

Pūrongo Rangahau | Study Paper 24

Appendix 2:

**Kei raro i ngā tarutaru, ko
ngā tuhinga o ngā tupuna |
Beneath the herbs and
plants are the writings of
the ancestors**

**Tikanga as expressed in
evidence presented in legal
proceedings**

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Introduction

In Māori intellectual tradition, the law is not a series of rules that one lives under, nor can anyone rise above it, our people simply lived with it like we live with the land. Tikanga is completely intertwined with all aspects of day-to-day living.

In the hundreds of years prior to 1840 the common land mass that made up the islands of Te Ika a Māui and Te Waka a Māui was occupied by a number of distinct Iwi and Hapū polities. Each polity exercised its own mana and lived according to its tikanga secure in the uniqueness it had developed over centuries. Just as the common land mass of Europe was occupied by a number of distinct polities exercising their authority and living according to their law so Iwi and Hapū did the same. They were recognised and constitutionally regulated polities.

Dr Moana Jackson¹

1. This statement by the late Dr Moana Jackson speaks to both the nature of tikanga and its integral place within the lives of Māori. It was made in the context of affidavit evidence in the High Court case of *R v Tamati Mason*.² Māori have long utilised courts and forums such as the Waitangi Tribunal to make claims, assert rights and attempt to rectify wrongs. In doing so, evidence has been brought to these forums that contains expressions of tikanga Māori and its nature.
2. This Report synthesises and maps some of these expressions of tikanga through an examination of evidence presented to courts and the Waitangi Tribunal. We have entitled this Report using a whakataukī – Kei raro i ngā tarutaru, ko ngā tuhinga o ngā tūpuna (Beneath the herbs and plants are the writings of the ancestors). This whakataukī has been taken from the Waitangi Tribunal's report *Ko Aotearoa Tēnei*.³ It was used by the Waitangi Tribunal in the context of the relationship of Māori with the environment. The Tribunal emphasises that "[M]atauranga Māori is present in the environment; in the names imprinted on it; and in the ancestors and events those names invoke."⁴ We have used this whakataukī to also emphasise that the exercise we have undertaken has been to shine the light on kōrero that, to our knowledge, has not been synthesised in one collection before. The kōrero in this Report is not new. To the contrary, in most cases, it is intergenerational. However, it has been somewhat out of sight, at least as it has been conveyed in the evidence. Our task was to look beneath the herbs and plants. The kōrero of the ancestors was there.

¹ *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [22] and [34].

² *R v Tamati Mason* [2012] NZHC 1361.

³ *Ko Aotearoa Tēnei* (the Wai262 report); Waitangi Tribunal, 2011, p.103.

⁴ *Ko Aotearoa Tēnei* (the Wai262 report); Waitangi Tribunal, 2011, p.237.

3. This Report is intended to inform the broader piece of work being undertaken by the Law Commission led by Commissioner Whata, namely the review of the role of tikanga Māori in relation to New Zealand law. This broader piece of work has the following brief:⁵

Te Aka Matua o te Ture | Law Commission will produce a detailed study paper that examines tikanga Māori and its place in Aotearoa New Zealand’s legal landscape.

Tikanga Māori has been steadily gaining recognition in the courts and in statutes. Te Kōti Mana Nui has recently affirmed that tikanga Māori may be a source of enforceable rights and interests and is relevant to developing the common law. Tikanga is also expressly recognised, in various ways, in many Acts of Parliament. Despite this, understanding of tikanga Māori, what it is, and where and how it should be applied in these contexts is limited.

The object of the study paper is to address these important questions. To this end, the study paper will give an explanation of tikanga Māori, including an account of what it is and where it comes from, grounded in mātauranga Māori. The paper will also “map” tikanga Māori as a system of law, drawing on, among other sources, expressions of tikanga in the courts and Waitangi Tribunal. Finally, the paper will look at the interface between tikanga Māori and institutional law, including the common law and legislation, with a view to providing a principled framework for engagement.

The planned paper will build on the Study Paper, Māori Custom and values in New Zealand Law, published by Te Aka Matua o te Ture in 2001.

4. We note that work is also being undertaken by Te Whare Wānanga o Awanuiārangi to support the Law Commission paper. As we understand it, the Wānanga work draws on the tikanga expertise of the Wānanga and provides an additional framework for conceptualising tikanga.

⁵ <https://www.lawcom.govt.nz/our-projects/tikanga-maori>

Scope and methodology

1. The process at the outset was to develop the scope of the task and the methodology to analyse expressions of tikanga in legal proceedings.
2. In terms of the time period selected, whilst evidence from some historical cases has been examined (i.e. from the mid-20th century),¹ the majority of evidence reviewed has been sourced from cases and Waitangi Tribunal inquiries from the mid-1980s to the present day. It is acknowledged that this Report does not include the rich and valuable evidence of tikanga that would have been present in earlier cases and particularly prevalent in courts such as the Native Land Court. The time period was limited primarily to make the project manageable but also to capture relatively contemporary understandings and expressions of tikanga.
3. Evidence was sourced from the Waitangi Tribunal, the Environment Court, the High Court, the Court of Appeal and the Supreme Court (noting that the Court of Appeal and Supreme Court are appellate jurisdictions, but relevant evidence presented to those Courts was also reviewed). We understand that evidence from the Māori Land Court and Family Court was also reviewed by other teams. That analysis is not included in this Report.
4. The evidence reviewed from these contexts necessarily needed to be focused. The authors initially identified and collated an index of leading cases and Waitangi Tribunal inquiries relevant to tikanga Māori in the Waitangi Tribunal and the courts. The final list of cases and Tribunal inquiries selected was a collaborative exercise following engagement with Commissioner Whata, peer reviewers and judges. A representational cross-section of cases and inquiries covering a broad array of subject matter and themes was sought. We have included, as an appendix, the number of briefs reviewed and their source (i.e. Waitangi Tribunal inquiry or case).
5. Access for the evidence given for the court cases was requested, and permission was largely granted by the relevant parties. Non-confidential evidence from the Waitangi Tribunal was sourced through the publicly available Waitangi Tribunal database.
6. Following receipt of the evidence, the respective teams at Whāia Legal and Kāhui Legal completed a review for relevance. In that regard, a team approach was taken to reviewing the evidence. The authors and reviewers are all Māori and are versed in kaupapa Māori research methodologies and briefing evidence of this nature and in tikanga Māori more generally. Sessions were held at the outset of the research process alongside the reviewers and Commissioner Whata to ensure consistency of approach for the review (including the initial relevance review).

¹ For example, *In re Bed of Whanganui River* [1958] NZMAC 2/59.

7. Not all evidence sourced was deemed relevant. For example, some of the evidence sourced and provided for Environment Court cases was technical in nature (i.e. Western science evidence). In other situations, the evidence was brief and did not necessarily address matters of tikanga. The authors and reviewers were mindful of the way in which kōrero has been expressed through the evidence. It is not always the case that relevant tikanga kōrero is 'signposted' in a Western sense. This does not mean the kōrero is not relevant to this exercise; often it was.
8. There are a range of deponents whose evidence is drawn from in this Report. The deponents include, but are not limited to, pūkenga, legal academics and those whose lived experience framed their kōrero (acknowledging that there are overlaps in these groupings of deponents). We have taken an inclusive approach to the evidence and, if relevant (i.e. if the evidence included matters of tikanga), it has been included in the analysis contained in the Report. We have not sought to limit the evidence included based on the experience or whakapapa of the deponents.
9. Once relevance was assessed and confirmed, the evidence itself was reviewed to identify contemporary expressions of tikanga Māori. This was collated in table form, identifying the relevant case or Tribunal inquiry and deponent alongside key parts of the evidence. The key parts of the evidence were then grouped into themes before this report was drafted.
10. The authors and reviewers also discussed, and have been mindful of, the particular context and setting in which the evidence has been provided. In some cases, the setting is adversarial (i.e. the High Court in particular cases) and in some it is less so (i.e. the Waitangi Tribunal). Ultimately, the approach taken was to extract expressions from the evidence as presented, and in highly contested cases, we have also reviewed the transcript and notes of evidence for further evidence that has come through as a result of cross-examination. We have endeavoured to provide a fair and balanced account of these expressions of tikanga.
11. A reality that the authors and reviewers were cognisant of was the distinction between tikanga Māori and tikanga that was iwi or hapū specific. Although this Report maps themes that span across iwi, we were conscious to ensure that the iwi/hapū voice was not lost. The centrality of this voice can particularly be seen through the specific examples and application of tikanga principles that are woven through the Report. We also chose to identify the iwi of the deponents that we named so that their comments are given an iwi/hapū context. Our approach to iwi identification was that we generally drew on the iwi identified by deponents in their primary evidence. Where iwi/hapū affiliations were not provided, where possible, the authors inserted the iwi that the deponent has previously identified with in other contexts through our own research. The iwi that are listed after witness names therefore do not purport to represent their only iwi connections.
12. We note that the authors of this Report and some of the reviewers have been directly involved in a number of the cases that were reviewed. Where that was the case, evidence review and report drafting was allocated to those who were not directly involved in the case.
13. In some quotes, macrons were not used. For consistency and accuracy of written te reo Māori, macrons have been used throughout the entire Report (including in quotes that did not use macrons in the original source).
14. We explicitly note the following limitations with this Report:

- In accordance with its purpose, this Report does not posit a way forward for the interface between tikanga and New Zealand law. That is a task beyond the scope of simply bringing together and mapping expressions of tikanga Māori from a range of different court and Tribunal contexts.
- We were unable to review all potential evidence from all cases and/or Tribunal reports. For example, in respect of the Tribunal, only a narrow snapshot of the vast array of reports and evidence that have touched on tikanga since its inception was reviewed.
- A relatively narrow time period was also chosen. Apart from the odd exception, cases and reports were generally drawn from between the mid-1980s until the end of 2021. Given the parameters of the project and time constraints, it was simply not possible to review everything or even the majority of possibly relevant evidence. The approach taken, as set out above, was intended to be the best possible cross-section of materials based on the time and resource available in this context. Given this Report only scratches the surface of a rich array of tikanga evidence, we would encourage more work to be done in this space.
- Given the adversarial nature of some contexts in which evidence was provided, another limitation is that evidence was inevitably context specific and directed towards particular matters. The evidence provided was not designed to provide a systemic and whole explanation of tikanga and its internal working and logic. Constructing this Report was a process of pulling together multiple comments and statements from witnesses. This inevitably means that this is not a full account and there will be gaps in content coverage. We did not seek additional sources beyond the evidence we reviewed to fill gaps. There is also no substitute for reading the evidence in full and in context.
- An inherent difficulty in attempting to map and explain tikanga is translating te reo Māori concepts into English. However, given that almost all of the evidence was provided in English, this was a challenge that the deponents rose to. We have therefore drawn directly on their words and explanations.
- We acknowledge that there is inherent overlap in the kōrero presented in this Report. In that regard, there is overlap between a number of sections, and judgement has been exercised in determining both the sections included in this Report and how the kōrero is reflected within the sections. Some kōrero has been reflected across more than one section if it was considered appropriate to do so.
- Finally, there is a further difficulty in attempting to map a living, breathing, complex system of law onto the written page. Tāmāti Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) reflects this difficulty in his evidence when he says: “Practising tikanga and kawa is an inherently experiential and spiritual part of Te Ao Māori. It is difficult to commit an account of tikanga to writing because, as I’ve mentioned, Māori traditions are predominantly aural and practical.”² Although we consider there is value in undertaking this process, it inevitably results in an artificiality in terms of some of the

² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmāti Kruger (2 June 2020) at [40].

distinctions that we have drawn, particularly between what are highly overlapping concepts and principles. Painting broad brushstrokes on a page is not the same as seeing tikanga in its full multi-dimensional reality.

15. All of these limitations should be kept in mind in the context of reviewing this Report.



Acknowledgements

1. It was an honour and a privilege to be able to read through the expressions of tikanga reflected in the evidence. There were many witnesses who are well-known rangatira, tohunga and leaders of their whānau, hapū and iwi and in te ao Māori. A number of them have now passed on. We acknowledge the taonga that all witnesses have left in their kupu (words) and mātauranga (knowledge).
 2. This Report was completed by Whāia Legal and Kāhui Legal (led by Horiana Irwin-Easthope and Natalie Coates). Solicitors at both Whāia Legal and Kāhui Legal assisted with the review of evidence and analysis as part of the core legal team. Horiana and Natalie would like to acknowledge and thank Kate Tarawhiti, Josie Te Rata, Adair Houia-Ashwell, Rahera Douglas, Annelise Samuels, Ella Young, Toni Love, Rāhuikura Eruera and Tamahou Thoms (all of Whāia Legal and Kāhui Legal). We would also like to acknowledge the work of Morgan Dalton-Mill (clerk to Whata J) and Emma Sidnam, Tāneora Fraser and Briar Peat (Law Commission staff).
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SECTION ONE

What is tikanga?

1.1 Tikanga is described variably by witnesses as the “right”,¹ “normal”,² “appropriate”³ or “correct”⁴ way that Māori do things.⁵ Margaret Kawharu (Ngāti Whātua Ōrākei) in her evidence refers to an account by Reverend Manuhua Bennett (Te Arawa) who says tikanga or custom was the “right person, doing the right thing, in the right way”.⁶

1.2 Tikanga is explained by Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) in a joint statement as follows:⁷

Tikanga is the first law of Aotearoa. It is the law that grew from and is very much embedded in our whenua (land).

Tikanga Māori came to the shores of Aotearoa with our Māori ancestors, starting with Kupe and those on board the waka (canoe) Matahourua. In some traditions, tikanga merged with that already present. Tikanga operated effectively for around a millennia before Pākēha arrived.

Tikanga is the Māori “common law”. It is a system of law that is used to provide predictability and are templates and frameworks to guide actions and outcomes.

The term ‘tika’ means ‘to be right’. Tikanga Māori therefore means the right Māori way of doing things. It is what Māori consider is just and correct.

Tikanga Māori includes all of the values, standards, principles or norms that the Māori community subscribe to, to determine the appropriate conduct.

¹ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence by Kura Paul-Burke (22 December 2016) at [4.1]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Dr Korohere Crossley Bishop Lloyd Ngāpō Evidence (3 October 2020) (English translation) at [9].

² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Dr Korohere Crossley Bishop Lloyd Ngāpō Evidence (3 October 2020) (English translation) at [9].

³ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence by Kura Paul-Burke (22 December 2016) at [4.1].

⁴ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence by Kura Paul-Burke (22 December 2016) at [4.1].

⁵ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence by Kura Paul-Burke (22 December 2016) at [4.1].

⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (2 June 2020) at [20].

⁷ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [22]. This statement and the evidence formally produced by Tā Hirini and Tā Pou was endorsed at a hui of experts that also included Te Ripowai Higgins, Kura Moeahu, Professor Rawinia Higgins, Associate Professor Peter Addis, Che Wilson, Mohi Apou and Tamahou Rowe.

Tikanga is therefore comprised of both practice and principle. That is, it includes both the rules (what you should and should not do) as well as the principles that inform the practical operation and manifestation of the rule.

The customs or rules of tikanga are acknowledged when they are maintained by the people and are observed in fact.

- 1.3 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou), discussing tikanga as the ‘first law’ quoting Ani Mikaere (Ngāti Raukawa, Ngāti Porou), explains:⁸

Iwi and Hapū also developed a law that grew out of the stories and the culture that developed here. Ani Mikaere of Ngāti Raukawa has called the resulting tikanga the ‘first law’ of this land ... it developed from philosophies to do with the sacred and the interrelatedness of whakapapa as well as from precedents and custom. It recognised the need for sanctions but stressed ethics and sought reconciliation rather than punishment.

...

In Māori intellectual tradition, the law is not a series of rules that one lives under, nor can anyone rise above it, our people simply lived with it like we live with the land. Tikanga is completely intertwined with all aspects of day-to-day living.

- 1.4 Margaret Kawharu (Ngāti Whātua Ōrākei) points to Tā Hirini Moko Mead’s (Ngāti Awa) explanation of tikanga as embodying “a set of beliefs and practices associated with procedures to be followed in conducting the affairs of a group or an individual. These procedures are established by precedents through time, are held to be ritually correct, are validated by usually more than one generation and are always subject to what a group or an individual is able to do ...”⁹

- 1.5 Other variations that deponents used when describing tikanga include:

- “the customs employed by Māori when engaging in certain activities”;¹⁰
- the “foundation of social order” and “the expression of the values that ensured strong and resilient communities”;¹¹
- “a level of Māori ethics and what is acceptable to keep order in a hapū or iwi setting”;¹²
- the regulator of “the spiritual and physical relationships between Māori and the natural world”;¹³
- “a values-based system that regulates the maintenance of tangata whenua societal law, order and authority”¹⁴ that “recognises the importance of and regulates

⁸ *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [17] and [22].

⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (2 June 2020) at [21].

¹⁰ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence by Kura Paul-Burke (22 December 2016) at [4.1].

¹¹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A63 Ella Henry at [32].

¹² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Dr Korohere Crossley Bishop Lloyd Ngāpō Evidence (13 October 2020) (English translation) at [9].

¹³ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence by Kura Paul-Burke (22 December 2016) at [4.1].

¹⁴ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020) at [32].

relationships between people, between people and their environment, and between the natural world and the spiritual world”;¹⁵

- “the values and standards left by our ancestors to guide our conduct and way of doing things. Tikanga has some broad values and meanings but it means what is right, what is correct, what is fair for the best interests of the people and environment as they cannot be separated”;¹⁶
- “appropriate human conduct in accordance with the principles, values and ideologies of the affiliated group for their circumstances of the time”;¹⁷
- a Māori belief system that has “rights and responsibilities based on a natural order and steeped in a spiritual psychological and emotional bond between people and their rohe”;¹⁸ and
- “a system of values which indicates how we should behave in certain situations” which is “fluid and ever evolving”.¹⁹

1.6 Tāmami Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) explains tikanga Māori broadly as being:²⁰

[a] set of binding principles, beliefs and traditions practised collectively by Māori whānau, hapū and iwi since time immemorial. The word tika means ‘correct’, ‘just’, ‘decent’ and ‘honourable’ i te reo Māori, and so tikanga is considered ideologically as the right way to do things, which accordingly guides and constrains all aspects of *Te Ao Māori* and Māori life including social relationships and ceremonies, moral behaviour, economic activity and so on. There are consequences for breaching tikanga, which are generally proportionate to the particular transgression.

1.7 Tāmami Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) in a different statement of evidence says:²¹

Tikanga is the customary practices, attitudes, and regulation of behaviour of people. Tikanga is applicable and is accountable in terms of its general practice of that marae and that hapū. It is the connection between the cultural identity and the language of the people and their cultural practices.

1.8 He goes on to say, “The very basis of tikanga is to avert evil and its consequence. When one designs tikanga that is what you are designing, a method of aversion of evil and its consequences. Further, it is designed to attract and keep prosperity. Those are its two main functions.”²²

¹⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020) at [33].

¹⁶ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Awhina Evelyn Waaka (21 November 2013) at [4].

¹⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [31].

¹⁸ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [19].

¹⁹ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Justin Owen Ian Puna (11 August 2020) at [8].

²⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [38].

²¹ *Clarke v Takamore* [2010] 2 NZLR 525, Affidavit of Tāmami Kruger (31 July 2008) at [4].

²² *Clarke v Takamore* [2010] 2 NZLR 525, Affidavit of Tāmami Kruger (31 July 2008) at [36].

- 1.9 Paul Meredith (Ngāti Maniapoto) says, “While tikanga may be fluid, it is not a matter of personal whim. Tikanga draws on precedent to determine appropriate action.”²³ Meredith refers to the whakataukī, “Ehara i te mea poka hou mai: nō Hawaiki mai anō.”²⁴ “It is not a new thing done without proper cause: It has come to us all the way from Hawaiki.”²⁵
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²³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [40].

²⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [40].

²⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [41].

SECTION TWO

Characteristics of tikanga

UNDERPINNED BY MĀTAURANGA MĀORI

- 2.1 Joseph Davis (Ngāti Hei) explains that “Mātauranga Māori informs tikanga (what is right) and kawa (protocol)”.¹
- 2.2 Apirana Mahuika (Ngāti Porou) describes mātauranga as “a system for acquiring knowledge, and the training of the intellect to achieve a high level of scholarship and the gaining of the wisdom to give scholarly expressions to what has been learnt”.² He goes on to say:³

The key to Mātauranga Ngāti Porou is tikanga, or in English terms, culture. In culture or tikanga we find all those elements that are essential to life, namely, the rules and regulators about norms of behaviour and respect for people and property, rules of lore out of which arises systems of law, moral codes of behaviour and justice, sets of values systems, political and economic systems and religions and spiritual sanctions.

BASED ON FUNDAMENTAL GUIDING PRINCIPLES

- 2.3 A number of witnesses referred to tikanga as having key underlying principles. For example, Paul Meredith (Ngāti Maniapoto) says “that while the expression of tikanga Māori may differ across regions and develop over time, there are several underlying values and principles that inform the broader system of tikanga Māori”.⁴ Alongside “principles”, the terms “values” and “ideologies” were also commonly referred to.⁵
- 2.4 Different principles are emphasised by witnesses.⁶ These include:

¹ *Wilson v Waikato Regional Council* [2021] NZEnvC 131 Statement of Evidence of Joseph Davis (28 August 2020) at [112].

² Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [10.1].

³ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [10.2].

⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [33]–[34].

⁵ See *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (2 June 2020) at [22]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [10] and [58]–[59]; *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020) at [31]–[40].

⁶ For example, Tāmami Kruger in *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [58]–[59] referenced whanaungatanga, manaakitanga, mana, tapu and noa, utu and ea; Tamati Waaka in *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073,

- whakapapa;⁷
- whanaungatanga;⁸
- tapu⁹ and noa;¹⁰
- mana;¹¹
- manaakitanga;¹²
- utu and ea;¹³
- mauri;¹⁴ and
- kaitiakitanga.¹⁵

Statement of Evidence of Tamati Waaka (4 January 2017) at [95] referenced tikanga as being founded on whakapapa, mana and tapu and David Wilson *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [51] indicated that tikanga principles include manaakitanga, whanaungatanga, whakapapa, kaitiakitanga and mana; Paul Meredith in *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [33]–[34] lists whanaungatanga, mana, tapu, utu and kaitiakitanga; Professor Ruru and Mihiata Pirini in *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020) at [38] referred to Hon Justice Sir Williams writing extra-judicially suggests whanaungatanga, mana, tapu, utu and kaitiakitanga are five core principles in Joseph Williams “Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law” (2013) 21 *Waikato Law Review* 1.

- ⁷ See Whakapapa section [4.1]–[4.50]. See also *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [95]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence p.1151.
- ⁸ See Whanaungatanga section [4.51]–[4.66]. See also *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [58]–[59]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [33]–[34]; *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020) at [38].
- ⁹ See Tapu and noa section [4.67]–[4.155]. See also *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [95]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [58]–[59]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith on behalf of the plaintiff (2 June 2020) at [33]–[34]; *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020) at [38].
- ¹⁰ See Tapu and noa section [4.67]–[4.155]. See also *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [58]–[59].
- ¹¹ See Mana section [4.156]–[4.255]. See also *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [95]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [33]–[34]; *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020) at [38].
- ¹² See Manaakitanga section [4.256]–[4.265]. See also *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [58]–[59].
- ¹³ See Utu and ea section [4.266]–[4.325]. See also *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [58]–[59]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [33]–[34]; *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020) at [38].
- ¹⁴ See Mauri section [4.326]–[4.329]. *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [37].
- ¹⁵ See Kaitiakitanga section [4.330]–[4.371]. *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [33]–[34]; *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020) at [38].

- 2.5 These principles are explained and explored in separate sections in the Report.
- 2.6 Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) describe how these “fundamental concepts are intertwined and cannot be defined in isolation or translated by a simple English word”.¹⁶ They exist in an interconnected matrix. A similar point is made by David Wilson (Te Ākitai Waiohua, Ngāti Te Ata) when he emphasises that you cannot just take one tikanga principle out and ignore the others.¹⁷
- 2.7 Rahera Ohia (Ngāti Pūkenga, Ngāi Te Rangi, Waitaha) illustrates this point in the various principles that she draws upon to assert interests in an area of the takutai moana: “... the combination of whakapapa (genealogy), mana whenua (authority over our lands), mana moana (authority over our harbours and seas), ahikāroa (what Mr Smallman has called the fires of occupation), kaitiakitanga (stewardship), rangatiratanga (authority), whanaungatanga (social responsibility), and wairua (spiritual connection) point strongly to a relationship for all of Ngā Pāpaka ō Rangataua with the tāhuna that was never able to be extinguished”.¹⁸
- 2.8 This is also illustrated in how Te Rua Rakuraku and Donald Kurei (both Te Whakatōhea, Ngāti Ira) describe their relationship with the takutai moana:¹⁹
- In te ao Māori, there are fundamental tikanga values that guide our relationship to the takutai moana. They are embedded into the notions of authority like mana motuhake, mana whakahaere, mana taketake that secure our ahi kaa to any place; space or waterway and inform the practices of kaitiakitanga, aroha tētahi ki tētahi and manaaki that sustain our ways of life and the continuing mutual survival of the realms of Tangaroa and the realms of Tāne Mahuta.
- 2.9 In a different context, Tā Pou Temara (Tūhoe) says that “the social institutions of hapū; marae and whānau and the Ira Tangata roles and responsibilities were never developed or practiced in a vacuum ... they were seen to operate within a hierarchy of values of respect and continuity where Te Ao Tūroa and Te Ira Atua that set the framework of obligations for which humankind would operate”.²⁰ This statement illustrates the multi-dimensional connection between key informing values and principles that are informed by the natural and spiritual world and that manifest themselves in how people and communities behave.
- 2.10 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe), when referring to disagreements between families about where someone should be buried, says, “In these situations Māori refer to some main concepts. These concepts assist to form a conclusion rather than be determinative of the conclusion.”²¹

¹⁶ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [30].

¹⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [51].

¹⁸ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Rahera Aroha Ohia (7 July 2020) at [16].

¹⁹ *Re Edwards* [2021] NZHC 1025, Joint affidavit of Te Rua Rakuraku and Donald Kurei (21 January 2022) at [20].

²⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [16].

²¹ *Clarke v Takamore* [2010] 2 NZLR 525, Affidavit of Tāmati Kruger (31 July 2008) at [40]–[41].

UNIVERSAL PRINCIPLES, VARIABLE APPLICATION

There are common and shared values which underpin law across the whole country in terms of Māori law ... there are some variations in procedure but the basic values or what our people call whakamārama tōtika or the jurisprudence is essentially the same.

Dr Moana Jackson²²

- 2.11 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) considers certain principles to be universally significant to Māori and that tikanga and kawa can be justified by reference to these underlying philosophies and values.²³ He explains that there are, “local variations of customary practice (ideology) but not philosophy”.²⁴ Kruger refers to marae practices as an example. However, Kruger considers there is a limitation on the extent to which there are local variations and indicates that this does not extend to “seminal matters such as the importance of whenua and the mana that comes from there and the duty expected of its people to the whenua”.²⁵
- 2.12 Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) also accept that the “values and principles that underlie tikanga are common among Māori. They are universally accepted and are a constant. The practice and the manifestation of these principles in particular contexts can vary between different iwi, hapū and whānau.”²⁶
- 2.13 Te Kahautu Maxwell (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tai, Ngāti Awa, Tūhoe, Ngāti Porou, Ngāti Maniapoto) explains:²⁷

Tikanga must have a base or a tūrangawaewae for it to stand up to the tests of validity. Tikanga is derived from the pakiwaitara, the creation stories a power delegated from the gods to the ancestors. The fact that tikanga has its origins with the gods gives it validity and tapu sanctity. For example, when Ngā Tama a Rangi held a wānanga (counsel) to separate their parents, this was the first example of a wānanga. When the sons of Rangi debated whether to separate their parents or not, this was the first example of whaikōrero. During this separation of Ranginui (Sky father) and Papatūānuku (Earth mother) it is said that Papatūānuku cried out in pain and bade farewell to Ranginui; this was the first example of karanga. The fact that these practices have their genesis in the creation stories is validation. The people validate tikanga, the marae, the hapū and the iwi. Iwi validate tikanga by adhering to the rule and practicing the tikanga in their own particular way that is unique to their iwi and their region.

²² *R v Tamati Mason* [2012] NZHC 1361, Notes of evidence taken before the Hon Justice Heath on pre-trial application – 3 May 2012 at 2.

²³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [58]–[59].

²⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (4 December 2020) at [26].

²⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (4 December 2020) at [26].

²⁶ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [31].

²⁷ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Te Kahautu Maxwell (7 August 2020) at [104].

2.14 There were a number of witnesses that described tikanga as varying between different hapū and/or iwi.²⁸ This was particularly recognised in the context of creation and arrival narratives. For example:

- Rereata Makiha's (Te Mahurehure, Te Aupōuri, Te Arawa) evidence talks about Kupe's arrival in Aotearoa.²⁹ He indicates that the kōrero of the iwi and hapū of Hokianga is that 'Kupe' was not one person but several and included wāhine. Makiha acknowledges that other iwi may have different traditions and stories around wāhine navigators.³⁰
- Rima Eruera (Muriwhenua, Te Rarawa, Ngāti Kuri) says that there are many versions as to where Kupe landed and that he believes the one that says he landed in the region of Murimotu, on the tail of Māui's fish.³¹
- Leonie Pihama (Te Ātiawa, Waikato-Tainui, Ngā Māhanga a Tairi) also recognises that there are a range of iwi stories that speak to the origins or creation of humanity and that she refers to but one of the many.³²
- Chris Winitana (Ngāti Tūwharetoa), on behalf of the Tūwharetoa Māori Trust Board, does not dispute other contrasting kōrero that others had about how geothermal came to be; rather, he emphasises the Tūwharetoa kōrero of its origins.³³
- Mason Durie (Ngāti Kauwhata, Rangitāne) acknowledges that there is not a consistent view between tribes as to the creation stories and atua.³⁴ However, he recognises that there are common denominators that surpass the tribal and dialectical differences.³⁵

2.15 Maui Solomon's (Moriōri) evidence explains the difference between tikanga Moriōri and tikanga Māōri.³⁶ He describes Moriōri as having a distinctive set of customary beliefs and value systems that evolved in isolation in the islands and differ to that of Māōri.³⁷ He goes on to describe the Moriōri custom of peace to explain why Moriōri didn't fight back when other iwi invaded. Whether they should maintain this peaceful custom was the topic of discussion, debate and ultimately decided by consensus. According to their own custom, this did not mean they were relinquishing mana over their lands (in contrast with take raupatu as Māōri know it).³⁸

²⁸ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence by Kura Paul-Burke (22 December 2016) at [4.1]. *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [47].

²⁹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A71 Rereata Makiha at [5]–[8].

³⁰ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A71 Rereata Makiha at [9].

³¹ Muriwhenua Land Report, Wai 45, #F23 Rima Eruera p.5.

³² Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama at [11].

³³ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [23]–[24].

³⁴ Ko Aotearoa Tēnei, Wai 262, #K14 Mason Durie at [2.1].

³⁵ Ko Aotearoa Tēnei, Wai 262, #K14 Mason Durie at [2.1].

³⁶ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [2.4].

³⁷ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [2.4].

³⁸ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [4.2]–[4.3].

