IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2017-485-253
CIV-2017-485-262
CIV-2017-485-377
CIV-2017-485-299
CIV-2017-485-292
[2024] NZHC 1435

IN THE MATTER	of applications for protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act)
	TE RINGAHUIA TE HATA for and on behalf of NGĀTI PATUMOANA (CIV-2017-485-253) First Applicant
	NGĀI TAMAHAUA (CIV-2017-485-262) and TE HAPŪ TĪTOKO O NGĀI TAMA (CIV-2017-485-377) Second Applicant
	NGĀTI IRA O WAIŌWEKA (CIV-2017-485-299) Third Applicant
AND	NGĀTI RUATAKENGA (CIV-2017-485-292) Fourth Applicant

Hearing: 1 May 2024

Counsel: M Smith and T H Bennion for First Applicant for CIV-2017-485-253
C M Panoho-Navaja and J Alexander for CIV-2017-485-262 and CIV-2017-485-377
A T Sykes, S W Fletcher and M S Te Hira for CIV-2017-485-299
G Melvin and S L Gwynn for Attorney-General
T Greensmith-West for Whakatane District Council (Written submissions only)
R M Boyte for Bay of Plenty Regional Council (Written submissions only)
M Hill for Crown Regional Holdings Ltd

(Written submissions only)

Judgment: 31 May 2024

JUDGMENT OF CHURCHMAN J

Background

[1] In its judgment of 18 October 2023, the Court of Appeal allowed certain appeals from the High Court decision in *Re Edwards (Whakatōhea)*[1] (the judgment under appeal). Rehearings were directed in respect of number of the matters that had been the subject of appeals.

[2] This decision deals with five such matters:

(a) Protected Customary Rights (PCR) Order for Ngāti Patumoana;

(b) Amended application for PCR and Customary Marine Title (CMT) order for Ngāi Tamahaua hapū;

(c) Third amended application for PCR orders for Ngāti Ira o Waiōweka;

(d) The extent to which any form of seaweed could be the subject of a recognition order; and

(e) Miscellaneous matters raised by local authorities.

Ngāti Patumoana

[3] In the judgment under appeal, Ngāti Patumoana had sought recognition orders for PCRs under the Marine and Coastal Area Act 2011 (MACA Act). Other than in respect of whitebaiting, the application was declined for lack of evidence.

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1 *Re Edwards* [2021] NZHC 1025, [2022] 2 NZLR 772.

[4] In respect of whitebaiting the application was declined on the basis that the beds of navigable rivers were not part of the Common Marine and Coastal Area (CMCA).

[5] Because the Court of Appeal held that the beds of navigable rivers are part of the CMCA, Ngāti Patumoana were entitled to a PCR in respect of whitebaiting in the Waiōweka River.

[6] Ngāti Patumoana had originally applied for a PCR in respect of taking kaimoana and seabirds. The Court of Appeal noted that there was no challenge to the finding in the judgment under appeal that there was no evidence of non-regulated species of kaimoana and seabirds being taken.[2] The result of this was that a PCR order was not available in relation to this part of the application.

[7] In the judgment under appeal Ngāti Patumoana's application for a PCR in respect of the taking of aquatic plants had been dismissed. The Court of Appeal noted that there was evidence of some aquatic plants growing in the takutai moana being utilised. These were harakeke, raupō, pīngao, toitoi and bullrushes.[3]

[8] The Court of Appeal also noted that there was evidence of navigation, passage and landing of waka as well as evidence of the takutai moana being used as a place where Ngāti Patumoana offered and received prayer, conducted rituals of protection and guidance, took the ill to pray and heal and the dead to embalm and engaged in leisure, play and learning. It was also somewhere where they exercised kaitiakitanga. The Court of Appeal also found there was evidence of the collection of sand, stones, shingle and detritus. Accordingly, the Court held:[4]

> …the appeal should be allowed with respect to whitebait; aquatic plants, navigation, passage and the landing of waka; rituals such as karakia and karanga; the exercise of kaitiakitanga; and the gathering of sand, stones, shingle and detritus.

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2 *Re Whakatōhea Kotahitanga Waka (Edwards)* [2023] NZCA 504 at [350].
3 At [346].
4 At [350].

[9] Ngāti Patumoana have filed a draft PCR order. In most respects, it mirrors the findings of the Court of Appeal. One part that will need modification is draft cl 4.2 which presently reads:

> **With respect to aquatic plants—**Ngāti Patumoana has the right, in accordance with tikanga, to gather aquatic plants within the common marine and coastal area that lies within the claimed area.

