

**Summary Report of Information Relevant to the Ngāti Pāhauwera CMT and PCR application
under the Marine and Coastal Area (Takutai Moana) Act 2011**

**November 2014
Ministry of Justice**

NOT LEGAL ADVICE OR GOVERNMENT POLICY

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Preface

- 1 My name is Ashley Gould. I am employed by the Ministry of Justice as Principal Historian with responsibilities in a Ministry team implementing the Marine and Coastal Area (Takutai Moana) Act 2011 [**the Act**]. This overview report was created for discussion purposes in a bilateral engagement and determination space between the Crown and the Ngāti Pāhauwera applicants under the Marine and Coastal Area (Takutai Moana) Act, 2011. [REDACTED]

Purpose:

- 2 An earlier version of this overview report was prepared during 2012 by Mr James Keating, a staff historian at OTS, to assist the parties consider the application by Ngāti Pāhauwera for customary marine title (CMT) and protected customary rights (PCR) under the Marine and Coastal Area (Takutai Moana) Act 2011 (the 2011 Act). It summarised two information streams developed at different times;

2.1 information collected by the Marine and Coastal Area Act team of the Ministry of Justice during 2012 which mainly spoke to third party use and occupation of the CMCA and was applied to the then existing draft test questions

- 3 The Keating edition of this report was provided to Ngāti Pāhauwera in 2012 and feedback was provided by applicants' legal counsel. Following Mr Keating's departure from the Ministry the draft report was refined and edited by me early in 2013 to take account some of the observations and suggestions relating to facts made by applicant counsel and versions were again exchanged with Ngāti Pāhauwera. Discussion and comments in the earlier draft report made available to counsel for Ngāti Pāhauwera were arranged under an earlier series of draft approved test questions developed as a winnowing tool to test the relevance of historical and other materials to the legal questions at hand. The amended and confirmed CMT test issues and questions are recorded in this iteration of the report in the text and headings with italics.

- 4 This iteration of the summary report has received additional text in relation to the roading access issue, the addition of some further quotes from historical sources which provide a window on early European contacts and the nature of the contemporary population distribution observed by visitors to the area. Visual images from the pre-1868 period have been sourced from the Napier museum that assists in understanding colonial development in the Mohaka block. The report has been edited to account for the recent realignment of the application area.
- 5 This summary report is not an attempt to write Ngāti Pāhauwera’s history of the Common Marine and Coastal Area [CMCA] nor is it an authoritative local history of the lands abutting the specified engagement area. Instead, it should be read as an attempt to present a coherent narrative of the various manifestations of coastal use and occupation in the application area from 1840 to the present, which have been identified as relevant for consideration for the legal tests for CMT and PCR under the 2011 Act. Based upon disparate historical and other facts, the emphasis is primarily upon third party use and occupation, and little or no comment is directed to those matters sought under the Protected Customary Rights limb of the engagement which were thoroughly aired before the Māori Land Court in 2008 under a Customary Rights Order (CRO) application under the 2004 Act and upon which the Crown made comment at the time.
- 6 For completeness the present iteration of the approved CMT ‘test questions’ document has been incorporated into this draft report as Appendix I. In addition to footnote references, a list of sources generally relied upon has also been annexed for the parties’ information.

MACA Act Test Questions Disclaimer:

- 7 *The purpose of this set of questions is to extract from the available evidence those facts which are pertinent to the legal assessment of whether or not customary marine title (CMT) exists (the test for which is set out in section 58). The questions are not exhaustive and may only act as an opening to the enquiry as to whether or not CMT exists. They are purposefully pitched at a high level because the expertise of the relevant historian and lawyer will be required to develop the subsequent nuanced questions specific to the factual scenario which emerges from the research effort. The weight of explanatory or compliance authority given to each question will vary and may depend on legal interpretation and argument. The overall assessment will require a picture to be built up with all the relevant factors being considered in light of each other. These questions do not directly deal with the case of a customary transfer.*

Fundamental branches of the Tests

8 *The aim of the test questions is to seek evidence that addresses the fundamental elements of the test, namely:*

- *Exclusive use and occupation of the area by the applicant group (which must be without substantial interruption from 1840 until the present day);*
- *the applicant group holds the area according to tikanga; and*
- *CMT has not been extinguished at law.*

The order of the questions is indicative only and may be altered according to the circumstances of each application and the evidence available.

9 Since the last version of the summary report was provided to Pāhauwera, the Crown has received a number of sworn affidavits from the applicants and the content of these has been considered for relevance to the question of third party use and occupation of the CMCA. In addition Ngāti Pāhauwera Trust has also identified a number of reports from the records of previous inquiries undertaken in the area. The utility of some this historical material to the key question of determining surviving Customary Marine Title in the application area is questioned, as is the identification of some of these sources as the views of Ngāti Pāhauwera. It would be more accurate to refer to these sources as reports prepared on behalf of Ngāti Pāhauwera.

10 The matter of tikanga in relation to the tests is primarily a matter for the applicants and the deponents in support of the application but it is anticipated that some effort will need to be made to compare and contrast the expressions of tikanga against more general tenants of tikanga, in so far as these are applicable to the CMCA and the Marine and Coastal Area (Takutai Moana) Act.¹

Identity of the Group:

11 Ngāti Pāhauwera is a confederation of hapū centred on the Mohaka River valley in Hawke's Bay and which asserts mana moana over the area from Poututu in the northeast to Ahuriri in the southeast.² Ngāti Pāhauwera appears to have been one of a number of independent hapu living broadly along the Hawke Bay Coastline in the mid-nineteenth century. This hapu name is now applied generally to a number of current and ancient hapu. Individual hāpu of Ngāti Pāhauwera have resided in the application area since at least the mid-eighteenth century, while the

¹ See the Affidavit of Mr Toro Waaka, October 2007, for a compiled explanation of Ngāti Pāhauwera tikanga.

² Affidavit of Wi Derek Huata/King, 12 October 2007, exhibit A to Affidavit of Wi Derek Huata/King, 5 December 2013; Affidavit of Mr Toro Waaka, October 2007, p.9-12.

expansion of Ngāti Kahungunu descendants from the East Coast into the region at the expense of former occupiers has been traced to the sixteenth century.³ The name 'Pāhauwera' commemorates the singeing of the beard of a recent common ancestor, Te Kahu o Te Rangi, in 1824. Upon his death the tribe prepared his head for preservation but it reportedly slipped into a fire.⁴

- 12 Hāpu of Ngāti Pāhauwera embrace three marae located near the CMCA in the application area. Each is surrounded by a cluster of residential housing and a number of small sections, some of which have housing or other buildings located upon;

12.1 **Kahungunu/Putere/Raupunga** is located at 36 Putere Road in Raupunga, approximately 7 kilometres from the Mohaka River mouth;

12.2 **Kurahikakawa** - a more recent development on land near Waihua exchanged with the Haynes family but still incomplete - is located at State Highway 2 approximately 500m from the Waihua River mouth. We understand that the proto-marae may now be based upon the closed school which formed a part of the Ngāti Pāhauwera land settlement with the Crown; and

12.3 **Waipapa-a-Iwi** is located at 594 Township Road in Mohaka, near the CMCA and approximately 1 kilometre from the Mohaka River mouth.⁵

- 13 The Ngāti Pāhauwera governance entity structure comprises two trusts: the Ngāti Pāhauwera Development Trust (a commercial and operational arm) and the Ngāti Pāhauwera Tiaki Trust (which holds culturally significant lands received through Ngāti Pāhauwera's Treaty settlement.)⁶
- 14 On 13 September 2011 the Ngāti Pāhauwera Development and Tiaki Trusts, on behalf of Ngāti Pāhauwera were, under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, granted a rohe moana between the Waikari River and Poututu Stream (the same boundaries as its original Marine and Coastal Area application), extending seaward 12 nautical miles.⁷

³ Waitangi Tribunal, *Mohaka ki Ahuriri Report (WAI 201) Volume 2*, Wellington: Legislation Direct, 2004, pp.50, 360.

⁴ *Mohaka ki Ahuriri Report Volume 2*, p.359.

⁵ Ngāti Pāhauwera, *Te Kāhui Māngai*, available from <http://www.tkm.govt.nz/iwi/Ngāti-Pāhauwera/#>; accessed on 5 September 2012.

⁶ Ngāti Pāhauwera Treaty Claims Settlement Act 2012, s.11 (1). See also <http://NgātiPāhauwera.co.nz/>.

⁷ NZG, 15 September 2011, no. 141, p.4072.

Report Methodology:

15 This summary report addresses the application area re-defined by the combined Ngāti Pāhauwera Trusts, which is a section of northern Hawke’s Bay coastline.⁸ In order to disaggregate the evidence collected by the Crown under both the 2004 and 2011 Acts, this draft version of the report presently divides the application area into two separate research areas:

15.1 **Area One:** Poututu Stream—East Bank of the Mohaka River.

15.2 **Area Two:** West Bank of the Mohaka River—Pōnui Stream.

Geographical location and appearance of the full application area:

16 The amended specified application area abuts the coastline between the Pōnui Stream in the south west and Poututu Stream in the north east of Hawke Bay. These modified boundaries not accord with the area of Ngāti Pāhauwera’s core area of Interest under its deed of settlement with the Crown for Treaty of Waitangi breaches and instead reflect a recent pragmatic decision by Pāhauwera to modify its application boundary to remove an overlap with its near neighbour.⁹ The seaward boundary is fixed at 12 nautical miles from high water spring tide line. [See attached map.]

17 The modified specified area abuts a physically remote section of central-northern Hawke’s Bay – consisting of open beaches and river mouths some 20 plus kilometres in length. The intersection of the common marine and coastal area (CMCA) and abutting land is characterised by high, shelving greywacke cliffs subject to the forces of erosion, deeply embanked rivers, black/grey sand and steeply shelving beaches presently covered in unusually large quantities of drift wood debris associated with poor environmental management of cultivation forests in the hinterland. The coastal area was described by the Wairoa District Council in 2004 as ‘unsuitable for swimming.’¹⁰ The alluvial beaches are subject to short term fluctuations depending on the frequency of storms and, in the long term, as elsewhere in Hawke Bay, this coastline is slowly

⁸ The coastal limits of this area coincide with the coastal limits of the Ngāti Pāhauwera’s gazetted rohe moana under the Fisheries (Kaimonana Customary Fishing Regulations) 1998. See Fisheries (Kaimoana Customary Fishing) Notice (No. 15) 2001 (No. F608), *New Zealand Gazette (NZG)*, no. 141, 15 September 2011, p.4072. It also conforms to core area recognised by the Crown in the Ngāti Pāhauwera deed of settlement.

⁹ Refer to Map 6 “Core Areas of Interest,” Deed of Settlement, p.117. See also the Justice commissioned GIS database, 2013.

¹⁰ Draft (Un-adopted) Wairoa District Council coastal Access Action Plan, April 2004. WDC File D1/25/3.

retreating from the encroaching erosion of the sea and uplift from tectonic forces.¹¹ Since 1840, erosion has significantly altered the northern Hawke's Bay coastline, compounded by the effect of landslides and earth movements triggered by large earthquakes in the 1890s, 1914, and the very large 1931 Napier earthquake.¹² In particular, after the 1931 earthquake, the coastline at the Waihua River rose by approximately one foot, and along the coast throughout the application area 'gravity slips [were] almost continuous, though they [became] gradually less frequent and smaller' toward the Wairoa River.¹³ The earthquake led to the Waihua River taking a new course and creating a new mouth while eroding an existing roadway and leaving an area of then Māori-owned land without physical access and located to the East of the river's new outlet.

18 The region is today sparsely populated with several small Māori settlements located between Napier and Wairoa. State Highway 2 follows an inland route north of the Esk River, passing through Tutira, Putorino and Raupunga before returning closer to the coast at Waihua then turning inland towards the Wairoa River valley.¹⁴ There are concentrations of Ngāti Pāhauwera affiliated people at Mohaka, Raupunga and about Waihua while the majority of the non-Pāhauwera population consists of land-owning farmers and their families and farm managers for both European and Māori-owned stations. 2006 census information provided below appears sufficient to establish that Ngāti Pāhauwera hāpu are a significant component of the local population.¹⁵ Ngāti Pāhauwera persons in the past reportedly provided most of the labour on

¹¹ Coastal Resource Inventory: Urewera District Wairoa, Unit Three: File Three, Mohaka Physical Resources, Department of Conservation Wairoa Field Centre, June 1988, s.1.2.

¹² *Poverty Bay Herald*, 5 December 1898, p.3. It was reported that 'further particulars show that a good slice of the bluff at the Heads [Wairoa River] has been carried away. An eye-witness states that all the cliffs from Poututu along the seashore to Waihua were obscured by the dust from the crumbling of the overhanging peaks.'

¹³ P. Marshall, 'Effects of Earthquake on Coast Line near Napier', *New Zealand Journal of Science and Technology*, 16, pp.81-89.

¹⁴ In 2011 Statistics New Zealand estimated the population of the Wairoa District Territorial Authority (the area between a point approximate with Putorino on the coast to a point north of the Mahia Peninsula and stretching inland to the Huiarau Ranges) at 8,350. Wairoa District ranks 66th in population size out of 73 districts in New Zealand. 'QuickStats About Wairoa District', *Statistics New Zealand*, available from <http://www.stats.govt.nz/Census/2006CensusHomePage/QuickStats/AboutAPlace/SnapShot.aspx?id=2000029&type=ta&ParentID=1000006>; accessed on 25 July 2012; 'Sub-national Population Estimates Tables', *Statistics New Zealand*, available from http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/subnational-pop-estimates-tables.aspx; accessed on 25 July 2012.

¹⁵ Information compiled by Ngāti Pāhauwera and supplied to OTS by counsel for the applicants, based on the 2006 census figures, suggests that of the total of 665 persons living in the Ngāti Pāhauwera core area of interest (a definition arrived at in the course of Treaty settlement negotiations) 356 are Māori and 350 of these persons are registered as members of Ngāti Pāhauwera.

pastoral farms, and now as seasonal shearers, fencers and in the forestry industry.¹⁶ Statistics suggest that there is a net exodus of people from the Wairoa district generally and this more than likely applies to the area abutting the specified application area.

19 Combined with the paucity of coastal settlements in the region, the diversion of State Highway 2 away from the coast limits public legal access to the CMCA to just one point west of the Mohaka River. [REDACTED]

20 As required by section 6 of the Resource Management Act, the Council is required to protect outstanding natural features and landscape from inappropriate subdivision and development while at the same time maintaining and enhancing public access as well as maintaining the relationship of Māori culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga. Finding a happy medium amongst these sometimes conflicting tasks is the challenge for the Wairoa District Council and it seems that the council has not taken any steps to legalise the two popularly used informal access points east of the Mohaka River mouth.

Some Initial Observations:

Area One: Poututu Stream—East Bank of the Mohaka River

21 As is the case for much of the New Zealand coastline the footprint of modernity and its accompanying intrusions in the CMCA across the entire application area has been noticeably light. No permitted or consented structures exist along the coastline, and the two coastal settlements, Mohaka and Waihua, are small hamlets with disbursed housing on small rural sections bereft of services except for an area school at Mohaka, and both are somewhat physically removed inland from the CMCA. Application of the Coalmines Act Amendment Act to the Mohaka River means that the CMCA extends to the town bridge some one kilometre from the physical river mouth, although at the moment (2013) a massive reef of gravel and sand

¹⁶ Affidavit of Gerald Aranui on behalf of Ngāti Pāhauwera, 26 November 2013, para.11.

¹⁷ [REDACTED]

blocks that exit and the river debouches into the sea further east after running along the bottom of the cliffs in the vicinity. (Refer to images appended.)

- 22 Despite active Crown purchasing of land south-west of the Mohaka River in 1851 and east of the Waihua River in the 1860s, no Crown purchase of land abutting the CMCA occurred in the nineteenth century in the land abutting the CMCA between the Mohaka and Waihua Rivers. Because of a drawn-out process of determination of title by the Native Land Court, the coastal Waihua to Mohaka blocks were in the later nineteenth century leased for a lengthy period to Pākehā farmers. These coastal lands, subject to review by the Stout/Ngata Native Lands Commission in the first decade of the twentieth century, eventually were mostly alienated. After various changes in ownership and land use status, some of these lands abutting the CMCA were returned to Ngāti Pāhauwera in its Treaty settlement and individual Māori associated with Ngāti Pāhauwera also purchased lands from Europeans in the vicinity of the Waihua River – true right bank.
- 23 Ngāti Pāhauwera maintained some control over the Waipapa block land along the east bank of the Mohaka River until the advent of Sir Apirana Ngata's Mohaka Consolidation Scheme.¹⁸ Some sections of the blocks above the site of the town bridge were leased to a pakeha pastoralist in 1874 and there appears to have a reasonably large pakeha population located in the vicinity by the turn of the twentieth century with the population of Mohaka village rising from 36 in 1896 to 219 in 1906.¹⁹ A consequence of the individualization of sections in the Waipapa blocks was the creation by order of the Māori Land Court of a series of roads which terminated at the High Water Mark. One of these so ordered roads, which did not terminate at the High Water Mark, is today formed and extends beyond its legal termination point to provide access today to the CMCA east of the Mohaka river mouth.
- 24 Ngāti Pāhauwera's application area has a total coastline length of approximately 28.4 kilometres. Ngāti Pāhauwera interests now own – post treaty settlement – abutting land with a total coastline length of approximately 6.55 kilometres or just under 25% of land abutting the CMCA in the application area. Ngāti Pāhauwera interests own all of the land along the Mohaka River's lower reaches on the eastern bank abutting the CMCA. [Refer to Map Book.]

¹⁸ Empowering legislation provided by ???. The purpose was to concentrate ownership of shares in land in whanau groups which would ensure allocation of these lands to family members for productive farming was made easier.

¹⁹ George Thomson, *The Crown and Ngāti Pāhauwera from 1864'*, #A29, Wai 119/201, p.47 and p.89.

- 25 Historically the tidal or wet and dry part of the CMCA in parts of the research area was used as a thoroughfare by ancestors of the applicant group and third-parties alike. The beach along this section of the abutting lands was occasionally used as a 'road' by Europeans between the 1840s and the advent of a more reliable inland coach track between Napier and Gisborne in the 1870s. Extant sources reveal that early colonial travellers did not exclusively travel along the beach even before the formation and construction of a reliable inland route. A Native Land Court file for the Waipapa Block, dated September 1868, revealed that the 'road' connecting Napier and Wairoa, took an inland northerly direction after the crossing point on the Mohaka River rather than in a shape in a manner to suggest that the beach was at that point in time used as a road.²⁰
- 26 In addition, coastal shipping was important to the area before the advent of the modern roading network linking coastal pastoral stations with Mohaka and Napier. It seems that this activity was restricted to calm weather conditions. Prior to the Crown purchase of the Mohaka Block in 1851 and the subsequent establishment of coastal pastoral stations, the Mohaka settlement reportedly allowed shore-based whaling and shipbuilding activity, although neither industry endured. Some of the witnesses to the Mohaka deed of purchase in 1851 were Europeans who gave their occupations as cooper or carpenter and were likely involved with whaling and ship building in the area.²¹ Shore whalers also reportedly operated at Whakamahia, between Poututu and Wairoa.²²
- 27 Public access to and along the CMCA within research area one is limited to two points, neither of which are properly legalised public roads, although likely 'public' by dint of orders of the Māori Land Court. The roads are formed and apparently maintained to a degree by the Wairoa District Council.
- 28 Waihua Beach Road is not a legalised road, but an unsealed right-of-way over several private properties (land now owned again by Ngāti Pāhauwera interests), but reportedly maintained by arrangement with the Wairoa District Council. Even this road does not reach the 'beach' per se; visitors or users are now required to scramble down a steep bank on to the beach proper. Coastal erosion is affecting this point of abutting land and when the writer visited the area earlier in 2013 it appeared clear that very careful execution would be required to get a quad bike across an existing temporary waste log-ramp structure onto the Waihua beach. It was not

²⁰ *ibid*, p.48.

²¹ Raupatu Document Bank, 1991, p.???

²² Waitangi Tribunal, Mohaka ki Ahuriri Report, Chapter 3, p.55.

clear how an exit from the beach on a quad bike or other form of motor vehicle could safely be executed.

- 29 On the east bank of the Mohaka the nature of public access is similarly ambiguous. A road line now known as 'East Beach Road' was created by the Native Land Court on consolidation of the Waipapa Blocks. Unlike two additional road lines within the Waipapa area of the consolidation, the surveyed and public component of this road finished well short of the cliffs above the CMCA.
- 30 Today the East Beach roadway continues directly towards the cliffs, crossing private land eventually s-bending through a quarry and down a steep bank above beach level. The roadway to the beach consists of the Māori Land Court ordered roadway further north, an extension or part of Waipapa A146 Block, Waipapa 41B which is administered by the Waipapa a Iwi (Mohaka) Marae, Waipapa A122 which is owned by members of Ngāti Pāhauwera and leased to Quality Roding Services Ltd as a quarry and Waipapa A146 which is administered by the Waipapa a Iwi (Mohaka) Marae. East Beach Road is formed and gravel covered. This private part of the road is steep and, like many such isolated areas, there is no defined public parking or public facilities. Aerial photography reveals that the road is formed and appears to have some regular use but with the present position of the Mohaka River mouth bar some two kilometres north of the traditional mouth, access to the coastal beach is severely restricted, if not impossible without a boat. Access to the River mouth is obtained from a track below the quarry site.²³ MOJ staff travelled part of this track by motor vehicle and walked to the present location of the river mouth. This track, it is surmised, formerly provided access to the Paikea fishing club building some one or two kilometres north east, which is no longer in place. The nature and quality of access along the beach between these two points is varied, as beach and cliff-top erosion can limit travel along the coastal fringe of the application area.
- 31 The Mohaka and Waihua rivers have in the past both seen recreational fishing by third parties and Ngāti Pāhauwera alike. The Waihua River mouth, in particular, hosted a long-term annual fishing competition that attracted competitors from across New Zealand. Similarly, both rivers have reportedly seen low level recreational swimming, surfing and other recreational activities. Local information suggests that Waihua Beach today attracts very few people. The sea-wave action is generally quite dangerous and the access way now very problematic, while there is no

²³ The mouth is historically very variable. See Brief of Evidence of William Henry Culshaw, 31 August 2007, p.4.

natural shade on the beach and the cliffs are dangerous with land slips apparently quite common.

- 32 Gravel extraction reportedly occurred near the mouth of the Waihua River over several decades at the turn of the twentieth century. Extraction has also occurred on the banks of the Mohaka River since 1930, through predominantly upriver beyond the limits of the CMCA. As witness testimony in the 2008 Māori Land Court case revealed, non-commercial extraction of gravel and stones by Ngāti Pāhauwera continues to occur along the coast in an ad-hoc fashion.

Initial Observations

Area Two: West Bank of the Mohaka River—Pōnui Stream

- 33 As with area one, the footprint of modernity has been comparatively light in and along the boundary of the CMCA between the west bank of the Mohaka River and the Pōnui Stream. There are no settlements close to the coast and no structures although there appears to be a shed or toilet located near the terminus of Mclvor road, west of Mohaka. (See attached images.)
- 34 Crown land purchasing began and ended in the area with the 1851 Mohaka purchase which encompassed all the coastal land between the Mohaka and Waikari Rivers and seems to have occurred within the legal tenets of understanding relating to riparian rights in each of the rivers. As noted in the body of report, Ngāti Pāhauwera are unlikely to have vacated their settlements and kainga immediately, but evidence suggests they gradually moved to settlements outside the research area—at Te Kuta, on the west bank of the Waikari River, and to the Waipapa Block on the north bank of the Mohaka River. Following the 1851 Mohaka block purchase the Crown first leased out the land in the block as large runs and eventually sold most of the lower altitude Mohaka land fronting the CMCA. Today the coastal-frontage abutting land is consolidated in a few large blocks, owned by several large farming operations.
- 35 The coast between Pōnui Stream and Mohaka appears to have been less used as a thoroughfare by early colonial travellers in the region compared to the coast northeast of Mohaka. This appears to be a consequence of the dangerous overhead cliffs and travellers' preference for the inland route through valleys and along high coastal ridge lines.

- 36 As the region's infrastructure developed, coastal shipping and the continually improving inland road largely ended coastal or beach travel, although Ngāti Pāhauwera continued to use it as a travel route to preferred mahinga kai sites south of Pōnui.²⁴
- 37 There appears a complete absence of coastal trans-shipping activity between Mohaka and Pōnui. Similarly, the area did not appear to experience the low level industry (shore-based whaling and ship building) that occurred at mid-nineteenth century Mohaka on the Eastern Bank of the River. The exposed beach did not lend itself to lands except perhaps in ideal conditions.
- 38 Public legal access to the CMCA within the application area is limited to one modern point or node. Mclvor Road provides legal public access to the CMCA on the western side of the Mohaka River and a track leads south to provide access to a private residence located on the face of a huge land subsidence. A track also leads from the Mclvor Road terminus with the beach eastward to the southern shore of the mouth of the River. Oral evidence suggests that Ngāti Pāhauwera persons have arrangements with abutting landowners to facilitate access to coastal resources along this stretch of coastline before the legalising of Mclvor Road in the 1980s.²⁵
- 39 Western Beach Road as presently formed does not now appear to provide legal public access directly to the CMCA on the Western Bank of the Mohaka River, stopping for practical purposes at the driveway of the last dwelling before the river mouth. A sign clearly indicates that this is private property. (See image collection.) The title information suggests that it might provide access but review of the area using aerial photography suggests that there is now no practical access. A Crown reserve at the river mouth, and accompanying marginal strip, appears to have been eroded away over the course of time and now either forms part of the river bed which is subsumed by the trees growing along the southern bank of the river or on an island divided from the shore by a narrow subsidiary channel of the Mohaka River. (Refer to images attached.)
- 40 As with research area one, the nature and quality of access along the beach between the Mohaka and Pōnui Stream is variable as beach and cliff top erosion and tidal movements can limit travel along the coastal fringe. A track leads west towards a private residence. Witness testimony from Ngāti Pāhauwera indicates that while pedestrian access may be difficult at times, horseback or vehicular travel may provide unfettered lateral access along this section of the coast.

²⁴ See Brief of Evidence of Charles Seymour Arundal Lambert, 31 August 2007, p.5.

²⁵ Personal communication with the applicants, 2013.

Research Issues:

- 41 Hāpu now associated with Ngāti Pāhauwera probably inhabited some of the lands abutting the application area in 1840, albeit in reduced numbers than the decades before their temporary migration north to Mahia following attacks from musket-armed northern iwi, but it is likely they still constituted the largest body of people in the area.²⁶ While coastal leases and land alienation limited control over portions of the area abutting the CMCA after 1851, hāpu associated with Ngāti Pāhauwera continued to own land close to the Mohaka River, and land in the vicinity of the Waihua River mouth, although in the late twentieth century there was some repurchase activity and also an exchange of land located near to the Waihua River.
- 42 It was hoped that applicant research would clarify Ngāti Pāhauwera’s historical occupation and customary use of the CMCA, other than as a road along its fringe and as a place to fish from. (Refer to the statutory acknowledgement above).
- 43 As noted above, the years following the 1851 Mohaka purchase saw the Ngāti Pāhauwera and other vendor (Ngai Tahu and MTT hāpu?) population move to the margins of the purchase area, to the eastern bank of the Mohaka River and to Te Kuta block respectively. By the early twentieth century the Te Kuta block (itself outside of lands abutting the specified application area) was mostly sold to the Crown, with the remaining residents eventually abandoning their settlement in the Waikari River valley.
- 44 Existing research, including that filed in the Māori Land Court for the CRO inquiry hearing in 2008, does not speak to Ngāti Pāhauwera’s use of the CMCA after the migration away from the alienated land in the vicinity of Mohaka and Pōnui, and also along the coastline East of Waihua which was alienated to the Crown in the 1860s. The CRO application evidence was imprecise on occupation of any point out to sea except with reference to a mussel reef off Waihua River mouth. That in itself has been a well known feature of the area and referenced in historical sources, although the bathymetric data does not disclose an underwater structure analogous to that description. According to Mr Bob Haynes – the present owner of lands acquired by John Glendenning about Waihua originally by lease in 1885 and subsequently freeholded - it was only

²⁶ The Waitangi Tribunal in its Mohaka River Report, 1992, quoted evidence from Mr Charlie King, the late Canon Wiremu Te Tau Huata, and also Mr Cordry Huata, which identified a number of hāpu which constitute Ngāti Pāhauwera. These were Ngāti Kura, Ngāti Kurahikakawa, Ngāti Kapekape, Ngāti Paieka, Ngai Te Rau, Ngāti Kahuterangi, Ngāti Purua, Ngāti Tuhemata, Ngāti Huki, Ngāti Rauiri, Ngāti Huki, Ngāti Kaihaere, Ngāti Tangopu, Ngai Taane, Ngāti Paroa, Ngāti Hinku, Mawete and Ngāti Popoia (names of taniwha in the Mohaka River). The latter appear to have interests in the coastline from the Waikari River to Ahuriri. (Affidavit of Derek Huata, 5 December 2013, para 15.) Toto Waaka lists 85 separate hapu names in his 2007 report appended to his 2014 affidavit as appendix “D”.

the Waihua school teacher in the past couple of decades who went out to the reef, and then in diving gear.²⁷ Anecdotal evidence provided by Pāhauwera suggests that there are now issues of siltation of this reef structure.²⁸

- 45 In its closing submission to the Māori Land Court hearing of the CRO application on 21 February 2008, the Crown agreed that Ngāti Pāhauwera had enduring customary rights in the public seabed and foreshore that justified a Customary Rights Order from the Māori Land Court.²⁹ However, the paucity of evidence regarding the scale, extent and frequency of these customary rights concerned Crown counsel, who believed the Court had to infer such information from witnesses' general descriptions of these activities.³⁰ In order for the Māori land Court to issue a CRO for a specified area, Crown Counsel held a view that the details regarding the scale, extent and frequency of use for each of the rights included in the application required particularisation.³¹ Ngāti Pāhauwera have said to Officials that the scale, extent and frequency is that they take what they want, when they want, restricted only by tikanga because the whole area (CMCA?) is theirs.
- 46 The nature and extent of legal public access to the CMCA in the research area remains uncertain and no attempt has been made to independently verify this use. The ability of the applicant group and or third parties to access the application area speaks to the contemporary use of the CMCA and the 'exclusivity' of that use. While neither the Waihua Beach Road nor the Mohaka East Beach Road offer legalised public access to the CMCA, informally both appear to be used for that purpose, and Ngāti Pāhauwera reportedly have agreements to travel across private properties to the CMCA in the application area. These may not be so critical after the Treaty settlement which has seen some formerly Crown-owned land abutting the CMCA vested in Pāhauwera as parts of its settlement with the Crown.
- 47 The ownership of abutting land, while not a crucial consideration under the 2011 Act may be of some importance, particularly in relation to both Ngāti Pāhauwera and third party access to, and

²⁷ Personal communication, May 2013.

²⁸ Affidavit of Derek Huata on behalf of Ngāti Pāhauwera, 5 December 2013, para 11.

²⁹ Crown Closing Submissions—Introduction, in the Māori Land Court of New Zealand, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.2.

³⁰ Crown Closing Submissions—Ngāti Pāhauwera Evidence, Crown Closing Submissions, in the Māori Land Court of New Zealand, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.8-9.

³¹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.231.

use of resources along this coastline. Title data research has been shared with Ngāti Pāhauwera and this information is now reflected on the present iteration of the GIS mapping data.

Crown Reserve Acquisition and Public Access Overview

- 48 There has been a significant effort made by agencies of the Crown since 1966 to improve public access to the beaches of New Zealand. Between 1966 and 1980 the Department of Lands and Survey undertook a nation-wide survey of coastal resources with the primary aim of maintaining existing public access, and improving this in the future.³²
- 49 On 19 May 1969 the Chief Surveyor of the Gisborne Office of the Department of Lands and Survey reported that he, another official, and a consultant to the Wairoa County Council, had ‘inspected the Waikari Beach, both beaches at the mouth of the Mohaka River and the Waihua Beach.’ The result of this survey – a part of the general reserves project - was a recommendation that an area of 38 acres be acquired at Waihua Beach and that the existing formed access road be acquired from the then present land owners, legalized and enlarged. The area was reported as being a popular public fishing spot. All four sections of land targeted for acquisition, including Waihua A36 – now known locally as the Island and owned by Mr Haynes - were recorded as being Māori owned with a combined value of \$9,600.³³ Despite the initial recommendation, the general local sense of the matter was that there was no need for additional acquisition of lands and that matters of public access could be left to the Wairoa County Council.
- 50 The Director-General of Lands subsequently sought additional information from the Commissioner of Crown Lands, Napier office. In relation to coastal margin in the vicinity of Waihua, some observation was sought on the possible breakout of the river through the ox-bow, the amount and type of public usage, and whether the area was suitable for boat-launching. In relation to the Mohaka east beach, the question related to camping, while the east beach’s actual use was considered greater than for the west beach. Additional questions

³² Department of Lands and Survey, Gisborne Land District, ‘Coastal Reserves Investigation’. This coastal survey was initiated in 1966 by the Director General of Lands in a general circular to all Commissioners of Crown Lands on 26 July 1966. The background appears to have been in the context of the attempt, outlined in the Department of Lands Annual Report of 1961/62, to ensure that all unauthorised buildings were removed from foreshores of lakes, rivers and the sea. Experience suggested that it was difficult to ensure that foreshore areas remained in public hands, and the Minister of Lands reportedly had expressed concern for action and future vigilance in ensuring public access to shorelines. See Administration Circular 1966/14, 26 July 1966, Head Office file 6/1/1164, and Gisborne file, 8/859, now LINZ Wellington.