2.16 In relation to the tikanga of the various tītī islands:

- Dr Te Maire Tau and Pat Hutana (both Ngāi Tahu) say that “the principles of the islands are the same, but the particular expressions of them differ among islands”.³⁹
- Michael Skerrett (Ngāi Tahu) says that, “although there are minor variations between the islands, the associated tikanga is generally consistent”.⁴⁰
- Lesley Rewi (Ngāi Tahu) states “the underlying values of ‘tikanga’ remain the same, but may vary to suit individual islands resource availability, geography, number of whānau attending in a season”.⁴¹
- Paul and Natalie Karaitiana (Ngāi Tahu) acknowledge that “Tikanga do vary from island to island” in relation to the tītī islands. They provide the following example where “one tupuna was put off/stripped of his right to go on Horomamae [one of the tītī islands] by his peers, for wrongfully treating his wife, most likely physical violence and/or his adultery. This was about 1840s/50s.” However, they had “not heard of that being practised on other islands, although there is common understanding about other things, such as no fire arms ...”⁴²

2.17 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) explains that “Māori law was and is the law common to Māori, and although there have always been some iwi variations there was also always a distinct and evolving set of conventionally approved means of ensuring acceptable behaviour. It was a construct of social order and dispute resolution within and between iwi, Hapū and whānau that was accepted and recognised as a legal system.”⁴³

2.18 The extent to which tikanga is variable between iwi was contested in the Ngāti Whātua Ōrākei High Court litigation.⁴⁴ Evidence from certain witnesses from Marutūāhu and Te Ākitai Waiohua emphasises that tikanga has variation between iwi.⁴⁵ For example, Korohere Ngāpō (Marutūāhu, Ngāti Tamaterā, Ngāti Maru, Ngāti Pāoa) explains:⁴⁶

There is no one universal tikanga when it comes to whenua. While the concepts of tuku, take, mana whenua and ahi kā etc are well known, how they operate in practice has tribal variation. For the Marutūāhu people, our tikanga recognises shared whenua and marae, even in our “heartland” or “core areas”. This reflects our history, for example, intergenerational intermarriage to maintain strategic alliances between the Marutūāhu

³⁹ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Memorandum of meeting with Dr Te Maire Tau/Pat Hutana (12 October 2014) at [26].

⁴⁰ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Questionnaire – Customary Marine Title Application by Michael Skerrett (undated) p.63; *Re Tipene* [2016] NZHC 3199, Affidavit of Michael Skerrett (31 July 2015) at [6].

⁴¹ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Questionnaire – Customary Marine Title Application by Lesley Rewi (undated) p.106.

⁴² *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Questionnaire – Customary Marine Title Application by Paul and Natalie (Pohio) Karaitiana (undated) p.14.

⁴³ *R v Tamati Mason* [2012] NZHC 1361, Brief of Evidence of Moana Jackson (10 January 2005) at [91].

⁴⁴ See *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843.

⁴⁵ See *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of Walter (Wati) Ngakoma Ngamane (13 October 2020) at [32]; and *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [45]–[47].

⁴⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Dr Korohere Crossley Bishop Lloyd Ngāpō Evidence (3 October 2020) (English translation) at [14]. Also see *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Morehu Anthony Dean Wilson (13 October 2020) at [44] for a similar sentiment.

tribes and shared settlements and seasonal harvesting kāinga. We recognise that other iwi have a different tikanga. One is not superior or inferior – they are different.

- 2.19 In contrast, evidence from witnesses for Ngāti Whātua Ōrākei disagree, asserting that there is universal tikanga, particularly in relation to whenua. Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) says:⁴⁷

I disagree. All iwi refer to the land as Papatūānuku, our mother. This is not simply aspiration or poetry. The connection of tikanga to land stems from the view that land is a living person and entity, it is our origin and our point of return. Everything that iwi are comes from their land and from their place. That is universal tikanga.

- 2.20 According to Charles Tawhiao (Ngāi Te Rangi) for Ngāti Whātua Ōrākei, to say there is no commonality between iwi is too extreme:⁴⁸

Tikanga is not completely unique to each hapū or iwi. If there was no commonality among these ideas we could not have functioned as a Māori society. We have to have shared ideas of how the universe came to be and of what is right in order to interact with each other.

- 2.21 Margaret Kawharu (Ngāti Whātua Ōrākei) accepts that tikanga can be determined according to what is appropriate in particular circumstances and that it was well known that tikanga differs between groups.⁴⁹ However, she agrees with an observation made by David Wilson for Te Ākitai Waiohū that, where there is uncertainty, we should turn to guiding principles, including concepts of mana, whanaungatanga, kaitiakitanga and manaakitanga.⁵⁰

TIKANGA IN PRACTICE

- 2.22 There are many examples of specific tikanga-based practices in relation to:

- the gathering of harakeke;⁵¹
- eeling;⁵²
- hunting kererū;⁵³
- fishing;⁵⁴

⁴⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (4 December 2020) at [25].

⁴⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Charles Wahia Tawhiao (4 December 2020) at [36].

⁴⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (4 December 2020) at [3].

⁵⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (4 December 2020) at [3].

⁵¹ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [11].

⁵² Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [13] and [15].

⁵³ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [32]–[34].

⁵⁴ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [37]–[42]; The Fisheries Settlement Report, Wai 307, #A13 Michael Bradley at [7]–[8] and [10]–[13]; The Fisheries Settlement Report, Wai 307, #A22 P Ricky, H Te Hau and H Christy at [2]–[3]; The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao; The Fisheries Settlement Report, Wai 307, #B8(c) Apirana Mahuika at [3]–[4]; The Fisheries Settlement Report, Wai 307,

- transplanting kaimoana;⁵⁵
- gathering tītī;⁵⁶
- preparing pōhā/rimurapa kelp bags;⁵⁷
- navigation;⁵⁸
- preparation of rongoā;⁵⁹
- weaving;⁶⁰
- harvesting of tohorā;⁶¹
- harvesting of koinga shark;⁶²
- marking the first ikura;⁶³
- cutting down rākau for tokotoko;⁶⁴ and
- tangihanga.⁶⁵

2.23 Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) explains the rituals or tikanga in relation to the moki (a particular fish). This includes that:⁶⁶

- it must not be cooked on the beach;
- it must not be beaten with a stick;
- it must not be eaten raw;
- the first moki caught must be sacrificed to Rehua or Tangaroa;

#B10(a) A Chadwick p.3; Muriwhenua Fishing Report, Wai 22, #B30 Reverend Harold Petera; Muriwhenua Land Report, Wai 45, #F31 Rapata Romana p.4; *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of James (Tex) Rickard (undated) at [12]–[13]; *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Desmond Tatana Kahotea (28 October 2016) at [8]–[8.17]; *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Primary statement of evidence of Barrie William Wilkinson for Te Rūnanga o Ngāti Whakaue ki Maketu Inc. and Te Arawa Takitai Moana Kaumatua Forum (22 December 2016) at [16]–[25].

⁵⁵ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [47]–[50].

⁵⁶ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [99]; Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [47]–[48].

⁵⁷ *Re Tipene* [2016] NZHC 3199, Brief of Evidence of David Armstrong (31 August 2015), Exhibit marked DA-27, Submission from Rakiura Māori Land Incorporated by Harold Ashwell; *Re Tipene* [2016] NZHC 3199, Brief of Evidence of David Armstrong (31 August 2015), Exhibit marked DA-55, Wai 27, #J-10 Evidence of Henare Rakihiia Tau, David Higgins, Trevor Howse, Peter Ruka and Barry Brailsford.

⁵⁸ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [60]–[61]; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A71 Rereata Makiha [4]–[13].

⁵⁹ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [69]; Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [62]–[74].

⁶⁰ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [76]–[97].

⁶¹ The Fisheries Settlement Report, Wai 307, #B10(a) A Chadwick p.2.

⁶² Muriwhenua Fishing Report, Wai 22, #B57 Niki Kanara, Piri Paraone and Ratima Petera at [4].

⁶³ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A67 Ngahua Murphy at [24]–[25].

⁶⁴ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [19].

⁶⁵ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [72].

⁶⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [115].

- it would be hung by the tail as the head is regarded as sacred; and
- no food is to be taken on board when fishing for the moki.

2.24 Many discuss their tikanga in respect of the ocean and kaimoana, including:

- you do not eat on the rocks;⁶⁷
- you do not take kete that have been used for cooked food to food-gathering areas or you urinate on the kete prior to going to the waahi mātaītai kai as a safety measure;⁶⁸
- you should not shout or swear at waahi mātaītai kai⁶⁹ nor should you yell or scream on the rocks generally while gathering kaimoana;⁷⁰
- you should not break shells on the rocks;⁷¹
- you should not open or eat shellfish while people are still in the water diving;⁷²
- you should karakia before and after the gathering of kaimoana;⁷³
- you should always face the sea and never turn your back to the waves;⁷⁴
- women are not allowed near the sea or kaimoana-gathering areas during menstrual cycles;⁷⁵
- the first catch is always given back to Tangaroa;⁷⁶

⁶⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [122]; Affidavit of Hetaraka Biddle (20 February 2020) at [107]; Affidavit of Pepper Hudson (20 February 2020) at [16]. The following affidavits also note you should not drink on the rocks: Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [44]; Affidavit of Pepper Hudson (20 February 2020) at [16]; Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [20]; Affidavit of Kayreen Tapuke (20 February 2020) at [68].

⁶⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [122]. Mimi was discussed extensively in the evidence, with some saying that mimi on hands and equipment (or other body parts) was a way of reconnecting with Tangaroa (see Affidavit of Hetaraka Biddle (20 February 2020) at [109]; Affidavit of Pepper Hudson (20 February 2020) at [16]; Heremaia Warren (21 February 2020) at [152]–[154]; Affidavit of Arapeta Mio (14 April 2020) at [36]; Affidavit of Kayreen Tapuke (20 February 2020) at [68]; and Affidavit of David Peters (24 July 2020) at [11]).

⁶⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [122].

⁷⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [107]; Affidavit of Pepper Hudson (20 February 2020) at [16]; Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [44]; Affidavit of Pepper Hudson (20 February 2020) at [16]; Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [20]; Affidavit of Te Ringahuia Hata (29 January 2020) at [96].

⁷¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [44]; Affidavit of Pepper Hudson (20 February 2020) at [16]; Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [20].

⁷² *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [122]. See also Affidavit of Hohepa Te Kahika (20 February 2020) at [30]. Te Kahika notes that he was told that leaving a dead shell was “saying to those beds ... you’re going to be depleted so they move”.

⁷³ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [93]; Affidavit of David Peters (24 July 2020) at [11]; Affidavit of Kayreen Tapuke (20 February 2020) at [67] and [68]; Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [20].

⁷⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Kayreen Tapuke (20 February 2020) at [68].

⁷⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [96]; Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [44]; Affidavit of Pepper Hudson (20 February 2020) at [16]; Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [20]; Affidavit of Kayreen Tapuke (20 February 2020) at [68].

⁷⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [96].

- you should refrain from sexual intercourse with your partner before collecting kaimoana;⁷⁷ and
 - if gathering in the morning, you should not “brush your hair, bathe, or shower” because of “te tapu o te tangata”.⁷⁸
- 2.25 Heremaia Warren (Te Whakatōhea) discusses specific tikanga relating to a fishing ground, Hāmama, in Ōpōtiki. He notes that, the first time he went to this ground to fish, his Nan explained to him that she would call him in to shore with his fish using a karakia called an umere.⁷⁹ Warren also observes that there is a special type of fishing tool, the pekapeka, for catching fish at Hāmama, which is made from the tānekaha tree.⁸⁰
- 2.26 Marjorie Huingapani Kurei (Ngāi Tamahaua hapū) discusses the tikanga around crayfish, noting that it would always be cooked for women first, which was part of a tradition that applied to a number of delicacies from the moana. This tikanga reflects the status of women, the fact women are responsible for the bulk of the workload at the marae in terms of food gathering and maintenance of gardens as well as women being whare tangata, the holders of whakapapa.⁸¹
- 2.27 Kayreen Tapuke (Ngāi Tamahaua hapū) states, “The rocks of niania and kina closest to the beach are left for the elders of Ōpape. That way, kuia, kaumātua, and those who are less able have easier access to those kai moana.”⁸²
- 2.28 These types of customs and rules are considered a key and integral part of tikanga. As Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) notes:⁸³
- tikanga are in place to focus on the caring for the mauri (life force) of the waahi mataitai kai and to ensure various kaitiaki and descendants of the owners of the food gathering areas are alerted to any dangers.
- 2.29 Gage’s words are reiterated further in the evidence, with many noting that the above tikanga exists to ensure the protection of people and the environment.⁸⁴
- 2.30 Te Ringahuia Hata (Ngāti Patumoana) adds to these sentiments, stating that the above protocols “are seen as acts of respect and kindness and appreciation to Tangaroa,

⁷⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Kayreen Tapuke (20 February 2020) at [68]. This is a tikanga concerning tapu and noa. It is practised in order to protect a person before they collect kaimoana.

⁷⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Kayreen Tapuke (20 February 2020) at [68].

⁷⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Heremaia Warren (21 February 2020) at [71].

⁸⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Heremaia Warren (21 February 2020) at [67]–[69].

⁸¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [35]–[39].

⁸² *Re Edwards* [2021] NZHC 1025, Affidavit of Kayreen Tapuke (20 February 2020) at [68]; Karen Mokomoko reiterated these sentiments, noting that a Mokomoko tikanga is that mussels are not to be taken from the rocks that can be easily accessed by walking or swimming as these should be left for whānau who are unable to access deeper waters (see Affidavit Karen Stefanie Mokomoko (30 January 2020) at [109].

⁸³ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [123].

⁸⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [44]; Affidavit of Pepper Hudson (20 February 2020) at [16]; Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [20]; Affidavit of Kayreen Tapuke (20 February 2020) at [68]; Affidavit of Hetaraka Biddle (20 February 2020) at [93] and [109]; Affidavit of Heremaia Warren (21 February 2020) at [143]–[155], which explains that specific tikanga was to ensure the safety of people (no yelling or running when on the rocks and always facing the sea so you can see incoming waves), while other tikanga was to protect the kaimoana (not using metal tools as the shells may be damaged and returning rocks to the original position to maintain the animal’s environment).

Hinemoana and Papamoana to ensure a good catch or bountiful harvest. Cultural reciprocity is an important value we practice as we understand that if we look after Tangaroa, he in turn will look after us.”⁸⁵

TIKANGA IS PRAGMATIC AND HAS CAPACITY TO CHANGE

- 2.31 The capacity for tikanga to change and evolve over time is well recognised.⁸⁶ Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) says, “Māori law and whakamārama tōtika is not static.”⁸⁷
- 2.32 Wira Gardiner (Ngāti Pikiao, Ngāti Awa, Te Whakatōhea, Te Whānau-ā-Apanui) explains that, “Our ancestors did not expect their behaviour and practice to be cast in stone and to be unchanging. Our traditional concepts have evolved and need to be considered in current times.”⁸⁸
- 2.33 Michael Bradley (Rangitāne, Waitaha, Rapuwai, Ngāti Mamoe, Ngāti Kuia, Ngāti Apa, Ngāti Tumatakokiri, Ngāti Wairangi, Ngāi Tara Pounamu, Ngāti Rarua, Te Ātiawa, Ngāti Tahu) refers to traditional methods of fishing that could be improved with technology without losing their roots in traditional practices.⁸⁹
- 2.34 Paul Meredith (Ngāti Maniapoto) says “tikanga is characteristically dynamic and receptive to change. It is this ability of tikanga to change, and the fact that it is socially constructed as a matter of regional tribal practice rather than by a central governing body, that accounts for some variations among tribes.”⁹⁰ Although Meredith recognises this capacity to evolve, he sees there being “tāhuhu of tikanga” and “structure” and “precedent” that guides the evolution of tikanga.⁹¹
- 2.35 Tāmami Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) explains, “Tikanga is a result of our never ending struggle to deal with life and its predicaments. Tikanga is our attempt to practice what we preach and believe. It is imperfect because we are imperfect but it has been practiced and adapted and practiced and adapted over thousands of years.”⁹² Kruger goes on to say, “Tikanga is practiced in its living and evolved form and is never set in stone. It is sufficiently flexible to provide people with a means to deal with almost any set of circumstances.”⁹³

⁸⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahua Hata (29 January 2020) at [96].

⁸⁶ See *Ko Aotearoa Tēnei*, Wai 262, #G4 Apirana Mahuika at [10.2]; *The Fisheries Settlement Report*, Wai 307, #A13 Michael Bradley at [44].

⁸⁷ *R v Tamati Mason* [2012] NZHC 1361, Notes of Evidence (3 May 2012) p.14. Whakamārama tōtika is explained by Dr Jackson as the “basic values” (see Notes of Evidence, p.2).

⁸⁸ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Reply Evidence by Harawira Tiri Gardiner (17 February 2017) at [4.3].

⁸⁹ *The Fisheries Settlement Report*, Wai 307, #A13 Michael Bradley at [44].

⁹⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [37].

⁹¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence p.1116.

⁹² *Clarke v Takamore* [2010] 2 NZLR 525, Affidavit of Tāmami Kruger (31 July 2008) at [34]–[35].

⁹³ *Clarke v Takamore* [2010] 2 NZLR 525, Affidavit of Tāmami Kruger (31 July 2008) at [67].

- 2.36 Paul Meredith (Ngāti Maniapoto) provides an example where a tapu was put on a road for five months but it was found this was quite impractical and people needed to use the road, so the time was reduced to five weeks.⁹⁴ Peter Adds (Te Ātiawa) says this demonstrates “tikanga is flexible”.⁹⁵
- 2.37 Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) recognise that “tikanga has a flexible dimension to it [and that] like all law, it is not static and can evolve over time and adapt to new situations”.⁹⁶ They refer to how tikanga developed as a consequence of European contact, including the influence of Christianity, and that can be clearly seen in the creation of faiths such as the Ringatū and Rātana churches.⁹⁷ They state:⁹⁸
- Importantly, however, when a new matter or issue arises for resolution, recourse is always had to the fundamental principles that underlie tikanga as well as drawing on historical precedent and how tikanga has been recognised in similar situations.
- 2.38 Haami Te Whaiti (Ngāti Kahungunu ki Wairarapa, Ngāi Tumapuhia) says, “The nature of customary interests is flexible and fluid, and able to adapt to changing circumstances, including the many and profound changes Ngāti Kahungunu have had to deal with since 1840 ... Customary interests continued to evolve after 1840, including when whānau or hapū moved to lands they had not previously occupied as a result of war, land loss, or other upheaval.”⁹⁹
- 2.39 Kihi Ngatai (Ngāi Tukairangi) sets out that the changing nature of tikanga is also seen at different levels in te ao Māori. He says, “Tikanga can change. Individual hapū can lead that change for their own whānau, or the iwi can lead that change for hapū. The key is that changes are made by consensus, and it becomes accepted when the people adopt that new practice and begin to apply it.”¹⁰⁰
- 2.40 Hauata Palmer (Ngāi Te Rangi) similarly reiterates, “Tikanga is dynamic and evolving. Its validity comes from the hapū. Its validity also comes from being evolutionary over generations. From a practical point of view, tikanga in very simple terms is really a plain common-sense thing that is adopted by hapū as it suits them.”¹⁰¹ Palmer exemplifies the evolving nature of tikanga in his discussion of cremation and tikanga:¹⁰²

A good example of this evolutionary change I speak about is the practice of cremation. Today, cremation is a more common occurrence for whānau that choose to farewell their loved ones in such a way, more so than in times gone by. This is particularly the case where whānau must bring loved ones that have passed away home from overseas. However, it is not a practice that our tikanga has suited. Our tikanga has more commonly envisaged the

⁹⁴ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Paul Meredith p.37.

⁹⁵ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds p.38.

⁹⁶ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [32].

⁹⁷ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [32].

⁹⁸ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [33].

⁹⁹ The Wairarapa ki Tararua district inquiry, Wai 863, #J43 Haami Te Whaiti at [60].

¹⁰⁰ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Evidence of Kihi Ngatai (7 July 2020) at [47].

¹⁰¹ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Evidence of Hauata Palmer (6 July 2020) at [6].

¹⁰² *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Evidence of Hauata Palmer (6 July 2020) at [8]–[10].

tupāpaku (deceased body) being called on to the marae and lying in state, with kaikōrero offering up karakia, speaking to the tupāpaku, and bidding farewell. However, more and more our people are discussing the change where rather than a coffin is brought onto our marae, an urn is brought on, and our speeches bidding farewell to loved ones is simply to an urn containing ashes. This is not simply one conversation either. We kōrero and wānanga the topic from time to time. Eventually enough people become comfortable with the shift and the tikanga changes through action.

Cremation is not entirely foreign to our tupuna. The mōteatea Tamarangi sings of the loss of Tamarangi, whom upon his death at the battle of Te Tokitoki was placed on a pyre at Ranginui besides Te Tahuna o Rangataua to be cremated, lest his body be taken by the enemy and decimated.

Understanding that at times our tupuna have undertaken this practice can give some comfort that we are not departing far from the values that our tūpuna have laid down. That said, where our people collectively agree, we move as one, and all things are possible.

- 2.41 Apirana Mahuika (Ngāti Porou) describes that, when they made changes to tikanga, they did it in a way that did not compromise tikanga and guaranteed the continuity of tikanga from one generation to another.¹⁰³ He emphasises that Ngāti Porou needed to be in control of cultural adaptations because it is they who have whakapapa, who live and practise the tikanga and its values, who have knowledge of it and how effective it can be in their lives.¹⁰⁴
- 2.42 David Williams (Pākehā), in discussing tikanga Māori, notes: “Māori custom law has never been static. It has always been flexible to need and circumstances and capable of adaptation, including adopting newforms and practices. At the same time, flexibility and a willingness to adapt should not be confused with such fluidity or malleability as to enable changes to take place without regard to underlying values and fundamental principle ... Māori processes will always contextualise disputed issues within the framework of fundamental values rather than merely announce the application of a rule.”¹⁰⁵

THE APPLICATION OF TIKANGA IS CONTEXTUALLY DEPENDENT

- 2.43 David Wilson (Te Ākitai Waiohua, Ngāti Te Ata) provides an example of when a hui is held in a “contested area” and explains that it can be almost impossible to arrange who the speakers in a whakatau or pōwhiri are in advance. He goes on to say:¹⁰⁶

When we turn up on the day and see who is there, everyone usually understands who has the mana to do the whaikōrero and the order we go in. It is based on various considerations like mana, whakapapa, seniority, the purpose of the hui, who is attending, where the pōwhiri is being held, whether one can speak te reo and sometimes even ability to deliver whaikōrero. We all work collectively to figure it out. So although all iwi have similar welcoming customs – in Tāmaki, outside of the marae context, who has the mana to stand and speak in a place is not always a given.

¹⁰³ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [10.2].

¹⁰⁴ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [10.14].

¹⁰⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of David Vernon Williams (30 July 2020) at [20] and [25].

¹⁰⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [49].

- 2.44 In a similar vein, the joint evidence of Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) states, “Decisions about mātāpono (principles) are always subject to variables such as concepts, practices, and values, as relevant to the circumstances.”¹⁰⁷

THE USE OF PŪRĀKAU AND KŌRERO

- 2.45 It was common for evidence to refer to sources such as pūrākau (stories),¹⁰⁸ whakataukī (proverbs),¹⁰⁹ whakapapa recitations (genealogy),¹¹⁰ karakia (ritual chants/prayers),¹¹¹ mōteatea (laments)¹¹² and waiata.¹¹³
- 2.46 These sources are used for a number of purposes, including:¹¹⁴
- passing down knowledge of tikanga;¹¹⁵
 - understanding place, obligations and connections;¹¹⁶
 - making sense of protocols and guiding behaviours;¹¹⁷

¹⁰⁷ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [19].

¹⁰⁸ See Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere; The Fisheries Settlement Report, Wai 307, #B8(b) Kakapawaiho Kururangi Tibble p.2.

¹⁰⁹ See *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [40]–[41].

¹¹⁰ See Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [10.14].

¹¹¹ See Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata at [4.8.3] p.33; Muriwhenua Land Report, Wai 45, #A6 Miraka Szászy p.1 and p.4.

¹¹² See Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata at [3.2.11].

¹¹³ For example, see Ko Aotearoa Tēnei, Wai 262, #P3 Haami Piripi at [8] where he begins with the creation story.

¹¹⁴ The Fisheries Settlement Report, Wai 307, #B8(b) Kakapawaiho Kururangi Tibble p.2.

¹¹⁵ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [35]–[36].

¹¹⁶ See Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon. Also see Apirana Mahuika’s evidence in The Fisheries Settlement Report, Wai 307, #B8(c) at [3]–[4] where he uses Ngāti Porou pūrākau, haka and waiata as evidence to demonstrate the significant relationship Ngāti Porou have with the moana. Mahuika says that fishing traditions and their historical significance are embedded in Ngāti Porou history – the story of their tipuna Māui and his canoe Nukutaimemeha resting in petrified form on Maunga Hikurangi. He also provides Ngāti Porou haka and waiata that attest to their long-held fishing tradition – “Hara mai ki rato o Waiapu, Kia kite koe Te Awemapara, E te paripari Ti hei Taruke”. Maunga Hikurangi was a beacon and navigational point for deepsea fishermen. Donald Ati Kurei in his Affidavit dated 19 February 2020 at [6] in *Re Edwards* [2021] NZHC 1025 shared a waiata that had been composed to retain the history of Ngāti Ira raupatu boundaries. Also from *Re Edwards* [2021] NZHC 1025, see the Affidavit of Hetaraka Biddle (20 February 2020) at [121]; the Affidavit of Arapeta Mio (Ngāi Tai) (14 April 2020) at [6]–[20], which discusses Ngāi Tai’s association with the coastline by recounting the whakapapa and travels of their ancestor Manaakiao and the events that occurred prior to the arrival of the Tainui waka; the Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [39]–[69], which discusses the origins of Ngāti Awa at length and includes the kōrero regarding key people from whom Ngāti Awa descend and their travels, including Māui and Tiwakawaka, Toi Te Huatahi, Awanuiārangi I, Irakewa, and the arrival of the Mataatua waka and Wairaka, Awanuiārangi II, Te Tokotoru a Paewhiti, Te Heke o Te Rangihouhiri; the Affidavit of Tama Te Waiwhakaruku Hata (14 February 2020) at [40]–[42]) where he composed “Te Ripa o Waiōweka” so that the mountains, rivers, sacred places, treasures and placenames of Ngāti Ira would never be lost; and see Affidavit of Te Ringahua Hata (21 February 2020) at [88] where she notes that haka and waiata are composed about the raupatu losses from colonisation. In particular, she notes the waiata mōteatea *Tērā Te Pō Pango*, which depicts the traditional raupatu whenua boundary of Ngāti Ira within Whakatōhea.

¹¹⁷ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [19]–[33] and [39]–[45]. Puhanga Tupaea’s evidence refers to several stories or kōrero to make sense of certain protocols or symbols in relation to gathering kai, transplanting kaimoana, tuatara, navigation, rongoā and weaving.

- being a mechanism for enhancing a relationship;¹¹⁸
- describing the characteristics of a collective;¹¹⁹
- explaining natural phenomena and making sense of the world;¹²⁰
- as part of a tikanga practice (for example, preparation for and collection of kai); and¹²¹
- establishing a claim over whenua.¹²²

2.47 As Wayne Ngata (Ngāti Porou) explains:¹²³

Mōteatea are for us; the summaries of our existence, the expression of our histories, the exultations of our deeds, the commentaries on our lives meanderings, the outpourings of our feelings. They are in effect with Reo Māori, what makes us Māori.

2.48 Ngata uses three examples of mōteatea to illustrate how they are repositories of history and knowledge and are more than merely theoretical but practical guides on how to live.¹²⁴ They are personal to each iwi and hapū and define the relationship between people and the land, natural resources, atua and tūpuna.¹²⁵

2.49 Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) explains how mōteatea can demonstrate the history and feelings of the people.¹²⁶ He explains:¹²⁷

What we did this morning when we sang our mōteatea showed the length and breadth of the mamae that we are suffering, in particular to the mamae of the loss of the land to us.

Although we have come to a resolution with the Crown, there is still this hurt and this mamae, within the iwi. And so, when we sung *E pā tō hau* you need to understand from

¹¹⁸ As explained by Wayne Ngata in Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata at [4.8.3] p.33, the kōrero, karakia, mōteatea and tahu enhance the Ngāti Porou relationship with Paikē: “It is not some airy fairy spiritual things but real and pragmatic in that these determine how we utilise the resource of the sea and this relationship.”

¹¹⁹ See Muriwhenua Fishing Report, Wai 22, #B30 Reverend Harold Peters at [2] uses a whakataukī to describe the characteristics of Ngāi Takoto with reference to the natural world. The whakataukī “He iti pioke o Rangaunu he au tona” refers to the pioke (a small variety of shark) found in Rangaunu. As it moves, it leaves behind a wake that is disproportionately large for its size.

¹²⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Anna-Marei Kurei (19 February 2020) at [66].

¹²¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [21].

¹²² For example, Rima Eruera’s evidence in the Muriwhenua Land Report, Wai 45, #F23 intertwines whakapapa, kōrero, whakataukī and pūrākau to seek to establish a foundation for the Muriwhenua claim that they have mana whenua over Muriwhenua land taken in the pre-1834 transactions; Tāmāti Kruger in *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmāti Kruger (2 June 2020) at [138]–[139] refers to the matakitenga shared by Titahi with Te Kawau to establish that Ngāti Whātua Ōrākei had mana atua, mana tangata and mana whenua when the prophecy was made; Charles Tawhiao in *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Charles Wahia Tawhiao (2 June 2020) at [37]–[42] refers to well-known Ngāi Te Rangi whakataukī and a Ngāti Whātua Ōrākei tauparapara as support for mana whenua in a rohe; *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) notes that the Ngāti Awa rohe as described by Te Hurinui and Ngāti Awa in the 1922 petition to Parliament regarding Crown confiscation of land is commemorated in the mōteatea Te Kupu a Te Hurinui (at [108]–[110]); Affidavit of Mandy Mereaira Hata (5 August 2020) at [3]; Affidavit of Te Rua Rakuraku (19 February 2020) at [61].

¹²³ Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata at [3.2.11].

¹²⁴ Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata.

¹²⁵ Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata.

¹²⁶ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Nigel Te Hiko p.87.

¹²⁷ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Nigel Te Hiko pp.87–88.

our perspective why we sang that particular waiata. That particular waiata was composed on the very whenua we are talking about, namely the Pouakani. It is composed by a koroua – one of our koroua, who climbed the mountain there. Titiraupenga, and he looked across the land and he saw his land that had been taken. We had lost our land and he lamented and he cried for the loss of this lands. So when we sing *E pā tō hau* we are carrying generations of mamae and it becomes very difficult for us to alleviate that mamae unless we get it out there in the open.

And when our koroua was on top of Titiraupenga looking over his lands he passed away. He died up there. His whangaunga Te Rangiamoa then wrote / composed this waiata in his memory seeing all the pain that he was going through for the loss of his people and for the loss of his lands.

- 2.50 An example of one of the stories told in evidence to illustrate the connection of people to whenua is Tamati Waaka's (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) account of the death of a tupuna by the name of Kino. Waaka explains that Kino was a warrior of Te Whānau-ā-Apanui who was about to be killed by Tamahae.¹²⁸ Kino requested that he be killed on his own land, a request that Tamahae consented to. Waaka explains that Kino wanted to die on the land that he had a connection to. Tamahae understood the value of this tikanga.¹²⁹

- 2.51 Paraone Gloyne (Raukawa ki Wharepūhanga) talks about using these types of sources to illustrate particular iwi interests in an area:¹³⁰

... because I am a composer of kapa haka I'm constantly looking at the old mōteatea, waiata, haka, and things like that. All of the kōrero that comes out of that area [the particular area in dispute] is Raukawa kōrero, not Wairarapa.

- 2.52 Miraka Szászy's evidence (Ngāti Kuri, Te Aupōuri) draws on a number of language features, including kōrero tuku iho, karakia and poroporoaki, which she weaves into her evidence as part of claiming guardianship rights of her people to Te Rerenga Wairua, although she recognises it also as a national taonga.¹³¹ Szászy commences her evidence with reference to their spiritual origins that reside in other realms, including Matangireia and Rangiatea-te-tuahu-o-to-Matakanakana.¹³² She goes on to reference their spiritual homeland of Hawaiki, the connection to Papatūānuku (the earth mother) and the legend of Māui who fished up Aotearoa from the depths of the ocean and her forebears who lived on the "tail of the fish of Māui" for centuries.¹³³ Szászy then describes the arrival of Kupe and his dedication of Te Reinga as being the place from where spirits of the dead depart from the spiritual world.¹³⁴ She explains:¹³⁵

¹²⁸ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [46].

