering groups' use and occupation of offshore islands, the Court of Appeal's assessment of Whakaari in *Edwards* is also instructive. In *Edwards*, the Court concluded the evidence in respect of Whakaari did not satisfy the test for CMT for any of the applicant groups before it, as it only demonstrated the groups exercised usage/resource rights in respect of that area.[523] The Court acknowledged, however, that the establishment of CMT in offshore areas does not necessarily require the identification of, for example, specific fishing grounds; but can also include areas that have been used and occupied for purposes such as passage and navigation as well as resource-gathering.[524]

149. The following witnesses gave evidence about the impact of the Taranga and Marotere nature reserve designation on their use and occupation of those areas:

149.1 *Te Parawhau witnesses:* Bobby Tuhiwai said members of Te Parawhau were told not to go on the islands because they are used as a sanctuary for birds.[525]

149.2 *Ngāti Kahu witnesses:* Waimarie Kingi said the classification of the islands as a nature reserve has meant that Ngāti Kahu need to buy their ōi from Ngāi Tahu in the South Island rather than being able to harvest them directly from the islands.[526]

149.3 *Ngātiwai witnesses:* While Mr Wellington said the classification of the islands as a nature reserve had not impacted on his ability to

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523 See *Edwards* at [298]-[315] **[[BOA Tab 16]]** per Miller J (with Cooper P and Goddard J in agreement: at [360]).

524 *Edwards* at [320] per Miller J **[[BOA Tab 16]]**. The Court noted, however, that evidence of use of the coastal marine area around Whakaari was "closely tied to tītī harvesting, which was strictly seasonal and not in itself a use of the marine and coastal area": at [308] per Miller J. This finding is relevant when considering the evidence of harvesting ōi mentioned by some witnesses (see [149.3] below).

525 Affidavit of Bobby James Tuhiwai dated 7 February 2024 **[[701.00348]]** at [15] **[[701.00351]]**.

526 NOE Vol 1, p 352, lines 18-33 (cross-examination of Ms Kingi by Ms Roff).

fish in and around the islands in the late 1970s,[527] he clarified that his fishing activity at that time had been recreational rather than customary in nature.[528] Hori Parata's response to the same question was that for some of his uncles, it "had no impact at all".[529] He also confirmed that some whānau continue to harvest muttonbird from the islands.[530] When asked whether he would accept that this requires a permit, he replied, "Well yes and no" and "that's another story".[531]

Northern and southern anchorages

150. Northport's evidence described two main anchorage areas to the north (comprised of two northern anchorages) and south (comprised of seven southern anchorages) of the harbour entrance.[532] These are designated on LINZ charts as being safe areas that commercial vessels use when waiting for access to a berth or for safe access through the mouth of the harbour.[533] The anchorages appear to have had an impact on the underlying seabed.[534]

151. In the period between July 2023 and June 2024, the anchorage areas were used by a total of 162 vessels that came to berth at Northport and Channel Infrastructure's sites.[535] The average time that vessels bound for Northport were at anchor was just under 28 hours, while the average time that

527 NOE Vol 2, p 106, lines 10-32 (cross-examination of Mr Wellington by Ms Roff).

528 NOE Vol 2, p 106, lines 23-27 (cross-examination of Mr Wellington by Ms Roff).

529 NOE Vol 2, p 86, lines 2-8 (cross-examination of Mr Parata by Ms Roff). He said, "And they were the sort of uncles that would say to young fellas like me: 'Grab your bag boy, we're off.' And if you said: 'Where to?' They'd say: "Oh no, no you stay home'": lines 6-8.

530 NOE Vol 2, p 86, lines 11-23 (cross-examination of Mr Parata by Ms Roff).

531 NOE Vol 2, p 86, lines 17-20 (cross-examination of Mr Parata by Ms Roff). He also confirmed that muttonbirding is not something that the Ngātiwai Trust Board would issue a permit for: lines 21-23.

532 Affidavit of Gregory John Blomfield dated 9 July 2024 **[[701.00436]]** at [14] **[[701.00439]]**. These anchorages are depicted on the 'Amalgamated Stage 1(b) Chart': **[[809.04578]]**.

533 Affidavit of Gregory Blomfield dated 9 July 2024 **[[701.00436]]** at [14] **[[701.00439]]**. Mr Blomfield confirmed that the anchorages are not subject to resource consents: NOE Vol 1, p 240, lines 21-34 and p 241, line 1 (cross-examination of Mr Blomfield by Ms Inns).

534 Affidavit of Gregory Blomfield dated 9 July 2024 **[[701.00436]]** at [43]-[45] **[[701.00446]-[701.00447]]**. Northport undertakes hydrographic surveys of the seabed under the anchorages every 2-3 years. Mr Blomfield explained that results from a recent hydrographic survey show that anchoring has caused scouring of the seafloor: Exhibit GB-4 (pp 5-7) **[[809.04576]]** at **[[809.04580]-[809.04582]]**.

535 Affidavit of Gregory Blomfield dated 9 July 2024 **[[701.00436]]** at [20] **[[701.00440]]**. The table at [20] records the use of the anchorages by vessels berthing at Northport and Channel Infrastructure from 2019-2024.

vessels bound for Channel Infrastructure were at anchor was just under 80 hours.[536]

152. The following witnesses described their use and occupation of the areas where the northern and southern anchorages are located:

152.1 *Te Parawhau:* Pari Walker said the anchorage areas have had a destructive impact on the underlying seafloor and said that "[t]he fishing might not be great now", but "that doesn't negate our access to that particular place".[537] Bobby Tuhiwai said that the anchorage areas were not areas he would generally dive in, although he had done so in the past.[538] Opania George said he does not fish in the anchorage areas when boats are moored there.[539] Tamihana Paki said he continues to drift fish in the anchorage spots when they are not in use.[540]

152.2 *Te Waiariki, Ngāti Kororā, Ngāti Takapari:* Pereri Mahanga accepted that the presence of the northern anchorages affects his ability to fish (specifically drift fish) in that area, but only when there are vessels present.[541] He said that he does not fish at the southern anchorages.[542]

152.3 *Ngāti Tū witnesses:* Mr Hawkins confirmed that he does not fish in the areas where the northern and southern anchorages are located.[543]

152.4 *Ngāti Kahu witnesses:* Mr Kingi said he issues customary permits for fishing within the areas of the anchorages.[544] When asked

536 Affidavit of Gregory Blomfield dated 9 July 2024 **[[701.00436]]** at [20] **[[701.00440]]**. See also NOE Vol 1, p 217, lines 23-33 and p 218, lines 1-3 (cross-examination of Mr Blomfield by Ms Ellis). See also Affidavit of Kelly Maree Stevens dated 9 July 2024 **[[701.00448]]** at [9] **[[701.00450]]** which explained that Golden Bay's vessels use the anchorages when conditions for safe passage are unfavourable or because other commercial shipping movements are occurring. Ms Stevens said Golden Bay used the anchorages 2 times in the last year.

537 NOE Vol 1, p 92, lines 4-9 and lines 30-35 (evidence-in-chief of Mr Walker). See also NOE Vol 1, p 91, lines 10-33 and p 92, lines 1-3 (evidence-in-chief of Mr Walker).

538 NOE Vol 1, p 133, lines 6-14 and lines 22-32, p 134, lines 31-34 and p 135, line 1 (cross-examination of Mr Tuhiwai by Mrs Golightly).

539 NOE Vol 1, p 83, lines 1-6 (cross-examination of Mr George by Mrs Golightly).

540 NOE Vol 1, p 18, lines 26-34 and p 19, lines 1-5 (cross-examination of Mr Paki by Mrs Golightly).

541 NOE Vol 1, p 261, lines 23-34 and p 262, lines 1-6 (cross-examination of Mr Mahanga by Mrs Golightly).

542 NOE Vol 1, p 262, lines 11-14 (cross-examination of Mr Mahanga by Mrs Golightly): "No, I don't go that far".

543 NOE Vol 1, p 302, lines 16-21 (cross-examination of Mr Hawkins by Mrs Golightly).

544 NOE Vol 1, p 375, lines 5-11 (cross-examination of Mr Kingi by Mrs Golightly).

whether he fishes in the areas of the anchorages himself, he said, "Yes, in the anchorage areas, yes, but we don't fish close to the actual anchored ships, that port there".[545] He said when vessels are anchored there, they go to other areas to fish.[546] Mr Solomon said he sometimes fishes in the anchorage areas but not when ships are moored there.[547]

152.5 *Ngātiwai witnesses:* Te Warahi Hetaraka was asked whether he could still fish in the anchorage areas when ships are moored there.[548] He said, "We wait till they go".[549] Mr Wellington was asked whether he fishes in that area and replied, "Occasionally but not for a long time. For a long, long time".[550] When asked why that was the case, he said, "There's no reason to go there at all. No reason at all for me to go there, all the way from Tutukaka".[551] He later clarified that the fishing he had previously undertaken in that area had been for commercial purposes.[552]

152.6 *Ngāpuhi-nui-tonu witnesses*: Arthur Mahanga said he would not fish within the areas of the northern and southern anchorages because those areas are tapu and have been since before 1840.[553]

153. Gregory Blomfield (the terminal facilities manager at Northport) said that Northport has not received reports of diving at the areas of the anchorages, and would expect to have received reports if there were.[554]

154. For completeness, the Attorney-General notes that there also appears to

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545 NOE Vol 1, p 378, lines 11-12 (cross-examination of Mr Kingi by Mrs Golightly).

546 NOE Vol 1, p 378, lines 13-15 (cross-examination of Mr Kingi by Mrs Golightly).

547 NOE Vol 1, p 433, lines 5-18 (cross-examination of Mr Solomon by Mrs Golightly).

548 NOE Vol 2, p 80, lines 27-32 (cross-examination of Mr Hetaraka by Mrs Golightly).

549 NOE Vol 2, p 81, lines 1-2 (cross-examination of Mr Hetaraka by Mrs Golightly).

550 NOE Vol 2, p 105, lines 19-24 (cross-examination of Mr Wellington by Mrs Golightly).

551 NOE Vol 2, p 105, lines 28-29 (cross-examination of Mr Wellington by Mrs Golightly).

552 NOE Vol 2, p 108, lines 9-19 (re-examination of Mr Wellington).

553 NOE Vol 2, p 370, lines 11-33 and p 371, lines 1-10 (cross-examination of Mr Mahanga by Mrs Golightly).

554 NOE Vol 1, p 214, lines 12-16 (evidence in-chief of Mr Blomfield). He also considered the anchorage areas are unsuitable for fishing and diving, for various reasons: NOE Vol 1, p 213, lines 29-34 and p 214, lines 1-17 (evidence-in-chief of Mr Blomfield) (in relation to the depth of the anchorages being in excess of the regular recreational and advanced diver limits); see also Exhibit GB-4 **[[809.04576]]** at **[[809.04580]-[809.04582]]** (bathymetric survey of Northport anchorages); NOE Vol 1, p 215, lines 9-23 (evidence-in-chief of Mr Blomfield) (in relation to the anchorage areas being sandy, barren areas that are not good for fishing); and NOE Vol 1, p 222, lines 8-24 (cross-examination of Mr Blomfield by Mr Sharp) (describing fishing and diving in the anchorage areas when they are in use as difficult and risky).

be a *prohibited* anchorage area within the hearing area, in respect of which anchoring or mooring is prohibited within 75 metres either side of the area, except in emergencies.[555] The exact coordinates of the prohibited anchorage area are set out in the Navigation Safety Bylaw[556] and marked on LINZ hydrographic charts.[557] The Court did not hear specific evidence about tangata whenua use of the prohibited anchorage area during the hearing.