³³ DOC Head Office File 8/5/105/1, Off-Site Storage Wellington. Tab 4 DOC Gisborne papers, vol.1, Pāhauwera Research collection.

were raised as to the status of Lot 6 on the west bank which was located between an existing reserve at the Mohaka River mouth and the proposed strip reserve which was to take in the beach to the west.³⁴

51 The Commissioner responded that there was no prospect of a break-through at the ox-bow as the banks were very high and the river flowed at only a couple of feet above sea-level. (See image #??) Waihua beach was described as being popular for surf-casting and considered fair for surfing. It was reported that the beach was not used for boat launching.³⁵ There was reportedly little prospect of a camping ground at Mohaka East Beach, while Mohaka West Beach was reportedly un-used by the public because **there was no legal public access** and ‘a sign on the gate firmly asks people to keep out. [This was before the County obtained ownership by transfer of Mclver Road.] As the homestead and shearing shed for the block have to be passed to get to the beach, the gate notice is able to be enforced fairly rigidly.’ Lot 6, DP 4046, near the western bank of the mouth of the Mohaka River, was described as freehold land and part of the adjoining farm, while the river mouth reserve was described as Crown land which had not been gazetted as any particular kind of reserve. A survey was considered necessary should a reserve status be applied. The County reportedly did not expend funds on the maintenance of the access road to Waikari East beach. Perhaps this referred to formal expenditure? There is a hint of anecdotal evidence that the County (privately by its grader driver perhaps) occasionally graded the road.

52 The Reserve work was delayed and a final report by the local office of Lands and Survey for the Wairoa County Council had not been completed by 1976. Most regional reports in this exercise were in fact not completed until the early 1980s and by then the political will appeared to have evaporated as the cost of acquiring coastal reserves around the entire coastline of New Zealand was such that the struggling economy would not have been able to fund the exercise. These matters resided until the Department of Conservation was created in 1986.

53 In 1989 the Department of Conservation, in a re-run of the earlier reserve exercise - requested information from the Department of Survey and Land Information (DOSLI) regarding legal access to the Hawkes Bay coast in the Wairoa County.³⁶ Of the seven areas mentioned, three are in the

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ Coastal, Marine, and Freshwater Resources – Coastal Reserves Proposals, File 5/8/0, DOC Gisborne?

area considered by this report: Waihua, Mohaka (A and B). The information requested was whether there was:

- a. Legal public access to the coast in those locations
- b. If so, was the access negotiable by foot or by vehicle
- c. was the access demarcated on the ground on the legal road-line
- d. How was this demarcated? Formed road or fenced right of way?

54 The file data is sparse but a report from the era has been located which suggests that, on the basis of the information supplied by DOSLI, a proposal was developed to establish a recreation reserve at on the South Bank of the Waihua River at its mouth.³⁷ This was to be some 14 hectares in extent. The non-legality of the access road was recognised and legalizing and widening the road was one of the proposed actions. It was also recorded that the area had been designated as a proposed foreshore reserve 'with an underlying zoning of Rural A', under the Wairoa County District Scheme in 1981. It was also recorded that the area was popular for fishing.

55 The areas of land in question were Māori owned Waihua Blocks A50A, A36, and Pt A50B, and the freehold Waihua 2C7B. Waihua A36 was recorded as a reserve for marae, burial ground, beach reserve and recreation ground for the use and benefit of the Ngāti Kuia hāpu of Ngāti Kahungunu.³⁸ That area of reserve has since been alienated by its owners to a local European farmer. (Refer to title data attached as **appendix A.**) Earlier this area was declared under Part XXIV of the Māori Affairs Act 1953 as subject to development.³⁹

56 Little or no progress was achieved by DOC before the passing of the Resource Management Act, 1991, and the subsequent transfer of authority for foreshores to Regional Councils. The Wairoa District Council became responsible for administering public access policy.

57 The proceedings of the Wairoa District Council's coastal strategy provide some interesting observations about the general coastal area. In February 2003 the Council determined to 'develop and action a Coastal Access Action Plan, creating an inventory of Council owned

³⁷ *ibid.*

³⁸ *NZG*, 1981, p.2684.

³⁹ *NZG*, 1972, p.694.

properties adjacent to the coast (including roading), and resurvey those area where significant accretion (addition) of new land area has occurred'.⁴⁰

58 A part of this process was the creation of a Community Consultation Document in October 2003 which in part recorded under key facts:

- a. Only a small portion of the 130 km of the Wairoa coastline is accessible by public road.
- b. There are only two publically accessible safe sites for launching boats on the Wairoa coast. [From north of Mahia to the Waikari River?]
- c. The Wairoa coastline boasts significant wilderness and solitude values that are important for a natural recreational experience.

59 Some of the key issues identified in the document were:

- a. 'The level and quality of road access to the coastal areas creates issues for both local residents and visitors and there is potential for conflict with both landowners and protection of heritage sites.'
- b. Manage appropriate access to the coast to avoid adverse impacts and conflicts between different user groups.
- c. Coastal development had the potential to reduce recreational values and restrict public access
- d. Council appeared unsure of the level of demand for access to the foreshore
- e. 'Public access over private lands needs to be negotiated properly and compensated for appropriately.'

Summary of Contemporary Roading Access Issues

60 We have been able to determine there is only one legal roadway which coincides with the Mean high-water mark of the CMCA in the whole application area. Mclvor Road, an existing right of way legally dating from 1941 on the western side of the Mohaka River, was acquired in two uneven sections by Torrens title transfer by the Wairoa County Council in 1980 and 1987, although no gazette entry has been found.⁴¹ This is clearly the road access point for the Mohaka Beach fishing competition and also provides access for a version of freedom camping on the western beach. (Refer to Map and Image Booklet.)

61 The Western Beach Road at Mohaka stops at private property (see image of road sign included in the document collection, and Map Book) while the legal road which formerly gave access to the Government reserve at the river mouth appears to been eroded by the river.

⁴⁰ DOC Gisborne File SAR-04-43-01-01.

⁴¹ Refer to CTs HBJ1.553 and 544

62 The East Beach Road is a Māori roadway created by a consolidation order of the Māori Land Court, and for the reasons set out above, is not likely to be a legal public road for the final third to half of its present formed and maintained length, although used by the public to access the CMCA. As surveyed it does not proceed to the MHWS mark but, instead turns north east, crossing one road line and intersecting with another.⁴² The status of these road lines was referred to by Judge Carr of the Tairāwhiti Māori Land Court; ‘... it is hereby ordered that until such time as the said road lines be declared Public Roads they shall be known as the Waipapa Road Lines.’⁴³ No evidence has been located to suggest that these lines were so precisely proclaimed as suggested by the Judge’s order. Gerald Aranui records that the maintenance of this road is the responsibility of the local community, ‘The Councils don’t maintain the beach access except the odd time when they grade part of the road. Tommy Heta took his digger down there to replace a culvert so locals could get to the beach.’⁴⁴

63 Waihua Beach Road presents somewhat of a conundrum: It is formed and maintained along some of its surveyed length but it is not a legal road. Formally created by an order of the Māori Land Court on 17 November 1910, it likely dates from the post-1885 era when the Glendenning interests acquired leases across most the area. Judge Jones of the Native Land Court made a partition order for Waihua 2C in November 1910. Recorded on the Partition Order for Waihua 2C7 is the following note; ‘Subject to right of private way, as shown on plan enclosed hereon, in favour of the owners of Waihua No.2C8.’ The latter block, now numbered Waihua A36 (Beach Reserve) upon a Consolidation Order by the Māori Land Court in 1941, is that block now locally identified as ‘the island’ and is owned by the Haynes family after acquisition by exchange with its former Māori owners in 1988. It was probably necessary for the award to be made at the time of the partition hearing as Waihua No.2C8 likely sat in isolation amongst the lands which were then leased to the Glendenning interests. The right of way was to provide continued access to as Waihua No.2C8.

64 That Block had been awarded in 1941 to five Trustees on behalf of the ‘Ngāti Kura hāpu of the Kahungunu Tribe.’⁴⁵ The change in the course of the Waihua River produced by the Napier

⁴² Order of the Māori Land Court, 12 September 1941, ‘Waipapa Road Lines’, See Mohaka Consolidation Plan, ML 2708.

⁴³ *ibid.*

⁴⁴ Affidavit of Gerald Awanui on behalf of Ngāti Pāhauwera, 26 November 2013, para. 8.

⁴⁵ Consolidation Order, 12 September 1941, PR M1/1091, Wr MB 46A/210. See ML 1180 and ML 2522. Title History folder vol.3, tab 16 MACA Team. Ngāti Kura are listed in Ngāti Pāhauwera’s claimant definition.

Earthquake left this section isolated on the eastern bank of the Waihua River. The Haynes' interests exchanged this section of Māori land for a section on the west bank of the river which was formally a woolshed site. The lower reaches of the Waihua roadway are now located in the bed of the river near its mouth. It is still a right of way across private land, giving access to three separate sections of land formerly owned by the Glendenning's, and their successors. It is gated from the State Highway. On the basis of aerial photograph imagery I am compelled to observe that the parking area and turn around point at the present end of the right of way, is not on the surveyed line. Recent erosion of the beach end now makes it almost impossible for wheeled vehicles to access the beach from the roadway.

65 Glendenning Road, on the north bank of the Waihua River [REDACTED] [REDACTED] leads from the Highway to the Haynes' farm house and other buildings and the first section of it was formerly the main road leading to a tight turn on to the original road bridge over the Waihua River. The remainder of the road into the Haynes property up to the buildings was a county road sold to the County by the Haynes/Glendenning interests at some point in the 20th century. Some people still seek to access the beach from the end point of this road but are politely turned back by the present occupier.⁴⁶

⁴⁶ Personal communication, May 2013.

Discussion of information under the defined ‘test’ categories

Area One [Poututu Stream—East Bank of the Mohaka River]:

66 Research area one extends from the Poututu Stream in the north east of the application area to the east bank of the Mohaka River, encompassing the Waihua River mouth, and the ocean beach. While the Waitangi Tribunal has published two reports that encompass the Mohaka River area, they have largely focussed on the river and inland blocks rather than the beaches and lower river banks in the CMCA.

Introductory Questions:

What is the identity of the applicant group?

67 The identity of Ngāti Pāhauwera is set out in the introductory section.

Has the applicant been appointed as a representative?

68 The applicant is the approved representative of the hāpu of Ngāti Pāhauwera.

Is the specified area outside the common marine and coastal area?

69 No. The area **does not include:**

69.1 any area of specified freehold land

69.2 any area owned by the Crown with the following status;

69.3 a conservation area (sec 2(1) of the Conservation Act 1987,

69.4 a National Park (sec of the National Parks Act, 1980,

69.5 a reserve within the meaning of sec 2(1) of the Reserves Act 1977, and

69.6 the bed of Te Whaanga Lagoon in Chatham Island (sec 9, Marine and Coastal Area (Takutai Moana) Act 2011).

Does the available information raise potential issues about extinguishment of customary title?

70 An area at the Mohaka River mouth (‘a circle of one nautic [sic] mile radius from the East Head’) was defined by the Marine Department, via an Order in Council, as a port under the Marine Act 1867 in November 1868.⁴⁷ In 1914, the Wairoa County Council sought to establish a Harbour Board for the gazetted port area, but there is no evidence the proposal proceeded.⁴⁸

⁴⁷ NZG, no. 22, 23 November 1868, p.549.

⁴⁸ Formation of Mohaka Harbour Board APOE 16612, M1, 387/3/13/57 (ANZ).

71 No vesting of any area in the Coastal Marine Area (CMA) to harbour boards appears to have occurred in this section of the application area.

Holds the specified area in accordance with tikanga?

What Evidence is there of Operative Tikanga?

Does the applicant group possess mana moana (allowing that this is a modern term) in the area today?

72 Ngāti Pāhauwera claim mana moana throughout the application area and also assert that the whole of the application area is a wahi tapu. The latter claim could be somewhat problematic in relation to tapu and food collection over a very large area?

73 Affidavits and evidence presented by Ngāti Pāhauwera individuals before the Māori Land Court at Mohaka between 18 and 22 February 2008, together with more contemporary affidavits provided in support of this application, contained strong assertions of mana moana. Examples of these statements have been excerpted below:

73.1 'Ngāti Pāhauwera is a coastal people. The sea, the seabed and foreshore and all the resources within them are part of who we are.'⁴⁹

73.2 'I have always known that the Ngāti Pāhauwera rohe moana is ours, and that we have always taken what we need when we need it.'⁵⁰

73.3 'Because Ngāti Pāhauwera have mana whenua and mana moana over the foreshore and seabed we use whatever resources we need when we need them and have always done so. We have always had the foreshore and seabed there and we will always use it. It has always been in us and will always be ours. Who else does it belong to? The river and sea have always been there, they are sitting there and we have always used them. It would be stupid if we didn't.'⁵¹

⁴⁹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.16.

⁵⁰ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.54.

⁵¹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.105.

73.4 'We never thought about our rights to the foreshore and seabed and I still do not think of it that way. It was just always ours.'⁵²

73.5 'My whenua, awa, foreshore, seabed and mountain are essential to my mana and my people's mana. Without these, could we still claim to be Māori? I do not think so, for it is all these things which have given me what mana I have and which differentiate me from anyone else. What makes me Māori, apart from the blood of my Māori ancestors which courses through my veins, is my whenua, foreshore, seabed, awa, mountain and all the natural resources in this rohe. These are the key to the waiata, whakatauki, legend, philosophy and rhetoric of my Māori world'.⁵³

74 In closing submissions on 21 February 2008, the Crown conceded that Ngāti Pāhauwera had sufficient enduring customary rights in the public seabed and foreshore justifying the issuance of a Customary Rights Order from the Māori Land Court under the Foreshore and Seabed Act, 2004.⁵⁴

75 In September 2011 the Ngāti Pāhauwera Development Group and Tiaki Trust, on behalf of Ngāti Pāhauwera were granted a rohe moana between the Waikari River and Poututu Stream, extending seaward 12 nautical miles, under the Fisheries (Kaimoana Customary Fishing) Regulations 1998.⁵⁵ The fisheries regulations recognise the 'special relationship between the tangata whenua and places of importance for customary food gathering...to the extent to which that such food gathering is not commercial in any way.'⁵⁶ The gazettal of a rohe moana is an indication of mana moana over a particular area as the application process is contestable and disputes over mana moana must be resolved before the Minister for Primary Industries will confirm an application:⁵⁷

75.1 Under the Fisheries (Kaimoana Customary Fishing) Regulations 1998 rohe moana holders appoint Tangata Kaitiaki (subject to confirmation by the Minister for Primary Industries), individuals who can authorise customary fishing within their rohe moana, in accordance with

⁵² Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.67.

⁵³ Affidavit of Wi Derek Huata/King, 12 October 2007, in support of the 2008 CRO application hearing in the Māori Land Court, exhibit A to Affidavit of Wi Derek Huata/King, 5 December 2013.

⁵⁴ Crown Closing Submissions—Introduction, in the Māori Land Court of New Zealand, A20050006643, p.2.

⁵⁵ NZG, 15 September 2011, no. 141, p.4072.

⁵⁶ Fisheries (Kaimoana Customary Fishing) Regulations 1998 (SR 1988/434), preamble.

⁵⁷ 'A Guide to the Fisheries (Kaimoana Customary Fishing) Regulations 1988', *Ministry for Primary Industries*, available from <http://www.fish.govt.nz/en-nz/Māori/Kaimoana/default.htm>; accessed on 17 September 2012.

tikanga Māori. Tangata Kaitiaki issue and record authorisations for customary fishing, assist in the development of fisheries management practices, and report regularly to Tangata Whenua and the Ministry for Primary Industries.⁵⁸

- 76 Information received from the Ministry of Primary Industries reveals that a group called Ngāti Kaahu, which is thought to be a hapu of Ngāti Pāhauwera, has a disputed application for a rohe moana that overlaps with the current Ngāti Pāhauwera rohe moana at its northern boundary, around Poututu Stream.
- 77 Further exploration of third party interests in the research area, particularly toward Wairoa may be required to determine whether Ngāti Pāhauwera's assertions of mana moana conflict with those of other groups. However, our information suggests there is an agreed boundary between Ngāti Pāhauwera and Te Tira Whakaemi o Wairoa for land settlement purposes. It is noted that TTWW, in its engagement space with the Crown, has asserted an area of interest down to the mouth of the Waihua River.

Does the applicant group currently exercise customary uses and practices in the area?

- 78 The testimony of Ngāti Pāhauwera individuals before the Māori Land Court at Mohaka between 18 and 22 February 2008 provides clear evidence of continuing customary uses and practices in the research area.
- 79 The affidavit of Isobel Beronica Thompson is very helpful in respect to the Waihua River mouth and beach.⁵⁹ She noted the beach at Waihua possessed a different character to Mohaka. There is reportedly little drift-wood on the beach and hangi stones get deposited on it. In addition 'the fishing at Waihua is easy and plentiful and the river is used for eeling, although the river mouth is sometimes closed'. Evidence suggests that the locals have this opened at times.
- 80 Many witnesses' descriptions of their continued customary uses and practices exercised in the CMCA in the application area are not linked to specific locations. These include collection of sand, stones, gravel, pumice, driftwood, kokowai, wai tapu and using the area as a tauranga waka. However, some affidavits did incorporate specific places into their descriptions of customary activities. Toro Waaka noted that Ngāti Pāhauwera elders had told him 'each [Ngāti

⁵⁸ 'A Guide to the Fisheries (Kaimoana Customary Fishing) Regulations 1988', *Ministry for Primary Industries*, available from <http://www.fish.govt.nz/en-nz/Māori/Kaimoana/default.htm>; accessed on 17 September 2012.

⁵⁹ Affidavit of Isobel Beronica Thompson on behalf of Ngāti Pāhauwera, 11 April 2014, para 18.

Pāhauwera] family had their own favourite fishing areas along the coast from Poututu to Aropaoanui', but did not elaborate of how these areas were individuated within the coastal rohe.⁶⁰

81 Witnesses described the continued customary use of sand for gardening and cultivation, burial, and preservation of kaimoana. In the research area, Gaye Hawkins described sand, gravel and driftwood collection at the Waihua River practiced today by 'up to 13 households'. In cross-examination she noted that sand was taken from below the road (presumably Waihua Beach Road) and below the mean high water springs mark.⁶¹

82 Harry Tuapawa's evidence described the area on the Mohaka River bank between the township bridge down to the sea as a popular location for gathering sand and driftwood with about 50 to 60 persons in the area taking 'mud sand' for use on their gardens.⁶² He also described the whole beach as a Tauranga Waka; "we know where it is safe to land because of our connection to the foreshore. I am often called out to help boats in trouble. The tauranga change every day..."⁶³

83 Colin Culshaw recorded;

83.1 The area from Poututu to Waikare [sic] is tauranga waka for Ngāti Pāhauwera. There is no specific site. We know where to launch our boats and where to land them because the waka that goes out must come back otherwise there will be no kai for the family. Our knowledge of the tauranga waka comes from our exercise of the mana whenua, mana moana and mana tipuna over the foreshore and seabed and the fact that we have been here so long. This is the way it always is and has always been.'⁶⁴

84 Ms Hawkins also described her childhood at Waihua, noting local families would 'send all the children along the foreshore to pile up the driftwood...and then load it on to horse-drawn sledge to bring it back home. The exercise often involved a number of whanau or the whole hāpu...'⁶⁵ Toro Waaka described similar experiences at the Mohaka River mouth, including daily visits to gather resources, and riding to the beach on a horse-drawn sledge to collect firewood, hāngi

⁶⁰ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.16.

⁶¹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.136-137.

⁶² Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.96-97.

⁶³ Brief of Evidence of Harry Ihaia Tuapawa, 31 August 2007, p.8.

⁶⁴ Brief of Evidence of Colin Culshaw, 31 August 2007, p.5.

⁶⁵ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.133.

stones, as well as ‘play, swim and fish’.⁶⁶ The sledge followed the road down past the quarry on the north Eastern bank of the river.⁶⁷ Olga Rameka located the track north from the Mohaka River as an area where firewood was collected, but described the beach as ‘very unpredictable’ and did not describe how far north east firewood collection occurred.⁶⁸

85 Wayne Taylor’s evidence included a description of the customary collection and use of kokowai, an iron oxide or red ochre, used in carving, weaving, and tattooing. Evidence given by Mr Taylor and Harry Tuapawa indicates that although the place where Ngāti Pāhauwera historically gathered kokowai was disappeared following heavy erosion caused by the 1931 Napier earthquake, it can still be found along ‘the foreshore and seabed’ between Mohaka and Waihua.⁶⁹ Mr Tuapawa’s evidence suggests the land where kokowai was traditionally found is submerged beneath the sea.⁷⁰

86 Several Ngāti Pāhauwera witnesses gave evidence that the entire application area, between Poututu Stream and Waikari River is considered tauranga waka, although it was noted that few people today own waka.⁷¹ Ms Hawkins described two specific tauranga waka in the application area. The first, no longer in use, was located on an island at the Waihua River mouth. Presumably this was the former reserve area. The second, now more commonly used as a camping area by visitors, is located at Takapau, a place halfway between Waihua and Mohaka. She also said: ‘We continue to use the foreshore for launching of waka, and now we launch boats straight off the beach at the end of the public roadway at over the foreshore.’⁷²

87 Ms Hawkins also described occasional white-baiting at the Waihua River mouth.⁷³

⁶⁶ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.15.

⁶⁷ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.21-24.

⁶⁸ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.59.

⁶⁹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.36, 48-50, 95, 98-99.

⁷⁰ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.99.

⁷¹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.36, 48-50, 95, 98-99.

⁷² Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.36, 108, 133-34.

⁷³ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.136.

- 88 A number of witnesses described the water from the Mohaka River mouth as wai tapu (healing water), and described either collecting it for healing purposes or therapeutic bathing in the waters to the side of the river mouth.⁷⁴ William Culshaw, in his sworn affidavit not read before the court, explained: ‘Ngāti Pāhauwera have used the wai tapu as medicine and for healing for as long as we have been here.’⁷⁵ (No analysis of the Mohaka river water was seen in the course of this research.)
- 89 In cross-examination, Wayne Taylor explained that Poututu Stream was difficult to access due to beach erosion and the changing nature of the coastline depending on the season and tides.⁷⁶ However, other witnesses indicated that they could traverse the entire coastline in the research area, either by using quad bikes or four-wheel drive vehicles.⁷⁷ A site visit accompanying the Trustees would be useful should the weather allow.
- 90 The Tangitu fishing reef was referred to by a number of witnesses during the Māori Land Court hearing. The reef, located offshore somewhere from the Mohaka and Waihua River mouths, is reportedly shallow but does not break the surface in low tide. Witnesses’ estimations of the distance from the coast to the reef varied—Charles Lambert noted that a boat was required to access the reef, but Gaye Hawkins recalled her grandfather swimming his horses in the sea until they reached some rocks below the water about 400 yards from Waihua. While on the reef people would dive for kaimoana.⁷⁸ Mr Lambert also noted that Tangitu broke the water at Waihua until a few years ago.⁷⁹ Wi Derek Huata King explained that when he dived at the Waikari River 30 years ago, the reef broke the water’s surface approximately 50 meters from shore. He estimated that the reef broke the surface the same distance from the Waihua River mouth.⁸⁰

⁷⁴ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.91, 103.

⁷⁵ Brief of Evidence of William Henry Culshaw, 31 August 2007, for Ngāti Pāhauwera Customary Rights Order hearing, A20050006643, 18-21 February 2008.

⁷⁶ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.37.

⁷⁷ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.87, 116.

⁷⁸ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.83-85, 133-34.

⁷⁹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.83-85.

⁸⁰ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.127-28.

91 The bathymetric data for the Hawke Bay does not disclose a reef anywhere except in the vicinity of the Port of Napier. **(Refer to map book Image??)**

92 As indicated in Crown closing submissions in 2008, evidence before the Māori Land Court in 2008 did not speak to activities, uses and practices that occurred further out to sea than the Tangitu reef.⁸¹ This is presumably because the nature of the CRO application under the 2004 Act did not require such evidence to be adduced.

93 The Ngāti Pāhauwera Treaty Claims Settlement Act 2012 includes a section prohibiting the extraction of hāngi stones without the consent of the trustees of the Ngāti Pāhauwera Development Trust from the Mohaka and Te Hoe River beds in the Ngāti Pāhauwera core area of interest. However, the settlement legislation only protects hāngi stones situated outside the coastal marine area as defined by section 2(1) of the Resource Management Act 1991.⁸²

Are there other competing tikanga-based interests in the area?

94 It is possible that there is an overlap with Wairoa-based groups in the vicinity of the Waihua River.

Is the area within the rohe moana of another iwi, hapū or whanau?

95 This is a challenging question but it appears that there is no overlap of interests as decided when the Pāhauwera application for a rohe moana was actioned by MPI under the Kaimoana regulations 1998.

96 There appears no overlap with the modified application area.

Exclusive use and occupation of the area from 1840 until the present day

Does the group use and occupy the specified area now?

97 The evidence adduced by the applicants in previous legal inquiries suggests that this is so. The lack of intrusion of significant third party usage suggests that it is Pāhauwera people who more regularly use the CMCA on the fringe of abutting lands in the early 21st century.

Does the group use and occupy the application area now?

98 As the evidence before the Māori Land Court, summarised above, suggests, although Ngāti Pāhauwera proportionally do not own much land abutting the CMCA in the application area,

⁸¹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.238.

⁸² Ngāti Pāhauwera Treaty Claims Settlement Act 2012, ss.57-61.

they continue to use the fringe of the specified application area for customary practices and also fish from boats in the deeper sea.

99 In the 2006 Census, 1,761 people self-identified as being of Ngāti Pāhauwera descent. Of those, 831 people resided in Hawke's Bay.⁸³ In 2008, Toro Waaka estimated that 600 Ngāti Pāhauwera individuals resided in the area between the Esk and Waihua Rivers, of a total population between 15,000 and 20,000.⁸⁴ Two small settlements, Waihua and Mohaka, are located close to the coast in the research area. In her evidence before the Māori Land Court in 2008, Ms Hawkins testified that 13 Ngāti Pāhauwera households lived at the Waihua settlement and regularly used a range of customary resources located in the CMCA.⁸⁵

100 As noted above, several of the witnesses before the Māori Land Court observed that they used the CMCA in the research area on a regular basis for the collection of a number of natural materials or things recognised as important customary resources.

Did the group use and occupy the area at 1840?

101 A pre-1769 midden/oven site is located on abutting land close to the CMCA, near the mouth of the east bank of the Waihua River.⁸⁶

102 In 1994, Angela Ballara and Gary Scott described the area between the Waihua River and Tangoio as 'dominated in the mid eighteenth century and later by the major tribe, Ngāti Pāhauwera.'⁸⁷ During the 1820s and 1830s Ngāti Kahungunu hāpu in Hawke's Bay were subject to a series of raids by musket-armed enemies from the north and east. In response, most Hawke's Bay people retreated to fortified pā on the Mahia Peninsula where they defended their territory and launched counter-attacks.⁸⁸ The Waitangi Tribunal's *Mohaka ki Ahuriri Report* concluded: 'by and large...Hawke's Bay lay virtually abandoned for most of the 1820s and

⁸³ Statistics New Zealand, 'Iwi Profiles: Ngāti Pāhauwera', 2006 Census, available from <http://www.stats.govt.nz/Census/about-2006-census/iwi-profiles/2006-census-iwi-profiles.aspx>; accessed 12 September 2012.

⁸⁴ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.31-32.

⁸⁵ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.137.

⁸⁶ NZAA Site Number W19/117, Archsite Summary Record, Archsite, available from www.archsite.org.nz; accessed on 9 July 2012.

⁸⁷ Angela Ballara and Gary Scott, 'Claimants' Report to the Waitangi Tribunal on Crown Purchases of Māori Land in Early Provincial Hawke's Bay', WAI 201, I-1, January 1994, p.3.

⁸⁸ Lambert, *Old Wairoa*, p.325; Loveridge, 'When the Freshets reach the Sea', p.17.

1830s.⁸⁹ While some Ngāti Pāhauwera hapū engaged in the fighting, others claim to have remained on the land to keep fires burning.⁹⁰

103 Peace of a type came to the region in 1838, allowing released prisoners and those at Mahia to return home.⁹¹ In 1840, the missionary William Williams travelled between Ahuriri and his mission station at Turanganui a Kiwa, visiting various settlements including Mohaka and Waikari [west of the application area].⁹² On October 17th he noted that ‘at Waikari is living a party of the natives who have recently left Werowero in Poverty Bay, this being their home which they left five years ago on account of war.’⁹³ However, Patrick Parsons argued that the majority of the Hawke’s Bay population remained in exile when the Treaty of Waitangi was signed.⁹⁴ While Ngāti Pāhauwera began returning to their rohe in the early 1840s, it is difficult to pinpoint when this return migration occurred, and what shape this took.⁹⁵

104 By the mid-1840s Ngāti Pāhauwera had re-established their position in the northern Hawke’s Bay (around the Waikari, Waihua and Mohaka River valleys), and began participating in commercial activities that drew a few Pākehā (primarily whalers and traders from Mahia and the East Coast) to settle in the region.⁹⁶ In 1851, Paora Rerepu informed Donald McLean that 100 Ngāti Pāhauwera men (and presumably more women and children) resided along the Mohaka River.⁹⁷ When Donald McLean made his first payment for the Mohaka block purchase to Ngāti Pāhauwera resident at Mohaka, he noted that Paora Rerepu represented 197 ‘hāpus’ (as discussed below, he may have meant whānau).⁹⁸ Toro Waaka, however, estimated the total

⁸⁹ *Mohaka ki Ahuriri Report Volume 2*, p.51.

⁹⁰ Toro Waaka, ‘Traditional Resources of Ngāti Pāhauwera before 1851’, Waitangi Tribunal Mohaka ki Ahuriri Hearing, WAI 201, J12, 1996, p.102.

⁹¹ Ballara and Scott, ‘Crown Purchases of Māori Land in Early Provincial Hawke’s Bay’, pp.39-41.

⁹² *Mohaka ki Ahuriri Report Volume 1*, p.57.

⁹³ William and Jane Williams, *The Turanga Journals 1840-1850: Letters and Journals of William and Jane Williams, Missionaries to Poverty Bay*, Wellington: Price Milburn, 1974, pp.128-29. Patrick Parsons, Wai 299, # J18, p.199.

⁹⁴ Patrick Parsons, ‘The Mohaka-Waikari Confiscated Lands: Ancestral Overview (Customary Tenure)’, WAI 201, J-18, November 1993, p.196.

⁹⁵ McHugh, ‘The Purchase of the Mohaka Block, December 1851’, p.45; *Mohaka ki Ahuriri Report Volume 2*, p.54.

⁹⁶ Williams, *The Turanga Journals*, pp.352, 416; McHugh, ‘The Purchase of the Mohaka Block, December 1851’, p.45; *Mohaka ki Ahuriri Report Volume 2*, p.54.

⁹⁷ *Mohaka ki Ahuriri Report Volume 2*, p.59; ‘Tuesday 7th January 1851’, Donald McLean Diary, 14 December 1850—12 February 1851, Sir Donald McLean Diaries and Notebooks, MS-1231-1240, Object#1008793, ATL.

⁹⁸ 5 December 1851, Donald McLean Diary, 14 December 1850—12 February 1851, Sir Donald McLean Diaries and Notebooks, MS-1231-1240, Object#1008793, ATL.

population of the Mohaka region in 1851 as 'around 600'.⁹⁹ Counsel for Ngāti Pāhauwera before the 1951 Mohaka Block Royal Commission elicited from the witnesses he led that of the 297 signatories to the 1851 Mohaka deed of purchase, only 70 were members of the Pāhauwera tribe.¹⁰⁰ No evidence was adduced as to the identity of the remainder but this could suggest that the area of the Crown purchase between the Waikare and Mohaka rivers was a shared area. One applicant witness suggested that the signatories were not from the Mohaka area and that the Deed was signed in other locations outside of Mohaka. This point was refuted by a Crown witness and Crown counsel.¹⁰¹

105 A review of McLean's reports by McHugh suggested that his first negotiations at Wairoa and Mohaka in 1851 involved the area from Mohaka to the Waitaha stream and that his second round of discussions at Waikari involved the area from Waitaha to Moeangiangi, and a third round took the boundary to Waipapa stream.¹⁰² Eventually the area covered by the transaction, and identified by local Māori, including Pāhauwera, was between the Mohaka River and the Waikari River. McHugh recorded:

105.1 Only two of the three groups of Māori originally participating in the sale had decided to continue with the transaction. These were the Mohaka Māori, who continued to offer the Mohaka-Waitaha block for sale, **and the Waikari Māori**. The latter continued to offer the Waitaha-Waikari land for sale, but withdrew the Waikari-Moeangiangi land. The Moeangiangi Māori, as represented by Toha, had withdrawn from the sale entirely.¹⁰³ [Emphasis added.]

Has the applicant group continuously used and occupied the areas since 1840?

106 Since the return of Ngāti Pāhauwera from the Mahia Peninsula in the early to mid 1840s, they have continuously used and occupied some of the lands abutting the application area.

107 Following the Mohaka Purchase in 1851, Ngāti Pāhauwera began to relocate to the north bank of the Mohaka River, at a settlement near the mouth called Waipapa-a-iwi.¹⁰⁴ In 1858, William Williams recorded 50 communicants at Waipapa.¹⁰⁵

⁹⁹ Toro Waaka, 'Report No. 1 for the Mohaka Forest Claim', WAI 119/201, J-21, p.112.

¹⁰⁰ Evidence of Naera Wainohu, Raupatu Document Bank, vol.53, p.20389. This was the basis of a petition signed in 1946 and presented to government in 1948.

¹⁰¹ Raupatu Document Bank, vol.53

¹⁰² McHugh, 'The Purchase of the Mohaka Block, December 1851', p.45; *Mohaka ki Ahuriri Report Volume 2*, p.14.

¹⁰³ McHugh, 'The Purchase of the Mohaka Block, December 1851', p.45; *Mohaka ki Ahuriri Report Volume 2*, p.19.

¹⁰⁴ Loveridge, 'When the Freshets reach the Sea', pp.50-51.