[10] The words "aquatic plants" need to be deleted and replaced with the following words: "harakeke, raupō, pīngao, toitoi and bullrushes". Those are the aquatic plants that there was evidence of use for weaving and to make piupiu and poi.[5]

[11] Two maps were filed by Ngāti Patumoana as part of the draft PCR order. Plan 1 depicts an area stretching from Maraetōtara in the west to Tarakeha in the east and extending into the Takutai Moana 100 metres beyond low water springs. It also includes all of Ohiwa Harbour.

[12] Plan 2 covers the same area as Plan 1 but also extends out to the 12 nautical mile limit. Neither plan makes it clear which of the different PCRs they relate to. The only one of the activities in respect of which a PCR was granted which could potentially extend beyond the 100 metre limit depicted in Plan 1, is the exercise of kaitiakitanga.

[13] The draft order and plans which accompany it will need to be modified in accordance with these observations and resubmitted for review.

[14] For completeness Ngāti Patumoana applied for an extension of time to file submissions and draft PCR orders. That was not opposed. It is granted.

Ngāi Tamahaua CIV-2017-485-262 and Te Hapū Titoko o Ngāi Tama CIV-2017-485-377 amended application

Ngāi Tamahaua

[15] Ngāi Tamahaua are members of the Te Kāhui group. They are one of the six Whakatōhea Hapu who, together with Ngāti Awa, were awarded CMT in respect of

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5 At [346].

CMT 2. In respect of CMT 1, they were awarded CMT along with the other Whakatōhea applicants (including Ūpokorehe).

[16] The case they advanced in the Court of Appeal differed from what had been advanced in the High Court. The Court of Appeal directed that a rehearing was required in respect of CMT 1 but not CMT 2.

[17] Ngāi Tamahaua have therefore filed an amended application in respect of this area that conforms with the case they advanced in the Court of Appeal. However there are a number of problems with that amended application.

[18] Paragraph 1.1 of the amended application states that:

> Ngāi Tamahaua will apply for orders
>
> (a) Recognising that Ngāi Tamahaua hapū hold (on a shared basis to the exclusion of any other individual entity or group) customary marine title in respect of the customary marine title area (**Ngāi Tama CMT area)** described in the **schedule** to this application along with Ngāti Ruatakenga, Ngāti Ira o Waiōweka, Ngāti Patumoana, Te Ūpokorehe, Ngāti Ngahere and Ngāti Hokopu and Wharepaia Hapū of Ngāti Awa.

[19] The schedule to the amended application contained a map which showed the claimed area from Maraetōtara in the west to Tarakeha in the east and out to 12 nautical miles. It also included Ohiwa Harbour which was the subject of CMT 2. The Court of Appeal did not direct a rehearing in respect of CMT 2.

[20] The map is not consistent with the findings of the Court of Appeal, in that it purports to include Te Paepae o Aotea and Whakaari (White Island), as well as Uretara Island and Hokianga Island.

[21] The Court of Appeal upheld the High Court decision excluding Te Paepae o Aotea and Whakaari (White Island) from CMT 1. Even though the map filed with the amended application does not depict the boundaries going out as far as Te Paepae o Aotea or Whakaari, the description which appears with the map must delete the reference to those areas.

[22] Uretara Island and Hokianga Island are both in Ohiwa Harbour within the area covered by CMT 2 and are not the subject of a rehearing direction.

[23] The reference to "any other individual" in 1.1 will also need to be modified to delete the word "individual". That is because the Act only permits recognition orders to be made in favour of whanau, hapu or iwi. Indeed, the three words "individual, entity or group" would ideally be replaced with the words "whanau, hapu and iwi".

[24] As and when a rehearing takes place for CMT 1, the Court will require a memorandum from all of the parties asserting entitlement to CMT in this area on a joint exclusive basis confirming their agreement as to the joint holding of CMT. The other members of Te Kahui will need to file amended applications as will Ngāti Hokopu and Wharepaia (hapu of Ngāti Awa).

[25] Paragraph 1.3 of the amended application refers to a protected customary rights order in favour of Ngāi Tamahaua hapu in respect of what is said to be "rights exercisable in respect of the Ngāi Tama CMT area". The first of those is "management and control of access and entry to all wāhi tapu and wāhi tapu areas, as defined from time to time by the hapu".