¹²⁹ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [46].

¹³⁰ The Wairarapa ki Tararua district inquiry, Wai 863, #J21 Paraone Gloyne at [2.5].

¹³¹ Muriwhenua Land Report, Wai 45, #A6 Miraka Szászy p.1.

¹³² Muriwhenua Land Report, Wai 45, #A6 Miraka Szászy p.1.

¹³³ Muriwhenua Land Report, Wai 45, #A6 Miraka Szászy p.2.

¹³⁴ Muriwhenua Land Report, Wai 45, #A6 Miraka Szászy pp.3–4.

¹³⁵ Muriwhenua Land Report, Wai 45, #A6 Miraka Szászy p.4.

To this day, the wake of his departing canoe can still be seen – a stretch of white foam leading out to sea all the way to Manawatawhi, the main island of the Three Kings. The same phenomenon is described by our people as “the meeting place of two lovers, Rehua and Whitirea” – the children of the Tasman Sea (the male) and Pacific Ocean (the female). Hence also the ancient saying “Papaki tū ana ngā tai o Rehua, o Whitireia”.

- 2.53 Similarly, Anna-Marei Kurei (Ngāti Ira) explores the connection of Ngāti Ira to the takutai moana through use of waiata, pakiwaitara and whakatauākī.¹³⁶ Kurei begins her evidence by identifying the whakatauākī *Ngā Tamāhine a Te Whakatohea* as an acknowledgement of the mana moana and mana motuhake of Ngāti Ira and the strong connection Te Whakatōhea have over Ōhiwa and Waitahe.¹³⁷ Kurei then discusses a Te Whakatōhea waiata, *Te Tapu o Muriwai*, which refers to the rohe moana of Te Whakatōhea and is a historical record of the significant sites, stories and whakapapa relationships with neighbouring iwi.¹³⁸ Kurei analyses each line of the waiata to highlight the key areas and points of interest for the mana moana of Te Whakatōhea.¹³⁹ Kurei notes the importance of pūrākau and other forms of storytelling such as pakiwaitara and whakatauākī for transmitting scientific knowledge, history, whakapapa and social norms to successive generations.¹⁴⁰ She notes further that “pakiwaitara hold valuable messages surrounding tikanga practices especially those concerning morals and ethics”.¹⁴¹
- 2.54 Whaimutu Dewes (Ngāti Porou, Ngāti Rangitahi) uses various pūrākau to illustrate that Māori “were not confined to fishing inshore alone but also the depths beyond”. He refers to mōteatea that record the use of seine nets for deep-sea species through the use of specially built waka called waka tua.¹⁴²
- 2.55 Tā Hirini Moko Mead (Ngāti Awa), Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) and Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) use a well-known whakatauākī regarding a Ngāti Awa ancestor to demonstrate the connection of Ngāti Awa to Whakaari, stating:¹⁴³

¹³⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Anna-Marei Kurei (19 February 2020) at [3].

¹³⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Anna-Marei Kurei (19 February 2020) at [9] and [10].

¹³⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Anna-Marei Kurei (19 February 2020) at [12]–[65].

¹³⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Anna-Marei Kurei (19 February 2020) at [66]–[75]; Hemaima Mariana Hughes (Ngāti Ira) notes in her affidavit dated 30 January 2020 at [36] the significance of kapa haka for transmitting history and whakapapa, noting that “the history of Ngāti Ira, traditional boundaries, battle sites, waahi tapu, marriage alliance, significant events and our relationships to the land, sea and other people is intrinsically woven into compositions that have passed down through generations”. In particular, Hughes identified the waiata *Karoro a Tamatea – Na Ngāti Ira*, which is a waiata that speaks of Ngāti Ira.

¹⁴⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Anna-Marei Kurei (19 February 2020) at [66].

¹⁴¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Anna-Marei Kurei (19 February 2020) at [75].

¹⁴² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission at 14 and 15. For example, Dewes includes the pūrākau of Māui fishing up Te-Ika-a-Māui as well as the pūrākau of Ruatapu and Paiea. In the latter pūrākau, Ruatapu planned to kill his brothers by casting them into the sea from the fishing ground Te Huripureiata, where no land could be seen. Paiea escaped by climbing aboard a whale who brought him ashore. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Ngā Tikanga Māori e pa ana ki a Tangaroa (22 November 1991) at Appendix A.

¹⁴³ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [117].

There is also a well-known Ngāti Awa whakatauki connected to Whakaari. An ancestor of Ngāti Awa, Te Tahi-o-te-rangi, was suspected of causing floods on the lowland crops by his magic. Therefore, the people abandoned him on Whakaari. As their canoes disappeared from sight, Te Tahi summoned some friendly sea monsters, one of which carried him back to the mainland shore. When the sea monsters proposed that they overturn the canoes of the malefactors, Te Tahi uttered the following saying:

Waiho mā te whakamā e patu. Waiho hai kōrero i a tātau kia atawhai ki te iwi – Leave them for shame to punish. Let us acquire fame by being merciful.

- 2.56 In a different context, Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) use a story from Tūhoe to explain and illustrate the operation of the concept of “hara”:¹⁴⁴

One day a kuia (elderly woman) went and visited a family.

When the kuia got to the home, the dog of the family that she was visiting attacked her. The dog drew blood from her leg and tore her flesh.

The owners of the dog rushed outside, took the dog away and then tended to the injuries of the kuia.

It was a hara on behalf of the dog owners for the dog to have attacked the kuia. The shedding of blood is significant as it meant there was a transgression of tapu (as blood is sacred). The offence also resulted in mana became [sic] imbalanced.

The owners of the dog knew that they had committed a hara and that there had been a breach of tikanga.

In response, they went to their waka huia (treasure box) and brought out a pounamu (greenstone) that had significant value. They gave this to the kuia as compensation for the hara.

The kuia had every right to impose a muru (ritual plundering and restorative justice process that entails the redistribution of wealth). However, she accepted the pounamu as payment for the wrong that had been committed.

This meant that the issue became ea (satisfied, settled, mana rebalanced).

- 2.57 They draw on this story as an example of the successful resolution of a hara and explain the relevance of the story to the case before the Court in *Ellis*.¹⁴⁵

- 2.58 Associate Professor Khylee Quince (Ngāpuhi, Te Roroa, Ngāti Porou, Ngāti Kahungungu) draws on the metaphor of ‘te pā harakeke’ to explain the relationship between the child and their whānau:¹⁴⁶

The traditional metaphor for this characterises the child as the unprotected tender central shoot of the harakeke or flax bush – exposed by the outer blades – in contravention of the assumed “pā harakeke” or village of the flax bush that represents the healthy and functional family group. The healthy harakeke is stabilised by a root system representing values and practices of aroha (love/compassion), manaakitanga (care/responsibility for others), wairuatanga (nurture of the spirit) and whanaungatanga (kinship obligations). The survival and flourishing of the child is dependent upon the group as a whole – as it is with the central and outer leaves of the plant.

¹⁴⁴ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [60].

¹⁴⁵ *Ellis v R* [2022] NZSC 114.

¹⁴⁶ *Solicitor-General v Heta* [2018] NZHC 2453, s 27 report by Khylee Quince (18 September 2018) p.9.

2.59 Various witnesses for Te Whakatōhea in the takutai moana claim context employ language features and techniques to illustrate their connection to land and sea:

- Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) discusses the tauparapara *Maruhia Atu*, which introduces Whakatōhea and references an important pūrākau regarding the rāhui the Whakatōhea ancestor Muriwai placed on Te Moana-nui-ā-Toi following the drowning of her two sons at sea.¹⁴⁷
- Mandy Mereaira Hata (Ngāti Ruatakenga) presents her evidence using the whakataukī “Ngāti Rua ki uta, Ngāti Rua ki tai – Ngāti Rua upon the land, Ngāti Rua beside the sea” to show how Ngāti Rua have kept and maintained their connection to the takutai moana.¹⁴⁸
- Hetaraka Biddle (Ngāi Tamahaua hapū) references the whakataukī “Ko au te moana, ko te moana ko au – I am the sea and the sea is me” to demonstrate that the takutai moana is part of the identity of Ngāi Tamahaua.¹⁴⁹
- Eru Koopu (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāti Awa) begins his evidence with Tārawa’s arrival to Whākatōhea and how this arrival is reflected in the name of Ōpōtiki. Koopu recounts:¹⁵⁰

Tārawa arrived on his canoe, Ara Umauma. He swam ashore. Here is a saying, a proverb for that.

He painga, he painga. He painga ratou.

That refers to Paerata. Those are the hills that look down onto the Waiotahi beach.

I te utanga mai o Tarawa ka puta mai te pātai.

Ma hea koe i tae mai.

Na Tarawa te whakautu. I runga i te Araumauma me te awhina mai o ngā tāhanahana, ngā pōtiki.

Koinei nga pōtiki.

Haramai te ihi te wehi te tapu.

Haumi ē hui ē, manaakitia Ōpōtiki e.

- Koopu explains that this is the kōrero behind the name Ōpōtiki, which reflects the tāhanahana (small fish) that helped Tarawa arrive ashore.¹⁵¹
- Kayreen Tapuke and Toni Cherie Ngoungou-Martin (Ngāi Tamahaua hapū) both discuss the significance of karakia for Ngāi Tamahaua.¹⁵² Tapuke notes the use of karakia for a number of commemorative events, to lay down and lift rāhui and to provide safety and protection of people and places.¹⁵³ Ngoungou-Martin notes:¹⁵⁴

¹⁴⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (3 August 2020) at [7.6].

¹⁴⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Mandy Mereaira Hata (5 August 2020) at [3].

¹⁴⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [120].

¹⁵⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Eru Koopu (21 February 2020) at [5]–[10].

¹⁵¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Eru Koopu (21 February 2020) at [5]–[10].

¹⁵² *Re Edwards* [2021] NZHC 1025, Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [18] and [19]; Affidavit of Kayreen Tapuke (20 February 2020) at [45], [46], [49] and [51]–[64].

¹⁵³ *Re Edwards* [2021] NZHC 1025, Affidavit of Kayreen Tapuke (20 February 2020) at [51]–[64].

¹⁵⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [18] and [19].

Karakia is an essential part of Ngāi Tamahaua tikanga. The faith of Ngai Tamahaua is Ringatū faith, so this is reflected in our karakia. The whānau would karakia morning and night, before entering the sea for fishing or shellfish gathering, or before going hunting. Everything was protected by karakia. Wharekawa taught us this.

Today a lot of practices, including those to with the coast and the moana, are preceded by karakia. The karakia link us to our land, our waters, our kaumatua, our tīpuna, our spiritual selves. They help us keep safe when we are out diving and collecting kai. The karakia keep us grounded and remind us of the places that we cannot go, as a result of it being a sacred site or because of rāhui. We have been raised to take note of these things and to respect them.

- Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) discusses the significance of karakia for Ngāti Ira:¹⁵⁵

By virtue of our whakapapa connections to our whenua and moana, we have exercised our right of mana whakahaere to ensure that the wellbeing of the moana is maintained. The power of karakia is special to us as Māori, but more specifically, us of Ngāti ira and it is an integral custom for us.

As stated above, the moana is and remains to be a place that is respected. We have always been taught to give thanks for what the moana provides in terms of kai, safety, leisure, and rongoā. The moana allows us as a hapū to be able to facilitate karakia and church services.

Our kai gatherers have always done karakia before going out to sea. He tikanga tēnei nō mai ra anō. I also remember as a child when we travelled and stayed at the Trust Board farm, we would have Ringatū ‘karakia moata’ (5am) to set the order of day right before the men would go out for the day or week fishing.

I also know that it is still a common practice of our fisherman and kaimoana gatherers to karakia before going out to sea, and to thank the moana when they were successful in gathering kai. These are ongoing unsevered obligations of authority and reciprocity that we have to protect the integrity of the ocean territories and foreshore that we have inherited.

- Further, Rakuraku says, “Karakia is one of the most important protection mechanisms we have. We live and breathe by this Tikanga. It is through practices like karakia, waiata, rāhui etc. that we have maintained our mana motuhake to Whakaari.”¹⁵⁶

TRANSMISSION OF TIKANGA

- 2.60 It was generally accepted that mātauranga Māori (and therefore tikanga) is passed on through oral tradition.¹⁵⁷ This includes through the language sources and features

¹⁵⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [46]–[49].

¹⁵⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [61].

¹⁵⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [36]. *Ko Aotearoa Tēnei*, Wai 262, #H11 Benjamin Hippolite at [27] and [54]; *Ko Aotearoa Tēnei*, Wai 262, #B11 Himiona Munroe at [19]; *Ko Aotearoa Tēnei*, Wai 262, #E3 Wayne Ngata at [7.2]. *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit by Justin Owen Ian Puna (11 August 2020) at [8].

discussed above such as *kōrero*,¹⁵⁸ *waiata*,¹⁵⁹ *haka*¹⁶⁰ and *karakia*.¹⁶¹ Paula Ormsby gives the example of *oriori* (lullabies) that were composed and sung to *pēpi* (babies) in the womb. She says, “They tell stories of *Tūpuna*, journeys, *whakapapa* and *whenua*. They connect the land to the child and the child to the land.”¹⁶²

- 2.61 Importantly, *tikanga* is also represented visually. Hetaraka Biddle (Ngāi Tamahaua hapū), in discussing their *whare tipuna* Muriwai, notes, “Each of the *heke* (rafters) ... are a visual representation of significant moments in our Ngāi Tama history.”¹⁶³ Further, *heke* paying tribute to important *tūpuna* were also present.¹⁶⁴
- 2.62 Moe Milne (Ngāti Hine) explains that the naming of children was another method of retaining stories and knowledge, and it was an important tradition that had descended through their *whānau*.¹⁶⁵ Toro Waaka (Ngāti Pāhauwera) states a reason for doing so “was so those ancestors would be remembered and someone would continue to talk about the history of that person, and someone else would focus on another one”.¹⁶⁶
- 2.63 An example of naming is provided by Hemana Manuera (Ngāti Awa):¹⁶⁷
- Kahungunu, while fishing *whakaaronui*, disrespected *tikanga* by failing to throw the first catch back to *Tangaroa* by way of *koha*. Kahungunu was slapped with a *tāmure* (snapper) by his brother. To resolve this misdeed, Kahungunu named his son *Tūtāmure* which means ‘pricked on the face by snapper fins’. Hemana uses this as an example of Kahungunu addressing his disrespect of the *mauri* of *Tangaroa* by the naming of *Tūtāmure* as perpetual living evidence of his misdeed and disrespect.
- 2.64 Moka Puru (Ngāti Ira, Te Whakatōhea) says, “Following the battle of Te Ika-A-Ranginui at Kaiwaka in 1825, Moka was shot. He was rescued by another Ngāpuhi chief, Rawiri Taiwhanga. He took the name *Kainga-Mataa* meaning ‘eaten by a bullet’, meaning he took a hit but survived.”¹⁶⁸
- 2.65 Naming of areas more generally to reflect historical events or connections is also discussed frequently:

¹⁵⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [36]. Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [56]; Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [19].

¹⁵⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [36]. Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [21].

¹⁶⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [36].

¹⁶¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [36].

¹⁶² Mana Wāhine Kaupapa Inquiry, Wai 2700, #A55 Paula Ormsby at [83]. The authors have been unable to locate Paula Ormsby’s *whakapapa* based on the written material reviewed.

¹⁶³ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [65]–[70].

¹⁶⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [71].

¹⁶⁵ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [5].

¹⁶⁶ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Toro Edward Reginald Waaka (19 December 2019) at [72].

¹⁶⁷ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Statement of Evidence of Hemana Eruera Manuera (29 March 2019) at [22]; Te Riaki Amoamo reiterated this same *kōrero* in his affidavit of 3 August 2020.

¹⁶⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Moka Kainga Maata Puru (3 February 2020) at [25].

- Hetaraka Biddle (Ngāi Tamahaua hapū) discusses naming of the Ōpēpē awa. According to Ngāi Tamahaua tradition, the name relates to the Maruiwi people who are considered the first inhabitants of the area and who Ngāi Tamahaua whakapapa to. “The Maruiwi women were small in stature and the Ōpēpē stream was a place they would go to deliver their babies. Due to their small frames the babies often died there at the awa. That is why the name Ōpēpē was given.”¹⁶⁹ A waiata tangi was composed to record the significance of the awa and its kōrero:¹⁷⁰

Me pēnei ana
 Te mate i a koe
 Me he mate marama
 Ka ora mai e
 E hika e
 Kua pani o tamariki
 Kua riro koe hei whakaruruhau e
 Whakatutu ai
 Nga kapua i opepe
 E puanga nei ka rere i te hau e

- Tā Hirini Moko Mead (Ngāti Awa), Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) and Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) discuss a number of examples of naming. One such example reflects an event that occurred in the Ngāpuhi raids, which resulted in the naming of Ōhope:¹⁷¹

The name Ōhope means to be suspended from the hips and the name resulted from an incident during the Ngāpuhi raids. Similarly, the naming of Ngāti Hokopu arose during this period also. They were resident at Ōhope and on Uretara Island at Te Paripari pā. During one of their raids, Ngāpuhi made a peace offering to Ngā Ariki. Slaves were offered in exchange for muskets. The slaves were killed and hung from the tress hence the name of Ōhope. From the transaction, Ngā Ariki became known as Ngāti Hokopu.

- Eru Koopu (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāti Awa) discusses the kōrero of Muriwai and the name Te Whakatōhea.¹⁷² Koopu begins by recounting that, when Muriwai’s waka arrived at Whakatāne, all the men came off the waka to explore the forest. While exploring, the waka was left at Mataroa River, near a cave. The waka subsided and began to drift away. As the men could not reach the waka in time, Muriwai swam to retrieve it and pull it to the shore, proclaiming:¹⁷³

Kia Whakatāne au i ahau. I must be like a man.

- Koopu notes further that “because no one was quick enough to catch the boat before it floated away, she growled, or asserted herself. Because of that

¹⁶⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [72] and [73]; Affidavit of Kayreen Tapuke (20 February 2020) at [24].

¹⁷⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [75]; Affidavit of Kayreen Tapuke (20 February 2020) at [26].

¹⁷¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [79]–[83].

¹⁷² *Re Edwards* [2021] NZHC 1025, Affidavit of Eru Koopu (21 February 2020) at [12]–[16].

¹⁷³ *Re Edwards* [2021] NZHC 1025, Affidavit of Eru Koopu (21 February 2020) at [13].

characteristic the descendants of Muriwai were called, Te Whakatōhea. An assertive people, and argumentative people.”¹⁷⁴

- Larry Takamoana Delamere (Te Whakatōhea, Te Whānau-ā-Apanui) discusses the name Te Ika Whenua, which is the area between Tirohanga to the Ōpōtiki River. He notes the old people called it this because there was always an abundance of fish.¹⁷⁵
- 2.66 Knowledge is also said to pass on from generation to generation. Huitau Te Hau (Rongomaiwahine) explains that their “ancestors right down to them have continuously used certain tauranga ika located around the Māhia peninsular and they have passed down through the generations the tohu or landmarks by which one can identify the tauranga ika”.¹⁷⁶
- 2.67 Te Ringahuia Hata (Ngāti Patumoana) describes hapū links to the rohe moana and naming: “As the name of our hapū denotes, Ngāti Patumoana derives its name from an incident that occurred at the mouth of the Waiotaha river around 1830 during the Ngāpuhi pakanga. Hineiahua of Ngāti Ngahere, was captured by Ngāpuhi and killed at sea. This demonstrates Ngāti Patu strong links between the hapū and our rohe moana, as only events as significant as that in nature that impacted on its uri (descendants) would adopt that name for the entire sub-tribe.”¹⁷⁷
- 2.68 Mātauranga is also said to pass down by observation as well as through teachers.¹⁷⁸ Particular emphasis is placed on elders.¹⁷⁹ Moe Milne (Ngāti Hine) says “me tiaki i ngā kaumātua; ngā māra kai. Ko ngā tamariki ngā rangatira, whakarongo ki ā rātou kōrero whakamanatia”. She explains that this was her mother’s catch cry that “conceptually talks about kaumātua as the knowledge holders to feed the children to make them grow. It also acknowledges the honesty of children and that we need to listen to what they have to say.”¹⁸⁰

¹⁷⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Eru Koopu (21 February 2020) at [14]. Koopu discussed a number of natural features to explain the boundary of Te Whakatōhea, including the significance of various names of those boundary features (see [17]–[22]). For example, he discusses the rock Te Rangi at Awakino that determines Whakatōhea’s boundary and signifies where the waka Nukutere anchored (at [20]).

¹⁷⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Larry Takamoana Delamere (21 February 2020) at [38].

¹⁷⁶ The Fisheries Settlement Report, Wai 307, #A22 P Ricky, H Te Hau and H Christy at [2]–[3]. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), “Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets” at 2, 6 and 7.

¹⁷⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [38].

¹⁷⁸ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [28] and [34]. *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Tony Walzl (10 August 2020) at [228].

¹⁷⁹ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [34]. Ko Aotearoa Tēnei, Wai 262, #D7 Mereraina Uruamo at [54]; The Fisheries Settlement Report, Wai 307, #A13 Michael Bradley at [50]–[52]; *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [19]; Pepper Hudson (Ngāi Tamahaua hapū) talks of the common practice of children being sent to live with koro or kuia to learn tikanga, whakapapa and ancestral stories in her affidavit of 20 February 2020 at [40]–[41]; *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), “Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets” at 2, 6 and 7.

¹⁸⁰ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [7].

- 2.69 Tīpuna,¹⁸¹ parents, aunties and uncles are also captured as teachers and holders of knowledge.¹⁸² Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) explains how he was taught the oratory art of whakapapa and the stories of his ancestors by his Uncle Fraser Te Hiko-o-te-rangi and his aunty Marina.¹⁸³ He goes on to say:¹⁸⁴

I was fortunate to be tutored by Fraser Te Hiko (also known as Hiko). Much of Hiko's knowledge was taught to him by his paternal and maternal grandfathers as well as others. Each of his grandfathers were in turn taught by Hitiri Te Paerata and Werohia Te Hiko, the primary witnesses in the Pouākani rehearing in the Native Land Court in the 1800s. Hiko therefore had a significant understanding of the wāhi tapu within the Pouākani, including knowledge of certain Raukawa wāhi tapu. Without his efforts in passing that knowledge on, then the mātauranga of those places would be lost forever.

- 2.70 Ngāti Koata society is described by Benjamin Hippolite (Ngāti Koata, Ngāti Toa, Ngāi Tahu, Ngāti Kuia) as being “matriarchal” with women being responsible for passing down knowledge.¹⁸⁵
- 2.71 Rereata Makiha (Te Mahurehure, Te Aupōuri, Te Arawa) describes where wānanga as traditional places of higher learning.¹⁸⁶ He says, “Both wāhine and tāne held traditional knowledge through where wānanga. Certain mātauranga is connected with te ira wāhine and other mātauranga with te ira tāne.”¹⁸⁷
- 2.72 Tohunga are also regarded as specially chosen and trained repositories of knowledge and often specialised in certain fields. Moe Milne (Ngāti Hine) says, “Tohunga were considered experts in their particular fields and held knowledge of a spiritual kind that was passed down through the generations. There were tohunga whakapapa, mahi rongoā, matakite. Both women and men were tohunga and this knowledge or spiritual abilities have descended through whakapapa to wāhine within Ngāti Hine today.”¹⁸⁸
- 2.73 Tā Pou Temara (Tūhoe) explains, “Those that are fortunate to be raised steeped in the knowledge of whakapapa, history, and Tikanga are known as Tohunga Whakapapa, Tohunga Whaikōrero or Pou Tikanga. It is these knowledge keepers that ensure the integrity of the relationships between the various realms.”¹⁸⁹
- 2.74 Carol Hemoana Gage (Ngāti Ira) notes that it was individual tohunga and rangatira that held the knowledge of and maintained “customary practices for the benefit of all hapū members”.¹⁹⁰

¹⁸¹ The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao p.1.

¹⁸² Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [34].

¹⁸³ The Wairarapa ki Tararua district inquiry, Wai 863, #J23 Nigel Te Hiko at [1.8].

¹⁸⁴ The Wairarapa ki Tararua district inquiry, Wai 863, #J23 Nigel Te Hiko at [2.10].

¹⁸⁵ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [56].

¹⁸⁶ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A71 Rereata Makiha at [14].

¹⁸⁷ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A71 Rereata Makiha at [14].

¹⁸⁸ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [90].

¹⁸⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [9].

¹⁹⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Carol Hemoana Gage (13 February 2020) at [102].

- 2.75 Tāmāti Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) discusses how Tūhoe used ‘Whare Maere’ to transmit and transfer their knowledge and values to their descendants. He says:¹⁹¹

In the past the descendants of Tūhoe were taught through the schools of learning of Tūhoe called the Whare Maere. There were several schools inside of the Whare Maere, this is how our knowledge, this is how they were taught, but today they are – each person, they are taught by their elders, their own elders. And those – what you see – you see that demonstrated in the people on the Marae how they’ve been taught and that’s also a way of learning, practice is on the Marae.

- 2.76 According to Himiona Munroe (Ngātiwai), not everyone received mātauranga Māori.¹⁹² It could be jealously guarded.¹⁹³ Knowledge held by tohunga in particular was fiercely guarded and was not passed on unless an appropriate person was identified.¹⁹⁴ Houpeke Piripi (Ngātiwai) gives an example of tikanga governing knowledge and practices in respect of tātai (whakapapa) to protect its tapu nature.¹⁹⁵ This includes knowledge only being given to select whānau members (usually the eldest child).¹⁹⁶ He points out that this knowledge was not given to wāhine with young babies although it could be once the children were gone.¹⁹⁷ Teaching tātai results in a transmission of mana from the teacher to the learner or recipient.¹⁹⁸
- 2.77 There can therefore be tikanga and rules around the transmission of certain knowledge. Wiremu McMath (Ngātiwai) explains that he was told that you pass on tauparapara to your whānau and your iwi and that you select someone to pass it on to.¹⁹⁹ When you hear or learn tauparapara, waiata or any knowledge from one tribal area, it should stay with that area and shouldn’t be taken or used in another tribal area.²⁰⁰
- 2.78 Pita Pangari (Ngāti Kahu) explains “our whakapapa has never been written or recorded but had been orally passed down through the generations and I recorded the wish of our kaumatua that this be respected and that it not be published”.²⁰¹
- 2.79 Although the foundational notions of tikanga are widely known, Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) provide evidence that some tikanga might be tapu and kept confined to certain expert people. For example, certain karakia would be only used by a small group of experts who have the appropriate training, expertise and standing.²⁰²

¹⁹¹ *R v Iti* [2007] NZCA 267/06, Notes of Evidence, Tāmāti Kruger, p.94.

¹⁹² Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [8].

¹⁹³ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [11].

¹⁹⁴ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [9], [13] and [20].

¹⁹⁵ Ko Aotearoa Tēnei, Wai 262, #C2 Houpeke Piripi at [14].

¹⁹⁶ Ko Aotearoa Tēnei, Wai 262, #C2 Houpeke Piripi at [20]–[23] and [28].

¹⁹⁷ Ko Aotearoa Tēnei, Wai 262, #C2 Houpeke Piripi at [25].

¹⁹⁸ Ko Aotearoa Tēnei, Wai 262, #C2 Houpeke Piripi at [227].

¹⁹⁹ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [42].

²⁰⁰ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [43].

²⁰¹ Muriwhenua Land Report, Wai 45, #H19 Pita Pangari p.3.

²⁰² *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [36].

- 2.80 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) discusses the tikanga of kupu ōhāki, which he explains as “one’s dying last words or oath”.²⁰³ He says that this is still practised in Te Whakatōhea today. He continues on to say “throughout our history, this is how people have handed down whakapapa, knowledge and locations of where taonga or people are buried”.²⁰⁴ He finishes that this is often when the dying person will detail their wishes for when they pass such as “who they wish to bequeath taonga to and more importantly, where they wish to be buried”.²⁰⁵
- 2.81 Particular techniques for learning tikanga include repetition without distraction.²⁰⁶ Wayne Ngata (Ngāti Porou) describes how in the past there was a clear process to learn mōteatea: “listen once, listen twice and if you didn’t get it, learn to carve”. He also mentions fasting as a technique that helped learning and to “noho tapu” so there were no distractions.²⁰⁷
- 2.82 Manuka Henare (Ngāti Hauā, Te Aupōuri, Te Rarawa, Ngāti Kahu) discusses the intergenerational impact of knowledge transmission throughout Māori history:²⁰⁸

According to Rev. Māori Marsden (1991), a theologian, and tohunga, the lessons of the past and the values imbued in cultural practices constitute a general corpus of Māori knowledge, which serve as guidelines to the future. Collectively they set a distinctive and contextual framework for articulating the spiritual and general principles and the absolutes in a Māori corpus of knowledge. These principles and corpus of knowledge have been tested and tried out over countless generations and represent a corporate experience of communities in which they have been culturally transmitted from a new generation to another time.

TIKANGA CAN BE IMPLICIT

- 2.83 Tikanga is often implicit and underpins evidence. For example, it is common for witnesses in their evidence to set out and reference their pepeha (introductory recitation), significant ancestors and associations with the whenua and various natural features.²⁰⁹

²⁰³ *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [13].

²⁰⁴ *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [14].

²⁰⁵ *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [15].

²⁰⁶ Ko Aotearoa Tēnei, Wai 262, #C2 Houpeke Piripi at [25].

²⁰⁷ Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata at [7.2].

²⁰⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Manuka Henare in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (29 January 1998) at [26].

²⁰⁹ Ko Aotearoa Tēnei, Wai 262, #E6 Maggie Ryland at [1.1]; Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [2]; Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [3], [4] and [8]; Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [1]–[5]; Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [8]–[16]; Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata at [4.1.1]; Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [3.2]–[3.5]; The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [1.1]; Muriwhenua Fishing Report, Wai 22, #A13 Miraka Szász p.1; Muriwhenua Land Report, Wai 45, #F23 Rima Eruera p.1; Muriwhenua Land Report, Wai 45, #F31 Rapata Romana p.1 and p.14; Muriwhenua Land Report, Wai 45, #F33 Tuini Sylva p.2; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere p.2; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama p.1; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [2]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Nigel Hikurangi Denny (13 October 2020) at [1]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of Ted Andrews and Glen (Joe) Tupuhi (13 October 2020) at [1]–[6]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of Evidence of Te Kurataiaho Lonoholoikahiki Kapea (te reo Māori version) (2 June 2020) at [3].

- 2.84 The evidence of Maggie Ryland (Ngāti Porou), for example, starts with the following:²¹⁰

Ko Hikurangi te Maunga,
Ko Waiapu te Awa,
Ko Ngāti Porou te Iwi,
Ko Porourangi te Tangata.

...

I am Maggie Ryland of Te Whānau a Te Aotāwarirangi, Te Whānau a Ruataupare of Tokomaru Bay and of Te Iwi o Ngāti Porou.

My umbilical cord lies buried beneath the land near the mouth of the Waiapu river for I also have whānau links with Te Whānau a Hinepare, Te Whānau a Takimoana and Te Whānau a Hunaara of those areas.

My vision is often projected towards Hikurangi, the sacred symbol that portrays the unity and endurance of Te Iwi o Ngāti Porou.

My blood connotations mingle through the Iwi o Ngāti Porou for they are all kinfolk of mine.

This I can claim through Porourangi our common ancestors who is the taproot of my very existence as being of te Iwi o Ngāti Porou.