108 Quoting from McHugh, the Wairoa-based CMS missionary Hamlin recorded in 1855 that;

108.1 A few of [the] Mohaka and Waikare natives sometimes go to Moeangiangi to plant, where I pay them occasional visits. ... Waihua is a river of about 100 feet wide, and is deep to a distance of 3 miles inland, where it becomes a mere brook; it take[s] its rise in the hills near Putere. There are but few natives residing on this river, and these are often at Mohaka as at this place. ... There are about four hundred natives residing on the Mohaka, somewhere about 30 have joined the whalers and have turned out drunkards, but the Christian party continues to give every encouragement. A few whites are located on the southern bank of the Mohaka (who are the usual stamp of whites)¹⁰⁶ the Government having purchased all the land from Mohaka to Waikare; but it affords so few facilities for trade and the difficulties in shipping and landing so many that it is not likely many whites will settle on it for some time to come:

108.2 Waikari like Waihua is a river about 30 yds wide, and is deep to the distance of three miles, and then becomes a mere brook. A few natives are resident on this river, perhaps thirty, but many more claim possessions here; Tangoio, however, affording greater facilities for trade they have settled there in preference.¹⁰⁷

109 Further migration to what had become the Waipapa block occurred following the Waihua 1 and 2 leases in 1870. In his evidence to the Waitangi Tribunal, Dr Fergus Sinclair for the Crown described Waipapa as a trading centre and location of the church, thereby explaining Rerepu's decision to draw his people in to live on the block. Reflecting its importance, Rerepu asked the Native Land Court to make it inalienable by sale as it was 'our residence and our cultivations and school.'¹⁰⁸ In 1871 an observer remarked that the 'Waipapa Block' was 'the only one occupied and cultivated by [Ngāti Pāhauwera].'¹⁰⁹ Between 1868 and 1899 Waipapa was held in a hapū trust and used as papakainga land, and alongside sections of the inland Rotokakarangu block was the only Ngāti Pāhauwera land not leased to Pākehā run holders.¹¹⁰

110 Following Te Kooti's raid down both banks of the lower Mohaka River in late March 1869, Ngāti Pāhauwera hapū were, reportedly, left in disarray. At least 56 Ngāti Pāhauwera hapū men, women, and children were killed and the survivors were reportedly 'disorganised and scattered'

¹⁰⁵ Williams, *Journal*, vol. 5, 9 December 1858, cited in Sinclair, 'Land Transactions on the North Bank of the Mohaka River ca 1860-1863', p.7.

¹⁰⁶ Water colour paintings by Cooper found in the Lavin papers at the Alexander Turnbull library and in the Hawkes Bay Museum collections, reveal the development of some of the settler farms on the south bank Crown lands. Cooper and Lavin arrived in 1855. (See Map and Image booklet

¹⁰⁷ Hamlin to Sec CMS, 31/3/1855 at WTU Micro MS Coll 4, reel 52, from Ms Stephanie McHugh, 'The Purchase of the Mohaka Block, December 1851, Wai 119/201, #C4, p.54.

¹⁰⁸ Loveridge, 'When the Freshets reach the Sea', p.77.

¹⁰⁹ George Worgan to Bishop Williams, 2 Aug. 1871: quoted in Sinclair, 'Land Transactions on the North Bank of the Mohaka River ca 1860-1863', pp. 43-44.

¹¹⁰ *Mohaka River Report*, p.46; *Mohaka ki Ahuriri Report Volume 2*, p.438.

a year after the attack.¹¹¹ The further consolidation of Ngāti Pāhauwera on the coastal Waipapa block may have resulted from the raid as upriver settlements were abandoned for the security of settlement near the river mouth.¹¹²

111 When leases expired on the Māori-owned blocks occupied by Pākehā farmers toward the late nineteenth century, Ngāti Pāhauwera began to reoccupy their lands and farmed them as individuals and whānau. The Stout-Ngata Commission's inquiry into 'native land tenure' found that the majority of Māori owners in the inland Mohaka and Whareraurakau blocks occupied their land, grazed livestock and tended cultivations. Of the 27,565 acres in both blocks, the Commission found that just a few thousand should be leased to Pākehā settlers, with the balance required for Ngāti Pāhauwera to live on, indicating that the population could not sustain further land losses.¹¹³ Typically owners in the block grazed livestock on their sections, but resided on the Waipapa block.¹¹⁴

112 The Crown, during its purchasing activities of the 1910s and 1920s, acquired only a small section of the Waipapa block along the Mohaka River. The exception was a 2 acre subdivision upstream from the road bridge, purchased in July 1914 by a local policeman, then sold to the Crown in November 1922. Elizabeth Sim acquired another subdivision—Waipapa 41—at the river mouth, in 1919.¹¹⁵ The remaining land was retained by Ngāti Pāhauwera, much of it until the present, as discussed below.

113 A case study of the adult population of Mohaka and Raupunga, the two significant settlements on the lower east bank of the Mohaka River, carried out by Tureti Moxon in April 1992, estimated that 222 Ngāti Pāhauwera resided in the area.¹¹⁶ It is likely that this number will have declined as employment opportunities in the area evaporated with government reforms in the early 1990s.

114 Given the paucity of information on the historical loci of the Ngāti Pāhauwera population in Hawke's Bay in the early twentieth century further research may be required to assess their

¹¹¹ George Worgan to Chief Judge Native Land Court, 17 January 1870, Māori Land Court Gisborne Mohaka Miscellaneous Papers, cited in David Alexander, 'The Mohaka Block 1868-1941', WAI 119/201, M-3, pp.7-8.

¹¹² Loveridge, 'When the Freshets reach the Sea', p.69.

¹¹³ *AJHR*, 1907, G-1, pp.9-11; Loveridge, 'When the Freshets reach the Sea', p.99.

¹¹⁴ Loveridge, 'When the Freshets reach the Sea', p.102.

¹¹⁵ Alexander, 'Land Dealings on the Mohaka River North Bank 1903-1992', pp.41-42.

¹¹⁶ Tureti Moxon, 'Tino RaNgātiratanga and the Mohaka River: The Social Impact of Treaty Breaches', WAI-201, B-13, p.4.

ability to access and use resources in the CMCA. It is expected that the applicants' will have addressed this issue in their affidavit evidence.

Are there examples of acts which show or imply capacity to exclude non-members?

115 At this stage we have been unable to find evidence of acts that speak to the capacity of Ngāti Pāhauwera to exclude non-members from the CMCA. However, the existence of a gazetted rohe moana conterminous with the boundaries of the original application under the 2011 Act, allows appointed Tangata Kaitiaki the power to restrict the use of the CMCA for customary kaimoana gathering. Taking aquatic life in a gazetted rohe moana without the authorisation of the relevant Tangata Kaitiaki is an offence punished by fines of up to \$20,000.¹¹⁷ No evidence has been seen by the writer explicating the operation of the Kaimoana regulations in practice. There remains a question of the territoriality of the regulations and whether in fact the application is restricted to the activities of the Group?

116 In his evidence before the Māori Land Court in 2008, Wayne Taylor noted that when 'people from outside the area' visited to gather resources they generally 'ask the locals' before taking sand or driftwood.¹¹⁸ At the same hearing, Olga Rameka stated that whānau from outside the Ngāti Pāhauwera rohe knew to ask permission from locals before gathering resources or there would be 'repercussions' for their actions. Similarly, Pāhekā living in the area respected Ngāti Pāhauwera tikanga and only took resources sufficient for their needs.¹¹⁹ There is of course a question of how in this context the level or quantification of sufficiency is determined or judged?

117 This evidence appears to be contradicted a little by Isobel Thompson's comments about fishers from Wairoa using the Waihua beach road to launch vessels, almost in a clandestine manner, it is implied.¹²⁰ There appear to be few spots where vessels could be launched from the Wairoa area when the Wairoa River bar is closed and this may explain the use of the Waihua Road end in the past. The present condition suggests that it is not possible any longer to launch from the road end.

¹¹⁷ Fisheries (Kaimoana Customary Fishing) Regulations 1988 (SR 1998/434), ss.41-46.

¹¹⁸ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.143.

¹¹⁹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.55, 60.

¹²⁰ Affidavit of Isobel Beronica Thompson on behalf of Ngāti Pāhauwera, 11 April 2014, para 19.

118 Again at the 2008 Māori Land Court hearing, Charles Lambert described the erection of a sign on the access point to the beach at Mohaka, ‘a while ago’, that detailed Ngāti Pāhauwera tikanga for visitors. It is unclear whether the sign exists today, but Mr Lambert testified that locals **instruct** outsiders using the CMCA in their rohe to comply with the operative tikanga.¹²¹ Mr Lambert also described an instance of a kaumatua stopping an individual from selling hāngi stones via newspaper advertisement.¹²² Another witness, Janet Huata, recounted a similar story about a garden centre returning hāngi stones to Mohaka after Ngāti Pāhauwera informed them of their importance for the iwi.¹²³

119 No detailed documentary evidence has emerged of Pāhauwera excluding non-group members. This writer was acutely conscious of this point when visiting the Waihua beach road together with a well known local land-owner in May 2013. While not challenged directly when opening a gate and driving down the road, our presence was acknowledged by an occupant of the Cottle house with a wave, and one in return. Clearly in this case the driver was known to the occupant but it did imply a degree of observation of who was travelling down the road, although it is recognised that this is not unusual in rural areas generally.

Can inferences be drawn about the group’s use and occupation of the area of the common marine and coastal area from its use or occupation of adjoining or abutting dry land, or from nearby land?

120 As the above section regarding ownership of abutting land indicates, Ngāti Pāhauwera individuals and the settlement trust continue to own and occupy land abutting the CMCA, particularly on the east bank of the Mohaka River. The only access to the beach on this side of the river mouth crosses land owned by Ngāti Pāhauwera interests, suggesting a degree of control or potential for control over access to the CMCA in this area. At other points in the research area, Ngāti Pāhauwera do not appear to own the dry land abutting the CMCA, so we cannot draw any inferences regarding occupation and access. Nevertheless, as the evidence taken from the 2008 Māori Land Court hearings and summarised above suggests, the alienation of land between the Mohaka River and Poututu Stream has not, for the most part, prevented the continuation of customary activities, uses and practices by Ngāti Pāhauwera. It seems that

¹²¹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.76, 81.

¹²² Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.77.

¹²³ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.143.

access to the CMCA from Waihua towards Poututu is limited by the seasonal condition of the Waihua River mouth.

121 In November 1864 Paora Rerepu and others offered Donald McLean approximately 12,000 acres 'extending northwards from the Waihua River to the last block purchased at Wairoa'.¹²⁴ In February and March 1865 a Crown purchase agent traversed the block with Rerepu and others, adding approximately 7,000 acres to the area included in the sale.¹²⁵ On 7 March 1865, 72 Māori (including Rerepu) signed a deed to sell the block for £1,250. The gazetted boundaries of the block commenced 'on the coast at Mangapukatea' (about halfway between the Waihua and Wairoa River) and extending to the Waihua river mouth.¹²⁶ No reserves were recorded along the coastline, but a small grant upstream on the east bank of the Waihua River, which was not described or mapped on the purchase deed, was made for Toha Rahurahu, but was sold to a European in 1873.¹²⁷ This reserve was above the present boundary of the CMCA.

122 The lands located between the Mohaka and Waihua Rivers were retained by Ngāti Pāhauwera hapū in 1865. In 1868 Ngāti Pāhauwera rangātira led by Paora Rerepu sought grants from the Native Land Court for a number of blocks, including the remaining land between the Waihua and Mohaka Rivers.

123 The first Native Land Court hearings in the region were held at Wairoa in September 1868. Between 17 and 21 September, the Court investigated titles for eight blocks, including Waipapa, Waihua 1 and Waihua 2, all of which were located on the coast.

124 Paora Rerepu claimed these three blocks for Ngāti Pāhauwera by descent from the common ancestor, Kahungunu. Title was not disputed in court, and awards were made under the Native Lands Act 1867 on the same day the cases were heard. The ten-owner rule applied and Mr George Thomson listed the grantees and the name of the hāpu in appendix C, p.4 of his report of January 1992 for the Mohaka River hearings:¹²⁸

¹²⁴ Thomson, 'The Crown and Ngāti Pāhauwera from 1864', p.10.

¹²⁵ *Mohaka ki Ahuriri Report Volume 2*, p.394.

¹²⁶ *NZG*, 31 May 1865, no. 18, p.161; *Mohaka ki Ahuriri Report Volume 2*, p.362.

¹²⁷ Brent Parker, "The Evidence of Brent Parker for the Crown concerning Toha's Reserve and the Waihua Block Boundary" (June 1999), WAI-201 W4; *AJHR*, 1873, G-7, p.156. See also MA-MT, 6, Box 17, volume of plans of Native Reserves in the several Provinces of New Zealand 1850-1870.

¹²⁸ George Thomson, 'The Crown and Ngāti Pāhauwera from 1864', January 1992, Wai 119/201, #A29, Appendix C: p.4.

124.1.1 Waipapa: A 1,290 acre block on the eastern bank of the Mohaka River bounded to the west by the Waihua blocks. In 1868 it was a place of residence for Ngāti Pāhauwera and other hāpu, and the land was retained after title was awarded. The block was granted to the ten 'owners' listed by Rerepu (representing himself as Ngāti Pāhauwera) and eleven hapū were listed on the memorial of the deed.¹²⁹ At a hearing of the Native Land Court on 23 September 1899, the block was defined by seven separate blocks divided into uneven hāpu shares.¹³⁰

124.1.2 Waihua 1 and Waihua 2: 6,820 and 2,400 acre blocks respectively, located between the Waipapa block and the Waihua River. While both blocks were granted to the ten 'owners' listed by Rerepu, the Waihua 1 deed memorialised 8 hapū¹³¹ and the Waihua 2 deed memorialised 9 hapū.¹³²

125 In 1870, Ngāti Pāhauwera leased the Waihua 1 and 2 blocks to H.J. Twigg for a period of 21 years. This lease was transferred to one Hassell in 1875. The Waihua 2 lease included a clause which allowed the lessors to reside on the block and cultivate 'small portions'.¹³³ John Glendenning acquired the leases in 1886, following which Native Land Court hearings between 1888 and 1890 determined the ownership of successive subdivisions of the blocks.¹³⁴ Disputes over the blocks continued until the Native Land Court finally determined ownership in 1908 and 1910. This process suggests that there was significant competition for land interests between whanau and hāpu in the area.

¹²⁹ The grantees were Paora Rerepu, Winiata Noanoa, Hoani Te Wainohu, Henare Pakura, Hohepa Tura, Hare Hemi Tautu, Maneuera, Te Hira Whakapinga, Te Tipene Te Aho, and Ropine Hinemare. The hapū were Ngāti Pāhauwera, Ngāti Kura, Ngāti Ruakohatu, Ngāti Paikea, Ngāti Kapukapu, Ngāti Te Huki, Ngāti Paroa, Ngāti Matengahuru, Ngāti Kapekape, Ngāti Purua, and Ngāti Hineku. See Sinclair, 'Land Transactions on the North Bank of the Mohaka River ca 1860-1863', pp.34-35; 'Supporting Papers to the Evidence of Fergus Sinclair', Wai 119/201, #C5(a) part 1, pp.3-8.

¹³⁰ Thomson, 'The Crown and Ngāti Pāhauwera from 1864' January 1992, Wai 119/201, #A29, Appendix E: p.1. (Ngāti Pāhauwera, Ngāti Hineku Ngāti Paikea, Ngāti Ruakohatu – 508 acres), (Ngāti Kura, Ngāti Kapukapu – 382 acres), (Ngāti Matengahuru- 110 acres), (Ngāti Paroa – 90 acres), (Ngāti Kapekape – 90 acres), (Ngāti Purua – 60 acres), (Ngāti Te Huki – 50 acres).

¹³¹ Ngāti Pāhauwera, Ngāti Raukohatu, Ngāti Kura, Ngāti Kapukapu, Ngai Taumau, Ngai Te Honomokai, Ngai Tahirao and Ngai Huki.

¹³² Ngāti Rahui, Ngāti Popoio, Ngāti Irirangi, Ngāti Rangi haere kau, Ngāti Hinekino, Ngāti Hine kete, Ngāti Honomokai, Ngāti Pāhauwera, Ngāti Ruakohatu. *Mohaka ki Ahuriri Report Volume 2*, p.411.

¹³³ Thomson, 'The Crown and Ngāti Pāhauwera from 1864', p.39. Perhaps related to this, Gaye Hawkins recorded in 2007; 'the people of Ngāti Kura (Kurahikakawa) had extensive crops in the Waihua area and used sand from the foreshore and seabed to grow these crops from before 1840. Even after Waipapa was settled and people moved to live there, they would still return to their gardens in Waihua to plant food.' Brief of Evidence of Gaye Hawkins, 10 September 2007.

¹³⁴ Thomson, 'The Crown and Ngāti Pāhauwera from 1864', p.42.

126 In November 1910, both Waihua 1 and Waihua 2 were subdivided into A, B, and C sections. Of the partitioned blocks, Waihua 1A, 1B and 2C abutted the CMCA. In 1911 the Glendenning family leased Waihua 1A, and in April 1912 purchased Waihua 1B with the approval of the Tairāwhiti Māori Land Board. By 1916 the Glendennings also owned Waihua 2C6A, 'in the Waihua community area near the mouth of the Waihua river', and much of the land they had previously leased, such as Waihua No.2C7B over which the right of way (now the Waihua Beach Road) traversed.¹³⁵ There is a degree of retrospective application of descriptions by Mr Thomson here and it may well be that Waihua Station was the cause for the emergence of a late 19th century Māori settlement in the vicinity of the Waihua River mouth?

127 Although the 'Waihua flats near the sea', located on Waihua 2C and part of Waihua 2A have mostly remained in Māori ownership, George Thomson noted 'in practice the control [of these lands] has been negligible for 120 years. From 1870 to 1911 all of the two blocks was leased, and since 1911 there has been a series of leases over most of the area, sometimes for 21 years, with the right of renewal.'¹³⁶ These were likely to have been leases entered into by the Local Māori Land Board and applied to lands vested in the board under the 1909 Māori Land Act?

128 Similar comments regarding the alienating affect on Māori owners of the leasing system were made by Tureiti Moxon in her report on the affects of post-purchase land alienation on Ngāti Pāhauwera: 'the lease system effectively took away Ngāti Pāhauwera's control over their natural resources especially the Native Forests which were of substantial worth, far in excess of the minimal rents that were being paid.'¹³⁷

129 As with the Waihua blocks, ownership of the Waipapa block was contested in the Native Land Court during the late nineteenth century, with a list of owners and their relative interests fixed in 1899. Sales and leases of inland portions of the block began in 1906 and continued with small sales in the early decades of the twentieth century.¹³⁸

¹³⁵ Thomson, 'The Crown and Ngāti Pāhauwera from 1864', p.99. See also Partition Order for Waihua No.2C7B under tab 15, MACA Pāhauwera title data, vol.3.

¹³⁶ Thomson, 'The Crown and Ngāti Pāhauwera from 1864', p.109.

¹³⁷ Tureiti Haromi Moxon, 'The Impact of Post Purchase Land Alienation on Ngāti Pāhauwera, Report 1' WAI 201, J-1, July 1996, p.51.

¹³⁸ Thomson, 'The Crown and Ngāti Pāhauwera from 1864', pp.50, 98.

130The block underwent a substantial number of subdivisions which were passed through the Native Land Court in July 1899 and surveyed in 1913. [REDACTED]

[REDACTED]

131In January 1930 the Native Minister, Sir Apirana Ngata, decided to implement a land development scheme on the Mohaka block under the Native Land Amendment and Native Land Claims Adjustment Act, 1929. The Mohaka scheme included land from the Putere, Mohaka, Waipapa and Waihua blocks, with the purpose of separating and consolidating Māori and Crown interests in the lands in question. Under the final consolidation plan, approved in 1941, the Crown received a number of Waipapa ‘A’ blocks, but the majority (146) remained with hāpu associated with Ngāti Pāhauwera.¹⁴⁰

132Despite the long-term leasing and alienation of much of land adjacent to the CMCA in the research area, a number of the Waihua blocks remain Māori-owned, either continuously since 1840 or currently with a history of alienation and repurchase. (Refer to accompanying map book.)¹⁴¹

Brief Land Block Histories

133 [REDACTED]

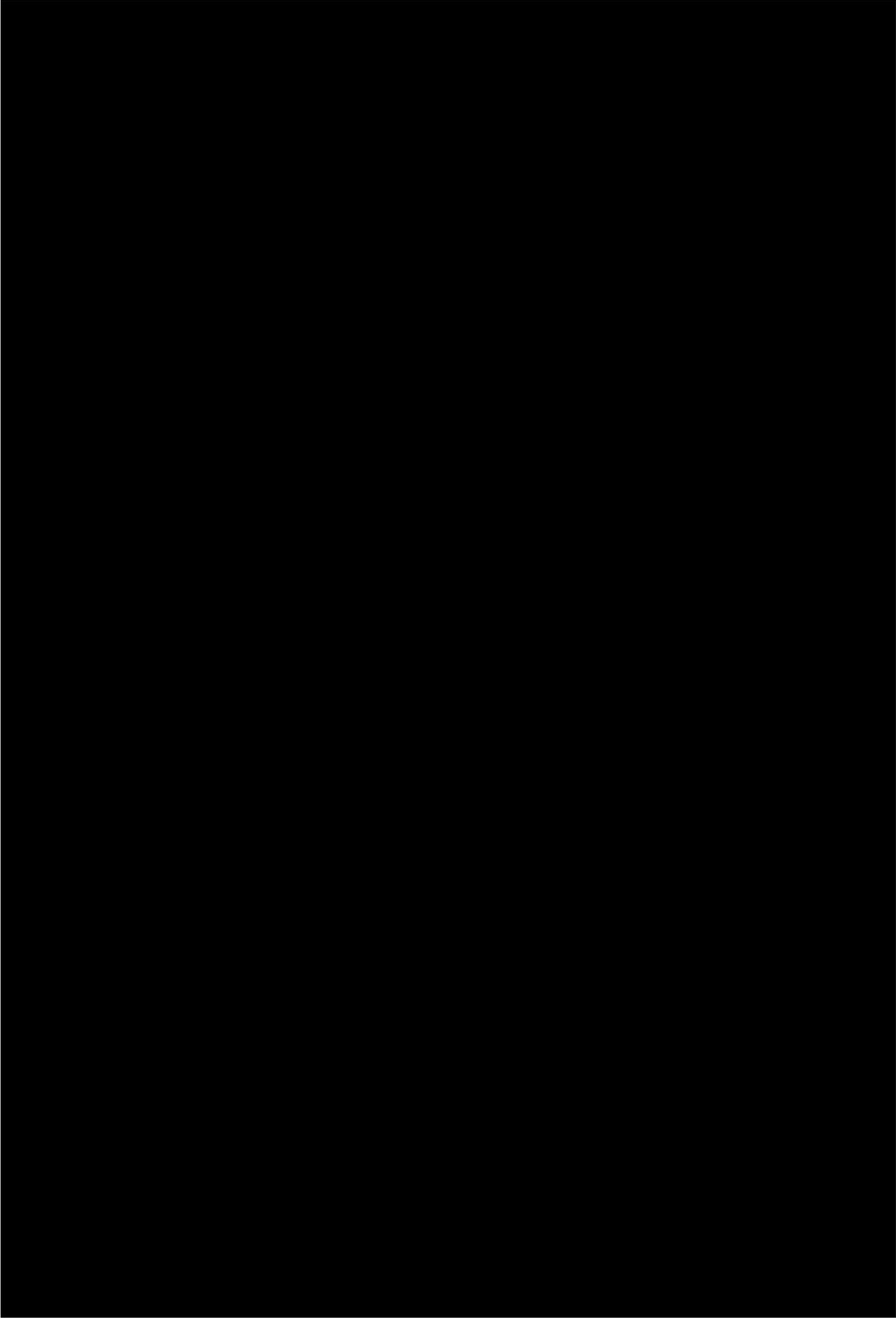
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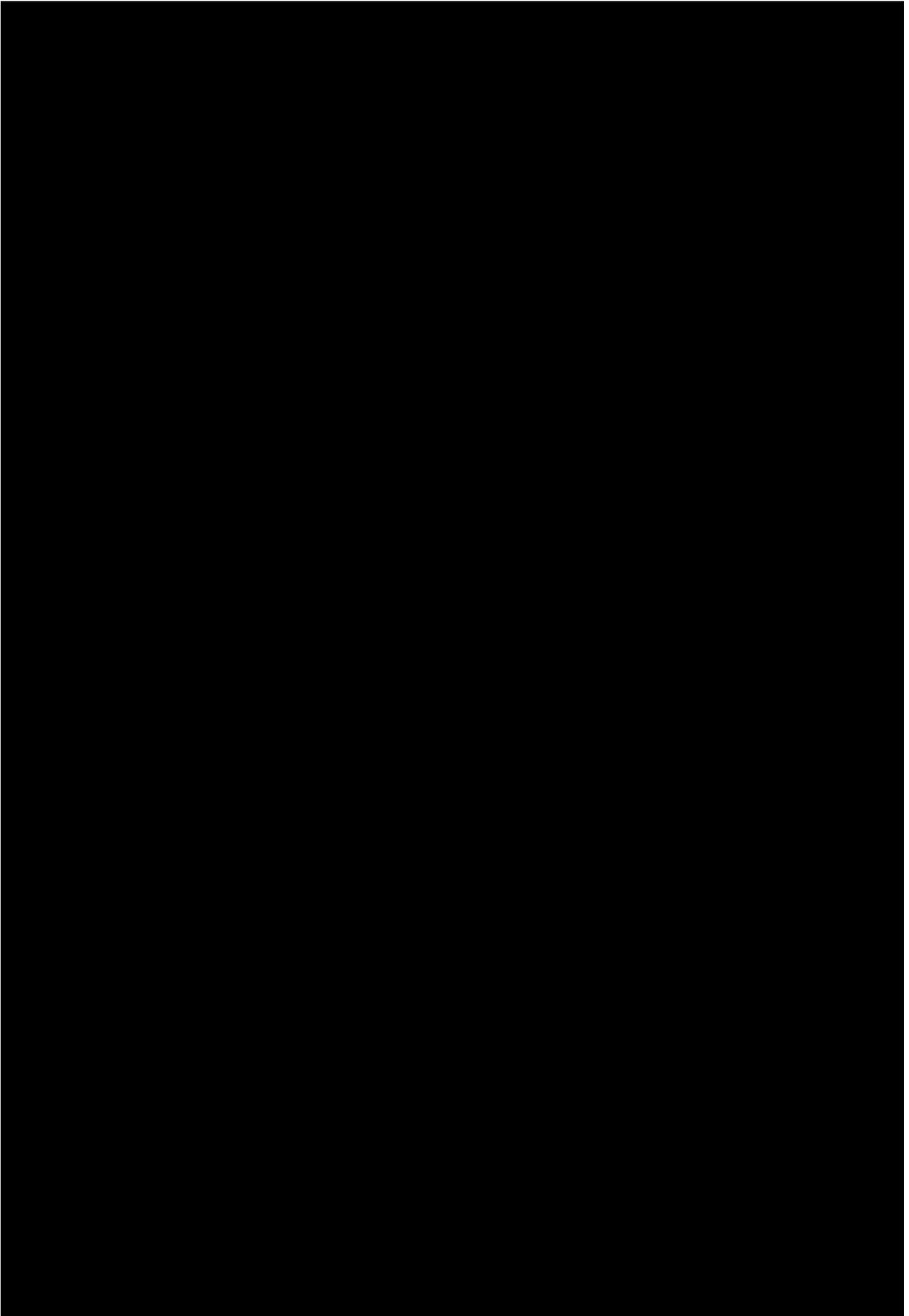
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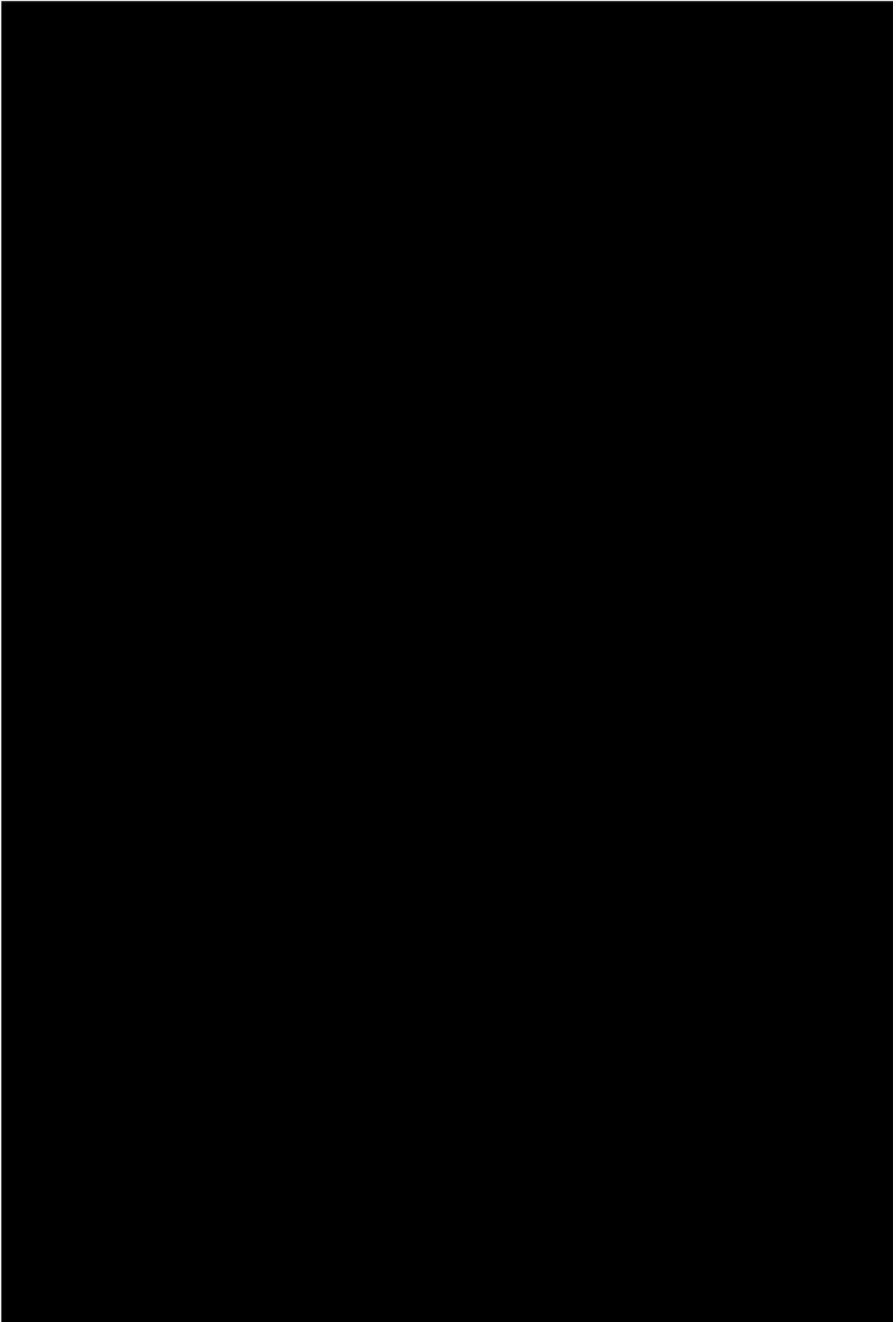
139 [REDACTED]

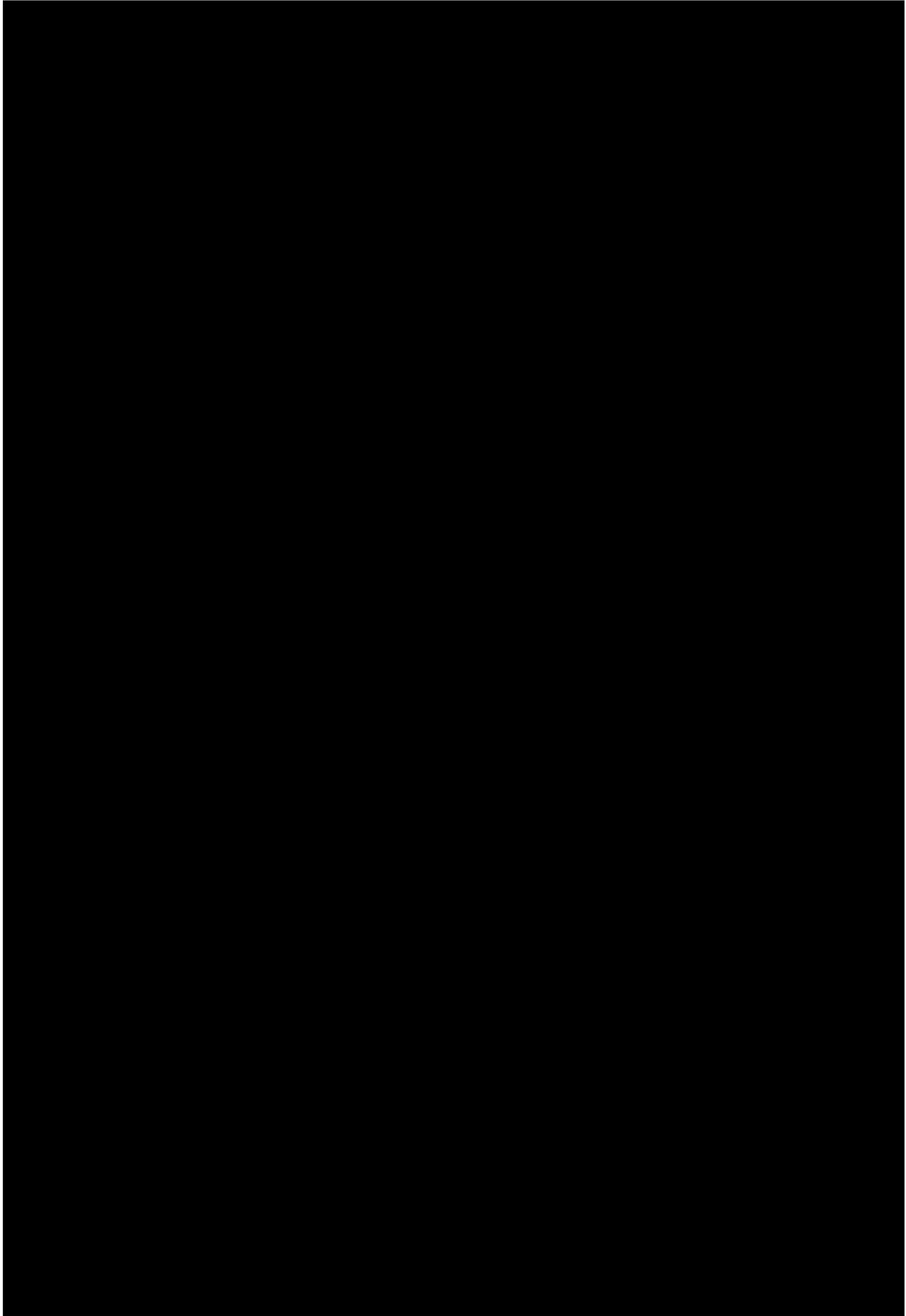
140 *Mohaka ki Ahuriri Report Volume 2*, pp.463-65.