[26] The ability to designate an area as a wāhi tapu or wāhi tapu area is something that comes not from the grant of PCR but from the grant of CMT. It is also a right exercisable by the group, where CMT has been awarded on a joint exclusive basis, rather than the individual members of the group.

[27] Subparagraph (c) of 1.3 refers to a PCR for "customary fishing rights, including the gathering of kaimoana and manu". PCR orders are not available in respect of these matters. ." Section 51(2)(c)(ii) of the Act excludes from the definition of Protected Customary Right "any non-commercial Māori fishing right or interest, being a right or interest subject to the declarations in s 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992".[6]

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6 Marine and Coastal Area (Takutai moana) Act 2011 s 51(2)(c)(ii).

[28] Subparagraph (d) refers to "customary rights in respect of flora and fauna and other resources including for traditional Rongoa and other tikanga practices." More specificity of the nature of the PCR will be required. Any flora and fauna covered by a PCR have to be growing in the takutai moana rather than on adjacent dry land. The application will need to specify what flora and fauna are being referred to and what practices they are used for.

[29] Subparagraph (e) refers to "gathering and performing karakia at sites of historical significance to hapu". Section 51(2)(e) also excludes from the grant of PCR any activity:

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

[30] While performing karakia could potentially be a "physical activity" it would have to be something that occurred in the takutai moana. The same observation applies to the term "gathering". It would also be important for the application for PCR to limit "sites of historical significance to hapu" as to being within the takutai moana covered by the applications.

[31] Subparagraph (f) refers to "rights to derive commercial benefits". The right to derive a commercial benefit is something that flows from a grant of CMT not PCR Section 60(2)(a) of the Act provides:

> A customary marine title group—
>
> (a) may use, benefit from, or develop a customary marine title area (including derive commercial benefit) by exercising the rights conferred by a customary marine title order…

[32] Subparagraph (f) will therefore need to be deleted as it cannot be included in a PCR.

[33] Subparagraph (g) refers to "the protection of all other customary activity exercised by the applicant in accordance with tikanga as determined by the hapu from time to time including…" (and then it lists five specific activities). The words "as determined by the hapu from time to time including" will need to be deleted. The

holder of a grant of PCR does not have any entitlement to amend the contents of that grant should they see fit to do so. Subparagraph (g)(ii) also has problems. It purports to give Ngāi Tamahaua the power to prohibit "vehicle access to Ōpape beach to prevent the degradation of the mauri of the beach and taonga". That is not a power that flows from the grant of PCR.

[34] Paragraph [2] of the amended application states:

> The applicant reserves the right to amend the orders sought at 1.1 to give effect to any agreement reached between Ngāi Tamahaua hapu and/or Te Hapū Tītoko or Ngāi Tama and/or any other applicant group or groups including in the agreement to recognise joint exclusivity over any CMT area or areas as defined by the set agreement.

[35] This is unacceptable. No holder of a CMT can reserve to itself the power to unilaterally amend a recognition order. It is necessary for Ngāi Tamahaua to specifically set out in their amended application exactly what orders they are seeking and who they are claiming that they are entitled to CMT with on a joint exclusive basis.

[36] At [10] the amended application lists "grounds for a Protected Customary Rights order". For the reasons discussed above, a number of the listed activities would appear to be caught by s 51(2)(c)(ii) (non-commercial māori fishing rights) or s 51(2)(d) relating to "wildlife within the meaning of the Wildlife Act 1953 or any animal specified in s 6 of that Act". This will need to be amended.

[37] To the extent that some of the activities listed are incidents of a grant of CMT, they can only be exercised collectively by all of the joint CMT holders. By way of an example, paragraph [10] 1.3(g)(iv) of the amended application refers to:

> Do all things instrumental to and involving the performance of kaitiaki roles within the CMT according to Ngāi Tamahaua tikanga including management of fisheries, the environment, planting, access, use and occupation, and health and safety.

[38] To the extent that these rights are available to a CMT holder on the basis of joint exclusivity, they are joint rights not individual rights for Ngāi Tamahaua. A number of the claimed rights such as "use and occupation" go further than anything that is available under the Act. Similar observations apply to (xi) "Protecting and

preserving any taonga of Ngāi Tamahaua including artifacts found through archaeological digs." Section 82(1) of the Act provides:

> Any taonga tūturu found in a customary marine title area on or after the effective date is prima facie the property of the relevant customary marine title group."