Wave Rider Buoy system

155. Northport owns a Wave Rider Buoy system (comprising of three buoys) which is located on the northern side of the shipping channel in between the Fairway Buoy and No. 1 Buoy.[558] Under the Navigation Safety Bylaw, vessels are required to keep at least 100 metres clear of the buoys and are also prohibited from entering or leaving the channel between the Fairway and No. 1 Buoys.[559] The Court did not hear specific evidence of tangata whenua use of this area during the hearing.

Monitoring and coastal protections work at Marsden Point

156. Over the past 20 years, Channel Infrastructure has undertaken regular monitoring and coastal protection works along the eastern boundary of its site at Marsden Point (which borders onto Bream Bay beach) to combat coastal erosion.[560] This has involved the construction of a buried seawall.[561] While Channel Infrastructure suggested in its opening submissions that the coastal protection works undertaken around its site may have amounted

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555 Northland Regional Council's "Navigation Safety Bylaw 2017", rule 2.8.1 **[[384.39817]]**.

556 Northland Regional Council's "Navigation Safety Bylaw 2017", sch 2, p 44 **[[384.39846]]**.

557 See map series 2(c) in the mapbook prepared by Richard Jennings: **[[3110.52784]-[3110.52791]]**. See also Whangārei Harbour NOE Vol 1, p 2987, lines 14-33 (cross-examination of Richard Jennings by Justine Inns) **[[417.09296]]**.

558 Affidavit of Gregory John Blomfield dated 9 July 2024 **[[701.00436]]** at [12] **[[701.00438]].** See also Northland Regional Council's "Navigation Safety Bylaw 2017", sch 2 **[[384.39845]]**. At [13] **[[701.00438]]**, Mr Blomfield said "persons swimming or diving" must keep at least 100 metres clear of these buoys. He confirmed this was incorrect under cross-examination: NOE Vol 1, p 244, lines 6-22 (cross-examination of Mr Blomfield by Ms Roff). See also NOE Vol 1, p 217, lines 9-16 (cross-examination of Mr Blomfield by Ms Ellis) for a description of the function of the Wave Rider Buoy system.

559 Northland Regional Council's "Navigation Safety Bylaw 2017", sch 2 **[[384.39845]]**. The Wave Rider Buoy System is marked on LINZ hydrographic charts. For example, see map 2(b1) in the mapbook prepared by Richard Jennings **[[811.05438]]** at **[[811.05458]]**. See also 'Amalgamated Stage 1(b) Chart': Exhibit GB-4 (p 3) **[[809.04576]]** at **[[809.04578]]**.

560 Affidavit of Riaan Scott Elliot dated 15 April 2024 **[[701.00361]]** at [10]-[11] and [29]-[31] **[[701.00363]]** and **[[701.00370]]**. A copy of resource consents granted in 2014 by Northland Regional Council for the construction of a buried sea wall and the undertaking of dune restoration work (amongst other things) is attached as Exhibit B **[[808.04075]]**. Images depicting the site of erosion and location of the consented works are on pp 6-7 of that exhibit **[[808.04080]-[808.04081]]**.

561 Affidavit of Riaan Scott Elliot dated 15 April 2024 **[[701.00361]]** at [30] **[[701.00370]]**.

to a substantial interruption,[562] Riaan Elliot (the environmental health and safety manager at Channel Infrastructure) confirmed under cross-examination that the buried seawall is located above the mean high-water mark and to date no works have been undertaken in the CMCA to maintain the seawall.[563] He also agreed that Channel Infrastructure's monitoring activities in respect of coastal erosion have a "very limited impact" on public access to the CMCA in most cases (as technology nowadays allows the area to be surveyed by drones rather than requiring a physical survey of the foredune area).[564]

ASSESSMENT OF PCR APPLICATIONS

157. The Attorney-General's opening submissions set out the requirements of the test for PCRs in s 51 and detailed the activities for which a PCR cannot be granted.[565] Those submissions are not repeated here. In summary, s 51 provides for PCRs to be recognised if an activity, use or practice[566] has: "been exercised since 1840"; and "continues to be exercised in a particular part of the [CMCA] in accordance with tikanga by the applicant group".

158. All of the applicant groups in this proceeding have applied for the recognition of PCRs.[567] The particular activities, uses and practices that each group is seeking to have recognised are set out in the Appendix, together with the Attorney-General's assessment of the evidence that applicants have provided in support of those activities, uses and practices.

159. As a preliminary point, the representation issues identified above (at [10]-[13]) need not prevent the Court from considering whether the particular whānau, hapū and iwi groups with applications before it have satisfied the test for PCRs. So, while there is more than one PCR application that has

562 Opening submissions of Channel Infrastructure dated 13 September 2024 at [7].

563 NOE Vol 2, p 285, lines 5-24 (cross-examination of Mr Elliot by Ms Dixon). See also the evidence of Juliane Chetham. Ms Chetham was asked about the impact of the buried seawall's construction on Patuharakeke. She replied, "The buried sea wall was either behind or sort of at level with the channel infrastructure fence line, so it wasn't out on the beach proper or in the coastal marine area proper": NOE Vol 2, p 246, lines 18-20 (cross-examination of Ms Chetham by Ms Ellis). She said that she had visited the site when the works were taking place and "to my recollection they were inside the fence line": NOE Vol 2, p 246, line 24.

564 NOE Vol 2, p 289, lines 18-27 (cross-examination of Mr Elliot by Mr Sharp).

565 Opening submissions dated 12 August 2024 at [82]-[90].

566 "Protected customary right" is defined in s 9 of the Act as an "activity, use, or practice".

567 See fn 11 above, however, for the Attorney-General's understanding in respect of Patuharakeke Te Iwi Trust Board's application for PCRs.

been brought on behalf of some groups (for example Te Parawhau and Ngāti Tū), the Court could consider whether it is satisfied those particular hapū have satisfied the s 51 test and issues of representation would then fall to be addressed prior to the finalisation of any orders.

160. The Attorney understands the following groups to be advancing applications for PCRs:

160.1 Te Parawhau;[568]

160.2 Te Waiariki, Ngāti Kororā and Ngāti Takapari;[569]

160.3 Ngāti Tū;[570]

160.4 Ngāti Kahu;[571]

160.5 Patuharakeke and other hapū of Ngātiwai;[572]

160.6 the Reti whānau;[573] and

160.7 Ngāpuhi-nui-tonu.[574]

161. The Attorney-General does not understand Te Rūnanga o Ngāti Whātua (on behalf of Ngāti Whātua) to be pursuing an application for PCRs in respect of the hearing area.[575]

162. The Attorney-General does not take a formal position on whether any of the applicant groups have met the test for PCRs, but to assist the Court says the following.

163. First, for the reasons set out below, some of the PCRs that are applied for are not available under the Act, either because they are specifically

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568 Tamihana Paki on behalf of Te Parawhau Hapū (CIV-2017-485-305) and Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799).

569 Pereri Mahanga on behalf of Te Waiariki, Ngāti Kororā, Ngāti Takapari (CIV-2017-404-566).

570 Waimarie Kingi on behalf of Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai (CIV-2017-404-579); and Maia Honetana on behalf of Ngāti Tū ki Ngāpuhi (CIV-2017-404-573).

571 Waimarie Kingi on behalf of Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai (CIV-2017-404-579).

572 Ngātiwai Trust Board on behalf of Ngātiwai whānau, hapū and iwi (CIV-2017-485-283) and Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554). Although the Patuharakeke Te Iwi Trust Board has also applied for PCRs, the Attorney-General understands the Board to be seeking to have the PCR application treated as a CMT application instead. See fn 11 above.

573 Elvis Reti on behalf of the Reti whānau (CIV-2017-485-515).

574 Joseph Kingi on behalf of Ngāpuhi nui tonu, Ngāti Rāhiri, Ngāi Tāhuhu and Ngāitawake (CIV-2017-404-537) and Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398).

575 See [22] above.

prohibited or are otherwise inconsistent with the scheme of the Act. These are identified in the tables included in the Appendix, in the second column, and are also summarised below:

163.1 Several applicants have applied for the recognition of non-commercial fishing and the seeding and harvesting of shellfish as PCRs.[576] These activities cannot be recognised as PCRs by virtue of s 51(2)(a) and s 51(2)(c).

163.2 Several applicants have sought PCRs for the gathering of aquatic plants and seaweed.[577] Again, these activities cannot be recognised as PCRs by virtue of s 51(2)(a) and s 51(2)(c).

163.3 Some applicants have sought PCRs for activities in relation to wildlife or marine mammals.[578] These activities cannot be recognised as PCRs by virtue of s 51(2)(d).

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576 Tamihana Paki on behalf of Te Parawhau Hapū (CIV-2017-485-305) (seeking PCRs for non-commercial fishing, non-commercial seeding and harvesting of shellfish and seeding of elver and harvesting eels); Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799) (seeking PCRs for non-commercial fishing and non-commercial seeding and harvesting of shellfish); Maia Honetana on behalf of Ngāti Tū ki Ngāpuhi (CIV-2017-404-573) (seeking PCRs for customary fishing, customary gathering of shellfish and the exercise of kaitiakitanga for conservation of kaimoana and fish stocks); Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398) (seeking PCRs for commercial and non-commercial fishing, commercial and non-commercial harvesting of shellfish and kaimoana and [use of] toka ika or protected fishing grounds); Joseph Kingi on behalf of Ngāpuhi nui tonu, Ngāti Rāhiri, Ngāi Tāhuhu, and Ngāitawake (CIV-2017-404-537) (seeking PCRs for commercial and non-commercial fishing and commercial and non-commercial harvesting of shellfish or kaimoana); Elvis Reti on behalf of the Reti whānau (CIV-2017-485-515) (seeking PCRs for commercial and non-commercial fishing, commercial and non-commercial harvesting of shellfish or kaimoana and [use of] toka ika or protected fishing grounds); Patuharakeke Te Iwi Trust Board on behalf of Patuharakeke (CIV-2017-485-286) (seeking PCRs for non-commercial fishing and non-commercial seeding and harvesting of shellfish); Ngātiwai Trust Board on behalf of Ngātiwai whānau, hapū and iwi (CIV-2017-485-283) (seeking PCRs for fishing, utilising nets, hinaki and hand-lines to catch various species, and harvesting and seeding of shellfish); and Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554) (seeking PCRs for fishing, kaimoana gathering and fishing tuna).

577 Tamihana Paki on behalf of Te Parawhau Hapū (CIV-2017-485-305) (seeking a PCR for gathering edible and aquatic plants); Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799) (seeking a PCR for gathering edible and aquatic plants); Maia Honetana on behalf of Ngāti Tū ki Ngāpuhi (CIV-2017-404-573) (seeking PCRs for gathering of seaweed for cultural practices and extraction of seaweed); Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398) (seeking a PCR for gathering edible and aquatic plants); Joseph Kingi on behalf of Ngāpuhi nui tonu, Ngāti Rāhiri, Ngāi Tāhuhu, and Ngāitawake (CIV-2017-404-537) (seeking a PCR for collecting seaweed); Elvis Reti on behalf of the Reti whānau (CIV-2017-485-515) (seeking a PCR for gathering edible and aquatic plants); Patuharakeke Te Iwi Trust Board on behalf of Patuharakeke (CIV-2017-485-286) (seeking a PCR for gathering edible and aquatic plants); Ngātiwai Trust Board on behalf of Ngātiwai whānau, hapū and iwi (seeking a PCR for gathering edible and aquatic pants, including kelp and other seaweed); Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554) (seeking a PCR for [collecting] aquatic plants).