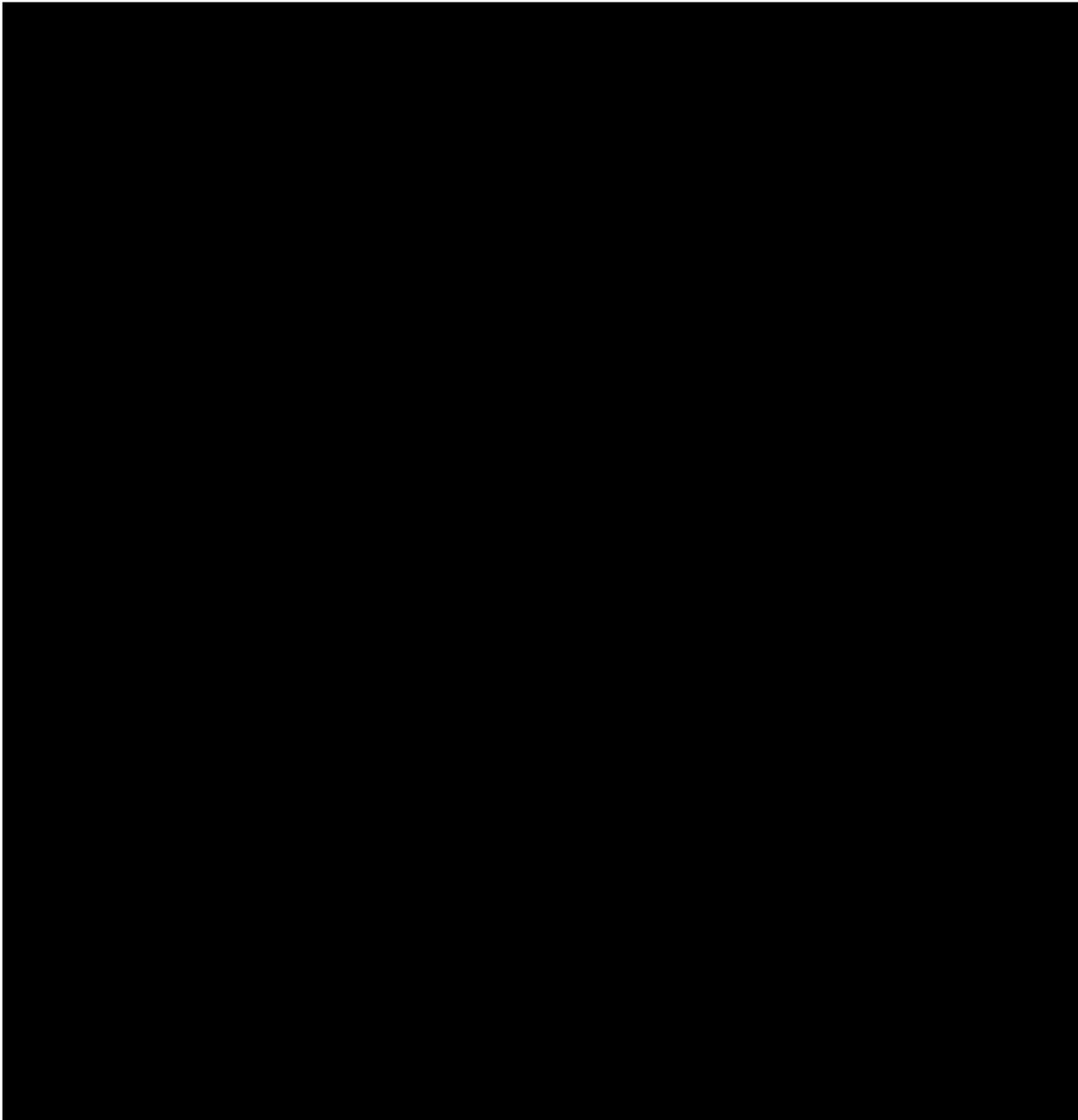
141 [REDACTED]











Exclusivity – Non-member use and occupation of the application Area

Are there other iwi/hapū/whānau with established interests in the area?

142 It seems that there may be some rights to the kahawai fishery exercised on a seasonal basis by people from Ngāti Hineuru. The evidence suggests that this right was of very long standing and associated both with reciprocal exchange of birds caught and preserved in the hinterland, and as recognition of services rendered to the persons now associated with the Pāhauwera whakapapa. The applicants will be in a better position to discuss arrangements of this type and whether these are still recognised and practiced?

What evidence is there if third party use or occupation of the area?

143 The available evidence is fragmentary and writers have made comments based on various sources of information such as those included in the footnotes of this report. The presence of whalers, traders and a boat builder at Mohaka is attested to in a number of sources, and the use by European businesses of the foreshore for ingress and egress of farm requisites and products respectively after the Crown purchase of the area from the Mohaka River to the Waikari River in 1851. (See the images booklet.)

144 However the nature and extent of this use appears restricted to a period from the 1850s to perhaps the turn of the twentieth century and then limited to the local leaseholders and shipping of goods, with perhaps some limited kinds of other use?

Is there or has there ever been established public access to the area and permitted activities associated with this access?

145 The discussion of historical and more recent observations suggests that there has been uninterrupted public access to the area in question between the Poututu Stream and the Eastern bank of the Mohaka River and that this access potentially continues even though the roadways in question are not legal public roads.

146 Apart from reports of events in the twentieth century, such as recreational fishing, most of the available evidence points to a period of commercial activity along the CMCA fringe in the mid and later nineteenth century associated first with whaling and agricultural operations, followed with pastoral operations and that this economic activity came to an end when roads and bridges ensured more reliable communications with points East and West of the application area.

147 Ngāti Pāhauwera for example complained in the CRO application hearing of non-Pāhauwera people taking hangi stones and other customarily used materials from the foreshore in the application area.

148 The available evidence suggests that the foreshore section of the application area was treated as a commons by early European travellers and those people who took up leased run-holds or purchased freehold on abutting lands. Ngāti Pāhauwera explain that nothing has ever stood in the way of tribal members using and exploiting the CMCA in the application area in any fashion they chose and my sense from the available materials is that this may well be the case when viewed from the abutting lands.

149 The foreshore in the nineteenth century generally was not a place for ‘recreation’ in the modern understanding of that term. European New Zealanders in the nineteenth century used the foreshore for sustenance and commercial activity, be this for shipping or as convenient roads. Fishing was treated as a necessary component of life for those in proximity to the beach and only the ‘idle’ – a term of reproach – might take the time to throw a line in for recreation only. The one notable exception was the phenomenon known as the community picnic, and I have not seen evidence of this phenomenon in the application area. Camping at beaches for recreation emerged after WWI and was associated with the urbanisation of the population, spread of vehicle ownership, and improved roading (bridges in fact). As well as the general sense of ‘freedom camping’ or road or beachside camping there emerged facilities for campers more commonly known as motor-camps or seasonal camping ‘grounds’.¹⁴⁶ None of these have been identified on abutting lands in research area 1 of the application area.

150 The available evidence suggests that the area of coastline from Poututu to Waihua saw little or no active European use except perhaps at the very stage of as a roadway. It seems likely that there was a former Māori village at Poututu but the identity of the occupiers is unknown to this writer.

Roading and Travellers:

151 The existence of roads in, or providing legal public access to, the CMCA may prove an important factor in determining whether or not ‘significant interruption’ has occurred at particular parts of the coastline. Roads are deemed legal when the taking of the line of road reserve is formalised under legislation and the acquisition is notified in the *New Zealand Gazette*. Not all formed roads have been gazetted. Partially formed roads that are no longer legal, or unformed roads described on maps are known as ‘paper roads’.

152 The steep cliffs and sloping beaches that characterise the application area made the coastline a dangerous thoroughfare in the colonial period. Nevertheless travellers used parts of the coast as a highway, most frequently between Waihua and Wairoa, until inland tracks, better suited for horse-drawn coaches became the preferred option in the early twentieth century. A guide to the Napier/Wairoa region written by local historian Ivan Hughes notes ‘early travel’ occurred along ‘the coastal track’, which ‘followed the line of shingly beaches, crossed numerous streams and rivers and climbed steep headlands’. The track gradually developed into a bridle trail and

¹⁴⁶ <http://www.teara.govt.nz/en/camping/page-2>

moved inland as the coastal route eroded.¹⁴⁷ General histories of the Hawke's Bay describe the first travelling routes in the region following existing Māori tracks 'northward up the coast to Wairoa and on to Poverty Bay' or south from 'Whakamahia and thence by the beach or bridle-tracks past Mohaka.'¹⁴⁸

153 In November 1842, Bishop George Selwyn – arriving from the Manawatu - travelled in the company of William Williams between Ahuriri (Napier) and Wairoa, intermittently walking 'along the eastern coast' over four days. His description of the northward trip suggested that a Māori track was followed for some of the journey, but he did not specifically record travelling along the beach.¹⁴⁹ Another historian has quoted from Selwyn's journal for 19 November 1842, in the context of the Waitangi Tribunal's inquiry into the Mohaka ki Ahuriri land claims:

153.1 After morning service, as usual, started down the pretty valley of Aroapaoanui, after which our way led over a succession of cliffs, over which the native path is carried, close to the verge, instead of pasting through the valley, which generally lies on the inland side of the cliff. In many places the whole upper surface of the cliff is cracked and ready to fall, forming fissures of that we could not see the depth. It is impassable to diverge from the track, however bad may be its line or direction, because of the difficulty of walking through the tall fern.¹⁵⁰

154 Reportedly the Bishop's party found no one at Waikare, which might accord with the then progressive return of people from Mahia.¹⁵¹ In December 1843 Williams and Colenso found no one at Mohaka, and few Māori at Wairoa as a number of canoes had reportedly left (from both locations?) for Ahuriri.¹⁵² Williams recorded in his journal on 23 October 1845, 'Towards noon we proceeded to Mohaka and got there just at dusk. A large party from Table Cape (Mahia Peninsula) who belong to the place but who had left formerly through fear of the Waikato natives, are now returning and will make the place of some consequence. It was pleasant to meet with a party of Christian natives at evening prayers which I have not done before at this place [Mohaka].'¹⁵³ The following day Williams reported, 'Went in to Waikare before breakfast

¹⁴⁷ Ivan Hughes, *Heritages Trails: Napier to Wairoa*, p.2.

¹⁴⁸ The Historical Affairs Committee Hawke's Bay and East Coast Museum, *Picture of a Province: Hawke's Bay Provincial Centennial 1858-1958*, Napier: Swailes Printing Co. Ltd, 1958, p.43; Wairoa Centennial Committee, *Wairoa Centennial Celebrations 1858-1958 Souvenir Programme*, Wairoa, 1959, p.9.

¹⁴⁹ George Augustus Selwyn, *Annals of the Diocese of New Zealand*, London: Society for Promoting Christian Knowledge, 1847, p.43-45. See also J.G. Wilson, *History of Hawkes Bay*, Dunedin, 1939, pp.177 and 329.

¹⁵⁰ Patrick Parsons, 'The Mohaka Waikare Confiscated Lands', 1995, Wai 201, #J18, p.200.

¹⁵¹ *ibid.*

¹⁵² *ibid.*, p.201.

¹⁵³ *ibid.*, pp.201-202.

walking under the dangerous cliffs, the rain falling most of the time. The weather being decidedly bad we were glad to remain at Waikare. The population is very small.¹⁵⁴

155 In May 1845, the *New Zealand Spectator and Cook's Strait Guardian* published an account of Thomas and Harrison's walk from Wellington to Table Cape in October and November 1842. After the travellers left Mohaka on 2 November they described a journey along a ridge for three or four miles before crossing the Waihua River and walking four miles along the beach to the Wairoa River:

155.1 Leaving Mohaka on the 2[n]d, we passed through some bush and fern, and ascended a steep hill, thence along a ridge for three or four miles, when we descended to a small stream ascending again we arrived at a few waries [whares] on the summit of the ridge, called Waihua, overlooking the valley of that name; there is some pasturage here, descending into the valley, we forded the river, which took us up to the neck; after crossing the valley, we at length came out at the beach at a small pa and kumera [sic] ground; four miles more along the beach brought us to the Wairoa River, and we stopped for the night at the whaling station.¹⁵⁵

156 Between December 1850 and May 1851, Donald McLean travelled in Hawke's Bay to begin Crown land purchasing in the region. He travelled north by boat, stopping at Mohaka on 28 January 1850 and sailing to Wairoa on 29 January. On his return, between 2 and 7 March 1851, McLean travelled south between Wairoa and Aropoanui.¹⁵⁶

157 On 1 March 1851, McLean detailed a day's journey between Nuhaka and Wairoa (outside the application area). He described a horse ride along 'heavy sand' as his party viewed land between Nuhaka and Waikakapu.¹⁵⁷ He left Wairoa on 4 March and crossed the Waihua River (presumably upstream) before travelling along 'a tolerable road' through hilly country to Mohaka. While not explicit about the route he took, the description suggests the party travelled inland from the coast.¹⁵⁸ Similarly, when McLean's party travelled to Waikari on 6 March they

¹⁵⁴ *ibid.*, p.202.

¹⁵⁵ 'Journal of a Walk Along the East Coast, From Wellington to Table Cape, by Messrs. Thomas and Harrison', *New Zealand Spectator and Cook's Strait Guardian*, Vol. 1, no. 31, 10 May 1845, pp.2-3.

¹⁵⁶ *Mohaka ki Ahuriri Report Volume 2*, p.74.

¹⁵⁷ 'Saturday 1st March 1851', Donald McLean Diary, 15 February—15 March 1851, Sir Donald McLean Diaries and Notebooks, MS-1207 Object#1001245, ATL.

¹⁵⁸ 'Tuesday 4th March 1851', Donald McLean Diary, 15 February—15 March 1851, Sir Donald McLean Diaries and Notebooks, MS-1207, Object#1001245, ATL.

traversed 'hilly' land 'over a road where we had to haul the horses up in one place, with a tackle.'¹⁵⁹

158 George Rich, an Ahuriri farmer, travelled from Wellington to Turanga between 12 February and 5 March 1852 recording his experiences in a journal. He left Tangoio ('Tongoa') on 1 March in the direction of the Mohaka River (the 'Mahawka'), describing a journey through 'broken country, meeting with hills and valleys continually.' In the application area he stopped at pā before crossing the Mohaka River, then later at a pā called 'Waikadi'. Between the Mohaka River and Wairoa, Rich described the day's travel as 'hilly work', stopping at 'Mahahau' over night before arriving in Wairoa the next afternoon. Throughout his journey in the application area, Rich did not mention travelling along the beach, and his descriptions of difficult hilly terrain and steep gullies and rivers suggest he followed an inland route.¹⁶⁰

159 In his 1951 thesis on early colonial communications in Hawke's Bay, JWN Kelly observed of the Napier to Gisborne road:

159.1 Relieved only by the provision of odd ferries and bridges the record of neglect of this [road] line is almost complete. Still dependent on coastal shipping as a means of access for all but foot and horse traffic the settlements at Mohaka, Wairoa and Mahia had to be content with the patching up and slight improvement, made to the old Māori track along the coast by way of Tangoio, Waipatiki, Arapawanui, Waikari, Mohaka and Waihua. At Waihua the track diverted inland approaching the Wairoa River at Ohinepaka but from Wairoa on to Mahia adherence to the old Māori line was the rule.¹⁶¹

160 In his history of Wairoa, Thomas Lambert recorded: 'in the early days there were two "roads" so called, to Napier between Wairoa and Waihua, thirteen miles south, leading out of the town; one was by way of the beach, not always reliable owing to the risk of the rider being swept out of the saddle by an extra heavy wave, and of being smothered in quicksand at the point of emergence at the Waihua end on to what was then called the Marengo plains.' The alternative route, used by the owners of the Waihua Station in the 1880s, took a course up the Wairoa River and crossed inland via the Turiroa cutting.¹⁶²

¹⁵⁹ 'Thursday 6th March 1851', Donald McLean Diary, 15 February—15 March 1851, Sir Donald McLean Diaries and Notebooks, MS-1207, Object#1001245, ATL.

¹⁶⁰ Journal kept by George Rich Esq., Sheep farmer of Ahuriri, from February 11th to March 5th, 1852, MS-1817, ATL, Wellington.

¹⁶¹ J.W.N. Kelly, 'A Study of Early Colonial Communications in the Hawkes Bay During the Period 1858-1876,' MA Thesis Victoria University College, 1951, p.138.

¹⁶² Lambert, *Old Wairoa*, p.27; Miriam Macgregor, *Early Stations of Hawke's Bay*, Wellington: A.H. & A.W. Reed, 1970, p.56.

161 In the mid-1860s, Paora Rerepu (a leading Ngāti Pāhauwera rangātira) wrote to the Hawke's Bay Superintendent indicating the local people's desire for development:

161.1 You have appointed ferries for the following rivers namely, Waikari, Mohaka, Waihua, Te Wairoa, I am wishing to have something to do, that is, some road to make that the roads may be good for travellers, may get on fast, that is, the road to Te Wairoa and right through to Ahuriri.¹⁶³

162 Brent Parker recorded in his 1999 brief on this issue that, 'on 22 April 1861 Toha [of Wairoa it appears both from the address on the letter and from Grendell's 1864 report] wrote to the Superintendent of Hawkes Bay Province requesting the Province assist in paying for a ferryman for the Waihua river. He stated that there were no Māori residing permanently at that place to assist travellers or the mail across the river.'¹⁶⁴

163 Available evidence suggests local Māori provided labour for road construction. In January 1862, Thomas Gill, the Hawke's Bay Provincial Engineer, reported 'the track from Mohaka to the Wairoa passes for its entire length through native land, and it is doubtful if any but Māories [sic] would be allowed to work at its improvements. It is in a very bad state.'¹⁶⁵ In 1862, his successor Charles Weber, reported 'the natives Toha and Paul have not yet completed their contract for the bridle track between Mohaka and Wairoa, but I hear now that they are inclined now to proceed with it properly; but in the meantime travellers are put to great inconvenience.'¹⁶⁶

164 In a letter first published in the *Edinburgh Daily Review* and republished in the *Hawkes Bay Herald* in August 1869, the writer observed;

164.1 I have been at Mohaka more than once, and knew a good many of the residents there. The district is comparatively small. It lies on the seaboard in Hawke's Bay, and is about

¹⁶³ F.R.J. Sinclair, 'Land Transactions on the North Bank of the Mohaka River ca. 1860-1903', *WAI 119/201*, C5, pp.9-10.

¹⁶⁴ Brief of Evidence of Brent Parker for the Crown Concerning Toha's Reserve and the Waihua Block Boundary, June 1999, *Wai 201*, #W4, p.2. In translation Toha said, '... I have a proposition to lay before you respecting the Waihua River, namely, that you will set aside a certain amount of money, as a salary for someone either white or Māori to be stationed there to keep the ferry for the convenience of the mail, and also of travellers who are often travelling the roads. My object in bringing this to your notice is, there are no natives living permanently on the spot, and often times no canoe to cross anyone in, either Postman or traveller, therefore if you think proper to grant a yearly salary and also fix the charge for travellers either crossing or re-crossing it will be very good.'

¹⁶⁵ *The Government Gazette Province of Hawkes Bay*, Vol. 13, January 1862, p.10.

¹⁶⁶ *The Government Gazette Province of Hawkes Bay*, Vol. 13, 29 July 1862, p.67.

45 miles from Napier by land and 30 by water. By land there is a bridle road – for part of the way over heavy sand by the sea [Western spit to Tangoio?] and for a greater part of it over high, and in many places precipitous hills, and through deep, bush-covered ravines. Except at Petane (Bethany), about seven miles from Napier, there are only three or four families [pakeha?] till you come to Mohaka.¹⁶⁷

165 In 1870, the road north of Napier largely followed the coast along old Māori tracks. The ‘Wairoa correspondent’ of the *Hawkes Bay Herald* recorded on 9 March 1881 that the Wairoa to Mohaka road [a formed section] terminated at the Waihua river ferry.¹⁶⁸ The reason was that the land to the west of the Waihua River was Māori-owned.

166 On 25 August 1886, the *Hawke’s Bay Herald* reported that mail coaches ran weekly between Napier and Wairoa.¹⁶⁹ Essentially a widened bridle track, the route was unreliable, and could not support livestock movement or be taken when rivers were high.¹⁷⁰ That year a section of the road between Waihua and Wairoa was reportedly abandoned, in part because ‘the beach was continually washing away.’¹⁷¹ This suggests a route along the beach from Waihua. On 5 August 1870, a correspondent to the *Hawke’s Bay Herald* explained: ‘unless the inland route was improved it was asserted that mailmen and travellers would continue to be tempted to risk their lives.’¹⁷² Presumably meaning by taking the coastal beach road?

167 [REDACTED]
[REDACTED]
[REDACTED] The 1887 Wairoa County Council estimates of expenditure included upgrading the road between Waihua and Mohaka.¹⁷⁴

168 [REDACTED] the location and use of ferries indicates transportation routes in the northern Hawke’s Bay and also the influx and influence of non-group members. For much of the second half of the nineteenth century the route linking the Hawke’s Bay settlements was

¹⁶⁷ *Hawkes Bay Herald* in August 1869

¹⁶⁸ The *Hawkes Bay Herald*, 9 March, 1881, p.3, Paperspast web site, National Library.

¹⁶⁹ *Hawke’s Bay Herald*, 25 August 1866, in J.G. Wilson, *History of Hawke’s Bay*, Christchurch: Capper Press, 1976, p.363. This edition of the Herald is not available on Papers Past.

¹⁷⁰ Kelly, ‘A Study of Early Colonial Communications in the Hawkes Bay’, p.214.

¹⁷¹ Kelly, ‘A Study of Early Colonial Communications in the Hawkes Bay’, p.215.

¹⁷² *Hawke’s Bay Herald*, 5 August 1870.

¹⁷³ [REDACTED]; Kelly, ‘A Study of Early Colonial Communications in the Hawkes Bay’, p.216; *Hawkes Bay Provincial Council, Votes and Proceedings, 1874*, ATL.

¹⁷⁴ R.C. Wilson, *Wairoa County Council – the First Hundred Years*, p.66.

devoid of bridges. Instead, ferries crossed rivers and streams at Petane, Waihua, Waikari, Mohaka and Wairoa.¹⁷⁵

169 The first ferry in the research area dates from 1859, when Mr J. Sim was granted a bush liquor license on the condition that he maintained a ferry crossing at the Mohaka River.¹⁷⁶ The river crossing was reportedly located at a ford 'in front of Mr Sims house', 'a mile and a half or two miles' upstream from the river mouth and beyond the present limit of the CMCA.¹⁷⁷ Alfred John Cooper's 1860 water colours of the river mouth strongly suggests that Sim's premises were located on the western or government side of the river somewhere in the vicinity of the present bridge at a location known to locals as Waiparuparu.¹⁷⁸

170 Mr Daniel Bearry was appointed ferryman at Mohaka from 31 July 1869.¹⁷⁹ The Wairoa County Council (established in 1876), concerned by disputes over access to the ferry, resolved in 1882 to take the ferry landing area under the Public Works Act with the expense borne by the government.¹⁸⁰ It is unknown what happened to this resolution, but in 1887 the ferry remained in operation, although the local Constable complained to the Council, that its lessee, a Mr R. White, was frequently drunk.¹⁸¹ A punt was tendered for the Mohaka River in 1890 and Mr C. Rich received the contract for its operation.¹⁸²

171 In the mid-nineteenth century north bound travellers followed a track that passed through the Waihua Station, and 'found it necessary to cross the Waihua River by ferry.'¹⁸³ The ferry was operated by James and Mary Hamshar, who wrote to the Provincial government in August 1867 seeking to occupy a government reserve on the Waihua River. James Hamshar took possession of the reserve later in the year, and was resident in Waihua in 1869. The Waihua Ferryman's house was attacked by Te Kooti and his party in April 1869 as they pursued a mixed force of militia and local friendly Māori down the Mohaka River valley (killing a number of local

¹⁷⁵ Kelly, 'A Study of Early Colonial Communications in the Hawkes Bay', p.214.

¹⁷⁶ Wilson, *History of Hawke's Bay*, p.330.

¹⁷⁷ *Hawke's Bay Herald*, 20 April 1869, cited in Sinclair, 'Land Transactions on the North Bank of the Mohaka River ca 1860-1863', p.3.

¹⁷⁸ Cooper, Alfred John, 1819-1869. Cooper, Alfred John d 1869 :Waiparu-paru. Mohaka 1860 Mouth of Mohaka. Sims' Public House in foreground. Riddle's woolshed and craft in the distance. Ref: A-235-011. Alexander Turnbull Library, Wellington, New Zealand. <http://natlib.govt.nz/records/22399188> The water colour appears to have a connection to another local settler, John Lavin who, along with Cooper, were murdered by Te Kooti and his followers in April 1869.

¹⁷⁹ *Hawkes Bay Herald*, 14 September 1869, p.2.

¹⁸⁰ Wilson, *Wairoa County Council*, p.47.

¹⁸¹ Wilson, *Wairoa County Council*, p.60.

¹⁸² Wilson, *Wairoa County Council*, p.74.

¹⁸³ James Hamshaw to Deputy Superintendent, Hawkes Bay, 12 August 1867, HB 4/8 67/1159, ANZ.

Pāhauwera and European settlers), forcing the surviving European population to flee and forcing the local Māori population to hold up in two pa.¹⁸⁴ A decade later, in 1877, the Wairoa County Council earmarked £12 'for the purpose of constructing a punt at the Waihua ferry, conditionally that Mr. Hemshaar [Hamshar?] guarantees to work the ferry for the ensuing 12 months without bonus at the existing tariff.'¹⁸⁵ Hamshar successfully tendered for the lease of the Waihua River ferry in December 1882.¹⁸⁶ This places him in charge of the ferry for approximately fifteen years.

172

[REDACTED]

173 Bridges began replacing ferries over northern Hawke's Bay Rivers in the late 1870s and early 1880s as local councils consolidated their ability to levy rates and thereby secure loans for infrastructure development, as well as attract some of the Vogel Government lending for public works purposes in the 1870s. The Wairoa County Council noted that severe flooding destroyed the Waihua Bridge in May 1892 and ferries resumed service until it was rebuilt. The bridge was again destroyed in 1914 and the Council again resurrected the ferry service until a new bridge was constructed.¹⁸⁸ The destruction of the bridge at Mohaka is attested to in a letter from Charles Trevelyan to William Pember Reeves on 22 August 1898:

173.1 Travelling is generally not what it might be...We, too, had to wait on the further side of the Mohaka River on our way to Napier. The bridge was washed away 18 months ago, and Seddon has not yet given enough money to rebuild it and cavilling opponents say that it is because it is in Capt. Russell's constituency. There the Webbs had to stay two days in company of station managers and shepherds. I, being a bachelor and athlete, crossed in a rope cage attached by a pulley to an iron cable, pulling myself across hand over hand with such frightful exertion that my fingers were crooked with the straining for five minutes after I landed. I lost my bag in the torrent into the bargain.¹⁸⁹

¹⁸⁴ *The Hawkes Bay Herald*, 23 April 1869, Paperspast website, National Library.

¹⁸⁵ R.C. Wilson, *Wairoa County Council – The First Hundred Years*, Wairoa, 1978, p.31.

¹⁸⁶ *The Hawkes Bay Herald*, 29 December 1882, p.2, Paperspast website, National Library.

¹⁸⁷

¹⁸⁸ Wilson, *Wairoa County Council*, pp.156-57, 162.

¹⁸⁹ D.A. Hamer (ed.), *The Webbs in New Zealand 1898/Beatrice Webb's diary, with entries by Sidney Webb*, Wellington, 1974, pp.61-62.

174 In 1884, the Wairoa County Council approved the construction of a road through the Mohaka Township to the beach.¹⁹⁰ [REDACTED]

[REDACTED]

175 As pastoral farming expanded in the late nineteenth century, regional infrastructure generally improved. In 1895, the Wairoa County Council built the first bridge over the Mohaka River. Construction of an inland coach route between Mohaka and Napier began in the late 1890s and was completed in 1901.¹⁹² The route ‘climb[ed] over the hills past Turiroa thence to Waihua and on over the plains and hills to Mohaka.’¹⁹³

Contemporary Public Access-Waihua:

176 The Waihua Beach Road, located on the west side of the Waihua River, dates legally from 1910, when it was intended as a right of way to two blocks near the river mouth. A 1918 survey plan of Waihua 2C7A and 2C7B blocks describes the road as a ‘right of way’, branching off State Highway 2 and leading down to the west bank of the Waihua River, slightly short of the mouth.¹⁹⁴ Māori Land (ML) plans from 1972 and 1981 display the right of way leading to Waihua A36, just short of the Waihua River mouth.¹⁹⁵

177 [REDACTED]

The Waihua Beach Road is clearly treated as a public thoroughfare, with fishing and tourist

¹⁹⁰ Wilson, *Wairoa County Council*, p.56.

¹⁹¹ [REDACTED]

¹⁹² Wilson, *Wairoa County Council*, p.87; George Thomson, ‘The Crown and Ngāti Pāhauwera from 1864’, *Wai* 119/201, January 1992, p.23; Ivan Hughes, *Heritages Trails: Napier to Wairoa*, p.2

¹⁹³ Wairoa Centennial Committee, *Wairoa Centennial Celebrations 1858-1958 Souvenir Programme*, Wairoa, 1959, p.9.

¹⁹⁴ Plan of Waihua 2C7A and 2C7B Blocks, ML 1180, Hawke’s Bay Land District, Wairoa County, 1918.

¹⁹⁵ Mohaka Consolidation Plan, ML 2710, Hawkes Bay Land District, Wairoa County, April 1972; Plan of Waihua A36 Block, ML 2522, Hawke’s Bay Land District, August 1981.

¹⁹⁶ [REDACTED]

¹⁹⁷ [REDACTED]

180 The Wairoa District Council's 2004 'District Strategy' included proposals to 'secur[e] public ownership of Waihua Beach Road' and 'work with landowners and other agencies to legalise road access.'²⁰⁴ Neither objective has been completed. Although Waihua Beach Road is a private road, between 2008 and 2012, the District Council spent \$44,459.88 on roading contracts for its maintenance. These projects included large scale debris removal, pavement repair and maintaining sightlines and roadside verges. Communication with the Council's Infrastructure Business Unit Manager revealed that in the recent past the Roding Manager had verbal agreements with the land owners allowing the Council access, but he has left the organisation and it is unclear if the arrangements stand.²⁰⁵

181 Gaye Hawkins' brief from 2007, under the sub-heading 'Tauranga waka', also covers some detail on the use of the Waihua road by local Ngāti Pāhauwera, although this may no longer be the case because of erosion at the end of the road:

181.1 The foreshore has always been important for the launching and returning of waka and other boat [sic], in order to gain access to the sea. Traditionally, tauranga waka were the area above high-water, where the waka were stored when they were not being used, but it was on the foreshore where they were launched. **We continue to use the foreshore for the launching of waka, and now our [?] launch boats straight of the beach at the end of the public roadway over the foreshore.**²⁰⁶

182 Ms Hawkins also provides some very useful evidence about the use of tauranga waka by manuhiri or non-group members:

182.1 Two Tauranga waka were spoken of by my tipuna in the Waihua area that I can recall. The first was the A36 Māori reservation, more commonly known as the Island [after 1931] at the mouth of the Waihua river, part of which was designated as a landing place for Manuhiri passing through the area. This tauranga waka is no longer in place. The land having been exchanged for a property further up the river.

182.2 The other Tauranga waka was at a place called Takapau between Waihua and Mohaka where an old pa site was established by Mamangu the younger brother of Kurahikakawa. In earlier times this was used as a resting place for travellers. This tauranga waka is still there, however as very few people have waka, the use has changed as that manuhiri now can camp at this place.²⁰⁷

²⁰⁴ 'Wairoa Coastal Strategy: Te Maahere Taatahi ki te Wairoa', Wairoa: Wairoa District Council, 2004, p.36.

²⁰⁵ Michelle Myer, Wairoa District Council Infrastructure Business Unit Manager, to OTS, Email 23 August 2012.

²⁰⁶ Brief of Evidence of Gaye Hawkins, 10 September 2007, p.5.

²⁰⁷ *ibid.*

183 It remains unclear to this writer where this spot is but further information will no doubt be provided by Ngāti Pāhauwera.

Use of the Beach for Travel

184 The beach between Wairoa and Poututu has been used for travel in more recent times although it appears from comments from local land owners that this was one of few instances of this kind. Dennis McLean's family journey from Te Araroa to Wellington, undertaken in stages between 1978 and 1984, occurred primarily along East Coast beaches. His party reached Poututu Stream over the Christmas period 1980/1981, and he made the following observations of that section of the trip:

184.1 On the beach between Wairoa and Mohaka: 'At the right tide the next stretch along the featureless, mainly sandy beach is easy and boring. We were lucky with our timing and could start each morning on a falling tide; thus we could pad along happily enough, well clear of the unstable cliffs. We would be pushing our luck to get all the way through to Mohaka before having trouble with the tide. Stopping for lunch at the Waihua River mouth, we decided to stay to camp. We settled down at the back of the beach for a lazy afternoon. **The boys kept their record intact on the fishing front. [Failure?]** I walked inland for a bit. With a pleasant, open, river valley and flat land close to the sea, Waihua was a staging place for the trek along the beach between the larger settlements at Mohaka and Wairoa.'²⁰⁸

184.2 'It is another eight kilometres of uneventful walking to the mouth of the Mohaka. We found a rough track [likely over Waipapa A146] up from the beach to the high terrace level which supports the small farming settlement...I realised that Mohaka is an oddball among coastal settlements. Sitting high on its flat terrace above the inaccessible mouth of a large river, **it is marooned from the sea.**'²⁰⁹ [Emphasis added.]

185 The track referred to appears likely to have been that which runs over Waipapa A146 or close to it and arrives at the quarry. It is also interesting that he refers explicitly to the local topography on the eastern bank creating a barrier to access to the river mouth.

186 Since 1966, various government departments have made a significant effort to improve public access to the nation's beaches. [REDACTED]

[REDACTED]

²⁰⁸ Denis McLean, *The Long Pathway: Te Ara Roa*, Auckland: Collins, 1986, p.143.

²⁰⁹ McLean, *The Long Pathway*, p.144.