- 2.85 Margaret Kawharu (Ngāti Whātua Ōrākei) says “A large part of what defines tribal identity is the link between the tangata and the whenua ... The importance of the whenua for Māori is expressed in pepeha (formal introduction) in which the speaker will reference the maunga (mountain) and awa/moana (river/sea) which they are most closely associated with. These geographical landmarks will be drawn from the core rohe of their hapū. Each tribal group has a core area which it associates most strongly with.”²¹¹
- 2.86 Although this type of recitation is based on the principles of whakapapa and whanaungatanga,²¹² witnesses generally do not point out that this is a tikanga practice or comment on why they cited their pepeha from a tikanga perspective. It is performative tikanga in action rather than tikanga explained and objectively commented upon.
- 2.87 The inclusion of pepeha and identity markers illustrates the centrality and importance in tikanga of connection to people and to place. As Moe Milne (Ngāti Hine) explains, “Pepeha are a way of describing the nature of a person or situation by reference to important tribal landmarks and tūpuna. Pepeha capture tūpuna thinking of the past, the relationship of our tūpuna to the environment, and embody life lessons, tikanga, emotions and affirmations for generations to come.”²¹³

²¹⁰ Ko Aotearoa Tēnei, Wai 262, #E6 Maggie Ryland at [1.1]–[1.6].

²¹¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (4 December 2020) at [9].

²¹² *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [42].

²¹³ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [4].

- 2.88 Paul Meredith (Ngāti Maniapoto) says that “there are numerous pre-contact pepeha (tribal mottos) and whakataukī (proverbs) that arguably emphasise a jurisdictional association over geographical features and leading individuals”. Meredith draws on an example from Ngāti Kaputuhi and his ancestor Tamakowhao after defeating Ngāti Mākino, “I au ko Waimiha, ki runga, ki raro” (Mine is Waimiha, above and below).²¹⁴
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²¹⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [96].

SECTION THREE

Other conceptual frameworks

DIFFERENCE BETWEEN KAWA AND TIKANGA

3.1 Maggie Ryland (Ngāti Porou) describes kawa as “the recognised lore of Māori”.¹ She explains, “This lore was initiated by our ancestors as the ultimate management plan. This ancient lore has always been accepted as the most effective system to conserve and protect the ecosystems of all forms of life, animate and inanimate.”²

3.2 There are different explanations offered as to the distinction between kawa and tikanga. Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) says:³

The practice or practical expression of tikanga is sometimes distinguished from the guiding principles of tikanga itself. These protocols are referred to as kawa, and are always grounded in the principles of tikanga. Kawa are flexible and adapt over time to changing circumstances, though they are first and foremost coercive and normative in nature.

3.3 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) explains, “Kawa are etiquette and protocols. They are the protocols that keep things operating smoothly whilst the *Tikanga* is the law or rule to protect the mana and mauri. For example, a kawa in Whakatōhea is ‘pāeke’ where the tangata whenua side speak first in whaikōrero and then the manuhiri speak. Tikanga and Kawa vary from hapū to hapū, iwi to iwi.”⁴

3.4 David Wilson (Te Ākitai Waiohū, Ngāti Te Ata) also uses an example from the pōwhiri and explains:⁵

There might be someone at a tangi (funeral) that wants to mihi (greet) the whānau on the paepae (orator’s bench) but they can’t kōrero Māori. Even though it is not tika (right) it might be decided to allow them to kōrero. This is consistent with the idea of manaakitanga and allowing for the exercise of whanaungatanga and connections to be made between people.

¹ Ko Aotearoa Tēnei, Wai 262, #E6 Maggie Ryland at [3.6].

² Ko Aotearoa Tēnei, Wai 262, #E6 Maggie Ryland at [3.6].

³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [39].

⁴ *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [8].

⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [52].

- 3.5 This indicates a protocol being flexible based on the application of the underlying tikanga principle. Wilson says that, because of their strong historical links and connections to Waikato-Tainui, “our kawa and protocols at the marae are Waikato-Tainui”.⁶
- 3.6 Although Korohere Ngāpō (Marutūāhu, Ngāti Tamaterā, Ngāti Maru, Ngāti Pāoa) describes tikanga Māori as being a structure that gives “effect to fundamental principles to achieve balance”, he says that “tikanga can be interchangeable where kawa is rigid like the rising and setting of the sun”.⁷
- 3.7 Dr Ruakere Hond (Taranaki, Ngāti Ruanui) draws on the words of Manuka Henare to explain “the cascading relationship between kawa, tikanga, ritenga and āhuatanga”:⁸

But at the top level is kawa. Now I understand that most iwi have concepts of kawa and they may be different to other areas, however, as I think what Mānuka explained is kawa in the sense of core principles. Looking at the words that we have on the page here kōrua rā is concepts like tapu and ora become core principles that can't really be changed. They can be measured but they can't really be changed. You don't want to lose sight of those core values and they become he kawa ora, he kawa tapu that then informs tikanga.

Tikanga are the practices that are used in how we engage, our customs and how we relate to each other. And I very much followed the discussion that came from you Sir Kim around the concept of ea. At the end of the day it comes down to relationships. So tikanga would be around how do we maintain relationships, so tikanga.

And then the final one was āhuatanga which then becomes the core characteristic. Now when communities are exposed to trauma in particular historical trauma sometimes those āhuatanga get played out in terms of bitterness, anger and broken relationships. And so, how do you change āhuatanga? We need to come back to those core principles.

... he taki, he tātai, he taumata kei tērā wāhi, kei tērā wāhi, kei tērā wāhi kia mōhio kei hea tēnei momo mahi, kei hea tērā momo mahi. Hei tōna mutunga, is that we are seeking to achieve he āhuatanga ora, he āhuatanga whai mana, he āhuatanga kua whai tapu i roto i to tātou Ao. Kei te pai? Mehemea he whakaaro kei runga anō i tērā pātai, tērā kōrero.

TE IHO MATUA

- 3.8 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) in his evidence stresses the centrality and importance of “te iho matua”:⁹

Tikanga and *kawa* as ideologies ground themselves in Māori philosophy, or *iho matua*. Quite literally *iho* is the umbilical cord that connects a woman and her child. *Matua* suggests something that is chiefly, important and occurring before anything else. *Iho matua*, then, is the foundational nature of wisdom, insight and appreciation according to Māori traditions.

It is not a coincidence that the ideas underpinning Māori philosophy relate to the importance of the connection between woman and child, and the creation of life. In Māori tradition, the creation of human life and all elements of the natural world are themselves

⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [60].

⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Dr Korohere Crossley Bishop Lloyd Ngāpō Evidence on behalf of Second Defendant 1(3 October 2020) (English translation) at [9].

⁸ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Dr Ruakere Hond pp.71–72.

⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [44]–[45] and [54]–[56].

grounded in an understanding of the origins of the cosmos. That knowledge system is also referred to as *kawa*, the same *kawa* as the protocols or practical expression of tikanga Māori. This connection represents an ongoing and enduring connection between the human and the natural worlds and the cosmological origins of *Te Ao Māori*.

...

As I have said, *tikanga* is an ideology grounded in philosophy, or *iho matua*. In my view, the particular *iho matua* principles that emerge from the account of the origins of Māori knowledge are:

- *Karanga i te pai, i te tika*: welcome what is good and what is true (there is no *iho matua* that that welcomes calamity, death or cruelty);
- *Ārai i te kino*: averting evil or disadvantageous consequences;
- *Whakakotahi*: unifying thought, opinion and action; and
- *Whakaawe wairua*: humanity grounded in spirituality (as distinct from religion).

While I am sure that the *kawa* (expression) of fundamental philosophies differs between iwi, and probably even between leaders of the same iwi, from my experience the underlying meaning of these *iho matua* are fairly universal.

- 3.9 Kruger acknowledges that, “Tikanga is not static, however, and sometimes there may be inconsistency or uncertainty as to which tikanga is the most appropriate in any given situation. The pursuit of the underlying *iho matua* should always provide clarification.”¹⁰

TE KAUA RUNGAKA AND TE KAUA RARO

- 3.10 Apirana Mahuika (Ngāti Porou) describes mātauranga Ngāti Porou as dealing with both the esoteric (*kauae runga*) and the world of man (*kauae raro*):¹¹

The Esoteric is the *Kauae Runga* (Upper Jaw), which deals with spiritual, divine and religious matters in a holistic manner. This type of learning in particular became the field for the aristocracy and their leadership role was evidence in their tasks as *tohunga*, healers, chiefs and the like. They were trained, in order to hold this knowledge, to know how to acquire this knowledge, the wisdom to interpret that knowledge appropriately for the people to act out and also to pass that knowledge on to the appropriate students in the next generations.

Te Ao o Te Tangata (*Kauae Raro*) involved the operational tasks as well as implementing the interpretations of the esoteric as provided. For example, the rituals prior to an [sic] major event taking place are performed by a graduate of the higher school of learning who will also provide advice to the doers or performers of tasks.

- 3.11 Maanu Paul (Ngāti Awa) describes *kauae runga* as “that which belong to the celestial world – the world of the Atua/Gods” and *kauae raro* as “that which belongs to the terrestrial world – the world of humans”.¹²

¹⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [62].

¹¹ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [10.3]–[10.4].

¹² *R v Tamati Mason* [2012] NZHC 1361, Cultural Advisor Report by Maanu Paul (5 July 2012) at [11].

SECTION FOUR

Central tikanga principles

WHAKAPAPA

4.1 Whakapapa is often translated as “genealogy”.¹ However, as Walter Ngamane (Ngāti Maru, Ngāti Whanaunga, Ngāti Tamaterā, Ngāti Pāoa, Ngāi Te Rangi, Ngāti Hinerangi) explains, the deeper meaning of whakapapa is, “to lay one thing upon another – one generation upon the next”.²

4.2 In a similar vein, Leonie Pihama (Te Ātiawa, Waikato-Tainui, Ngā Māhanga a Tairi) explains:³

Whakapapa, the cultural template through which we understand our descent and ancestral relationships, refers to a process of placing in layers, which reminds us that relationships between and amongst us as individuals and social groupings, are layered upon each other and extend as wide as our whānau and intergenerational connections reach ...

4.3 Genevieve Ruwhiu-Pupuke (Ngāi Tamahaua hapū, Te Whakatōhea) states, “Whakapapa is depicted and referred to in the following ways:

- Taotahi – Which is the use of a single tūpuna name, usually one of high rank;
- Whakamoe – Which refers to whakapapa lines through inter-marriage;
- Tararere – Which refers to a single whakapapa line from one tūpuna;
- Tahu – Which referred to the main whakapapa lines; and
- Tataihiko – Which depicts significant tūpuna by omitting other tūpuna to provide emphasis.”⁴

¹ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [90].

² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane evidence (13 October 2020). See *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [90].

³ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama at [18].

⁴ *Re Edwards* [2021] NZHC 1025, Affidavit Genevieve Ruwhiu-Pupuke (30 January 2020) at [10].

4.4 There were many briefs that contained accounts of whakapapa that connected people to the natural world, to places and to people.⁵ The centrality of whakapapa in te ao Māori across the evidence was clear:

- Moe Milne (Ngāti Hine) states “Whakapapa connects us spiritually to our past and it defines the present.”⁶
- Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) refers to tikanga as being “the law in our area [which] is underpinned by whakapapa, because without whakapapa you have no right to claim, speak for or take care of the whenua or its resources”.⁷
- Chris Winitana (Ngāti Tūwharetoa) articulates whakapapa as being “the axis upon which the Māori world spins. It is not confined to people. It is the domain of all things. And it informs behaviour.”⁸
- Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) explain that “Māori place great importance on genealogy and kinship relationships and the concept of whakapapa is central to being Māori and to identity. The world and everyone in it is part of a huge interlocking family tree.”⁹ They go on to describe whakapapa as being “pivotal to the Māori world and tikanga Māori”.¹⁰

⁵ For example, Ko Aotearoa Tēnei, Wai 262, #E6 Maggie Ryland at [1.1]–[1.6]; Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [2]; Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [3], [4] and [8]; Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [1]–[5]; Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [8]–[16]; Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata at [4.1.1]; Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [3.2]–[3.8]; The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [1.1]; Muriwhenua Fishing Report, Wai 22, #A13 Miraka Szászy at 1; Muriwhenua Land Report, Wai 45, #F23 Rima Eruera at [1.1]; Muriwhenua Land Report, Wai 45, #F31 Rapata Romana at 1 and 14; Muriwhenua Land Report, Wai 45, #F33 Tuini Sylva at 1; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at 2; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama at [1]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [2]–[7]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Nigel Hikurangi Denny (13 October 2020) at [1]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of Ted Andrews and Glen (Joe) Tupuhi (13 October 2020) at [1]–[6]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of Evidence of Te Kurataiaho Lonoholoikahiki Kapea (te reo Māori version) (2 June 2020) at [3]; and *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, The Wairarapa ki Tararua district Inquiry, Wai 863, #J20 Poihaere Elizabeth Anne Rangitutia Heke-Barrett at [1.1]–[1.3]; Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [6], [7], [21], [30]–[33], [39]–[69] and [107]; Affidavit of Dayle Lianne Takitimu (24 February 2020) at [2]–[4]; Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [2] and [19]–[53]; Affidavit of Carol Hemoana Gage (13 February 2020) at [6]; Affidavit of Hetaraka Biddle (20 February 2020) at [1]–[39]; Affidavit of Hetaraka Biddle (20 February 2020) at [2], [3], [22], [23], [29]–[33], [37] and [52]; Affidavit of Arapeta Mio (14 April 2020) at [6]; Affidavit of Te Rua Rakuraku (19 February 2020) at [7] and [10]; Affidavit of Te Ringahua Hata (21 February 2020) at [26]–[28] discusses the whakapapa of Ngāti Ira; Affidavit of Leelyn Raiha Ruwhiu (30 January 2020) at [7]–[30]; Affidavit of Karen Stefanie Mokomoko (30 January 2020) at [8]–[12], [21] and [24].

⁶ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [31]; *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Nga Tikanga Māori e pa ana ki a Tangaroa (22 November 1991) at 3.

⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (25 January 2022) at [9].

⁸ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of evidence of Chris Winitana (4 June 2017) at [2].

⁹ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [91].

¹⁰ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [92].

- Mason Durie (Ngāti Kauwhata, Rangitāne) describes whakapapa as “the fundamental basis of the “Māori” knowledge system”.¹¹
- Morehu Wilson (Ngāti Paoa, Ngāti Whanaunga, Ngāti Maru, Ngāti Tamaterā) describes whakapapa as “‘he taonga tuia tāngata’ – ‘a treasure that binds people’”.¹²
- Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) says whakapapa is “the foundation of Māori belief. Māori connection with all things starts with the whakapapa (genealogy) of creation”.¹³
- Korohere Ngāpō (Marutūāhu, Ngāti Tamaterā, Ngāti Maru, Ngāti Pāoa) emphasises that “whanaungatanga and whakapapa are at the heart of tikanga, underpinning a complex cosmological network connecting people and the physical and spiritual worlds”.¹⁴
- Christina Davis (Ngāti Muriwai, Te Whakatōhea) states, “Whakapapa drives relationships”.¹⁵
- Justin Puna (Ngāti Kurumōkihi, Ngāti Marangatūhetaua, Ngāi Tauira, Ngāi Te Ruruku ki Tangoingoi, Ngāi Tahu) states, “Whakapapa is a core value in the Māori world. It gives and defines genealogical links between different whānau, hapū, iwi. Whakapapa provides links and gives validity to historical events. Whakapapa validates our existence in this world. It provides links to all matter, whether animate or inanimate.”¹⁶
- Cleve Barlow (Ngāpuhi) states, “Whakapapa comes under the category of taonga or ‘treasure’ of the heart. It is very sacred.”¹⁷ He adds, “Its original purpose is to connect one generation to the next, to understand your roots and as the basis of self identity.”¹⁸

4.5 As Ani Mikaere (Ngāti Raukawa, Ngāti Porou) explains:¹⁹

Whakapapa necessitates a focus on relationships: between people; between people and their non-human relatives; between past, present and future generations. It reminds us that relationships must be carefully managed because everything in our world is connected.

¹¹ Ko Aotearoa Tēnei, Wai 262, #K14 Mason Durie at [2.2].

¹² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Morehu Anthony Dean Wilson (13 October 2020) at [26].

¹³ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [20].

¹⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Dr Korohere Crossley Bishop Lloyd Ngāpō Evidence (13 October 2020) (English translation) at [10].

¹⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Christina Davis (21 February 2020) at [16] and [17].

¹⁶ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit by Justin Owen Ian Puna (11 August 2020) at [14]–[15].

¹⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Second affidavit of Dr Cleve Dufty Barlow in reply to affidavits in opposition filed by the various parties in relation to the preliminary question (11 March 1998) at [5(a)].

¹⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Second affidavit of Dr Cleve Dufty Barlow in reply to affidavits in opposition filed by the various parties in relation to the preliminary question (11 March 1998) at [5(c)].

¹⁹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at [45].

Failing to nurture key relationships will result in imbalance which will ultimately be to the detriment of all.

- 4.6 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) says, “The ties of whakapapa which bound the collective together provided the precedents and jurisprudential framework that rationalised the rules for individual and collective behaviour as well as the various sanctions used to ensure compliance”.²⁰ He further says, “Whakapapa also provided precedents for the exercise of the political power which was essential to the law’s effective functioning”.²¹ He discusses how rights stem from whakapapa:²²

Our law is a way of maintaining relationships, where processes and entitlements are based upon kinds of obligations associated with the receipt of any gift. We sometimes define these entitlements as ‘rights,’ however these do not stem from the grant of a political body but from the rites of our birth and the whakapapa that makes us unique. They began at the moment of birth, as the first act in every child’s life was the burying of his or her whenua ... a means of proclaiming their right to stand on their land and proclaiming the reciprocal relationships they would have within their whānau, Hapū and Iwi.

- 4.7 The influence of whakapapa is extensive. For example, we see from Reverend Māori Marsden’s (Ngāi Takoto, Ngāti Warara) evidence that whakapapa influences the names of iwi and hapū, the connections with te taiao and non-related kin and (in the specific context in which he was writing his evidence) the fishing areas that people could fish in on behalf of iwi (or the relationship/connection that iwi had with another iwi).²³ Cleve Barlow (Ngāpuhi) explains the “concept of whakapapa or genealogy is of great importance in Māori society. It traces the descent of all living things from the gods to the present time. It is not to be taken as simply a reference to the genealogy of the waka (canoes) commonly referred to as tribal genealogy. The different bonds provided by whakapapa may commonly be classified under the following four headings: (a) cosmic genealogies; (b) genealogy of the gods; (c) genealogy of mortal man or primal genealogies; (d) genealogy of the canoes.”²⁴ Barlow further categorises whakapapa with reference to Hawaiiki. He states:²⁵

there are generally said to be four categorisations of whakapapa or Māori genealogy which are known to Māori as: (i) Hawaiiki Nui (ii) Hawaiiki Roa (iii) Hawaiiki Pamamao (iv) Hono-ki-Wairua.

One must trace back through all four phases in order to trace back to Io. Many of the witnesses tend to focus solely on the first and/or second phases only and thereby provide a telescopic and incomplete form of genealogy.

²⁰ *R v Tamati Mason* [2012] NZHC 1361, Brief of Evidence of Moana Jackson (10 January 2005) at [93].

²¹ *R v Tamati Mason* [2012] NZHC 1361, Brief of Evidence of Moana Jackson (10 January 2005) at [94].

²² *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [19].

²³ Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden pp.6–9.

²⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Dr Cleve Dufty Barlow at [22].

²⁵ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Second affidavit of Dr Cleve Dufty Barlow in reply to affidavits in opposition filed by the various parties in relation to the preliminary question (11 March 1998) at [5(e)].

4.8 Te Iwi Moriori Trust Board recounts the Moriori tradition regarding their tūpuna Rongomaiwhenua:²⁶

The common founding ancestor or take tipuna of Moriori is Rongomaiwhenua. His line represents the tuakana or senior line of all present day Moriori descendants. In this sense, he is the unifying karapuna for Moriori.

Rongomaiwhenua was the most prominent early settlor on Rekohu. Our Hokopapa identifies Rongomaiwhenua as a descendant of Rangi and Papa and the child of Te Ao Marama and Rangitokona. Rangitokona is said by our karapuna to have propped up the sky in the same way as Tanetokorangi of the tribes of Aotearoa.

There are three distinct origin themes for the early settlement of Rekohu by the ancestors of the Moriori.

The first tells of a simultaneous migration from Hawaiki and settlement of Rekohu and Aotearoa. Rongomaiwhenua is said to have departed for Rekohu at the same time his younger brother Rongomaitere departed for Aotearoa. A second origin theme tells of the people of Rangiauria (Pitt Island) who claimed to have sprung from the earth. Literally tangata whenua or people of the earth. In this original tradition, Rangiauria was the first Island in the group to be occupied by the early settlers. In other words it was settled before the main island of Rekohu. More ancient names which appear for Rekohu include Te Rangikohua and Rekohua. It is said that Rangiauria was the last ‘Hawaiki’ for the ancestors before eventually settling on Rekohu.

These two settlement traditions are consistent and relate wherein Rongomaiwhenua departs from Rangiauria for Rekohu and Rongomaitere (his younger brother) departed from Rangiauria for Aotearoa. This would account for the remigration from Aotearoa to Rekohu of the Rangihoua, Rangimata and Oropuke canoes many generations later.

Connection to the natural world

4.9 Many of the briefs of evidence reference the genealogical link back to primordial parents Ranginui and Papatūānuku.²⁷

4.10 Mason Durie (Ngāti Kauwhata, Rangitāne) explains:²⁸

The Māori world view is based on the proposition that the environment is an interacting network of related elements, each having a relationship to the others and to earlier common origins. Ranginui and Papatūānuku are personified as the “parents” of the environment, a model based on family which has at its base the phenomena of connections and interdependencies. These phenomena can loosely be described as whakapapa ...

²⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), “Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets” at 2 and 3.

²⁷ Ko Aotearoa Tēnei, Wai 262, #K14 Mason Durie at [2.2]; Ko Aotearoa Tēnei, Wai 262, #P3 Haami Piripi at [11]–[12]; Muriwhenua Fishing Report, Wai 22, #A13 Miraka Szász at 2; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at [7]; *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki (23 December 2016) at [4.4]; *Ngāi Te Hapū v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [21]–[24]; *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Joint Brief of Evidence of Hohepa Joseph Mason and Te Kei (O Te Waka) Wirihana Merito (29 April 2019) at [37]–[38]; *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), “Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets” at 2 and 3; *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission at 12.

²⁸ Ko Aotearoa Tēnei, Wai 262, #K14 Mason Durie at [2.2].

whakapapa is the basis of the “Māori” knowledge system. The children of Rangi and Papa took on identities as atua, gods, and each domain had its own interdependencies in relation to forests, oceans, flora and fauna ...

4.11 Whakapapa is seen as the kinship connection that exists between all elements of the natural world (including humans).

- Miraka Szászy (Ngāti Kurī, Te Aupōuri) clarifies:²⁹

According to our cosmogeny legends we are the children of PAPATŪĀNUKU, the Earth Mother, one of our divine Primal Parents. We contend that all of Nature derives from her – our lands, forests, rivers, lakes and seas and all life contained therein. As such our spirituality is deep-rooted in the earth, the lands upon which our forebearers lived and died, the seas across which they travelled and the stars which guided them to Aotearoa.

- Tahu Potiki (Ngāi Tahu, Ngāti Māmoë) explains:³⁰

Everything from weather events, the stars, planets and clouds, fish, birds, trees and flowers, stones and volcanic events, wellbeing, life, illness and death can be explained as a result of the creation narrative interlinking all of these components in a web of whakapapa.³¹

- Marjorie Huingapani Kurei (Ngāi Tamahaua hapū) states:³²

We whakapapa back to the elements and the natural environment, including the sea. The seasons have a whakapapa back to our tīpuna, our Atua, back to Rangi and Papa. This is all reflected within the Maramataka o Ngāi Tamahaua.

It starts with Te Rā, the sun, who spends half his time with his wife Raumati and the seasons with his wife Hine Takurua. The movement of Ruaumoko, the trembles within Papatūānuku, signals the beginning of the shift of seasons from Summer to Winter.

With Raumati, the Summer, we have the heat, and the growing seasons in the realm of Tane and Rongo. We see their daughter Tanerore – this is the quiver of the heat from the rays of the sun. This is a time for the birds who have their babies in this season.

The stars are also signallers of the seasonal changes and the signals for certain Kaupapa, such as harvesting of harakeke or catching birds or fish/seafood. We see the whetū, Mere Tu Ahiahi, which moves into Tarewa and Kōpu and even the constellation of Matariki.

When Te Rā moves to Hine Takurua, also signalled by a star, this brings in the cold winds and signals the migration of the fish to the deeper waters, to be regenerated and to breed in the sacred waters of Wainui.

As Ngāi Tamahaua, we are intricately connected to the natural environment, including and especially our moana; there is no separation. This is reflected in all our practices, including our karanga and our karakia, and it links us back to the origins of our whakapapa.

²⁹ Muriwhenua Fishing Report, Wai 22, #A13 Miraka Szászy at 2.

³⁰ *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, Cultural Values Assessment and Analysis by Tahu Potiki (August 2016) at [6.1].

³¹ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki on behalf of the Applicant (23 December 2016) at [4.6].

³² *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [64]–[69].

- In evidence produced in a different context, Tahu Potiki (Ngāi Tahu, Ngāti Māmoe) says:³³

At the core of everything Māori is whakapapa. Descent from the gods to all living things and all elements of the universe are genealogically inter-related. From creation ultimately all things in the universe are interconnected and they share a single source of spiritual authority. This spiritual force is also the origin of mana and tapu.

- Wiremu McMath (Te Rarawa) talks about Te Rarawa having a spiritual as well as physical connection to every form of plant life in their rohe (territory).³⁴ “We have a common whakapapa with them.”³⁵ He saw the same as applying to the sea, rivers, creeks, land and mountains.³⁶
- Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) explains:³⁷

Whakapapa is the foundation of Māori belief. Māori connection with all things starts with the whakapapa (genealogy) of creation.

Whakapapa describes the emergence of Ranginui (the sky father) and Papatūānuku (the earth mother) from nothingness. As the primal parents lay locked together in an embrace their children existed in a world of darkness. To allow light into their world the children separated the embrace of their parents. Once this has occurred the children become atua (gods or deity) of various parts of the natural world.

Tāne-Mahuta, known also as Tāne-nui-a-rangi (atua of the forest and all that lives within it) is credited with creating the first woman from soil. He named her Hineahuone and together they had a child, called Hinetitama (later known as Hine-nui-te-po). It is from these tūpuna that Māori are said to descend. Tāne-Mahuta’s brother, Tangaroa, is the atua of the sea and sea life. There are many more atua over the different domains of the world. Tūmataunga, the atua of war, is also credited as the atua of man.

As such, Māori believe that all things are connected and that humans are part of, and genealogically linked to nature.

Māori are directly connected by whakapapa to the land, sea and sky and all things within. It is through this whakapapa that hapū and iwi are directed connected to parts of the environment that are important to them.

- Tāmami Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) discusses Ranginui and Papatūānuku as the origins of humanity (tangata whenua). He introduces the atua Māori, the children of Rangi and Papa. “Tāne and Tūmataunga are generally regarded as the progenitors of mankind. The other children of Ranginui and Papatūānuku gave form, aura and phenomenon to our universe. From this inter-

³³ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki (23 December 2016) at [4.6].

³⁴ *Ko Aotearoa Tēnei*, Wai 262, #B9 Wiremu McMath at [57].

³⁵ *Ko Aotearoa Tēnei*, Wai 262, #B9 Wiremu McMath at [57].

³⁶ *Ko Aotearoa Tēnei*, Wai 262, #B9 Wiremu McMath at [58].

³⁷ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [20]–[24].

weaving of relationships, comes the innate Māori relationship with whenua, arā ko *tangata whenua*.”³⁸

- Tā Pou Temara (Tūhoe) says:³⁹

As a tangata Māori, we all have an obligation and duty to protect our whenua and resources (tāonga tuku iho) under Tikanga because we see ourselves as part of their intrinsic makeup through whakapapa. The environment, the seas, the rivers, the water, the mountains and sky and the earth are all tuakana to us, and we are their teina because they were here long before humankind.

- Henare Rakiihia Tau (Ngāi Tahu, Ngāti Māmoe, Waitaha) says:⁴⁰

Our Ngāi Tahu perspective is that water and land are of the Creators, and we see Creation as a whole system of the world. We refer to the role of Papatūānuku the Earth mother, and to Rakinui the sky father, and to their children Tane and Takaroa. The trees of the forest and their fruits, and the birds are referred to as the children of Tane, while the fishes are children of Takaroa. Both Tane and Takaroa are Atua of deities responsible for these natural resources in the created world, and they are closely related within the whakapapa of creation ...

... we use the concept of whakapapa both to analyse into separate parts and to bind the parts together as a whole entity of creation, of which we see ourselves are also a part ... our cultural concept in the land begins in Papatūānuku and her resources seen as a whole ... we go on to categorise the parts of the whole in respect to their uses and functions. But when we go out to make use of the resources of nature, we do not forget the whakapapa binding all together, at the same time as we distinguish the resources of land and sea.

- 4.12 A number of witnesses set out their whakapapa going back to the atua.⁴¹ Tā Pou Temara (Tūhoe) traces the whakapapa between Io and people broadly as being:⁴²

Io

Ranginui = Papatūānuku

Te Ira Atua (Māori Gods and Goddesses)

Te Ao Tūroa (Physical/Natural World)

Te Ira Tangata (Humankind)

³⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [48]–[49].

³⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [34].

⁴⁰ *Re Tipene* [2016] NZHC 3199, Affidavit of David Anderson Armstrong (Affirmed 31 August 2015) Exhibit DA-20 *Ngai Tahu Māori Trust Board v Attorney-General* CP 559/87, Affidavit of Henare Rakiihia Tau (24 November 1989) at [73].

⁴¹ See Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden at 6–9; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at 3; *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki (23 December 2016) at [4.1]–[4.12]; *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, Cultural Values Assessment and Analysis by Tahu Potiki (August 2016) at [6.4]; and *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Joint Brief of Evidence of Hohepa Joseph Mason and Te Kei (O Te Waka) Wirihana Merito (29 April 2019) at [37]–[38].

⁴² *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [8].

- 4.13 Temara goes on to provide the whakapapa of atua that guide “these understandings in the context of the relationships between the rohe moana and the inland territories”.⁴³ He states:⁴⁴

Hinemoana, the goddess of the ocean is a wahine and Papamoana the ocean bed. Hinewai is the goddess of the waters. They are all female deities of Tangaroa – the God of the sea. Kiwa is one of Rangi and Papa’s children. We call the Pacific Ocean Te MoananuiaKiwa – the great ocean of Kiwa.

Hinemoana and Kiwa had a number of children. The names and number of these children vary in different accounts however each of them was the ancestor of the creatures of the sea ... Pipihura: ancestor of the cockle; Te Uru-kahikakahika: source of eels, lampreys and frostfish; Wharerimu: ancestor of seaweed ...

Kiwa’s first wife was Parawhenuamea: atua of streams that flow from the land to the sea and of fresh water generally. They had Rakahore, Te Atua o te Kohatu – Gods of rocks and stone.

- 4.14 Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) provides a whakapapa for Tūhoe from Ranginui (the sky father) to Te Maunga, the ancestor from which Tūhoe say they descend. Waaka explains that this whakapapa links Tūhoe directly to the whenua:⁴⁵

Ranginui

Rangoroa

Rangipouri

Rangipōtango

Rangiwhatumā

Rangiwharo

Rangiwhākere

Ta Tahunui o te rangi

Tukutuku

Hekeheke

Uaua

Te Maunga = Hinepūkohurangi

- 4.15 Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) and Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) set out the whakapapa of wai (water) according to Ngāti Awa experts:⁴⁶

Ranginui married Papa-tū-ā-nuku (and begat Kiwa)

Kiwa married Parawhenuamea (The ancestor of water)

⁴³ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [17].

⁴⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [18]–[20].