578 Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799) (seeding of ōi and kiwi on Motu Matakohe); Maia Honetana on behalf of Ngāti Tū ki Ngāpuhi (CIV-2017-404-573) (seeking a PCR for the extraction of bones); Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398) (seeking PCRs for the exercise of kaitiakitanga through the protection of kawau, sea lions and other sea creatures, protecting kawau and other sea creatures and collecting whale and whale bones); Joseph Kingi on behalf of Ngāpuhi nui tonu, Ngāti Rāhiri, Ngāi Tāhuhu, and Ngāitawake (CIV-2017-404-537) (seeking PCRs for hunting of muttonbird and wetland food stocks and collecting whale and whale bones); Elvis Reti on behalf of the Reti whānau (CIV-2017-485-515) (seeking PCRs for protecting kawau and other sea creatures and collecting whale and whale bones); Ngātiwai Trust Board on behalf of Ngātiwai whānau, hapū and iwi (seeking a PCR for accessing and caring for stranded marine mammals and obtaining bone and other cultural materials from deceased marine mammals); Ngātiwai Trust Board on behalf of Ngātiwai whānau, hapū and iwi (seeking a PCR for snaring, and accessing snaring and egg-gathering sites, for birds); and Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554) (seeking a PCR for bird snaring).

163.4 Some applicants have sought PCRs for rāhui,[579] however, as set out in the Attorney-General's opening submissions, the recognition of rāhui as a PCR is inconsistent with the scheme of the Act.[580]

164. Second, the nature of the PCRs being sought by some applicants is unclear,[581] and the evidence that has been presented to the Court has not clarified the particular physical activity, use or practice for which recognition has been sought.

165. Turning to the evidence that has been presented to the Court in support of each group's claim for PCRs, while there is some evidence that groups have continued to exercise activities, uses or practice in the hearing area in accordance with tikanga, there is a lack of clarity in some of the evidence as to the location of the particular area where activities that are claimed as PCRs are carried out.[582] It is also unclear whether some of the activities that are claimed as PCRs take place within the CMCA, and whether some of the activities that are claimed as PCRs continue to be exercised in the present day.

166. In relation to Te Parawhau:[583]

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579 Tamihana Paki on behalf of Te Parawhau Hapū (CIV-2017-485-305); Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799); Te Rūnanga o Ngāti Whātua on behalf of Ngāti Whātua (CIV-2017-404-563); Patuharakeke Te Iwi Trust Board on behalf of Patuharakeke (CIV-2017-485-286); and Ngātiwai Trust Board on behalf of Ngātiwai whānau, hapū and iwi (CIV-2017-485-283).

580 See the Attorney-General's opening submission dated 12 August 2024 at [88] (referring to *Re Edwards (Whakatōhea)* [2021] NZHC 1025, [2022] 2 NZLR 772 **[[BOA Tab 6]]** at [387]-[390] and [617]; and *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc* [2024] NZHC 309 **[[Supp BOA Tab 6]]** at [716]).

581 Where applicants have sought recognition of activities related to spiritual activities (aside from rāhui), the particular activity for which protection is sought (noting the requirement for a physical manifestation in s 51(2)(e)) has not been identified in the applications of Tamihana Paki on behalf of Te Parawhau (CIV-2017-485-305); Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799); Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398); Elvis Reti on behalf of the Reti whānau (CIV-2017-485-515); and Patuharakeke Te Iwi Trust Board on behalf of Patuharakeke (CIV-2017-485-286). Other activities that are unclear (and in respect of which a particular physical activity has not been identified) include: "the exercise of rangatiratanga" (Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398) and Elvis Reti on behalf of the Reti whānau (CIV-2017-485-515)); "the exercise of rangatiratanga and/or other customary rights over the area" and "the exercise of kaitiakitanga over the area" (Joseph Kingi on behalf of Ngāpuhi nui tonu, Ngāti Rāhiri, Ngāi Tāhuhu, and Ngāitawake (CIV-2017-404-537)); "the duty to care for and maintain the area" and "the duty to use the area to look after their relations and their guests" (Pereri Mahanga on behalf of Te Waiariki, Ngāti Kororā, Ngāti Takapari Hapū/Iwi of Niu Tireni (CIV-2017-404-566)); and "communicating hapū matauranga" (Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554)).

582 See [85] of the Attorney-General's opening submissions for the Whangārei Coast hearing dated 12 August 2024 in relation to the importance of specifying where a PCR is practiced.

583 Tamihana Paki on behalf of Te Parawhau Hapū (CIV-2017-485-305) and Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799).

166.1 *Collection of flax*: Evidence was provided of flax being collected by members of Te Parawhau from Otaika river/valley,[584] however, this is not within the stage 1(b) hearing area.[585]

166.2 *Collecting driftwood:* Evidence was provided of driftwood collection from Johnson's Point (at the mouth of the Waipū river) by members of Te Parawhau. However, on the applicant's own evidence, this practice does not appear to have been carried out since 1840. Riripeti Norris explained that her and her whānau used to collect driftwood at Marsden Point,[586] but that this practice was moved to Johnson's Point after the oil refinery was constructed at Marsden Point in the 1960s.[587]

166.3 *Use of temporary campsites:* Evidence was provided of temporary campsites being set up by members of Te Parawhau at Poupouwhenua[588] and Langs Beach.[589] However, witnesses confirmed that these areas have not been used for that purpose since around the 1960s.[590]

166.4 *Use of tauranga waka:* Bobby Tuhiwai said that, "[o]ver the decades", Te Parawhau members have often used river mouths (including at the Waipū awa and Ruakākā awa) to launch vessels,[591] although he did not describe these areas as traditional tauranga waka sites.

167. In relation to Te Waiariki, Ngāti Kororā and Ngāti Takapari,[592] no evidence appears to have been provided of the applicant group undertaking any of the activities sought to be recognised as PCRs within the stage 1(b) hearing

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584 NOE Vol 1, p 48, lines 18-32 and p 49, lines 1-5 (cross-examination of Ms Kay by Ms Roff).

585 See map 1(a) of the mapbook prepared by Richard Jennings for the Whangārei Harbour hearing **[[3110.52778]]**.

586 Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [36] **[[701.00263]]**.

587 NOE Vol 1, p 27, lines 26-32 (cross-examination of Ms Norris by Mr Simmons).

588 NOE Vol 1, p 28, lines 10-20 (cross-examination of Ms Norris by Mr Simmons); NOE Vol 1, p 60, lines 11-22 (cross-examination of Mr Kepa by Mrs Golightly).

589 Affidavit of Pari Walker dated 1 February 2024 **[[701.00354]]** at [8] **[[701.00356]]**.

590 NOE Vol 1, p 95, lines 19-33 and p 96, lines 1-14 (evidence-in-chief of Mr Walker); and p 101, lines 12-31 and p 102, lines 1-4 (cross-examination of Mr Walker by Mr Mathias); NOE Vol 1, p 27, lines 14-25 and p 28, lines 10-20 (cross-examination of Ms Norris by Mr Simmons).

591 Affidavit of Bobby James Tuhiwai dated 1 February 2024 **[[701.00348]]** at [20] **[[701.00351]]**; and NOE Vol 1, p 120, lines 29-34 (evidence-in-chief of Mr Tuhiwai).

592 Pereri Mahanga on behalf of Te Waiariki, Ngāti Kororā, Ngāti Takapari (CIV-2017-404-566).

area. Some evidence was provided of using a deep-water current located 12km out from Bream Head for the purposes of navigation.[593] However, a map depicting the current indicates that it is located outside Te Waiariki's application area (to the extent Te Waiariki's application falls within the stage 1(b) hearing area).[594]

168. In relation to Ngāti Tū:[595]

168.1 *Gathering of resources for cultural practices:* Wiremu Puke said in his stage 1(a) evidence that Ngāti Tū collect hāngi stones from Smugglers Bay.[596] He also identified other resources (hammerstones, basalt and greywacke) that would be collected from that location.[597] However, no evidence was given by tangata whenua witnesses in stage 1(b) to confirm whether the collection of these resources by members of Ngāti Tū continues today. Ms Honetana said that she would collect driftwood and shells from Langs Beach on summer holidays in the 1970s,[598] but did not say whether those practices continue today.

168.2 *Collection and use of resources for rongoā*: Ms Honetana said in her stage 1(a) evidence that rongoā such as kawakawa has always been collected and used for medicinal purposes,[599] but did not specify whether (and if so, whereabouts) this is collected from the stage 1(b) hearing area. She did say, however, that she carries out the ritual of purea (cleansing) at Langs Beach whenever she visits Whangārei.[600]

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593 Affidavit in reply of Pereri Mahanga dated 15 July 2024 **[[701.00066]]** at [1]-[3] **[[701.00068]]**.

594 See the map in Affidavit in reply of Pereri Mahanga dated 15 July 2024 **[[701.00066]]** at [1] **[[701.00067]]**.

595 Maia Honetana on behalf of Ngāti Tū ki Ngāpuhi (CIV-2017-404-573).

596 Brief of evidence of Wiremu Puke dated 21 August 2023 **[[202.00564]]** at [148] **[[202.00603]]** and [174] **[[202.00611]]**.

597 Brief of evidence of Wiremu Puke dated 21 August 2023 **[[202.00564]]** at [158] **[[202.00605]]** and [168] **[[202.00610]]**.

598 Affidavit in reply of Maia Maria Honetana dated 29 July 2024 **[[701.00071]]** at [14]-[15] **[[701.00074]]**.

599 Brief of evidence of Maia Maria Honetana dated 21 August 2023 **[[202.00542]]** at [64] **[[202.00553]]**.

600 NOE Vol 2, p 343, lines 6-12 (cross-examination of Ms Honetana by Ms Roff). When asked how often she visits the Bream Bay area and goes into the water, Ms Honetana said "As often as I can", and "this year alone, probably about 20 times": NOE Vol 2, p 343, lines 13-21. See also Brief of evidence of Maia Maria Honetana dated 21 August 2023 **[[202.00542]]** at [64] **[[202.00551]]**, where she said "the ritual of purea (cleansing) by fresh water and sea is used for health and wellbeing".

169. In relation to Ngāti Kahu:[601]

169.1 *Use of tauranga waka*: Hori Kingi said that Ngāti Kahu had tauranga waka all along the coastline.[602] Waimarie Kingi said that Kaione, located on Whatupuke (one of the islands of Marotere) was the main offshore tauranga waka that Ngāti Kahu tūpuna used to access.[603] However, she said these tauranga waka are no longer used today (whether for cultural purposes or for launching boats).[604]

170. In relation to Patuharakeke:[605]

170.1 *Baptism ceremonies:* Juliane Chetham said that baptisms occurred at Waipū and Ruakākā rivers/estuaries.[606] She did not say whether this practice continues in the present day.

170.2 *Planting and cultivating pīngao, muka and harakeke:* Ms Chetham gave evidence of plants such as pīngao, muka and harakeke being harvested from areas within Bream Bay.[607] However, she did not specify whether these activities continue in the present day. She also accepted under cross-examination that her evidence has not identified any contemporary examples of planting or cultivating plant species at Langs Beach.[608]

170.3 *Collecting hāngi stones:* Evidence was provided that Patuharakeke members continue to collect hāngi stones and driftwood from the Ruakākā and Waipū estuaries,[609] however, Ms Chetham indicated

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601 Waimarie Kingi on behalf of Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai (CIV-2017-404-579).

602 Brief of evidence of Te Whareumu Hori Kingi dated 2 February 2024 **[[701.00079]]** at [21] **[[701.00084]]**.

603 Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [63] **[[701.00142]-[701.00143]]**.