[39] Accordingly, this right is a collective right rather than the individual right of Ngāi Tamahaua. [10] therefore needs to be re-drafted so that the recognition orders sought are of the type that are available as either PCR or CMT.

Ngāti Ira o Waiōweka CIV-2017-485-299

[40] Ngāti Ira are a member of Te Kahui and were a successful applicant in the High Court in respect of CMT areas 1 and 2. They also amended their position in the Court of Appeal and advanced a case that, in respect of CMT 1, they were entitled to an order for CMT on a shared exclusivity basis with two hapu of Ngāti Awa in the western part of Ōhiwa Harbour and from Maraetōtara to Ihukatia.

[41] In my minute of 8 March 2024[7] I directed Ngāti Ira to amend their draft PCR orders.

[42] Ngāti Ira have filed a third amended application for orders recognising Customary Marine Title and Protected Customary Rights. That document similar in a number of respects to the document filed by Ngāi Tamahaua and discussed above. The above observations about the Ngāi Tamahaua document apply equally to this document.

[43] [3] of the amended application refers to what is described as the Ngāti Ira rohe moana which is bounded at its outer limits by "the territorial sea including Whakaari Island." The map filed with the third amended application also refers to it extending out beyond Whakaari. As the Court of Appeal made clear no rehearing was to take place in respect of claims to the Marine and Coastal Area around Whakaari or Te Paepae o Aotea. The application and map will therefore need to be further amended.

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7 *Re Edwards* CIV-2011-485-817, 8 March 2024; minute of Churchman J.

[44] The amended application makes it clear that what is now being sought is CMT on a joint exclusivity basis with the other members of Te Kahui and two Ngāti Awa hapu, Ngāti Hokopu and Wharepaia (as to the western side of Ōhiwa Harbour and between Maraetōtara to Ihukatia).

[45] [6] of the amended application refers to the orders sought arising from a number of factors. Subparagraph 4.7 refers to "the protection of trees that are indicators for seasonal fishing and locators of boundaries". While navigating to offshore fisheries by the use of markers on land is an activity relevant to recognition orders, the protection of trees (which by inference do not grow in the takutai moana) is not an activity which can be recognised by way of PCR.

[46] The application for CMT refers to that part of Ōpōtiki Harbour where the Ōpōtiki Harbour redevelopment work is being undertaken. Because maps showing how the final harbour redevelopment project will affect the takutai moana at the mouth of the Ōpōtiki River have not been finalised, counsel were agreed that any final determination on the availability of CMT or PCR for that area would have to wait until that information was available.

[47] [8] refers to the application seeking:

> An order for a PCR for the landing of vessels and enabling sea passage to the islands and fishing grounds through the claimed area.

[48] Although "the islands" are not named, they presumably refer to Whakaari and Te Paepae o Aotea. As those islands are excluded from the rehearing, clarification is required as to the area this PCR is proposed to relate to.

[49] [9](b) refers to "the right to collect traditional material(s)." This is too vague and will need to be amended to explain what traditional material(s) are being referred to. Some examples are given on a "such as" basis but this leaves the identity of other "traditional material(s)" unacceptably indeterminate.

[50] The minute of counsel noted that no party had appealed the award of PCRs to Ngāti Ira and that once the draft PCR orders had been finalised, they could be sealed. For the reasons set out above the draft PCR orders and maps will need to be resubmitted first.

Seaweed

[51] A number of applicants applied for PCR orders in relation to the taking of various types of seaweed. Section 51(2)(a) of the Act provides that a Protected Customary Right does not include any activity:

> (a) that is regulated under the Fisheries Act 1996….

[52] Section 89(1) of the Fisheries Act provides that:

> (a) [n]o person shall take any fish, aquatic life, or seaweed by any method unless the person does so under the authority of and in accordance with a current fishing permit…

[53] Section 89(2)(f) provides that subs (1) does not apply to "seaweed of the class Rhodophyceae while it is unattached and cast ashore".

[54] At the hearing under appeal the Court agreed with the submission of the Attorney-General that seaweed of the class Rhodophyceae could be the subject of a PCR while it was unattached and cast ashore.[8]

[55] The Attorney-General has now changed her position on this matter both in the Court of Appeal and in this rehearing. The Attorney-General now contends that all seaweed is regulated by the Fisheries Act and therefore not available to be the subject of a PCR.