⁴⁵ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [27].

⁴⁶ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Joint Brief of Evidence of Hohepa Joseph Mason and Te Kei (O Te Waka) Wirihana Merito (29 April 2019) at [37]–[38].

Some names pertaining to water include;

Tāne the Water of Life

Tāne the Great water

The Great river of the heavens.

- 4.16 The Māori relationship to the environment can only be understood in the context of this whakapapa.⁴⁷
- 4.17 Mira Szászy (Ngāti Kurī, Te Aupōuri) explains that, because we are children of Papatūānuku and all nature derives from her, “our spirituality is deep-rooted in the earth, the lands upon which our ancestors lived and died”.⁴⁸
- 4.18 Further, implications of this whakapapa to the natural world that are identified by different deponents include:
- there being no disconnection between the secular and sacred for Māori as Māori descend from the gods;⁴⁹
 - Māori being one with all things, an integral part of the natural order and holding a special relationship to Mother Earth;⁵⁰
 - an emphasis on the importance of conservation and of maintaining balance with the natural world; and⁵¹
 - it being difficult to desecrate and dispose of the land as an alienable asset and resource.⁵²
- 4.19 Margaret Mutu (Ngāti Kahu) explains that their tikanga is such that whenua is not treated like chattels. She says, “Muriwhenua customs, oral traditions and philosophy in respect of land absolutely preclude the land, which is perceived as the embodiment of Papatūānuku, the earth mother, being treated like a cow or a pig that one may buy one day and sell the next.”⁵³
- 4.20 Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) makes a similar point where he says, “In our cultural context the sea is not owned. In an interconnected environment, where we have whakapapa (genealogical links) to all living we do not own the land or the sea in the same way as is suggested by the English legal concept of title. Instead, we see an interconnection with the land and seas that gives us rights and obligations. Our cultural concept of mana is very different to the legal concept of ownership.”⁵⁴
- 4.21 Wiremu Hodges’s (Ngāti Pāhauwera) expression of the whanaungatanga concept aligns with the Ngāti Pāhauwera “philosophy of relationships with all things of this earth”. He

⁴⁷ Ko Aotearoa Tēnei, Wai 262, #K14 Mason Durie at [2.2]; Ko Aotearoa Tēnei, Wai 262, #P3 Haami Piripi at [19]; and Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at 3.

⁴⁸ Muriwhenua Land Report, Wai 45, #A6 Miraka Szászy at 2.

⁴⁹ Muriwhenua Land Report, Wai 45, #A7/#A14 Reverend Māori Marsden at 1.

⁵⁰ Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden at 1.

⁵¹ Ko Aotearoa Tēnei, Wai 262, #E6 Maggie Ryland at [3.5.2(a)].

⁵² Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [10.5].

⁵³ Muriwhenua Land Report, Wai 45, #H10 Margaret Mutu at 14.

⁵⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [99].

adds that “we (‘te tangata’) belong within the environment – we don’t own it as such. Ownership is a foreign concept of ‘title’ whereas ours is one of ‘entitlement’ through Whakapapa and is celestially founded.”⁵⁵

Connection to place

- 4.22 Whakapapa often plays a role in narratives around the connection that people have with whenua and particular places.⁵⁶ For example, Apirana Mahuika (Ngāti Porou) talks about how Ngāti Porou maintain their descent from Māui, whose canoe, Nukutaimemeha, whilst fishing up his great fish, became stranded on the peak of Mt Hikurangi, the first part of the land to emerge from the deep.⁵⁷ He explains:⁵⁸

Ngāti Porou oral tradition is that this canoe rests in petrified form on top of Hikurangi. The whakapapa of Māui to Ngāti Porou shows that they are indigenous to this land and the story explains why Mt Hikurangi is imbued with tapu and so significant to Ngāti Porou.

- 4.23 A spiritual perspective on the importance of connection to place is provided by Tā Hirini Moko Mead (Ngāti Awa). He says, “One is born into an iwi, whenua ki te whenua (placenta to the land) and when one’s life is done there is a passage back to the land, to the rohe or takiwā, to lie with the whanaunga and the tipuna, symbolically to recapture the essence of the whānau, the hapū and the iwi.”⁵⁹
- 4.24 Chris Winitana (Ngāti Tūwharetoa) explains that the geothermal resources in the Rotokawa area are part of their whakapapa lineage.⁶⁰ He recounts one lineage line of Ngāti Tūwharetoa, the geothermal fires of Ngātoroirangi. This lineage began following the separation of Ranginui and Papatūānuku by Tāne-tokorangi.⁶¹ Rūaumoko was with his mother Papatūānuku. When the brothers decided to turn Papatūānuku over, Rūaumoko pleaded for them to retrieve him. However, he was left to placate Papatūānuku in her loneliness and sorrow.⁶² Rakahore (the father of bedrock and stone) imbued the sacred ‘ahi tāmou’ heat into the bedrock of Papatūānuku to keep the pair warm. Rūaumoko disagreed and vowed to take revenge on his brothers by “shaking the world and causing earthquakes to devour their offspring”.⁶³ Rūaumoko moved about in discomfort and produced earthquakes. Winitana says, “His movements weakened the fabric of the

⁵⁵ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Wiremu Itereama Sylvester Hodges (11 December 2013) at [33].

⁵⁶ For example, see *Ngā Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [21]–[24] and [27]–[28]; *Ko Aotearoa Tēnei*, Wai 262, #E6 Maggie Ryland at [3.5]; and *Ko Aotearoa Tēnei*, Wai 262, #E3 Wayne Ngata at [4.3].

⁵⁷ The Fisheries Settlement Report, Wai 307, #B8(c), Affidavit of Apirana Mahuika (Te Rūnanga o Ngāti Porou) at [3]–[4].

⁵⁸ *Ko Aotearoa Tēnei*, Wai 262, #G4 Apirana Mahuika at [3.3].

⁵⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [100].

⁶⁰ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [52].

⁶¹ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [54]–[59].

⁶² *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [54]–[59].

⁶³ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [56].

earth's crust, giving escape routes to Te Ahi Tapu a Tapeka and geothermal and volcanic activity was born into the world.”⁶⁴

- 4.25 Hetaraka Biddle (Ngāi Tamahaua hapū) recounts the kōrero regarding Tārawa as “the earliest recognised ancestor from whom Tamahaua the man and therefore Ngāi Tamahaua hapū descends”.⁶⁵ Biddle provides the following:⁶⁶

According to our kōrero, Tārawa is said to have come over from Hawaiki on his chest and when the people first saw Tārawa they mistook him for a rata tree. When they approached him they found a man lying with a paepae kaiāwhā (beam across the front of a meeting house). The whenua where Tārawa landed was named Paerātā after this event which is a point 3 kilometres west of Ōpōtiki.

As Ngāi Tamahaua we acknowledge Te Tapuwae o Tārawa (‘The Footprint of Tārawa’) as being part of the rohe passed down to us. Te Tapuwae o Tārawa is as follows:

Ka tīmata ki a Paerātā haere tonu ki a Tawhitinui, whakawhiti i te awa Waioweka ki te taone Pā-Kowhai (Ōpōtiki), whakawhiti i te awa ōtārawa ki ōroi. Ka herea ki te timatanga o te awa o te Motu, haere tōtika ki te tonga ki a Motuhora, Pokaikai ki Tapaona.

- 4.26 Biddle notes further that he always acknowledges Tārawa in his kōrero when speaking at various events or ceremonies as the name immediately places Ngāi Tamahaua in Ōpōtiki and surrounding areas.⁶⁷
- 4.27 Whakapapa is described as the basis of certain tikanga-based status, rights, interests and responsibilities. For example:

- David Topia Rameka (Ngāti Tūwharetoa, Ngāti Kurapoto, Waikato-Tainui, Ngāti Rangitihī, Ngāti Tahu) explains:⁶⁸

Ngāti Tūwharetoa are linked by whakapapa to our lands and taonga. This connection establishes our mana whenua, kaitiakitanga and rangatiratanga, including our right to establish and maintain a meaningful and sustainable relationship between whānau, hapū and marae, and our taonga tuku iho or natural resources.

- Tā Hirini Moko Mead (Ngāti Awa) speaks of the birthright a child receives when it is born and the spiritual connection created by the burial of its whenua and pito in the land.⁶⁹ He explains these rights continue in spite of distance, as exemplified by the many urban Māori who are returned to their marae and whenua for tangihanga and burial. The birthright includes mauri, wairua, mana, tapu, whenua, whanaungatanga, identity and whakapapa to the whānau, hapū, iwi and waka, interest in the tribal estate, use of the marae and future burial in the urupā.

⁶⁴ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [59].

⁶⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [23].

⁶⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [22]–[26]; Affidavit of Heremaia Warren (21 February 2020) at [18].

⁶⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [27].

⁶⁸ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of David Topia Rameka (4 June 2017) at [20].

⁶⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [22]–[23].

- Chris Winitana (Ngāti Tūwharetoa) emphasises that Tūwharetoa is a kaitiaki over the Rotokawa geothermal area by right of the “whakapapa lineage-defined resource”, the geothermal fires of Ngātoroirangi.⁷⁰
- When referring to rights over te takutai moana, Moka Puru (Ngāti Ira, Te Whakatōhea) says, “The source of our rights has not changed; it stems from our whakapapa, our whakapapa to our tūpuna, our atua, the whenua and the moana.”⁷¹
- Tama Hata (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tūhoe, Waikato) references comments by Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) in relation to whakapapa when discussing the authority to manage the marine and coastal area and responsibilities that arise from whakapapa:⁷²

Tipuna title may be described as the physical and spiritual interests that collectively vested in Iwi or Hapū as part of their mana or rangatiratanga in regard to the whenua.

It is a title that exists within what may be termed “relational interests,” that is interests that inhered in the relationships of a particular whakapapa and the willingness of our people to develop existing or potential relationships with others. It is an absolute title in the sense that rangatiratanga and whakapapa create inalienable ties to the land. Being tangata whenua implies having whenua to be tangata upon, and “tipuna title” presupposes a continuing authority in relation to it. It may in fact be construed as a unique Māori construct of ownership because it implies a collective exclusivity.

- Whakapapa is also seen by Apirana Mahuika (Ngāti Porou) as being the key to Article 2 of the Treaty of Waitangi.⁷³ He says that, without whakapapa, one does not have rangatiratanga rights to hapū, whānau, iwi, land, taonga and so on.⁷⁴
- Reverend Māori Marsden (Ngāi Takoto, Ngāti Warara) makes the point that, while the Muriwhenua groups came into conflict and political dynamics change, they are all connected by whakapapa and have rights based on take tupuna (ancestral right) through that whakapapa.⁷⁵
- Maui Solomon (Moriōri) says his grandfather is “the last full-blooded Moriōri who died in Rēkohu (Chatham Island) in 1933”.⁷⁶ His whakapapa extends back 600 years in Rēkohu, and he points to this and his close association with Rēkohu as evidence that Moriōri have retained their ahi kaa and mana over their lands and seas.⁷⁷
- Te Rua Rakuraku and Donald Kurei (both Te Whakatōhea, Ngāti Ira) say:⁷⁸

⁷⁰ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana on behalf of Tūwharetoa Māori Trust Board (4 June 2017) at [16]–[17], [21] and [29].

⁷¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Moka Kainga Maata Puru (3 February 2020) at [53].

⁷² *Re Edwards* [2021] NZHC 1025, Affidavit of Tama Te Waiwhakaruku Hata (14 February 2020) at [53]; Moana Jackson “The Notion of Tipuna Title as a Tikanga Construct re The Foreshore and Seabed” (2010) APC <<http://www.apc.org.nz/pma/mjtipuna.htm>>.

⁷³ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [4.6].

⁷⁴ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [4.6].

⁷⁵ Muriwhenua Land Report, Wai 45, #F25 Māori Marsden at 3.

⁷⁶ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [1.1].

⁷⁷ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [1.1].

⁷⁸ *Re Edwards* [2021] NZHC 1025, Joint affidavit of Te Rua Rakuraku and Donald Kurei (21 January 2022) at [16]–[17].

In assessing how to uphold our Tikanga the starting point must therefore be that our whakapapa obligations tie us to the moana and the land and are sovereign responsibilities we have as mokopuna of Muriwai; Te Hira Popo; Rakuraku and the many other familial figures in our whakapapa to uphold for future generations ...

A key obligation for us as those who possess mana whenua and as kaitiaki to the claimed area is thus the need to protect resources when they have been under threat or to avoid exploitation of limited taonga. More importantly to remember the relationships between tuakana and teina that subsist to ensure the ecological balance of the environment and the interaction between humankind are interconnected.

- Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) says:⁷⁹

Tikanga guides us in everything we do in Te Whakatōhea, how we behave and how we operate as whānau, hapū and iwi. ‘Tikanga’ literally means acting in the ways that are ‘tika’ (proper/correct). Tikanga is the law in our area and is underpinned by whakapapa, because without whakapapa you have no right to claim, speak for or take care of the whenua or its resources. This applies to the moana as much as the whenua: the moana is just whenua with water sitting on top of it ... Therefore, Tikanga are the rules and rituals that guide our practices and protect our whakapapa and resources. We have an obligation as kaitiaki of the whenua and of the moana to look after and protect all the rocks, fish species and the waters in the moana.
- According to Robyn Wallace (Ngāi Tahu), “Tikanga practice on Pohowaitai and Tamaitemioka dictate it is shared by all whānau who whakapapa to these islands.”⁸⁰
- This statement is supported by Ronald Bull (Ngāi Tahu) who says that “customary marine title should be held under a collective of all whānau who whakapapa to the Titi Islands, and definitely not one family”.⁸¹
- Henare Rakiihia Tau (Ngāi Tahu, Ngāti Māmoe, Waitaha) describes how fishing rights at some fishing grounds are derived from whakapapa. “Ngāi Tahu custom requires that access, in some instances, to certain sea fishing grounds is determined by a person’s whakapapa. Some are recognised as having a right by inheritance, while others may be excluded.”⁸² He provides an example of “the ground named Tuhaitara about 12 miles offshore from Moeraki, and we recognise only people who can claim descent from that Ngāi Tahu chiefteness [sic] Tuhaitara as having any right to fish on that ground”.⁸³

⁷⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (25 January 2022) at [9]–[10].

⁸⁰ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Questionnaire – Customary Marine Title Application by Robyn Wallace (undated) at 96.

⁸¹ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Submission by Ronald Bull (4 October 2014) at 102.

⁸² *Re Tipene* [2016] NZHC 3199, Affidavit of David Anderson Armstrong (Affirmed 31 August 2015) Exhibit DA-20 *Ngai Tahu Māori Trust Board v Attorney-General* CP 559/87, Affidavit of Henare Rakiihia Tau (24 November 1989) at [77].

⁸³ *Re Tipene* [2016] NZHC 3199, Affidavit of David Anderson Armstrong (Affirmed 31 August 2015) Exhibit DA-20 *Ngai Tahu Māori Trust Board v Attorney-General* CP 559/87, Affidavit of Henare Rakiihia Tau (24 November 1989) at [77].

- 4.28 When explaining a particular understanding of the word ‘iwi’, Tā Tīmoti Kāretu (Tūhoe, Ngāti Kahungunu) and Professor Te Wharehuia Milroy (Tūhoe) note the important links between the burial of ancestral bones in land and identity:⁸⁴

These words [kōiwi/poroiwi] are used widely to describe the bones of a person such as those that lie in the resting places of the deceased whether they be the burial plots of modern times or the older resting places of traditional times. According to Māori custom these bones should be placed within the lands or district of the deceased so that they may be brought within the compass of their relations, tribes people or close descendants. From that it can be seen that the terms kōiwi or poroiwi are closely connected to iwi and have a common source in the sense of the genealogy of each whānau, each hapū and each tribe. In Pākehā thinking, kin relationship is expressed by ties of blood but the equivalent in Māori is not blood but bones. In Māori thought it is said, “they are my bones” (‘he poroiwi ēra nōku’).

Connection to and between people

- 4.29 Whakapapa is a common thread that serves to connect and weave people together.⁸⁵
- 4.30 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) refers to how most Māori, when giving their whakapapa, will recite their connection to whenua beginning at their ancestral genealogical lines, usually traced from ancestral waka (canoe) that arrived in Aotearoa from Hawaiki, where the Pacific peoples who became Māori originated.⁸⁶ He describes whakapapa as being “about connection to others and how these connections inform one’s identity and relationships and the responsibilities to others”.⁸⁷ He goes on to say:⁸⁸

The point of establishing this *whakapapa* is to contextualise an individual person within their wider kinship group (hapū), who can all trace themselves back to a common *tūpuna* (ancestor) and to *atua* (spiritual world) where that impossible. *Whakapapa* inevitably connects both the individual and his or her kin group to the land and it affirms the values of sharing and community over the individual.

⁸⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor James Te Wharehuia Milroy and Professor Tīmoti Samuel Kāretu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (unsigned) at [10]; Māori taken from *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), *Te Kupu a te Toi Huarewa* (Professor) James Te Wharehuia Milroy rāua ko te Ahorangi (Professor) Tīmoti Samuel Kāretu (25 February 1998) at [10].

⁸⁵ The Fisheries Settlement Report, Wai 307, #B9 Tipene O’Regan at 5, where he describes whakapapa as “the common thread that weaves the hapū together to form the iwi”; Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) discusses the origins of Ngāti Awa at length, which includes the kōrero regarding key people from whom Ngāti Awa descend and their travels, including Māui and Tiwakawaka, Toi Te Huatahi, Awanuiāraangi I, Irakewa, and the arrival of the Mataatua waka and Wairaka, Awanuiāraangi II, Te Tokotoru a Paewhiti, Te Heke o Te Rangihouhiri, at [39]–[69].

⁸⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [52].

⁸⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [52].

⁸⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [52].

4.31 As Apirana Mahuika (Ngāti Porou) explains, “The relationship is one of family united by a spiritual bond ... or whakapapa bond that unites all kinfolk, that is those living in the world now and those who have passed on to the world of the spirits.”⁸⁹

4.32 Tā Tīmoti Kāretu (Tūhoe, Ngāti Kahungunu) describes the whakapapa connection as follows:⁹⁰

Māori are all linked genealogically and they have these taurahere which ... joins them and links them and no one can say Māori stands alone, even though he may be ignorant of their genealogy.

4.33 Tā Hirini Moko Mead (Ngāti Awa) defines the centrality of what he called the “whakapapa principle” to Māori social order:

Unless you are born into the group or adopted as a whāngai, you cannot be a member of that whānau. The term used to label this group contains within it the defining characteristic that distinguishes a whānau from some other group of people. The whānau principle, which is described by anthropologists as the kinship principle and by Māori as the whakapapa principle underpins the whole social system, that is one must be born into the fundamental building block of the system in order to be a member as of right. The kinship principle cannot be bypassed or ignored.⁹¹

Without the whakapapa principle, they cannot be regarded as an iwi, or indeed as a hapū or whānau. Without shared descent from the principal identifying ancestor, they are strangers to each other without any kinship ties and the great bundle of rights and obligations that are inseparable from the whānau, the hapū and the iwi.⁹²

4.34 In relation to the common use of prefixes (ngāti, ngāi te, te aitanga, te ati) before an iwi name, Tā Tamati Reedy (Ngāti Porou) says, “These prefixes are all variations on a single meaning – they collect the tribal descendants together as literally “the issue from the copulation of” the particular ancestor. The fact that one of these prefixes is used before most iwi names indicates the centrality of descent to the concept of iwi in the Māori context.”⁹³ Reedy also explains the centrality of whakapapa to a Māori perspective and identity as exemplified in the word ‘iwi’:⁹⁴

The strong relationship between the concept of iwi meaning bone and iwi meaning tribe is obvious to any speaker of Māori. The bones of ones ancestors have always been traditionally, and remain today, the most revered and sacred of treasures. The level of reverence is, in my experience, far greater than even the significant respect shown human

⁸⁹ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [10.5].

⁹⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Timoti Samuel Karetu) at 77.

⁹¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [21].

⁹² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [83].

⁹³ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Tamati Muturangi Reedy for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [24].

⁹⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Tamati Muturangi Reedy for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [37(b)].

remains by western culture. This is because, in Māori terms, one is defined by one's ancestors.

To translate a common Māori phrase – “Ko tātou ngā kanohi me ngā waha kōrero o rātou mā kua ngaro ki te pō – we are but the seeing eyes and speaking mouths of those who have passed on”.

This reverence for the bones and indeed the memory of ancestors is directly reflected in the centrality of whakapapa or genealogy to all structures within Māori society. Whether it be at whānau, hapū, iwi or waka level the group dynamic and the right of each individual to participate is necessarily defined by kin relationship through descent from revered ancestors. If that component is taken away it is in my view clear that the term iwi cannot be used.

- 4.35 Whakapapa is a common tool used throughout the evidence to connect people. Reverend Māori Marsden (Ngāi Takoto, Ngāti Warara) refers to how Ngāti Kuri, Te Aupōuri and Ngāi Takoto were connected through their founding ancestors Ngāti Kaharoa, Ngāti Kahu and Te Rarawa.⁹⁵ Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou), in introducing Te Whānau-ā-Apanui in his evidence, refers to their two neighbouring iwi groupings in whakapapa terms:⁹⁶

To our west are our whanaunga of the Ngāi Tai tribe with whom we share important genealogical ties as Apanui Ringamutu (the eponymous ancestor of Te Whānau a Apanui) married two women from there: Te Whaaki and Te Kohepare.

Immediately to our east are our closet kin, the Ngāti Porou peoples. Together Te Whānau a Apanui and Ngāti Porou refer to ourselves as “ngā kotipu o te mārā tapu o Tumoanakotore” or “tubers from the sacred garden of Tumoanakotore”. Tumoanakotore was one of our common ancestors.

- 4.36 Tā Hirini Moko Mead (Ngāti Awa) recognises the enduring importance of whakapapa:⁹⁷

The traditional system of whānau, hapū and iwi will live on well into the next century and beyond mainly because they continue to make sense to the people. As rallying points for action and for calling the people together they have no peers. People respond to the call of their whānau which remains the most supportive and important group in the life of any Māori. The hapū is also a powerful symbol of identity and its call to action is also difficult to ignore. This group comes together frequently in meeting the ceremonial requirements of whānau, such as tangihanga.

- 4.37 Dr Ranginui Walker (Whakatōhea) considers whakapapa central to a Māori viewpoint of the world:⁹⁸

... that's what whakapapa is, whakapapa is the paradigm of Māori knowledge of the world of reality. It is characterised by a layering in sequence which also contains within it the idea of progression and evolution and so you start at the creation, you come down to the sons of Rangi and Papa and other ancestors who are the repositories of knowledge such as fire, Māui having the knowledge of the magic props of bone for making artefacts, then further down to the migratory canoe ancestors of the 9th, 12th and 14th Centuries ...

⁹⁵ Muriwhenua Land Report, Wai 45, #F25 Māori Marsden at 2.

⁹⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [11] and [12].

⁹⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [96].

⁹⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Ranginui Walker) at 104.

4.38 Whakapapa is seen as a basis of responsibilities between kinship groups:

- Walter Ngamane (Ngāti Maru, Ngāti Whanaunga, Ngāti Tamaterā, Ngāti Pāoa, Ngāti Te Rangi, Ngāti Hinerangi) points out generally that whakapapa “creates responsibilities of manaaki (care and nurturing) within the group. It is through whakapapa that kinship ties are cemented”.⁹⁹
- Reon Tuanau (Ngāti Te Rangi) more specifically indicates, “Our close Ngāti Te Rangi whakapapa connection with Ngāti Awa means that when environmental matters affect our kin that are of significance, Ngāti Te Rangi are duty bound by whakapapa to support.”¹⁰⁰
- Moe Milne (Ngāti Hine) describes how:¹⁰¹

[w]hakapapa connects us spiritually to our past and it defines the present. It is having confidence in our whakapapa; that through our relationships we can rely on each other and contribute to the wellness of the whānau, of the hapū as a whole. At a basic level, it is having a relationship where when you say you need me, I show, and equally when I say I need you, you show.
- Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) describe whakapapa as creating “responsibilities of manaaki (care and nurturing) within the whānau. Like all these concepts, that are inextricably linked, whakapapa is closely linked to the concept of whanaungatanga.”¹⁰²

4.39 Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) states that “the complex web of whakapapa that starts from the time of Raukawa himself is what makes some of the mana whenua issues in our takiwā so complicated today”.¹⁰³

4.40 Vanessa Eparaima (Raukawa) explains:¹⁰⁴

Raukawa are landlocked and large and powerful neighbours border o[u]r takiwā. We have close whakapapa connections with all those neighbours, and a number of hapū regard themselves as part of both Raukawa and other iwi. This means that in practices there is often not a hard line that marks the Raukawa takiwā and our interests blend into others.

4.41 Ani Mikaere (Ngāti Raukawa, Ngāti Porou) explains what whakapapa accordingly demands of us:¹⁰⁵

Reliance on a whakapapa framework to make sense of our existence requires us to value every person as part of an endlessly expanding whole. This is not to be confused with some

⁹⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane (13 October 2020) at [22].

¹⁰⁰ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Affidavit of Reon Roger Tuanau (15 August 2018) at [19].

¹⁰¹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [131].

¹⁰² *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [94].

¹⁰³ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, The Wairarapa ki Tararua district inquiry, Wai 863, #J5 Nigel Te Hiko at [2.12].

¹⁰⁴ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, The Wairarapa ki Tararua district inquiry, Wai 863, #J4 Vanessa Eparaima at [2.2].

¹⁰⁵ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at [44].

feel-good notion of equality or sameness; rather, it recognises that the particular qualities of every person contribute to the vitality of the whakapapa network in its entirety.

- 4.42 Robin Hapi (Ngāti Kahungunu) states that the obligations that come with whakapapa are not diminished by distance:¹⁰⁶

... we have a Tupuna by the name of Hikawera the father of Te Whatuiāpiti, in his time there was a famine of kūmara in Wairoa district, Hikawera through obligations that he had to his whanaunga in Wairoa slaughtered a number of dogs and took the dogs up to Wairoa where they were provided to the people of Wairoa at Tūtaekurī of my own Tupuna a signatory to the declaration of independence also a signatory to the Treaty of Waitangi, I think about him and in the 1820s he was captured by a war party; the people of Kahungunu from Wairoa to Wairarapa got together pursued the war party and negotiated for his release. An exchange of gifts ensured his release.

Whakapapa expertise

- 4.43 Whakapapa is a prized form of knowledge, and great effort is made to preserve memory of it.¹⁰⁷
- 4.44 Tā Pou Temara (Tūhoe) explains, “Those that are fortunate to be raised steeped in the knowledge of whakapapa, history and Tikanga are known as Tohunga Whakapapa, Tohunga Whaikōrero or Pou Tikanga. It is these knowledge keepers that ensure the integrity of the relationships between the various realms.”¹⁰⁸

Whakapapa and status

- 4.45 Tahu Potiki (Ngāi Tahu, Ngāti Māmoē) explains that “The Māori view of the universe also places a hierarchy on descent. This means that those with more senior whakapapa inherit greater power status”.¹⁰⁹ For a further discussion on tuakana/teina see paragraphs [6.94]–[6.100] below.
- 4.46 Apirana Mahuika (Ngāti Porou) expresses a similar sentiment, explaining, “Whakapapa determines rank and status within society and one’s genealogical ranking in the social hierarchy of whānau, hapū or iwi.”¹¹⁰ He also explains that of all the ancestors available, Porourangi was the chosen name for the iwi of Ngāti Porou because all the senior whakapapa lines from Hawaiki and Aotearoa converged on Porourangi.¹¹¹ “My interpretation therefore is that just as many strands are woven together to adorn a house,

¹⁰⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Robin Hapi) at 550.

¹⁰⁷ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [92].

¹⁰⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [9]. See also [2.75] of this Report.

¹⁰⁹ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki (23 December 2016) at [4.13].

¹¹⁰ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [4.6]. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Nga Tikanga Māori e pa ana ki a Tangaroa (22 November 1991) at 4.

¹¹¹ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [3.49]–[3.65].

so in Porourangi’s case, he is the final adornment resulting from his senior whakapapa and or descent from his many ancestors.”¹¹²

- 4.47 Moe Milne (Ngāti Hine) talks about the strengthening of whakapapa through marriage: “If a couple were having trouble having children, it was common for the woman to remarry the brother or close relative. It was not about personal needs or wants, the priority was about strengthening whakapapa, *kia ora ai te hapū*. However, it was a consensus decision between the woman and man and their families.”¹¹³ This example not only illustrates the importance of whakapapa and connection but also the centrality of the collective and not just individuals.

Whakapapa and inclusiveness

- 4.48 Ani Mikaere (Ngāti Raukawa, Ngāti Porou) describes whakapapa as being “inherently non-hierarchical and is driven by the logic of inclusion”.¹¹⁴
- 4.49 Apirana Mahuika (Ngāti Porou) similarly explains how, traditionally and to the minds of Ngāti Porou, whakapapa was and is inclusive.¹¹⁵ He laments how the individualisation of legal title created a character of exclusivity to whakapapa as it resulted in the dispossession of rights granted by whakapapa to individuals in *whānau* and/or *hapū* areas of their *iwi*.
- 4.50 Margaret Kawharu (Ngāti Whātua Ōrākei) approaches this issue from a different perspective. She put emphasis on the “twin ideologies”¹¹⁶ of *whanaungatanga* and *whakapapatanga* that “inspire the logic and the ethos of tribal society”.¹¹⁷ She describes these principles “as providing a logical basis for the way things have been in the past, are now and ought to be in the future”. However, she goes on to distinguish between the two: “The more inclusive kinship ethic of *whanaungatanga* offsets the more exclusive linear factional loyalties derived from the descent lines of whakapapa.”¹¹⁸

WHANAUNGATANGA

The fundamental values base of Māori law is the maintenance and protection of relationships.

Dr Moana Jackson¹¹⁹

- 4.51 The concept of *whanaungatanga* is centred on relationships, expressed as:

¹¹² Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [3.55].

¹¹³ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [95].

¹¹⁴ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at [46].

¹¹⁵ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [4.2].

¹¹⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (2 June 2020) at [3].

¹¹⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (2 June 2020) at [6].

¹¹⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (4 December 2020) at [6].

¹¹⁹ *R v Tamati Mason* [2012] NZHC 1361, Notes of evidence taken before the Hon Justice Heath on pre-trial application – 3 May 2012 at 4.

- “the way we bring our whakapapa to life” and “the way we relate to our kin”;¹²⁰
- “the relationship between kinship groups”;¹²¹
- “the kinship ties that link us together through events in history and our whakapapa”;¹²²
- focused on “the maintenance of relationships”;¹²³ and
- reminding “a person that they exist as part of a matrix and web of relationships and collectives”.¹²⁴

4.52 David Wilson (Te Ākitai Waiohū, Ngāti Te Ata) describes how in tikanga:¹²⁵

... we generally talk about how we are related and connected to each other and to different places, especially on the marae. Our framework for thinking emphasises our relationships to land and people and we are more inclusive than exclusive. This reflects the tikanga concepts of: whanaungatanga and manaakitanga.

4.53 Whaimutu Dewes (Ngāti Porou, Ngāti Rangitahi) discusses the concept of whanaungatanga in the context of Māori fishing rights and rangatiratanga:¹²⁶

In terms of Tikanga Māori, the concept of Whanaungatanga (common descent) applies which establishes a web of reciprocal, kinship based, rights of acknowledgement, support, access to resources and an active duty of reciprocity. Behavioural norms in respect of the exercise of those rights are in turn drawn from the values inherent in Manaakitanga, or mutual respect. Hence the reciprocal nature of the relationship is affirmed and underlined by the need to respect the resource and those who have primary control of access to it.