604 NOE Vol 1, p 355, lines 13-31 (cross-examination of Ms Kingi by Ms Roff): "Q. And are they still used today for cultural purposes or for launching boats or – ? A. No, 'cos the Department of Conservation's got that now".

605 Patuharakeke Te Iwi Trust Board on behalf of Patuharakeke (CIV-2017-485-286) and Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554).

606 Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(c)(i)] **[[202.00935]]**.

607 Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(d)(ii)] **[[202.00936]-[202.00937]]** (referring to the coastline from Bream Bay to Uretiti) and at [20(e)(i)] **[[202.00937]]** (referring to the Ruakākā estuary, Waipū estuary and the Ruakākā Dune Lake); NOE Vol 2, p 245, lines 12-31 (cross-examination of Ms Chetham by Ms Ellis) (referring to a "strip" of land between Channel Infrastructure's site and the moana).

608 NOE Vol 2, p 262, lines 1-6 (cross-examination of Ms Chetham by Mr Mathias).

609 Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(f)(i)] **[[202.00937]]**; and Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [126] **[[804.01704]]**.

that this activity can also be carried out in other parts of the Bream Bay coastline.[610] Harry Maki-Midwood confirmed that no evidence has been provided of Patuharakeke collecting hāngi stones at Langs Beach.[611]

170.4 *Collecting driftwood:* Evidence was provided that Patuharakeke collect driftwood and other natural resources along the Bream Bay coastline down to Uretiti.[612] In respect of the Poupouwhenua area, Ms Chetham confirmed that Patuharakeke continue to collect driftwood there.[613] Harry Maki-Midwood confirmed that no evidence has been provided of Patuharakeke collecting driftwood at Langs Beach.[614]

170.5 *Use of tauranga waka:* Evidence was provided of Patuharakakeke's present day landing sites (where tauranga waka were historically located) at: Ruakākā awa and Waipū awa (at the Princes Street reserve and the bottom of Seaview Road), Waipū (at Hamon Rd near the cemetery and the bottom of the Flagship Hill pā site), the current wharf and fishing club site (at the confluence of Waipū and Waionehu), and the location of the reserve at Waihoihoi awa (which runs through Waipū).[615] Evidence was also given identifying "Pariwaka Waipū Cove and Wakatarariki to Wairahi Langs Beach" as tauranga waka locations.[616] In addition, although outside Patuharakeke Te Iwi Trust Board's application area,[617] evidence was also provided that several traditional tauranga waka sites on Taranga and Marotere are still in use today. These sites are located at Dragon Mouth Cove and Wahine Bay on Taranga, and the West Bay landing beach

610 NOE Vol 2, p 244, lines 7-12 (cross-examination of Ms Chetham by Ms Ellis).

611 NOE Vol 2, p 262, lines 16-19 (cross-examination of Mr Maki-Midwood by Mr Mathias).

612 Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(g)(i)] **[[202.00937]]**.

613 NOE Vol 2, p 243, lines 22-30 (cross-examination of Ms Chetham by Ms Ellis).

614 NOE Vol 2, p 262, lines 16-19 (cross-examination of Mr Maki-Midwood by Mr Mathias).

615 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [127] **[[804.01704]]**. In relation to the location of Waihoihoi awa, see **[[804.01687]]**.

616 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [128] **[[804.01705]]**.

617 But within Kare Rata's application area on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554).

on Māuiamua.[618] Assuming these sites are located on the foreshore of the islands, the designation of that area as a nature reserve (see [21] above) means the Court is unable to recognise PCRs for activities that take place in that area.

171. The Attorney-General has not identified any specific evidence of Ngāpuhi-nui-tonu presently undertaking any of the activities sought to be recognised as PCRs.[619] This is also largely the case in respect of ngā hapū o Ngātiwai[620] (aside from Patuharakeke, addressed separately above at [170]), although witnesses did describe ongoing customary practices undertaken on one of the islands of Marotere in relation to wai whakaata (divining pools).[621]

172. In relation to the Reti whānau,[622] evidence was given of the applicant group continuing to collect shells and driftwood along the Bream Bay coastline, however, particular locations were not identified.[623] Howard Reti also said that campsites would be set up "[a]ll the way along the coast"[624] including within the tidal area, but did not provide any examples of this taking place within the hearing area.[625] As for the remaining PCRs sought, there does not appear to be any evidence of the applicant group undertaking those activities in the hearing area.

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618 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [144] **[[804.01710]]**.

619 Joseph Kingi on behalf of Ngāpuhi nui tonu, Ngāti Rāhiri, Ngāi Tāhuhu and Ngāitawake (CIV-2017-404-537) and Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398). While Joseph Kingi said in his 2017 affidavit that his family have been involved in the collection of stones and pumice for various processes, including tools and decoration (Affidavit of Joseph Kingi dated 31 March 2017 **[[201.0001]]** at [7] **[[201.00003]]**), Mr Kingi was unavailable for cross-examination and so it is not known whether (and if so where) this activity is undertaken within the hearing area.

620 Ngātiwai Trust Board on behalf of Ngātiwai whānau, hapū and iwi (CIV-2017-485-283) and Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554).

621 Affidavit in reply of Morore Kai Piripi dated 15 July 2024 **[[701.00205]]** at [15]-[17] **[[701.00209]]**. See also NOE Vol 2, p 10, lines 14-34 ("The wai whakaataata is a part of an extremely sacred practice that we've maintained in Ngātiwai") and p 11, lines 1-3 (evidence-in-chief of Aperahama Kerepeti-Edwards); and NOE Vol 2, p 111, lines 25-32 and p 112, lines 1-25 (evidence-in-chief of Morore Piripi). There were also references in the evidence to camping and the use of tauranga waka in respect of Taranga and Marotere, however, no specific details about where and when these activities have taken place appears to have been provided. See the table in the Appendix for further information.

622 Elvis Reti on behalf of the Reti whānau (CIV-2017-485-515).

623 NOE Vol 2, p 425, lines 12-33 and p 426, lines 1-11 (cross-examination of Mr Reti by Ms Roff) (collection of shells); and NOE Vol 2, p 426, lines 12-20 (cross-examination of Mr Reti by Ms Roff) (collection of driftwood).

624 NOE Vol 2, p 427, lines 20-23 (cross-examination of Mr Reti by Ms Roff).

625 NOE Vol 2, p 427, lines 24-33 and p 428, lines 1-18 (cross-examination of Mr Reti by Ms Roff). When asked to provide a specific example of a campsite within the hearing area, he gave an example of being born in a car beside Taupiri beach in Whangaruru (north of the hearing area): p 428, lines 12-18.

List of authorities

173. The Attorney-General continues to rely on the list of authorities attached to her opening submissions dated 12 August 2024.[626]

3 October 2024

R I. Roff / Y Moinfar-Yong
Counsel for the Attorney-General

TO: The Registrar of the High Court of New Zealand.

AND TO: The applicants and interested parties listed above.

[626] A bundle of authorities has not been filed. The Attorney-General continues to rely on the bundle (and supplementary bundle) filed for the Whangārei Harbour hearing on 29 January 2024 and 26 April 2024 respectively.

APPENDIX

This appendix provides a list of the PCRs sought by each applicant group and whether the activity is excluded from recognition under the Act. For activities noted as "permitted" activities, the evidence that has been provided by applicants to demonstrate the test for PCRs in s 51(1) has been met is assessed in the far right-hand column.

1. Tamihana Paki on behalf of Te Parawhau Hapū (CIV-2017-485-305)

Activity[627]	Permitted or excluded under s 51(2)	Attorney-General's assessment of evidence
Non-commercial fishing (utilising nets, hinaki and hand-lines to catch birds, eels and other fish)	Fishing: excluded under s 51(2)(a). Non-commercial customary fishing: excluded under s 51(2)(c)(ii). Activities relating to wildlife: excluded under s 51(2)(d)(i).	N/A
Non-commercial seeding and harvesting of shellfish	Fishing: excluded under s 51(2)(a). Non-commercial customary fishing: excluded under s 51(2)(c)(ii).	N/A
Activities related to spiritual practices (such as rāhui)	Rāhui not capable of being recognised as a PCR.[628] In relation to other practices, spiritual or cultural association not manifested in a physical activity or use related to a natural or physical resource are excluded under s 51(2)(e).	N/A There does not appear to be any evidence of spiritual practices (other than rāhui) being undertaken in the hearing area that manifest in a physical activity.
Planting and cultivating plant species in CMCA wet margins (such as flax, tī kouka, pīngao)	Permitted activity.	Margaret Kay said that flax has been collected in the past from Otaika river/Otaika valley.[629] However, Otaika river is not within the stage 1(b) hearing area.[630]
Gathering edible and aquatic plants	Aquatic life and seaweed: excluded under s 51(2)(a) and s 51(2)(c)(ii).	N/A
Extracting non-nationalised minerals for non-commercial purposes	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Collecting hāngi stones for non-commercial purposes	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Collecting driftwood and other natural resources for non-commercial purposes	Permitted activity.	Riripeti Norris said that she and her whānau used to collect driftwood along the seafront at Marsden Point (pre-1965).[631] She said that this practice was moved to Johnson's Point (at the mouth of the Waipū River) after the

627 Originating application for recognition orders dated 3 April 2017 **[[101.00222]]** at [2] **[[101.00223]]**.

628 *Re Edwards (Whakatōhea)* [2021] NZHC 1025, [2022] 2 NZLR 772 **[[BOA Tab 6]]** at [387]-[390] and [617]; and *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc* [2024] NZHC 309 **[[Supp BOA Tab 6]]** at [716].

629 NOE Vol 1, p 48, lines 18-32 and p 49, lines 1-5 (cross-examination of Ms Kay by Ms Roff).

630 See map 1(a) of the mapbook prepared by Richard Jennings for the Whangārei Harbour hearing **[[3110.52778]]**.

631 Affidavit of Riripeti Mira Norris dated 2 February 2024 **[[701.00256]]** at [36] **[[701.00263]]**.

		construction of the oil refinery at Marsden Point.[632]
[Use of] temporary camp-sites for ceremonial activities in the CMCA	Permitted activity.	Owen Latimer described camping on the beach in Bream Bay as a child.[633] He did not specify whereabouts in Bream Bay this practice took place or clarify whether camping is still undertaken there today. He was unavailable for cross-examination. Ms Norris said her whānau used to have a camping site at Poupouwhenua prior to the construction of the oil refinery in the 1960s.[634]
[Use of] tauranga waka	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.

2. Korokota Marae on behalf of Te Parawhau hapū (CIV-2017-485-799)

Activity[635]	**Permitted or excluded under s 51(2)**	**Attorney-General's assessment of evidence**
Non-commercial fishing (utilising nets, hinaki and hand-lines to catch native fish, eels and other fish species)	Fishing: excluded under s 51(2)(a). Non-commercial customary fishing: excluded under s 51(2)(c)(ii).	N/A
Non-commercial seeding and harvesting of shellfish	Fishing: excluded under s 51(2)(a). Non-commercial customary fishing: excluded under s 51(2)(c)(ii).	N/A
Activities related to spiritual practices (such as rāhui), mana whenua, mana moana, tino rangatiratanga, kaitiakitanga, wairuatanga, manaakitanga, whakapapa, mauri and whanaungatanga	Rāhui not capable of being recognised as a PCR.[636] In relation to other practices, spiritual or cultural association not manifested in a physical activity or use related to a natural or physical resource are excluded under s 51(2)(e).	N/A There does not appear to be any evidence of spiritual practices (other than rāhui) being undertaken in the hearing area that manifest in a physical activity.
Planting and cultivating plant species in the CMCA wet margins	Permitted activity.	Finnisha Tuhiwai-Birchall said planting, cultivating and gathering plant species have been customary practices of Te Parawhau since

632 NOE Vol 1, p 27, lines 26-32 (cross-examination of Ms Norris by Mr Simmons).

633 Brief of evidence of Owen Latimer **[[701.00306]]** at [4] **[[701.00307]]**.

634 NOE Vol 1, p 28, lines 16-17 (cross-examination of Ms Norris by Mr Simmons). See also NOE Vol 1, p 60, lines 11-22 (cross-examination of Dr Kepa by Mrs Golightly).