²¹⁰ [REDACTED]

187 On 19 May 1969, the Chief Surveyor at the Lands and Survey Gisborne office reported that he had inspected the Waikari Beach, beaches on both sides of the Mohaka River and the Waihua Beach. The area was reported to be a popular fishing spot. The result of this survey—part of the general national reserves project—was a recommendation that 38 acres acquired at Waihua Beach and that Waihua Beach Road be acquired, legalised, and enlarged. Evidently the project never occurred as the financial problems derived from the 1973 fuel crisis halted the national public access programme. All four sections targeted for acquisition were recorded as being Māori-owned with a combined value of \$9,600.²¹¹

188 In relation to the general aim of extending public access to the coast, the Director-General of Lands sought additional information on the Waihua site from the Commissioner of Crown Lands Napier. In particular, he wished to know about the possible breakout of the Waihua River through the ‘ox-bow’, the degree and types of public usage and whether the area was suitable for boat-launching.²¹² The Commissioner responded that Waihua River’s high banks and low water level prevented a break-through at the ox-bow. He further described Waihua Beach as popular for surf-casting and fair for surfing, though unsuitable for boat launching.²¹³

189 [REDACTED]

190 In 1989 DOC returned to the Lands and Survey exercise, requesting information from the successor agency Department of Survey and Land Information (DOSLI – now LINZ) regarding legal access to the coast in Wairoa County. Seven areas were considered in the report including Waihua, both sides of the Mohaka River and the beach east of the Waikari River.²¹⁵

[REDACTED]

²¹¹ DOC Head Office File 8/5/105/1, Off-Site Storage, Wellington.

²¹² DOC Head Office File 8/5/105/1, Off-Site Storage, Wellington.

²¹³ DOC Head Office File 8/5/105/1, Off-Site Storage, Wellington.

²¹⁴ [REDACTED]

²¹⁵ Coastal, Marine, and Freshwater Resources – Coastal Reserves Proposals, File 5/8/0, DOC Gisborne.

Contemporary Public Access-Mohaka:

191 As the descriptions of access to the CMCA at the Mohaka River mouth (included below) suggest, public access to the Mohaka beach has historically been complicated.

192 West of the Mohaka River, Western Beach Road stops at private property a few hundred meters short of the CMCA. However, Mclvor Road leads down to the Mohaka River mouth, running almost a kilometre along the coast from the Mohaka settlement. [REDACTED]

[REDACTED]

[REDACTED]²¹⁶ In his evidence for the Māori Land Court in 2008, Wayne Taylor testified that while Mclvor Road stopped short of the CMCA, and local Māori had an agreement with the landowner to cross over his property down to the river mouth.²¹⁷ We understand that Pāhauwera may provide evidence in relation to this.

193 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

194 East Beach Road, as displayed on aerial images (obtained from Google Earth) and mapping software (eMap and Quickmap) appears to be a legal road until it reaches the boundary of Waipapa 41 B, from that point a right of way (?) gives access to an old quarry on the Waipapa A122 block near the cliff edge, before proceeding down to the beach further east of the river mouth. [REDACTED]

[REDACTED]

[REDACTED]

195 In his evidence before the Māori Land Court in 2008, Wayne Taylor testified correctly that the legalised public road stopped short of the river mouth, before crossing land owned by private

²¹⁶ [REDACTED]

²¹⁷ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.44.

²¹⁸ [REDACTED]

individuals and the Mohaka Marae committee. As with Mclvor Road, Mr Taylor testified that local inhabitants had agreements with the land owners to facilitate access to the river mouth.²¹⁹

196 Today, much of the land abutting the CMCA in the research area is owned by third parties. Of the blocks abutting the CMCA between the Mohaka River and Poututu Stream, the majority of those East of the Waihua River are owned by third parties. Between Mohaka and Waihua the picture is mixed, with coastal blocks owned by both Māori and non-Māori. Further investigation into the whakapapa of these owners and whether they allow members of the application group access to the CMCA via their property is likely required to assess the extent and nature of third party use and occupation.

197 As mentioned earlier, we have not found evidence of any structures located in the CMCA in the research area.

Have non-members used or occupied the area for recreational or commercial activities since 1840?

Gravel extraction - Waihua:

198 Gravel extraction may have occurred in the wider research area since the latter half of the nineteenth century.²²⁰ For example, in 1897, the Wairoa County Council approved a road maintenance contract for the Waihua to Mohaka road at £50 per annum—presumably the task required the extraction and dispersal of roading metal?²²¹

199 [REDACTED]

²¹⁹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.44.

²²⁰ George Thompson, Wai 201, #A27, p.17. His focus was on the Mohaka River.

²²¹ Wilson, *Wairoa County Council*, p.93.

²²² [REDACTED]

200 There is some evidence for gravel extraction from this general area during the early twentieth century. The Wairoa County Council minutes disclose a common issue of the era, the on-going cost of roading maintenance. At least one Māori-owned company participated in roading in the general locality with K Winitana and Co obtaining a contract to metal a part of the Wairoa to Waihua Road.²²³

201 On 14 March 1913, some Wairoa County Councillors proposed a visit to Waihua to inspect the quality of the metal to be hauled to the Mohaka-Waihua Road.²²⁴ In April 1913 Keita Kawiri wrote to the Council complaining that contractors were taking metal from Waihua 2C7 without paying him royalties.²²⁵ Councillors were nominated to deal with the matter, but at the meeting the following month a letter was tabled by Maunga Mata, one of the two owners, 'advising if no arrangement is come to between owners and council he will claim on owners' behalf 3d per c-yd [cubic yard] for metal taken from Waihua 2C7 block. The Council voted to pay a royalty for the metal already taken and not to take any more.²²⁶ It appears that the beach became the source of second resort. In October 1913 the Council cancelled a contract for the delivery of metal to the Waihua-Mohaka Road, 'owing to the supply of **beach metal** becoming exhausted'.²²⁷ [Emphasis added.] The Council proposed to prospect for an alternative supply on private land owned by a Mr McKinnon.²²⁸ The council was also approached by a contractor who offered to deliver metal to the Waihua – Mohaka road '**whenever it was available from the Beach at Waihua...**'²²⁹ [Emphasis added.]

202 The Wairoa County Council approved a November 1913 proposal for the overseer to '**secure all shingle from the Waihua Beach**' and delivered to the Mohaka-Waihua road.²³⁰ It also later in 1915 approved the use of the County tractor for the purpose when the contractor building the Waihua – Wairoa Road Bridge sought supply from the Waihua beach.²³¹

²²³ Wairoa County History, p.155.

²²⁴ Minutes of the Wairoa County Council, 14 March 1913, held today at the Wairoa District Council (WDC).

²²⁵ Minutes of the Wairoa County Council, 11 April 1913.

²²⁶ Minutes of the Wairoa County Council, 11 April 1913.

²²⁷ Minutes of the Wairoa County Council, 10 October 1913.

²²⁸ Minutes of the Wairoa County Council, 10 October 1913.

²²⁹ Minutes of the Wairoa County Council, 14 November 1913.

²³⁰ Minutes of the Wairoa County Council, 14 May 1915.

²³¹ Minutes of the Wairoa County Council, 8 October 1915.

203 The County Council resolved on 12 January 1917 that the Māori owners at Waihua be approached for permission **‘to take shingle from Waihua Beach through their properties.’**²³² This suggests that the Beach road was being used, yet the area was being leased to the Glendenning connections. On 9 February 1917 the Council passed a motion, ‘that the overseer Mr Mahood give 24 hours notice to owners of native land at Waihua of Council’s intention to go through their properties with metal drays to procure shingle from Waihua Beach.’²³³ In March 1917 the Council approved for the overseer to be authorized to arrange for delivery of metal from Waihua Beach to the cliff top, and to let the contract at 3d per square yard.²³⁴

204 It appears doubtful the gravel was extracted in March 1917 because the Council minutes recorded in August 1917 that Councillor Hodges ‘reported that he interviewed the natives and asked their consent to Council’s contractor going through their properties in Waihua Block to obtain metal for road between Waihua Bridge and Waihua Hill, but that he was unsuccessful in obtaining such consent.’ This report generated a motion from the assembled Council, to wit, ‘that the Natives be given 24 hours notice under the provisions of the Public Works Act, of the Council’s intention to go through their properties to secure metal from Waihua Beach for road purposes, and that the Overseer, Mr Smith, be instructed to take every precaution to protect their lands from damage by the sea during the time Council is [crossing] their properties for purpose of obtaining metal, and further that Mr Smith be instructed to form road of access to the beach.’²³⁵ This may be when the Waihua Beach road over the 1910 Māori Land Court-ordered right of way was formed and metalled?

205 It appears that this was not acted upon and in February 1918, the Council again proposed that, ‘The overseer, Mr Mahood, be instructed to arrange to have **metal carted up from Waihua Beach to top of cliff** in readiness for carting out on to Waihua- Mohaka Road.’²³⁶

206 In the 1920s the geologist Patrick Marshall conducted research on the size and grade of gravels and sands at Napier Beach and Mohaka Beach. For the purposes of his research, Marshall defined the Mohaka Beach as extending 35 miles along the coast between the Mohaka River mouth and Waitaniwha, just short of Waikokopu point. Marshall’s research, published in the

²³² Minutes of the Wairoa County Council, 12 January 1917.

²³³ Minutes of the Wairoa County Council, 9 February 1917

²³⁴ Minutes of the Wairoa County Council, 9 March 1917.

²³⁵ Minutes of the Wairoa County Council, 10 August 1917.

²³⁶ Minutes of the Wairoa County Council, 8 February 1918.

Transactions and Proceedings of the Royal Society of New Zealand, involved the collection of sand and gravel samples at a series of locations in the area (including the west bank of the Mohaka River, and the Waihua River mouth. The samples were then processed in a Deval abrasion testing machine, presumably offsite. Marshall's published findings do not indicate the quantity of aggregate he and his research assistants took at each location.²³⁷

Gravel Extraction – Mohaka River:

207 Similar to the Waihua River, gravel extraction has probably occurred on the Mohaka River banks since the nineteenth century, but records suggest the twentieth century extraction points were upriver near the viaduct and State Highway Bridge, well beyond the CMCA boundary. This extraction was clearly associated with the development of the railway line through the district and the roading associated with this. Mr. Alexander, a planner, in evidence to the Waitangi Tribunal, indicated that the Mohaka River was one of the few gravel sources in northern Hawke's Bay and that it was targeted by contractors in the Hawke's Bay, Gisborne and Taupō areas. Gravel was extracted between approximately Waipapa 2B and A19.²³⁸ The latter block is predominately located adjacent to the CMCA seaward of the lower Mohaka Bridge but a part of the section is located on the inland side of the lower Mohaka Bridge and could well be associated with gravel extraction from the existing pit because an access road is located across it. The Hawke's Bay Regional Council holds records of the quantities of gravel taken since 1963. Between 1963 and 1992 approximately 32,500 cubic meters of gravel was extracted annually from the Mohaka River.²³⁹ In 1988, the DOC Hawke's Bay conservancy noted: 'human modification in the area is moderate apart from...shingle mining in the Mohaka River'.²⁴⁰ Since 1993, local iwi have been involved in the allocation process.²⁴¹ Royalties are not collected by the Regional Council (at approximately \$1 per cubic meter in 1992 dollar values) in the manner

²³⁷ P. Marshall, 'Beach Gravels and Sands', *Transactions and Proceedings of the Royal Society of New Zealand*, no. 60, 1930, pp.324-365.

²³⁸ David Alexander, Wai 119, Doc #C7, 'Land Dealings on the Mohaka River North Bank 1903-1992', p.50.

²³⁹ George Thompson recorded that 'In the 1960's Davy Jones set up a permanent crusher just upstream from the lower Mohaka bridge. This is now [1990] run by Mohaka Aggregates, a combination of three Wairoa firms, Draggers, Knights and Clarks. This plant has taken significant amounts of gravel from the river bend above the plant, with the result that the current moved to undercut the north bank at the shingle works area. The HB Regional Council has now apparently directed them to take shingle from the south side of the river bed, opposite the plant, to bring the river channel back.' George Thompson, Wai 201, #A27, pp.17-18.

²⁴⁰ Coastal Resource Inventory: Uruwera District, Wairoa Area, Unit Three: Mohaka, file 2, section 1.1

²⁴¹ Hawke's Bay Regional Council, File 72—Shingle Extraction General.

previously used by the local Catchment Board, but charges are managed under Section 36 of the Resource Management Act.²⁴²

208 In 1992, the Waitangi Tribunal recommended that future extraction should only proceed with the approval of Ngāti Pāhauwera, rather than the previous regime which was overseen by the Regional Council who permitted extraction in exchange for the payment of nominal royalties.²⁴³

209 In 2010, the Crown acknowledged the detrimental impact of gravel extraction activities at the Mohaka and Waihua Rivers on Ngāti Pāhauwera in its Deed of Settlement for Ngāti Pāhauwera's historical Treaty Settlement process.²⁴⁴ Part of the cultural redress package in Ngāti Pāhauwera's historical Treaty settlement with the Crown was agreement between the Hawke's Bay Regional Council and the trustees of the Ngāti Pāhauwera Tiaki Trust relating to the future extraction of gravel from the Mohaka River.²⁴⁵

Fishing-Waihua:

210 The Waihua River area was an important eel fishery for local Māori in the period before European arrival in the region.²⁴⁶

211 Fishing in an area of Hawke's Bay known as 'Wairoa Hard' is regulated under the Fisheries (Central Area Amateur Fishing) Regulations 1986. The regulation, covering the area between the Moeangi River mouth and the east bank of the Mohaka River, and stretching 16 kilometres out to sea, prevents the use of nets for taking finfish in an area recognised as a nationally important juvenile fish nursery.²⁴⁷ Commercial fishing (except crayfishing) has been prohibited in the area since 1981.²⁴⁸

212 In the early twentieth century correspondence between the Marine Department, Port Ahuriri and the Wairoa Harbour Board revealed concerns that fishing trawlers were operating very close to the coastline around the Mohaka River. The concern ultimately resulted in the late twentieth century commercial fishing ban, yet in 1915 the gravity of the issue was contested, with Port

²⁴² Moxon, 'The Impact of Post-Purchase Land Alienation on Ngāti Pāhauwera', p.7.

²⁴³ *Mohaka River Report*, pp.70-71.

²⁴⁴ Deed of Settlement of Historical Claims of Ngāti Pāhauwera, 17 December 2010, p.36.

²⁴⁵ Deed of Settlement of Historical Claims of Ngāti Pāhauwera, 17 December 2010, pp.44-45.

²⁴⁶ Sinclair, 'Land Transactions on the North Bank of the Mohaka River ca 1860-1863', p.91.

²⁴⁷ Fisheries (Central Area Amateur Fishing) Regulations 1986, s.4. See Appendix), in *The Crown and Ngāti Pāhauwera from 1864; Report for Wai 119/201*, George Thomson, January 1992, Wai 201, #A29.

²⁴⁸ 'Appendix 4', *Hawke's Bay Conservation Management Strategy*, Vol. 1, Department of Conservation, p.1.

Ahuriri officials reporting that the coast between Mohaka and Whakaki was ‘very foul with snags, making it almost impossible to work close in to the vicinity of the Wairoa River.’²⁴⁹

213 It is unclear how effective the Fisheries (Central Area Amateur Fishing) Regulations 1986 are for the Wairoa Hard area. George Thompson, in his 1992 overview of the relationship between Ngāti Pāhauwera and the Crown, noted that photographs taken between 1987 and 1990 depict trawlers working within five kilometres of the Mohaka River mouth.²⁵⁰

214 A Coastal Resources Inventory prepared by DOC in 1988 describes the ‘entire Wairoa Coastline’ as ‘popular amongst locals and visitors for surfcasting and contiki fishing from the beach.’ Areas such as the Waihua River mouth and beach, Poututu Stream, and Mohaka River were all described as popular contemporary fishing locations.²⁵¹

215 Bruce Te Kahika of Ngāti Pāhauwera has provided comment about fishing in the Poututu area.²⁵² He and his wife fished in the Poututu area after travelling to it along the beach from ‘the north’, although this hadn’t been done for some time because of family logistics. Other ‘locals’ continued to access Poututu using [quad] bikes but this required planning to account for tides. Poututu was regarded as a very tapu place and was not easy to access. He also included Poututu in a list of places he and his family have fished at along the coastline as far south as Napier. He states that this whole area is known to him as the Ngāti Pāhauwera area and it is implied that Ngāti Pāhauwera tikanga applies wherever he or his family fishes.

216 Waihua Beach is also mentioned as a popular fishing area in several published fishing guides:

216.1 Several Hawke’s Bay tourism pamphlets from the 1980s indicate that the Waihua Beach area between Mohaka and Wairoa is a good location for surfcasting, swimming and fishing.²⁵³

²⁴⁹ A. Petersen, Searcher, Port Ahuriri, to ‘The Collector’, Marine Department, M1 2/12/84 pt.1, ANZ, Wellington.

²⁵⁰ Thomson, ‘The Crown and Ngāti Pāhauwera from 1864’, p.114.

²⁵¹ Coastal Resource Inventory: Uruwera District, Wairoa Area, Unit Three: Mohaka, section 3.4

²⁵² Affidavit of Bruce Howard Te Kahika on behalf of Ngāti Pāhauwera, 11 April 2014, para.4.

²⁵³ Wairoa—New Zealand: The Eastern Gateway to Outdoor Adventure – find reference from ATL, possibly from Hawkes Bay tourism ephemera collection 1980s; Hawkes Bay Tourism Board Incorporated, ‘In and Out of Water’, Tourist Pamphlet, 1986 - find reference from ATL, possibly from Hawkes Bay tourism ephemera collection 1980s.

216.2 A 1991 guide notes includes Waihua on a list of good fishing beaches in Hawke's and Poverty Bay area.²⁵⁴

216.3 Gary Kemsley's *Hawkes Bay Surfcasting Guide*, published in 1999, including the following information about fishing at Waihua:

'...look for Waihua Beach Road which leads down to the water near the rivermouth. Deep water is close at hand here and the fishing can be very good. There is an area of snaggy water in front of the river entrance but once you move away from the rivermouth the bottom is cleaner. This can be a great sport for shark fishing with narrow tooth, tope, seven gill, blue sharks, spiny back, dogfish and spotted smooth hounds present at different times. During the summer months snapper and kahawai work the beach and figure prominently in angler's [sic] catches. A beach bike will give you access to many kilometres of water here on both sides of the rivermouth. Make your return to the road end before high tide if there is a swell running or you may be cut off when the waves wash right up to the base of the cliffs.'²⁵⁵

216.4 Revised editions of Gary Kemsley's guide published in 2003 and 2005 also discuss the fishing at Waihua. The 2003 guide displays pictures of a four-wheel drive vehicle parked on a flat grassy area just behind Waihua Beach with the sea and fishing rods dug into the sand in the background, and a picture of a family member holding a '30 kg seven gill shark taken in the surf at Waihua Beach.'²⁵⁶

216.5 The 2005 guide notes that: 'you can fish left, right, or straight in front of the carpark with confidence as fish feed all along this part of the coast', and 'this is a very fishy [sic] piece of water. The section on Waihua also instructs readers to '[m]ake sure you lock your car and put the alarm on if fishing away from your vehicle here.'²⁵⁷

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²⁵⁴ Gil Henderson, *Surfcasting: A New Zealand Guide*, Auckland: David Bateman, 1991, p.85.

²⁵⁵ Kemsley, *Hawkes Bay Surfcasting Guide*, pp.15-16.

²⁵⁶ Kemsley, *Fishing the Edge: a Guide to Surfcasting in New Zealand*, pp.38, 88.

²⁵⁷ Kemsley. *The Hawkes Bay Surfcasting Guide*, pp.20-21.

²⁵⁸

It has been reported to MOJ staff that the fishing competition is no longer held.

218 In March 1988, a sperm whale stranded on Waihua Beach 1.4 kilometres from the river mouth, and was found by DOC officials ‘half buried in sand, located at the high tide mark.’ In May 1994, a pygmy sperm whale stranded on the beach two kilometres east of the Waihua River mouth. This is in the vicinity of the Poututu Stream.²⁶⁰

219 At the 2008 Māori Land Court hearing, Mr Taylor described an incident ten years prior regarding the management of stranded whales. The former owner of Poututu Station, Morris Doole, found two sperm whale carcasses on the beach at Poututu. In cross examination, Mr Taylor described his journey to the site, explaining that the easiest way to access the whales was via motorbike along the beach from Wairoa. Mr Doole was recorded as supposedly, but inaccurately, leasing the land from Ngāti Pāhauwera, and had contacted a Ngāti Pāhauwera kaumatua concerning the whales. The kaumatua then instructed Mr Taylor and his brother to visit the beach. At the site, Mr Taylor and his brother performed a ceremony in accordance with Ngāti Pāhauwera tikanga, and agreed that DOC should remove the whales’ jaws in accordance with Ngāti Pāhauwera tikanga. DOC officials later presented the whales’ jaws and teeth to Ngāti Pāhauwera at Mohaka Marae.²⁶¹ Reference to leasing of the land in question by Ngāti Pāhauwera to Mr Doole is incorrect for the lands abutting the CMCA in the application area. The area in question was freehold land purchased by Mr Doole in 1992 from Poututu Station. This land was part of the Poututu Crown purchase of 1866. This land has recently changed hands and is now a part of the Haynes family holding in the area.

Fishing-Mohaka:

220 The Mohaka River mouth was historically a popular fishing area with local Māori and mid-nineteenth century whalers. By mid-1853 a whaling station operated at Mohaka, with boats

²⁵⁹ ‘Big Snapper Worth \$1000’, *Wairoa Star*, 25 January 1996, p.18; ‘Big Snapper had Smiler – ‘smiling’’, *Wairoa Star*, 7 March 2002.

²⁶⁰

²⁶¹ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.34-40.

manned by local Māori.²⁶² However, by 1854 William Snodgrass told Donald McLean that local Māori had abandoned the venture in favour of land cultivation, probably with wheat.²⁶³ Whaling is the subject of Alfred Cooper's ca.1860 water colour 'Cutting the blubber off a whale on Mohaka Beach', which depicts six men stripping a whale of its skin and blubber for boiling down.²⁶⁴ [REDACTED]

221 Locals interviewed by DOC officials in the late 1980s described the Mohaka River as a prolific fishing ground, particularly for kahawai, flounder and herring. Reti boards (reputedly a Ngāti Pāhauwera invention which appears tailored to the fishing environment provided by the Mohaka River) were 'always set up across the river mouth', with a defined hierarchy of placement.²⁶⁶ The Coastal Resources Inventory also recorded whitebait fishing occurring at Mohaka, with up to 12 nets a day in place during the fishing season. A 'fair percentage' of these white baiters were non-local residents, with many travelling from southern Hawke's Bay.²⁶⁷ A similar observation was made about recreation anglers, with about 400-700 estimated to be locals, and with between 50 and 200 visitors during a fishing season.²⁶⁸

222 As with the Waihua River, the Mohaka River is also mentioned in fishing guides. Gary Kemsley's *Hawkes Bay Surfcasting Guide* describes fishing and public access on both the north and south banks of the river.

222.1 North bank: 'This is the area just north of the Mohaka rivermouth [sic] and can be accessed through the quarry road (East Beach Road) which turns off at the top of the hill before you descend to the bridge over the river. Fishing can be good here although there are plenty of snags to grab your gear along most of the beach. Fishing to the north will get you into clearer water with less problems.'²⁶⁹

²⁶² McHugh, 'The Purchase of the Mohaka Block, December 1851', p.53.

²⁶³ William James Snodgrass to Donald McLean, September 1854, Sir Donald McLean Papers, MS-Papers-0032-0582, Object #1016541, ATL.

²⁶⁴ Alfred John Cooper, 1819-1869, 'Cutting the Blubber off a whale on Mohaka Beach [ca. 1860?]', Ref: A-235-010, ATL, Wellington.

²⁶⁵ [REDACTED]

²⁶⁶ Coastal Resource Inventory: Uruwera District, Wairoa Area, Unit Three: Mohaka, section 3.4.1

²⁶⁷ Coastal Resource Inventory: Uruwera District, Wairoa Area, Unit Three: Mohaka, section 3.4.6

²⁶⁸ Coastal Resource Inventory: Uruwera District, Wairoa Area, Unit Three: Mohaka, section 3.4.7

²⁶⁹ Kemsley, *Hawkes Bay Surfcasting Guide*, pp.16-17

222.2 South bank: 'Take the road to Mohaka settlement [West Beach Road?], which is well signposted from the main road, and follow it ultimately to the river. Cross the bridge and turn right and follow the track over the hill to the beach. You will come out just south of the rivermouth [sic]...There is a track south for about a kilometre and this offers easy access to the beach along its length.'²⁷⁰

Swimming and Surfing:

223 Although little information has been found on swimming and bathing, occasional references suggest that despite the area's remoteness such recreational activity at times occurs along the coastline in the application area. There are no reported surf life savings clubs in the area.

224 In September 1994, the Hawke's Bay Regional Council reviewed the bacteriological water quality of bathing beaches in the region. Between December 1993 and February 1994, 13 beaches deemed 'coastal areas commonly used by the public' were monitored for microbiological quality.²⁷¹ The methodology used by the research scientist was to wade out into the sea up to chest height to collect a water sample once every one to two weeks.²⁷²

225 Waihua Beach was included in the survey, although it was designated as receiving 'infrequent use'.²⁷³ Between December 1993 and February 1994 seven water samples were collected, and the report recommended that the survey be repeated again in two to three years.²⁷⁴

226 A 2004 surfing guide described the Hawke's Bay region as 'one of the most underrated surfing destinations in the country.' Its description of Waihua depicts the Waihua Beach Road with a parking area, and notes the beach is 'uncrowded [sic]' and 'good for surfers of all levels.'²⁷⁵ The same guide instructs surfers to follow East Beach Road from State Highway 2, and drive past the 'small settlement and Marae' to a car park beyond the quarry.²⁷⁶ This is a private road and does not provide legal public access to the CMCA. That this trip was taken without consequences needs to be considered.

²⁷⁰ Kemsley, *Hawkes Bay Surfcasting Guide*, pp.17-18.

²⁷¹ G.W. Hooper, *Hawkes Bay Regional Council: Bathing Beaches Bacteriological Water Quality*, September 1994, p.1.

²⁷² Hooper, *Hawkes Bay Regional Council: Bathing Beaches Bacteriological Water Quality*, p.6.

²⁷³ Hooper, *Hawkes Bay Regional Council: Bathing Beaches Bacteriological Water Quality*, p.14.

²⁷⁴ Hooper, *Hawkes Bay Regional Council: Bathing Beaches Bacteriological Water Quality*, p.20.

²⁷⁵ Peter B. Morse, *New Zealand Surfing Guide*, Mt Maunganui: Greenroom Surf Media Limited, 2004, p.334.

²⁷⁶ Morse, *New Zealand Surfing Guide*, p.335.

227 Mr James Adsett in his affidavit on behalf of Ngāti Pāhauwera mentions see non-Pāhauwera persons surfing at Mohaka beach as recently as last year.²⁷⁷

Other Recreational Uses

228 The Waitangi Tribunal's 1992 *Mohaka River Report* described recreational usage of the Mohaka River as follows:

'The upper reaches are a popular starting point for canoeing and rafting trips, with stretches for novices and experts. From just above its confluence with the Waipunga River to Willow Flat, the river is of outstanding value for recreational canoeing. The river is considered to be one of the better white-water rivers in the North Island, and six commercial companies operate rafting trips of one to two days operation. Parts of the river are also used by a rafting club of 200 to 300 members from the Hawke's Bay area. The lower reaches of the river are used for jetboating, although only on an informal basis.

Its headwaters and middle reaches have been assessed as being one of 23 nationally important recreational angling rivers in New Zealand. It is a nationally important trout fishery.

Swimming represents only a minor use of the river, and river tramping activities are not common in the catchment but are known to occur.

Recreational use has increased markedly since the 1950s. The relative value to recreational users of rivers in New Zealand was surveyed and analysed in 1981. The survey found the Mohaka River to be of "high" but not "exceptional" recreational value along with 93 other New Zealand rivers.²⁷⁸

Beach Landings

229 As was the case for other East Coast regions before the development of reliable inland roads, a major focus of communications was via coastal shipping. The remoteness of the application area, and the formidable line of cliffs interspersed with narrow river valleys made it difficult to transport goods and livestock. Given the rudimentary mid-nineteenth century land transportation network coastal shipping using small vessels such as schooners and cutters was a national feature from the 1840s and continued to be preferred in some instances for the transport of wool until the 1930s.²⁷⁹ Thus, coastal shipping was important for early settlers in northern Hawke's Bay.

²⁷⁷ Affidavit of Mr James Adsett on behalf of Ngāti Pāhauwera, 25 March 2014.

²⁷⁸ *Mohaka River Report*, p.72.

²⁷⁹ Michael David Neville Campbell, 'The Evolution of Hawke's Bay Landed Society, 1850-1914', PhD Thesis, Victoria University of Wellington, 1972, pp.188-193. Hawke's Bay farmers on the Heretaunga plans for

230 In 1859, a Napier to Wairoa shipping service began. Analysis of newspaper reports of vessel arrivals and cargoes in Napier by a Crown witness in the 1992 Mohaka River inquiry by the Waitangi Tribunal, suggests that there was a Māori component to the products and commodities exported from the area.²⁸⁰ It is clear that vessels operated on the coast from the Mohaka River to the Poututu Stream. Ships regularly landed at John Glendenning's Waihua station.²⁸¹ The Wairoa-Mohaka Steamship Company was formed in the early 1870s, and provided services between Napier, Mohaka, Wairoa and Waihua. River bars presented a hazard to shipping services sometimes trapping vessels inside the Mohaka River or stopping them from gaining access, thus smaller boats were sometimes used to ferry goods and passengers between land and sea.²⁸² The Wairoa-Mohaka Steamship Company became Richardson and Co in 1913 and continued to service Mohaka until the early 1920s when road transport replaced sea-going vessels.²⁸³

231 Several sources refer to a story of wool bales being tipped over the cliff at Waihua station, where they were stored in a shed at the Waihua River mouth [pre 1931 earthquake change in the river mouth?], before being loaded on to coastal vessels.²⁸⁴ S.D. Waters' book on the Richardson firm of Napier provides further detail, noting that a temporary barricade erected on the beach below the cliff prevented the bales from rolling into the sea.²⁸⁵ It is unclear how long this practice continued, but the first reference seems to be in Waters' 1952 book. [REDACTED]

[REDACTED]

It does seem from the nature of local topography that this method would have been used if the bales were being collected by boats from the ocean beach on the southern or western side of

example relied on river boat and barge services to transport their produce to the coastal terminus at Ahuriri for export.

²⁸⁰ See Fergus Sinclair, 'Land Transactions on the North Bank of the Mohaka River, Ca, 1860-1903', Wai 119/201, #C5, p.12.

²⁸¹ S.D. Waters, *Richardsons of Napier: A Century of Coastal Shipping 1859-1959*, Napier: Richardson and Company Limited, 1959, p.65.

²⁸² Susan Forbes, 'Mohaka Archaeology: A Survey of the Lower Mohaka River, Hawke Bay, North Island, New Zealand', WAI 201, A15, November 1989, s.1.4.

²⁸³ George Thompson, 'Coasting Vessels at Mohaka', *Wairoa Star*, 20 March 1990 in DOC Wairoa Field Centre: File HHR-05-07 ECW 1 Historic Heritage – Historic Research and Monitoring – research and assessments Wairoa History 1990-1997.

²⁸⁴ Macgregor, *Early Stations of the Hawkes Bay*, pp.255-56; McLean, *The Long Pathway*, p.143; Waters, *Richardsons of Napier*, p.67.

²⁸⁵ Waters, *Richardsons of Napier*, p.67.

²⁸⁶ [REDACTED]

the Waihua River mouth. The actual Waihua station woolshed was in the nineteenth century located further upstream on the western bank of the river.

Coastal Shipping – Mohaka:

232 After the 1851 Mohaka purchase, a small European community developed near the river mouth, while local Ngāti Pāhauwera dwelt on the northern or western bank.²⁸⁷ The settlement included a wool storage shed, perhaps built by the first run-holders in the area, Herman Stapleton and the Riddell Brothers.²⁸⁸ In the 1850s and 1860s, there was also boat building activity at Mohaka (located at ‘Carpenters Point’ on the east side of the river mouth), with Adolf Henrici (who arrived before December 1851) building whaleboats and small coastal vessels.²⁸⁹

233 Between the 1850s and early 1920s, the Mohaka River was frequented by coastal vessels transporting freight and passengers, until improving roads and vehicle technology made shipping uneconomic.²⁹⁰ While most of these boats were European owned; the “Hero”, the “Mary Ann Hudson” and the “Three Brothers”, for example, Ngāti Pāhauwera reportedly owned and operated a small steamer, the *Sailor’s Bride*, until it was wrecked at Wairoa in 1866.²⁹¹ Other Māori-owned vessels were recorded in Mr Sinclair’s evidence to the Waitangi Tribunal as the “Tere,” “The Lark,” the “Janet,” the “Maid,” the “Queen” and the “Lady Bird.”²⁹² The Wairoa-Mohaka Steamship Company was founded in the early 1870s and operated three vessels between Napier, Mohaka, Waihua and Wairoa.²⁹³ While small ships could come close to the

²⁸⁷ Donald M. Loveridge, ‘When the Freshets reach the Sea: Ngāti Pāhauwera and their Lands, 1851-1941’, Waitangi Tribunal Mohaka ki Ahuriri Hearing, WAI 201, J30, 1996, p.50.

²⁸⁸ Mathew Wright, ‘Farming in the Mohaka State Forest 1860-1950’, New Zealand Forest Service, Napier 1985, Wai 201, W10, p.23.

²⁸⁹ George Thompson, ‘Coasting Vessels at Mohaka’, *Wairoa Star*, 20 March 1990 in DOC Wairoa Field Centre: File HHR-05-07 ECW 1 Historic Heritage – Historic Research and Monitoring – research and assessments Wairoa History 1990-1997; Forbes, ‘Mohaka Archaeology: A Survey of the Lower Mohaka River, Hawke Bay, North Island, New Zealand’, s.1.4; Stephanie Louise McHugh, ‘The Purchase of the Mohaka Block, December 1851’, WAI-119/201, C4, p.53. On Adolf Henrici, see for example ‘Imports’, *Hawke’s Bay Herald*, 10 October 1857, p.2.

²⁹⁰ The ‘Shipping Intelligence’, ‘Vessels in Port’, and ‘Imports’ columns of the *Hawke’s Bay Herald* over this period provide a good sense of the types of ships visiting Mohaka, the frequency of their visits to ports in the region, and the types of goods they carried.

