IN THE SUPREME OF NEW ZEALAND
I TE KŌTI MANA NUI O AOTEAROA **SC 125/2023**

BETWEEN **Te Upokorehe Treaty Claims Trust on behalf of Te Upokorehe Iwi**

Applicants

AND **Landowners Coalition Incorporated**

First respondent

AND **Te Rūnanga o Ngāti Awa**

Second respondent

AND **The Late Claude Augustin Edwards (deceased), Adriana Edwards, and others on behalf of Te Whakatōhea**

Third respondent

[Cont.]

OUTLINE OF SUBMISSIONS IN SUPPORT OF APPEAL BY TE UPOKOREHE TREATY CLAIMS TRUST

Dated: 20 September 2024

Solicitors:
Robyn Zwaan
Te Aro Law
Barristers and Solicitors
PO Box 11277
Manners St
Wellington 6011
0800 99 22 65
Robyn.zwaan@tearolaw.com

Counsel:
J S Cooper KC
Shortland Chambers
60 Shortland Street
PO Box 4338
Auckland 1142
(09) 354 1408
Jcooper@shortlandchambers.co.nz

Bryce Lyall and
Hannah Swedlund
PO Box 60649
Auckland 0642
(09) 889 1835
Bryce@brycelyall.com
Hannah@brycelyall.com

AND	**Christina Davis on behalf of Ngāti Muriwai hapū** **Fourth respondent**
AND	**Barry Kiwara on behalf of Kutarere Marae** **Fifth respondent**
AND	**Larry Delamere on behalf of Pakowhai hapū** **Sixth respondent**
AND	**Dean Flavell on behalf of Hiwarau C, Turangapikitoi, Waiōtahe and Ōhiwa of Whakatōhea** **Seventh respondent**
AND	**Whakatōhea Māori Trust Board on behalf of Whakatōhea Hapū** **Eighth respondent**
AND	**John Hata, Te Ringahuia Hata and Antionette Hata on behalf of Ngāti Patumoana** **Ninth respondent**
AND	**Tracy Francis Hillier on Behalf of Ngai Tamahaua Hapū and Te Hapū Titoko o Ngai Tama** **Tenth respondent**
And	**Pita Tori Biddle and Karen Stefanie Mokomoko on Behalf of Te Uri o Whakatōhea Rangatira Mokomoko** **Eleventh respondent**

AND

The Attorney-General

Te Whānau-ā-Apanui

Seafood Industry Representatives

Crown Regional Holdings Limited, Ōpōtiki District Council

Bay Of Plenty Regional Council

Whakatāne District Council

Interested parties

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TĒNĀ, E TE KŌTI

I. Introduction

1. Te Upokorehe is a small iwi that holds ahi kā in the area surrounding the Ōhiwa Harbour in the Bay of Plenty, to the west of Ōpōtiki.[1] They are distinct from other iwi and hapū in their whakapapa, waka, and rohe.[2]

2. Te Upokorehe Treaty Claims Trust (**TUTCT**), on behalf of Te Upokorehe, applied for customary marine title (**CMT**) and protected customary rights (**PCR**) orders under the Marine and Coastal Area (Takutai Moana) Act 2011 (**MACA Act** or **Act**). It did so in its own right and in respect of its own rohe, independently of other applicants. A select chronology of the history of Te Upokorehe and its claim under the Act is attached to these submissions.

3. Te Upokorehe's application, together with those of other applicants seeking CMT over the same or an overlapping area, was determined by Churchman J in *Re Edwards Whakatōhea*.[3] This resulted in Te Upokorehe being included in two joint CMT orders, together with neighbouring iwi and hapū:

    a. A jointly held order for Ngāti Ira, Ngāti Patumoana, Ngāti Ruatakenga, Ngai Tamahaua, Ngāti Ngāhere[4] and Upokorehe for the area from Maraetotara in the west to Tarakeha in the east and out to the 12 nautical mile limit (**CMT 1**); and

    b. In relation to the western part of Ōhiwa Harbour, jointly held CMT between "the six Whakatōhea hapū"[5] and Ngāti Awa (**CMT 2**).

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[1] Maps showing the rohe and locations of the marae of Te Upokoreke are attached to the Application by TUTCT on behalf of Te Upokorehe for Recognition Orders pursuant to the Marine and Coastal Area (Takutai Moana) Act 2011 COA Tab 86 at 101.00356. See also the evidence of Kahukore Baker at COA Tab 105 at 202.00868.

[2] As detailed in the evidence of Kahukore Baker at [5]-[7], COA Tab 105 at 202.00867 and summarised in Appendix B to the High Court's judgment, *Re Edwards Whakatōhea* [2021] NZHC 1025, [2022] 2 NZLR 772, at [62]-[71].

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

[4] Ngāti Ira, Ngāti Patumoana, Ngāti Ruatakenga, Ngai Tamahaua, and Ngāti Ngāhere are hapu of Te Wakatōhea.

[5] This was clearly intended to include Te Upokorehe although it does not accept it is a hāpu of Te Wakatōhea.

4. TUTCT cross-appealed from aspects of that judgment, including the finding that, while the Act permits jointly held CMTs, it does not permit overlapping but separate CMTs.

5. On 18 October 2023 the Court of Appeal issued *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board*[6] (***Whakatōhea Kotahitanga Waka***), which determined the appeals and cross-appeals from the decision of Churchman J in *Re Edwards Whakatōhea*.[7] This was the first appellate decision concerning the legal tests for CMT and PCR under the MACA Act.

6. The *Whakatōhea Kotahitanga Waka* decision upheld Te Upokorehe's cross-appeal in part, referring the decision on CMT 1 back to the High Court for re-determination, but failed to do likewise regarding CMT 2. It did not accept Te Upokorehe's argument that overlapping CMTs are permitted by the Act.

7. TUTCT, on behalf of Te Upokorehe, appeals to this Court on three discrete issues.[8]

II. Summary of Argument

A. *Issue 1: Whether the Court of Appeal correctly interpreted the test for customary marine title set out at s 58 of the MACA Act?*

8. The correct interpretation of s 58 is the principal common issue on appeal and will be thoroughly addressed in the submissions of other parties. To avoid unnecessary duplication, these submissions address this issue only insofar as it relates to the separate grounds of appeal which are individual to Te Upokorehe, in particular, Issue 3 below. Te Upokorehe will also address these issues further, to the extent it is necessary to do so, through their submissions responding to other appeals, in particular the appeal brought by the Attorney-General.

B. *Issue 2: Whether the Court of Appeal erred in failing to set aside CMT 2 and remit that aspect of Te Upokorehe's application to the High Court for rehearing?*

[6] *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504; 3 NZLR 252.

[7] Above n 3.

[8] Te Upokorehe no longer pursues the fourth question in its notice of application for leave to bring civil appeal.

9. As noted above, the High Court included Te Upokorehe in two joint CMT orders, despite Te Upokorehe's firm position that it was the only applicant group entitled to CMT in respect of its rohe.

10. Churchman J took this approach on the basis of what he referred to as a finding by the pūkenga that the relevant applicant groups shared the CMT areas as a matter of tikanga.[9] However, the pūkenga did not make any factual finding as to which groups held the CMT areas as a matter of tikanga. Rather, they simply recited each applicant's claim and proposed a structure by which they could all be accommodated.[10] This approach was consented to by the five hapū of Te Whakatōhea but not by Te Upokorehe.

11. In the Court of Appeal, Miller J held that Te Upokorehe's claim to hold areas independently of other applicants was not examined by the pūkenga.[11] His Honour held that the Court of Appeal was in no position to decide Te Upokorehe's application itself as:

> The record does not permit the place-by-place and area-by-area analysis that, as the pūkenga recognised, would be required to distinguish Te Ūpokorehe from the other hapū and identify any areas where the iwi acted as a collective and so might be granted a jointly held recognition order.[12]

12. For that reason, CMT 1 was set aside and Te Upokorehe's application remitted for hearing in the High Court.[13] Confusingly however, the Court of Appeal did **not** order a rehearing of CMT 2. Instead, the Court of Appeal substituted its own view concerning CMT 2 for that of the High Court without undertaking the kind of granular analysis that it had just confirmed was required of the High Court.

13. The Court also made factual errors in its consideration of CMT 2, including as to whether there was consensus among those taking part in a tikanga process;[14] whether there was mutual recognition of rights as between applicant groups in the Ōhiwa Harbour;[15] and whether there

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[9] At [324], [331].
[10] *Re Edwards Whakatōhea*, above n 3, Appendix A at 901.
[11] *Whakatōhea Kotahitanga Waka*, above n 6, at [270].
[12] At [286].
[13] At [286]-[287].
[14] At [324].
[15] At [324].

was any evidence to support a finding of joint CMT in favour of Ngāti Ngāhere.[16]

14. For these reasons, Te Upokorehe says that its application for CMT in respect of the area covered by CMT 2, namely, the Ōhiwa Harbour, also needs to be reheard, alongside CMT 1.

C. *Issue 3: Did the Court of Appeal err in finding that separate, overlapping titles are not an available outcome under the MACA Act?*

15. Te Upokorehe say that the Court of Appeal erred in finding that separate, overlapping CMTs are not an available outcome under the MACA Act.

16. The effect of the MACA Act is that customary rights in the takutai moana can only be given "legal expression" through the much more limited statutory rights found in the MACA Act.[17] The question to be answered is, according to the tikanga in these circumstances, what does shared exclusivity look like in Aotearoa New Zealand?

17. Te Upokorehe say that separate, overlapping CMTs are a workable and available outcome under the Act and, in the alternative to Te Upokorehe being granted sole CMT in respect of its rohe, would better reflect the tikanga and mana tuku iho of applicant groups such as Te Upokorehe than requiring them to participate within a single joint CMT.