635 Originating application for recognition orders dated 3 April 2017 **[[101.00265]]** at [2] **[[101.00266-101.00267]]**.

636 *Re Edwards (Whakatōhea)* [2021] NZHC 1025, [2022] 2 NZLR 772 **[[BOA Tab 6]]** at [387]-[390] and [617]; and *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc* [2024] NZHC 309 **[[Supp BOA Tab 6]]** at [716].

(such as flax, tī kouka, pīngao, and kumara)		before 1840.[637] She did not elaborate on whereabouts these activities took/take place within the stage 1(b) hearing area and was unavailable for cross-examination.
Gathering edible and aquatic plants	Aquatic life and seaweed: excluded under s 51(2)(a) and s 51(2)(c)(ii).	N/A
Extracting non-nationalised minerals for non-commercial purposes	Permitted activity.	Ms Tuhiwai-Birchall said extracting certain minerals such as salt has been a customary practice of Te Parawhau since before 1840.[638] She did not elaborate on whereabouts this activity took/takes place within the stage 1(b) hearing area and was unavailable for cross-examination.
Collecting hāngi stones for non-commercial purposes	Permitted activity.	Ms Tuhiwai-Birchall said collecting hāngi stones has been a customary practice of Te Parawhau since before 1840.[639] She did not elaborate on whereabouts this activities took/takes place within the stage 1(b) hearing area and was unavailable for cross-examination.
Collecting driftwood and other natural resources for non-commercial purposes	Permitted activity.	Ms Tuhiwai-Birchall said collecting driftwood has been a customary practice of Te Parawhau since before 1840.[640] She did not elaborate on whereabouts this activity took/takes place within the stage 1(b) hearing area and was unavailable for cross-examination.
[Use of] temporary campsites for ceremonial activities in the CMCA	Permitted activity.	Ms Tuhiwai-Birchall said that camping has been a customary practice of Te Parawhau since before 1840.[641] She did not elaborate on whereabouts this activity took/takes place within the stage 1(b) hearing area and was unavailable for cross-examination. Pari Walker spoke of camping at Langs Beach every Christmas with his whānau and many other whānau,[642] but said this practice ceased in around the 1960s and in any event was undertaken above the high-water mark.[643]
[Use of] tauranga waka	Permitted activity.	Ms Tuhiwai-Birchall said the use of tauranga waka has been a customary practice of Te Parawhau since before 1840.[644] She did not elaborate on whereabouts this activity took/takes place within the stage 1(b) hearing area and was unavailable for cross-examination. Bobby Tuhiwai said that, "[o]ver the decades", Te Parawhau members have often used river mouths (including at the Waipū awa and

637 Affidavit of Finnisha Tuhiwai-Birchall dated 21 August 2023 **[[203.01330]]** at [25] **[[203.01336]]**.

638 Affidavit of Finnisha Tuhiwai-Birchall dated 21 August 2023 **[[203.01330]]** at [25] **[[203.01336]]**.

639 Affidavit of Finnisha Tuhiwai-Birchall dated 21 August 2023 **[[203.01330]]** at [25] **[[203.01336]]**.

640 Affidavit of Finnisha Tuhiwai-Birchall dated 21 August 2023 **[[203.01330]]** at [25] **[[203.01336]]**.

641 Affidavit of Finnisha Tuhiwai-Birchall dated 21 August 2023 **[[203.01330]]** at [25] **[[203.01336]]**.

642 Affidavit of Pari Walker dated 1 February 2024 **[[701.00354]]** at [8] **[[701.00356]]**.

643 NOE Vol 1, p 96, lines 5-14 (evidence-in-chief of Mr Walker) and NOE Vol 1, p 101, lines 12-31 and p 102, lines 1-9 (cross-examination of Mr Walker by Mr Mathias).

644 Affidavit of Finnisha Tuhiwai-Birchall dated 21 August 2023 **[[203.01330]]** at [25] **[[203.01336]]**.

		Ruakākā awa) to launch vessels,[645] although he did not describe these areas as traditional tauranga waka sites.
Seeding of elver and harvesting eels	Fishing: excluded under s 51(2)(a). Commercial and non-commercial customary fishing: excluded under s 51(2)(c)(i) and s 51(2)(c)(ii).	N/A
Seeding of oi and kiwi on Motu Matakohe	Activities relating to wildlife: excluded under s 51(2)(d)(i).	N/A

3. Te Rūnanga o Ngāti Whātua on behalf of Ngāti Whātua (CIV-2017-404-563)

Activity[646]	**Permitted or excluded under s 51(2)**	**Attorney-General's assessment of evidence**
Gathering flax to make kupenga (fishing nets), whariki (mats) for whare, Korowai (cloaks), piupiu, maro (war belt), tatua or whītiki (belt), strainers for making scented body oils from Tītoki, kete for gathering kaimoana, and transporting goods	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Gathering Tī Kouka (Cabbage tree) leaves for making fishing nets	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Gathering Pīngao to make tukutuku panels for Wharehui	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
[Use of] temporary campsites (nohoanga) the iwi set up and occupied around the coast when gathering food and resources	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Rāhui put in place over coastal areas and stretches of moana by tohunga to protect the mauri of mahinga	Rāhui not capable of being recognised as a PCR.[647]	N/A

[645] Affidavit of Bobby James Tuhiwai dated 1 February 2024 **[[701.00348]]** at [20] **[[701.00351]]**; and NOE Vol 1, p 120, lines 29-34 (evidence-in-chief of Mr Tuhiwai).

[646] Fourth amended originating application for recognition orders dated 21 August 2023 **[[101.00060]]** at [11] **[[101.00063]]-[[101.00064]]**.

[647] *Re Edwards (Whakatōhea)* [2021] NZHC 1025, [2022] 2 NZLR 772 **[[BOA Tab 6]]** at [387]-[390] and [617]; and *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc* [2024] NZHC 309 **[[Supp BOA Tab 6]]** at [716].

mātaitai (seafood gathering sites), tauranga ika (fishing areas), pā harakeke (flax bushes), ngahere (bush), wāhi tapu and other valuable sites and resources which asserted the mana of the iwi over the resources within the rohe		
Whakawhanaungatanga – coming together by transport routes provided by the harbours and coastline for hui to address all business, decisions and practices of the iwi	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Manaakitanga – providing hospitality to manuhiri, feeding them with resources of ika, kai mātaitai, manu (bird), hua rākau (tree fruit) and hua whenua (vegetables) from the rohe	Permitted activity, provided spiritual or cultural association manifested in a physical activity or use related to a natural or physical resource: s 51(2)(e).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Takoha – giving gifts to manuhiri of the valued resources within the rohe which developed and maintained relationships with other iwi, which were utilised when conflict arose with other iwi	Permitted activity, provided spiritual or cultural association manifested in a physical activity or use related to a natural or physical resource: s 51(2)(e).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Rangatiratanga, mana tuku iho from atua to tupuna endorsed by the iwi. Mana over resources held by the Rangatira	Nature of physical activity/use unclear. Spiritual or cultural association not manifested in a physical activity or use related to a natural or physical resource: excluded under s 51(2)(e).	No evidence of these concepts being manifested in physical activities within the takutai moana appears to have been provided.

4. Waimarie Kingi on behalf of Ngā Hapū o Tangaroa ki Te Ihu o Manaia tae atu ki Mangawhai (CIV-2017-404-579)

Activity[648]	Permitted or excluded under s 51(2)	Attorney-General's assessment of evidence
Kaitiakitanga roles and responsibilities, including the passing on of Māori lore and ecological wisdom to younger generations, and conservation, protection and supervision of the specified area.	Permitted activity, provided spiritual or cultural association manifested in a physical activity or use related to a natural or physical resource: s 51(2)(e).	The Attorney-General has not identified any specific examples of the applicant group undertaking physical activities in the takutai moana as a manifestation of the exercise of kaitiakitanga.
[Use of] tauranga waka	Permitted activity.	Hori Kingi said that Ngāti Kahu had tauranga waka all along the harbour and coastline.[649] Waimarie Kingi said that Kaione, located on Whatupuke (one of the islands of Marotere) was the main offshore tauranga waka that Ngāti Kahu tūpuna used to access.[650] However, she said these tauranga waka are no longer used today (whether for cultural purposes or for launching boats).[651] In any event, as noted at [21] above, if these sites are located on the foreshore of the islands, the designation of that area as a nature reserve means the Court is unable to recognise PCRs for activities that take place in that area. Riki Solomon was asked to identify the locations from which he would launch to go fishing with his father. He did not appear to identify any launching sites within the stage 1(b) hearing area.[652]

[648] Amended originating application for recognition orders dated 11 December 2023 **[[101.00122]]** at [20]-[24] **[[101.00127]]**.

[649] Brief of evidence of Te Whareumu Hori Kingi dated 2 February 2024 **[[701.00079]]** at [21] **[[701.00084]]**.

[650] Brief of evidence of Waimarie Kingi dated 19 February 2024 **[[701.00126]]** at [63] **[[701.00142]-[701.00143]]**.

[651] NOE Vol 1, p 355, lines 13-31 (cross-examination of Ms Kingi by Ms Roff): "Q. And are they still used today for cultural purposes or for launching boats or – ? A. No, 'cos the Department of Conservation's got that now".

[652] See NOE Vol 1, p 433, lines 24-33 and p 434, lines 1-5 (cross-examination of Mr Solomon by Ms Roff) for the launching sites identified: "Taurikura, Parua Bay, the jetty across from Parua Bay. McLeods Bay, Urquharts, all the way up and down various places at the harbour. On the other side of the harbour, at Urquharts was a great place to launch, because you got very quick access out through the channel and out into those more open waters. Moving around to the left, down to Kauri Mountain, Ocean Beach, further to the right through up into Bream Bay".

5. Maia Honetana on behalf of Ngāti Tū ki Ngāpuhi (CIV-2017-404-573)

Activity[653]	Permitted or excluded under s 51(2)	Attorney-General's assessment of evidence
Customary fishing of certain species of fish (including whitebait) to feed whānau, kaumātua, hapū and to provide kai for hui, tangihanga and marena/weddings	Fishing: excluded under s 51(2)(a), except in relation to non-commercial whitebait. Non-commercial fishing: excluded under s 51(2)(c)(ii), except in relation to whitebait.	In relation to whitebaiting, no specific evidence appears to have been provided of this activity occurring in the hearing area. Maia Honetana referred to uri of Ngāti Tū gathering whitebait from "estuaries around Parua Bay, Tamaterau and other bays within the application area"[654] but she did not specify whether any of these "other bays" are located within the stage 1(b) hearing area.
Customary shellfish-gathering of certain species	Fishing: excluded under s 51(2)(a). Non-commercial customary fishing: excluded under s 51(2)(c)(ii).	N/A
Gathering of resources for cultural practices, including seaweed, stones, pumice, semi-precious stones, shells, driftwood and minerals	Permitted activities, except in relation to seaweed: excluded under s 51(2)(a) and s 51(2)(c)(ii).	Wiremu Puke said in his stage 1(a) evidence that Ngāti Tū collect hāngi stones from Smugglers Bay.[655] He also identified other resources (hammerstones, basalt and greywacke) that would be collected from that location.[656] However, no evidence was given by tangata whenua witnesses in stage 1(b) to confirm whether the collection of these resources by members of Ngāti Tū continues today. Ms Honetana described collecting shells and driftwood from "Langs Beach or another beach" when visiting Whangārei on summer holidays in the 1970s.[657] She did not say whether this practice continues today.
The collection of flotsam, jetsam and lagan	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
The exercise of kaitiakitanga for conservation of kaimoana and fish stocks, resources and the environment, protection from erosion, marine farming, caring for plant and mineral resources and sustainable	Permitted activities, except in relation to activities regulated under the Fisheries Act: s 51(2)(a). Commercial aquaculture activity: excluded under s 51(2)(b).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.

