

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIPOUNAMU**

*In the Māori Land Court of New Zealand
Te Waipounamu District*

AP-20250000006022

WEHENG <i>Under</i>	Section 11(2), Protected Objects Act 1975
MŌ TE TAKE <i>In the matter of</i>	Taonga Tūturu found at Rēkohu/Wharekaui
I WAENGA I A <i>Between</i>	HAYDEN MCALAISTER PREECE, CHAS KARAURIA TAURIMA, HANA-MARAEA SOLOMON, JARED WATTY, THOMAS HENRY LANAUZE, RANA LYNETTE SOLOMON, CHRISTINE ANNE HARVEY, and BELINDA WILLIAMSON, AS TRUSTEES OF THE HOKOTEHI MORIORI TRUST Ngā kaitono Tuku Tahi <i>First Joint Applicants</i>

Kōtitanga:
Hearing

On the papers

Kanohi kitea:
Appearances

C Griggs for Non-Crown Parties
F Dean and I Yu for First Respondent
A Cameron for Second Respondent
S Foote KC for Third Respondents

Whakataunga:
Judgment date

30 June 2026

TE WHAKATAUNGA A KAIWHAKAWĀ M J DOOGAN
Judgment of Judg M J Doogan

Ka haere tonu ngā taipitopito kēhi ki te whārangi kei raro)
(Proceedings continued overleaf)

Ngā taipitopito kēhi e toe ana)
(Proceedings continued)

ME
And

KUSHLA JANE ALLEN, WILLIAM PETER KING,
HAEN MCALAISTER PREECE, CHAS KARURIA
TAURIMA, THOMAS HENRY LANAUZE, AS
TRUSTEES OF THE MORIORI IMI SETTLEMENT
TRUST
Ngā Kaitono Tuku Tahi Tuarua
Second Joint Applicants

ME
And

MINISTRY FOR CULTURE AND HERITAGE
Te Kaiurupare Tuatahi
First Respondent

ME
And

NGĀTI MUTUNGA O WHAREKAURI IWI TRUST
Te Kaiurupare Tuarua
Second Respondent

ME
And

DIX WHĀNAU/STATION OWNERS
Ngā Kaiurupare Tuatoru
Third Respondents

Hei tīmatanga kōrero*Introduction*

[1] In August 2024, Vince and Nikau Dix discovered some finely carved wooden remains in sand dunes adjacent to Wharekauri Station on the north coast of Rēkohu/Wharekauri/Chatham Islands. What they had discovered are the remains of a large voyaging waka which was wrecked near that spot around 1440 – 1470. Some of the waka has since been recovered, but a good deal more remains buried at the site.

[2] The Chief archaeologist (Dr Maxwell) is of the opinion that this is one of the most important archaeological sites ever encountered in New Zealand and the wider Pacific. He says it is of the highest importance at the local, regional and international level.

[3] All parties, including the Crown, agree with Dr Maxwell’s assessment, but there is significant disagreement about who is responsible for excavation and recovery of the parts of the waka that remain buried.

[4] The Crown says that the statutory obligations of the Chief Executive for taonga tūturu only extends to taonga tūturu that are “found” and the parts of the waka that remain buried have not been “found.” The Crown also says that a decision of this Court with respect to the ownership of those parts of the waka so far recovered is needed before further decisions are made about excavation of the remainder.

[5] The Moriori applicants, Ngāti Mutunga and the Dix whānau/station owners argue that what has been found are the remains of a large waka, some of which has been recovered. The Crown’s obligations extend to the entire find, not just the parts recovered. Given the vulnerability of the find site to further erosion and storm damage, the Crown must prioritise the excavation of the remaining parts of the waka, and this proceeding concerning ownership should not delay or compromise this.

[6] The failure of the Crown to prioritise excavation of the remaining parts of the waka over the past summer and ongoing ambiguity as to the extent to the Crown’s commitment has now led the Moriori applicants to press for an expedited hearing of their claim to traditional ownership.

[7] At a judicial conference on the 14th of April 2026, all parties agreed that I should determine the question as to the meaning of “found” on the papers following the receipt of written submissions.

[8] I received submissions by way of a joint memorandum from the non-Crown parties dated 7th of May 2026. Crown counsel filed submissions in response dated 25th of May 2026.

Ngā take

The Issues

[9] The issue to decide is:

- 1) Are those parts of the waka that remain buried in the dunes “found” as that term is used in the Protected Objects Act 1975?

[10] If they are “found” then the Chief Executive is under a statutory duty to:

take the action the Chief Executive considers appropriate to provide for the examination of the taonga tūturu, its care, its recording, and its custody on such conditions as the Chief Executive considers fit.¹

[11] It is necessary to first outline the relevant context.

Te horopaki

Background

[12] By application dated 8th of May 2025, trustees of the Hokotehi Moriori Trust and the Moriori Imi Settlement Trust jointly applied on behalf of Imi Moriori for orders as follows:

- a) The waka miheke is a taonga tūturu for the purposes of the Protected Objects Act 1975.
- b) The waka miheke was made by and brought to the abovementioned site by Moriori or their karāpuna [ancestors].

¹ Section 11(4)(a)(i) Protected Objects Act 1975.

- c) The actual and traditional ownership of the waka miheke is vested in the applicants as the representatives of Moriori.