²⁹¹ *Hawke’s Bay Herald*, 7 August 1866; Sinclair, ‘Land Transactions on the North Bank of the Mohaka River ca. 1860-1903’, p.11.

²⁹² Sinclair, p.11. This Company we understand eventually became Richardson Shipping Company.

²⁹³ Alex Howell, *Mohaka School Centenary, 1880-1980*, Napier: Daily Telegraph Commercial Print, 1980, p.13.

river mouth, larger steam vessels servicing Mohaka from 1900 sent smaller surf boats to ferry goods and passengers to and from the beach.²⁹⁴

234 An undated Marine Department report (ca.1907-1919) described the river as having previously allowed small steamers to enter the harbour, but owing to changes at its mouth at the time of writing, river transport was no longer possible.²⁹⁵

235 In 1908, a section of the Mohaka River between the junction with Te Hoe River and the sea was gazetted as a timber floating area.²⁹⁶ Logs and sawn timber 'made into small rafts' were floated down river from the Mohaka Station near Te Hoe to ships waiting at the river mouth.²⁹⁷ Additionally, between the 1880s and 1917 a sawmill reportedly operated at the Mohaka River mouth.²⁹⁸

Are there geographical features that allow or prevent public access? If so, was access possible from other points?

236 The general aspect of area one is not inviting and access is a little more challenging than simply driving to a macadamised car park and walking onto a sand beach.

236.1 The Waihua beach is accessible along the non-legalised beach road and then a short walk down to the beach proper. (MOJ staff undertook this exercise in 2013.)

236.2 The Mohaka River mouth - east bank - is also accessible by car from the quarry site along a non-legalised road. This access point dates from 1947 and the creation of this access was one of the benefits envisaged by the Māori Affairs Department when it agreed to lease a site for a quarry on Waipapa A122. (MOJ undertook this exercise in 2013.)

What is the intensity and frequency of third party access / activities / occupation? What inferences might be drawn about the intention behind such activities?

²⁹⁴ George Thompson, 'Coasting Vessels at Mohaka', *Wairoa Star*, 20 March 1990. DOC Wairoa Field Centre: File HHR-05-07 ECW 1 Historic Heritage – Historic Research and Monitoring – research and assessments Wairoa History 1990-1997; See photograph from the MTG Hawkes Bay, Object # M72/29, 4610f, 83792, image printed from website, Showing a small steamer inside the mouth of the Mohaka River against the western bank in the vicinity of the Crown reserve and stockade.

²⁹⁵ Untitled Report, Wairoa County Overview, Local Bodies 1907-1919, W1 53/73 pt. 1, ANZ, Wellington.

²⁹⁶ *NZG*, 28 May 1908, no. 42, p.1527.

²⁹⁷ Macgregor, *Early Stations of the Hawkes Bay*, pp.136-37.

²⁹⁸ Forbes, 'Mohaka Archaeology: A Survey of the Lower Mohaka River, Hawke Bay, North Island, New Zealand', s.1.4.

237 These questions are beyond the scope of this high level report. Suffice it to say that there appears little access from the landward to the CMCA.

What, if any, infrastructure exists in the area?

238 The only evidence of infrastructure in this area is the Waihua Beach Road, and that is now, for all intents and purposes, no longer connected to the tidal beach per se, if indeed it ever was. There are no known extant marine structures between Poututu Stream and the east bank of the Mohaka River. While no physical structures rest in the CMCA, Westech Energy New Zealand holds a petroleum exploration permit for a 1,084 square kilometre area that extends down to the CMCA between Oputama and a point west of the Mohaka River. The permit was granted on 3 July 2006 and expires on 2 July 2016.²⁹⁹ This may presage the erection of significant infrastructure.

239 [REDACTED]
[REDACTED]
[REDACTED] In relation to these works, press reports of an infamous flood in May 1914 recorded the following under the by-line “Serious Damage in Wairoa County” but some doubt exists in my view around the structure of the paragraph and the conflating of information about different geographical locations. Be that as it may, the report noted:

239.1 A report from the country states that there has been a very heavy loss of stock. Roads and bridges have gone in all directions. At Waihua the river rose over 60 feet. The Wairoa River is still rising, and it is raining heavily at present. The river [Wairoa] is over all the walls, and the town wharf at the Harbour board shed dropped six inches. Several piles have been washed away. The Mohaka river rose to an enormous height last night, and the postmistress had to leave the office and take shelter at the hotel. The flood is running through the office. At noon to-day the Mohaka bridge is safe, but grave fears are expressed for its safety. The harbour works are still holding, but the contractor will be a heavy loser, owing to part of the inner training wall and tram line being washed away. The main works, as far as can be ascertained, are intact...³⁰¹

²⁹⁹ ‘Permit 38346 Report—21/08/2012’, *New Zealand Petroleum and Minerals*, available from <https://data.nzpam.govt.nz/PermitWebMaps/StaticReport.aspx?permit=38346>; accessed on 12 July 2012.

³⁰⁰ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁰¹ *Poverty Bay Herald*, 19 May 1914, p.6, Paperspast website, National Library.

240 Recent aerial images display a wide and braided river with a closed mouth some two kilometres northeast, suggesting that any remedial structures at the river mouth constructed in the 19th century have entirely disappeared.

241 The Waihua Beach road may have been constructed by the Glendenning family when their interests took over existing leases of land in the Waihua block in the area in the late 1880s? The road featured in partition orders for the Waihua 2C block in 1911. The following title tree explains this.

242 **Waihua 2C7B** (General land)

- a. Currently owned by Brian Leslie Cottle and Lilian Peggy Cottle (deceased daughter of Sue Te Aho) on CT HB C2/19, subject to a right of way over part.
- b. Formerly
 - i. Waihua No.2C created by Partition Order, 17 November 1910 and No.2C7 created by Partition Order 7 October 1911 and awarded to 2 owners and inclusive of a private road.
 - ii. Waihua 2C7B created by Partition Order dated 24 May 1917 and awarded to S Keita Rawiri? **Subject to a Right of Way over Waihua 2C7 in favour of the owners of Waihua 2C8 and 2C7A.** The Partition Order recorded that the land had been sold.
 - iii. CT 19/49 issued to Kieta Rawiri, 6 February 1922.
 - iv. **Transfer to Ernest Hember Glendenning**, 6 February 1922.
 - v. Transmission to Stewart Millar Daniel Haynes, and Laura Elizabeth Haynes, 18 March 1954.
 - vi. CT C2/19 issued to Stewart Millar Daniel Haynes, and Laura Elizabeth Haynes, 19 August 1968. Subject to a Right of Way over part appurtenant to Waihua A50B, Waihua A50A and Waihua A36.
 - vii. Transmission to Laura Elizabeth Haynes of Wairoa, widow, 2 October 1978.
 - viii. Transfer to Robert Ernest Alec Haynes (½ share) and East Coast Permanent Trustees Limited and Robert Ernest Alec Haynes (jointly) (½ share) as tenants in common. 2 October 1978.
 - ix. Transfer of the undivided one half share of Robert Ernest Alec Haynes to Robert Ernest Alec Haynes and the East Coast Permanent Trustee Limited, 7 May 1982.
 - x. Transfer to East Coast Permanent Trustees Limited, Robert Ernest Alec Haynes and Jill Diane Haynes, 15 November 1984.
 - xi. **Transfer to Brian Leslie Cottle and Lilian Peggy Cottle, 24 January 1989.**

243 **Former Waihua 2C8 - now A36** (General Land)

- a. Owned today by Robert Ernest Alex Haynes and Jill Diane Haynes on CT HB M1/1092. Appurtenant is a right of way which appears to be the end of the Waihua road which has now been washed away as the Waihua River changed course after the Napier earthquake, and left this section without access.
- b. Formerly:
 - i. Waihua No.2C created by Partition Order, 17 November 1910.

- ii. Waihua 2C8 (and Waihua 2C16) created by Partition Order, 7 October 1911. Boundary of 2C8 given as the sea. Awarded to 39 owners.
- iii. On Consolidation, 12 June 1941, 108 owners entered onto schedule. Block called **Waihua A36 (Beach Reserve)**.
- iv. Five individuals named as trustees for the **Ngāti Kura Hāpu of the Kahungunu Tribe**, 6 October 1981.
- v. Memorandum of Transfer, 23 June 1986. Lucky Pere, Jim Biddle, Wiremu Hokena, Paul Te Aho, in terms of an **Agreement for Exchange** dated 26 August 1984, to Robert Ernest Alec Haynes, Jill Dianne Haynes and East Coast Permanent Trustees Limited.³⁰²
- vi. CT M1/1092 issued to Wiremu Hokena, Paul Te Aho, Jim Biddle and Lucky Pere, 16 November 1987.
- vii. Transfer to Robert Ernest Alec Haynes, Jill Dianne Haynes and East Coast Permanent Trustees Limited, 29 November 1988.
- viii. Transfer to Alec Robert Ernest Haynes, and Jill Diane Haynes, 19 September 1989.

What involvement, if any, did the applicant group have in the establishment or on-going operation of that infrastructure (i.e. did they support or oppose its establishment, are they involved in its on-going operation)?

244 As there is no evidence of infrastructure in the CMCA except, perhaps the seaward pilings of the Mohaka town bridge (this would require additional investigation).

³⁰² The Haynes Family exchanged their land on the State Highway side of the Waihua River, on which their woolshed and yards had been constructed in the deeper past. The intention of the transferees was to create a Marae complex on the site. Personal communication with Mr Bob Haynes, May 2013.

Research Area Two [West Bank of the Mohaka River—Pōnui Stream]:

245 Research Area two extends south west from the west bank of the Mohaka River to the east bank of the Pōnui Stream. Aside from housing on the western side of the Mohaka River Bridge, there are no settlements located close to the CMCA in area two. As with area one the coastline between the Mohaka and Pōnui Stream is similarly remote, with McIvor Road providing public access to the CMCA.

Introductory Questions:

What is the identity of the applicant group?

246 The identity of Ngāti Pāhauwera is set out in the introductory section. Ngāti Kurumokihi (MTT) has also been recorded as the hāpu whose lands commenced at Waikari and may have had interests up to the Pōnui Stream.³⁰³ This area was included in the Crown's purchase of the Mohaka Block in 1851.

Has the applicant been appointed as a representative?

247 The applicant is the approved representative of the hāpu of Ngāti Pāhauwera.

Is the specified area outside the common marine and coastal area?

248 No. The area **does not include:**

248.1 any area of specified freehold land

248.2 any area owned by the Crown with the following status;

a conservation area (sec 2(1) of the Conservation Act 1987,

a National Park (sec of the National Parks Act, 1980,

a reserve within the meaning of sec 2(1) of the Reserves Act 1977, and

the bed of Te Whaanga Lagoon in Chatham Island (sec 9, Marine and Coastal Area (Takutai Moana) Act 2011).

Does the available information raise potential issues about extinguishment of customary title?

249 An area at the Mohaka River mouth ('a circle of one nautic [sic] mile radius from the East Head') was defined by the Marine Department, via an Order in Council, as a port under the Marine Act

³⁰³ Bevan Taylor, 1993, 'Mohaka-Waikare Confiscated Lands', evidence of Mere Kingi Ratima, Wai 201, #J 5, p.79.

1867 in November 1868.³⁰⁴ In 1914, the Wairoa County Council sought to establish a Harbour Board for the gazetted port area, but there is no evidence the proposal proceeded.³⁰⁵

250 No vesting of land in harbour boards appears to have occurred in this section of the application area.

Holds designated area in accordance with tikanga:

What evidence is there of operative tikanga?

Does the applicant group possess mana moana (allowing that this is a very modern term) in the area today?

251 As noted in the section for research area one, and shown in the excerpts from the testimony of Ngāti Pāhauwera witnesses to its CRO application before the Māori Land Court in February 2008, Ngāti Pāhauwera claim mana moana throughout the application area. Also noted in the previous report was the concession by Crown counsel in closing submissions on 21 February 2008 that Ngāti Pāhauwera held enduring customary rights in the public seabed and foreshore that, subject to particularisation of scope, extent and frequency, justified the issuance of a CRO from the Māori Land Court.³⁰⁶

252 These customary interests were further recognised by the Crown when it granted the Ngāti Pāhauwera Development Group and Tiaki Trust a rohe moana between the Waikari River and Poututu Stream, extending seaward for 12 nautical miles, under the Fisheries (Kaimoana Customary Fishing) Regulations 1998.³⁰⁷ As the guidance material published by the Ministry for Primary Industries explains, the gazetted notice of rohe moana is an indication of mana moana over a particular area. The application process is contestable and disputes over mana moana in a particular area must be resolved before the Minister for Primary Industries will confirm an application.³⁰⁸

253 Ngāti Pāhauwera representatives initially sought to encompass a larger area to the south, between the Waikari and Esk Rivers, in their gazetted rohe moana. However, the application was eventually dropped, on the understanding that an agreement would be later reached with

³⁰⁴ NZG, no. 22, 23 November 1868, p.549.

³⁰⁵ Formation of Mohaka Harbour Board APOE 16612, M1, 387/3/13/57 (ANZ).

³⁰⁶ Crown Closing Submissions—Introduction, in the Māori Land Court of New Zealand, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.2.

³⁰⁷ NZG, 15 September 2011, no. 141, p.4072.

³⁰⁸ 'A Guide to the Fisheries (Kaimoana Customary Fishing) Regulations 1988', *Ministry for Primary Industries*, available from <http://www.fish.govt.nz/en-nz/Māori/Kaimoana/default.htm>; accessed on 17 September 2012.

the holders of the rohe moana south west of the Waikari River.³⁰⁹ Ngāi Te Ruruku o Te Rangi was granted a rohe moana between the middle of the Waikari River mouth to Bluff Hill in December 1999.³¹⁰ The May 2006 letter from the Ngāti Pāhauwera Incorporated Society that outlined the proposed agreement noted that provision would be sought to allow Ngāti Pāhauwera hapu to collect kaimoana south of the Waikari.³¹¹ The status of the agreement is unclear, as the Ngāti Pāhauwera rohe moana was not gazetted for a further five years, by which point the notifying authority for Ngāti Pāhauwera became the Ngāti Pāhauwera Development and Tiaki Trusts.

254 Further exploration of third party interests in the research area, particularly toward Waikari may be required to determine whether Ngāti Pāhauwera’s assertions of mana moana overlap with those of other groups. The recent application to the Minister for a determination by MTT has now made this step an indispensable one.

255 Some of the deponents on behalf of Ngāti Pāhauwera disclose a association with the sea shore and the CMCA around Waikari and south as far as Cape Kidnappers based upon kaimoana gathering and fin fishing.³¹²

Does the applicant group currently exercise customary uses and practices in the area?

256 As with area one, the testimony of Ngāti Pāhauwera individuals before the Māori Land Court at Mohaka between 18 and 22 February 2008 provides evidence of a range of continuing customary uses and practices in the area. These uses included the collection of sand, stones, gravel, pumice, driftwood, kokowai, wai tapu, and tauranga waka.

257 Also as noted in the first section of this summary report, the 2006 Census listed 1,761 people self-identified as being of Ngāti Pāhauwera descent, of which 831 resided in the Hawke’s Bay region. Mr Toro Waaka estimated in 2008 that 600 people, the majority of the Ngāti Pāhauwera hapu population, resided between the Esk and Waihua Rivers. However, the coastal settlements in the area, Mohaka and Waihua, are located in research area one, and Raupunga, on the north bank of Mohaka River about seven kilometres inland from the coast. There are no ‘settlements’ near the coast in area two.

³⁰⁹ Ngāti Pāhauwera Incorporated Society to Wayne Ormsby, Ministry of Fisheries, 10 May 2006. (Source?)

³¹⁰ NZG, 2 December 1999, no. 184, p.4357.

³¹¹ Ngāti Pāhauwera Incorporated Society to Wayne Ormsby, Ministry of Fisheries, 10 May 2006.

³¹² See for example the affidavit of Derek Huata on behalf of Ngāti Pāhauwera, 5 December 2013.

258 The strong assertions of mana moana excerpted in the report addressing the area between the Mohaka River and Poututu Stream are relevant to area two. However, as a general observation, most, if not all, of the witnesses before the Māori Land Court in 2008 lived either at Mohaka, Raupunga, or Waihua—additional evidence from Ngāti Pāhauwera individuals exercising customary uses, practices, or activities between Mohaka and Pōnui Stream may be required to bolster the evidence.

259 Of that testimony, we have compiled the following examples and descriptions of customary activities identified either in the 2008 MLC hearing affidavits or through cross-examination as specifically occurring in area two. The remainder of the customary activities in the 2008 application were described as occurring generally across the wider application area, but specific locations were not identified by witnesses.

260 Charles Lambert reported that he looked for hāngi stones while fishing along the coast as far south as the Waikari River to the west of the Pōnui Stream.³¹³

261 As noted above for area one, several Ngāti Pāhauwera witnesses gave evidence that the entire application area, between Poututu Stream and Pōnui Stream is considered tauranga waka, although few people own waka today.³¹⁴ Two specific sites described as tauranga waka by Gaye Hawkins were located in research area one.³¹⁵ The details contained in the Earthquake Slip statutory acknowledgement – see above – suggest that access to the southeast was probably obtained in the deeper past via the land and not using canoes, except perhaps in calm seas? The advent of whale boats and the reported use of these for whale chasing from Waikari might have changed matters.

Are there other competing tikanga-based interests in the area?

262 It is unclear whether other hāpu or iwi possess tikanga interests in the area between Mohaka and Pōnui. It is possible that access by Ngāti Hineuru to the kahawai fishery at the Mohaka River mouth is obtained from the southern side of the river along the legal access point at McIvor Road? It is not clear that Ngāti Hineuru continues to practice its rights under the pre-1840 tuku, nor what tikanga might apply if it does?

³¹³ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.77.

³¹⁴ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.36, 48-50, 95, 98-99.

³¹⁵ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, pp.36, 108, 133-34.

263 The Maungahauru Tangitu settlement entity has made an application which abuts that of Ngāti Pāhauwera at the eastern bank of the Pōnui Stream.

Is the area within the rohe moana of another iwi, hapū or whanau?

264 There appears to have been some political agreement about the Waikari River as a boundary between the two modern entities, Pāhauwera and MTT engaged with the Crown on Treaty of Waitangi matters in this region. Although there is a suggestion that some hapu interests in this locality were not 'settled' by either group. The Pōnui Stream boundary for the purposes of this application appears to have removed any possible overlap.

265 The Waikari River, further to the south west is a boundary between neighbouring rohe moana for the purposes of the Kaimoana regulations.

Exclusive use and occupation of the area from 1840 until present day

Does the group use and occupy the specified application area now?

266 As the evidence before the Māori Land Court, summarised above and together with recent affidavits, suggests, although Ngāti Pāhauwera do not own land abutting the CMCA between the south bank of the Mohaka River and the Pōnui Stream, they continue to use the tidal edge of the application area to undertake a range of customary activities, uses and practices.³¹⁶

Did the group use and occupy the area or adjacent area at 1840?

267 As with area one, while the area between the Waihua River and Tangoio was reportedly 'dominated in the mid eighteenth century and later by the major tribe, Ngāti Pāhauwera,' most people in the region fled north to Nukutaurua at Mahia in response to raids from musket-armed enemies from the north and east.³¹⁷ While some Ngāti Pāhauwera hapū engaged in the fighting throughout this period, others claim to have remained on the land to keep the fires burning.³¹⁸

268 When fighting ended in the region around 1838 (previous invaders had come from the far north, Hauraki, Waikato, inland Patea and Taupo³¹⁹) Ngāti Pāhauwera, like their Kahungunu kin, began returning to their former settlements.³²⁰ When the missionary William Williams travelled

³¹⁶ Affidavit of Raymond Russell Edwards on behalf of Ngāti Pāhauwera, 25 November 2013.

³¹⁷ Ballara and Scott, 'Claimants' Report to the Waitangi Tribunal on Crown Purchases of Māori Land in Early Provincial Hawke's Bay', p.3.

³¹⁸ Waaka, 'Traditional Resources of Ngāti Pāhauwera before 1851', p.102.

³¹⁹ JDH Buchanan, *The Maori History & Placenames of Hawkes Bay*, (Ed. D.R. Simmons), Reed, Wellington, 1973, p.46.

³²⁰ Angela Ballara, *Taua 'Musket Wars', 'Land Wars' or tikanga? Warefare in Māori Society in the Early Nineteenth Century*, Penguin, Auckland, 2003, p.44.

between Ahuriri and the Turanganui a Kiwa mission station in 1840, he stopped at coastal villages, including Waikari. Also in 1840 Williams observed that Ngāti Pāhauwera had begun to reoccupy the Waikari and Mohaka river valleys following their five year absence 'on account of war.'³²¹ However, Patrick Parsons argued that the vast majority of the Hawke's Bay population remained in exile when the Treaty of Waitangi was signed.³²²

269 By the mid-1840s, Ngāti Pāhauwera had re-established their position in the northern Hawke's Bay (around the Waikari, Waihua and Mohaka River valleys), and began participating in commercial activities that drew a few Pākehā (primarily whalers and traders from Mahia) to settle in the region.³²³ Alexander Alexander, based at Ahuriri from 1846, opened a trading store at Waikari at some point after 1846 which was managed by W Thompson.³²⁴ In 1851, Paora Rerepu informed Donald McLean that 100 Ngāti Pāhauwera men (and presumably more women and children) resided along the Mohaka River.³²⁵ Toro Waaka, however, estimated the total population of the Mohaka region in 1851 as 'around 600'.³²⁶

270 As discussed in relation to research area one, while Ngāti Pāhauwera began returning to their rohe following the end of hostilities in the region, it is difficult to pinpoint when this return migration occurred.³²⁷

What inferences be drawn about one part of the area based on use and occupation of another part?

271 Given that third-parties own all the dry land abutting or adjoining the CMCA between the Mohaka and Waikari Rivers, we cannot draw any inferences regarding occupation. As the evidence taken from the 2008 Māori Land Court hearings and presented above addresses, the alienation of this land has not prevented the continuation of customary activities, uses and practices by Ngāti Pāhauwera in the research area.

³²¹ Williams, *The Turanga Journals 1840-1850*, pp.128-29.

³²² Patrick Parsons, 'The Mohaka-Waikari Confiscated Lands: Ancestral Overview (Customary Tenure)', WAI 201, J-18, November 1993, p.196.

³²³ Williams, *The Turanga Journals*, pp.352, 416; McHugh, 'The Purchase of the Mohaka Block, December 1851', p.45; Waitangi Tribunal, *Mohaka ki Ahuriri Report Volume 2*, p.54.

³²⁴ JDH Buchanan, *The Maori History & Placenames of Hawkes Bay*, (Ed. D.R. Simmons), Reed, Wellington, 1973, p.45; *Mohaka ki Ahuriri Report Volume 2*, p.55.

³²⁵ *Mohaka ki Ahuriri Report Volume 2*, p.59; 'Tuesday 7th January 1851', Donald McLean Diary, 14 December 1850—12 February 1851, Sir Donald McLean Diaries and Notebooks, MS-1231-1240, Object#1008793, ATL.

³²⁶ Waaka, 'Report No. 1 for the Mohaka Forest Claim', p.112.

³²⁷ McHugh, 'The Purchase of the Mohaka Block, December 1851', p.45; *Mohaka ki Ahuriri Report Volume 2*, p.54.

272 Toro Waaka, in his evidence before the Māori Land Court in 2008, noted that ‘in the time after colonisation’ (presumably after the area between the Mohaka and Waikari Rivers had been alienated to the Crown) it was common to see 10-15 Ngāti Pāhauwera horsemen and women riding along the beach south from Mohaka to travel to shearing jobs in the Tutira area (south of Waikari).³²⁸

Can inferences be drawn about the group’s use and occupation of the area of the common marine and coastal area from its use or occupation of adjoining or abutting dry land, or from nearby land?

273 Between December 1850 and May 1851, Donald McLean travelled in Hawke’s Bay to begin purchasing land. Previously, in April 1849, three Waikari rangātira had asked Governor Grey to discuss the potential for settling Pāhekā in the district so they might see ‘in what consists the wealth of the White people.’³²⁹

274 Seeking to extend the coastal frontage of the Ahuriri block northwards, McLean met local rangātira between 5 and 14 March 1851 and received their agreement to purchase an area of land between the Waikari and Mohaka Rivers. When a survey was commissioned in May, the block boundaries were ‘almost entirely defined by rivers and the coast.’³³⁰ Inland, the southern boundary was the source of the Waikari River, 16 miles from the coast, then across to the Mohaka River about 2 miles further upstream.³³¹

275 On 5 December the deed of sale for the approximately 87,500 acre block was signed at Mohaka, and the first payment of £200 distributed.³³² At the time of sale, Paora Rerepu was the pre-eminent rangātira of the confederated Ngāti Pāhauwera hapū.³³³ The only reserve from the purchase, Te Heru o Tureia, comprised 100 acres in the northern corner of the block near the confluence of the Waikari and Mohaka Rivers.³³⁴ The reserve’s boundaries were not defined, but it was included in the pastoral lease of a Pāhekā farmer, Philip Dolbel, in 1859.³³⁵

³²⁸ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.16.

³²⁹ ‘29th January 1851’, Donald McLean Diary, 14 December 1850—12 February 1851, Sir Donald McLean Diaries and Notebooks, MS-1231-1240, Object#1008793, ATL.

³³⁰ *Mohaka River Report*, p.25.

³³¹ Robert Park, Esq., Surveyor, to the Chief Commissioner, 7 June 1851, Encl. No. 2 in no. 6, *AJHR*, 1862, C-1, p.314.

³³² *Mohaka ki Ahuriri Report Volume 2*, p.371.

³³³ *Mohaka ki Ahuriri Report Volume 2*, p.360.

³³⁴ The approximate location of the reserve is depicted on a map in the Deed of Settlement of Historical Claims of Ngāti Pāhauwera, 17 December 2010, p.14.

³³⁵ Loveridge, ‘When the Freshets reach the Sea’, p.35.

276 Despite the 1851 purchase, the Waitangi Tribunal argued that Ngāti Pāhauwera would have continued to use the alienated land until Pākehā settlers became numerous.³³⁶ By early 1855, ‘a few whites’ had settled near the south bank the Mohaka River, but as the missionary James Hamlin reported, the difficulty of shipping access limited trade and inhibited the growth of the Pākehā population.³³⁷ In the same year, four Pākehā families settled along the Waikari River.³³⁸

277 McLean’s visit to Waikari in April 1853 to make the final instalment payment for the Mohaka block was also characterised by a discussion on the ownerships rights of the parties in the Waikari River, which formed a part of the southern boundary of the Mohaka Block. Following what appears to be conventional riparian law, McLean observed;

277.1 We discussed the propriety of their removing their pigs of[f] the English side of the [Waikari] River also of allowing a passage for timber and boats through the Waikare [sic] where they put up eel cuts that stop the passage. I explained to them that half of the river was theirs and half the white peoples but if if [sic] the white people would tell then when they wanted to take down timber as Mr Donaldson promised he should do[,] they on their part agreed to send two Natives to clear a passage for rafts or boats[...]³³⁹

278 According to analysis of the deed of purchase of the Mohaka block, the same riparian explanation should have applied to the Mohaka River until either the lands on the eastern bank had been alienated or the general application of the navigability test in Coal Mines Act, Amendment Act circa 1906?

279 The Crown undertook the Mohaka purchase to acquire land to lease to settlers, and to prevent the extension of illegal leasing into Hawke’s Bay from the Wairarapa district.³⁴⁰ In the years following the Mohaka purchase, the land was transferred from the Crown to private owners, who today comprise mostly, if not entirely third parties (as described below). Detailed title histories of these blocks have not been compiled, and further research outlining the alienation of these blocks may be required, but it is clear from engagement with Ngāti Pāhauwera that

³³⁶ The Tribunal’s report quoted from James Belich, noting that “The vast tracts of land sold did not turn wholly white instantly. Like empire itself, land sales could be myths on maps. Nominal alienation took place the day the deed was signed; substantive alienation took place the day customary Māori use ceased, and the gap between the two could be decades long.’ See *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century*, Auckland: Penguin, 2001, p.226, cited in *Mohaka ki Ahuriri Report Volume 2*, p.392.

³³⁷ James Hamlin to Church Missionary Society secretary, 31 March 1855, cited in McHugh, ‘The Purchase of the Mohaka Block, December 1851’, p.54.

³³⁸ McHugh, ‘The Purchase of the Mohaka Block, December 1851’, p.55.

³³⁹ *ibid.*, p.60. Quoting from McLean Journal entry, 6 April 1855, in Wai 201, #C4(a), p.96.

³⁴⁰ Loveridge, ‘When the Freshets reach the Sea’, p.12.

none of their affiliates own land between the Mohaka and Waikari rivers, except perhaps in the vicinity of the Mohaka town bridge.

280 The evidence suggests clearly that Pāhauwera hāpu vacated the abutting lands between the Mohaka and Waikari Rivers after the 1851 sale of the Mohaka Block to the Crown and that the centre of the respective rivers became a border of sorts. This suggests that continued access to the CMCA in this stretch of coast would have been from access points at Mohaka or points south of Waikari, and using the beach as a road way, or via the Waikari River and the settlement on the Te Kuta block.

Has the applicant group continuously used and occupied the area or adjacent areas (including adjacent common marine and coastal area) since 1840?

281 When Donald McLean was engaged in the Mohaka purchase he met with hapū at both ends of the block. (The Pōnui Stream dissects the coast and the Mohaka Block abutting boundary approximately 4.5 kilometres north east of Waikari and 6.2 kilometres to the west of the Mohaka River.) On 2 December, 150 Māori assembled at Waikari to hear him speak. On the Mohaka deed plan, an area west of the Waikari River, just upstream from the coast is labelled 'Kainga'—this could well have been the settlement William Williams visited in the previous decade.³⁴¹ The Waikari residents' interests were further recognised when the initial payment of £200 was divided evenly between the Waikari and Mohaka groups. McLean returned in April 1855 after paying the Mohaka residents £200 and paid those at Waikari a final instalment of £100.³⁴² When McLean made the first payment at Waikari 20 'hāpus' were present, as compared to 197 'hāpus' at Mohaka.³⁴³ However, the Waitangi Tribunal's *Mohaka ki Ahuriri Report* suggested 'McLean may have meant 'whanau' instead of 'hāpu'', though cautioned that his figures may still be inaccurate.³⁴⁴

282 In 1855, James Hamlin observed only 'a few natives... perhaps thirty' resident on the Waikari River, whereas 'about four hundred' lived on the Mohaka. Loveridge argues that this suggests a Ngāti Pāhauwera migration to the east bank of the Mohaka River, on what became the Waipapa block in 1868. The area between the two rivers was described as a 'dead space' between the

³⁴¹ 'Deed Plan of Mohaka Block 1851', reproduced in *Mohaka River Report*, p.26.

³⁴² *Mohaka ki Ahuriri Report Volume 2*, p.371.

³⁴³ 5 December 1851, Donald McLean Diary, 14 December 1850—12 February 1851, Sir Donald McLean Diaries and Notebooks, MS-1231-1240, Object#1008793, ATL.

³⁴⁴ *Mohaka ki Ahuriri Report Volume 2*, p.371, cf.37.

Waikari and Mohaka settlements.³⁴⁵ By the late 1860s, aside from the settlements at Waikari and Waipapa, most of Ngāti Pāhauwera's 'tangible assets were those rough lands in the interior', having been 'encouraged by the Crown to sell large proportion [sic] of their coastal and valley lands.'³⁴⁶ Of these blocks, Bishop Samuel Williams informed the Crown in 1871, those at Waipapa were the only land of real value remaining to Māori in the area.³⁴⁷

283 The extent of Ngāti Pāhauwera occupation of the area of land abutting the CMCA between the Pōnui Stream and Mohaka Rivers since the 1851 Crown purchase and into the twentieth century is unclear. The absence of any reported settlement at the mouth of the Pōnui Stream suggests that consideration should be given to the story of the nearest reported settlement. A kainga, Te Kuta, was located at the south bank of Waikari River mouth (outside lands abutting the original Pāhauwera application area), and inhabited until 'about 1912-14.'³⁴⁸ The 1,625 acre block was included in the Mohaka-Waikari Confiscation district in 1867 and returned to 35 named owners in 1870.³⁴⁹ The history of the block between 1870 and 1913 is unclear, but in July 1913 eight owners offered to sell the land to the Crown. It is unclear why the remaining dwelling was abandoned, but Toro Waaka, in his evidence before the Māori Land Court, agreed that Ngāti Pāhauwera resident at Te Kuta left the settlement in the 'early decades of the twentieth century.'³⁵⁰ A number of the unnamed owners were reportedly absentees, then resident at Petane and Tangoio.³⁵¹ Richard Boast's evidence suggests that the 130 people reportedly living at Waikare in 1874 belonged to the Ngaitauhere tribe and its Ngāti kaingaahi hāpu.³⁵²

284 The Crown purchased a 1,470 acre section of the block in January 1915. The sale was gazetted in November 1915.³⁵³ The Native Land Court awarded a small number of non-sellers 155 acres beside the Waikari River at the final bend before its outlet, where their kainga and urupa were

³⁴⁵ Loveridge, 'When the Freshets reach the Sea', pp.50-51.

³⁴⁶ Loveridge, 'When the Freshets reach the Sea', p.74.

³⁴⁷ Bishop Samuel Williams to the Superintendent of Hawke's Bay, 15 August 1871, cited in quoted in Sinclair, 'Land Transactions on the North Bank of the Mohaka River ca 1860-1863', p.44.

³⁴⁸ Cordry Tawa Huata, 'Report to Waitangi Tribunal for Ngaati Pāhauwera Society', February 1991, WAI 201, A-14, p.68.

³⁴⁹ This raises an issue requiring additional research.

³⁵⁰ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.21.

³⁵¹ R.P. Boast, 'The Mohaka-Waikari Confiscation Consolidated Report: Volume 2, The Mohaka-Waikari Blocks', 1996, Wai 201/209, J-29, p.125.

³⁵² R.P. Boast, 'The Mohaka-Waikari Confiscation and its aftermath: social and economic issues', 1995, Wai 201/209, J4, p.27.