653 The application does not specify the particular PCRs that are sought, however, these are set out in the brief of evidence of Maia Maria Honetana dated 21 August 2023 **[[202.00542]]** at [104] **[[202.00561]-[202.00562]]**.

654 Affidavit of Maia Maria Nova Honetana dated 17 August 2022 **[[201.00265]]** at [55] **[[201.00274]]**.

655 Brief of evidence of Wiremu Puke dated 21 August 2023 **[[202.00564]]** at [148] **[[202.00603]]** and [174] **[[202.00611]]**.

656 Brief of evidence of Wiremu Puke dated 21 August 2023 **[[202.00564]]** at [158] **[[202.00605]]** and [168] **[[202.00610]]**.

657 Affidavit in reply of Maia Maria Honetana dated 29 July 2024 **[[701.00071]]** at [14]-[15] **[[701.00074]]**.

management of resources		
The exercise of mana motuhake and rangatiratanga	Spiritual or cultural association not manifested in a physical activity or use related to a natural or physical resource: excluded under s 51(2)(e).	Specific examples of physical activities taking place in the takutai moana as a manifestation of mana motuhake and rangatiratanga do not appear to have been provided.
The use of resources for medicinal and healing purposes	Permitted activity.	Ms Honetana said in her stage 1(a) evidence that rongoā such as kawakawa has always been collected and used for medicinal purposes,[658] but did not specify whether (and if so, whereabouts) this is collected from the stage 1(b) hearing area. She did say, however, that she carries out the ritual of purea (cleansing) at Langs Beach whenever she visits Whangārei.[659]
Resource extraction, including shells/fossils, wood, bones, sulphur, seaweed, stones and sand	Permitted activities, except in relation to seaweed and aquatic life (excluded under s 51(2)(a)) and s 51(2)(c)(ii)) and the bones of marine mammals (excluded under s 51(2)(d)(ii)).	As noted above, Ms Honetana described collecting shells and driftwood from "Langs Beach or another beach" when visiting Whangārei on summer holidays in the 1970s.[660] She did not say whether this practice continues today.

6. Pereri Mahanga on behalf of Te Waiariki, Ngāti Kororā, Ngāti Takapari Hapū/Iwi of Niu Tireni (CIV-2017-404-566)

Activity[661]	**Permitted or excluded under s 51(2)**	**Attorney-General's assessment of evidence**
The right to pass and re-pass over the application area without interference	Permitted activity (noting public rights already provided by ss 26(1)(b) and 27(1)(a)).	Pereri Mahanga said Whangarei Terenga Parāoa is the name of a deep-water current which is located 12 km out from Bream Head. Mr Mahanga said that it is utilised by tangata whenua as a strategic transportation method, serves as a pathway into Whangārei Harbour and provides access to customary resources such as kaimoana and rongoā.[662] However, a map depicting the current indicates that it is located outside Te Waiariki's application area (to the extent Te Waiariki's application falls within the stage 1(b) hearing area).[663]

658 Brief of evidence of Maia Maria Honetana dated 21 August 2023 **[[202.00542]]** at [64] **[[202.00553]]**.

659 NOE Vol 2, p 343, lines 6-12 (cross-examination of Ms Honetana by Ms Roff). When asked how often she visits the Bream Bay area and goes into the water, Ms Honetana said "As often as I can", and "this year alone, probably about 20 times": NOE Vol 2, p 343, lines 13-21. See also Brief of evidence of Maia Maria Honetana dated 21 August 2023 **[[202.00542]]** at [64] **[[202.00551]]**, where she said "the ritual of purea (cleansing) by fresh water and sea is used for health and wellbeing".

660 Affidavit in reply of Maia Maria Honetana dated 29 July 2024 **[[701.00071]]** at [14]-[15] **[[701.00074]]**.

661 Amended originating application for recognition orders dated 11 December 2023 **[[101.00079]]** at [1.2] **[[101.00081]]**.

662 Affidavit in reply of Pereri Mahanga dated 15 July 2024 **[[701.00066]]** at [1]-[3] **[[701.00068]]**.

663 See the map in Affidavit in reply of Pereri Mahanga dated 15 July 2024 **[[701.00066]]** at [1] **[[701.00067]]**.

The right to launch, land, anchor, and stay on the application area without interference	Permitted activity (noting public rights already provided by s 27(1)).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
The right to take anything found on the shore of the application area without interference	To the extent the activity is related to wildlife or marine mammals, it is excluded under s 51(2)(d)(i) and s 51(2)(d)(ii). To the extent the activity is related to aquatic life and seaweed, it is excluded under s 51(2)(a) and s 51(2)(c)(ii). To the extent the activity is related to commercial or non-commercial customary fishing, it is excluded under s 51(2)(c)(i) and 51(2)(c)(ii).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
The right to take any produce of the sea that is over the application area without interference	To the extent the activity is related to wildlife or marine mammals, it is excluded under s 51(2)(d)(i) and s 51(2)(d)(ii). To the extent the activity is related to aquatic life and seaweed, it is excluded under s 51(2)(a) and s 51(2)(c)(ii). To the extent the activity is related to commercial or non-commercial customary fishing, it is excluded under s 51(2)(c)(i) and 51(2)(c)(ii).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
The right to take anything attached to the underlying land without interference	To the extent the activity is related to aquatic life and seaweed, it is excluded under s 51(2)(a) and s 51(2)(c)(ii). To the extent the activity is related to commercial or non-commercial customary fishing, it is excluded under s 51(2)(c)(i) and 51(2)(c)(ii). All petroleum, gold, silver and uranium existing in its natural condition in land continues to be the property of the Crown: s 16(1).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
The right to salvage anything within the application area without interference	Permitted activity (depending on what is salvaged).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.

The right to conduct and undertake ceremonies within the application area without interference	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
The right to conduct and undertake trading activities there without interference	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
The duty to care for and maintain the area	Nature of physical activity/use unclear.	It is unclear to the Attorney-General what particular customary activity associated with caring for and maintaining the area is being referred to by the applicant group, or what evidence is being relied on.
The duty to use the area to look after their relations and their guests	Nature of physical activity/use unclear.	It is unclear to the Attorney-General what particular customary activity associated with using the area to look after relations and guests is being referred to by the applicant group, or what evidence is being relied on.

7. Louisa Collier on behalf of Ngāti Kawau and Te Waiariki Kororā (CIV-2017-485-398)

Activity[664]	**Permitted or excluded under s 51(2)**	**Attorney-General's assessment of evidence**
The exercise of rangatiratanga	Spiritual or cultural association not manifested in a physical activity or use related to natural or physical resources: excluded by s 51(2)(e).	Specific examples of physical activities taking place in the takutai moana as a manifestation of the exercise of rangatiratanga were not provided.
The exercise of kaitiakitanga including through protecting kawau, sea lions and other sea creatures	To the extent the activity is related to wildlife and marine mammals, it is excluded under s 51(2)(d)(i) and s 51(2)(d)(ii).	Specific examples of physical activities taking place in the takutai moana as a manifestation of the exercise of kaitiakitanga were not provided.
Commercial and non-commercial fishing	Fishing: excluded under s 51(2)(a). Commercial and non-commercial fishing: excluded under s 51(2)(c)(i) and s 51(2)(c)(ii).	N/A
Commercial and non-commercial harvesting of shellfish or kaimoana	Fishing: excluded under s 51(2)(a). Commercial and non-commercial fishing: excluded under s 51(2)(c)(i) and s 51(2)(c)(ii).	N/A

[664] Amended originating application for recognition orders dated 13 December 2017 **[[101.00234]]** at [7] **[[101.00237]]-[[101.00239]]**.

Activities related to spiritual practices	Spiritual or cultural association not manifested in a physical activity or use related to natural or physical resources: excluded by s 51(2)(e).	Specific examples of physical activities taking place in the takutai moana as a manifestation of spiritual associations were not provided.
Use [of the CMCA] as tauranga waka	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Gathering edible and aquatic plants including flax, tī kouka, pīngao and seaweed	Aquatic life and seaweed: excluded under s 51(2)(a) and s 51(2)(c)(ii).	N/A
Extraction of fossils, rocks and minerals, including stones, shingles, sand, pumice, semi-precious stones and other minerals	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
[Use of] kauta or temporary campsites	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
[Use of] toka ika or protected fishing grounds	Fishing: excluded under s 51(2)(a). Non-commercial customary fishing: excluded under s 52(2)(c)(ii).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Protecting kawau and other sea creatures	Activities relating to wildlife and marine mammals: excluded under s 51(2)(d)(i) and s 51(2)(d)(ii).	N/A
Collecting shells	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Collecting driftwood	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Collecting whale and whale bones	Activities relating to marine mammals: excluded under s 51(2)(d)(ii).	N/A
Taking flotsam, jetsam and langam [sic – presumably meant to say lagan].	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Further uses and practices to be the subject of evidence	No activity specified.	No evidence appears to have been provided to identify additional uses or practices.

8. Joseph Kingi on behalf of Ngāpuhi nui tonu, Ngāti Rāhiri, Ngāi Tāhuhu, and Ngāitawake (CIV-2017-404-537)

Activity[665]	Permitted or excluded under s 51(2)	Attorney-General's assessment of evidence
The exercise of rangatiratanga and/or other customary rights over the area	Spiritual or cultural association not manifested in a physical activity or use related to natural or physical resources: excluded by s 51(2)(e).	Specific examples of physical activities taking place in the takutai moana as a manifestation of the exercise of rangatiratanga were not provided.
The exercise of kaitiakitanga over the area	Spiritual or cultural association not manifested in a physical activity or use related to a natural or physical resource: excluded under s 51(2)(e).	Specific examples of physical activities taking place in the takutai moana as a manifestation of the exercise of kaitiakitanga were not provided.
Use of the takutai moana as a tauranga waka	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Planting and harvesting of native flora	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Aquaculture for the growth and harvest of kaimoana	Commercial aquaculture: excluded under s 51(2)(b)	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Commercial and non-commercial fishing	Fishing: excluded under s 51(2)(a). Commercial and non-commercial fishing: excluded under s 51(2)(c)(i) and s 51(2)(c)(ii).	N/A
Commercial and non-commercial harvesting of shellfish or kaimoana	Fishing: excluded under s 51(2)(a). Commercial and non-commercial fishing: excluded under s 51(2)(c)(i) and s 51(2)(c)(ii).	N/A
Hunting of muttonbird and wetland food stocks foraged by whānau in the estuaries and coastal margins	Activities relating to wildlife: excluded under s 51(2)(d)(i).	N/A
The extraction of fossils, rocks and minerals including stones, pumice,	Permitted activity.	Joseph Kingi said in his 2017 affidavit that his family have been involved in the collection of stones and pumice for various processes, including tools and

[665] Amended originating application for recognition orders dated 17 October 2023 **[[101.00010]]** at [12] **[[101.00013]]-[[101.00015]]**.

semi-precious stones and other materials		decoration.[666] He was unavailable for cross-examination and so it is not known whether (and if so where) this activity is undertaken within the hearing area.
Collecting shells	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Collecting driftwood	Permitted activity.	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Collecting seaweed	Taking of seaweed: excluded under s 51(2)(a) and s 51(2)(c)(ii).	N/A
Collecting whale and whale bones	Activities relating to marine mammals: excluded under s 51(2)(d)(ii).	N/A
Cleansing and matauranga activities	Permitted activity, provided spiritual or cultural association manifested in a physical activity or use related to a natural or physical resource: s 51(2)(e).	There does not appear to be any evidence of the applicant group undertaking this activity in the hearing area.
Tohunga activities	Permitted activity, provided spiritual or cultural association manifested in a physical activity or use related to a natural or physical resource: s 51(2)(e).	Evidence was provided of tohunga activities conducted in relation to the management and control of kaimoana gathering.[667] However, activities relating to customary fishing are excluded from being recognised as a PCR under the Act.
Other complementary customary activities, uses and practices.	No activity specified.	No evidence appears to have been provided of complementary activities, use and practices.