The Māori fishing right, according to Tikanga Māori, may be seen as encompassing both the primary management right to allocate and oversee the rights of use in respect of the sea as well as the actual right of use itself. The right of allocation fell to those who exercised Rangatiratanga over that seaward territory. Rangatiratanga in respect of the sea was based upon the Rangatiratanga of the land to which the particular sea region was contiguous. Note that although occupation of the landward reference territory is the threshold determinant, the land and the sea are two different and severable composites of the Rangatira's domain. Hence the expression “He rereke a Tai, he rereke a Uta”

¹²⁰ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [72].

¹²¹ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [69]–[81].

¹²² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [54].

¹²³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane evidence (13 October 2020) at [21]. See also *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [96].

¹²⁴ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [97].

¹²⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [53].

¹²⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission at 10. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Nga Tikanga Māori e pa ana ki a Tangaroa (22 November 1991) at 6–8.

According to Tikanga Māori, in certain circumstances, continuous and uninterrupted land occupation is not necessary to assert a fisheries right.

People connected by links of Whanaungatanga to the shoreline dwellers enjoy the right to share in the use of the resource. Such a right to share could be terminated by the shoreline dwellers or, if it were not maintained, be allowed to fail by virtue of disuse. The oral histories of Iwi are replete with examples of the application of sharing on the basis of Whanaungatanga and it is not necessary to repeat them here.

The primary right to allocate use and management and the right to share in the use were both collective rights, normally controlled by the respective Rangatira. These were not individual rights.

...

The resources that falls within the Māori fishing right is everything that Tangaroa provides or may provide. There is no limit as to fish or other marine life that may be harvested in terms of Whanaungatanga, no seaward or depth of water limitation. Similarly the uses to which the sea and its resources may be put. Tangaroa's manaakitanga in making the bounty of the sea available must be treated with respect in term of the whanaungatanga with which it is proffered. Exploitation, whether commercial or non-commercial must be sustainable and respectful. Thus, over-fishing and pollution are both derogations of the values and the normative rules governing fishing. Commercial and non-commercial exploitations must be viewed in terms of the reciprocal obligations to the sea, including stewardship of the future productivity. These concepts provide the constraints, in Tikanga Māori terms, to exploitation.

- 4.54 Whanaungatanga is seen to create “rights and responsibilities”¹²⁷ between “people and the natural world”¹²⁸ as well as between “whānau”.¹²⁹
- 4.55 Christina Davis (Ngāti Muriwai, Te Whakatōhea) describes how whanaungatanga relates to rights over resources and says, “The importance of knowing the whanaungatanga connections is that they validate the mana of the hapū in turn their tikanga Māori customary rights and practices to the whenua and foreshore and seabed.”¹³⁰
- 4.56 Matire Duncan (Ngā Pōtiki) sets out that, “Central to the ideal of connectiveness is the concept of whanaungatanga. Relationships drive our everyday life in the Nga Pōtiki natural resources world. The people see themselves as intrinsically connected to the taonga such as Rangataua, they are living breathing beings just like humans. They form part of our whakapapa, our waiata, our whaikōrero, pepeha, they provide kai, healing and wairua support. The tikanga of whanaungatanga also allows us to manage relationships with other hapū and iwi, this includes managing use and occupations rights.”¹³¹
- 4.57 Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) says, “Through the tikanga of whanaungatanga, iwi and hapū support each other

¹²⁷ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [69]–[81].

¹²⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane (13 October 2020) at [21].

¹²⁹ Sir Hirini Moko Mead and Professor Pou Temara Statement of Tikanga, 31 January 2020 at [97], as cited in *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [97].

¹³⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Christina Davis (21 February 2020) at [17].

¹³¹ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Matire Duncan (6 July 2020) at [14].

and held reciprocal obligations to assist each other in maintaining their mana. This tikanga also extends to shared rights and responsibilities to resources and taonga.”¹³²

- 4.58 Although, some explanations of whanaungatanga focus on whanaungatanga as being between “kin”, Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) in their evidence explain that “[t]he whanaungatanga principle goes beyond just whakapapa and includes non-kin persons who become like kin through shared experiences”.¹³³
- 4.59 Toro Waaka (Ngāti Pāhauwera) explains whanaungatanga as an essential element to survival, emphasising that you “depended not only on immediate whānau for survival, you depended on your extended family and beyond. Your status was not about what you had it was what you could give”.¹³⁴
- 4.60 Manuka Henare (Ngāti Hauā, Te Aupōuri, Te Rarawa, Ngāti Kahu) states whanaungatanga “is the value of belonging in a kind of kinship system but it’s the idea of belonging”.¹³⁵
- 4.61 An example from Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) of the responsibilities that whanaungatanga creates between people is that, when a hara (wrong) is committed, it not only impacts the individuals involved, both offender(s) and victim(s), but also the broader collectives of these individuals including whānau, hapū and iwi.¹³⁶ They explain that it means that a community is always responsible for their wrongdoers because they are kin.¹³⁷ It also means that a community is impacted as victims when offending occurs.¹³⁸
- 4.62 Associate Professor Khylee Quince (Ngāpuhi, Te Roroa, Ngāti Porou, Ngāti Kahungunu) says:¹³⁹

Within Māori whānau, social control is modelled through the concept and practice of whanaungatanga – kinship or familial obligations. Boundaries and behavioural expectations are set and enforced by the collective, with particular roles and responsibilities for guidance and leadership vesting in parents, aunts and uncles and grandparents.

¹³² *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017).

¹³³ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [97].

¹³⁴ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Toro Reginald Waaka (19 December 2019) at [69].

¹³⁵ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Manuka Henare) at 33.

¹³⁶ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [98].

¹³⁷ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [99].

¹³⁸ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [99].

¹³⁹ *Solicitor-General v Heta* [2018] NZHC 2453, s 27 report by Khylee Quince (18 September 2018) at 8.

- 4.63 Some witnesses describe whanaungatanga as an “integral”,¹⁴⁰ “essential”¹⁴¹ or “fundamental” principle of the “Māori world”¹⁴² and as “the glue that holds the Māori world together”.¹⁴³
- 4.64 Tā Pou Temara (Tūhoe), however, places a slightly different emphasis. He describes whakapapa as “the glue that holds the Māori world together and sets the parameters of the relationships between and amongst all things”.¹⁴⁴ However, he goes on to say, “Whanaungatanga is the idea that makes the whole system make sense ...”.¹⁴⁵
- 4.65 The interconnectedness between whakapapa and whanaungatanga perhaps explains in part why the concept of whanaungatanga was not teased out or explored in more depth in the evidence reviewed. The significant emphasis that we see in the evidence on connections through whakapapa is whanaungatanga in action.
- 4.66 Tā Hirini Moko Mead (Ngāti Awa) notes that, in te reo Māori, the word ‘iwi’ also means ‘bone’, an important metaphor for the relationship embodied by ‘iwi’.¹⁴⁶ He goes on to say, “An important component of the metaphor of bone is that it provides strength. Iwikore, literally no bones, means feeble, and without strength. Bones make a body strong and give form to it. Thus bones in the sense of whakapapa and in giving strength to anything is important in understanding the concept of iwi. The important aspect of the word iwi is its function as a metaphor for whanaungatanga and the strength that arises from that fact.”¹⁴⁷

TAPU AND NOA

- 4.67 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) summarises the concepts of tapu and noa:¹⁴⁸

Tapu and noa: Tapu is the miracle and sanctity of life and refers to life’s mysteries and everything that is not yet understood or known. In particular tapu is seen as a value that would provide a connection to understanding the universe and is not a human creation but a natural phenomenon like gravity. Noa then is described as the ordinary world, where there is a state of ease, limited restrictions and freedom. They are opposite concepts that

¹⁴⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 39.

¹⁴¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane (13 October 2020) at [21].

¹⁴² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane (13 October 2020) at [21] and also *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [96].

¹⁴³ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [96].

¹⁴⁴ *Re Edwards* [2021] NZHC 1025, Joint affidavit of Te Rua Rakuraku and Donald Kurei (21 January 2022) at [11].

¹⁴⁵ *Re Edwards* [2021] NZHC 1025, Joint affidavit of Te Rua Rakuraku and Donald Kurei (21 January 2022) at [11].

¹⁴⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [46].

¹⁴⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [48].

¹⁴⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [58].

balance each other. Every aspect of the physical and spiritual world holds elements of *tapu* and *noa* and people can transition between them. Tapu however is too often associated with the Christian idea of sacredness, and while I don't disagree with that, one does not have to subscribe to Christianity to understand *tapu*. *Tapu* persists despite religion, and must be respected.

- 4.68 The word 'sacred' is commonly used in association with the idea of tapu.¹⁴⁹ Tapu is also linked with notions of restriction,¹⁵⁰ prohibition¹⁵¹ and protection¹⁵² and seen as a mechanism to control and regulate behaviour.¹⁵³
- 4.69 As Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) explains:¹⁵⁴
- Though 'tapu' is commonly translated as sacred, it is more accurate to think of tapu as being a restriction for spiritual purposes. 'Tapu' must be understood alongside the concept of 'noa'. Noa is when tapu is removed or cleared through the proper karakia ritual, removing the spiritual restriction.
- 4.70 The spiritual realm is central to the concept of tapu.¹⁵⁵ Rima Eruera (Muriwhenua, Te Rarawa, Ngāti Kuri) points out that "the Māori world was a world of wairua, and Māori life was spiritually driven. Everything that was done was accompanied by karakia and rules of tapu".¹⁵⁶
- 4.71 This spiritual dimension of the Māori world is also reflected in Tahu Potiki's (Ngāi Tahu, Ngāti Māmoë) explanation of the origins of tapu and mana. He says, "Tapu and mana are

¹⁴⁹ See *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Reuben Clarke (undated) at [5]–[6]; Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [3.6]–[3.7]; Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [16]; *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Primary statement of evidence of Rereamanu Wihapi (22 December 2016) at [21]; and *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [25].

¹⁵⁰ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama citing Rangimarie Rose Pere at [80]. *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Reuben Clarke (undated) at [5]–[9]. Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [77]. *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [24]. *Minhinnick v Minister of Corrections statement of Evidence by Buddy Mikaere* (undated) at [18]. The Fisheries Settlement Report, Wai 307, #A22 P Ricky, H Te Hau and H Christy at [2]–[3].

¹⁵¹ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Reuben Clarke (undated) at [5]–[9]. Muriwhenua Fishing Report, Wai 22, #B57 Niki Kanara, Piri Paraone and Ratima Petera at [5]. Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [77]. Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [10]–[11] and [38]–[39].

¹⁵² Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [77]. *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Reuben Clarke (undated) at [5]–[6]. Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [10]–[11] and [38]–[39].

¹⁵³ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [29]. Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath. Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe.

¹⁵⁴ *Re Edwards* [2021] NZHC 1025, Third Affidavit of Te Riaki Amoamo (25 January 2022) at [14].

¹⁵⁵ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama citing Rangimarie Rose Pere at [80]. Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [3.6]–[3.7]. Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea. Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [8]. Ko Aotearoa Tēnei, Wai 262, #C2 Houpeke Piripi. Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe. *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [17]; Statement of Evidence by Buddy Mikaere (undated) at [18].

¹⁵⁶ Muriwhenua Land Report, Wai 45, #F23 Rima Eruera p.8.

derived from the creation of the world, from Te Kore, Te Pō, Te Ao, through to the union of Rangi and Papatūānuku and their offspring.”¹⁵⁷

4.72 Tā Pou Temara (Tūhoe) makes a similar point:¹⁵⁸

When you enter the realm of Tapu the atua are always at the forefront of your mind. When we look at the whakapapa from the atua to you as a tangata, the atua are still at the forefront of your mind. When we enter the realm of Tapu, we enter where the atua reside, their rivers, their mountains, their waters, their forests their domains, their territories, all of which fall under the spiritual protection of Tapu. Te Wharehuia Milroy used to say “*Pēnā he tangata whakaponu koe, he wairua tapu tōu*” – If you are person who believes and has faith, then you are spiritually connected to tapu. Tapu comes directly from the atua.

4.73 Tā Pou Temara (Tūhoe) explains the purpose of tapu as being:¹⁵⁹

- to caution and warn of danger (kia wehi, kia tūpato i te tangata);
- to instil faith, values and belief of traditions (kia ū te whakaponu);
- to guide, nurture and protect people (hei arataki i te tangata);
- to honour the relationship between humankind, the physical realm and atua (whakahōnore whakapapa);
- to instil mana (whakaū mana);
- to protect the mauri (whakaū mauri); and
- to restrict, impose a ban on an area for a short period of time (rāhui).

4.74 Tā Pou Temara (Tūhoe) goes on to emphasise, “Pre-1840 Māori communities’ behaviour was also highly influenced by tapu ... both people and objects could be tapu, and it was used to govern communities’ behaviour and adherence to people, such as rangatira and tohunga, and to situations, for example wāhi tapu.”¹⁶⁰

4.75 Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hōkōpū, Ngāti Tamapare) says, “Tapu can be both permanent and temporary depending on the site and tikanga associated with that site.”¹⁶¹

4.76 Peter Addis (Te Ātiawa) draws on a paper written by Michael Shearers in 1982 to explain tapu.¹⁶² He gives the examples of:¹⁶³

... the tapu of the head, the tapu of blood, the tapu of the urupā and so on you know. In some cases, tapu is a desirable thing. In some case it is undesirable. It is to be avoided at all costs. Because if you don’t avoid it what happens? Well, you can be affected by tapu. It

¹⁵⁷ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki (23 December 2016) at [4.1].

¹⁵⁸ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [35].

¹⁵⁹ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [37].

¹⁶⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [40].

¹⁶¹ *Re Edwards* [2021] NZHC 1025, Joint Brief of Evidence of Dr Te Kei (O Te Waka) Wirihana Merito and William Bruce Stewart (24 January 2022) at [31].

¹⁶² The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Addis p.34.

¹⁶³ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Addis p.35.

has a polluting quality some anthropologists say. It can rub off on you and it can harm you, to the point where if you're not careful you can die or at least get sick. If it's not you that gets sick it might be some other member of your whānau that gets sick. This is a deeply, deeply held view and way of thinking about the tapu even today I think in Māori communities across the country.

- 4.77 Adds also explains that “everything is intrinsically tapu” because “everything in the Māori world has a whakapapa that goes back to ancestors and then eventually back to the Atua”.¹⁶⁴ “There are degrees of tapu. Some things are intrinsically more tapu than others because of their association with the hierarchy of gods.”¹⁶⁵

Te tapu o te tangata: the tapu of people

- 4.78 Reuben Clarke (Ngāti Rangi) describes all living things (including the land, ocean, rivers and forests) as being tapu.¹⁶⁶ He acknowledges that mankind is tapu because the gods created him.¹⁶⁷

- 4.79 Tā Pou Temara (Tūhoe) makes a similar point:¹⁶⁸

If one looks at what is between Rangi and Papa everyone also falls under the spiritual protection of tapu. Rangi is tapu and Papa is tapu. All their children and descendants are tapu, the mountains, the waters, the forests, they are all supreme beings superior to humankind. People are tapu as well from their head to their toes, the most tapu person all during a tangihanga, are women. That is why only women can sit beside the tūpāpaku the entire duration of a tangi to mourn and lament, whilst men sit opposite or separate to the tūpāpaku.

- 4.80 Although everyone is tapu in a sense, the level of tapu associated with a person can vary. For example:

- Puhanga Tupaea (Ngāti Koata, Ngāti Kuia) explains that the personal mana of certain rangatira made them highly tapu and in some sense dangerous to themselves and other people unless the tapu was appropriately adhered to.¹⁶⁹ She uses the example of the mana of Te Whetu and Toro Roma being such that “they protected others by restricting themselves, their utensils, their clothes and bedding, because they knew that the strength of their mana could cause misfortune to others. That is why Te Whetu buried his hair at a special place.”¹⁷⁰
- Apirana Mahuika (Ngāti Porou) similarly talks about how tradition has it that Uenuku, a senior person in Hawaiki, was so tapu that someone else had to give him food lest his tapu would contaminate it.¹⁷¹

¹⁶⁴ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds p.36.

¹⁶⁵ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds p.36.

¹⁶⁶ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Reuben Clarke (undated) at [5]–[6].

¹⁶⁷ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Reuben Clarke (undated) at [5]–[6].

¹⁶⁸ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [39].

¹⁶⁹ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [77] and [90]–[92].

¹⁷⁰ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [77].

¹⁷¹ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [3.27].

- Tā Pou Temara (Tūhoe) also talks about the particularly tapu status of tohunga.¹⁷² He says, “Atua are tapu and tapu come from atua. Therefore, the mandate of the Tohunga come from their whakapapa and from the atua. They become repositories of esoteric knowledge ... this kind of knowledge is tapu and not for general dissemination. Tohunga are the kauwaka or the mediums and mouthpieces of the atua.”¹⁷³ He goes on to say that they refrained from anything that could contaminate that tapu state and render them noa. “Some Tohunga were considered so tapu that they did not wash. These kinds of Tohunga tended to live apart from the community.”¹⁷⁴
 - Certain parts of bodies (both of people and of animals) are described as particularly tapu. For example, Benjamin Hippolite (Ngāti Koata, Ngāti Toa, Ngāi Tahu, Ngāti Kuia) describes how the head of the fish was always offered to manuhiri out of respect. He explains that “the head is always the tapu part”.¹⁷⁵
- 4.81 The connection between tapu, mana and whakapapa is discussed by Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe). Waaka recognises that many activities and resources have tapu associated with them in recognition of their whakapapa and the source of mana. He gives the example of how, when interacting with a rangatira, due to their tapu, one would be careful not to breach that tapu to cause offence. He indicates that the same caution is advised when chopping down a tree, which requires recognition of tapu and observation of kawa.¹⁷⁶
- 4.82 Peter Adds (Te Ātiawa) also talks about how sometimes the terms tapu and mana “can be used interchangeably”.¹⁷⁷ He provides an example of a Lindauer painting of a young child feeding an old man with his hands behind his back. He explains that the old man:¹⁷⁸
- ... is a valued member of the community, he’s got a lot of mana in that community. Therefore, he has become tapu, and in that context, his tapu needs to be preserved at all costs, and one way to ruin his tapu is by ... coming into contact with cooked food. Cooked food is also a powerful agent of tapu removal.
- ...
- So, on the one hand, tapu is dangerous. In other contexts, it’s a desirable thing. We want to preserve the tapu, and in that case the extended tapu of that man, because it affects his mana. He has mana because he’s tapu. He has tapu because he’s got a lot of mana in that community, and that has to be looked after in that context.
- 4.83 Tahu Potiki (Ngāi Tahu, Ngāti Mamoe) says:¹⁷⁹

¹⁷² *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [69]–[83].

¹⁷³ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [73].

¹⁷⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [82].

¹⁷⁵ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [42].

¹⁷⁶ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [82]–[84].

¹⁷⁷ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds p.41.

¹⁷⁸ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds pp.41–42.

¹⁷⁹ *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, Cultural Values Assessment and Analysis by Tahu Potiki (August 2016) at [7.3].

The residual impact of mana is tapu. Where there is mana, which is god power, the influence creates an effect that is holy or tapu – the residue of gods. Important ancestors were not only tapu as a result of their descent but also their other works that required them to be a vessel or channel for godly activities such as controlling weather, volcanic activity and the seas. Where they ventured, places they named or built would become tapu thanks to the power of their mana.

- 4.84 People are also considered to be particularly tapu at certain times or based on particular actions. For example:
- Wiremu McMath (Te Rarawa) explains that, when manuhiri (visitors) come onto marae, they are seen to be coming in a state of tapu.¹⁸⁰ It is through the singing of waiata that their tapu is removed.
 - Bella Tari (Ngāti Rangi) is of the view that inmates who have committed a crime put themselves in a state of tapu. That tapu is relative to their own mauri and wairua, which is an effect directed to themselves only – their tapu will not affect the area.¹⁸¹
 - Tā Pou Temara (Tūhoe) says that “women are the only ones permitted under tikanga and tapu to sit beside the tūpāpaku. This is because women are the source of tapu, or te puna o te tapu. It is not the men.”¹⁸²

Wāhi tapu: tapu areas

- 4.85 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) describes wāhi tapu as follows:¹⁸³

‘Wāhi’ is a place or location and ‘tapu’ is commonly defined as sacred. So in simple terms ‘wāhi tapu’ is usually out of bounds to people, at least until such time as the proper karakia ritual is performed. The karakia ritual makes the area noa or free from tapu.

- 4.86 Buddy Mikaere (Ngāti Pūkenga, Ngāti Ranginui) explains wāhi tapu as being “strictly set apart from the daily traffic of normal domestic life. This was due to the tapu or spiritual restriction contained within such places posing danger to people who might, for example, accidentally transgress upon them”.¹⁸⁴

- 4.87 Hetaraka Biddle (Ngāi Tamahaua hapū) says:¹⁸⁵

I understand wāhi tapu to be a sacred or tapu place, a place where tapu exists whether it is in a traditional or spiritual sense. To Māori, the physical, spiritual and natural world are all linked and wāhi tapu are often sacred because they are sites which keep open our connection to our tīpuna, our atua Māori and our histories.

Wāhi tapu are sites combining Mana Atua, Mana Whenua, Mana Moana, and Mana Tangata through a complex system of tikanga that comes from mātauranga and tikanga within Te Kauae Runga and Te Kauae Raro.

¹⁸⁰ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [17].

¹⁸¹ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Bella Tari (undated) at [10]–[11].

¹⁸² *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [45].

¹⁸³ *Re Edwards* [2021] NZHC 1025, Third Affidavit of Te Riaki Amoamo (25 January 2022) at [12].

¹⁸⁴ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, Statement of Evidence by Buddy Mikaere (undated) at [18].

¹⁸⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (undated) at [6], [7] and [10]–[12].

...

Wāhi tapu are places within our rohe which we were raised to know about and where we were always taught you need to be respectful and careful around. They are places where we conduct our customary practices and kawa such as karakia to protect those who are visiting the site and to pay our respects to the sacredness of the site as a result of a historical incident or act which might have taken place there including historical battles where there are likely kōiwi of those who have passed on still located there.

Wāhi tapu are also places of communication, signals and tohu in respect of events to come that may impact our lives, whenua, awa, moana. Wāhi tapu is a mechanism of safety and protection for the whenua, Ngāi Tamahaua and manuhiri in the spiritual domain.

Wāhi tapū reflects the enduring relationship between Ngāi Tamahaua and sites of special spiritual, cultural and historical significance to us.

4.88 The following are examples of wāhi tapu identified in the evidence:

- Areas associated with the dead:
 - Laly Haddon (Ngātiwai) explains that the Pakiri sands are considered wāhi tapu because a battle, Te Ika a Ranginui, took place there. Many warriors from Ngāpuhi and Ngāti Whātua were slain and buried there.¹⁸⁶ This was why Ngātiwai objected to the taking of sand from Pakiri: “Ngātiwai did not understand why their tupuna should be taken away from Pakiri to be spread over Mission Bay to make it look beautiful. Ngātiwai do not wish to see their tupuna taken away, so that tourists may sit on them and watch the Americas Cup.”¹⁸⁷
 - Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) describes some of their burial caves, which were negatively impacted by the construction of dams:¹⁸⁸

[T]he steep banks and cliff faces along the Waikato River also contain a number of sites that were traditionally used as burial caves.

These are difficult to talk about with any great specificity though. They were considered very tapu by my elders and so not widely discussed.

The caves were also where the bones of the dead would be secretly interred after a period of time, once the flesh has been removed.

While other places such as rock crevices and gaps in trees were also used to hide bones, caves were particularly important because they often housed the bones of leading rangatira (chieftain). These places were considered as tribal sepulchres, where only the bones of leading rangatira were interred.

Because this is where remains were taken to be ‘hidden’ the very point was that they remained secret and are not recorded.

- Tahu Potiki (Ngāi Tahu, Ngāti Mamoe) similarly explains that various burial sites “such as urupā, rua tūpāpaku and tomo” are examples of wāhi tapu. “Their

¹⁸⁶ Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [30].

¹⁸⁷ Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [31].

¹⁸⁸ The Wairarapa ki Tararua district inquiry, Wai 863, #J95 Nigel Te Hiko at [4.1]–[4.5].

association with the dead, particularly those who were of importance or died in important events, meant these areas were not freely accessible.”¹⁸⁹

- Pepper Hudson (Ngāi Tamahaua hapū) discusses Ngāi Tama practice regarding tūpāpaku, which were laid in the sand dunes to have the sand flow over – specifically, the areas to let the sand flow over the top. “To us the sand dunes from Tirohanga to Waiaua were urupā.”¹⁹⁰ However, Hudson also notes another tikanga practice of hanging tūpāpaku in a pōhutukawa tree.¹⁹¹ Tracy Hillier (Ngāi Tamahaua hapū) reiterates this by noting that the tūpāpaku were hung in the trees until the flesh fell away and they would then be placed in caves often along the coast.”¹⁹²
- Wiremu McMath (Te Rarawa) speaks of a spiritual pathway that runs throughout Aotearoa that our spirits tread before leaving this world.¹⁹³ He recognises that “there are many wāhi tapu along the pathway which are sacred to these spirits” and run to “Te Rēinga Wairua” where they depart.¹⁹⁴
- In discussing specific wāhi tapu, Tracy Hillier (Ngāi Tamahaua hapū) explains that Tirohanga pā “is the location where Ngariki killed the children of Ngāi Tai and dragged them through the surf and placed them in pits at the Tirohanga pa. There are four urupā in that area and our kōrero is there is a taniwha in the awa known as Tama-Ariki which is said to change from an eel to a shark when it reaches the saltwater.”¹⁹⁵ The significance of Tirohanga was the reason Ngāi Tamahaua opposed the original plan for Motu Trails cycle track project as the original trail plans had the track traverse the pā site.¹⁹⁶
- Karen Mekomoko (Ngāti Patumoana, Te Upokorehe, Ngāi Tamahaua hapū) identifies Akeake, located at Waiotahe Drifts, as a wāhi tapu due to it being the location of a raid by Ngāti Maru on Te Whakatōhea (the battle of Pāpakanui). The bodies of those killed remain and the area is now an urupā.”¹⁹⁷
- Areas associated with ancestors:
 - Tahu Potiki (Ngāi Tahu, Ngāti Mamoe) explains:¹⁹⁸

¹⁸⁹ *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, Cultural Values Assessment and Analysis by Tahu Potiki (August 2016) at [8.11].

¹⁹⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Pepper Hudson (20 February 2020) at [71].

¹⁹¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Pepper Hudson (20 February 2020) at [73].

¹⁹² *Re Edwards* [2021] NZHC 1025, Affidavit of Tracy Francis Hillier (20 February 2020) at [107].

¹⁹³ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [46].

¹⁹⁴ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [47].

¹⁹⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Tracy Francis Hillier (20 February 2020) at [71]; Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [32] and [33].

¹⁹⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Tracy Francis Hillier (20 February 2020) at [70]; Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [32] and [33].

¹⁹⁷ *Re Edwards* [2021] NZHC 1025, Affidavit Karen Stefanie Mekomoko (30 January 2020) at [45] and [66].

¹⁹⁸ *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, Cultural Values Assessment and Analysis by Tahu Potiki (August 2016) at [7.4], [8.2], [8.14] and [8.18].

Behaviour associated with tapu is one of the most culturally persistent beliefs amongst Māori meaning that certain places are avoided or treated with reverence because of traditional associations with powerful ancestors.

The Māori view of the universe also places a hierarchy on descent. This means that those with a more senior whakapapa inherit greater status of power.

To determine exactly what creates wāhi tapu and what does not is somewhat problematic. If it was merely ancestral or association or connection with an ancestor then the entire country could be considered a wāhi tapu but instead there are certain activities or events that lend themselves to this character and, it would be fair to say, in a hierarchical manner.

Kāinga Tawhito or ancient occupation sites were also considered wāhi tapu. A village or fortified site abandoned by the people was often avoided for a generation or longer. This was due to the residual ancestral tapu associated with the area and the potential for harm to the unwitting.

Puna Waiariki, Awa, Roto, Toka, Motu, Mahinga Kai, Ngaherehere, hot springs, rivers and waterways, rock features, islands, hunting grounds, forests and many other geographical features were also imbued with wāhi tapu status dependent on ancestral association and activities. They were often recognised as holding such status but activities surrounding them were less restrictive. More people had greater access to them although some sites may have also been dedicated purely to one family or one chief.

- Apirana Mahuika (Ngāti Porou) talks about how Mount Hikurangi is a sacred mountain upon which rested the canoe and spirits of their ancestors.¹⁹⁹
- Certain areas associated with birth and burying of placenta:
 - Genevieve Ruwhiu-Pupuke (Ngāi Tamahaua hapū, Te Whakatōhea) discusses this practice, saying, “The placenta is referred to as whenua. This is because the placenta sustains and nurtures the development of the baby while in the womb, much like the land will once the child is born. ‘Pito’ refers to the remaining umbilical cord that hangs from a baby’s navel. The practice associated with the pito involves burying this with the whenua or in another appropriate location. When buried in separate locations, the purpose is to keep the whakapapa/connections to those places strong, and enhance the kaitiakitanga and rangatiratanga of our Mokomoko whānau.”²⁰⁰ Ruwhiu-Pupuke goes on to say that the places where whenua and pito are buried are sacred or wāhi tapu because the tapu associated with these areas, commonly pā sites, provide the whenua and pito with protection.²⁰¹
 - Hetaraka Biddle (Ngāi Tamahaua hapū) notes that the caves at wāhi tapu, Te Taiharuru, was one such place used for the burying of pito.²⁰²

¹⁹⁹ Ko Aotearoa Tēnei, Wai 262, #G4 Apirana Mahuika at [3.6]–[3.7].

²⁰⁰ *Re Edwards* [2021] NZHC 1025, Affidavit Genevieve Ruwhiu-Pupuke (30 January 2020) at [21].

²⁰¹ *Re Edwards* [2021] NZHC 1025, Affidavit Genevieve Ruwhiu-Pupuke (30 January 2020) at [19] and [20]; Affidavit of Hetaraka Biddle (20 February 2020) at [85]; Affidavit of Tracy Hillier (20 February 2020) at [104].

²⁰² *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [85]; Affidavit of Tracy Hillier (20 February 2020) at [104].

- Areas such as the marae ātea, for example, Roimata Minhinnick (Ngāti Te Ata) points out, “The purpose of the marae ātea, the open space in front of the marae or pā, is where all the ceremonial speeches, welcoming of visitors or challenges were made.”²⁰³ This area was considered to be tapu and would always need to remain clear.²⁰⁴ Minhinnick also recognises that whare or kāinga or ceremonial places within old pā or fortifications were said to have varying degrees of tapu. The whare tupuna (ancestral house) would be tapu, not restricting people’s use of the house, but restricting the form of use.²⁰⁵
- Muriwai Jones (Ngāi Tai) says, “Our wāhi tapu sites play an important part of our culture and traditions. We hold these places in reverence and practice our specific Ngāi Tai kawa and tikanga. Wāhi tapu can include urupā, birthing sites, placenta burial sites, battle sites, sites of old existing pā, midden and archaeological sites, sources of water, sites of valued natural resources, sites of ritual practices, significant sites attached to tupuna, sites of extreme tragedy.”²⁰⁶
- Hetaraka Biddle (Ngāi Tamahaua hapū) identifies different types of wāhi tapu areas, including:²⁰⁷
 - landforms that symbolise the identity/whakapapa and creation story of the hapū such as maunga and awa;
 - urupā, burial caves and burial trees;
 - battle sites and areas where there has been a loss of life;
 - pā sites, excavations and middens;
 - sites where the kōiwi, pito or placenta has been placed;
 - areas associated with a tipuna of significance;
 - areas of wānanga tawhito (training) of tohunga and warriors;
 - springs or sources of water used for healing;
 - sites for birthing rituals;
 - sources of water used for death rites;
 - places where baptismal rites were performed;
 - areas where a significant event has occurred;
 - sacred natural resources such as rocks, trees or springs; and
 - water courses, swamps, lakes and their edges.

²⁰³ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [30].

²⁰⁴ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [30].

²⁰⁵ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [24].

²⁰⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Muriwai Jones (26 January 2022) at [3].