III. Narrative of Facts: Te Upokorehe

18. As noted above, Te Upokorehe are distinct from other applicants in their whakapapa, waka, and rohe.[18] As a result Te Upokorehe applied under the MACA Act in their own right, prior to the statutory deadline.[19]

19. Te Upokorehe hold ahi kā in the area surrounding the Ōhiwa Harbour in the Bay of Plenty, to the west of Ōpōtiki.[20] The outer boundaries of

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[16] At [288].
[17] Section 6(1) and *Whakatōhea Kotahitanga Waka*, above n 6, at [33] and [38]–[39].
[18] See Reports: Upokorehe Iwi – Marine and Customary Area Traditional and Customary Practices and Sites of Significance COA Tab 537 at 315.06564 and Kahukore Baker, Mō āke tonu atu: Te Upokorehe Takutai Moana Overview Report, 17 February 2020 COA Tab 504 at 315.06342.
[19] Application by TUTCT on behalf of Te Upokorehe for Recognition Orders pursuant to the Marine and Coastal Area (Takutai Moana) Act 2011 COA Tab 86 at 101.00352.
[20] Being "the long burning fires, symbolising occupation or similar concepts such as hau kainga, which may be relevant to assessing interruption to use and occupation". As put by Cull J in *Ngā Hapū o Tokomaru Ākau v Te Whānau a Ruataupare ki Tokomaru* [2024] NZHC 682 at [104]. Affidavit of Felicity Margaret Kahukore Baker 3 March 2017 COA Tab 233 at 202.00867 – 202.00868; Affidavit of Paul Thomas Harman 12 February 2020 COA Tab 234 at 202.00893 – 202.00894; Affidavit of Maude Te Rau Aroha Edwards 19 February 2020 COA Tab 236 at 202.00930.

their rohe for the purposes of their MACA Act application stretches from the Maraetotara River in the west to the middle of the Waioweka River (a site known as Pakihikura) in the east, and out to the sea to a distance of 12 nautical miles (**NM**).[21]

20. Te Upokorehe's application for CMT and PCR orders was heard as part of the 2020 *Re Edwards Whakatōhea* proceedings.[22] This was the first occasion that the High Court was required to grapple with overlapping, contested applications brought by a range of whānau, hapū and iwi in circumstances where some applicants did not accept the rights of others in their areas. Additionally, the applications being heard covered an area where there has historically been significant use, overlapping occupation and infrastructure.

21. In the High Court Te Upokorehe advanced a firm position that they are the only group that holds mana in the area from Maraetotara to the Waioweka River, including within the Ōhiwa Harbour, in accordance with their tikanga. While others may enter the area and make use of the resources in the rohe, they do so under the mana of Te Upokorehe.[23] Te Upokorehe continues to maintain this position.

22. For these reasons Te Upokorehe progressed their application individually, outside of the 'clusterings' of applicants including the 'Whakatōhea Waka' and the 'Kahui' groups of hapū and whānau that now appear in this Court.[24]

23. Te Upokorehe's claims to hold ahi kā over its rohe and to exercise kaitiakitanga over Ōhiwa Harbour were largely not disputed. A number of witnesses for other applicants acknowledged the special position of Te Upokorehe within Ōhiwa.[25] Rather, the dispute was over whether Te Upokorehe held the area exclusively, given the acknowledged connections with and use of Ōhiwa by other applicant groups.

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[21] Application by TUTCT on behalf of Te Upokorehe for Recognition Orders pursuant to the Marine and Coastal Area (Takutai Moana) Act 2011 COA Tab 86 at 101.00352.
[22] *Re Edwards Whakatōhea*, above n 3, at [19].
[23] Reflected in *Re Edwards Whakatōhea* at [158]-[159].
[24] *Whakatōhea Kotahitanga Waka*, above n 6, at [260].
[25] For example, Amber Rakuraku (Ngāti Ira) COA Tab 212 at 202.00657, COA Tab 133 at 107.03593; Julie Lux (Ngāti Ruatakenga) COA Tab 144 at 201.00080; Karen Mokomoko (Te Uri o Whakatohea Rangatira Mokomoko) COA Tab 132 at 106.03173; Hetaraka Biddle (Ngāi Tamahaua) COA Tab 132 at 106.03292.

24. Despite pursuing their position of exclusivity throughout the hearing in the High Court, Te Upokorehe were nevertheless included in joint CMT orders on the basis of "shared exclusivity".[26] The questions of whether Te Upokorehe's special status within its rohe entitled it to CMT in its own right, or whether the whakapapa links of other applicants and their ability to access and use certain resources within Te Upokorehe's rohe were sufficient to entitle them to CMT were not squarely addressed.

25. Te Upokorehe says that being grouped with neighbouring hapū and iwi for the purposes of CMT failed to recognise either its mana over its rohe, or the limits to its rohe (with CMT 1 including an area outside Te Upokorehe's rohe and the area for which it had applied for CMT).[27] They further say that this resulted in other groups inappropriately being awarded rights within the rohe of Te Upokorehe. This is most clearly the case in respect of Ngāti Ngāhere, which was awarded joint CMT despite the absence of any direct evidence of it having any rights in the rohe whatsoever.[28]

26. The approach of making joint orders including a number of applicants stemmed from a Pūkenga Report prepared to assist the High Court.[29]

27. Rather than addressing the factual and tikanga basis of each applicant's claim, the Pūkenga Report adopted what it described as a poutarāwhare comprising of Te Upokorehe and the Whakatōhea hapū of Ngai Tamahaua, Ngāti Ruatakenga, Ngāti Ira, Ngāti Ngāhere, and Ngāti Patumoana. The pūkenga considered this poutarāwhare as a "simple solution" to the question of which applicants should be awarded CMT. Ultimately, and without being asked to by the applicants, or notifying the applicants in advance, the pūkenga recommended a single CMT be issued to this poutarāwhare.[30]

28. In doing so, as the Court of Appeal correctly found, the pūkenga did not answer the key question posed to them of which applicant group or

[26] *Re Edwards Whakatōhea*, above n 3, at [168–[170] and [183] for shared exclusivity, and [660] for the orders awarded.
[27] *Whakatōhea Kotahitanga Waka*, above n 6, at [284].
[28] A table confirming this lack of evidence was prepared by counsel for Te Upokorehe for presentation of submissions in the Court of Appeal. It is filed with these submissions for ease of reference.
[29] *Re Edwards Whakatōhea*, above n 3, Appendix A at 901.
[30] At 903–904.

groups held the application area or any part of it in accordance with tikanga, instead merely repeating what each of the applicants themselves had each claimed, nor did they substantively address or determine competing claims to the same areas.[31]

29. It was Te Upokorehe's expectation that a recognition order for CMT in their rohe would be held solely by Te Upokorehe, unless any other applicant could somehow also meet the test in Te Upokorehe's rohe (or parts of their rohe) individually. However, there is no evidence in either the Pūkenga Report or the High Court judgment of an applicant-by-applicant or place-by-place analysis of the evidence to support such a finding.

30. Te Upokorehe therefore cross-appealed the High Court's judgment on two grounds:[32]

    a. Firstly, that the High Court erred in determining that the MACA Act allows for shared CMT and not overlapping CMT.

    b. Secondly, that the High Court erred in determining that Ngāti Ngāhere, a hapū of Te Whakatōhea, met the test for CMT in the complete absence of evidence from Ngāti Ngāhere.[33]

31. In its written and oral submissions on appeal, Te Upokorehe submitted more broadly that the Judge erred in not undertaking a more 'granular' analysis of customary interests in the application area, which was reflected in the approach to Ngāti Ngāhere, and failed to address Te Upokorehe's claim to be entitled to CMT over its rohe, independent of other iwi and hapū.

32. As already noted above, the Court of Appeal allowed Te Upokorehe's appeal in part, finding that its application was not considered separately

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[31] *Whakatōhea Kotahitanga Waka*, above n 6, at [267]–[270].
[32] Notice of Cross-Appeal by TUTCT COA Tab 10 at 05.00050. We note that ultimately grounds 2 and 3 were not pursued.
[33] In its written and oral submissions at the hearing of the appeal, Te Upokorehe also relied on the absence of any cogent evidence from any other party to support Ngāti Ngāhere's inclusion in a joint order for CMT.

from those of the other applicants, and ordered a rehearing in respect of CMT 1 but not CMT 2.

33. Given the apparent logical inconsistency between the outcomes in respect of CMT 1 and CMT 2, Te Upokorehe applied for recall of the Court of Appeal's decision not to order a rehearing of CMT 2.[34] The Court dismissed the application for recall, considering that "a challenge to those findings is ultimately a question of evidential sufficiency which should be decided on appeal".[35]

34. The Court concluded, however, that the Te Upokorehe application for leave to appeal to this Court:[36]

> Asserts errors of fact and logic in this Court's decision. If made out, those errors would appear to justify the relief sought from the Supreme Court; namely, an order remitting Order 2 for rehearing along with the other CMT Orders.

IV. Submissions

A. *Issue 2: Whether the Court of Appeal erred in failing to set aside CMT 2 and remit that aspect of Te Upokorehe's application to the High Court for rehearing?*

35. The Court of Appeal allowed Te Upokorehe's cross-appeal on the ground that Te Upokorehe's application was, in essence, folded into a joint application and as a result was not addressed on its own merits. [37]

36. The Court of Appeal accordingly ordered that CMT 1 must be set aside and Te Upokorehe's application reconsidered.[38] Despite this, the Court then erred by holding later in its judgment that CMT 2 was upheld and did **not** require a rehearing.[39]

37. The grounds for upholding Te Upokorehe's appeal and remitting CMT 1 to the High Court apply equally to CMT 2. No distinction between them is made in the part of the judgment addressing Te Upokorehe's appeal.

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[34] *Whakatōhea Kotahitanga Waka,* above n 6.
[35] At [5]–[6].
[36] At [7].
[37] At [268], and [284]–[287].
[38] At [287] and [295]–[296].
[39] At [323]–[324], and [353].

38. The Court's reasons why Te Upokorehe's application in respect of CMT 1 needed to be reconsidered by the High Court apply equally (or, indeed, with even greater force) to CMT 2. This is because, as was made clear in evidence before the High Court, Te Upokorehe accept that their claim to exclusivity as against other hapū and iwi diminishes as their application travels offshore towards the 12 NM bounds of CMT 2.[40]

39. The Court of Appeal's approach turns this acceptance on its head, upholding joint CMT in an area where Te Upokorehe's claim to exclusivity is the strongest. The Ōhiwa is, as the High Court heard, where Te Upokorehe live day in and day out, where they are custodians for the resources.[41] All the marae immediately surrounding the Ōhiwa are Te Upokorehe marae.[42] Additionally, CMT 2 includes a further party as joint holder to those included in CMT 1 (namely, Ngāti Awa), further diluting Te Upokorehe's rights.