[13] With the application is a detailed annexure in support which includes reference to Moriori traditions recorded by Shand in 1911 which refer to a waka by the name of Rangihoua which was wrecked on the northern coastline of Rēkohu near the find spot.² It is known from the parts recovered to date that this is a waka tuitui which is an old term for a planked waka that has been stitched together and as such dates from a time before there was significant cultural separation across the Pacific. It is also known from the presence of timbers and obsidian that are only found on mainland Aotearoa that this waka was constructed or repaired in Aotearoa before its final voyage. Carbon dating of some of the recovered parts places the arrival of the waka at the find spot between 1440 – 1470.

[14] After the find was notified, Sunrise Archaeology (Dr Justin Maxwell) was engaged to assess the site and conduct an archaeological survey and assessment of the proposed emergency recovery of ‘a waka, which has been partially exposed by coastal erosion on the north coast of the Chatham Islands/Rēkohu.’³

[15] In his September 2024 report, Dr Maxwell notes that on arrival at the site, timbers were seen in the creek bed and extending out of the dune bank. An initial controlled excavation was undertaken in the most exposed area where multiple components of the waka were identified in the exposed, eroded dune face. From that initial rescue excavation, it was determined that in a relatively small area less than 2 m², multiple components of the waka were present subsurface. The exposed timbers were a range of sizes, the smallest of which were covered but there were larger timbers which extended into the dune in multiple directions.⁴

[16] In terms of its archaeological significance, Dr Maxwell says:

Given the construction details and carving on the timbers examined thus far, it is likely that this waka is old and originates from the period where there were oceanic

² Alexander Shand “the Moriori people of the Chatham Islands”: their history and tradition’s (1911).

³ Archaeological survey and assessment of proposed rescue excavations at CH-744 waka find spot, Wharekauri, Chatham Island, Dr Justin Maxwell and Dr Jennifer Hubert, Sunrise Archaeology Report no. 2024-28, September 2024.

⁴ at para 7.2 page 35.

voyages. This waka, and the potential that this site can provide, is therefore of the highest significance at the local, national and potentially international level.⁵

[17] Dr Maxwell notes that the site is vulnerable and is exposed to both ocean surges and water flowing into the sea from a creek. It is certain that some of the waka has already been removed by storms, high seas, and erosion and a large storm arriving on the north coast of the island will result in not only loss of components of the waka but an important part of the history of the Chatham Islands and New Zealand, “It cannot be overstated what an immense loss to culture and heritage it would be if more of this site and the waka itself were lost to a storm event”.⁶

[18] Following that report, Dr Maxwell and others were commissioned by the Ministry of Culture and Heritage to conduct a limited rescue excavation in order to further document the site and recover and record waka components. Excavation work took place during January and February 2025 and at the conclusion of the work, the site was re-covered. As a result of that excavation, over 750 pieces of the waka have been recovered and are now in conservation storage on Wharekauri station.

[19] A draft archaeological report dated December 2025 has been recently provided to the Court. This report was expected to be in final form by February 2026, but Heritage New Zealand have raised issues and it is not at this time known when the report will be in a form suitable for public release. The draft report has been received by the Court on a confidential basis and I refer to it here as necessary in order to deal with the issue of statutory interpretation the parties have asked the Court to determine.

[20] Dr Maxwell confirms that the waka components recovered indicate that they are the remains of a large, ocean going vessel. Dr Maxwell notes that only a fraction of the material recovered has so far been analysed and much of the waka remains buried in situ. The attributes of the site suggests the waka and associated material were deposited and covered during a high energy storm or surge event. The purpose of the 2025 field work was to excavate the most at-risk portions of the waka, which at the start was unknown in terms of scope, size and density of the deposit. A great deal more is now known about the waka and

⁵ At para 8, page 40.

⁶ At para 10, page 43.

the potential extent of the archaeological site it lies within and also what will be required to excavate what remains in situ. He says there is no practical way to test the extent of the remaining waka deposit other than to excavate a large area mechanically.

[21] In August 2025, the Dix whānau alerted the Court to storm surges at the site causing further waka parts to be washed out of the dunes. I convened a judicial conference on the 9th of September 2025 in order to hear from the parties about options for a complete or substantial excavation of the waka over the summer months of the 2025/2026. I sought a report from the Chief archaeologist as to:

- a) What resources would be required to achieve a complete excavation of the waka over the coming summer months?
- b) What logistical support would be required for excavation and safe storage of the recovered pieces in this time frame?

[22] In response, a report from Dr Maxwell dated 8th of September 2025 was filed, together with a report from the lead conservator (Sarah Gainsford) also dated 8th of September 2025.

[23] Dr Maxwell noted that in total approximately 55m² of the waka/site was excavated in the 2024/2025 summer. The known extent of the area with potential waka components is 1100m². It was highly probable, however, that the area in situ, intact waka components, and cultural material is smaller (in the range of 200-300m²). Dr Maxwell goes on to say:

It is difficult to estimate how much of the waka is yet to be recovered, because it is not known how large the vessel was or how much remains buried in the dune. But it is possible as little as 10% has been recovered. This is based on the diversity of recovered timbers, and because whilst more than 400 timbers were recovered, the assemblage does not appear to be a complete vessel – or even a substantial and coherent part of one. It is also based on the presence of dense concentrations of waka components in the unexcavated walls of the excavated area. There is no practical way to determine the remaining extent of the waka by any means other than excavation.

[24] I issued directions following the judicial conference on the 10th of September 2025 which included the following:

The expert advice from Dr Maxwell is that waka recovery should occur sooner rather than later. Dr Maxwell says the most compelling reason for recovering the remaining waka in one field season is that excavation could commence with confidence that the work would not be cut short by time and resource limitations. Having to stop and start has negative preservation impacts on the waka deposit and considerable effort is required to re-bury and later uncover, all of which adds considerable cost to the exercise. Dr Maxwell goes on to say:

The second reason is that the site is at great risk of damage or significant loss. Engineering solutions, such as sandbags and the like, are unlikely to prevent large scale loss of the waka if there is a substantial storm event on the north coast of Rēkohu.