³⁵³ NZG, 4 November 1915, no. 124, pp.3687-88.

located.³⁵⁴ The purchase was presumably part of the Crown's vigorous acquisition of the seaward 'returned-blocks' from the confiscation district to provide for a future Napier-Gisborne railway.³⁵⁵ In 1919 the Crown land at Te Kuta was offered for sale or long-term lease to discharged soldiers under the Discharged Soldiers Settlement Act 1915.³⁵⁶

285 While 'a large number of known pa' existed south of the Waikari River, these fall beyond the scope of this report.³⁵⁷ In 1991, Cordry Huata described the Ngāti Pāhauwera marae communities as 'Mohaka, Waihua, Raupunga...and Tangoio and Petane, south of the Waikari'. None were identified in research area two and this could suggest that no pa existed at Pōnui Stream.³⁵⁸

Exclusivity – Non-member use and occupation of the application area

Are there other iwi/ hapū/ whānau with established interests in the area?

286 There appears to be other Māori interests in the area of abutting land between Waikari River and the Mohaka River. In 2013 it was considered that following iwi, hapū, or whānau may have or may claim interests in parts of the application area: Ngāti Tu (Maungaharuru-Tangitū Incorporated [MTI]); Ngāti Kahungunu ki Ahuriri (Mana Ahuriri Incorporated); Ngāti Hineuru,³⁵⁹ and the Moeangiāngi 42N Trust. It appears that MTI claim some of the hapu in this overlap area east of the Waikari River and this matter will require further research.

287 Joy Hippolite's 1996 *Rangahaua Whanui* report for the Tribunal on the Wairoa area outlined the hapū associated with the region between Wairoa and Te Mahia at 1840. She noted that between 1769 and 1840 Ngāti Kahu were the hapū located at the mouth of the Wairoa River, with Rakaipaaka and Ngāti Hinemanuhiri to the east and north, and Ngāti Pāhauwera hapū located further south.³⁶⁰ These boundaries may coincide with the application boundary, but further research will be needed to assess these interests more comprehensively. Further research is recommended on customary interests in lands abutting the application area to determine if and where they overlap with the boundaries of the Ngāti Pāhauwera application

³⁵⁴ Boast, 'The Mohaka-Waikari Confiscation Consolidated Report: Vol. 2', p.127.

³⁵⁵ *Mohaka ki Ahuriri Report Volume 1*, p.xxxii.

³⁵⁶ Section 8, Block IX, Moeangiāngi Survey District, Sale 51, LINZ, Hawkes Bay Registry.

³⁵⁷ Huata, 'Report to Waitangi Tribunal for Ngaati Pāhauwera Society', p.68.

³⁵⁸ Huata, 'Report to Waitangi Tribunal for Ngaati Pāhauwera Society', p.7.

³⁵⁹ The Waitangi Tribunal in its Mohaka River report in 1992 recorded that 'Ngāti Hineuru also had an agreement which allowed them to fish at the river mouth at certain times when the Kahawai was running. Section 2.10., Ngātirataunga: Ngāti Pāhauwera and Other Tribes. On Line Version.

³⁶⁰ Joy Hippolite, *Wairoa*, Waitangi Tribunal Rangahaua Whanui Series, 1996, pp.1-8; Alan Ward, *National Overview Volume III*, Waitangi Tribunal Rangahaua Whanui Series, 1997, pp.212-13.

under the 2011 Act. This need is now more important given the cross-over of application areas in the vicinity of the Waikari River and the Pōnui Stream.

288 Affidavits canvas the issue of Ngāti Pāhauwera occupation. Ray Edwards recalls that when a child and perhaps up to when he was a young adult, he and his family lived at Waikare and exploited a wide range of fishing resources in the area and also to the south of the River Mouth.³⁶¹ He asserts that only Ngāti Pāhauwera people came to Waikare to fish and sometimes to camp in what is now the DOC camping ground, along with Europeans at Christmas time. These people also came through the Tait farm on the north eastern bank of the Waikari River as the land-owners had a good relationship with Pāhauwera people. During his time in the areas there was no presence of people from Tangoio or Wairoa at Waikari.³⁶² No mention was made of Pōnui Stream.

What evidence is there of third party use or occupation of the area?

289 The land between the south bank of the Mohaka River and the Pōnui Stream is today held by third-party non-applicant owners in a six large parcels with coastal frontages. Apart from Mclvor Road, southwest, of the Mohaka River, none of the roads leading to these properties provide legal public access down to the CMCA in area 2. We are of the view that none of these parcels are held by Ngāti Pāhauwera. Furthermore, locals may have agreements to access the beach in certain areas with the landowners' permission. When staff of the Department of Lands and Survey were completing the coastal reserves evaluations for the region in approximately 1983 it was recorded in notes on what was described as proposal 12, (the last of 12 proposals stretching from Mahanga to Waikare) that in relation to the beach north (north-east) of the Waikari River, 'local residents have an agreement with the owner of the farm to use the formed access and beach on Sundays and public holidays.'³⁶³ This refers to the Tait Road access point and which is southwest of the Pōnui Stream.

290 Mclvor Road is a relatively recent legalized and upgraded road. In 1988 it was recorded by DOC that the 'west bank of the Mohaka River Mouth (access via Mclvor Rd) is a popular area for campers during the summer months. (Toilet blocks and litter bins on site).' It was reported that there were usually 20 or so campers at the site over Christmas. This suggests a version of freedom camping which has all but disappeared, other than on the East Coast.

³⁶¹ Affidavit of Ray Edwards on behalf of Ngāti Pāhauwera, 25 November 2013.

³⁶² *ibid.*

³⁶³ DOC Head Office, 0060/DX0322/5313, former file number 8/859/7 Coastal Reserves (Wairoa County).

Is there or has there ever been established public access to the area and permitted activities associated with this access:

291 As described in the third party use and occupation section, public access to the CMCA at the Waikari River, as elsewhere in the application area, is difficult to obtain. On the east river bank, Tait Road stops short of the river mouth on an approximately 240 ha block owned by Waikari Limited. This would be essential if people wished to proceed east along the beach to Pōnui Stream.

292 To the west of the river, Waikari Road leads down to a point about 700 meters from the river mouth. Discussions with Hawke's Bay Regional Council officials revealed that a four-wheel drive track leads from Waikari Road to the river mouth, but to use this road permission is required from the owners of the land adjoining the final section of the river.³⁶⁴ Directions posted on the DOC website instruct visitors to the Waikari River Mouth campsite to 'turn into Waikari Rd, travel approximately 20 minutes on unsealed road to the road end.' Beside the Waikari River, the campsite is 'a 10 minute walk to the beach for swimming, fishing and boating.'³⁶⁵

293 Pedestrian travel along the beach between the south bank of the Mohaka River and the Waikari River reportedly remains possible 'most of the time', presumably depending on the state of the cliffs and the tides.³⁶⁶ A site-visit may be required to clarify this point. The Pōnui stream

Are there geographical features that allow or prevent public access? If so, was access possible from other points?

294 The legal public access point from the DOC administered reserve at the end of the Waikari Road is reportedly along a reserve on the southern bank of the Waikari River. The writer has not visited this site. It seems generally that the condition of the cliffs to the south west precludes safe access from that direction. Note that the Department of Conservation closed the coastal walkway in the vicinity of Waipatiki, Aropaoanui and the Earthquake slip area because of public safety reasons.

³⁶⁴ Email and phone call, Vincent Byrne, Operations Engineering Officer, Hawkes Bay Regional Council, 11 May 2012. Interestingly, Mr Bryne revealed the nature of the access to the Waikari River mouth in a discussion about a washout at the Pan Pacific Forest Products Limited mill further up the Waikari River on 30 January 2010. The washout forced thousands of logs down the river to the ocean, where they floated back on to the CMCA surrounding the river mouth and were left to rot away.

³⁶⁵ 'Waikari River Mouth Campsite', *Department of Conservation*; available from <http://www.doc.govt.nz/parks-and-recreation/places-to-stay/conservation-campsites-by-region/hawkes-bay/Waikari-river-mouth>; accessed on 24 September 2012.

³⁶⁶ Transcript, Māori Land Court Mohaka, Ngāti Pāhauwera Customary Rights Order, A20050006643, 18-21 February 2008, p.16.

What is the intensity and frequency of third party access / activities / occupation? What inferences might be drawn about the intention behind such activities?

295 Insufficient information was located to answer this question with any authority. Generally it appears that there is not significant use of the foreshore in the application area beyond those affiliated to the area. Pāhauwera have adduced affidavit evidence in this engagement which suggests that it was an almost exclusively Pāhauwera area of influence in the twentieth century.

What, if any, infrastructure exists in the area?

296 No infrastructure has been found to exist today in the CMCA in research area 2 between the Mohaka River and the Pōnui Stream and on to the Waikare River, except perhaps for the frontal edges of the piles of the Mohaka town bridge.

What involvement, if any, did the applicant group have in the establishment or on-going operation of that infrastructure (i.e. did they support or oppose its establishment, are they involved in its on-going operation)?

297 Requests more generally for European settlement and public works such as roads and ferries connote a strong interest in development and perhaps any associated infrastructure?

Structures:

298A 1988 Coastal Resources Inventory compiled by DOC for the area between the Waikari and Wairoa Rivers found no structures along the coastline, except for a concrete boat ramp located on private property near the Waikari River mouth.³⁶⁷ The Department of Conservation's website describes a boat ramp located near the Waikari River Mouth freedom campsite. The site is located on the Waikari River No. 2 Marginal Strip above the CMCA limit in the river.³⁶⁸

Roads and Communications:

299 While the beach was predominantly used as a thoroughfare between Waihua and Wairoa, evidence exists that travellers journeyed through or close by the CMCA in the south of the

³⁶⁷ Coastal Resource Inventory: Uruwera District, Wairoa Area, Unit Three: Mohaka, section 3.10.

³⁶⁸ 'Waikari River Mouth Campsite', *Department of Conservation*; available from <http://www.doc.govt.nz/parks-and-recreation/places-to-stay/conservation-campsites-by-region/hawkes-bay/Waikari-river-mouth>; accessed on 24 September 2012.

application area. Before 1840, a Māori track ran along the broken cliff coastline between the Moeangiāngi and Waikari Rivers.³⁶⁹

300 In 1845, Elizabeth Colenso, while she was heavily pregnant, became the first Pākehā woman to make the coastal trip between Ahuriri and Gisborne for her confinement. A couple of days into her trip her party rested at Waikari, before leaving on foot as the terrain was too rough for her to be borne on a litter. Instead she had to 'clamber up and down the precipitous hillsides,' reaching the Mohaka River after six days of travel, before passing the Waihua River a day later.³⁷⁰ In the application area, the party rested overnight at Waikari, Mohaka and Poututu.³⁷¹ It should be noted that the beach appeared not to be used at all for this part of the journey!

301 Messrs. Thomas and Harrison's 1844 walk from Wellington to Table Cape entered the application area from the southwest at Waikari, 'situated on the seashore on a river of the same name.' The travellers crossed the river in a canoe then spent 'two hours walking along the seashore under high cliffs, which are dangerous from constantly falling' until they reached Mohaka.³⁷²

302 In October 1845, William Williams described his journey south along the Hawke's Bay coast. On 24 October his party left Mohaka, travelling along the coast toward Waikari 'walking under the dangerous cliffs, the rain falling most of the time.'³⁷³

303 In 1851, the Crown surveyor Robert Park described to Donald McLean the nature of the land he was interested in purchasing. On the subject of coastal travel he noted 'the distance from Mohaka southwards to Waikari being above 7 miles, all cliff; the beach at the base is passable in the summertime, but is rather dangerous from the cliffs constantly falling.' Park also reported 'regular traffic between Mohaka and Ahuriri carried on by the natives when they have produce for sale', but did not indicate whether this trade occurred via canoes or via the coastal route.³⁷⁴

³⁶⁹ Department of Conservation, *Coastal Resource Inventory: First Order Survey, Hawkes Bay Conservancy*, Wellington: Department of Conservation, 1990, p.22.

³⁷⁰ Macgregor, *Pioneer Trails of Hawke's Bay*, Reede, Wellington, 1975, p.73.

³⁷¹ William Dinwiddie, *Old Hawke's Bay*, Dinwiddie, Walker & Company, 1916, p.19.

³⁷² *New Zealand Spectator and Cook's Strait Guardian*, Vol. 1, no. 31, 10 May 1845, pp.2-3.

³⁷³ Williams, *The Turanga Journals 1840-1850*, p.352.

³⁷⁴ Robert Park, Esq., Surveyor, to the Chief Commissioner, 7 June 1851, Encl. No. 2 in no. 6, *AJHR*, 1862, C-1, p.314. Original as enclosure 2 in McLean to Domett [Colonial Secretary New Munster], 9 July 1851, NM8 51/900 at CS152/177, Archives New Zealand, in Wai 201, #A21(d), p.785

304 On his return to the region in 1851, Donald McLean travelled along the coast between Waikari and Mohaka, where he signed the Mohaka deed a few days later, before sailing back to Ahuriri.³⁷⁵

305 The area of the Mohaka Crown purchase attracted some European settlers almost immediately and there is evidence of whaling taking place from this area prior to the purchase.³⁷⁶ The Crown contracted a block-house on its reserve at the mouth of the Mohaka River. This can be seen in a photograph held at the Hawkes Bay museum, together with a house and other buildings and a small steamer anchored inside the heads against the south west bank of the river.³⁷⁷

306 In November 1868, Te Kooti launched a series of raids against Māori and Pākehā in Poverty Bay. Ngāti Pāhauwera mobilised to pursue Te Kooti, leaving their kainga vulnerable to attack. On 10 April 1869, Te Kooti's force attacked Te Arakanihi, a kainga on the Mohaka River near modern day Raupunga. The assault left 31 Ngāti Pāhauwera persons dead, and the raiders moved downriver, killing Māori at Mangaturanga and Pākehā at the Mohaka settlement. Te Kooti's force then attacked two pā inland from Mohaka but retreated on 12 April when Ngāti Pāhauwera reinforcements arrived from Wairoa.³⁷⁸

307 James Cowan's book on the 'New Zealand Wars' records an incident involving reinforcements from Napier arriving at Mohaka by sea and then evacuating the place in haste: 'some of the Hauhaus rode along the beach for several miles following the lifeboat and firing on it as it ran south under sail close in shore.'³⁷⁹

308 Extracts from the Mohaka School 'Log' published in the Mohaka School Centenary book reveal that locals used the beach for transport between Mohaka and Waikari in 1891. The log entry, from 10 April 1891, read: 'Māori children attending badly, beach rough, heavy seas. **Waikari boys cannot ride along beach to school.**'³⁸⁰ [Emphasis added.]

³⁷⁵ *Mohaka ki Ahuriri Report Volume 2*, p.83.

³⁷⁶ Robert Park, Esq., Surveyor, to the Chief Commissioner, 7 June 1851, Encl. No. 2 in no. 6, *AJHR*, 1862, C-1, p.314. Original as enclosure 2 in McLean to Domett [Colonial Secretary New Munster], 9 July 1851, NM8 51/900 at CS152/177, Archives New Zealand, in Wai 201, #A21(d), p.785

³⁷⁷ From MTG Hawkes Bay, object # M 72/29, 4610f, 83792, Website.

³⁷⁸ Judith Binney, *Redemption Songs: A Life of Te Kooti Arikirangi Te Turuki*, Auckland: Auckland University Press, 1995, pp.160-61; *Mohaka ki Ahuriri Report Volume 2*, p.416.

³⁷⁹ James Cowan, *The New Zealand Wars: A History of the Māori Campaigns and the Pioneering Period, Volume II: The Hauhau, 1864-1872*, Wellington: W.A.G Skinner, Government Printer, 1923, p.323.

³⁸⁰ *Mohaka School Centenary, 1880-1980*, Napier: New Zealand Daily Telegraph, 1980, p.25.

309 Oral evidence collected by Bevan Taylor in 1993 includes references to twentieth century use of the coastal track. One informant, Bill Broughton, recalled: ‘in the old days and even during my time the people were using the Bridle track, coming from Mohaka to Waikari along to **Tiwhanui** the halfway stop along the coast, still using the track to Ridgemount, to Aropaoanui, then on to Tangoio.’³⁸¹ [Emphasis added.]

310 In January 1981, Denis McLean and his family continued their years’ long walk south from Te Araroa to Wellington, crossing the Mohaka River Bridge before heading toward the western beach. The party stopped at a ‘smart new homestead’ to ask permission to cross paddocks to the beach but no one was at home. This is probably before the modern Mclvor Road was legalised? They proceeded ten kilometres along the coast until Waikari was reached. The crossing appeared dangerous and the travellers sought and were given assistance by a local farmer across the river – presumably by boat. Denis McLean observed that he had a letter of introduction to the farmer occupying the land on the western bank of the river.³⁸²

311 Although well outside the application area, McLean’s comments on the nature of the coastline southwest are useful. The area of the Matangimomoe cliffs was described as a vast series of cliffs and slippages and it was in this area that some two hundred acres of land had fallen during the 1931 earthquake and been pushed out into the sea. The trampers had to endure camping under dangerous overhangs and travelled close to the sea to avoid possibly injury from rock falls. The foreshore did not provide easy travel with large rocks and boulders to be overcome. The rest of the trip to Moeangiangi appeared to be relatively easy, and McLean, obviously reading the same sources as this writer, noted that early travellers (from the south) would turn inland at Moeangiangi ‘to avoid the rock-hopping we had just endured...’³⁸³ Travelling south west along what was described as ‘not a formed track, just a well-trodden line beneath walls of rock and above the restless sea... The shoreline was usually a maze of boulders thrown from sheer limestone bluffs above’³⁸⁴

Beach Landings

312 James Tait’s Waikari station served as landing place for the Richardsons’ shipping company, although it was reportedly a difficult place to land at due to the rugged coastline and rapid wind

³⁸¹ Bevan Taylor, ‘Mohaka-Waikari Confiscated Lands: Customary Usage Report’, WAI 201, J5, November 1993, p.24.

³⁸² Dennis McLean, *The Long Pathway*, p.148.

³⁸³ *ibid.*, p.150.

³⁸⁴ *ibid.*

changes.³⁸⁵ The first trading station was established at Waikari in 1847 by Alexander Alexander, but it burnt down within a couple of months.³⁸⁶ The Waitangi Tribunal reported instead that in 1846 Alexander (Napier's second permanent Pākehā inhabitant, arriving in 1846), had established a trading Store at Waikari, run by Mr. W. Thompson.³⁸⁷ No similar developments appear to have occurred at the Pōnui Stream.

313 Around 1866, James Tait built a homestead on the northern bank of the Waikari at the last bend of the river. The homestead was located on the pack track, making it a convenient stopping place for coastal travellers.³⁸⁸ In 1917, James Tait wrote to the Prime Minister on the Te Kuta block survey, and informed him that the river mouth was 20 miles from Napier and navigable by 'small oil boats for over three miles.'³⁸⁹ Upon investigation, the Commissioner of Crown Lands Napier commented that the lower reaches of the river were only intermittently navigable, 'generally with long periods [of time] in between.'³⁹⁰

314 During the period when maritime transport was the easiest way to transport goods in the region (circa 1860s until the late 1890s), Waikari was one of several 'drop-off' points for coastal shipping vessels travelling between Napier and Wairoa. Waikari seems to have received significantly less shipping traffic than the larger northern settlements.³⁹¹

315 As discussed above, the only structure we have identified in the vicinity of the specified area is the boat launching ramp at the Waikari River mouth, and this is located upriver beyond the CMCA boundary.

What evidence is there of third party use or occupation of the specified application area?

Fishing

316 The Waikari River Mouth was reportedly the site of whaling in the late nineteenth century, with local informants describing to DOC officials a whaling station atop the Western Hill overlooking the Waikari River.³⁹² James Tait informed the Prime Minister in 1917 that the river mouth was

³⁸⁵ Waters, *Richardson's of Napier*, pp.65-66.

³⁸⁶ Macgregor, *Early Stations of the Hawke's Bay*, p.257.

³⁸⁷ *Mohaka ki Ahuriri Report Volume 2*, Wellington: Legislation Direct, 2004, p.56.

³⁸⁸ Macgregor, *Early Stations of the Hawke's Bay*, p.257.

³⁸⁹ James Tait to Right Hon W.F. Massey, 7 August 1917, LS 1 22/1033, ANZ, Wellington.

³⁹⁰ Commissioner of Crown Lands to Under-Secretary for Lands, 30 August 1917, LS 1 22/1033, ANZ, Wellington.

³⁹¹ As with Mohaka, the 'Shipping Intelligence', 'Vessels in Port', and 'Imports' columns of the *Hawke's Bay Herald* over this period provide a good sense of the types of ships visiting Waikari, the frequency of their visits, and the types of goods they carried.

³⁹² Coastal Resource Inventory: Uruwera District, Wairoa Area, Unit Three: Mohaka, section 3.4.1.

‘an ideal spot for fishing.’³⁹³ After investigation of Tait’s claims, the Commissioner of Crown Lands Napier concluded that fishing in the area ‘would only be indulged in as recreation by the idle or by-chance visitor.’³⁹⁴

317 In the 1970s and 1980s, the Paieka Surfcasting Club – a Ngāti Pāhauwera initiative named after a taniwha in the Mohaka River but also associated with the general coastline to Tairāwhiti suggesting where Kāhāungunu peoples came from - held regular fishing tournaments at the Mohaka Beach area and extending as far south as the Waikari River.³⁹⁵ One such surfcasting competition, held on 3 March 1985, attracted 315 participants from across the North Island competing for a \$30,000 prize. The proceeds from the competition went towards the Kāhāungunu Marae building project.³⁹⁶

318 Several Hawke’s Bay tourist pamphlets - recognised I think as local booster publications - from the 1980s describe the Waikari River mouth area as good for surfcasting, sea fishing, swimming and windsurfing.³⁹⁷ A fishing guide published in 1999 described the Waikari Beach as ‘a difficult one to access as the public road finishes at a small camping area well back from the beach on the edge of the Waikari River. It is not possible to walk the riverbank to the ocean, and you can’t even see it, even though it is only a kilometre away. There is a track, (part of the New Zealand Walkway system) that meanders over the hills of the adjacent farm which ultimately ends up on the beach. It is a long walk but worth it when you see the golden sand of the beach stretching off into the mist.’³⁹⁸ The status of this track remains unclear as DOC closed the walkway in 2002 because of the dangers posed by the condition of the cliffs above.

³⁹³ James Tait to Right Hon. W.F. Massey. 7 August 1917, LS 1 22/1033, ANZ, Wellington.

³⁹⁴ Commissioners of Crown Lands to Under-Secretary for Lands, 30 August 1917, LS 1 22/1033, ANZ, Wellington.

³⁹⁵ Awhina Waaka mentions that this taniwha also protects the coastline as far north as Whangara, the site of Paieka Island or Paieka’s whale. Affidavit of Awhina Evelyn Waaka on behalf of Ngāti Pāhauwera, Para 13. Affidavit of Isobel Beronica Thompson on behalf of Ngāti Pāhauwera, 11 April 2014, suggests that the club went into abeyance and was resurrected in the early 1990s and ran through to 2006 when it again slowed down.

³⁹⁶ ‘Mohaka Fishing Contest – Unique in New Zealand’, *Wairoa Star*, 17 January 1985, p.9; ‘Paieka \$20,000 prize goes to Wairoa’, *Wairoa Star*, 5 March 1985, p.6.

³⁹⁷ Hawkes Bay Tourism Board Incorporated, ‘In and Out of Water’, Tourist Pamphlet, 1986; Bamboo Lodge Motels, ‘Hawke’s Bay The Lifestyle Region of New Zealand’, ca.1990—find references from ATL, possibly from Hawkes Bay tourism ephemera collection 1980s.

³⁹⁸ Kemsley, *Hawkes Bay Surfcasting Guide*, p.18.

319 Bevan Taylor covered off some of the available evidence about fishing by the Tangata Whenua in his 1992 report for the Mohaka ki Ahuriri inquiry.³⁹⁹ What is interesting is the degree to which access to kai moana was assumed across a large swath of the Hawke Bay from Waikari down to Pania [reef], which the writer understands is located off the main beach at Napier. For example;

319.1 Mere Kinga Ratima was recorded as observing; ‘The Waikare River was where we went fishing mullet and herring. At the mouth of the river on a reef out at sea hāpuka was caught. **Off the coast at Moeangiangi** there was another reef where we caught Tarakihi and moki.’⁴⁰⁰ [Emphasis added.]

319.2 Gerald Aranui recorded the following in his 2013 affidavit; ‘My family went to the beach a lot to fish, get hangi stones and wood and **get shell fish along the coast past Waikari**. Sometimes we camped there and other times we just went down for the day. The people you saw at the beach were mainly Ngāti Pāhauwera people but in the Christmas holidays **you got people who came from the towns who I didn’t know**.’⁴⁰¹ [Emphasis added.]

319.3 Mr Lu McDonnell provided an image of life in the Waikari area between circa 1945 and the early 1960s and he noted that ‘the traditional shellfish gathering area for Ngāti Pāhauwera was at Aropaoanui and access was only be horse or foot along the coastline.’⁴⁰² He confirmed that he had personally gone there. He made no comment about the Pōnui Stream but presumably he passed this on his daily horse ride to school at Mohaka.

Swimming and Surfing

320 The *New Zealand Surfing Guide’s* Waikari entry outlines two routes for surfers to access the river mouth. As the above fishing guide indicates, the area is considered publically accessible, but access is difficult. The first route entails a ‘2km hike to the [river] mouth’ on the southwest side of the river from a car-park and camping ground at the end of Waikari Road. The second follows ‘the first left off Waikari to the northeast side’ (presumably Glenbrook Road, then Tait Road which terminates at Waikari, short of the river mouth). The guide describes both routes as ‘a

³⁹⁹ Bevan Taylor, ‘Mohaka-Waikari Confiscated Lands: Customary Usage Report’, WAI 201, J5, November 1993, pp.23-24.

⁴⁰⁰ *ibid.*, p.28.

⁴⁰¹ Affidavit of Gerald Aranui, 26 November 2013, p.1.

⁴⁰² Affidavit of Luis James McDonnell on behalf of Ngāti Pāhauwera, no page number.

bugger of a long winding metal road drive', and the river mouth as 'very isolated and uncrowded [sic].'⁴⁰³

In addition to the information set out above, what evidence is there that the applicant group has, or has held, exclusive rights in the application area?

321 No evidence has emerged which strongly suggests that the applicants possess exclusive rights in the application area.

What is the attitude of the applicant group to use / occupation by third parties? (Noting this will largely come from the applicant group's evidence)

322 The applicants' affidavit evidence has still to be fully reviewed.

Are there examples of acts by members of the applicant group which show or imply capacity to exclude non-members?

323 In July 1862 two Pākehā travelling south from Wairoa to Napier were stopped at Mohaka by local Māori who confiscated their horses because the 'runanga had prohibited Sunday travelling.' Their horses were transported across the river and the men were asked for five shillings each for their return. When they refused, the locals detained them for over a day.⁴⁰⁴ Similar situations arose around this time in other parts of the country and can be understood as local Māori 'officials' taking extravagant positions not anticipated in the relevant legislation creating local runanga.

324 As noted in the first report, the existence of a gazetted rohe moana consecutive with the boundaries of the application under the 2011 Act, allows appointed Tangata Kaitiaki the power to restrict the use of the CMCA for kaimoana gathering. Taking aquatic life in a gazetted rohe moana without the authorisation of the relevant Tangata Kaitiaki is an offence punished by fines of up to \$20,000.⁴⁰⁵

⁴⁰³ Morse, *New Zealand Surfing Guide*, p.335.

⁴⁰⁴ See *Hawke's Bay Herald*, 14 June 1862, p.5; *Hawke's Bay Herald*, 26 July, p.3; *Hawke's Bay Herald*, 19 August 1862, p.2.

⁴⁰⁵ Fisheries (Kaimoana Customary Fishing) Regulations 1988 (SR 1998/434), ss.41-46.

Appendix I

Research Process/ Sources Consulted:

325 [Redacted]
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report also draws upon the Waitangi Tribunal's *Mohaka River Report (WAI 119)* and *Mohaka ki*

Ahuriri Report (WAI 201) and the associated records of inquiry; material on the National Library

of New Zealand's *Papers Past* database; additional material from the Alexander Turnbull Library and National Library of New Zealand; the *New Zealand Gazette*; *Quickmap*, *E-map*, and *Google Earth Pro* software.

Master Document List

This list of documents has been compiled from the research folders which were haphazardly compiled during the course of research work under the 2004 Act and also more recently under the 2011 Act, as information was collected and collated. Please note that not all references in footnotes are recorded in these lists.

Each research volume is numbered according to the source location or type of collection. For example there are two volumes of "Bibliographical information" containing extracts from published sources recorded in the order these were acquired. There are also folders dedicated to materials located at Regional and District Council offices and materials located at Archives New Zealand arranged according to Agency.

Within folders materials are located under numbered dividers and these are used in this list to identify individual piece items.

Bibliographic and Official Sources

Eastlight folder # 1	Item Description	Comments/Location
Tab 1A	<i>New Zealand Government Gazette</i> , 4 January 1856, pp.1-2	
1	<i>Mohaka School Centenary 1880-1980</i> , (Centennial Committee)	ATL, misc pages
2	<i>Richardsons of Napier, A centenary of Coastal Shipping 1859-1959</i> , S.D. Waters,	Misc pages
3	<i>The Journal of the Polynesian Society</i> , vol.26, 1917, pp.91-92	Web version,
4	<i>Dictionary of New Zealand Biography</i> , "Guthrie-Smith, William Herbert, 1862-1940.	Web Version Original in Vol. 3.
5	<i>Transactions of the New Zealand Institute</i> , Vol.60, 1930, ps. 324, 341	Web Version
6	<i>The Hawkes Bay Almanac</i> , 1865, pp.74-107 and 142-147	ATL, Ref Micro 1043
7	<i>The New Zealand Wars</i> , James Cowan, 1923, vol. II, pp.322-323,	
8	<i>Pioneer Trails of Hawkes Bay</i> , Miriam Macgregor, 1975, pp.72-73.	
9	<i>Early Stations of Hawkes Bay</i> , Miriam Macgregor, 1970, pp. 18-20, 135, 254-259,	
10	<i>History of Hawkes Bay</i> , J.G. Wilson, 1939, pp.176-179, 182-183, 204-207, 324-325, 328-333, 360-363.	
11	Wairoa, in <i>Heritage Trails</i> , 2001, p.2, pp.13-18	

12	<i>The Turanga Journals 1840-1850</i> , Francis Porter (ed), 1974, pp.80-85, 350-353, 358-361, 658-659.	
13	<i>The Wairoa County Council: the first hundred years...</i> , R.C Wilson, 1978, pp.30-31, 36-37, 46-49, 50-51, 72-73, 78-79, 82-83, 86-89, 92-93, 156-157.	
14	<i>Wairoa Centennial Celebrations 1858-1958</i> , 1959, pp.9-11.	
15	<i>Early Stations of Hawkes Bay</i> , Miriam Macgregor, 1970, pp.135-137, pp.203-206.	Note overlap with #9 above.
16	<i>Pioneering Reminiscences of Old Wairoa</i> , T Lambert, 1936, pp.26-29, 72-77, 104-109, 186-187, 206-207	
17	<i>New Zealand Historic Places Trust Inventory</i> , Wairoa County, March 1989.	
18	<i>AJHR</i> , 1851, C-No.-1, pp.313-314.	
19	<i>AJHR</i> , 1862, E-No.9, pp.19-22 <i>AJHR</i> , 1863, A-No.8A, pp.4-5 plus map. <i>AJHR</i> , 1873, G-7, no page number. <i>AJHR</i> , 1886, G-15, pp.8-9	
20	<i>New Zealand Gazette</i> , 1881, p.1115. <i>New Zealand Gazette</i> , 1882, p.912. <i>AJHR</i> , 1933, G-10, p.40, plus map. <i>New Zealand Gazette</i> , 1936, p.1121 SO plan 4390 <i>New Zealand Gazette</i> , 1936, pp.1423-1244	
2	<i>Journal of Votes and Proceedings of the Provincial Council of Hawkes Bay</i> , 1859, Session 1, 1+3, pp.1-2, p.53, pp.55-56. <i>Journal of Votes and Proceedings of the Provincial Council of Hawkes Bay</i> , 1860, Session II, 1860, pp.37-38, pp.61+65 <i>Journal of Votes and Proceedings of the Provincial Council of Hawkes Bay</i> , Session IV, 1862, pp.1+12, pp.27, 30, 32-33 <i>Journal of Votes and Proceedings of the Provincial Council of Hawkes Bay</i> , Session II, 1861, pp.22-23, 45-46, 48-49, 57-58, 60-62, 91-94, and 97. <i>Hawkes Bay Provincial Gazette</i> , 1862, vol.3, pp.8-10, 65-68. <i>Hawkes Bay Provincial Council Proceedings</i> , session 5 and 6, 1862-1863, Estimates 1 April 1863-1864, pp.43-46 <i>Hawkes Bay Provincial Council Votes and Proceedings</i> , sessions 7 and 8, pp.24, 45, 47, 58, 59, 101-106. <i>Hawkes Bay Provincial Council Proceedings</i> , 1873, - Mr Bold's Report on the Dray Road to Wairoa, - Mr Webber's Report on the Dray Road to Wairoa - Mr Rochfort's Report on the Proposed new road to Wairoa	ATL, Wellington
3	DOC, <i>Coastal Resources Inventory</i> , pp.19-20.	

4	DOC, <i>Coastal Resource Inventory First Order Survey</i> , Hawkes Bay Conservancy, 1990.	
5	<i>Hawkes Bay Provincial Centennial 1858-1958</i> , 'Picture of a Province' pp.4-5, 30-33, 40-47, 76-77.	
6	Susan Forbes and Warren Gumbley, Ngāti Pāhauwera – Archaeological Survey, 1996. Susan Forbes, <i>Mohaka Archaeology: A Survey of the Lower Mohaka River, Hawkes Bay, North Island, New Zealand</i> .	Also in the Waitangi Tribunal folder
7	<i>The Long Pathway</i> , Denis McLean, 1986.	Extracts.
8	Wairoa Hawkes Bay: Archaeological Survey, David C Nevin, New Zealand Historic Places Trust and Dept. of Conservation, 1988	Extracts
9	'A Study of Early Colonial communications in the Hawkes Bay During the Period 1858-1876, MA Thesis, VUW, date unknown	Extracts
10	Fish and Game New Zealand, Mohaka River Fishery.	Access points and maps
11	Hooper, G.W., 1994: Bathing Beaches; bacteriological water quality, Hawkes Bay Regional Council Report Resource Management Group 94/6	Both Waihua and Mohaka Rivers mentioned.
12	'The History of Farming in the Mohaka,' Matthew Wright, 1985 New Zealand Forest Service	Wai 201 #W10

Folder #2	Item Description	Comments/ location
1	<i>Surfcasting: A New Zealand Guide</i> , Gil Henderson, 1991, David Bateman Publication	p.85
2	<i>Hawkes Bay Surf Casting Guide</i> , Gary Kemsley, 1999, The Halcyon Press, Auckland.	pp.15-23.
3	<i>Fishing the Edge: A Guide to Surfcasting in New Zealand</i> , Gary Kemsley, 2003, the Halcyon Press, Auckland.	pp.38-39, pp.88-89.
4	<i>The Hawkes Bay Surfcasting Guide</i> , (2 nd Ed.), Gary Kemsley, The Halcyon Press, Auckland, 2005.	pp.20-12.
5	'A Chronological History of Wairoa,' in <i>The Mail Coach, Journal of the Postal History Society of New Zealand</i> , August 2003, Vol.39(5), #326, pp153-156.	