40. The Court of Appeal also made factual errors in its consideration of CMT 2, finding incorrectly and contrary to the evidence and record that:

    a. The tikanga process in the High Court among applicant groups and interested parties achieved consensus and was appropriate,[43] despite an earlier finding that, rather than consensus being achieved at a tikanga process: "Te Ūpokorehe were unwilling to participate (representatives left a hui attended by the pūkenga rather than continue discussions)".[44]

    b. That within the Ōhiwa Harbour applicant groups generally recognised one another's mana over specific local areas and

[40] See, for example, the evidence of Wallace Aramoana concerning Te Upokorehe's relationship with Whakāri, and acceptance that others have rights and interests which may be primary to those of Te Upokorehe. This is recorded in the hearing transcript, cross-examination by Natalie Coates, 29/9/2020 COA Tab 133 at 107.03751.

[41] Hearing transcript, cross-examination of Wallace Aramoana by Natalie Coates, 29/9/2020 COA Tab 133 at 107.03752 – 107.03753.

[42] Affidavit of Felicity Margaret Kahukore Baker COA Tab 233 202.00866 at [7]; Maps showing the rohe and locations of the marae of Te Upokoreke are attached to the Application by TUTCT on behalf of Te Upokorehe for Recognition Orders pursuant to the Marine and Coastal Area (Takutai Moana) Act 2011 COA Tab 86 at 101.00356.

[43] *Whakatōhea Kotahitanga Waka*, above n 6, at [324].

[44] At [267].

sites,[45] despite no such recognition being accepted by Te Upokorehe.

c. That in the absence of any evidence whatsoever being filed by the hapū, Ngāti Ngāhere might rely on evidence offered by others.[46] This conclusion was reached without the Court undertaking an analysis of whether such evidence existed, and if so whether that evidence was then sufficient to meet the s 58 test for Ngāti Ngāhere. The Court of Appeal was provided a table showing that the limited references to Ngāti Ngāhere in the evidence provided by others to the High Court are either general mentions, historic, or outside of the Upokorehe rohe. It was a factual error to conclude that this limited and indirect evidence could support a finding that Ngāti Ngāhere should be included within CMT 2.

41. As already noted above, a number of witnesses for other applicants acknowledged the special position of Te Upokorehe within Ōhiwa.[47] Further, while the evidence shows access by members of other applicant groups to Ōhiwa for fishing and gathering kaimoana, many of the witnesses for other applicants specifically refer to the fact they also whakapapa to Te Upokorehe and their evidence needs to be seen in this light.[48] Importantly, there is very little evidence of the exercise by other groups of kaitiakitanga within Ōhiwa, let alone on a continuous basis since 1840, in contrast to the extensive evidence on this subject from Te Upokorehe.[49]

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[45] At [324].
[46] At [288].
[47] See fn 25.
[48] For example, of the Edwards application witnesses, Donald Riesterer, Robert Edwards, Roka Cameron, Edward Ihaia, Pine Te Maipi, and Josephine Mortenson all say they whakapapa to Te Upokorehe, either exclusively or with other iwi/hapu.
[49] See for example: Upokorehe Iwi – Marine and Customary Area Traditional and Customary Practices and Sites of Significance COA Tab 537 at 315.06564 and Kahukore Baker, Mō āke tonu atu: Te Upokorehe Takutai Moana Overview Report, 17 February 2020 COA Tab 504 at 315.06342; Affidavit of Trevor Tira Taylor Ransfield COA Tab 237 at 202.00933 and generally; Affidavit of Wallace Aramoana COA Tab 239 at 202.00941 and generally.

42. Broadly, the Court of Appeal substituted its view concerning CMT 2 for that of the High Court (reaching the same end result) without undertaking exactly the kind of granular analysis that it had just confirmed was required of the High Court and without considering precisely the same issues as to competing claims and exclusivity that Churchman J had failed to consider. This includes failing to take account of matters which are expressly permitted to be taken into account under s 59(1) such as the extent of Te Upokorehe's occupation and ownership of areas abutting the specified area (such as Hokianga Island which is vested in Te Upokorehe and lies within Ōhiwa Harbour). This was an error of fact and logic.

B. *Issue 3: Did the Court of Appeal err in finding that separate, overlapping titles are not an available outcome under the MACA Act?*

43. Te Upokorehe say that, if multiple applicant groups can meet the test for CMT in respect of the same area, the Court has three options available to allow for expression of the customary rights:

a. The customary interests of successful applicant groups could be recognised by the grant of a jointly held CMT (whether held by one entity, or multiple entities); or

b. The customary interests of successful applicant groups could be recognised by the grant of multiple overlapping CMTs in respect of the same area; or

c. Both types of order could be available to successful applicant groups, to be assessed on a case-by-case basis in line with the evidence, tikanga, and the preference of successful applicants.

44. In *Re Edwards Whakatōhea* several applicants accepted shared exclusivity but argued that was best expressed through separate but overlapping CMTs.[50]

45. In his decision, while Churchman J found that multiple applicant groups could meet the CMT test for the same area on the basis of shared exclusivity,[51] he concluded that the MACA Act did not provide for

[50] *Re Edwards Whakatōhea*, above n 3, at [169].
[51] At [168].

multiple CMTs in respect of the same area, so ruled out the second two options above.[52]

46. Notably, Churchman J did **not** rule out multiple overlapping CMTs because of any issues related to the concept of shared exclusivity. Rather, the problems he identified related only to the potential for practical problems with the exercise of the rights which flow from the grant of CMT. Adopting a purposive and practical approach, the issues identified by Churchman J are not a barrier to a grant of separate, overlapping CMTs for the reasons discussed further below.

47. In the Court of Appeal the majority agreed that the scheme of MACA did not allow for two or more overlapping CMTs in respect of the same area, and that it "would be unworkable".[53]

48. In focusing on issues of workability, neither Churchman J nor the majority in the Court of Appeal appear to have fully recognised the fact that similar issues are likely to arise as between joint CMT holders on the basis of shared exclusivity. To the extent this was recognised, the likely practical difficulties were assumed to be capable of being overcome.

49. In distinction to Churchman J and separately to the majority in the Court of Appeal, Miller J did consider that if two applicant groups were separately granted recognition orders over the same specified area, neither group could meet the s 58(1) criteria for CMT, as "neither would hold the specified area to the exclusion of the other".[54] This was an error.

50. Separate overlapping CMTs are equally consistent with the s 58(1) test as jointly held CMTs. Both rely on the concept of shared exclusivity. Further, separate overlapping CMTs accord with the purpose of the MACA Act and are practically workable within the structure of the MACA Act (and at least as practically workable as jointly held CMTs) — there is no practical obstacle to overlapping CMTs arising from operational matters once orders are sealed.

1. *Purpose of the MACA Act*

51. The purpose of the MACA Act is found at s4:

[52] At [169]–[170].
[53] *Whakatōhea Kotahitanga Waka,* above n 6, at [439].
[54] At [209].

4 Purpose

(1) The purpose of this Act is to—

(a) establish a durable scheme to ensure the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand; and

(b) recognise the mana tuku iho[55] exercised in the marine and coastal area by iwi, hapū, and whānau as tangata whenua; and

(c) provide for the exercise of customary interests in the common marine and coastal area; and

(d) acknowledge the Treaty of Waitangi (te Tiriti o Waitangi).

52. There is nothing in the MACA Act that suggests that any of these purposes should be given greater weight than others, nor are they in competition. We consider each of the purposes in turn below in relation to whether they present a barrier to separate and overlapping CMTs.

<u>Establish a durable scheme to ensure the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand</u>

53. This purpose would not be undermined through the option to have separate but overlapping titles. In fact, separate titles may assist in preventing disputes, resulting in increased durability. As Churchman J noted, severely restricting the possibility of successful applications would fail to achieve this purpose.[56]

<u>Recognise the mana tuku iho exercised in the marine and coastal area by iwi, hapū, and whānau as tangata whenua</u>

54. Denying applicant groups the option to hold their own order in accordance with their tikanga if that is the preferred way to have their underlying customary rights expressed undermines this purpose of the MACA Act.

[55] Section 9 of the MACA Act defines mana tuku iho as meaning "inherited right or authority derived in accordance with tikanga".

[56] *Re Edwards Whakatōhea*, above n 3, at [129].

55. Mana tuku iho, defined in s 9 of the MACA Act as "inherited right or authority derived in accordance with tikanga". In the case of Te Upokorehe, this is not inherited through other groups or shared with other groups but comes through distinct and unique tūpuna and whakapapa.[57]

56. Requiring successful applicants to participate within a joint holding entity on a single order is not recognising their mana tuku iho but seeking to replace the existing intricate overlapping and interwoven relationship between applicant groups with something else entirely. As Te Upokorehe witnesses noted in evidence:

    a. Upokorehe stands on its own mana;[58]

    b. The underlying mana in the rohe rests with Te Upokorehe;[59]

    c. The Te Upokorehe claim lies within…Te Upokorehe tribal boundaries. That is why we have not claimed beyond Maraetotara or the Waiōweka River.[60]

57. Separate but overlapping orders would provide an appropriate degree of recognition of the mana tuku iho of applicant groups like Te Upokorehe.

Provide for the exercise of customary interests in the common marine and coastal area

58. Section 46 of the MACA Act states that Part 3 sets out "the legal rights and interests that give expression to customary interests in the common marine and coastal area of New Zealand".

59. It is not the customary rights or title themselves being expressed. Customary rights and interests are filtered through the MACA Act to give effect only to the rights conferred by CMT listed at s 62 and described in ss 66 to 93.[61]

60. To the extent that customary interests are permitted expression through the MACA Act, CMT rights are equally capable of being exercised

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[57] See, for example, the Affidavit of Felicity Margaret Kahukore Baker in reply COA Tab 244 at 202.00978 and generally and Evidence of Wallace Aramoana concerning Te Upokorehe whakapapa chart COA Tab 777 at 502.00520 and Transcript COA Tab 133 at 107.03706. Note that there is unfortunately no transcript of Ms Baker's evidence due to a technical error on the hearing day.

[58] Affidavit of Lance Terence Horopapera Reha in reply COA Tab 241 at 202.00956.

[59] At 202.00957 - 202.00958.

[60] Affidavit of Kahukore Baker, above n 57, at 202.00980.

[61] Section 60(1)(b).

through a joint title or through separate overlapping titles, or a combination of both.