[25] Shortly before the 9th of September judicial conference, I also received statements from senior Ministry officials including a statement from Helen McCracken. Ms McCracken is the Pou Arataki o Te Pai Tangata – manager partnerships (acting), and lead advisor to Deputy Secretary, Māori Crown partnerships at Ministry for Culture and Heritage. Ms McCracken notes that the dune system is a dynamic environment and whilst acknowledging a risk of storm event damaging the site, there are other risks that need to be considered before any decision to undertake a major excavation. Those risks included the risk of a poorly planned and resourced excavation, risk of damage to intangible cultural heritage values, risk of lack of statutory compliance (Heritage NZ, Department of Conservation (‘DOC’), possible obligations under Resource Management Act and health and safety).

[26] In terms of financial risk, Ms McCracken says:

The Ministry currently does not have the funds necessary to excavate. Further funding would need to be sought as part of the contemplated decision making process which we have outlined to the Court. There are not only excavation costs to consider but also the conservation costs during the excavation and in the medium and long-term. Conservation costs can be significant and are over many years.

It would be preferable for a traditional ownership order to first be made so that decisions around what is to be conserved and when can be made by the owner and not by the interim custodian.

If ownership is determined, it is likely to make it easier to raise funds from academic or private sources for excavation, conservation and ongoing research.⁷

[27] Ongoing uncertainty about the Crown's commitment to undertake further excavation led counsel for Moriori interests, Ngāti Mutunga o Wharekauri and the Dix whānau to write to the Honourable Paul Goldsmith, Minister of Arts, Culture and Heritage jointly on the 19th of December 2025. Counsel say they write collectively to draw attention to an archaeological discovery of exceptional national and international significance and to seek urgent consideration of appropriate Crown support to ensure its protection. After noting the significance of the find, counsel register concern about the vulnerability of the waka due to its exposed location on the coast. They note that the estimated cost of full excavation and preservation is approximately 3.5 million dollars. They ask for confirmation that options for Crown funding and support are being actively considered at the highest levels and indicated willingness to engage further.

[28] The Minister responded by letter dated 12th of February 2026, acknowledging the concerns regarding potential exposure and degradation but noting that as this is an operational matter, it is for the Chief Executive to consider. The Minister goes on to note that the Ministry and DOC have been working closely with the parties to determine ownership in the Māori Land Court and that this application and the Court's determination of traditional ownership is an important next step ahead of decisions impacting long term care and conservation. The Minister says that funding in relation to care of the waka parts recovered from the site sits within a dedicated budget and the Ministry is continuing to work within that funding, the Minister said he will consider in the usual way any requests for further funding in relation to that work. With respect to a full excavation of the site, the Minister says that his officials continue to work with DOC to administer the land and would alert appropriate stakeholders on events that may negatively impact the site in accordance with their emergency response plan.

⁷ Helen McCracken statement, 8 September 2025.

[29] By letter dated the 13th of February 2026, the Chief Executive of the Ministry of Culture and Heritage also responded. That letter repeats the points made by the Minister, confirms the Ministry's commitment to the care and safekeeping of the miheke taonga in accordance with conservation priorities set by the lead conservator, and confirms that the Ministry is not seeking extra funding.

[30] At the outset of this proceeding, all parties (other than the Crown) accepted that the waka was a taonga tūturu as that term is defined in the Protected Objects Act 1975. The Crown continued to reserve its position at a number of subsequent judicial conferences and on the 24th of April 2026 I directed Crown counsel to confirm by the 5th of May 2026 whether the Ministry was still reserving its position on the status of the waka as a taonga tūturu. On the 8th of May 2026, Crown counsel filed a memorandum confirming instructions from the Ministry as follows:

3.1 The Chief Executive of the Ministry for Culture and Heritage's view is that it is highly likely the waka fragments are taonga tūturu based on the information provided, including the draft archaeological report. The Ministry refers, in particular, to the information indicating the wood is likely to have come from Aotearoa (i.e. from the Totara species) which means it was likely made, used or modified by Māori (or Moriori) in Aotearoa (including Rēkohu Wharekauri Chatham Islands). There had been some uncertainty at earlier stages, and in particular whether the evidence was clear that the waka parts were manufactured or used by people who settled on the islands of Rēkohu Wharekauri Chatham Islands or Aotearoa. However, based on the draft archaeological report, the view is that this appears highly likely.

3.2 Given this view, the Crown no longer reserves its position on whether the waka fragments are taonga tūturu.⁸

[31] I now turn to the relevant statutory provisions.

Protected Objects Act 1975

[32] Taonga tūturu are a class of objects given certain statutory protections under the Protected Objects Act 1975. The purpose of the Act relevantly provides:

⁸ Memorandum of Crown counsel, 8 May 2026 at para 3.1 & 3.2.

1A Purpose

The purpose of this Act is to provide for the better protection of certain objects by—

- (a) regulating the export of protected New Zealand objects; and...
- enabling New Zealand's participation in—
 - i. the UNESCO Convention; and
 - ii. the UNIDROIT Convention; and
- (f) establishing and recording the ownership of ngā taonga tūturu; and
- (g) controlling the sale of ngā taonga tūturu within New Zealand.