²⁰⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (undated) at [13]; In Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [114], relevant sites of significance for Ngāti Awa are identified, which include fishing and resource-gathering places and pā. These areas were significant due to their association with resources, people or events or due to their specific (strategic) location.

- Biddle notes further that today many wāhi tapu are considered “important sites to conduct kawa (protocols) such as karakia as well as being used as tohu (signs) and pou (markers) for fishing spots, gathering kaimoana”.²⁰⁸

4.89 In terms of the use of wāhi tapu areas:

- Houpeke Piripi (Ngātiwai) talks about how there are laws around how and who can use wāhi tapu. He points out that some places are specific to particular whānau and only they can use its resources without risk of retribution.²⁰⁹
- Wiremu McMath (Te Rarawa) similarly states that only certain people may go to wāhi tapu.²¹⁰
- Wallace Wihongi (Ngāti Mahia, Te Uri o Hua, Ngāti Hine) explains that the knowledge about wāhi tapu is passed down from elders. If land is a wāhi tapu, children are instructed by their elders on how to conduct themselves on the land. He gives the example that horses are not ridden over land where tūpuna are buried, but walked. Tapu land is identified and known to all the people.²¹¹
- Arapeta Mio (Ngāi Tai) similarly notes there is knowledge and use of the wāhi tapu along the beach where tūpāpaku were hung in the trees due to the knowledge held and passed on by their koroua as well as the actions of tohunga in removing the tapu.²¹²
- Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) says:²¹³

The elements or components of wāhi tapu include traditional kōrero tuku iho, wairua and pūrakau. How you treat those wāhi tapu depends on the circumstances. For example, our urupā are considered wāhi tapu. However, that doesn't exclude us from going there because we have to go there to bury our tūpāpaku. Wāhi tapu does not always imply that entry is necessarily prohibited (but it may mean that certain practices need to be followed).

4.90 Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) says many of their wāhi tapu “were known to only a very few of our old people and not widely spoken about”.²¹⁴ Te Hiko goes on to explain that “all our rohe is a wāhi tapu – some sites are simply more tapu in comparison to others”.²¹⁵ He further clarifies:²¹⁶

I say this to mean that from the time our ancestors first trod on Pouākani their mauri and tapu infused with the land. Sometimes their engagement left a significant footprint on the

²⁰⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [47].

²⁰⁹ Ko Aotearoa Tēnei, Wai 262, #C2 Houpeke Piripi at [79]–[97].

²¹⁰ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [100].

²¹¹ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Wallace Wihongi (undated) at [13].

²¹² *Re Edwards* [2021] NZHC 1025, Affidavit of Arapeta Mio (14 April 2020) at [53].

²¹³ *Re Edwards* [2021] NZHC 1025, Joint Brief of Evidence of Dr Te Kei (O Te Waka) Wirihana Merito and William Bruce Stewart (24 January 2022) at [28].

²¹⁴ The Wairarapa ki Tararua district inquiry, Wai 863, #J95 Nigel Te Hiko at [2.9].

²¹⁵ The Wairarapa ki Tararua district inquiry, Wai 863, #J95 Nigel Te Hiko at [1.6].

²¹⁶ The Wairarapa ki Tararua district inquiry, Wai 863, #J95 Nigel Te Hiko at [1.7].

land e.g. settlements, urupā and cultivations. A number of these withstood the passing of time and physical traces of their existence remain today. In other cases the engagement between the tūpuna and the land is so subtle that they are only remembered in tradition e.g. walking tracks, watercress spots and bird hunting places are a few examples.

- 4.91 Louis Rapihana (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tama, Ngāti Rua, Ngāti Patu, Ngāti Ngāhere) in his evidence emphasises that “one of the distinguishing features of a wāhi tapu is that its location and boundaries were identifiable so that people would know to avoid the area. Sometimes tohu (signs) or kōrero (statements) were used to define a wāhi tapu area. A wāhi tapu must have identifiable boundaries so that it can be protected from inappropriate uses and access. It is not possible to protect a wāhi tapu if nobody knows where the boundaries are.”²¹⁷ Rapihana goes on to say:²¹⁸

Wāhi tapu areas were traditionally kept very separate from areas where fishing, kaimoana collection and other daily activities were performed because such activities are noa (common or ordinary), and never exercised in the same area as a wāhi tapu (sacred place). This is why you will rarely find wāhi tapu in coastal areas where there is lots of movement of people for fishing or transport, such as river mouths. If there are wāhi tapu are present in such areas, they will have clearly defined boundaries so that people can avoid them and continue to use the kai gathering or travel routes that were essential to the everyday functioning of traditional Māori life.

- 4.92 The position that wāhi tapu are rare along the coast, however, is not universal. The evidence of Tahu Potiki (Ngāi Tahu, Ngāti Mamoe), for example, is that wāhi tapu ki te Moana or sacred sites on the water and coast were “a common occurrence”.²¹⁹
- 4.93 Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) describes the term “Horanuku Tongarewa” to signify “unique cultural landscapes”.²²⁰ He goes on to say “all of our wāhi tapu and Horanuku Tongarewa have their own levels of tapu and this may increase depending on different circumstances”.²²¹
- 4.94 Te Iwi Moriori Trust Board discusses wāhi tapu in the context of mana whenua, stating that they are “sign posts on the land and in the sea by which Moriori define ourselves and our tikanga. To claim or assert as some do that Moriori mana does not remain on and in the land, is to ignore all of these essential characteristics of tikanga Moriori. The Land Court decisions did not and could not remove these things from the land. They are timeless. They are immutable.”²²²
- 4.95 Tahu Potiki (Ngāi Tahu, Ngāti Mamoe) recognises variation between iwi as to how tapu particular areas might be. He explains that “Maunga Tapu or sacred mountains are also considered wāhi tapu but the levels of restriction appear to vary across iwi. Some required

²¹⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Louis Agassiz Schenker Rapihana (31 March 2022) at [5.1].

²¹⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Louis Agassiz Schenker Rapihana (31 March 2022) at [4.3].

²¹⁹ *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, Cultural Values Assessment and Analysis by Tahu Potiki (August 2016) at [9.1].

²²⁰ *Re Edwards* [2021] NZHC 1025, Joint Brief of Evidence of Dr Te Kei (O Te Waka) Wirihana Merito and William Bruce Stewart (24 January 2022) at [30].

²²¹ *Re Edwards* [2021] NZHC 1025, Joint Brief of Evidence of Dr Te Kei (O Te Waka) Wirihana Merito and William Bruce Stewart (24 January 2022) at [30].

²²² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), “Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets” at 8.

absolute reverence whilst others were proud identity markers imbued with cultural story and personification.”²²³

4.96 Tā Pou Temara (Tūhoe) emphasises the centrality of tohunga to wāhi tapu:²²⁴

[T]here are varying levels, contexts and conditions of wāhi tapu for Māori and they also vary from hapū to hapū, and iwi to iwi. Wāhi tapu are places that are sacred for spiritual reasons and are protected by tikanga and karakia rituals performed only by Tohunga. They are sacred because the Gods have placed tapu there before us, the deceased are buried there, kaitiaki or taniwha reside there or a significant event or deed by an ancestor has happened there.

It is for those Tohunga to determine what is a wāhi tapu and what is not.

4.97 Louis Rapihana (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tama, Ngāti Rua, Ngāti Patu, Ngāti Ngāhere) also discusses the role of tohunga:²²⁵

The boundaries of a wāhi tapu are set by the tohunga who places the tapu over the wāhi to make it a wāhi tapu in the first place. The knowledge of the boundaries are then passed on from generation to generation, and maintained in the present day by the tohunga who hold mana over an area. These are the people you call when you have an issue such as the discovery of koiwi, to come and perform the necessary rituals to deal with the tapu.

...

For other types of wāhi tapu arising from a pakanga (battle) or a tragedy involving the loss of life, the locations of the wāhi tapu are recognised by the people with lived experience of those events and passed on through the generations. However the boundaries of the wāhi tapu resulting from those events are still set and maintained by the tohunga. This is necessary so that people can be made aware of where the wāhi tapu is and avoid that area. It could be considered as a type of traditional land management process, keeping that which is tapu away from that which is noa.

The tohunga who are left today still perform these wāhi tapu management responsibilities. These include putting wāhi tapu boundaries in place, lifting tapu from wāhi that may need to be used for noa activities, maintaining and protecting wāhi tapu from inappropriate uses and acting as knowledge keepers for wāhi tapu locations.

Rāhui

4.98 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) describes rāhui as “a general tikanga concept used widely by all Māori. Rāhui is a temporary ban on an area that is placed by Tohunga”.²²⁶ He goes on to say, “The ritual of placing rāhui takes many forms in Whakatōhea but generally a special karakia is performed by Tohunga and everyone is aware of the boundary placed and how it should be respected.”²²⁷

²²³ Taranaki-Whanganui Conservation Board v Environmental Protection Authority [2018] NZHC 2217, Cultural Values Assessment and Analysis by Tahu Potiki (August 2016) at [8.16].

²²⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [62] and [63].

²²⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Louis Agassiz Schenker Rapihana (31 March 2022) at [4.1], [4.4] and [4.5].

²²⁶ *Re Edwards* [2021] NZHC 1025, Third Affidavit of Te Riaki Amoamo (25 January 2022) at [34].

²²⁷ *Re Edwards* [2021] NZHC 1025, Third Affidavit of Te Riaki Amoamo (25 January 2022) at [34].

4.99 Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) describe a rāhui as a “means of prohibiting specific human activity from occurring through the use of tapu”.²²⁸

4.100 Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) explains:²²⁹

A rāhui is a form of tapu and can be set up for either conservation, economic, social or political purposes.

The placing of a rāhui is a common practice in Whānau a Apanui and is a practice that has continued throughout the generations long before 1840. Rāhui is a tikanga mechanism adopted by Te Whānau a Apanui to regulate access to and activities within Whānau a Apanui rohe, often in response to an event. The placement of rāhui and subsequent adherence to rāhui is a sign of Whānau a Apanui mana in the area.

4.101 Two of the main categories discussed by witnesses were rāhui related to death²³⁰ and conservation.²³¹

4.102 Te Rua Rakuraku and Donald Kurei (both Te Whakatōhea, Ngāti Ira) explain:²³²

Rāhui is a pivotal part of our role as Kaitiaki of the moana which protects our relationships to particular territories but also ensure the enduring connections to the spiritual realm to ensure our earthly protection. Rāhui is thus a form of tikanga and a form of tapu prohibiting or preventing access to, or use of, an area or resource by the kaitiakitanga of the area while at the same time recognising the interconnection of the past to the future.

In respect to our takutai moana, Rāhui has always been an important aspect of tikanga. They are imposed to embrace extensive area’s (the whole coastal area) or sometimes, they would only embrace specific areas. Our Tipuna Muriwai exercised her mana when she placed a rāhui from Ngā Kuri a Whārei to Tihirau when her twin sons drowned near Tauranga. This prohibited the taking of kaimoana within these coastal boundaries.

Rāhui were typically set down for reasons including a perceived need for conservation of food resources or because the area concerned is in a state of ‘tapu’, due for example, to a recent death in the area, out of respect for the dead and to prevent the gathering of food there for a specific period.

²²⁸ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [43]; Danny Craven Pohipi in his affidavit of 21 February 2020 reiterates this noting that rāhui “makes an area and/or its resources tapu” at [57].

²²⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [131]–[132].

²³⁰ Muriwhenua Fishing Report, Wai 22, #B57 Niki Kanara, Piri Paraone and Ratima Petera at [5]. *Re Edwards* [2021] NZHC 1025, Third Affidavit of Te Riaki Amoamo (25 January 2022) at [35]. *Re Tipene* [2016] NZHC 3199, Pūkenga’s Report of Jane Ruby Karina Davis (undated) at [40]. *Re Edwards* [2021] NZHC 1025, Joint Brief of Evidence of Dr Te Kei (O Te Waka) Wirihana Merito and William Bruce Stewart (24 January 2022) at [32]. *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Primary statement of evidence of Rereamanu Wihapi (22 December 2016) at [21]. *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [43]. *Re Edwards* [2021] NZHC 1025, Affidavit of Muriwai Jones (26 January 2022) at [18]; Affidavit of Danny Craven Pohipi (21 February 2020) at [57]; Affidavit of Arapeta Mio (14 April 2020) at [37].

²³¹ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Wikitōria Hepi-Te Huia (1 May 2017) at [2.4]. *Re Tipene* [2016] NZHC 3199, Pūkenga’s Report of Jane Ruby Karina Davis (undated) at [40]. Muriwhenua Fishing Report, Wai 307, #B30 Reverend Harold Petera at p.2. *Re Edwards* [2021] NZHC 1025, Joint Brief of Evidence of Dr Te Kei (O Te Waka) Wirihana Merito and William Bruce Stewart (24 January 2022) at [32]. *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [43]. *Re Edwards* [2021] NZHC 1025, Affidavit of Muriwai Jones (26 January 2022) at [18]; Affidavit of Danny Craven Pohipi (21 February 2020) at [57]; Affidavit of Arapeta Mio (14 April 2020) at [37]; Affidavit of David Peters (24 July 2020) at [10].

²³² *Re Edwards* [2021] NZHC 1025, Joint affidavit of Te Rua Rakuraku and Donald Kurei (21 January 2022) at [22]–[24]. See also Affidavit of Te Rua Rakuraku (19 February 2020) at [54].

- 4.103 Hetaraka Biddle (Ngāi Tamahaua hapū) notes, “There are different types of rāhui. Some are used to warn people against trespassing, some are to mark tapu areas where for example a death may have occurred, and some, are for temporary protection of kaimoana where some species are few ... If there is a rāhui over a particular area, every activity along the Takutai moana stops including the gathering of kaimoana.”²³³
- 4.104 Biddle also discusses pou rāhui, which were used to set boundaries within hapū and whānau regarding the land. He notes, “These could be for different lengths of time and could change over time. Some of the historical pou rāhui are still observed by hapū members who know about them today.”²³⁴
- 4.105 Donald Kurei (Te Whakatōhea, Ngāti Ira) notes that rāhui is a “normal practice of kaitiakitanga for us and is our obligation as mana whenua. A rāhui is placed when a person or people die in the sea and have not been found, when a natural disaster happens that disrupts and stirs the sea, or when there is a need to replenish food stocks or resources in a particular area.”²³⁵ Kurei further notes:²³⁶

We as Tohunga Tikanga in Whakatōhea all make decisions together on Rāhui for the benefit and safety of all. We have always asserted our mana moana and kaitiakitanga and that will never change.

We would never place a rāhui on areas we do not govern, manage or look after. For example Ngāti Ira would not go and place a Rāhui in areas that belong to Whānau Apanui and vice versa. However, when one has been placed, we respect it and let all the people know where it has been placed.

- 4.106 Rehua Smallman (Ngāti Pūkenga) discusses the general process for laying down a rāhui:²³⁷

The decision to impose a rāhui is normally taken by the senior kaumatua of the iwi taking into account the nature and timing of the event which has precipitated the need for a rāhui imposition. The kaumatua may or may not consult with other hapū and iwi but normally the decision is of their own initiative reflecting their responsibility to their own people in the first instance. The decision is normally taken at a hui called for the purpose and will include the normal hui protocols of mihimihi to the attendees and appropriate karakia.

- 4.107 In relation to death, Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) tells the story of the rāhui placed by Muriwai:²³⁸

The first known rāhui was set down by Muriwai following the drowning of her sons Tane Whirinaki and Koau. They were never found and so she imposed the Rāhui across the entire Mataatua rohe from Kaitiaki in the western end of Bay of Plenty to Tihirau in the east and quoted to be: “*Mai i ngā kuri a Whārei ki Tihirau*”.

It was believed that the death of both of her sons was a direct result of her breaking the tapu when she saved the Mataatua waka from drifting out to sea and uttered the words: “*Kia tū Whakatāne ake ahau*”. “*Make my stance that as a man.*”

²³³ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [110]–[113]; Affidavit of Kayreen Tapuke (20 February 2020) at [54] and [58].

²³⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [47].

²³⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Donald Ati Kurei (19 February 2020) at [46].

²³⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Donald Ati Kurei (19 February 2020) at [47] and [48].

²³⁷ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Rehua Tom Smallman (7 July 2020) at [48].

²³⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (25 January 2022) at [35]–[37].

From then on Muriwai lived in isolation from her people and confined herself to a cave until her death. The cave was named ‘Te ana a Muriwai’ or ‘The cave of Muriwai’ and whilst the tapu was lifted with a karakia by Ngāti Awa in 1970’s the cave was opened to the general public to view. The cave is still considered sacred to her memory and therefore eating and drinking is not permitted.

- 4.108 Amoamo goes on to give the more recent example when “a Rāhui was imposed by the iwi and hapū after the eruption of Whakaari on 9 December 2019 which resulted in 21 fatalities. A Rāhui was placed prohibiting fishing, diving, collecting or harvesting food for the duration of the Rāhui ... [this] was supported by other tohunga Ringatū on the day.”²³⁹ Amoamo provides additional insight:²⁴⁰

More recently, the eruption at Whakaari in December 2019 resulted in a rāhui being imposed on the ocean for some weeks afterwards, extending from the tribal areas of Te Whānau a Apanui and Whakatohea across to Ngāti Awa. The karakia to lift the tapu were performed on 27 December 2019, and I was asked to lead the karakia for Whakatōhea. We were taken out to sea in a boat. I was asked to say a karakia on the wharf at Whakatāne before we left, and I said no because we were within Ngāti Awa’s rohe.

- 4.109 Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) also draw on the example of the rāhui placed as a response to the eruption of Whakaari White Island on 9 December 2019 in their evidence.²⁴¹ They recall “a number of iwi initially placed a total ban on all maritime activities in the ocean (including swimming), this was then later changed to a ban only on fishing and the gathering of seafood”.²⁴² They note that, even though “the Eastern Bay of Plenty is a strong beach and ocean based community, people overwhelmingly respected the rāhui. This is the case despite the rāhui having a negative commercial and fiscal impact on businesses and affecting usual pre-Christmas and holiday ocean activities.”²⁴³
- 4.110 Also in response to this same event, Dayle Takitimu (Te Whānau-ā-Apanui) explains that what may not have been visible to the outside world was that there was an internal tribal process for Te Whānau-ā-Apanui to place a rāhui over their tribal marine space.²⁴⁴ She states that each hapū had to declare the rāhui under their own mana.²⁴⁵ “As it was an emergency situation, not all hapū were able to effect their internal processes at the same pace; so some hapū very early on (the afternoon of the eruption) declared the rāhui in accordance with their customs, whilst others attended it to as soon as they were able.”²⁴⁶

²³⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (25 January 2022) at [38].

²⁴⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (3 August 2020) at [6.3].

²⁴¹ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [46]–[47]. This was also referenced in the Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [118] as a recognition of the ongoing mana of Ngāti Awa over Whakaari.

²⁴² *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [46].

²⁴³ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [47].

²⁴⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [77].

²⁴⁵ Danny Pohipi (Te Whānau-ā-Apanui) also used this rāhui as an example of the exercise of mana (see Affidavit of Danny Craven Pohipi (21 February 2020) at [59]–[61]).

²⁴⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [71].

- 4.111 Robert Edwards (Te Whakatōhea) also discusses the rāhui at Whakaari in the context of the commercial mussel farm that lies between the coastline and Whakaari. Harvesting of mussels was scheduled at the time the volcanic eruption happened. However, due to the rāhui, this could not proceed. Edwards explains that, to save the mussels, which were at risk of sinking to the bottom of the ocean, extra floats were put in place to enable the mussels to remain near the surface. Ngāti Awa agreed to enable the extra floats to be put in place so long as harvesting did not occur.²⁴⁷ The tikanga conducted during the time the extra floats were being put in place involved a tohunga conducting karakia to cleanse the moana as well as to bless the structures of the mussel lines and crew.²⁴⁸
- 4.112 More generally, Dayle Takitimu (Te Whānau-ā-Apanui) also talks about the power of a death-related rāhui.²⁴⁹ She explains, “Our custom requires that the intensity of the tapu be acknowledged and given time to dispel. There are ample precedents of this within our tribal history, and it is a fairly well known, well accepted and settled tikanga. I cannot recall an instance where a rāhui has been put on, by a hapū or by the entire iwi acting in confederation, and then breached. They are almost universally respected, within the iwi and by outsiders.”²⁵⁰ Takitimu notes further that, during a rāhui, they “do not usually go on the water or within the sea. Most definitely the taking of kaimoana is prohibited. Some hapū only permit certain classes of people to search or access the beachfront during rāhui, it being considered to have the same tapu intensity as an urupā at those times.”²⁵¹
- 4.113 Niki Kanara (Te Aupōuri, Ngāti Kuri), Piri Paraone (Ngāti Kuri) and Ratima Petera (Te Aupōuri, Ngāti Kuri) say that “when someone drowns at a particular place the spot is prohibited for fishing. No sea-food is taken until ‘Tangaroa’ returns the dead. Only then can tapu be lifted. Indeed, three months must pass.”²⁵²
- 4.114 Te Kahautu Maxwell (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tai, Ngāti Awa, Tūhoe, Ngāti Porou, Ngāti Maniapoto) recounts multiple examples of rāhui, one being:²⁵³
- In Ōpōtiki, Te Whakatōhea a rāhui was placed by Irākewa the ariki of the Pākihihikura waka that landed at the of the confluence of the Ōtara and Tamatea (Waioweka) awa which is known by the name Pākihihikura. Irākewa is the father of Toroa the ariki of Mataatua waka and Muriwai the ariki tapairu and sister of Toroa. In the hinterland is a forest area also known as Pākihihikura named after the waka. It is said Irākewa placed a rāhui on both the foreshore and the forest this rāhui was known as “Piikihihikura ki uta, Pākihihikura ki tai”, meaning Pākihihikura inland and Pākihihikura at sea. This rāhui claimed the mana of that area for Irākewa and the people of the waka Pākihihikura.
- 4.115 Genevieve Ruwhiu-Pupuke (Ngāi Tamahaua hapū, Te Whakatōhea) notes, “Te Whānau a Mokomoko still adhere to the traditional timeframe of a rāhui – being three months. We

²⁴⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Robert Edwards (21 February 2020) at [16] and [17].

²⁴⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Robert Edwards (21 February 2020) at [27].

²⁴⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [71].

²⁵⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [71]–[72].

²⁵¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [80].

²⁵² Muriwhenua Fishing Report, Wai 22, #B57 Niki Kanara, Piri Paraone and Ratima Petera at 5.

²⁵³ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Te Kahautu Maxwell (7 August 2020) at [140].

practice this along our entire coastline/takutai moana in times of significant disruption, need or tragedy.”²⁵⁴

4.116 There are also examples of rāhui being placed for longer periods of time:

- Wikitōria Hepi-Te Huia (Ngāti Tahu) describes a rāhui that was placed as a result of the death of Paora Matenga at Rotokawa in 1867. A tohunga placed a tapu on the lake for five years.²⁵⁵ This meant that alternative locations for mahinga kai needed to be sourced during that time, and “maintaining whanaungatanga or good neighbourly relations” were important for access.²⁵⁶
- Danny Pohipi (Te Whānau-ā-Apanui) notes a rāhui put in place for five years on all fishing grounds in Maraenui by Te Whānau-ā-Apanui following the tragic death of 16 children and two adults in the Mōtū River.²⁵⁷ Today, a permanent rāhui applies over the Mōtū River with food gathering and fishing being prohibited every Saturday and on the 12th of every month.²⁵⁸
- Ngarimu Blair (Ngāti Whātua Ōrākei) says, “Ngāti Whātua to this day are forbidden to eat this fish [Araara or Trevally fish] given Rongomai, the captain of their founding waka, Mahuhu-Ki-Te-Rangi, was eaten in the Kaipara by the Araara following his drowning there.”²⁵⁹

4.117 In relation to conservation, Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hōkopū, Ngāi Tamapare) and William Stewart (Waikato, Taranaki, Ngāti Kahungunu, Ngāti Awa, Te Whānau-ā-Apanui, Ngāti Ranginui, Te Rarawa) explain that “rāhui were also a mechanism our old people used to help kaimoana [seafood] resources to flourish. It was a form of control.” Jane Davis (Ngāi Tahu) discusses the various types of rāhui that have been placed on tītī (muttonbird) and a rāhui on cutting down rātā trees.²⁶⁰

4.118 Whaimutu Dewes (Ngāti Porou, Ngāti Rangitīhi) describes a rāhui placed in the late 1990s:²⁶¹

In the sense that mana moana describes the authority which a descent group be it whanau hapū or other level, exercises and the guardianship which it has responsibility for particular sea maritime resources, yes I think [rāhui] does fall within that.

²⁵⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Genevieve Ruwhiu-Pupuke (30 January 2020) at [32]–[34]. In her affidavit, Ruwhiu-Pupuke notes that rāhui is placing of restrictions over an area or restricting use and access to an area. It usually follows a significant natural event such as “a natural disaster, the bloom of algae ... a decline in the number of fish or shellfish ... the beaching of whale or other sea creatures; a human death or disappearance; or a significant event within or near the area that warrants a rāhui.” She refers to the rāhui of Muriwai as the first significant rāhui, which followed the death of her two sons.

²⁵⁵ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Wikitōria Hepi-Te Huia (1 May 2017) at [2.8].

²⁵⁶ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Wikitōria Hepi-Te Huia on behalf of Tauhara North No.2 Trust (1 May 2017) at [2.8].

²⁵⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Danny Craven Pohipi (21 February 2020) at [110]–[113].

²⁵⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Danny Craven Pohipi (21 February 2020) at [115].

²⁵⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [33].

²⁶⁰ *Re Tipene* [2016] NZHC 3199, Pūkenga’s Report of Jane Ruby Karina Davis (undated) at [40].

²⁶¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Whaimutu Dewes) at 484.

Just prior to this Christmas gone, the pakeke of Te Whānau-ā-Hunāra which is a priceless but very small community on the East Cape were so worried about the effects of various environmental and harvesting practices on their seafood resources that they in their own traditional mana placed a rāhui from the mouth of the Awatere River to the East Cape Point and that applied to all people in the taking of all of the shellfish and seafood in that area. Although a number of them came under some severe criticism it was observed with one exception and that particular person did attend a hui called by the pakeke and gave what amounts to an apology for having broken the rāhui so it was a very recent example of the guardianship being put in action.

- 4.119 Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) give an example of the environmental rāhui placed by Te Kawerau ā Maki over the Waitākere forest in late 2017 in response to the threat of kauri dieback disease:²⁶²

This [rāhui] was unilaterally imposed in response to perceived central and local government inaction, to ensure the risks to kauri were mitigated until effective and appropriate research, planning and remedial work was completed.

The rāhui on the Waitākere ranges was generally respected and followed by the entire community. This was for a variety of reasons including the practice of rāhui becoming increasingly known and the rangatiratanga (authority) or the iwi being respected. However, it was also because the *principles* behind the rāhui of kaitiakitanga (guardianship) and environmental protection was clearly conveyed and supported by the community. Kaitiakitanga was an ethic and principle that people could understand and that resonated.

- 4.120 Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) explains:²⁶³

During rāhui no kaimoana is to be taken and the sea is considered tapu. The placement of rāhui by Te Whānau a Apanui and its constituent hapū is not lightly exercised, due to the iwi's heavy reliance on the sea. Rāhui are often placed when there is a depletion of kaimoana. The hapū in question might notice that stock is depleting and will place a sign in the area restricting kaimoana gathering. Rāhui are immediately placed by hapū following drownings [or] disasters such as the 'Rena' ship disaster off the coast of Tauranga. Following the shipwreck there was a ban on taking shellfish from certain sea regions including Whānau a Apanui areas.

- 4.121 Dayle Takitimu (Te Whānau-ā-Apanui) gives examples of rāhui that "regulate environmental integrity or fish/seafood stocks" placed at the "instruction of elders" including:²⁶⁴

- particular mussel rocks being prohibited from take for a season;
- regulation on the size of a catch or take (i.e. designated kete designs made to a specified size in accordance with tradition);
- designation of certain rocks/areas for certain whānau or classes of people (i.e. rocks reserved for kuia and kaumātua);
- regulation as to how a species may be caught (i.e. season/methodology, protocols, even how you prepare and eat it); and

²⁶² *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [44]–[45].

²⁶³ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [134]–[136].

²⁶⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [73].

- how waste is returned to the environment.

4.122 Maggie Ryland (Ngāti Porou) sets out various categories of rāhui, including:²⁶⁵

- restricting areas to regulate harvesting over threatened areas, prevent commercial encroachments into kāpata kai, limit the catch of endangered species and prevent diving apparatus and set nets over wāhi tapu;
- reserves, including education research (open closed seasons), wāhi tapu (where restrictions are applied), spawning grounds (that have open and closed seasons) and nurseries (that have infinite rāhui);
- prohibited areas, including recovery programmes (to observe the natural process), rotation harvest, pollution-affected areas and death by drowning; and
- protected areas, including wāhi tapu, rua ngōiro, rua taniwha, pake taniwha, ngā toka tapu and taunga ika tapu.

4.123 Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) and William Stewart (Waikato, Taranaki, Ngāti Kahungunu, Ngāti Awa, Te Whānau-ā-Apanui, Ngāti Ranginui, Te Rarawa) provide the example of rāhui that were placed to areas that were considered dangerous for people to swim.²⁶⁶ It was therefore a rāhui designed to protect people.

4.124 Colin Reeder (Ngā Pōtiki) discusses the importance of instinctual knowledge when it comes to preventing the need for rāhui in the Rangataua rohe. For example, he states, “I have never experienced an overt declaration of rāhui over the Rangataua. The reason for this is that we, as Ngā Pōtiki, instinctively know the tikanga of Rangataua, we know that it is not permitted to fish and collect kaimoana around Karikari urupa, as this is a tapu area; we know that we cannot swim in the harbour when someone has drowned nearby; we know not to take kai moana that is too small. These are basic tikanga that are instilled in us at a very young age, to the point that they become instinctual. Therefore, overt declarations of rāhui have not yet been required.”²⁶⁷

4.125 Louis Rapihana (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tama, Ngāti Rua, Ngāti Patu, Ngāti Ngāhere) says, “The placing of a rāhui over any area whether it is for recovery of a certain type of kaimoana (such as pipi bed) or because of a drowning, is always a temporary placing of tapu. Rāhui are not intended to be permanent. Once the temporary purpose for which a rāhui is placed is completed, the tapu is lifted and the place returns to its former state which is noa.”²⁶⁸ Rapihana goes on to clarify that it is up to the tohunga to determine the timeframes of a rāhui.²⁶⁹

It is the tohunga who make these decisions on when to place a rāhui, how long to leave the rāhui in place for, and when to lift the rāhui. Rāhui can go for a short period of time such as a few weeks, or much longer, even years, if the tohunga decide for example that shellfish gathering needs to stop in order to let the stocks recover. However, once the purpose for

²⁶⁵ Ko Aotearoa Tēnei, Wai 262, #E6 Maggie Ryland at [4].

²⁶⁶ *Re Edwards* [2021] NZHC 1025, Joint affidavit of Dr Te Kei O Te Waka Wirihana Merito and William Bruce Stewart dated 24 January 2022 at [32].

²⁶⁷ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Colin Francis Reeder (6 July 2020) at [60].

²⁶⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Louis Agassiz Schenker Rapihana (31 March 2022) at [7.2].

²⁶⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Louis Agassiz Schenker Rapihana (31 March 2022) at [7.3].

the rāhui is concluded, the tapu is lifted and the area goes back to being noa. It does not remain a wāhi tapu.