Acknowledge the Treaty of Waitangi (te Tiriti o Waitangi)

61. For the reasons set out above in relation to mana tuku iho it is submitted that the applicants' rights under te Tiriti o Waitangi are more appropriately acknowledged through recognition of orders for separate applicant groups rather than joint orders—in much the same way as the applicants' tūpuna signed te Tiriti o Waitangi as Rangatira on behalf of their hapū.[62]

2. *Conclusion on purposes*

62. It is in keeping with the purpose of the MACA Act to preserve the availability of joint titles **and** separate overlapping titles.

3. *Overlapping titles are consistent with the s 58 test*

63. Shared exclusivity has been found to be an available outcome under the Act by both the High Court,[63] and Court of Appeal.[64] Te Upokorehe agrees that the s 58 test should be interpreted in a way that enables shared exclusive use and occupation to be recognised, where this is supported by the evidence and tikanga.

64. This concept of shared exclusivity is equally as compatible with overlapping titles as with a shared but joint title. This reflects the nature of tikanga itself, which allows for layering and interweaving of rights. The tikanga values of whanaungatanga and manaakitanga both support accommodation of overlapping claims rather than drawing hard borders. As the Court of Appeal noted concerning rights at tikanga:[65]

> A difficulty occurs today when people, both Māori and Pākehā, try to translate this customary network of rights and connections into an environment of 'straight-line' boundaries. Resource rights were complex, convoluted,

[62] Wi Akeake signed for Te Upokorehe—see Affidavit of Kahukore Baker COA Tab 233 at 202.00868.
[63] *Re Edwards Whakatōhea*, above n 3, at [660]; *Re Ngāti Pāhauwera* [2021] NZHC 3599 at [161]; *Ngā Pōtiki Stage 1—Te Tāhuna o Rangataua* [2021] NZHC 2726; [2022] 3 NZLR 304 at [9] and decisions following.
[64] *Whakatōhea Kotahitanga Waka,* above n 6, at [204]–[208] and [438]–[445].
[65] At [363], citing Waitangi Tribunal *Turanga Tangata, Turanga Whenua: The Report on the Turanganui a Kiwa Claims* (Wai 814, 2004) at 18.

> and overlapping. They almost never phased cleanly from hapū to hapū as one panned across the customary landscape. Instead, most resource complexes had primary, secondary, and even tertiary right holders from different hapū communities, all with individual or whanau interests held in accordance with tikanga, and therefore by consent of their respective communities. All rights vested and were sustained by the currency of whakapapa.

65. At [209] Miller J made clear his view that exclusivity would not allow for separate but overlapping titles:

> If two applicant groups were separately granted recognition orders over the same specified area, neither group could meet the s 58(1) criteria for CMT; neither would hold the specified area to the exclusion of the other.

66. Te Upokorehe say this is also true where multiple groups make separate applications and are granted joint CMT. Respectfully, his Honour's comment fails to separate (1) the ability of each applicant to meet the test; and (2) the form in which CMT should be held (and therefore the form in which customary rights can and should be expressed in an Aotearoa New Zealand context). The MACA Act is silent on the latter.

67. While at [439]–[445] the majority recognise a need to accommodate overlapping and conflicting claims, overlapping CMT is ruled out as "unworkable". The majority do not identify any reason why tikanga, or the statutory language, cannot accommodate separate but overlapping titles.

68. An inability to have overlapping CMT also causes prejudice to applicants who are affected by the 'dual pathway problem'. Section 94 of the MACA Act provides a dual pathway for recognition orders. Under s 94(1), a PCR or CMT may be recognised by either: an agreement made in accordance with s 95 and brought into effect under s 96; or an order of the Court made on an application under s 100. There is a lack of cohesion between the two pathways which has created problems when different groups

have applied for orders in respect of the same area, but in different pathways.

69. In this situation, once a CMT is granted in one pathway, applicants in the other pathway could be automatically precluded from obtaining a title for the same area.[66] There is no provision for an application under s 95 to be treated by the Court as an application under s 100, or vice versa. This means groups that have filed an application in one pathway are unable to transfer their application to the other, if the pathways are moving at different speeds.

70. The issue of the dual pathway has arisen in both the *Re Edwards Whakatōhea* and *Re Ngāti Pāhauwera* hearings, as noted by the Waitangi Tribunal in the *Marine and Coastal Area (Takutai Moana) Act 2011 Stage 2 Report*, released 6 October 2023.

71. The Tribunal also observed that the effect of a High Court recognition order on ongoing negotiations in the Crown engagement pathway remains unclear.[67] Considering these issues, the Tribunal has found the lack of a mechanism to address the disjointed dual pathways breaches the Treaty principles of active protection, good government and partnership.[68] It is patently unfair and a breach of Te Tiriti if an award of CMT under a judgment excludes others pursuing direct negotiation. Separate but overlapping CMTs would mitigate that prejudice and better reflect the overall mechanics of the Act.

72. The existence of shared exclusive possession is a question of fact, and a recognition order reflecting this is an available outcome that the Court may identify. The means to address this could be a joint order or overlapping orders—there is nothing in the MACA Act that suggests one is possible but not the other.

4. *Structural and Practical Compatibility*

73. Te Upokorehe say that workability is not an insurmountable hurdle for overlapping CMT and that any issues that may arise between overlapping CMT holders will also arise for applicants who share a joint order.

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[66] Waitangi Tribunal *The Marine and Coastal Area (Takutai Moana) Act 2011 Stage 2 Report* (Wai 2660, 2023) at 135.
[67] At 136.
[68] At 137.

Churchman J noted (rightly) that "there will clearly need to be co-operation and agreement between the holders of joint CMT but these are not insurmountable issues. Tikanga has in the past provided for the exercise of a complex web of overlapping rights".[69] This statement holds equally for multiple overlapping CMTs.

74. Further, at a practical level, recognising joint CMTs would logically lead to having a higher number of CMTs covering smaller areas, to ensure all rights are recognised while avoiding giving joint CMT holders rights over greater areas than they would be individually entitled to. We have seen this in the two joint orders recognised in the area before the Court—rather than holding one order as Te Upokorehe the group must be a party to both orders:

    a. A jointly held order for Ngāti Ira, Ngāti Patumoana, Ngāti Ruatakenga, Ngai Tamahaua, Ngāti Ngāhere and Te Upokorehe from Maraetōtara in the west to Tarakeha in the east and out to the 12 nautical mile limit (despite Te Upokorehe not applying for recognition beyond Pakihikura); and

    b. In relation to the western part of Ōhiwa Harbour, a jointly held CMT between Ngāti Ira, Ngāti Patumoana, Ngāti Ruatakenga, Ngai Tamahaua, Ngāti Ngāhere and Te Upokorehe and Ngāti Awa.

75. In other words, joint CMT tends to result in CMTs being drawn either overbroadly so that applicants gain rights over areas they have no claim to, or at the scale of the lowest common denominator.

76. Overlapping CMTs would avoid this problem as the area of each CMT can be made specific to the interests of a single group—no more, no less. This is likely to simplify consultation and approval processes by reducing the number of parties who need to be involved.

77. It would also clarify which group is responsible for any particular area—for example, Te Upokorehe is included on an order from Maraetōtara in the west to Tarakeha in the east when they only sought an order from Maraetōtara in the west to the Waiōweka River in the east. An applicant

[69] *Re Edwards Whakatōhea*, above n 3, at [170].

for a resource consent east of Pakihikura ought not need seek their permission.

5. *Examination of the available rights under CMT*

78. To test whether the structure of the MACA Act is consistent with separate overlapping CMTs it is necessary to examine the nature of the bundle of rights conferred by customary marine title. These are set out at s 62 of the MACA Act and are addressed below to the extent they are relevant.

Contacting CMT Holders

79. Before examining the bundle of rights, we note that all successful CMT applicants must be added to a marine and coastal register.[70]

80. This requirement means that any party seeking to contact CMT holders in any particular area has all contact details available. There is no practical difference for those seeking to contact CMT holders whether there are joint CMTs or overlapping CMTs. In fact, individual CMTs may make it easier for the particular CMT holders for a specific area to be identified and contacted.

A Permission Right under the Resource Management Act 1991 and Conservation Permission Right

81. An RMA permission right allows a CMT holder to approve or decline consent. However, this right is not absolute and does not apply to the grant or exercise of a resource consent for an accommodated activity and is subject to a variety of other constraints or limitations.[71]

82. A CMT holder must notify, in writing, its decision on a request for permission for an RMA consent to the applicant who gave notice, and the relevant consent authority. If permission is given, the group must specify the activity for which permission is given, the applicant who is to have the benefit of the permission, and the duration of the permission.[72] The CMT holder is treated as if they have given permission if notice of a decision is not returned by the applicant within 40 working days.[73]

[70] Section 114.
[71] Section 66(4).
[72] Section 67(2).
[73] Section 67(4).

83. This process is equally capable of being followed whether there is a single joint CMT for a particular area or several overlapping CMTs. The principal difference would be that the applicant would need to notify more than one CMT holder. That is a relatively minor matter. The outcome of any application is unlikely to be affected, given that each CMT holder group would, in practice, need to give permission irrespective of whether they hold their rights jointly or separately.

84. A conservation permission right enables a CMT holder to give or decline permission on any grounds for the Minister of Conservation or the Director to proceed to consider an application or proposal for a conservation activity.[74] The Minister or Director must refer applications for conservation activities to the relevant CMT group or groups,[75] which must make a decision within 40 days. If a decision has not been received within the stated time, the group is treated as giving permission.[76]

85. As with RMA permission rights, there is little practical difference between applicants exercising a conservation permission right as a part of a joint CMT order, or doing so individually through holding separate orders, particularly when joint CMT holders may require notice to be provided separately to all of the holders on the CMT.

86. Because no joint CMT orders have been sealed to date[77] we cannot point to a concrete example of CMT holders requiring notice to be provided separately to all of the holders on the CMT. It does seem a logical outcome of the way in which the orders here will be held by nominated individuals if agreement cannot be reached on a joint holder, as decided by Churchman J in the stage two judgment:[78]

> If the parties continue to be unable to reach agreement, in order to finalise the CMT, the Court will have to make a decision as to who the nominated holders of CMT 1 and CMT 2 will be. It is likely that this will be six named individuals, each of the individuals representing one of the successful applicant groups, in respect of CMT 1 and,

[74] Section 71(1).
[75] Section 72(1).
[76] Section 73.
[77] Section 113.
[78] *Re Edwards (Whakatōhea Stage Two) No. 7* [2022] NZHC 2644 at [550].