[56] The reasoning of the Attorney-General is that the Fisheries Act regulates "fishing" which it defines as:[9]

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8 *Re Edwards (Whakatōhea No (2*)) [2021] NZHC 1025 at [369(d)].
9 Fisheries Act 1996, s 2(1).

> the catching, taking, or harvesting of fish, aquatic life, or seaweed; and includes—
>
> (i) Any activity that may reasonably be expected to result in the catching, taking, or harvesting of fish, aquatic life or seaweed;
>
> (ii) Any operation in support of or in preparation for any activities described in this definition.

[57] "Seaweed" is defined as including "all kinds of algae and sea-grasses that grow in New Zealand fisheries waters at any stage of their life history, whether living or dead".[10]

[58] The Attorney-General submits that s 89 of the Fisheries Act specifically regulates the taking of fish, aquatic life and seaweed generally by providing a general regulatory regime. A specific number of exceptions are mentioned including the exception in subs (2)(f) relating to seaweed of the class Rhodophyceae while it is unattached and cast ashore. The Court of Appeal was not required to make any finding on this issue, but, as noted below at [65], expressed reservations as to whether the proposition was correct.

[59] In this hearing, the Attorney-General continued to submit that the fact that seaweed of the class Rhodophyceae, while it was unattached and cast ashore, fell within an exception to the general provision in s 89, does not mean that it is not regulated but rather that, activities relating to it are regulated with the relevant regulation being that it can be taken without the authority of a current fishing permit and as an exception to the general requirement that taking seaweed must occur under the authority of and in accordance with a current fishing permit.

[60] That interpretation was opposed by Mr Fletcher on behalf of Ngāti Ruatakenga.

[61] Mr Fletcher's argument was that, as a matter of ordinary English, something is regulated when the relevant rule controls the activity. As the Fisheries Act does not control seaweed of the class Rhodophyceae (because it may be taken without any permit if it is unattached and cast ashore) it is not "regulated". He submits that a cross-check against the purpose and context of s 51 reinforces this conclusion and

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[10] At s 2(1).

submits that the drafter would have used another word or phrase in the same subsection if the Attorney-General's argument was correct (such as "relates to", not "regulated"). He submits that if the concern is that the taking of seaweed will not be controlled by any legislation, that concern is met by s 56 of the MACA Act and the requirement that a PCR be exercised in accordance with tikanga.

[62] I am inclined to agree with Mr Fletcher's submissions, but for reasons I now set out, it is not appropriate in these proceedings, to make a finding on this issue.

[63] Ngāti Patumoana was not granted a PCR for the taking of Rhodophyceae in the judgment under appeal. The Court said:

> There did not appear to [be] any evidence of specific types of seaweed being collected. I am therefore unable to determine if it was seaweed of the type that may support a grant of PCR..[11]

[64] As far as Ngāti Patumoana is concerned that is the end of the matter.

[65] The Court of Appeal did not make a finding one way or the other as to whether Ngāti Patumoana was entitled to a PCR in respect of Rhodophyceae. That is unsurprising given the finding in the decision under appeal that Ngāti Patumoana did not lead evidence which identified the type of seaweed for which a PCR was sought. The Court of Appeal also did not expressly direct a rehearing on the issue of seaweed. Its discussion of this topic is set out at footnote 402 which reads:

> We record that Ms Barnett, for the Attorney-General, advised us that the hearing below proceeded on a misunderstanding about seaweed. It was thought that seaweed of the class Rhodophyceae is not regulated by the Fisheries Act 1996, for the purposes of s 51(2)(a) of MACA, because s 89(2)(f) of the Fisheries Act excludes "seaweed of the class Rhodophyceae while it is unattached and cast ashore" from the activities which require a current fishing permit under s 89(1). Crown counsel now take the view that it is so regulated. We have reservations about this because such seaweed is regulated only in the sense that the law says it may be gathered without any permit. But no other counsel disputed the point, which would preclude PCRs for gathering any seaweed that is unattached and washed ashore. We cannot recall and amend recognition orders granted in the High Court because Ngāti Patumoana's is the only appeal in which the issue arises. The issue will need to be resolved in the High Court.

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11 Above n 8, at [527].

[66] This issue is best resolved in a case where an applicant for PCR has identified the seaweed Rhodophyceae as one in respect of which PCR is sought.