[33] The Act defines taonga tūturu as follows:

taonga tūturu means an object that—

- (a) relates to Māori culture, history, or society; and
- (b) was, or appears to have been,—
 - i. manufactured or modified in New Zealand by Māori; or
 - ii. brought into New Zealand by Māori; or
 - iii. used by Māori; and
- (c) is more than 50 years old

[34] Part 2 of the Act contains provisions concerning establishing the ownership and custody of taonga tūturu. The starting point is that any taonga tūturu found anywhere in New Zealand or within the territorial waters of New Zealand is declared and deemed to be *prima facie* the property of the Crown (section 11(1)).

[35] The Act sets out a process by which a find of a taonga tūturu is notified and claims for ownership may be made (section 11).

[36] Of relevance in s 12 of the Act is the jurisdiction conferred upon this Court to determine whether the subject matter of an application is a taonga tūturu and to hear and determine applications to the actual or traditional ownership, rightful possession or custody of any taonga tūturu, or to any right, title, estate or interest in a taonga tūturu (s 12(1)(a)(b)). The Court also has jurisdiction to vest in any person or persons as trustee or trustees in any taonga tūturu for safekeeping and preservation (section 12(1)(e)). The Act requires that any person who finds a taonga tūturu anywhere in New Zealand or within its territorial waters to notify either the Chief Executive (Ministry for Culture and Heritage) or the nearest public museum of the find. On receipt of notice of a find, the Chief Executive must:

Section 11(4)(a):

- a) take the action that the chief executive considers appropriate to—
 - i. provide for the examination of the taonga tūturu, its care, its recording, and its custody on such conditions as the chief executive considers fit; and
 - ii. notify any parties that may have an interest in the taonga tūturu; and [...]

[37] The following are defined terms in the Act:

found, in relation to any taonga tūturu, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the taonga tūturu and which suggest that the taonga tūturu was last in the lawful possession of a person who at the time of finding is no longer alive; and **finding** and **finds** have corresponding meanings

ngā taonga tūturu means 2 or more taonga tūturu

object includes a collection or assemblage of objects

protected New Zealand object means an object forming part of the movable cultural heritage of New Zealand that—

- (d) is of importance to New Zealand, or to a part of New Zealand, for aesthetic, archaeological, architectural, artistic, cultural, historical, literary, scientific, social, spiritual, technological, or traditional reasons; and
- (e) falls within 1 or more of the categories of protected objects set out in Schedule 4

[schedule 4, clause 4 includes ngā taonga tūturu and the words ‘this category includes any taonga tūturu.’]

Arguments of the non-Crown parties

[38] Counsel for Moriori, Ngāti Mutunga and the Dix whānau/station owners argue that as a starting point the waka is a taonga tūturu for the purposes of the Act and as such, in accordance with the relevant definitions, a taonga tūturu is an ‘object with particular characteristics connecting it to Māori culture, history, or society. In this context, Māori includes Moriori.

[39] They go on to note that the term ‘object’ is defined as including ‘a collection or assemblage of objects.’ It follows that such a collection may be “found” as that term is used in section 11 of the Act. As a matter of common sense and ordinary usage, all the constituent parts of such a collection or assemblage are not necessarily unearthed or discovered at exactly the same time. However, that does not alter the fact that the collection or assemblage has itself been found once it is apparent that that is what the finder is looking at.

[40] Counsel refer to High Court authority (upheld by the Court of Appeal and the Supreme Court) which held that The Act extends protection to certain objects of national value, but not to swamp kauri as a class of objects. The following is from the decision of the majority of the Supreme Court:

The purpose of the Protected Objects Act is to protect certain objects of particular national value to New Zealand. The focus is therefore on individual items that, as individual items, have significance for one or more of the reasons set out in s 2(1)(a). The Act is not designed, as the Courts below held, to protect natural materials such as swamp kauri in bulk. It is true that a protected New Zealand object is defined to include a collection or assemblage of objects but these terms imply that the collection or assemblage is in one place or in the hands of one owner. That does not apply to swamp kauri.⁹

[41] Counsel also refer to the following footnote to that paragraph from Justice Glazebrook who observed that

It seems to us that the reference to collection or assembly of objects may be designed to cover the situation where the individual objects may not all individually merit being subject to controls on export but where the national value lies in the collection itself.¹⁰

[42] On the basis of this authority, counsel argue that the waka as a whole fits squarely within the definition of ‘object’ under the Act as characterised by the Supreme Court. It is a ‘collection or assemblage that is in one place.’ Consistent with the observation of Justice Glazebrook and in the case of the waka find, the national value lies in the collection of parts itself.

[43] Counsel then argue for a purposive construction of the statutory provisions, noting that the purpose of the Act is to provide for the better protection of certain objects, including taonga tūturu. It is argued that the ordinary meaning of “found” is not necessarily synonymous with ‘sighted.’ To find something concerns a state of knowledge about the existence of the thing. To have sighted the item is one, but not the only means by which knowledge of existence can be obtained. This is consistent with the definition of “found” in the Act which refers to something ‘discovered or obtained.’ Counsel note the Oxford English Dictionary definition of ‘discover’ is:

⁹ Joint memorandum of non-Crown parties dated 7th May 2026, at para [9].

¹⁰ At para [10].