> in respect of CMT 2, seven named individuals, each individual representing one of the successful applicants.

A Right to Protect Wāhi Tapu

87. The MACA Act sets out the process for recognition of wāhi tapu and wāhi tapu areas at s 78.

88. There is no reason that recognition of wāhi tapu protections within CMT orders prevents separate but overlapping CMT orders from issuing. On the contrary, this would be consistent with the fact that wāhi tapu may be specific to individual iwi or hapū. Allowing separate overlapping CMTs means that wāhi tapu can be recorded and protected in a way that directly identifies them with the relevant iwi or hapū group.

89. While this is a matter that will be traversed more fully in appeals to the stage two decision, Churchman J has given the term "customary marine title group" a narrow meaning, holding that it "is not any one of the hapū individually but the collective group in whom [CMT] were jointly vested".[79]

90. Because of this, Churchman J held that:[80]

> The 'customary marine title group' for the purposes of the Act and the corresponding CMT orders, is that amalgamation of hapū collectively, rather than each hapū individually. Where the tests for wāhi tapu protections are established, those protections are to be granted in favour of the CMT group.

91. As a logical result, any wāhi tapu able to be recognised on the relevant CMTs must be agreed by all the parties jointly awarded CMT.[81] This gives any member of the group a veto. It also means that a wāhi tapu may be held by a group including some members who do not recognise it or who may be concerned at the ramifications of asserting that they hold the wāhi tapu where they do not purport to do so in accordance

[79] At [153] and [250].
[80] At [153].
[81] At [250].

with tikanga. The logical outcome of this approach is seen in *Re Edwards (Whakatōhea Stage 2) No. 8*:[82]

> I address each of these sites in turn but start by reminding Te Ūpokorehe that the right to identify and protect wāhi tapu flows from the award of CMT in the relevant area of the takutai moana. Te Ūpokorehe were not awarded their own CMT but a joint CMT with Whakatōhea hapū and Ngāti Awa. Where there is no agreement between all of those applicants who were jointly awarded CMT as to what areas are wāhi tapu and as to the protections that may be required to preserve and protect the wāhi tapu, one of the joint CMT holders cannot impose their views unilaterally on the others.
>
> Some of the other joint CMT holders have identified different wāhi tapu sites (particularly in Ōhiwa Harbour) or different protections.
>
> It was not clear to me the extent to which there was consensus as between the relevant joint CMT holders on these points. Therefore, those wāhi tapu identified by Te Ūpokorehe that I find meet the requirements of the Act for recognition, remain subject to there not being any opposition from the other joint CMT holders either as to the location of the CMT or the protections required.

92. The requirement that all parties need to agree before a wāhi tapu can be recognised effectively imposes an additional test or hurdle for an applicant group to meet that is not in the MACA Act, and also undermines rangatiratanga, tikanga and the objectives of the MACA Act.

93. Allowing for overlapping separate CMT orders would allow individual holders to protect their wāhi tapu without the threat of other groups on a joint order exercising a veto over their ability to have their wāhi tapu rights recognised. It is noted that the Waitangi Tribunal was unable to discern any reason why wāhi tapu protections are treated as an incident of CMT, noting that Māori should have the ability to seek wāhi tapu

[82] *Re Edwards (Whakatōhea Stage 2) No. 8* [2023] NZHC 1618 at [101]–[104].

protections regardless of whether they can successfully establish CMT to that area. This, the Tribunal concluded, breaches the principle of active protection.[83] Separate but overlapping CMT would go part way towards addressing this concern as it would allow for individual groups to apply for individual and discrete wāhi tapu protection rights without placing mātauranga Māori at risk.

Rights in relation to marine mammal watching permits and the process for preparing issuing changing reviewing or revoking the NZ coastal policy statement

94. For each of the rights provided for in ss 76–77 the views of CMT holders must be sought prior to a decision being taken. Seeking the views of multiple CMT groups would be required whether the CMT is jointly held or there are multiple CMTs.

95. In practice, the process of notification and consultation would not be significantly different in either case. Indeed, overlapping CMTs as opposed to joint CMTs would potentially simplify the process by ensuring that the geographical area of each CMT is tailored to each group rather than being under or over-inclusive of groups with rights over a single area. This would facilitate the identification of the groups with rights over the specific area in question. Therefore, this is not a barrier to recognition of overlapping CMTs.

96. In practice, the requirement that a CMT register is kept (discussed above) means that any party seeking to give notification to CMT holders only need consult the register and notify all parties affected. In many respects this is an easier hurdle than for RMA applicants prior to a grant of CMT. Section 62 of the MACA Act requires that a person applying for a resource consent, permit, or approval must locate and notify all applicant groups in both MACA pathways.

97. As a practical matter, it will be easier to notify a select group of those that have met the test and been granted CMT than to notify all applicants, who may or may not go on to meet the tests.

The prima facie ownership of newly found taonga tūturu unless the Māori Land Court decides otherwise

[83] *The Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 2 Report*, above n 66, at 181.

98. Under s 82(3) any person finding a taonga tūturu in a customary marine title area has a duty to notify the finding within 28 days, in accordance with s 11(3) of the Protected Objects Act 1975.

99. Section 82(4)(a) provides: "the relevant customary marine title group is entitled to have interim custody of the taonga tūturu, at the discretion of the chief executive and subject to any conditions that the chief executive considers fit".

100. The MACA Act then sets out a process for lodging competing claims, with ownership being determined under ss 11(6) and (7) and 12 of the Protected Objects Act 1975.

101. If a taonga tūturu is found in a joint CMT area the CMT holders will need to engage to decide on which of the holders should become the interim holder. There is no practical difference between this situation and overlapping CMT groups engaging for the same purpose.

The ownership of minerals other than minerals within the meaning of s10 of the Crown Minerals act 1991

102. Under s 83 a CMT holder has, and may exercise, ownership of minerals (other than petroleum, gold, silver, and uranium existing in their natural condition) that are within the CMT area of that group.

103. Again, practically there is no difference between a joint CMT and multiple overlapping CMTs. CMT holders will equally need to refer to the 'complex web of overlapping rights at tikanga' to resolve among themselves which is the appropriate group or groups to hold ownership rights in any particular area.

The right to create a planning document

104. CMT holders have a right to prepare a planning document that relates to their CMT area, or areas outside the customary marine title area where the group exercises kaitiakitanga. Planning documents are not binding on decision makers.

105. The issue arises that on a joint order individual groups would be prevented from preparing their own planning documents. As

Churchman J notes in the stage two decision (note the emphasis is his Honour's):[84]

> The Act does not provide for a "hapū coastal management plan". Section 85(1) of the Act provides that a **customary marine title group** has the right to prepare a planning document in accordance with its tikanga.
>
> The CMT group which this right vests in, is not any one of the hapū individually but the collective group in whom CMT 1 and CMT 2 were jointly vested. It may be that this group prepares a document that has different chapters relating to the enforcement of wāhi tapu conditions prepared by each individual hapū/iwi, but that can only be authorised by the collective group. The Act does not confer on an individual hapū the right unilaterally prepare its own planning document.

106. Under separate but overlapping CMT orders title holders would be able to prepare their own planning documents if they so choose, better reflecting the tikanga and mana tuku iho of the individual groups. It is accepted that any conflicts between competing documents in respect of the same area would need to be ironed out through consultation but the risk of practical difficulties arising is mitigated by the fact that the planning documents are not binding on decision makers.

6. *Conclusion on Issue 3*

107. Allowing separate, overlapping CMTs in addition to joint CMTs is in accordance with the purpose of the MACA Act. It provides for a durable regime, recognises the mana tuku iho of successful applicant groups, and provides an appropriate degree of certainty to all Aotearoans or New Zealanders as to who the holders are.

108. Little can be made of the fact that this is a novel outcome not seen in other jurisdictions. Were freehold title available under the Act then an argument that successful applications could overlap would be more difficult to maintain; however, the bespoke regime that was established

[84] *Re Edwards (Whakatōhea Stage Two) No. 7*, above n 78, at [249]–[250].

through the MACA Act only allows for vastly inferior rights by contrast, which are capable of being exercised by more than one party.

109. The Court of Appeal erred in determining that overlapping CMTs are not available under the MACA Act, and that any practical problems with the exercise of the rights which flow from the grant of CMT if multiple CMTs were granted for the same area warrant denying that outcome as an option for successful groups.

V. Relief Sought

110. Te Upokorehe seek:

a. Remission of CMT 1 and CMT 2 to the High Court for rehearing of Te Upokorehe's claim to be solely entitled to CMT in respect of the areas within its rohe.

b. Confirmation that, depending on the particular context and tikanga at issue, separate and overlapping CMT orders are an available outcome under the MACA Act.

VI. Certification

111. Counsel certify that, to the best of their knowledge, the submission is suitable for publication (that is, it does not contain any suppressed information).