[67] I note that this issue has now been considered by two High Court cases decided subsequent to the Court of Appeal's decision.[12]

[68] The High Court in both of those cases has adopted the interpretation now contended for by the Attorney-General. To that extent the issue has been "resolved in the High Court" and any further clarification will have to come from the Court of Appeal.

Local authority issues

[69] Counsel for both the Whakatāne District Council and Bay of Plenty Regional Council filed memoranda, as did counsel for Crown Regional Holdings Ltd.

[70] The memoranda for the Councils focused on two issues: firstly, the Councils' wish that recognition orders refer to the various legal issues arising in relation to the relationship between the granting of recognition orders and the preservation of council owned infrastructure such as roads and other assets; secondly, what should happen to those recognition orders which granted either PCR or CMT rights in relation to the area affected by the Ōpōtiki harbour redevelopment.

[71] The local authorities' understandable concern for certainty as to the contents of recognition orders was addressed in this Court's memorandum of 8 February 2024.[13]

[72] By way of summary, where the MACA Act contains a specific relevant provision, it is not necessary for the PCR to refer to that provision.

[73] In his memoranda of 12 April 2024, counsel for Whakatāne District Council accepted this proposition and indicated that:

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12 *Re Ngāi Tumapuhia-A-Rangi Hapu Inc* [2024] NZHC 309 at [764] and *Ngāi Hapu O Tokomaru Akau and Te Whanau A Ruataupare Ki Tokomaru* [2024] NZHC 682 at [501]–[503].

13 *Re an application by Edwards and Ors* CIV-2011-485-817 Minute of Churchman J, 8 February 2024 at [70]–[93].

> counsel's only comment would be to ask the Court and/or the applicants consider citing [the Courts minute of 8 March 2024] in any final orders before sealing for the purposes of future clarity.

[74] While that may be a sensible suggestion, the Court cannot direct the successful applicant group to do that. The District and Regional councils will need to keep a copy of the 8 February 2024 minute on their files so that, should any confusion arise, they have it available to refer to.

[75] The memorandum of counsel for the Bay of Plenty Regional Council referred to a lack of specificity in PCR orders making it more difficult for the Council to fulfil its duties such as deciding whether they can grant a resource consent or permit an activity in the Regional Coastal Plan area subject to a PCR order, or decide whether an activity is being exercised in accordance with a PCR order and whether to enforce compliance with the Resource Management Act.

[76] Counsel gave as an example, the gathering of sand, and suggested that PCR orders for this activity should specifically mention that this does not authorise the use of heavy machinery to harvest sand for customary purposes.

[77] This question was specifically addressed at [77]—[79] of the 8 February 2024 minute. No applicant for a CPR sought, or was granted, an application to use machinery of any sort in relation to the exercise of a customary right to take sand in accordance with tikanga. The same observation applies to PCRs granted in respect of the gathering of stones, shingle or detritus.

[78] The memorandum of counsel for the Regional Council concluded with an observation that the Council "…continues to have reservations about some [draft PCR orders] which purport to control third party activities…". The observation set out earlier in this decision in relation to such provisions will hopefully have resolved the council's concerns.

[79] The main concern of Crown Regional Holdings Ltd related to the Ōpōtiki Harbour redevelopment works. As noted above, those applicants for recognition orders affected by the Ōpōtiki Harbour redevelopment works have accepted that

finalisation of the relevant recognition orders cannot be completed until the precise location and nature of the final works is clarified and the relevant outstanding appeals have been resolved.

[80] Counsel's memorandum sought inclusion in the wording of all PCR orders an acknowledgment reflecting the position set out at s 20(a) of the MACA Act that nothing in the Act limits or affects any resource consent granted before the commencement of the Act. As this proposition is self-evident from the legislation, it is not necessary to repeat it in a PCR order.

[81] Counsel's memorandum also recorded that Crown Regional Holdings Ltd and Ngāti Patumoana have agreed on wording for the proposed PCR orders. That proposed wording is set out at [24] of the memorandum. If the parties have agreed on that wording, then there is no reason why it cannot be incorporated into the PCR.

[82] Counsel's memorandum concludes with a submission:

> CRHL'S position on the terms of the PCR orders to be settled by the High Court is subject to its right to be heard at any future hearing of the New Area and any future hearing on the issue of whether the completed Harbour Works alters the CMCA and any consequential impact on PCR activities and CMT.

[83] I anticipate that any such hearing would be able to be held on papers rather than in person and that Crown Regional Holdings Ltd, as an affected interested party, would be entitled to file written submissions.

Churchman J

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