9. Elvis Reti on behalf of the Reti whānau (CIV-2017-485-515)

Activity[668]	**Permitted or excluded under s 51(2)**	**Attorney-General's assessment of evidence**
The exercise of rangatiratanga	Spiritual or cultural association not manifested in a physical activity or use related to a natural or physical resource: excluded under s 51(2)(e).	Specific examples of physical activities taking place in the takutai moana as a manifestation of the exercise of rangatiratanga were not provided.
The exercise of kaitiakitanga including through protecting flora and fauna	Permitted activity, provided spiritual or cultural association manifested in a physical activity or use	Specific examples of physical activities taking place in the takutai moana as a manifestation of the

666 Affidavit of Joseph Kingi dated 31 March 2017 **[[201.0001]]** at [7] **[[201.00003]]**.

667 For example, Brief of evidence of Arthur Mahanga dated 26 March 2024 **[[701.00322]]** at [20]-[23] **[[701.00326]-[701.00327]]** and [26] **[[701.00328]]**; Brief of evidence of Louisa Collier dated 26 March 2024 **[[701.00331]]** at [15]-[16] **[[701.00335]]**.

668 Originating application for recognition orders dated 3 April 2017 **[[101.00250]]** at [7] **[[101.00252-101.00254]]**.

	related to a natural or physical resource: s 51(2)(e).	exercise of kaitiakitanga were not provided.
Commercial and non-commercial fishing	Fishing: excluded under s 51(2)(a). Commercial and non-commercial fishing: excluded under s 51(2)(c)(i) and s 51(2)(c)(ii).	N/A
Commercial and non-commercial harvesting of shellfish or kaimoana	Fishing: excluded under s 51(2)(a). Commercial and non-commercial fishing: excluded under s 51(2)(c)(i) and s 51(2)(c)(ii).	N/A
Activities related to spiritual practices	Spiritual or cultural association not manifested in a physical activity or use related to a natural or physical resource: excluded under s 51(2)(e).	Specific examples of physical activities taking place in the takutai moana as a manifestation of spiritual associations were not provided.
Use [of the CMCA] as tauranga waka	Permitted activity.	Under cross-examination, Howard Reti was not able to provide locations of any tauranga waka sites within the hearing area.[669]
Gathering edible and aquatic plants including flax, tī kouka, pīngao and seaweed	Aquatic life and seaweed: excluded under s 51(2)(a) and s 51(2)(c)(ii).	N/A Mr Reti said he would collect puha when he was growing up.[670] When asked whereabouts puha would be gathered, Mr Reti did not provide any specific locations within the hearing area and appeared to confirm that puha no longer grows in the areas that his whānau once gathered from.[671] Mr Reti was also not able to provide locations where flax and pīngao is collected. He said, "that's a wom[a]n's thing" and "you'll have to ask a woman" to find out that information.[672]
Extraction of fossils, rocks and minerals, including stones, shingle, sand, pumice, semi-precious stones and other minerals	Permitted activity.	No evidence appears to have been provided of the applicant group undertaking this activity in the hearing area.

669 NOE Vol 2, p 426, lines 30-34 and p 427, lines 1-5 (cross-examination of Mr Reti by Ms Roff).

670 Brief of evidence of Howard Reti dated 27 March 2024 **[[701.00339]]** at [4] **[[701.00340]]**.

671 NOE Vol 2, p 424, lines 21-29 (cross-examination of Mr Reti by Ms Roff). Mr Reti said, "most of the areas that we gathered watercress and puha and mushrooms, and all of those things are gone. You know, with farming and nitrogen and coming down into the water, it's killed all those things".

672 NOE Vol 2, p 426, lines 21-29 (cross-examination of Mr Reti by Ms Roff).

[Use of] kauta or temporary campsites	Permitted activity.	Mr Reti said his whānau would set up temporary campsites "[a]ll the way along the coast" and usually where there is freshwater.[673] He said that some of these campsites would be on the beach (including in the tidal area), and some would be on dry land.[674] However, he did not locate any such campsites within the hearing area.[675]
[Use of] toka ika or protected fishing grounds	Fishing: excluded under s 51(2)(a). Non-commercial customary fishing: excluded under s 52(2)(c)(ii).	N/A
Protecting kawau and other sea creatures	Activities relating to wildlife and marine mammals: excluded under s 51(2)(d)(i) and s 51(2)(d)(ii).	N/A
Collecting shells	Permitted activity.	Mr Reti said shells are collected from all along the coast.[676] He declined to identify any particular areas within the hearing area where shells are collected from.[677]
Collecting driftwood	Permitted activity.	Mr Reti said the Reti whānau continues to collect driftwood.[678] He did not identify any particular areas within the hearing area where driftwood is collected from.[679]
Collecting whale and whale bones	Activities relating to marine mammals: excluded under s 51(2)(d)(ii).	N/A
Taking flotsam, jetsam and langam [sic – presumably meant to say lagan]	Permitted activity.	No evidence appears to have been provided of the applicant group undertaking this activity in the hearing area.
Further uses and practices to be the subject of evidence	No activity specified.	N/A

673 NOE Vol 2, p 427, lines 21-23 (cross-examination of Mr Reti by Ms Roff).

674 NOE Vol 2, p 427, lines 6-33 and p 428, lines 1-8 (cross-examination of Mr Reti by Ms Roff).

675 NOE Vol 2, p 428, lines 9-18 (cross-examination of Mr Reti by Ms Roff). When asked to provide a specific example of a campsite within the hearing area, he gave an example of being born in a car beside Taupiri beach in Whangaruru (north of the hearing area): p 428, lines 12-18.

676 NOE Vol 2, p 425, lines 12-16 (cross-examination of Mr Reti by Ms Roff).

677 NOE Vol 2, p 425, line 33 and p 426, lines 1-11 (cross-examination of Mr Reti by Ms Roff). He said, "I'm not going to answer that" and "I'm not here to educate you about our world".

678 NOE Vol 2, p 426, lines 12-17 (cross-examination of Mr Reti by Ms Roff).

679 NOE Vol 2, p 426, lines 18-20 (cross-examination of Mr Reti by Ms Roff) ("Q. …[A]ny places in particular within the hearing area that that would be collected from? A. Not particularly, no.")

10. Patuharakeke Te Iwi Trust Board on behalf of Patuharakeke (CIV-2017-485-286)

The PCRs sought by Patuharakeke Te Iwi Trust Board in its originating application dated 29 March 2017 are set out below for completeness. However, as noted above,[680] the applicant has indicated it is now seeking to have its PCR application "considered as a CMT application" instead.[681] The Attorney-General understands that Patuharakeke are therefore no longer seeking PCRs in respect of that area, but are instead seeking CMT only.

Activity[682]	Permitted or excluded under s 51(2)	Attorney-General's assessment of evidence
Non-commercial fishing, including utilising nets and hand lines to catch tamure (snapper), patiki (flounder), mango (shark), inanga (whitebait), kumukumu (red gurnard), pioke (dogfish), paraoa (whale), kahawai, tuna (eel), kanae (grey eyed mullet), wheke (octopus), whai (stingray), aua (yellow eyed mullet), parore (bream)	Fishing: excluded under s 51(2)(a), except in relation to non-commercial whitebait. Non-commercial fishing: excluded under s 51(2)(c)(ii), except in relation to whitebait.	In relation to white baiting, no evidence appears to have been provided of this activity taking place within the hearing area.
Non-commercial seeding and harvesting of shellfish, including pipi (kokota), tio (rock oysters), koura (freshwater crayfish), kuku (mussels), tipa (scallops), kina, paua, tuatua (cockles), pupu, papaka (crabs)	Fishing: excluded under s 51(2)(a). Non-commercial fishing: excluded under s 51(2)(c)(ii).	N/A
Activities related to spiritual practices, such as rāhui	Spiritual or cultural association not manifested in a physical activity or use related to a natural or physical resource: excluded under s 51(2)(e). Rāhui not capable of being recognised as a PCR.[683]	Juliane Chetham said that baptisms occurred at Waipū and Ruakākā rivers/estuaries.[684] She did not say whether this practice continues in the present day.
Planting and cultivating plant species in the application area, including harakeke, pirita (supplejack) and pīngao	Permitted activity.	Ms Chetham said the entire foredune area on the coastline from Bream Bay to Uretiti was formerly a significant source of pīngao, which was used for weaving

680 At fn 11 of these submissions.

681 Memorandum of counsel dated 11 December 2023 **[[101.00203]]**.

682 Originating application for PCRs dated 3 April 2017 **[[101.00190]]** at [2] **[[101.00191-101.00192]]**.

683 *Re Edwards (Whakatōhea)* [2021] NZHC 1025, [2022] 2 NZLR 772 **[[BOA Tab 6]]** at [387]-[390] and [617]; and *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc* [2024] NZHC 309 **[[Supp BOA Tab 6]]** at [716].

684 Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(c)(i)] **[[202.00935]]**.

		baskets or nets.[685] Ms Chetham also said that the salt marshes on the southern arm of the Ruakākā estuary were harvest sites for muka, harakeke and rongoā. These resources were also collected in the Waipū estuary and the Ruakāka Dune Lake.[686] She did not specify whether these activities are still undertaken in the present day. She also accepted under cross-examination that her evidence has not identified any contemporary examples of planting or cultivating plant species at Langs Beach.[687] In respect of a "strip" of land between Channel Infrastructure's site and the moana,[688] Ms Chetham identified 'pingāo restoration' as an activity that Patuharakeke undertakes there.[689] Dr Guy Gudex said in his 2017 affidavit that coastal plant species including pirita (supplejack), harakeke, and pingao were all harvested, with pingao being useful for weaving.[690] His evidence did not specify whether this activity was undertaken in the stage 1(b) hearing area or whether it still occurs today.
Gathering edible and aquatic plants such as watercress	Aquatic life and seaweed: excluded under s 51(2)(a) and s 51(2)(c)(ii).	N/A
Collecting hāngi stones for non-commercial purposes	Permitted activity.	Witnesses said Patuharakeke continue to collect hāngi stones from the Waipū and Ruakākā estuaries.[691] Under cross-examination, Ms Chetham clarified that the gathering of hāngi stones is often associated with where you have an outlet, such as the Ruakākā river mouth, however the activity can be spread along the Bream Bay coastline.[692]
Collecting driftwood and other natural resources for non-commercial purposes	Permitted activity.	Ms Chetham said that driftwood and other natural resources were collected all along the Bream Bay coastline down

685 Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(d)(ii)] **[[202.00936]-[202.00937]]**.

686 Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(e)(i)] **[[202.00937]]**.