Dated: 20 September 2024

Jennifer Cooper KC Bryce Lyall Hannah Swedlund
Counsel for Te Upokorehe Treaty Claims Trust

List of Authorities

Decisions

1. *Ngā Hapū o Tokomaru Ākau v Te Whānau a Ruataupare Ki Tokomaru* [2024] NZHC 682
2. *Ngā Pōtiki Stage 1—Te Tāhuna o Rangataua* [2021] NZHC 2726; [2022] 3 NZLR 304
3. *Re Edwards Whakatōhea* [2021] NZHC 1025, [2022] 2 NZLR 772
4. *Re Edwards (Whakatōhea Stage Two) No. 7* [2022] NZHC 2644
5. *Re Edwards (Whakatōhea Stage 2) No. 8* [2023] NZHC 1618
6. *Re Ngāti Pāhauwera (Strike Out Decision)* [2020] NZHC 1139
7. *Re Ngāti Pāhauwera* [2021] NZHC 3599
8. *Paul v Attorney-General* [2022] NZCA 443
9. *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 504; 3 NZLR 252
10. *Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board* [2023] NZCA 644

Reports

1. Waitangi Tribunal *Turanga Tangata, Turanga Whenua: The Report on the Turanganui a Kiwa Claims* (Wai 814, 2004)
2. Waitangi Tribunal *The Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 2 Report* (Wai 2660, 2023)

Statutes

1. Marine and Coastal Area (Takutai Moana) Act 2011

Chronology[85]

Event	Date
Te Upokorehe tūpuna Te Hapuoneone living at Ōhiwa Harbour before arrival of Mātaatua waka[86]	Unknown
Battle between Tūhoe, Te Upokorehe and Te Whakatōhea at the Maraetōtara stream in Ōhope, resulting in Te Upokorehe having full control of Ōhiwa Harbour but allowing reciprocal access to Waimana Kaaku (Tūhoe)[87]	1823
Te Upokorehe Chief Wī Akeake signs Te Tiriti o Waitangi[88]	1840
Crown invasion and confiscation of Te Whakatōhea and Te Upokorehe lands following death of Reverend Volkner[89]	1865
Te Upokorehe re-settled on reserves at Hiwarau block (next to Ōhiwa Harbour) and Hokianga Island (in Ōhiwa Harbour)[90]	1866
Hiwarau and Hokianga Island Reserves gazetted, with Hiwarau to be held in Trust for the Upokorehe Tribe and Hokianga Island to be held in Trust for the Upokorehe Hapū[91]	1874
Attorney General v Ngāti Apa [2003] 3 NZLR 643 (CA) - held that Maori Land Court had jurisdiction to determine claims of customary ownership to areas of the foreshore and seabed	2003
Foreshore and Seabed Act 2004	2004
Marine and Coastal Area (Takutai Moana) Act 2011	2011
Re Tipene — Determination made February 2015 for CMT.	February 2015

[85] For a more fulsome chronology refer to Baker: Mō āke tonu atu, Te Upokorehe Takutai Moana Overview Report COA Tab 504 from 315.06342.
[86] McGovern-Wilson: *Heritage assessment: Tokitoki Reserve Ōhiwa Harbour* 4 July 2012, cited by Baker: *Mō āke tonu atu, Te Upokorehe Takutai Moana Overview Report* at 315.06345.
[87] Baker: *Mō āke tonu atu, Te Upokorehe Takutai Moana Overview Report* at 315.06342 at 315.06345 and Johnston: *Wai 203 and Wai 339 Research Report*, June 2002 COA Tab 508 at 315.06397.
[88] Baker: Mō āke tonu atu, Te Upokorehe Takutai Moana Overview Report COA Tab 504 at 315.06342.
[89] Ibid at 315.06348.
[90] Ibid at 315.06348.
[91] Ibid at 315.06349.

Te Upokorehe application filed	3 April 2017
Re Tipene — First High Court order sealed under the Act.	Enacted March 2018.
Stage 1 hearings of *Re Edwards Whakatōhea*	17 August 2020 – 23 October 2020
Final written submissions received for *Re Whakatōhea* Stage 1	15 December 2020
Re Edwards Whakatōhea [2021] NZHC 1025, [2022] 2 NZLR 772.	7 May 2021
Hearing Stage 2 *Re Edwards Whakatōhea*	14-25 February 2022
Re Edwards (Whakatōhea Stage Two) No. 7 [2022] NZHC 2644	13 October 2022
Court of Appeal hearing	27 February 2023 – 3 March 2023
Re Edwards (Whakatōhea Stage 2) No. 8 [2023] NZHC 1618.	27 June 2023
Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui and Whakatōhea Māori Trust Board [2023] NZCA 504; 3 NZLR 252	18 October 2023
Leave granted to appeal, Supreme Court	17 April 2024

Quote from WMTB submissions at [66]–[67]	Reference	Pinpoint	Mention	Comment
Ngati Ngahere are referred to in the Tony Walzl report …	Tony Walzl, Whakatohea and the Common Marine and Coastal Area 1865 – 2019. COA Tab 286 301.00001 generally	301.00052	A large proportion of Whakatōhea surrendered after the battle at Te Tarata. About 50 surrendered on 18 October. A further 220 Ngāti Rua, Ngāti Ngahere and Ngāi Tama surrendered on 21 October. Their fortified pā at Kohiapua had been destroyed and they were reportedly running out of food.	General mention
		301.00053	J A Wilson's census, conducted in late 1866, gave the total Whakatōhea population as 531. Of these people, 411 had surrendered by this time. …In April 1867, an armed party of about 12 Ngāti Rua and Ngāti Ngahere men came down the Waiaua Valley. The party was defeated by the militia, and Pirihaki (or Pirikaha) was mortally wounded. A group of 20 Ngāti Rua and Ngāti Ngahere attacked four military settlers the following month.	General mention
		301.00062	Two further small reserves were also later awarded to Ngāti Rua (11 acres) and Ngāti Ngahere and Ngāi Tama (32 acres) near Ōpōtiki township.	Outside of Upokorehe rohe
		301.00065	In 1874, a national census of Māori had been completed. The following figures were given for Whakatōhea: Ngātingahere - Waiaua, Ōpōtiki etc - 83 adults 41 children 124 total	General mention
		301.00066	In 1878, another nationwide Māori census was conducted by the Government. The result for Whakatōhea are as follows:	General mention

			Ngātingahere – Waioeka – 18 adults 17 children 35 total	
		301.00068	In 1881, a further Māori census was made where, again, the nomenclature of the census takers altered. Nevertheless, these are the figures published at the time. Ngātingahere - Waioeka - 35 adults 9 children 44 total	General mention and outside of Upokorehe rohe
	Tony Walzl, Whakatohea and the Common Marine and Coastal Area 1865 – 2019,. COA Tab 264, 301.00284	301.00284	APPENDIX I: 2005 Briefs of Evidence - Ngāti Ngahere, Ngāi Tamahaua - Ngāti Ngahere - Ngāti Ngahere	See below
… which refers to evidence of Ngati Ngahere filed in the Māori Land court when Edwards application was first lodged.	Evidence of James Pirihi [COA Tab 288 302.00547]		I picked up tikanga from my Whakatohea side later in life. I had my grounding in Ngai Tai and then I moved back over this side to learn my Whakatohea side. I had a base of knowledge and then was just adding to that with what was happening in Whakatohea. I was raised over the hill in Torere with my Mum's whanau of Ngai Tai. My father is Hone Pirihl and his parents were John Pirihi from the Ngati Ngahere hapu of Whakatohea and his mother's most common name is Makareta Hudson from the Ngai Tamahaua hapu of Whakatohea, My mother is Lena Herewini from Ngai Tai and her parents were Karauria Herewini from Ngai Tai and Matareta Maxwell from Ngai Tai and Ngati Porou.	BOE of Pirihi, not a lot of Ngahere specific references. Not given for Ngahere (and predates MACA Act)

	Evidence of Tangimoe Clay [COA Tab 288 302.00690]		Whakapapa's to Ngati Ngahere, outlines a Pingao planting programme within the Whakatohea rohe from Ohiwa to Opape. Hapu urupa at Tirohanga (Snells Beach).	Again, whakapapa but not to show that Ngāhere held the area
There are also the Kahotea reports	Dr Desmond Tatana Kahotea, Whakatōhea and the Common Marine and Coastal Area 1840 - 1865 [COA Tab 286 302.00720]	302.00791	The Whakatōhea Hapū Ngai Tamahaua, Ngāti Ruatakenga, Ngāti Patumoana and Ngāti Ngahere all descend from Tārawa and he remains an enigmatic tīpuna.	Whakapapa
		302.00792	The Ngaitu were the descent group of Tārawa and their territory went from Ōpōtiki inland to the catchments of Otara and Waioeka Rivers and they were contemporary with Te Whakatane. Ngāti Ngāhere, Ngāti Patumoana, and Ngāi Tamahaua descend from Tārawa.	Whakapapa
		302.00805	The fight took place again at Korotahi between Whakatane and Whakatōhea where Whakatōhea was defeated Whatupe and Hauoterangi was killed. Te Hauoterangi was hung by Whakatane in a tree and the name of the people Ngaetu was changed to Ngāti Ngahere in commemoration of the rope at the time of Heretaunga.	Whakapapa / historical
		302.00806	Ngāti Ira, Ngāti Patumoana, Ngāti Ngahere and Ngāti Tamahaua have their tīpuna origins in the inland bush covered hills, not on the coast. But their tīpuna Tauturangi, Tarawa and Tamatea landed on the coast and explored the inland hills. Because most of the korero stems from the evidence presented with the Native Land Court most of it is about that area rather than the coast but there are many references to areas of the Ōpōtiki valley or basin, the large area of river flats of the Waioeka and	Outside of Upokorehe rohe

			Otara where these Hapū , Ngāti Tamahaua, Ngāti Ngahere and Ngāti Patumoana were also living or occupying.	
		302.00814	[Context of Sim's Commission] At the hearing Te Hoeroa Horokai (Whakatōhea [Ngāti ngahere]) provided the following description of part of Whakatōhea's ancestral tribal boundaries "as far as my section is concerned": Commencing at Pakihi at the mouth of the river, along sea coast to mouth of Waiotahe stream, to mouth of Ōhiwa stream, to Te Horo (a hill), thence striking inland southwards to Puhikoko (a hill), by straight line to Pukemoremore (a hill), thence to Mapouriki (a hill) (at one time a fighting pa), then descending into Waimana stream Mapouriki being on the bank, following the Waimana stream towards its source at Tautautahi (a hill along the banks), to the mouth of the Parau stream, then following Parau stream to Tangata-e-roha (a hill), to Kaharoa (an old settlement). These boundaries, he continued, are for the lands of Upokorehe, Ngātingahere, Ngātirua and the other three Hapū s.	General statement, not Ngāti Ngāhere specific
		302.00820	Gilling's account is a chronology of the Ngāpuhi and Ngāti Maru raids on Whakatōhea … A second raid took place in 1825. Ngāti Ira and Ngāti Kahu of Ngāti Ngahere were the Hapū most affected by the Ngāpuhi attacks.	General and pre-1840