To obtain sight or knowledge of or become aware of (a thing or person previously unknown or overlooked) for the first time; to find out, to come to know of; to find in the course of a search or investigation.¹¹

[44] Counsel argues that the purposive interpretation of the statutory provisions and the ordinary meaning of the relevant words means that the waka is an entire find, even although some parts have so far been recovered and ‘sighted.’ Counsel conclude arguing:

On the Crown’s interpretation of the Act, the Chief Executive has no obligation to care for or protect the buried part of a taonga tūturu which has been found in part, even if (as is the case in this application) the presence of the buried part of the collection is abundantly clear in the context and that buried part is in grave need of care and protection. It mandates wilful blindness towards the cultural heritage of this country. That cannot have been Parliament’s intention.¹²

Crown argument

[45] Crown counsel argues that while a taonga tūturu may be a ‘collection’, or ‘assemblage’ a collection or assemblage can only comprise of objects that are actually known to exist with certainty. Whilst the remains of the waka excavated and found to date may be properly described as a ‘collection’ or ‘assemblage,’ this cannot extend to include objects that are not known to exist with any certainty and whose existence is merely suggested on the basis of what has been excavated and uncovered.

[46] With respect to waka remains that have not been seen or recovered by the archaeologists, counsel note the draft archaeological report which concludes that it is not possible to test ‘how far the waka deposit extends’ and that Dr Maxwell is of the opinion that ‘there is potentially a great deal more material present at this site.’ Crown counsel argue that this is not based on any specific knowledge but is an informed expert opinion that there is ‘potentially’ material other than the excavated and re-buried parts.

¹¹ At para [16].

¹² At para [18].

[47] Counsel go on to argue that the word “found” in section 11(1) should be read in light of the text, scheme, and purpose of the Act. On this approach, “found” requires actual discovery of a specific thing, such that its existence and identity are known with sufficient certainty and “found” is not satisfied by mere suggestion, prediction, or inference that additional material is merely likely to exist. Therefore, only the portion of the waka that has been actually uncovered and identified with certainty has been “found.” The remainder, the existence and extent of which remain uncertain, has not yet been ‘found’ for the purposes of section 11(1).

[48] It is argued that section 11(1) is a gateway provision, once a taonga tūturu is “found” the operation of the Act leads to a legal consequence of the taonga being deemed prima facie Crown property. The word “found” performs a threshold function and marks the point of which the Acts regime displaces that which would otherwise be the ordinary private law consequences of discovering and taking control of goods. On this basis, counsel argue that the Court should prefer a reading that is clear and workable rather than one that depends on impressions or predictions.

[49] Crown counsel noted that there is no case law directly on point as to how the definition of “found” in s 11(1) of the Act applies to the factual context at hand. However, Counsel argues that the judgment *Jones v Whickliffe* shows an approach that favours certainty over a broad construction.¹³ It was argued that that a wide meaning of “found” (to include the obtaining of a taonga from another person) would best serve the protective measures in the Act. The High Court held that “found” would not extend to a situation where a kākahu was taken from a person who was previously in possession of it.

[50] Crown counsel argue that the definition of “found” needs to be read in a way that is consistent with the common law finders law that Pt 2 displaces. At common law, the “finder” concept is not triggered by mere speculation. It is triggered by discovery of a specific object and its being taken into custody or control. This would have coloured how Parliament intended “found” to be understood. Finders law is engaged by discovery of a specific known object, capable of possession and control, and this

¹³ *Jones v Whickliffe* [2012] NZHC 1960 at [30].

supports reading the trigger in s 11(1) as applying when an identified object is actually discovered.

[51] Crown counsel refer to the following long-standing problems for the Antiquities Act 1975 that the policy proposals leading to the 2006 amendments addressed:

...outdated and inconsistent definitions, unclear export criteria, a lack of provision for the return of illegally exported objects, insufficiently transparent and accountable decision-making, no requirement that the Crown take active steps to establish actual or traditional ownership through the Māori Land Court, inadequate protection against wilful damage or destruction, and penalties too low to deter non-compliance.

[52] Crown Counsel argue that this context supports a reading of “found” that is certain and workable, not one that turns on constructive discovery or archaeological prediction.

[53] It is further argued that parliament indicated that the Act would protect taonga tūturu through the particular mechanisms of export control, establishing and recording the ownership of ngā taonga tūturu and controlling the sale of ngā taonga tūturu. Counsel contend that while the Act obviously does provide to some extent for protection of objects in terms of their physical integrity (including through section 11(4)), its focus is on protection against souveniring and export, and that needs to be taken into account when considering a purposive interpretation of “found”.

[54] The Ministry does not generally excavate itself and any limited excavation has been incidental and exceptional rather than required by the Act. Crown Counsel say that while there are other sites that are known to have archaeological significance, where artifacts including taonga tūturu continue to appear over time, and it is known that there are likely to be taonga there, the Ministry does not, and is not required to, take positive steps on the basis of inference or suggestion.

[55] Crown counsel argue that the Court’s role is not directed to hypothetical extensions or associated material whose existence boundaries, and character remain uncertain. Crown Counsel argue that the Court’s interpretation therefore requires

enough specificity and certainty that fits the Executive's functions under s 11 and the Court's role under s 12.

[56] Crown counsel contends the other parties' reliance on *Northland Environmental Protection Society Inc v Chief Executive of the Ministry of Primary Industries* as support for their interpretation is misplaced. They argue that the direct relevance of that authority is limited.

[57] On the other hand, Crown Counsel says that the judgments in *Northland Environmental Protection Society* endorse the view that the Act must be interpreted in a way that is practical and commonsense and avoids administrative burden for the Chief Executive.

[58] Crown Counsel argues that their definition of "found" fits ordinary archaeological usage. They say that:

In archaeology, a "find" usually means a specific artefact, feature, or remain that has been located, identified, and recorded in context as a distinct item. The term is not usually used for material that is only predicted, inferred, or hypothesised to exist somewhere within a site.