687 NOE Vol 2, p 262, lines 1-6 (cross-examination of Ms Chetham by Mr Mathias).

688 NOE Vol 2, p 245, lines 3-11 (cross-examination of Ms Chetham by Ms Ellis). The area is marked as a green strip surrounding the area marked as "Precinct 6" on the Whangārei District Council's district plan map. A map of this area was shown to Ms Chetham (NOE Vol 2, p 245, lines 3-9) but not introduced as an exhibit. The map can be found online at <https://eplan.wdc.govt.nz/plan/>.

689 NOE Vol 2, p 245, lines 12-31 (cross-examination of Ms Chetham by Ms Ellis).

690 Affidavit of Dr Guy Sinclair Gudex dated 30 March 2017 **[[202.00909]]** at [33] **[[202.00918]]**.

691 Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(f)(i)] **[[202.00937]]**. See also Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [126] **[[804.01704]]**.

692 NOE Vol 2, p 244, lines 7-12 (cross-examination of Ms Chetham by Ms Ellis).

		to Uretiti.[693] In respect of the Poupouwhenua area, she confirmed that Patuharakeke continue to collect driftwood and there is nothing restricting members of the hapū from doing so.[694] She also clarified that the gathering of driftwood is often associated with where you have an outlet, such as the Ruakākā river mouth, however the activity can be spread along the coastline.[695] Harry Maki-Midwood confirmed that no evidence has been provided of Patuharakeke collecting driftwood at Langs Beach.[696]
[Use of] temporary campsites for ceremonial activities in the application area	Permitted activity.	No evidence appears to have been provided of this activity taking place within the hearing area.[697]
[Use of] tauranga waka	Permitted activity.	The traditional report prepared by Ms Chetham and Mr Maki-Midwood identified Patuharakeke's present day landing sites (where tauranga waka were historically located) as: Ruakākā awa and Waipū awa (at the Princes Street reserve and the bottom of Seaview Road), Waipū (at Hamon Rd near the cemetery and the bottom of the Flagship Hill pā site), the current wharf and fishing club site (at the confluence of Waipū and Waionehu), and the location of the reserve at Waihoihoi awa.[698] The report also identified "Pariwaka Waipū Cove and Wakatarariki to Wairahi Langs Beach" as tauranga waka locations.[699] Further, although outside Patuharakeke Te Iwi Trust Board's application area, evidence was also provided that several traditional tauranga waka sites on

693 Affidavit of Juliane Chetham dated 3 April 2017 **[[202.00922]]** at [20(g)(i)] **[[202.00937]]**.

694 NOE Vol 2, p 243, lines 22-30 (cross-examination of Ms Chetham by Ms Ellis).

695 NOE Vol 2, p 244, lines 7-12 (cross-examination of Ms Chetham by Ms Ellis).

696 NOE Vol 2, p 262, lines 16-19 (cross-examination of Mr Maki-Midwood by Mr Mathias).

697 Ms Chetham said the area along the foreshore and dunes between Northport and the refinery jetty was regularly used as a nohoanga (camping site for harvesting kai) by Patuharakeke up until the 1960s, however, this area appears to fall within the stage 1(a) hearing area (see p 218 of the Attorney-General's closing submissions for the Whangārei Harbour hearing dated 26 April 2024) and in any event Ms Chetham confirmed in her stage 1(a) evidence that this activity does not occur in that location anymore: Whangārei Harbour NOE Vol 1, p 2270, lines 29-34. Kare Rata also gave evidence of camping at Poupouwhenua with her whānau: Brief of evidence of Kare Rata dated 26 March 2024 **[[701.00041]]** at [37] **[[701.00048]]**. Under cross-examination, she agreed that the area where they would camp fell within the stage 1(a) area, and that it took place above mean high-water springs in any event: NOE Vol 2, p 190, lines 1-20 (cross-examination of Ms Rata by Ms Ellis).

698 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [127] **[[804.01704]]**. In relation to the location of Waihoihoi awa, see **[[804.01687]]**.

699 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [128] **[[804.01705]]**.

		Taranga and Marotere are still in use today. These sites are located at Dragon Mouth Cove and Wahine Bay on Taranga, and the West Bay landing beach on Māuiamua.[700] As noted at [21] above, if these sites are located on the foreshore of the islands, the designation of that area as a nature reserve means the Court is unable to recognise PCRs for activities that take place in that area.

11. Ngātiwai Trust Board on behalf of Ngātiwai whānau, hapū and iwi (CIV-2017-485-283)

Activity[701]	Permitted or excluded under s 51(2)	Attorney-General's assessment of evidence
Fishing, utilising nets, hinaki and hand-lines to catch various species	Fishing: excluded under s 51(2)(a). Commercial and non-commercial customary fishing: excluded under s 51(2)(c)(i) and s 51(2)(c)(ii).	N/A
Harvesting and in some cases seeding of shellfish	Fishing: excluded under s 51(2)(a). Commercial and non-commercial customary fishing: excluded under s 51(2)(c)(i) and s 51(2)(c)(ii).	N/A
Accessing and caring for stranded marine mammals and obtaining bone and other cultural materials from deceased marine mammals in accordance with tikanga	Activities relating to marine mammals: excluded under 51(2)(d)(ii).	N/A
Activities related to spiritual practices such as caring for water burial sites and other wāhi tapu, and imposing rāhui	Rāhui not capable of being recognised as a PCR.[702] In relation to other practices, spiritual or cultural associations not manifested in a physical activity or use related to a natural or physical resource are excluded under s 51(2)(e).	N/A Witnesses described customary practices undertaken in relation to wai whakaata (divining pools).[703] There is a divining pool on one of the islands of Marotere, although witnesses did not disclose its specific location.[704]

700 Traditional Research Report prepared by Juliane Chetham and Harry Maki-Midwood dated 2 February 2024 **[[804.01666]]** at [144] **[[804.01710]]**.

701 Originating application for recognition orders dated 31 March 2017 **[[101.00209]]** at [11] **[[101.00213]]-[[101.00214]]**.

702 *Re Edwards (Whakatōhea)* [2021] NZHC 1025, [2022] 2 NZLR 772 **[[BOA Tab 6]]** at [387]-[390] and [617]; and *Re Ngāi Tūmapūhia-a-Rangi Hapū Inc* [2024] NZHC 309 **[[Supp BOA Tab 6]]** at [716].

703 Affidavit in reply of Morore Kai Piripi dated 15 July 2024 **[[701.00205]]** at [15]-[17] **[[701.00209]]**. See also NOE Vol 2, p 10, lines 14-34 ("The wai whakaataata is a part of an extremely sacred practice that we've maintained in Ngātiwai") and p 11, lines 1-3 (evidence-in-chief of Aperahama Kerepeti-Edwards); and NOE Vol 2, p 111, lines 25-32 and p 112, lines 1-25 (evidence-in-chief of Morore Piripi).

704 Affidavit in reply of Morore Kai Piripi dated 15 July 2024 **[[701.00205]]** at [16]-[17] **[[701.00209]]**. See also NOE Vol 2, p 10, lines 14-34 and p 11, lines 1-3 (evidence-in-chief of Aperahama Kerepeti-Edwards).

Planting, cultivating and gathering plant species in the wet margins of the takutai moana (such as flax, tī kouka and pīngao)	Permitted activity.	No evidence appears to have been provided.
Gathering edible and aquatic plants, including kelp and other seaweeds	Aquatic life and seaweed: excluded under s 51(2)(a) and s 51(2)(c)(ii).	N/A
Gathering and extracting minerals, including unique taonga like Onerahi chert, and accessing sources of other minerals on offshore islands, particularly obsidian	Permitted activity.	No evidence appears to have been provided.
Snaring, and accessing snaring and egg-gathering sites, for birds	Activities relating to wildlife: excluded under s 51(2)(d)(i).	N/A
Collecting driftwood and other natural resources	Permitted activity.	No evidence appears to have been provided.
Utilising temporary campsites for seasonal harvesting and ceremonial activities	Permitted activity.	The joint kaumatua panel said that members of Ngātiwai camped on Taranga and Marotere while they were harvesting and stayed there for two or three days at a time.[705] No further detail was provided about when and whereabouts this occurred, and whether this practice continues today. Phillip Wellington said there is a camping spot on the southern side of Taranga, which he thinks is now a Department of Conservation campground.[706] No further details about the use of this site (either historically or in contemporary times) for customary purposes were provided. Nor was evidence given about whether the campsite is located within the CMCA.
Navigation between coastal settlements on the mainland and offshore islands, using tauranga waka, safe harbours and refuge caves	Permitted activity (noting public rights already provided by s 27(1)).	The joint kaumatua panel said, "there are many stories of travel to and from the islands, and harvesting of resources from them".[707] They also said that members of Ngātiwai

[705] Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [31] **[[701.00036]]**.

[706] Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [28] **[[701.00219]]**.

[707] Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [21] **[[701.00035]]**.

		would land on Taranga and Marotere and "the small island behind them", but there is no landing place on Tūturu/Sail Rock.[708] Mr Wellington said that when he was a teenager[709] he used to land on Taranga and Marotere and that there was "always a safe anchorage to be found around the islands".[710] No further details about specific landing sites on Taranga and Marotere were provided. Further, as noted at [21] above, if these sites are located on the foreshore of the islands, the designation of that area as a nature reserve means the Court is unable to recognise PCRs for activities that take place in that area.

12. Kare Rata on behalf of Ngā Hapū o Ngāti Wai (CIV-2017-404-554)

Activity[711]	**Permitted or excluded under s 51(2)**	**Attorney-General's assessment of evidence**
Fishing	Fishing: excluded under s 51(2)(a). Commercial and non-commercial customary fishing: excluded under s 51(2)(c)(i) and 51(2)(c)(ii).	N/A
Kaimoana gathering	Fishing: excluded under s 51(2)(a). Commercial and non-commercial customary fishing: excluded under s 51(2)(c)(i) and 51(2)(c)(ii).	N/A
Transport	Permitted activity.	No evidence appears to have been provided.
Rongoa collection	Permitted activity (depending on the resource collected).	No evidence appears to have been provided.
Communicating hapū matauranga	Permitted activity, provided spiritual or cultural association manifested in a physical activity or use related to a natural or physical resource: s 51(2)(e).	No evidence appears to have been provided.
Bird snaring	Activities relating to wildlife: excluded under s 51(2)(d)(i).	N/A
[Collecting] firewood and stones	Permitted activity.	No evidence appears to have been provided.

708 Joint affidavit of Te Warahi Kokowai Hetaraka, Hori Te Moanaroa Parata, Honeri Rapata, Harry Maki-Midwood, Ngāwaka Haswell Grant Pirihi, Herbert Manapiri and Aperahama Kerepeti-Edwards dated 1 February 2024 **[[701.00029]]** at [32] **[[701.00036]]**.

709 NOE Vol 2, p 106, lines 10-16 (cross-examination of Mr Wellington by Ms Roff).

710 Affidavit in reply of Phillip Rex Wellington dated 18 July 2024 **[[701.00215]]** at [28]-[29] **[[701.00219]-[701.00220]]**.

711 Originating application for recognition orders dated 3 April 2017 **[[401.00021]]** at [2] **[[401.00022]]**. A more detailed description of the activities for which PCRs are sought is set out in the appendix to the affidavit of Kare Rata dated 3 April 2017 **[[301.00043]]**.

[Collecting] aquatic plants	Aquatic life and seaweed: excluded under s 51(2)(a) and s 51(2)(c)(ii).	N/A
Fishing tuna	Fishing: excluded under s 51(2)(a). Commercial and non-commercial customary fishing: excluded under s 51(2)(c)(i) and 51(2)(c)(ii).	N/A