		302.00822	Whakatōhea had gone to Thames to assist Ngāti Maru to obtain flax, and Ngāti Rua and Ngāti Ngahere fearful of attack went to join Ngapotiki and went to the confluence of the Waihuka and Waipaoa rivers.	General
		302.00830	In 1984 Sissons drew upon a statement following the confiscation of 1866 from Karauria Edwards, a leading Whakatōhea rangatira has written: The Whakatōhea at the height of its power was comprised of numerous hapu, many more than the six hapu we know, these being Ngai Tama, Ngati Rua, Ngati Patu, Ngati Ngahere, Ngati Ira and Te Upokorehe.	General
		302.00831	The first known list was Wilson's list of Hapū in 1867: Ngātingahere 92 [Aporohanga gives evidence he was both Panenehu and Ngāti Rua.] When cross-examined in the Whitikau No 3 hearing he responded to a question about the location of other hapū : Te Panenehu live at Omaramutu. When the war about Volkner's murder broke out Ngāti Ira went from Ōpōtiki & settled at Waioeka on their own land. N.Ngahere and N. Rua lived together on their land at Otara also Ngāti Tama. Those hapu lived together	Shows Ngāhere outside of Upokorehe rohe
		302.00832	Ranginui Walker described what happened to the Whakatōhea hapū : The dispossessed hapu from the confiscation of the Ōpōtiki heartland-Ngāti Ira, Ngāti Patu, Ngati	General

			Ngahere and Ngai Tama – were moved off their traditional hapu lands…	
		302.00833	Table 15 Compensation Court Hearings for Ōpōtiki: Crown agent (Wilson): Ngātiwhiri and Ngātingahere are distinct the latter worked on my land with my permission Case for the Crown' Whitirea: The claimant has a piece of land near Te… Te Peka Orongo belongs to the claimant. Ngātingahere worked there with her permission. She has a claim to Papakanui also.	Outside of Upokorehe rohe
		302.00835	Table 15 Compensation Court Hearings for Ōpōtiki: Whitiria Crown witness: Chief of Whakatōhea Ngātira lands are on the Otara river, Ngātingahere lands adjoin them. Cannot give the boundaries of individual claims of Ngātirua	Shows Ngāti Ngāhere outside of Upokorehe rohe
		302.00837	Opape Reserve was the only land given to Te Whakatōhea with a coastal front or foreshore. Figure shows the hapū subdivision of Opape Reserve where Ngai Tama, Ngāti Ngahere and Ngāti Rua have coastal frontage.	Outside of Upokorehe rohe
		302.00873	[Tarawa] Founding ancestor of Ngai Tamahaua, Ngāti Ruatakenga, Ngāti Patumoana and Ngāti Ngahere.	Historic
		302.00877	The Tamatea, Taututerangi and Muriwai descent groups over time through intermarriage and alliances merge with the Muriwai whakapapa to form the early nucleus of Te Whakatōhea where by 1850, Ngāti Ira,	Outside Upokorehe rohe

			Ngāti Patu, Ngai Tama, Ngāti Rua and Ngāti Ngahere are located along the two rivers of the Ōpōtiki Basin, Waioeka and Otara and the inland catchments of these two rivers.	
	Dr Desmond Tatana Kahotea, Whakatōhea Pākōwhai Hapū and the Common Marine and Coastal Area 1840 – 1865 [COA Tab 310 303.01257]	303.01270	Te Kareke only pa taken by Ngatimaru, Ngatiawa, Ngaitai etc . Ngatingahere remained on the land after these fights they had no pa they were living in the bush. Only hapū to occupy the land in the neighbourhood. Ngāti Rua had gone to Te Kaha, Tokomaru and other settlements on the coast amongst Ngāti Porou. Heremia Hoera of Ngati Rua disagreed with this statement saying that Ngati Rua all had gone to Gisbourne as he reiterated it was only Ngati Tamoko of Ngati Rua who went to Gisbourne. All Whakatōhea were present at Te Kareke fight. Ngaitama were taken prisoner and taken to Hauraki and Ngāti Ngahere but some Ngatingahere remained behind	Outside Upokorehe rohe
		303.01271	Manihera Maiki Ngati Ngahere OMB4 When Whakatōhea were known to have returned to their own country, then N'Rua and some of N'Ngahere who were living in Turanga returned to Ōpōtiki.	Outside Upokorehe rohe
		303.01273	Ngāti Rua occupied Waiaua after 1840 accompanied by Ngāti Ngahere, Ngāti Ira, Ngaitama and Upokorehe. When the cultivations had been established the other hapū withdrew and left Ngāti Rua at Waiaua and there was no disturbance from Ngaitai.	Outside Upokorehe rohe

		303.01274	This was for their counterclaim against Ngaitai for the Whitikau 3 Block. Ngaitama and Ngāti Ngahere also made claims to the Whitikau Block with Tutamure their tīpuna although they referred to specific tīpuna who was a direct descendant of Tutamure. The following are statements recorded for the Compensation Court Hearings for claims for land at Ōpōtiki which refer to the different hapū areas or lands along the lower Otara and Waioeka Rivers: I am chief of Whakatane there are five large Hapū s in the tribe. Te Puia belongs to my tribe Ngātira. Te Peka Orongo is in the township, Ngātihere use to work there. They occupied that land after they returned from captivity till the commencement of the late war. The whole tribe worked there and other places named in the claim. The claimant was the principal owner of the land. The claimant has a piece of land near Te… Te Peka Orongo belongs to the claimant. Ngātingahere worked there. All Ngātirua have an interest in the lands on both sides of the Otara river. All the Upokorehe have an interest in Hira's Ōhiwa claims. Chief of Whakatōhea Ngātira lands are on the Otara river, Ngātingahere lands adjoin them.	Outside Upokorehe rohe

			Cannot give the boundaries of individual claims of Ngātirua.	
		303.01279	[Whakapapa chart from Muriwai to the five hapū and Upokorehe]	General
		303.01293	[Tarawa the] founding ancestor of Ngai Tamahaua, Ngāti Ruatakenga, Ngāti Patumoana and Ngāti Ngahere.	General
		303.01298	Appendix 3 Compensation Court Hearings for Ōpōtiki (Wilson and Whitirea comment again from earlier report)	Outside Upokorehe rohe
		303.01300	Appendix 3 Compensation Court Hearings for Ōpōtiki (Whitirea comment again from earlier report - Chief of Whakatōhea Ngātira lands are on the Otara river, Ngātingahere lands adjoin them.)	Outside Upokorehe rohe
	Dr Desmond Tatana Kahotea, Ngāti Muriwai and the Common Marine and Coastal Area Kotahitanga Claims 1840 – 1865 [COA Tab 315 304.01503]	304.01510	Ranginui Walker described what happened to the Whakatōhea hapū : The dispossessed Hapū. from the confiscation of the Ōpōtiki heartland-Ngāti Ira, Ngāti Patu, Ngāti Ngahere and Ngai Tama – were moved off their traditional Hapū. lands at Waiōtahe, Paerātā, Hikūtaia, Pakōwhai and Waioeka and relocated to the Ōpape Reserve along with its original owners, Ngāti Rūa.	Outside Upokorehe rohe / general
		304.01511	Ranapia Waihaku of Ngāti Tama made the comment in 1895 that "There are six Hapūs acknowledged of Whakatohea now according to the Government reckoning, formerly there was a great many. Ngapotiki and Ngāti Kahu were not Hapū.s or subdivisions of Ngaitama formerly, but more recently they became part of Ngaitama and Ngāti Ngahere by intermarriage." The six Hapū he is referring to	General

			are Ngaitama, Ngāti Ngahere, Ngāti Rua, Ngāti Ira, Ngāti Here and Upokorehe	
		304.01513 - 304.01514	[Whitikau No 3 rehearing Tuakana Aporohanga evidence] When cross-examined in the Whitikau No 3 hearing he responded to a question about the location of other hapū Te Pananehu (Panenehu) live at Omaramutu. When the war about Volkner's murder broke out Ngāti Ira went from Ōpōtiki & settled at Waioeka on their own land. N.Ngahere and N. Rua lived together on their land at Otara also Ngāti Tama. Those Hapū. lived together.	Outside Upokorehe rohe
		304.01523	The early history of Ngāti Ngahere, Ngai Tama, Ngāti Patu and their tīpuna Tarawa and Tamatea Matangi we find are closely associated with the inland hill country of the upper catchments of Waioeka and Otara, in comparison the early period history for Te Wakanui focus is mainly on the coast.	Outside Upokorehe rohe
		304.01524	It is easy to see that Ngaitai had a very narrow coastal area and the periods of expansion to Waiaua that occurred. They were successful in being awarded the Whitikau Blocks through the Native Land Court but it was only through the evidence presented by the Whakatohea hapū (Ngati Rua, Ngai Tama, Ngati Ngahere) where the Court had no option but to award the area to Ngaitai. … Ngaitama and Ngāti Ngahere were claimants alongside Panenehu and Ngāti Rua at the	Outside Upokorehe rohe

			rehearing for the Whitikau No 3 because of their descent from Tutamure.	
		304.01524	The Whakatohea history written by Lyall (1979) and Walker (2007) emphasise a Te Whakatohea perspective or leaning. The conflict between Ngaitai and Te Whakatohea began with the Panenehu, Ngāti Rua and then drew in other hapū such as Ngai Tama and Ngāti Ngahere and all of Te Whakatohea on some occasions.	Outside Upokorehe rohe
		304.01525	At the Whitikau 3 investigation of title Native Land Court hearing Hoera Katipo responded to the Ngāti Rua, Ngaitama and Ngāti Ngahere counter-claimants with the following Ngaitai list of battles and fights between Ngaitai and Te Whakatohea to raise against the statements made by Ngāti Rua, Ngaitama and Ngāti Ngahere.	Outside Upokorehe rohe
		304.01528	Ngāti Rua occupied the land at Waiaua from after 1840 and Ngāti Ngahere, Ngaitama, Ngāti Ira and Upokorehe were also there with them. After the land was in a state of cultivation the other hapus withdrew and left Ngāti Rua in charge.	Outside Upokorehe rohe
		304.01529	The Native Land Court Judge could see that the Whitikau Blocks were Te Whakatohea but in two hearings awarded it to Ngaitai because Ngāti Rua, Ngāti Muriwai, Ngāti Ngahere and Ngaitama could not produce evidence the Judge needed. Underneath this is the struggle of Te Whakatohea in adapting to the post confiscation era.	Outside Upokorehe rohe