[59] Crown Counsel go on to argue that the waka is not conceivable as one object. They take issue with the argument of other counsel that because a waka is conceptually one object, discovery of any part means the whole is "found." It is argued that even if a waka can be properly described as a single object, a collection or an assemblage, it does not follow that finding one exposed remain means the whole has been found. The idea of an assemblage describes how known parts relate to each other. Where only part has been uncovered and the extent and condition of the rest remain uncertain the whole cannot yet to be said "found." "Finding one remain may justify an inference that other parts exist, and may support protection or further investigation, but that is not the same as discovery."

[60] It is therefore argued that "found" as the term is used in The Act requires actual discovery of a specific taonga tūturu identified with enough certainty as an object. It does not extend to material that is only inferred or predicted to exist. Only those parts

of the waka that have been uncovered and identified come within this definition (this includes those parts that were uncovered and then reburied). Any further material below the surface remains unfound unless and until it is discovered as an identified object.

Kōrerorero

Discussion

[61] The Moriori application seeks confirmation that the waka is a taonga tūturu, and that their ownership of it is affirmed. There may be other objects at the site that are not part of the waka but are taonga tūturu in their own right. I do not address these in this decision. To the extent that the Moriori application is said to extend to all archaeological and cultural items associated with the site (including organic material), I agree with Crown counsel that there may be jurisdictional limits that need to be clarified in due course. In this decision, I confine myself to the question of what has been found in relation to the waka itself and to whether (as the Crown argues) the Court can only consider those parts that were recovered or seen during archaeological investigation, but nothing further.

What has been “found”? Are those parts of the waka that remain buried in the dunes “found”?

[62] Notwithstanding the detailed arguments of Crown counsel, I believe the answer is clear and emerges in a straightforward way from close consideration of the facts set against the relevant statutory definitions, and the purpose of the Act.

[63] The evidence establishes that what Vince and Nikau Dix found are the remains of a large ocean-going waka wrecked at the site by a significant storm surge or similar event between 1440-1470. That same event also led to the remains of the waka being covered by a layer of debris and subsequently by soil, vegetation and sand – all of which have combined over time to preserve the waka remains in remarkably good condition.

[64] It is accepted that this waka is an object that relates to Māori culture and history, was manufactured or modified in New Zealand by Māori, used by Māori and is more than 50 years old, and as such it is a taonga tūturu.

[65] The Concise Oxford Dictionary defines “object” as:

A material thing that can be seen and touched.

[66] The object in question is the waka itself. While it is true that the term “object” is defined in the Act to include a collection or assemblage of objects what has been found are the remains of a waka, not a collection or assemblage of waka. The object or material thing that everybody has become aware of following the initial find are the remains of a previously undiscovered waka.

[67] I accept that the word “found” should be interpreted in light of the text, scheme, and purpose of the Act. I also accept that to be “found” requires actual discovery of an identifiable object. Where the object discovered has been broken into pieces, the extent and nature of the “find” is a question of fact and degree. Have enough pieces been seen and recovered so that a conclusion can be reached as to the identity of the object from which they derive? Yes, it is known that what has been found are the shipwrecked remains of a large ocean-going waka of considerable age. Is it known that more parts of the object remain at the site? Again, yes it is known that a great deal more of the waka remains at the site.

[68] In accordance with the statutory definition a taonga tūturu is “found” when it is “discovered” or “obtained.” Some parts of the waka have been recovered or “obtained” and it is common ground that they have been “found.” The question remaining is whether it can be said that those parts that remain unsighted in the dune have been “discovered.”

[69] Counsel for the non-Crown parties cited the Oxford English Dictionary definition of “discover” (set out above at [42]). This includes:

To obtain sight or knowledge of or become aware of (a thing previously unknown or overlooked)... to find out, to come to know of.

[70] As to knowledge of what remains buried at the site, I place weight on the expert opinion of Dr Maxwell. He is of the view that to date, only a portion of what is at the site has been recovered (possibly as little as 10% of the waka). He has expressed a view

as to the likely area within which further parts of the waka are buried. His expert opinion is based upon the configuration of the waka remains that had been exposed by excavation, together with observations at the site where other parts of the waka have been exposed.

[71] I annex to this judgement two images from Dr Maxwell's September 2024 archaeological survey and assessment. The first is a photograph of the excavation as at 15 January 2025. This shows the dense configuration of waka parts exposed by the partial excavation and the extent to which they carry on into the dunes in various directions. The second is an aerial photograph of the find spot with a large red oval, indicating the approximate extent of known subsurface waka components. The smaller circles are areas where waka components have been noted. The larger of the smaller red circles closer to the highwater mark indicates the approximate area that was excavated in January/February 2025.

[72] It is also relevant to note that knowledge of what had been discovered at the site grew over time as the investigation progressed. Following notification of the initial find, the Ministry instructed Dr Maxwell (lead archaeologist), Sarah Gainsford (conservator), and Matt Gainsford (archaeologist) to travel to the island and assess the site. Dr Maxwell's September 2024 report begins as follows:

The Ministry of Culture and Heritage (MCH) has commissioned this archaeological survey and assessment of the proposed emergency recovery of a waka, which has been partially exposed by coastal erosion on the north coast of Chatham Island/Rēkohu.

[73] The introductory section goes on to say that the field survey conducted in that initial visit:

... indicates that components of the waka are still present within the creek and dunes, and the site is extremely vulnerable to coastal erosion. It has therefore been determined that an archaeological excavation is appropriate.¹⁴

¹⁴ Archaeological Survey and Assessment of proposed rescue excavation at CH-744 waka find spot, Wharekauri, Chatham Island, September 2024 (Maxwell and Huebert) Sunrise Archaeological Report 2024-28 at para 1.