Internet Research

Folder #1	Item Description	Comments/
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		location
1	<i>Into the Mist</i> : Tess Redgrave travels to the home of the Tuhoë http://www.aadirections.co.nz/Issues?Autumn2005/Stories/Features/Kiwiroadtrips.htm	
2	Gisborne and the Eastland Region http://gisbornenz.com	
3	Pacific Highway Wairoa to Napier via Pacific Coast Highway http://www.opotikin.com	
4	Surfcasting Fishing Tackle: Photos http://www.takletactics.co.nz	A Waihua Snapper
5	Hawke's Bay Road Trips: Discover the wonders of Hawke's Bay http://www.aatravel.co.nz	
6	<i>Spot X Fishing Guide :News Guide – North Cape to Stewart Island, 2007, p.242. Hawkes Bay to Wairarapa.</i>	
7	Heritage Trails: Napier to Wairoa; Hawke's Bay – Discover the real New Zealand, 2006	Pamphlet
8	Fish and Game http://www.fishandgame.org.nz/Site/regions/HawkesBay/fisheries.aspx	
9	Hawkes Bay Coastal Assessment Report http://www.hastingsdc.govt.nz/environment/coast/CHAR/index.htm	2004?
10	Ministry of Fisheries: Central Fishery Management Area Recreational fishing rules	
11	Kahawai – the peoples['] fish. Kahawai Submission Co-op. Te Kawanga o Kahungunu, Ngāti Pāhauwera Section 30 Coop and Moeangiangi 42 N Owners, 5 April 2004 http://www.kahawai.co.nz/kahscoop.htm	Speaks of a kahawai cliff where people of a tribe called the kahawai tribe worshiped the fish from which they claimed descent.

12	<p>Te Kura ā Tuhi The Correspondence School. Newsletter Issue 8, 2006, Essay by Mata Hawkins, 'My Fishing story'. At Waihua Beach.</p> <p>http://www.correspondence.school.nz</p>	Check name with Pāhauwera
13	<p>Structure found on Waihua Beach, photograph, no date.</p> <p>http://wairoa.net/images/photo13.jpg</p>	Looks to be a frame for a tarpaulin to provide protection when people are fishing
14	<p>From old friends website: message from Rangī Hawkins re his whakapapa and the Waihua Marae</p> <p>http://www.olderfriends.co.nz/Memories.aspx?id=418647&page=1</p>	
15	<p>From old friends website: message from Claire Stirling-Hawkins which mentions fishing competitions on the beach</p> <p>http://www.olderfriends.co.nz/Memories.aspx?id=697040&page=1</p>	
16	<p>Raupunga Te Huki web site with a record of the 2008 hearing.</p> <p>http://www.naumaiplace.com/site/raupunga-te-huki/home/news/view/article/6/265/</p>	
17	<p>National Library of New Zealand Electronic resource. Transactions and Proceedings of the Royal Society of New Zealand 1868-1961, vol.5, 1912.</p> <p>Article by H.W. Williams, 'A plea for the Scientific study of Māori Names', pp.362.</p> <p>http://rsnz.natlib.govt.nz/image/rsnz_45/rsnz_45_00_0399_0354_ac_01.html</p>	Name of the Waihua River
18	<p>http://nzetc.victoria.ac.nz/tm/scholarly/tei-Wilthro-t1-body-d8.html#n59</p> <p>Page.60: The following day, Sunday, they had the usual services and classes, and on January 28th left Ahuriri on their return, calling at the various kaingas. When passing the dangerous cliff between Mohaka and Waihua on January 31st some of the party had a narrow escape from a mass of stone which fell from the summit. They spent Sunday, February 2nd at Mr.</p>	

	Hamlin's, and held the usual services. The night of February 4th was passed at Maraetaha, and they reached home in time for breakfast next day.	
19	Whitebait regulations circa 2008	

Alexander Turnbull Library, newspaper and Wairoa Museum Sources

Folder # 1	Item Description	Comments/ location
1	Four Images from Print Collection	
2	Journal Of George Rich.	MS-1817
3	'Journal of a Walk Along the East Coast, from Wellington to Table Cape by Messrs Thomas and Harrison', <i>New Zealand Spectator and Cook's Strait Guardian</i> , vol.1 (31), 10 May 1845, p.2.	Paperspast printout and original photocopy
4	<i>New Zealand Spectator and Cook's Strait Guardian</i> , November 1864, p.2. Report of McLean's purchase of Land from the Waihua river to the Wairoa River, including the beach frontage.	Paperspast printout
5	<i>The Hawkes Bay Herald</i> , 19 August 1862, p.2. Letter to the Editor from Alex Allan of Mohaka. <i>The Hawkes Bay Herald</i> , 26 November 1864, p.2. Letter to the Editor by James Grindell re visit of Mr McLean and party to the north.	Mentions a number of interesting points
6	[REDACTED]	
7	Images of the Glendinning/Haynes Property at Waihua from the Wairoa Museum, undated	Wool bales on the beach ready for shipping
8	<i>The Wairoa Star</i> , 17 January 1985, p.9: 'Mohaka fishing contest – unique in New Zealand.' <i>The Wairoa Star</i> , 5 March 1985, p.6: Paikea \$20,000 prize goes to Wairoa. <i>The Wairoa Star</i> , 25 January 1996, p.18: Big snapper worth \$1000 <i>The Wairoa Star</i> , 7 February 2002, p.16, Public Notice	Mentions the Paikea Fishing Club, nine kilometres of coast and 350 anglers. Described as the 'Waihua Beach 'Fishing competition

	<p>advertising a Waihua Fishing Day for 3 March 2002.</p> <p><i>The Wairoa Star</i>, 28 February 2002, advertising the fishing comp</p> <p><i>The Wairoa Star</i>, 7 March 2002, results of fishing comp</p>	
9	<i>The Wairoa Star</i> , 11 July 1991, Extracts about Waihua	
10	Michael David Neville Campbell, 'The Evolution of Hawke's Bay Landed Society, 1850-1914', DPhil, Victoria University of wellington, 2 Volumes, 1972	Extracts
11	E.A. Coxon, Hawkes Bay under provincial government 1853-1876, P q993.1 COX 1939.	Extracts
12	William Dinwiddie, 'Old Hawkes Bay', P993.1 Din 1901/1916	Extracts
13	Historic Places Inventory Wairoa County May 1983, q993.1 His 1982	
14	<p>Ephemera Collection – A Tourism Hawkes Bay 1990-1999 – "Hawkes Bay the Lifestyle Region of New Zealand.</p> <p>Tourism Hawkes Bay 1986, In and Out of the Water</p> <p>Wairoa – New Zealand The Eastern Gateway to Outdoors Adventure, 1980s</p>	

Archives New Zealand

Department of Conservation

Land Information New Zealand

Folder # 1	Item Description	Comments/ location
1	DOC-Gisborne Office: SAR 04-43-1 East Coast Conservancy – Statutory Advocacy and Planning – Resource Management Act – Regional /District plans and policy Settlements – Wairoa District Council – district Plan 2001-2006	Extracts
2	DOC – Gisborne Office: SAR 04-43-1 East Coast Conservancy Statutory Advocacy and Planning – Resource Management Act -Regional /District plans and policy Settlements – Wairoa District Council – district Plan- Coastal Strategy 2003-2007	

3	DOC-Head Office 15/8/0 Coastal, Marine & freshwater Resources Coastal Reserves (Proposals) 1989-2007 [Offsite Storage NYE000577 Box 6496]	
4	DOC Head Office – 8/5/105/1 [No file cover – Coastal Reserves 1969-1978] Offsite storage NYE000579 Box 6498	
5	DOC Head Office – WLK (5/5/7 – NZ Walkways Network Napier – Mahia Hawkes Bay Coastal Walkways) Offsite Storage NYB01 2906	
6	DOC Head Office [0060/DXO322/5313] 8/859/7 Coastal Reserve (Wairoa County)	
7	Email 8 September 2008 from DOC HB Area Office- re: Coastal walkway	
8	DOC Gisborne Area Office File 6/21 [EC W-1 Box 6506] Fisheries Wairoa Conservation Area Native Fish 1988-1998	
9	DOC Gisborne Area Office File 11/9, Māori Liaison 1987-1994	
10	LINZ Processing Centre – 6900/94 [20/94] Waihua Block 1924-1982]	
11	LINZ Processing Centre 20/94 Hawkes Bay Land District – Māori Land Blocks – Waihua Block 1931-1978	
12	National Archives: ABWN 6095 W5021, Box 258, 7/910, pt.1, Petition – Te Rauna Hape and Others, 1941	
13	National Archives: W 1, 40/3, Napier – Wairoa Road [1913-1915]	
14	National Archives: HB 4/13 Hawkes Bay Provincial Council Correspondence [re ferry and Waihua]	
15	National Archives: ABWN 8102, W5279, 67 HBW 1-90-1 Hawkes Bay Coastal Walkways	
16	National Archives: Lands and Survey Napier DO File, WLK 6/8, Vol.I, Hawkes Bay Coastal Walkways	
17	National Archives: Lands and Survey Napier DO File, WLK 6/8, Vol.II, Hawkes Bay Coastal Walkway	
18	National Archives: AANS 6095 W5491, Box 1049, 6/13/4, Scenic Reserves	

19	National Archives: AAPA 8108 W3374 Box 106, 9/2/10, Hawkes Bay sand/shingle surveys 1975-1978.	
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Archives New Zealand

Department of Conservation

Land Information New Zealand

Folder # 2	Item Description	Comments/ location
1	DOC Wairoa Field Centre: File 7/5 Coastal and Marine Resources Wairoa Conservation area – Marine Mammals Stranding 1987-1992	
2	DOC Wairoa Field Centre: File 7/6 Marine Mammals stranding	
3	DOC Wairoa Field Centre: File HHR-05-07 ECW 1 Historic Heritage – Historic Research and Monitoring – research and assessments Wairoa History 1990-1997	Includes cutting of article by George Thomson in the <i>Wairoa Star</i> , 20 March 1990 on Coasting Vessels at Mohaka
4	DOC Wairoa Field Centre: HHH-02 ECW-1 Historic Heritage – Archaeological Sites general – file not relevant, re Mahia.	
5	DOC Wairoa Field Centre: File 3/1 Mohaka Human – CRI – Urewera – Wairoa – Mohaka Region – human aspects 1988	
6	DOC Wairoa Field Centre: CRI Unit 3 File 3 Mohaka Physical Resources	
7	DOC Wairoa Field Centre: CRI Waihua Unit 8 Sections 1-6, stage 1	1990. Description of the coastline
8	DOC Wairoa Field Centre: From Library Resources Box <ul style="list-style-type: none"> • Visitors Guide to Wairoa and District • Farm location Map of Wairoa County revised 1985, produced by the Wairoa Jaycee • 'Tramp from Napier to Waikari', Mr and Mrs T.B. Harding, 1859. • Transactions, 1929. Beach gravels and sands 	

	<ul style="list-style-type: none"> • MAF Fish Proposed Central Fishery Management Plan • Regional Background Discussion Paper on Areas to Investigated for Proposed Marine Protected Areas in the Central Fishery Management Areas 1987 • New Zealand Shipwrecks 1795-1975 	
9	DOC Wairoa Field Centre: Nothing under this tab	
10	DOC Wairoa Field Centre: Album: "Coastal Photographs Inventory"	
11	DOC Wairoa Field Centre: Regional Background Discussion Paper on Areas to be Investigated For Proposed Marine Protected Area in the Central Fishery Management Area 1987.	
12	DOC Wairoa Field Centre: DOC Pamphlet "Whitebait", Information and Fishing regulations, 2003.	
13	DOC Wairoa Field Centre: List of Whale Stranding 1981-1998	
14	DOC Wairoa Field Centre: "Waihua Marginal Strip", 2001	
15	DOC Wairoa Field Centre: COA 195, CRI Unit 3 File 2 Mohaka Biological Resources	
16	DOC Wairoa Field Centre: Email re Whitebaiting on the Waihua River	
17	Archives New Zealand: ABDJ W3568 Box 162 Miscellaneous File Waihua School – a 1974 report on the school notes that "as there is no marae or communal meeting place in the district organisations and individuals occasionally use grounds..."	
18	Archives New Zealand: ABWN 6095, W5121, Box 593, 22/2852, Petition, 1924, re the Crown's purchase of land east of Waihua.	
19	Archives New Zealand: LS 1 35428 Moeangiangi (Whole File copied)	
20	Archives New Zealand: AAMK 869 W3074 944a, 64/5/8, Land Development	
21	Archives New Zealand: M 1, 2/12/84, pt.1 Sea fisheries trawling Wairoa limits protest, 1915.	

22	Archives New Zealand: W1, 53/73: Local Bodies Wairoa County Council, 1907-1919	
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Hawkes Bay Regional Council

Folder # 1	Item Description	Comments/ location
1	Hawkes Bay Regional Council: Regional Coastal Plan June 1999	Extracts
2	Hawkes Bay Regional Council: "Broad Scale Habitat Mapping of the Coastline of the Hawkes Bay Region" Cawthron Report No.1034, June 2005	Of the 70 individual GIS maps in this series we have #43 for Waihua. I have requested the full set of maps.
3	Hawkes Bay Regional Council: Annual Report 1 July 2005-30 June 2006	Indicates frequency of inspections of rivers and river mouths
4	Hawkes Bay Regional Council: Environmental Management Group; Recreation Water quality in Hawkes Bay: A Review of the 2007-2008 Recreational Water Quality Monitoring Programme	No reference to Waihua or Mohaka Rivers
5	Hawkes Bay Regional Council: http://www.hbrc.govt.nz/ReadAboutIt/StateofEnvironment Extracts on the Coast	
6	Hawkes Bay Regional Council: Riparian Management and Protection Study Report, February 1999 Misc correspondence re Riparian values Inventory	
7	Hawkes Bay Regional Council:	

	<p>RM Correspondence File Extracts: Public Letter/Notice from Wairoa District Council, 11 December 1998, under the Heading 'Freedom Camping – Public Land – Wairoa District'; Notification of Council Policy – 'Camping outside registered camping grounds or designated areas on any public open space within the Wairoa District without lawful consent shall not be permitted.'</p>	
8	<p>Hawkes Bay Regional Council: File 14/12 Coastal Monitoring; Press releases re toxicity in shell fish populations 11 June 2003: 'Hawkes Bay coastline remains closed due to high shellfish toxin levels', between Whareongaonga (approximately 22 kilometres north of Mahia) and Cape Turnagain in the South. The toxin was Paralytic Shellfish Poisoning (PSP)</p>	Significance?
9	<p>Hawkes Bay Regional Council: Hawkes Bay Catchment Board File 5/21600. 'Waihua river'. Erosion in the hinterland by a county road.</p>	Not relevant
10	<p>[REDACTED]</p>	
11	<p>[REDACTED]</p>	<p>[REDACTED]</p>
12	<p>[REDACTED]</p>	<p>[REDACTED]</p>

	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]
14	Hawkes Bay Regional Council: Environmental Management Group Technical Report (Internal); Hawke's Bay Region: Coastal Beach/Reef Inventory, June 2007.	Useful detailed descriptions of Mohaka East and Waihua Beaches
15	Hawkes Bay Regional Council: Annual summary 2006 The State of Our Environment, Hawke's Bay	No mention of Mohaka or Waihua

Folder # 2	Item Description	Comments/ location
1	Hawkes Bay Regional Council: Shingle Extraction General, File 72, 1999-2002	
2	Hawkes Bay Regional Council: Shingle Extraction General, File 72, 1991-1993	
3	Hawkes Bay Regional Council: Shingle Permits Issues, File 73, 1992-1993	
4	Hawkes Bay Regional Council: Shingle Extraction General, File 72, 1989-1991	Outlines extraction from Crown-owned river beds and arrangements with catchment boards to charge royalties
5	Hawkes Bay Regional Council: Shingle Extraction General, File 72, 1994-1998	
6	Hawkes Bay Regional Council:	

	Application for Shingle Permits , File 721, 1 November 1989	
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Wairoa District Council

File #1	Item Description	Comments/ location
1	Wairoa District Council: Operative District Plan (2005) http://www.wairoadc.govt.nz/planspolicy/districtplan/	
2	Wairoa District Council: Coastal Strategy: A Community Partnership Initiative: September 2004, pp.37-41.	
3	Wairoa District Council: County Council Minute Book Extracts circ 1892 – 1917.	
4	Wairoa District Council: The Wairoa Profile 2004, File A6/11/11	Dated data set but provides some very useful information on the population structure of the district
5	Wairoa District Council: A6/14/4, 1998-2007, Freedom Camping	Note submission by Mahia Beach Motel and Holiday Park
6	Wairoa District Council: B11/1, Works And Services/Beaches and Coasts/General	Contains the 1996 Surf Lifesaving NZ request for information from Wairoa District Council for the Coastline survey of all New Zealand Beaches
7	Wairoa District Council: D01/04; Coasts, foreshores, Beaches	A copy of the Haynes family submissions to the Māori Land Court, 22 August 2006.
8	Wairoa District Council: Aerial of the Waihua Beach road showing the distance of the council-maintained road line.	7 August 2008. Provided by the operations manger

9	Wairoa District Council: D1/25/3Wairoa Coastal Access Action Plan, draft April 2004,	Not adopted by the Council. Full copy obtained from the Hawke's Bay regional Council. Northern and southern beach sections
10	[REDACTED]	
11	Wairoa District Council: Camping-Campervans-Caravans within the Wairoa District. Information for visitors.	
12	[REDACTED]	

Waitangi Tribunal Inquiries and some Lease Details

File # 1	Item Description	Comments/ location
1	The Crown and Ngāti Pāhauwera from 1864; Report for Wai 119/201, George Thomson, January 1992 CDs and Hard Copy of the Waihua No.1 and 2 blocks leases. LINZ, Gisborne Deeds, now possibly LINZ-Hamilton.	#A29/201
2	Evidence of F.R.L. Sinclair, 'Land Transactions on the North Bank of the Mohaka River, Ca 1860-1903,	Wai 119/201, #C5. Extracts
3	Evidence of David James Alexander, 'Land Dealings on the Mohaka River North Bank 1903-1992, and some supporting papers	Wai 119/201, #C7 And #C7a
4	'The Impact of Post Purchase Land Alienation on Ngāti Pāhauwera, Report 1, Report for the Wai 201 Mohaka Forest Claim by Tureiti Haromi Moxan (nee Hokema), July 1996,	Wai 201, #J16 Makes reference to the Mohaka Commission of

		1951 into the 1851 purchase of the Mohaka Block
5	'The Impact of Post Purchase Land Alienation on Ngāti Pāhauwera, Report 2, Report for the Wai 201 Mohaka Forest Claim by Tureiti Haromi Moxan (nee Hokema), July 1996,	
6	'Preliminary Report on the Mohaka River Valley below the Waipunga Junction', George Thomson, 1990. Contains a copy of the 1852 Bousefield map which records in relation to the coastline of the Mohaka Block between Waikare and Mohaka, 'Bold Coast. Road under cliff dangerous.'	Wai 110/201, #A27. Extracts
7	Ballara/Scott, January 1994, 'A Guide to Maps with Wai 201	Wai 201, #11.
8	Evidence of David James Alexander, 'Block History of Waihua 1868-1941', in Wai 299, Casebook vol.8, #J24, pp.4369-4639	Extracts
9	Brief of Evidence of Brent Parker, 2 February 2008, in the Māori Land Court, Pāhauwera application for CRO Brief of Evidence of Brent Parker, 12 October 2007, in the Māori Land Court, Pāhauwera application for CRO	Details and maps
10	Documents supplied by the Crown in Wai 299, Wai 201, #W10. 'Farming in the Mohaka State Forest, 1860-195-, Matthew Wright for the New Zealand Forest Service, 1985.'	Extracts
11	Brief of Evidence of Brent Parker for the Crown Concerning Toha's Reserve and the Waihua Block Boundary, June 1999, Wai 201, #W4. And also W9 documents including a copy of Grindell's report published in the Hawkes Bay Herald, 24 November 1864.	

12	Stephanie Louise McHugh, 'The purchase of the Ahuriri Block, November 1851, supporting papers, Wai 55/119/201, #C3A.	Extracts
13	Ballara/Scott, Doc Bank, secs 1-39, Wai 201, I1, Box T 245, Te Kuta Block, MA 1/1917/328, Section 17.	Map and memo. Southwest of the Waikare River
14	Ballara/Scott, Doc Bank, secs 71-103, Wai 201, I1, Box T 245, Wairoa Block, LE 1/1940/8, Petition No.41/1940.	
15	Ballara/Scott, Doc Bank, secs 40-70 Wai 201, I1, sections 40-70, Nuhaka Block, MA 1/2/13/92, vol.1.	Transcript of Grindell's report published in the <i>Hawkes Bay Herald</i> , 24 November 1864.
16	Evidence of F.R.J. Sinclair, 'Aspects of River Tenure', Wai 201, #C6	Extracts relating to the Mohaka River
17	Bevan Taylor, Customary Usage Report, Esk forest Claim: Wai 299, Mohaka – Waikare Confiscated Lands, November 1993, Wai 201, #J5.	Extracts from Report and a copy of the full report. (With Rosie)
18	Nothing	
19	'Fragmented Lands: Report on the Kupa Whanau's Interests in the Mohaka Area', Robert McLean with Richard Moorsom, October 1998, Wai 201, #T17. 'Fragmented Lands: Report on the Kupa Whanau's Interests in the Mohaka Area', Summary of Evidence, Robert McLean, Wai 201, #T22.	Extract Full
20	Wai 119, Report to Waitangi Tribunal for Ngaati Pāhauwera Society, Cordry Tawa Huata, 19 February 1991. Wai 201, #A14	Extracts
21	'When the Freshets reach the Sea': Ngāti Pāhauwera and their lands 1851-1941, D M Loveridge, August 1996, Wai 201, #J30.	Extracts
22	Plan of Toha's Reserve Wai 201/119, # A11.	Two maps probably from

		the Reserves Commissioner's report circa 1870s?
23	Mohaka Archaeology: A survey of the lower Mohaka River, Hawke Bay, North Island New Zealand, November 1989, Susan Forbes, Wai 201/119, #A15.	Extracts
24	Preliminary Report on Mohaka river Archaeological Survey for Ngāti Pāhauwera Waitangi Tribunal Claim, Pam Bain, Wai 210/119, #A26	

Land Title Data; 1840 to the present in Three Volumes (not indexed)

Appendix II

Evidential questions for informing legal analysis under section 58 of the Marine and Coastal Area (Takutai Moana) Act 2011 for Customary Marine Title

Purpose of questions

The purpose of this set of questions is to extract from the available evidence those facts which are pertinent to the legal assessment of whether or not customary marine title (CMT) exists (the test for which is set out in section 58). The questions are not exhaustive and provide an entry point to the enquiry as to whether or not CMT exists. The expertise of the relevant historian and lawyer will be required to develop the subsequent nuanced questions specific to the factual scenario before them. The weight given to each question will vary and may depend on legal interpretation and argument. The overall assessment will require a picture to be built up with all the relevant factors being considered in light of each other. These questions do not directly deal with the case of a customary transfer.

Fundamental branches

The aim of the questions is to seek evidence that addresses the fundamental elements of the test, namely:

- Exclusive use and occupation of the area by the applicant group (which must be without substantial interruption from 1840 until the present day);
- the applicant group holds the area according to tikanga; and
- CMT has not been extinguished at law.

The order of the questions is indicative only and may be altered according to the circumstances of each application and the evidence available.

Introductory Questions

Question	Types of evidence relevant to the question	Connection of question and evidence to test element/s
What is the identity of the applicant group?	<ul style="list-style-type: none"> • What are the names of the whānau, hāpu, or iwi, or other identifiers (e.g. marae) which either make up the applicant group or form part of the wider context of customary interests in the area? 	Is the Crown dealing with the appropriate individual/s or group/s?
Has the applicant been appointed as a representative ?	<ul style="list-style-type: none"> • Has there been a process to appoint the applicant group/person to represent the iwi, hapū or whānau it purports to represent? • Is the applicant an acknowledged representative body of the iwi or hapū? Has an existing mandate been formally extended for the purposes of this application? • Is the Crown aware of disputes over representation? 	Appointment
Is the specified area outside the common marine and coastal area?	<ul style="list-style-type: none"> • Does the area include any specified freehold land? • Does the specified area include any area owned by the Crown with the following status: • a conservation area (sec 2(1) of the Conservation Act 1987) • a National Park (sec 2 of the National Parks Act, 1980) • a reserve within the meaning of s2(1) of the Reserves Act 1977 • the bed of Te Whaanga Lagoon in Chatham Island (sec 9 of MACA Act 2011) 	Not within the Common Marine and Coastal Area
Does the available information raise potential issues about	<ul style="list-style-type: none"> • What legislation has applied to the area which may raise extinguishment issues? • Have any legal interests been 	Extinguishment

extinguishment of customary title?	created in the area e.g. ownership formally vested in Harbour Boards/councils or other non-members?	
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Holds designated area in accordance with tikanga

The evidence ordered under this heading is likely to also be relevant for the heading 'exclusive use and occupation' as both go towards demonstrating the applicant group's relationship with the area.

Question	Types of evidence relevant to the question	Connection of question and evidence to test element/s
<p>What evidence is there of operative tikanga?</p> <ul style="list-style-type: none"> • Does the applicant group possess mana moana (allowing that this is a modern term) in the area today? • Does the applicant group currently exercise customary uses and practices in the area? 	<ul style="list-style-type: none"> • Whakapapa connections to area (continuous to present day) • Naming of specific points within the area/s Manawhenua/(mana moana) demonstrated through: <ul style="list-style-type: none"> • kaitaikitanga, • manaakitanga, • ahi kaa, • rahui • Manawhenua/(mana moana) recognised by other hapū/iwi e.g. recognition of rahui other regulatory provisions • Response to marine mammal stranding: initial response, spiritual elements • Evidence of culturally important places belonging to the group in the area such as, for example: <ul style="list-style-type: none"> • wahi tapu • significant landmarks • other physical locations (fishing rocks, reefs, etc.) • pito rocks, etc 	<p>Applicant holds the area in accordance with tikanga</p>
<p>Are there other competing tikanga based interests in the area?</p>	<p>Do other iwi, hapū or whanau exercise rights and/or activities in accordance with tikanga in the area eg:</p>	<p>Holds in accordance with tikanga</p>

<p>Is the area within the rohe moana of another iwi, hapū or whanau?</p>	<ul style="list-style-type: none"> • customary fishing • kaitiakitanga • burials • tauranga waka 	
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Exclusive use and occupation of the area from 1840 until present day

Question	Types of evidence relevant to the question	Connection of question and evidence to test element/s
<p>Does the group use and occupy the specified area now?</p>	<ul style="list-style-type: none"> • Do members of the group currently own land, live adjacent to and use the area? 	<p>Use and occupation</p>
<p>Did the group use and occupy the area or adjacent areas at 1840?</p> <p>What inferences can be drawn about one part of the area based on use or occupation of another part?</p>	<ul style="list-style-type: none"> • Evidence for 'holds the area in accordance with tikanga' listed above also relevant here. • Is there evidence of: <ul style="list-style-type: none"> • Where the group fished? • Where the group collected kaimoana? • Location of any tauranga waka? • Structures (rahui posts, jetties, platforms, fishing equipment, etc., placed in the area?) • Urupa in the area? • Wahi tapu in the area? (For example pito rocks) • Other uses of the area (eg considered in relation to applications for PCRs such as a source of materials supporting traditional modes of life)? 	<p>Use and occupation (since 1840)</p> <p>(also relevant for holds in accordance with tikanga)</p>
<p>Can inferences be drawn about the group's use and occupation of the area of</p>	<ul style="list-style-type: none"> • Is there, for example, evidence of: • contemporary or historic 	<p>Use and occupation</p>

<p>the common marine and coastal area from its use or occupation of adjoining or abutting dry land, or from nearby land?</p>	<p>dwellings on abutting or nearby land e.g. marae; pa sites;</p> <ul style="list-style-type: none"> • urupa on abutting or nearby lands; and / or • Māori customary land comprising abutting or nearby lands? • Did Māori communication tracks incorporate the CMCA? 	
<p>Has the applicant group continuously used and occupied the area or adjacent areas (including adjacent common marine and coastal area) since 1840?</p>	<p>Is there evidence of previous generations' continuous presence in area? For example Māori Freehold Land, longstanding marae and dwellings belonging to applicant group:</p> <ul style="list-style-type: none"> • Whakatauki • Waiata • Named pa sites • Named meeting houses • Other named locations memorializing significant events (arriving migrants, battles, marriages, etc.) • Recorded history in personal manuscripts • Māori Land Court Testimony (minutes) 	<p>Use and occupation</p> <p>(also relevant for holds in accordance with tikanga)</p>

Exclusivity - Non-member use and occupation of the application area

<p>Question</p>	<p>Types of evidence (non-exhaustive) relevant to the question</p>	<p>Connection of question and evidence to test element/s</p>
<p>Are there other iwi/hapū/whānau with established interests in the area?</p>	<ul style="list-style-type: none"> • Other iwi, hapū or whānau have: mana whenua in the area; whakapapa which demonstrates an ongoing relationship with the area (at any time since 1840). • The area sits within the rohe 	<p>Exclusivity</p>

Question	Types of evidence (non-exhaustive) relevant to the question	Connection of question and evidence to test element/s
	<p>boundaries of other iwi, hapū or whānau.</p> <ul style="list-style-type: none"> • There is Māori customary land held by non-members in or adjacent to the application area. • Members of other iwi, hapū or whānau live in the adjacent area and / or use the application area e.g. recreational activities, fishing. • How long have the other iwi, hapū or whānau lived in or use the area? • Other iwi, hapū, whānau exercise tikanga in the area e.g. rahui, manaakitanga, kaitiakitanga etc 	
<p>What evidence is there of third party use or occupation of the area?</p> <p>Is there or has there ever been established public access to the area and permitted activities associated with this access?</p> <p>Are there geographical features that allow or prevent public access? If so, was access possible from other points?</p> <p>What is the intensity and frequency of third party access / activities / occupation? What inferences might be drawn about the intention behind such activities?</p>	<ul style="list-style-type: none"> • Evidence of infrastructure allowing third party access: • roads leading to the CMCA and located on abutting lands • railway tracks and bridges along or across the CMCA • walking or cycling tracks • camp grounds • boat launching ramps • train tracks • ferries • marinas • swing moorings • wharfs and jetties • other infrastructure (bridges) • Evidence of use of that infrastructure • Evidence of recreational use of the area by non-members of the group in and around the specified area, such as: <ul style="list-style-type: none"> • recreational diving, • surfing, • swimming, • triathlons 	<p>Exclusivity</p>

Question	Types of evidence (non-exhaustive) relevant to the question	Connection of question and evidence to test element/s
	<ul style="list-style-type: none"> • surf lifesaving activities • recreational fishing • recreational fishing competitions • recreational kaimoana gathering? • beach horse and motorcycle racing • commercial scenic operations such as trips (buses and four-wheel drives, mountain bikes, etc.) which use the common marine area • camping (informal, freedom permitted, and commercial), • sand and gravel extraction (permitted and non-permitted) • relevant commercial fishing (cray quota, oyster and scallop fisheries) • commercial seaweed gathering • commercial charter fishing operations • commercial diving operations 	
<p>What, if any, infrastructure exists in the area?</p> <ul style="list-style-type: none"> • What involvement, if any, did the applicant group have in the establishment or on-going operation of that infrastructure, i.e. did they support or oppose its establishment, were or are they involved in its on- 	<ul style="list-style-type: none"> • For example the existence and use of: • settlement and urban development • recreational areas • public beaches • ports • marinas • marine farms • jetties • boat launching ramps • swing moorings • oil exploration platforms and accompanying pipelines • water intake pipelines (on- 	<p>Exclusivity</p>

Question	Types of evidence (non-exhaustive) relevant to the question	Connection of question and evidence to test element/s
going operation.	<ul style="list-style-type: none"> • shore marine farming) • waste water and waste disposal pipelines • cables across the area’s airspace (electricity and communications) • cables (electricity or telecommunications laid across seabed of the area) • sand and gravel extraction to support roading and building activities • erosion control measures in the CMCA by individuals, councils and central government (timber, concrete, boulders, steel structures, etc.) • river and waterway control measures such as groynes and moles, revetment seawalls, etc. • bridges (road and rail) which cross the CMCA 	

Evidence of Exclusivity

Question	Types of evidence (non-exhaustive) relevant to the question	Connection of question and evidence to test element/s
In addition to the information in the tables above, what evidence is there that the applicant group has or has held exclusive rights in the application area?	<ul style="list-style-type: none"> • Exclusivity may be demonstrated through evidence of positive use or occupation of the area by the applicant group and also by consideration of third party use or 	Exclusivity

<p>What is the attitude of the applicant group to use / occupation by third parties? (noting this will largely come from the applicant group's evidence.)</p> <p>Are there examples of acts by members of the applicant group which show or imply capacity to exclude non-members?</p>	<p>occupation of the area it therefore overlaps with the evidence in the two tables immediately above. It may also be demonstrated through specific examples of exclusion or the capacity to exclude e.g.</p> <ol style="list-style-type: none"> 1. Third parties seeking permission to access, use, occupy area; 2. members of applicant excluding non-members (e.g. by preventing accessing or stopping non-member activities) 3. The erection of fences, walls, or tolls 4. Private access ways owned by the applicant 5. Private roads including toll roads being the only access to the area 	
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