the Wilkie report,	Dr Margaret Wilkie, A Kaupapa Māori Analysis [COA Tab 292 303.01141]	303.01146	Hapū Driven Guiding principles for settling the Whakatōhea claims included that the process is hapū driven, with 7 hapū contributing to the original working party; Ngāti Ira, Ngāti Patu, Ngāti Muriwai, Ngāti Ngahere, Ngāti Rua, Ngai Tama, Ūpokorehe.	General and disputed
		303.01154	Hapū coverage of Te Whakatōhea 2019 interviews The whakapapa [geneology] and generation of the hapū identities for the many hapū of Te Whakatōhea is handled in depth by Dr Des Kahotea's Report. The interviews July to September 2019 for the contemporary evidence touched members of 8 hapū. In the order of first engagement with the research team the hapū of Te Whākatohea who contributed are Ngāti Muriwai, Ngai Tamahaua, Ūpokorehe, Ngāti Patumoana, Ngāti Pakowhai, Ngāti Ruatakenga, Ngāti Ngahere, and Ngāti Ira.	General and disputed
referring to the korero of Bradie Paul	Dr Margaret Wilkie, A Kaupapa Māori Analysis [COA Tab 292 303.01163]	303.01163 – 303.01164	Bradie Paul (54) from Ngāti Ngahere of Te Whakatōhea spoke of their whānau roles as kaitiaki. Well every time we went to the river or anywhere we'd always have to pick up our rubbish whatever. I was told that when we went there, you have to leave it as it was as we got there. It was our space where we sat or gathered and it had to be left how it was. And we pick up other rubbish because dad would	General, non-specific as to location

			say. "Go and get that bit, go there, go there." He'd be telling us.	
The Bruce Stirling Report and his reply evidence	Bruce Stirling, Te Mana Moana o Te Kāhui Takutai Moana o ngā whenua me nga hapū of Te Whakatōhea: Historical Issues [COA Tab 330 307.02683]	307.02689	(Quoting Ranginui walker) Muriwai's daughter Hine-i-kauia followed her brother east and married Tutamure (a descendant of Tauturangi) from whom Ngati Ira, Ngati Ngahere, Ngai Tamahaua, and Ngati Patumoana can trace descent. In this way the hapu of Whakatohea brought together the descendants of the Nukutere and Mataatua waka	Non-specific information on hapū.
		307.02703	Tlwai Piahana testified about a claim made to Ohiwa by Rakuraku for Ngal Tuhoe, which was more a claim for Te Upokorehe. Tiwai said that Whakatohea "have claims within the area claimed by Rakuraku ... Ngati Ngahere, all Whakatohea claims there' giving their boundary at Pukenui (at Ohope near Tauwhare), adding: "The Upokorehe belong to the Whakatohea".	Tiwai Piahana of Ngati Patumoana testifying about a claim made to Ohiwa by Rakuraku for Ngāi Tuhoe, which was more a claim for Te Upokorehe. Can be seen in context of boundary dispute with Ngāi Tuhoe rather than assetion of exact boundary of Ngāti Ngāhere.
		307.02703	Meremana of Ngatl Ngahere also referred to Pukenui as a boundary	Reference is as a boundary of Whakatōhea, not Ngāhere.
		307.02725	Compensation Court claims to Waiaua (and Opape across the river) by Ngai Tai were strongly opposed by the hapu of Whakatohea, especially Ngati Ruatakena and Ngati Ngahere, whose customary rights were acknowledged by the Court.	Evidence of Ngāti Ngahere rights well outside of Upokorehe rohe (to the east)
		307.02738	urupa for the hapu Ngati Rua and Ngati Ngahere	East of Ōpōtiki
		307.02820	Mereana Hauauru. Lot 125 Confiscated Land Grants and Reserves in Coastal Lands, Beside	Lack of detail in archival docs. Claim appears to have been made on behalf of

			Ohiwa Harbour north of Pataua ls, Ngati Ngahere grantee.	all her mother and all Whakatohea. Doesn't support exclusive use or occupation.
"his reply evidence which explicitly refers to interests of Ngati Ngahere in Ohiwa"	Reply Evidence of Bruce Stirling [COA Tab 336 309.03787]	309.03787	Rather it concerns the claim at Waiaua of Mereana (of Ngati Ngahere)	Not in the Ōhiwa – east of Ōpōtiki.
There is the Armstrong Report…	David Armstrong, Te Whānau a Mokomoko Application (CIV-2017-485-355) for Customary Marine Titile and Protected Customary Rights under the Marine and Coastal Area (Takutai Moana) Act 2011 (Part 1 of Exhibit A) [COA Tab 355 311.04391].	311.04404	Historically there were six main Whakatohea hapu: Ngai Tamahaua (Ngai Tama), Ngati Ira, Upokorehe, Ngati Patumoana (Ngati Patu), Ngati Ngahere and Ngati Ruatakena (Ngati Rua). … Ngai Tama is currently associated mainly with Opape, Ngati Patumoana with Waiaua, Ngati Ngahere with Te Rere, Ngati Ira with Waioeka, Upokorehe with Waiotahi and Kutarere, and Ngati Rua with Omarumutu.	"Ngahere with Te Rere" – eastern end of CMT and outside of Upokorehe rohe
		311.04411	[Ngati Ngahere in Wilson's 1866 census and Wilson's 1867 census]	General
		311.04412	1870 census 1878 census compiles by Resident Magistrate G. Preece Ngati Ngahere, Waioeka	General
		311.04413	1881 census compiles by Resident Magistrate R. Bush,	General

			Ngati Ngahere, Waioeka	
		311.04416	A copy of Te Tiriti o Waitangi/Treaty of Waitangi was brought to Opotiki by the trader James Fedarb, a former member of the Church Missionary Society (CMS) and master of the schooner Mercury. This copy of Te Tiriti was signed by seven Whakatohea chiefs on May 27th and 28th, 1840. They were Tautoro of Ngai Tama and Ngati Ngahere, Tu Takahi Ao of Upokorehe, Aporotanga and Rangimatanuku of Ngati Rua, Rangihaerepo of Upokorehe and Ngai Tama, and Te Whakia of Whakatohea	General
		311.04417	Wilson, Stack and Brown claimed to have purchased land on the coast at Opotiki from Titoko, Te Rangihaerepo, Te Ake and others by means of a transaction dated January 27, 1840. … Some Upokorehe and Ngati Ngahere people disputed the transaction. They were given a small share of the payment, and a wood called Tapuaiti and another area named Taumata-o-Te Tamahawa were excluded from the deal to further satisfy them.	General
		311.04428	A c20,000-acre block at Opape was also awarded to surrendered 'rebels' belonging to various Whakatohea hapu. This land had a sea frontage of a little over 3kms. Ranapia Waihuka later told the Native Land Court that 'the Government invited us to come out from our hiding place… all of the hapus of Whakatohea collected at Opotiki. Lands were parcelled out at Opape to the various hapus of Whakatohea, pieces of land were given to the	outside of Upokorehe rohe

			rebels of Ngati Patu, Ngati Rua, Ngati Tama [sic], Ngati Ngahere and Upokorehe'.	
		311.04433	Wilson allocated the Opape reserve for Whakatohea in April 1866, and 'moved the said tribe from Opotiki valley and located it at Opape'. The hapu to whom the various sub-divisions were awarded are shown in the following table. The coastal portion of the block (subdivisions 1, 2 and 3) were awarded to Ngai Tama, Ngati Ngahere and Ngati Rua. [Table] Ngati Ngahere, subdivision 10, 1680 acres Ngati Ngahere, subdivision 2, 2867 acres	outside of Upokorehe rohe
the excerpts of Ranginui Walker book, Opotiki-mai-Tawhiti,	Extract from text "Opotiki-Mai Tawhiti" by late Ranginui Walker (published 2007) Penguin Books (NZ), pp 36-41 [COA Tab 473 314.05685]	314.05686	The Ngati Ruamoko hapu occupied Paerata as a distinct group from Ngati Ngahere and one of the latter's offshoots in historic times, Ngati Patumoana. Ruamoko's own descendants lived permanently at Ohiwa. The lands occupied by Ngati Ngahere, Ngati Patumoana and Ngati Ruamoko were Paerata, Ahirau and Onekawa. The western boundary of Whakatohea, defined initially by Kahuki and confirmed by Ruamoko, was at Pukenui, a high point west of Ohiwa.	Disputed, general and predates 1840
…and the Derby report	Mark Derby, Report on Customary Interests and Third-Party Use and Occupation [COA Tab 686 326.11768]	326.11734	The Whakatohea Maori Trust Board regards the iwi as comprising six hapū – Ngai Tamahaua (aka Ngai Tama), Ngāti Ruatakena (Ngāti Rua), Ngāti Ngahere, Ngāti Patumoana (Ngai Patu), Ngāti Ira (Ngai Irapuaia) and Ūpokorehe	General
		326.11736	According to Dr Ranginui Walker, the distinct hapū of Ngai Tama, Ngāti Rua,	General

			Ngāti Patu, Ngāti Ira, Ngāti Ngahere and Te Ūpokorehe merged around the end of the 17th century under the tribal name Te Whakatōhea, partly	
		326.11768 - 11769	N' Ngahere, Te Rere marae, Ōpōtiki	Shows outside of Upokorehe rohe
		326.11777	Dr Ranginui Walker's own hapū of Ngāti Ngahere originally occupied the forested lands west of the Waioweka River, hence their name. Ruamoko was a chief of Ngāti Ngahere in the 18th century, when the hapū's territory ran from Waioweka to Ōhope, taking in the coastal fisheries of the Waioweka River and Ōhiwa Harbour.	Predates 1840 and disputed
		326.11778	During the Musket Wars period, a division of Ngāti Ngahere began developing as a separate entity under the name Ngāti Ruamoko. At the mouth of the Waiotahe River, a Ngāpuhi war party overtook a canoe carrying a Ngāti Ngahere woman of rank named Hine-i-ahua.	Predates 1840 and disputed
		326.11798	Table of census showing Whakatōhea at "Opape and mountains of Waioeka" at 1867	Outside Upokorehe rohe
		326.11827	Ngāti Ngahere and Ngāti Patu's settlements were at Paerata, with Ngāti Ira further up the floodplain of the two rivers.	Outside Upokorehe rohe
		326.11881	Ngāti Ngahere and Ngai Tama were offered 400 acres at Tirohanga, but settled instead for a much smaller area near Ōpōtiki	Outside Upokorehe rohe
		326.11882	Despite Waiaua's and Ōpape's wealth of marine resources, most of Ngāti Ngahere	Outside Upokorehe rohe

			rejected the offer to move to lands they regarded as the property of Ngāti Rua, and chose instead to relocate on small reserves at Te Rere, near Ōpōtiki	