[74] In the September 2024 report, Dr Maxwell goes on to say:

It is known that the areas of immediate concern, regarding the threat of coastal inundation and erosion by creek activity, include timbers of a range of sizes and lengths. These timbers were deposited in such a way as to make this a complex, interconnected archaeological deposit which will require large areas to be opened in order to recover the waka.¹⁵

[75] I have summarised at [20] – [24] above Dr Maxwell’s subsequent findings concerning the site and what remains there.

[76] I was fortunate to have an opportunity to visit the find site when I was on the Chatham Islands for Court in October 2025. I was taken to the site by Vince and Nikau Dix and accompanied by officials from the Ministry and DOC alongside representatives from Moriori and Ngāti Mutunga. I was shown the area previously excavated and the area within which it is thought most of the remains of the waka lie. I was also shown some timbers protruding from the bottom of the dunes in the vicinity of the creek that were considered to be part of the waka. The site visit assisted my understanding of the nature and extent of the “find.”

[77] Crown counsel argue that there is nothing in the text or scheme of section 11(1) that suggests Parliament meant *prima facie* Crown ownership would arise from mere suspicion that taonga exist somewhere, or from predications about what might lie below the surface.

[78] I do not accept this characterisation of the facts. This is not a case where *prima facie* Crown ownership would arise with respect to taonga that are merely suspected to remain at the site. It is known that further remains of the waka are buried at the site and enough is known to enable the archaeologist and his team to reach conclusions about the area within which the bulk of the remaining parts lie, and to estimate the cost and logistics of a full excavation. This takes the situation beyond mere suspicion or speculation as to the presence of further parts of the taonga.

¹⁵ Dr Maxwell and Dr Huebert summarised archaeological report 2024-28 at 7.3 pg 39.

[79] In terms of the history of the legislation and the overall purpose and objectives of the Act, it is relevant to note that the 2006 amendments enabled New Zealand's participation in the UNESCO convention and the UNIDROIT convention.

[80] The UNESCO convention (Protected Objects Act 1975 Schedule 2) is entitled:

UNESCO Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property.

[81] Amongst the recitals in the Preamble are clauses which note cultural property as constituting one of the basic elements of civilisation or national culture, and that it is incumbent upon every state to protect its cultural property against the dangers of theft, clandestine excavation and illicit export.

[82] Under the convention, cultural property has a wide meaning. It encompasses property which on religious or secular grounds is specifically designated by each state as being important for archaeology, pre-history, history, literature, art or science and belonging to a number of specified categories, which include:

- Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; and
- Property relating to history, including the history of science and technology and... to events of national importance...
- Objects of ethnological interest.

[83] Article 2 of the convention records that state parties recognise that the illicit import, export, and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage. Under Article 5 state parties undertake to set up one or more national services for the protection of cultural heritage with qualified staff to (inter alia) contribute to the laws and regulations designed to secure the protection of cultural heritage and prevention of the illicit import, export and transfer of ownership of cultural property and...

organising the supervision of archaeological excavations, ensuring the preservation “in situ” of certain cultural property, and protecting certain areas reserved for certain archaeological research...

[84] Article 14 states:

In order to prevent illicit export and to meet the obligations arising from the implementation of this convention, each state party to the convention should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose.

[85] This broader context is noteworthy both in light of the national and international significance of this particular find, and also because it goes against the Crown’s characterisation of the Act as having a focus on protection against souveniring and export. It has a wider scope, and with respect to taonga tūturu it carries forward the idea of prima facie Crown ownership of a find as a key protective measure to allow for Māori ownership to be determined by referral to the Court.

[86] The 2006 amendments incorporated substantial amendments to the Antiquities Act 1975. Under the Antiquities Act, what are now classified as “taonga tūturu” were classified as “artifacts.” The definition of “artifact” and the nature of the Court’s jurisdiction is similar but not the same for taonga tūturu under the Protected Objects Act 1975. Following the 2006 amendments, there are some differences.

[87] One such difference is in the wording of what was s 11(4) of the Antiquities Act 1975 which provided for what was to happen once the Secretary (now the Chief Executive) received notice of a find:

Upon receipt of a notification in accordance with subsection (3) of this section, the Secretary shall take such action as he deems appropriate to provide for the examination of the artifact, its recording and its custody, either by the finder or otherwise, and on such conditions as the Secretary deems fit.¹⁶

¹⁶ Section 11(4) Antiquities Act 1975.

[88] Section 11(4)(a)(i) now requires the Chief Executive to not only take action to provide for the examination, recording and custody of a taonga tūturu but also to take action to provide for “its care.” The words “either by the finder or otherwise” no longer appear and accordingly the enlarged statutory responsibility now lies with the Chief Executive solely.

[89] The addition of the requirement to “care” for the taonga tūturu while it remains prima facie Crown property makes it clear that the duty on the Chief Executive is not simply the reactive recording and examination of the taonga tūturu but also extends to active consideration of what is required to ensure the “care” and (safe) custody of the taonga.

[90] I have concluded that what has been “found” are not just those parts of the waka seen or recovered, but also those parts of the waka that remain buried in the dunes. While the Chief Executive has a broad discretion under section 11(4)(a) in terms of what action is considered appropriate, the statutory duty applies to the entire find.

What next?

[91] I have noted earlier in this decision the correspondence from the minister, the Chief Executive in the statement of Ms McCracken confirming that the Ministry continues to manage this find within existing baselines and no new funding has been sought by the Chief Executive. As I understand the Crown position, there is a denial of any current statutory duty with respect to those parts of the waka that remain buried at the site. I note that despite the general denial of responsibility for what remains buried at the site, the Crown has nonetheless commissioned expert advice about site protection measures and I understand some work is either planned or underway to install a barrier in the form of sandbags or similar in front of the dunes in an attempt to minimise the risk of further erosion from storm surges.

[92] The Chief Executive has yet to consider what action is appropriate with respect to the examination, care, recording and custody of those parts of the waka that remain at the site. A decision of this Court with respect to ownership of those parts so far recovered is not necessary in order for the Chief Executive to undertake the actions

required pursuant to s 11(4). The statutory scheme contemplates completion of the s 11(4) actions and notice to parties before referring claims of ownership to the Court for determination.

[93] The fact that the Moriori applicants initiated the proceeding pursuant to s 11(2) (as they are entitled to do) does not displace the responsibilities that lie upon the Chief Executive pursuant to s 11(4).

[94] By joint memorandum dated 18th of March 2026 counsel for Moriori and Crown counsel sought directions for timetabling the Moriori application to hearing. The memorandum records that the Chief Executive has no difficulty with the timetable and abides the Court's decision as to whether the timetable to hearing should now be ordered.

[95] By memorandum dated 14th of April 2026, counsel for Moriori filed an updated proposed timetable. Adjustments had been made in light of the fact that the final archaeological report had still not been filed. If the application was to be contested, the timetable provided for the filing of evidence by way of affidavit and then affidavits in response are to be filed by the 23rd of June 2026 with any cross-examination indications to be given by the 7th of July 2026. That timetable has been overtaken by the need to address this preliminary legal issue.

[96] The progress of this application, and the extent to which a decision of the Court on ownership is required before decisions can be made about further excavation needs to be addressed.

[97] I wish to hear further from the parties about these matters once they have had the opportunity to consider this decision. The following are my preliminary views concerning the next steps in these proceedings. I invite the parties to take instructions and respond in accordance with the directions that follow.

[98] The Crown argues that a decision from the Court on ownership of those parts of the waka so far recovered (and seen on the initial excavation) needs to be made before further decisions about excavation can take place. This is based upon the view

that it is preferable that such decisions are taken by the true owner rather than the “interim custodian.” It is said the Crown does not normally undertake excavations and a finding from the Court as to ownership would assist the traditional owner accessing funds from private and institutional sources.

[99] The Crown position appears to be (at least in part) based on the mistaken assumption that the Chief Executive’s statutory responsibility extends only to those parts of the waka so far recovered (or seen and re-buried at site).

[100] The statutory duty is triggered upon notification of a find, and a Court decision on ownership at that point is not contemplated or required by the statutory scheme. The Chief Executive’s initial response was consistent with the duty under s 11(4) of the Act. It was only once the scale of the find (and associated cost) became apparent that the Crown’s position has become more ambiguous and non-committal.

[101] It is entirely a matter for the government of the day to set its funding priorities and the Chief Executive has a broad discretion under s 11(4) of the Act. Nonetheless, the Chief Executive is under a statutory duty with respect to those parts of the waka that still remain at the site and that duty cannot be abdicated, avoided, or delegated to a third party.

[102] What is now required is greater clarity as to the action the Chief Executive considers appropriate in light of this decision with respect to those parts of the waka that remain at the site.

[103] I do not agree that a ruling from this Court on actual or traditional ownership is a necessary precondition to further decisions about excavation of what remains at the site. Given the significance, scale, and complexity of this find I am of the view that there are good reasons that the proceedings to determine ownership should await completion of a full excavation and availability of advice as to what is required with respect to ongoing conservation. I would then be in a position to consider the orders and conditions (as to vesting) that would best meet the particular needs of this remarkable find.

[104] Counsel for Moriori have previously raised the possibility that the Court could issue some form of interim order as to ownership. I remain of the view that I lack the jurisdiction to make such an order. It is not yet clear whether the Moriori application will in fact be contested and this raises the possibility that there could be orders by consent.

[105] I invite counsel for all parties to take instructions and confer and advise the Court in accordance with the directions that follow.

Kupu Whakahau

Directions

[106] On or before 4pm Friday 24th of July 2026, Crown counsel are to file a memorandum confirming:

- a) What action the Chief Executive considers appropriate to provide for the examination, care, recording and custody of those parts of the waka that remain buried at the site; and
- b) Provide an indication of the timeframes within which such action will take place; and
- c) Confirm whether or not the Crown considers that these proceedings should be stayed pending completion of those actions; and
- d) Whether further directions in this proceeding are required and/or whether directions and/or orders by consent could be made.

[107] Counsel for Moriori, Ngāti Mutunga and the Dix whānau/station owners are to file memorandum and/or joint memoranda on or before 4pm Friday 7th of August 2026 responding to the memoranda of Crown counsel and confirming:

- a) Whether further procedural directions are requested and/or
- b) Whether directions and/or orders in this proceeding can be made by consent.

I whakapuaki i te wā 4 pm i Te Whanganui-a-Tara, i te 30 ngā rā o Hune i te tau 2026.

Pronounced at 4pm in Wellington, on this 30 day of June 2026.

M J Doogan
JUDGE

Appendix 1

Base image is site on 15 January.



Figure 10. Large red oval is approximate extent of known subsurface waka components. High water mark is left edge of red oval. Small circles are areas where components of waka are noted. North to top.