- 4.126 Muriwai Jones (Ngāi Tai) also places emphasis on tohunga where she says, “From time to time Ngāi Tai have placed rāhui over the takutai moana. Rangatira would consult with tohunga as to the details of the rāhui. Once the tapu was in place for rāhui only the tohunga could lift it. It applied to all, whether of the iwi or not.”²⁷⁰
- 4.127 Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) states, “Tohunga and Pou Tikanga are the ones who set down Rāhui on behalf of the hapū and iwi. This right is given to Tohunga firstly because of their whakapapa and secondly, because of their understanding and knowledge of the kind of tapu that is involved in the process of setting down Rāhui. We as Tohunga or Pou Tikanga in Whakatōhea all make decision on Rāhui for the benefit and safety of all.”²⁷¹
- 4.128 Tracy Hillier (Ngāi Tamahaua hapū) states that the imposition of rāhui rested with the rangatira of the hapū. Following an event, the rangatira would be contacted and they would perform specific karakia at the relevant site. Following this, the hapū and community where the rāhui was located would be notified.²⁷²
- 4.129 Te Ringahuia Hata (Ngāti Patumoana) discusses rāhui in the context of taonga:²⁷³

Tāonga are both tangible and intangible treasures of Māori. All relationships and resources based on these relationships and connectedness Māori have to the land, sea and environment are the tāonga that we maintain and protect.

Our Tikanga, or customs, laws and protocols, to protect tāonga are actively practiced by the concept of rāhui.²⁷⁴

The purpose of Rāhui is to uphold the Tikanga of Kaitiakitanga of our tāonga, to actively protect the mana, integrity and life force of the Hinemoana and Papamoana and every being that resides within her womb and bosom.²⁷⁵

Ngāti Patu tohunga would place Rāhui on the sea (or rivers) concerned whenever a drowning would occur. They would discuss the Rāhui with other hapū affected and neighbouring iwi who are involved and their Kaitiakitanga would be supported in the placing and removal of a Rāhui.²⁷⁶

In general, a special karakia is recited by a Tohunga, however depending on the kind of Rāhui to be instated, a Pou Rāhui would be erected in the area. This was a physical reminder that a Rāhui was placed in the area and warned people against trespassing.²⁷⁷

²⁷⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Muriwai Jones (26 January 2022) at [17].

²⁷¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [57].

²⁷² *Re Edwards* [2021] NZHC 1025, Affidavit of Tracy Francis Hillier (20 February 2020) at [97]; Affidavit of Kayreen Tapuke (20 February 2020) at [55].

²⁷³ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [98].

²⁷⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [102].

²⁷⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [103].

²⁷⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [107].

²⁷⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [109].

Tapu of knowledge

- 4.130 In addition to people, the natural world and places, Himiona Munroe (Ngātiwai) emphasises the tapu nature of some forms of knowledge such as knowledge held by tohunga,²⁷⁸ which was fiercely guarded and was not passed on unless an appropriate person was identified.²⁷⁹
- 4.131 Tā Pou Temara (Tūhoe) explains, “Esoteric and spiritual knowledge is knowledge that is restricted or tapu and only the sagacious few, the elite, are privy to that knowledge. In the Māori world this elite are the known as Tohunga.”²⁸⁰
- 4.132 Particular expressions of mātauranga Māori are also held to be tapu. Puhanga Tupaea (Ngāti Koata, Ngāti Kuia), for example, talks about certain Māori art and icons as being tapu. She explains that it is desecration to use these on tea towels as it mixes the tapu of designs with the noa of food.²⁸¹

Consequences of breaching tapu

- 4.133 A theme from Tupaea’s evidence is that the contravention of tapu or tikanga can have profound physical and spiritual consequences:²⁸²
- I have heard of “Kauae hurihia”, from Ngāti Kuia – a double handed mere of Tutepourangi came into the possession of the wrong Ngāti Kuia people, and so they were inflicted with physical deformities of the lower jaw. When they handed it back to the correct owner, the deformities stopped appearing.
- 4.134 As put by Tā Pou Temara (Tūhoe), “If you do not respect the spiritual protection of tapu, you will be abandoned by your atua and worse, you or your whānau members will fall ill or sick. You will end up a mere commoner (hawini mawhiro). The extreme consequence is death.”²⁸³ In a different context, Temara says that “a breach of tapu was feared not only because it could reduce the mana of a rangatira or tohunga who was tapu or had placed the tapu, and therefore would be subject to muru or utu, but also because a breach of tapu was considered to expose the person to spiritual interference and misfortune”.²⁸⁴
- 4.135 Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) talks about “mate Māori”. This is determined by tohunga. It is “a term used for illness determined by tohunga to be the result of transgressions of tapu”. This can also be an illness that is brought on from whakamā (shame).²⁸⁵

²⁷⁸ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe.

²⁷⁹ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [20].

²⁸⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [72].

²⁸¹ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [23]–[24].

²⁸² Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [29].

²⁸³ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [43].

²⁸⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [40].

²⁸⁵ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [98]–[100].

- 4.136 Buddy Mikaere (Ngāti Pūkenga, Ngāti Ranginui) makes a similar point: “Defiance, or as Māori described it, the commission of a hara, brought down swift retribution from the gods in the form of misfortune, illness or death.”²⁸⁶
- 4.137 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) also says, “The consequence of breaking tapu results in misfortune, sickness or death. Therefore tapu was taken very seriously and even today, if there is sickness or death in a whānau or hapū we generally reflect on whether any tapu has been broken so we understand how to deal with it and remedy the situation.”²⁸⁷
- 4.138 The evidence of Houpeke Piripi (Ngātiwai) includes repeated use of anecdote (both kōrero tuku iho and contemporary) to show the breaches of tapu have both physical and spiritual consequences and that this aspect of life is very real for Māori:²⁸⁸

I knew of a man – that’s all he did was killing and skinning possum. He had a beautiful house, two bedroom house and a nice kitchen. All he did was possum skins. The next minute, crash. The skinning of possums now means no money.

...

You are not allowed to tātai in the kai house. You could not keep tātai next to kai at all. That wasn’t suppose to be. In our home the table was cleared and everything wiped and karakia said before all the tātai books came onto the table.

...

There were penalties for breaking these rules surrounding tātai. If you abuse tātai you abuse its tapu nature. There were spiritual penalties – even today if you play around with the tātai some people may get sick.

...

Te Waiariki, they control their wāhi tapu places. Once someone there went to disturb some taonga there. Next minute someone died and they couldn’t find the body. So a local person told them to take that that taonga back to where they got it from. Low and behold what happened – the body floated ashore.

- 4.139 In addition to spiritual penalties, Himiona Munroe’s (Ngātiwai) evidence is that traditionally “the old people would enforce the laws”.²⁸⁹ Although he goes on to say, “Nowadays, the old people have little or no say in fishing.”²⁹⁰
- 4.140 Danny Pohipi (Te Whānau-ā-Apanui) explains, “If someone breaks a rāhui there are various consequences. Some rāhui we trust that the breach of the tapu itself will result in spiritual and supernatural consequences. Other times we actively uphold and enforce our tikanga. This occurs through verbal direction or warnings as well as direct action.”²⁹¹

²⁸⁶ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence by Buddy Mikaere (undated) at [12].

²⁸⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (25 January 2022) at [13].

²⁸⁸ Ko Aotearoa Tēnei, Wai 262, #C2 Houpeke Piripi at [9], [16], [18] and [90].

²⁸⁹ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [83].

²⁹⁰ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [83].

²⁹¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Danny Craven Pohipi (21 February 2020) at [62].

- 4.141 Gary Hooker (Te Roroa) explains, “Ignorance of waahi tapu does not negate their existence.”²⁹²
- 4.142 To avoid the adverse consequences of tapu, there were practices and rules were implemented “to protect the uninitiated and ignorant”.²⁹³ It was acknowledged by Tahu Potiki (Ngāi Tahu, Ngāti Mamoe) that “the tapu aspects could be managed with appropriate ritualistic responses”.²⁹⁴ Such rules included:
- rules around placement of food bowls such as no carrying kai over someone’s head;²⁹⁵
 - doing a karakia before fishing and gifting the first fish back;²⁹⁶
 - restrictions on certain activities during menstruation;²⁹⁷
 - the placing of rāhui over an area or activity (which meant simply either staying out of the area or not engaging in a particular activity).²⁹⁸

Noa and removal of tapu

- 4.143 Noa is described by Tā Pou Temara (Tūhoe) as “the spiritual state and physical ability to allow a person to be free from the restrictions of tapu. The people or place is no longer tapu for a permanent or short period of time so that people can access it without fear of spiritual harm to them or their whānau. Noa allows people to survive and live.”²⁹⁹
- 4.144 Rangimarie Rose Pere (Tūhoe, Ngāti Ruapani, Ngāti Kahungunu), as cited by Leonie Pihama (Te Ātiawa, Waikato-Tainui, Ngā Māhanga a Tairi), explains:³⁰⁰
- The influence and power of noa is very significant to the physical well-being of people by freeing them from any quality or condition that makes them subject to spiritual and/or ceremonial restriction and influences. The concept of noa is usually associated with warm, benevolent, life-giving, constructive influences including ceremonial purification.
- 4.145 Peter Addis (Te Ātiawa) says that “noa is not the opposite to tapu. The opposite to tapu are other forms of tapu”.³⁰¹ The example that Addis gives is that, during the building of Te Herenga Waka marae, Ruka Broughton and Huirangi Waikarepuru applied a tapu to the

²⁹² *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Gary Hooker (undated) at [34].

²⁹³ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [77].

²⁹⁴ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki (23 December 2016) at [7.6].

²⁹⁵ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [77].

²⁹⁶ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [60].

²⁹⁷ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Reuben Clarke (undated) at [5].

²⁹⁸ *Re Edwards* [2021] NZHC 1025, Joint Brief of Evidence of Dr Te Kei (O Te Waka) Wirihana Merito and William Bruce Stewart (24 January 2022) at [32]; *Re Tipene* [2016] NZHC 3199, Pūkenga’s Report of Jane Ruby Karina Davis (undated) at [40].

²⁹⁹ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [57].

³⁰⁰ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama citing Rangimarie Rose Pere at [80].

³⁰¹ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Addis p.39.

building site.³⁰² While the marae was being built but before it could be opened, both Broughton and Parker died. This was seen as *utu* for that marae and had the effect of intensifying the *tapu*.³⁰³ Adds explains: “It meant that the *tapu* removal for the opening of the house, the removal of the forcefield as it were, needed to be done properly, well and good, and our community up at the university ended up doing that by bringing in three *tohunga* to do that process.” Pou Temara, Huirangi Waikerepuru and Matiu Māreikura lit a fire on the marae ātea, roasted *kūmara* and walked around the house doing *karakia*, sprinkling water, and wearing greenery, *kawakawa*, on their heads. The *kūmara* were thrown over the roof of the house from one side to the other, down the length of the house.³⁰⁴ Another important aspect of *tapu* removal was for a woman, a *puhi*, to be the first person to walk through the door, not because that woman was *noa* but because she is a powerful agent of *tapu* removal. “She was so *tapu* in her own right that she had the power, conceptually at least, to remove that extended *tapu* around the house.”³⁰⁵

- 4.146 Adds also explains that “there is also the concept of extended *tapu*. On certain occasions and when people deem it to be necessary, anything can be declared *tapu*.”³⁰⁶ When someone says something is *tapu* it has “extended *tapu* applied to it”. When this “is removed, and it goes back to its ordinary state, that’s when something is said to be *noa*, but it still has intrinsic *tapu* as well. It’s both *tapu* and *noa* at the same time.” When people or “things are in the extended state, that’s when they are dangerous.”³⁰⁷

- 4.147 There are a number of processes for removing *tapu* in particular circumstances. For example, Leonie Pihama (Te Ātiawa, Waikato-Tainui, Ngā Māhanga a Tairi) describes *wāhine* as critical agents of *whakanoa*.³⁰⁸ She explains:³⁰⁹

Women are especially powerful in making things and activities *noa*. Women have a particularly important task in ensuring that the extension of *tapu* on buildings does not apply to the users. They therefore make buildings safe for use or habitation. This is the *mana* and *tapu* of women, in that they have the ability to free areas, things and people from restrictions imposed by *tapu*. Women are not *noa*, as is often thought, but they are agents to *whakanoa* – to make *noa*. This is their *tapu*, and they are *taonga* because of their own specific areas of activity.

- 4.148 Other examples that draw on *wāhine*:

- Tahu Potiki (Ngāi Tahu, Ngāti Mamoe) provides the example of soldiers that became *tapu* under the power of *Tūmataunga*. To break the *tapu*, they would be required to crawl under the legs of a women or have appropriate *karakia* and ritual performed over them in or near a *kūmara* oven to deem them free from that *tapu*.³¹⁰

³⁰² The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds p.39.

³⁰³ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds pp.39–40.

³⁰⁴ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds p.40.

³⁰⁵ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds pp.40–41.

³⁰⁶ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds p.36.

³⁰⁷ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Adds p.38.

³⁰⁸ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama at [79] citing Manuka Henare, 1988.

³⁰⁹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama at [79].

³¹⁰ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki on behalf of the Applicant (23 December 2016) at [4.14]–[4.15].

- Paula Ormsby provides a similar example: “When our Men returned from war to lift the tapu of the blood that they shed they would crawl between the legs of a ruahine making them noa. Additionally to break them out of their war stance of Nguha woman would have intercourse with these warriors to bring them back into a balanced state. The sexual power and force that wāhine hold was one of the many sacred roles.”³¹¹
- David Taipari (Ngāti Maru, Ngāti Whanaunga, Ngāti Pāoa, Ngāti Tamaterā) uses an example of where, as part of a process to remove tapu from a whare rūnanga, “three women with mana sufficiently strong to absorb the tapu had been confirmed to perform the takahi te paepae ritual, to cross over the threshold, which makes the house safe for women”.³¹²

4.149 Further examples of methods used to move from a tapu to a noa state:

- *Water and food*: Water and food are also agents to remove tapu and bring things back to their normal states – for example, using water when leaving a cemetery or having a hākari (meal).³¹³ Lindsay Marr (Ngāti Rangitihī) talks about washing at a river outlet to lift tapu and to enjoy the cleanliness of the river.³¹⁴
- *Waiata*: Wiremu McMath (Te Rarawa) describes how, when a kaumātua has finished speaking on the marae, his talk has created a spiritual arena by his incantations.³¹⁵ A waiata is required to bring the utterances from that sacred state back to the normal sense. Waiata have a large role in removing tapu.
- *Tauparapara*: The recitation of tauparapara is explained as being sacred and protected as well as one of the steps in whaikōrero in removing tapu.³¹⁶ McMath says, “When you utter a tauparapara you are in the world of the dead. Until the tauparapara is finished you remain in the world of the dead. When it finishes you return to the world of the living.”³¹⁷
- *Gift giving*: Wikitōria Hepi-Te Huia (Ngāti Tahu) provides an example of how, as part of the lifting of tapu, Ngāti Kahungunu were sent tahā (gourds) as a gift.³¹⁸ “This gift giving was an embedded part of the tapu lifting ritual which required that the ‘hara’ was carried away and off the whenua.” A gift was the ritual that enabled this to occur. It was a key reason Ngāti Kahungunu were invited to participate.³¹⁹

³¹¹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A55 Paula Ormsby at [106]. The authors have been unable to locate Paula Ormsby’s whakapapa based on the written material reviewed.

³¹² *David Errol Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of David Errol Taipari for the second defendant (13 October 2020) at [16].

³¹³ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [38]; and *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [24]. Also see The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Peter Addis p.36.

³¹⁴ *Marr v Bay of Plenty Regional Council*, Statement of evidence of Lindsay John Ngahau Marr (25 May 2010) p.1.

³¹⁵ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [16].

³¹⁶ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [38]–[39].

³¹⁷ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [38].

³¹⁸ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Rebuttal Evidence of Wikitōria Hepi-Te Huia (23 June 2017) at [3.4].

³¹⁹ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Rebuttal Evidence of Wikitōria Hepi-Te Huia (23 June 2017) at [3.4].

- 4.150 Because food is a means to remove tapu, some practices require a person to abstain from it until a task is complete such as the weaving and setting of a large fishing net:³²⁰

Te Pokiha, a chief of Ngāti Pīkiao of the Te Arawa tribe had a kūpenga made by the members of his hapū in 1885. At the beginning of the winter, each family group began to make one of the sections, and while doing the work, the men were all under tapu. It took eight or nine months to make, and three hundred or more men worked on it.

When everything was ready, the net was taken to Otumakaro flat just below Maketu kāinga, and here the toronga or setting up occurred with high ritual by the Tohunga. As all this was a very tapu ceremony, the men took no food until after each day's work, when the tapu was taken off by the Tohunga ...

- 4.151 Wallace Wihongi (Ngāti Mahia, Te Uri o Hua, Ngāti Hine) states that tapu can be removed by a tohunga.³²¹
- 4.152 Himiona Munroe (Ngātiwai) talks of a tohunga who assisted with people who had been inflicted by tapu and mākutu.³²² He was able to look at those inflicted and ascertain the source and where the tapu came from or whether the person had transgressed tapu.³²³ Rongoā Māori was secondary to the spiritual realm.³²⁴ If people did not adhere to his advice, they may perish.³²⁵
- 4.153 Tā Pou Temara (Tūhoe) explains, “Rituals known as Pure are to purify people and areas. Tohi are rites of passage or a type of baptism for newborn babies or young children and performed in a river or the ocean with water sprinkled by a branch of a tree. Both pure and tohi are rituals of removing tapu.”³²⁶ He states that only tohunga can perform karakia to unu i te tapu (karakia to remove tapu).
- 4.154 Danny Pohipi (Te Whānau-ā-Apanui) discusses Te Whānau-ā-Apanui traditions relating to the land and sea being te huamata (the planting rite) and te pure (the harvesting traditions), which are linked to Māori cosmology and Ringatū practices.³²⁷ After the planting of the first fruits (te huamata), no one was permitted to enter or harvest until te pure, which were purification processes to move the māra from a state of tapu to a state of noa.³²⁸
- 4.155 Roimata Minhinnick (Ngāti Te Ata) talks about the ongoing nature of tapu in the face of damage: “Desecration will never remove the spiritual and cultural attachment to the

³²⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Elaine Rawinia Tapsell in support of the Applicant's case regarding the High Court rule 418 preliminary questions as referred back to this Court by Her Majesty's Privy Council; Exhibit *Te Arawa Mangai Nui Upoko Tutakitaki*, Te Ihu o te Waka ki Maketu (20 June 2020) at 5.

³²¹ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Wallace Wihongi (undated) at [14].

³²² Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [5].

³²³ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [5].

³²⁴ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [4]–[5].

³²⁵ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [6].

³²⁶ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [59].

³²⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Danny Craven Pohipi (21 February 2020) at [71].

³²⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Danny Craven Pohipi (21 February 2020) at [72]–[74].

designated area, it is still wāhi tapu.”³²⁹ Minhinnick states that “if all the tūpuna ancestors at the urupā/burial grounds of Ngāti Te Ata ... were uplifted and moved to another location, the urupā site would still be tapu to Ngāti Te Ata. If Pākehā put a McDonalds there in 50 years’ time, others will eat from there, but no Ngāti Te Ata would dare go there to eat ... The whenua/afterbirth of our ancestors alone being buried there, is wāhi tapu enough for Ngāti Te Ata.”³³⁰

MANA

4.156 Leonie Pihama (Te Ātiawa, Waikato-Tainui, Ngā Māhanga a Tairi) explains:³³¹

Central to Mana Wahine is the concept and practice of ‘mana’. The meaning of ‘mana’ is one that engages us conceptually, culturally, spiritually, emotionally and in material ways of being, and encompasses an essence and power of being that we have been reminded is beyond any singular translation (Henare, 1998; Pere 1991, Pihama 2001, 2005). Mana is multi-dimensional and requires an understanding of wider tikanga Māori and the relationships within which we locate ourselves. Mana is connected to every form of activity within Māori society and is generated through collective relationships. Mana is also enhanced by the collective in order to support peoples role in fulfilling particular obligations, social and political functions, as such it is a significant contributing factor to the how we present ourselves and are seen by others (Marsden 1988).

In the context of discussing Māori women’s theories, mana relates to notions of power, status and collective affirmation of our place within our communities (Smith 1992). Mana is both inherent to our being as Māori and can be enhanced or diminished through the ways in which we enact ourselves within the collectives that we affiliate to and with. Mana is therefore connected to both spiritual and earthly sources. Rangimarie Rose Pere reminds us that the origins of mana is firstly that of our connections to atua. This affirms the sacredness of all people. She writes:

Mana as a concept is beyond translation from the Māori language. Its meaning is multi-form and includes psychic influence, control, prestige, power, vested and acquired authority and influence, being influential or binding over others, and that quality of the person that others know she or he has! The most important mana however is mana atua – divine right from Io Matua. Every person has mana atua – no more, no less. This form of mana recognises the absolute uniqueness of the individual. Everything across the universe has mana atua, in that everything was created by Io Matua within the ancient teachings of Hawaiki, a leaf, a blade of grass, a spider, a bird, a fish, a crustacean, all have the same divine right as a person. The challenge is to feel for what this really means. (Pere 1991, 14)

4.157 Mana is described in various ways:

- Te Kurataiaho Kapea (Ngāti Whātua Ōrākei, Te Uri o Hau, Ngāti Rongo) describes mana as resting “in the spiritual dimension as well as the physical but it’s people who determine and construct it and exercise it”.³³²

³²⁹ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [17].

³³⁰ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Roimata Minhinnick (undated) at [21].

³³¹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama at [13]–[14].

³³² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 48.

- David Wilson (Te Ākitai Waiohua, Ngāti Te Ata) says, “Mana in this context is about integrity. It is about speaking and behaving with integrity or looking after people and taonga with integrity. Mana is also something you earn and not something you demand.”³³³
 - Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) explains that “to Māori, mana is the most valued quality. Mana is the basis of personal and collective authority and is central to hapū and iwi identity and relationships to their rohe and each other.”³³⁴
 - Te Ururoa Flavell (Ngāti Rangiwewehi) confirms that mana is inherent in pepeha and is a term used when referring to the link of whānau, hapū and iwi to the land. The loss of land is a deterioration of mana.³³⁵
 - Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) says, “When we talk about mana we talk about authority, about regulations and about the ranking of status to make certain rules and laws. This authority applies to an area, the resources and the activities conducted within.”³³⁶
 - Danny Pohipi (Te Whānau-ā-Apanui) says mana “means the authority and right to exercise our tikanga in our territorial area”.³³⁷
 - Hauata Palmer’s (Ngāi Te Rangi) discussion of manaaki manuhiri highlights that “the mana of our hapū and iwi rests on how well we treat our manuhiri or visitors, and equally importantly, how well we feed them”.³³⁸
- 4.158 Tāmami Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) discusses the idea that mana, often referred to as ‘authority’, ‘influence’ and/or ‘power’, always has a source (such as gods, ancestors, people or land), and that source must be established and maintained by discharging certain responsibilities to the source of that mana.³³⁹ He goes on to say:³⁴⁰

The concept of *mana* is often interpreted as involving ‘authority’, ‘influence’ and/or ‘power’. As a general proposition, I agree that is the case. However it is important to stress that *mana* must always have a source (whether in gods, ancestors, people or land), and that source must be established and maintained by discharging certain responsibilities to the source of that *mana*. In that way, *mana* is not something held or possessed by someone over their gods, ancestors or their land, rather that *mana* comes from the source and is preserved and fulfilled by living and practicing *tikanga Māori*.

³³³ See *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [56]. The context that David Wilson speaks of is disputes regarding mana whenua in Tāmaki Makaurau.

³³⁴ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [32].

³³⁵ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Brief of Evidence of Te Ururoa Flavell (undated) at [6.5]–[6.6].

³³⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [101].

³³⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Danny Craven Pohipi (21 February 2020) at [39] and [121].

³³⁸ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Hauata Palmer (15 December 2017) at [20].

³³⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [42].

³⁴⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [42]–[43].

Because *mana* is derived from a particular source, it is inconceivable as a *tikanga* Māori idea that gods, ancestors and the more tangible land could be ‘owned’ or possessed. The issue of *mana whenua* in particular requires further examination given the issues in this litigation and I will come back to that in more detail later in my statement. But for now I will give some further information about the key ideas that inform the Māori belief systems which *tikanga* and *kawa* reflect.

- 4.159 Kruger explains further that the exercise of *mana* is done with the best interests of the iwi at the forefront:³⁴¹

Overall, the essence of the Māori connection with land was its value to the community which was enduring and could not be severed unless in very narrow circumstances. And, as I mentioned earlier, the exercise of *mana* is done foremost with the benefit of its iwi in mind. *Mana* is exercised to preserve the identity of the iwi and the relationship Māori have with the land is a significant part of this identity.

- 4.160 Kruger under cross-examination in the same case clarifies:³⁴²

In my opinion you cannot divorce responsibility from *mana*. When I go and reach for my trusty *Williams Dictionary* *mana* is straight away translated as power, authority and influence, which is true, but rather those things are the outcome of fulfilling your responsibilities. So I think they’ve gone straight to the end result of *mana*. So today that’s how we now understand *mana* as power, authority, control and influence. And I think forgetting that you have to earn it and that there has to be a reputation, there has to be a track record, there has to be a consistency of performance in order for you to enjoy the control, the authority and influence. It doesn’t come because you are appointed and given a title to something to have that *mana*.

- 4.161 Peter Addis (Te Ātiawa) says there are many definitions for *mana*, and most of them “tend to revolve around the idea of power, authority, respect ... reputation”.³⁴³ He says *mana* “applies to individuals ... groups, to iwi, to hapū and so on but it can also apply equally to inanimate objects as well”.³⁴⁴ He explains that “there are degrees of *mana*. Some people and some things have more *mana* than other people and other things depending on context and depending on the deeds ... of that particular person.”³⁴⁵ In terms of redress, Addis says the question is “how much redress is going to be needed to reinstate the *mana* to a position where it should have ideally been prior to the *hara*”.³⁴⁶ Paul Meredith (Ngāti Maniapoto) says there is also *mana* in giving redress.³⁴⁷

Types of *mana*

- 4.162 A number of different people make reference to three manifestations of *mana* including that of the spiritual (*mana atua*), that bestowed in humanity (*mana tangata*) and that relating to Papatūānuku (*mana whenua*):

³⁴¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [96].

³⁴² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 1901.

³⁴³ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 25.

³⁴⁴ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 25.

³⁴⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 25.

³⁴⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 27.

³⁴⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 27.

- Wiremu McMath (Te Rarawa) comments, “The significance of the tauparapara is that it opens with reference to the sneeze of the living essence ‘Tihewa mauri ora’. Tihewa is that sneeze. It covers the whole world. When a child is born it is slapped to get that sneeze, the coming out of the breath. Once it has had that sneeze it is Tihewa Mauri and goes on with the breathing of life. Mauri ora is the essence of life. Even mother earth has the tihewa mauri ora. The three manifestations of mana are that of the spiritual (Mana Atua), that bestowed in humanity (Mana Tangata), and that relating to Papatūānuku (Mana Whenua). There is sacredness and laws that attach to each of these manifestations of mana.”³⁴⁸
- Kakapaiwaho Kururangi Tibble (Ngāti Porou) says, “Ko te mana o Ngāti Porou – he mana atua, he mana tangata, he mana whenua, kore e taea tētahi atu te wete.” That is, it is not for anyone else to speak on Ngāti Porou’s behalf but theirs. Their right to speak is derived from their mana atua, mana tangata and mana whenua of their rohe.³⁴⁹
- Ngahihi o Te Ra Bidois (Ngāti Rangiwewehi) identifies the three types of mana as being “mana tangata, mana atua and mana whenua”.³⁵⁰
- Similarly, Taiaha Hawke (Ngāti Whātua Ōrākei, Te Taoū, Te Uri o Hau, Ngāti Hē, Ngāti Mahuta) for Ngāti Whātua Ōrākei discusses the different types of mana that “should inform tikanga-based relationships: mana atua, mana tūpuna (or mana tangata) and mana whenua”.³⁵¹ He adds a fourth strand in relation to Ōrākei – mana motuhake.³⁵² He explains, “Mana Motuhake is the unique mana that an individual fosters and comes to possess over a period of time, and is bound together by an individual’s connection to their iwi/hapū and their ancestors (mana tūpuna), their atua (mana atua) and their land (mana whenua).”³⁵³
- Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) also describes tikanga in relation to three pou tokomanawa, or institutional pillars, that are consistent and cognisable reference points within te ao Māori. These are “mana atua, mana that is sourced from the genealogical connection between the divine and spiritual world and the physical world; mana tangata, mana that is sourced from genealogical connections between ancestors and their living relatives; and mana whenua, mana that is sourced from genealogical connections between people and the land”.³⁵⁴
- In relation to the phrase mana whenua, Toro Waaka (Ngāti Pāhauwera) denotes that one “cannot have mana over your tipuna Papatūānuku. Mana is associated with the

³⁴⁸ Ko Aotearoa Tēnei, Wai 262, #B9 Wiremu McMath at [35]–[36].

³⁴⁹ The Fisheries Settlement Report, Wai 307, #B8(b) Kakapaiwaho Kururangi Tibble at 1.

³⁵⁰ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Statement of Evidence of Ngahihi o Te Ra (19 November 2007) at [5.2].

³⁵¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Taiaha (Lance) Joseph Hawke (2 June 2020) at [71].

³⁵² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Taiaha (Lance) Joseph Hawke (2 June 2020) at [71].

³⁵³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Taiaha (Lance) Joseph Hawke (2 June 2020) at [71].

³⁵⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [41].

word manaakitanga. Papatūānuku is our source of sustenance or manaakitanga. Those who do not practice manaakitanga have no mana.”³⁵⁵

- Roderick Hadfield (Ngāti Kahungunu) conceptualises the types of mana: “Mana atua encapsulates sacred spiritual power from the atua (gods); mana tangata is the power or status reflected in one’s leadership skills, human rights and the mana of people; mana whenua is the power/authority over tribal lands that are associated with possession and occupation of those lands. The separation is land and sky, not land and sea, the sea is treated the same as the land, like an extension of land. Mana moana is like an extension of these land rights to seas or lakes with fixed boundaries for inshore and deep-sea fishing and gathering of kaimoana.”³⁵⁶
- 4.163 Hetaraka Biddle (Ngāi Tamahaua hapū) says that “mana atua acknowledges our whakapapa to and relationship with atua such as Ranginui and Papatūānuku and their Tamariki Tānemahuta, Tangaroa, Hinemoana, Hinewai, and many other atua who influence the environment and the moana in a meaningful way”.³⁵⁷
- 4.164 The term ‘mana tupuna’ is sometimes used as an alternative to ‘mana tangata’. For example, Reverend Māori Marsden (Ngāi Takoto, Ngāti Warara) describes the three types of mana as “Mana Atua (Gods); Mana Tupuna; Mana Whenua”.³⁵⁸ Marsden goes on to give a summary of the history, settlement, whakapapa and interrelationships of Aupōuri-nui-tonu (Ngāti Kaha – Ngāti Kuri, Ngāi Takoto and Te Aupōuri) in Muriwhenua from Hawaiki to contemporary times. He uses this as evidence of the following:³⁵⁹
- Mana atua “is delegated by the gods. Proof of their delegation of mana is through victory in conquest and continued support in occupation”.³⁶⁰ “Ngāti Kaha’s claims to the land within the boundaries outlined above, both by virtue of continued occupation and conquest through her sub-tribes of Ngāti Kuri, Ngāi Takoto, and Aupouri are established.”³⁶¹
 - Mana tupuna is “mana to lands, harbours, rivers, beaches, forests fisheries”, which are “inherited through the ancestors”.³⁶² “From the genealogies submitted the Mana Tupuna, by virtue of direct descendant from Kurahaupo, is also established.”³⁶³
 - Mana whenua “is based on occupation under the principle of “Ahi Kā” – keeping the home fires burning”.³⁶⁴ “Proof of claims is attested to by known papakāinga, Pā, gardens and burial sites.”³⁶⁵

³⁵⁵ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Toro Edward Reginald Waaka (19 December 2019) at [54].

³⁵⁶ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Roderick Nigel Kerry Hadfield (11 August 2020) at [34].

³⁵⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (undated) at [8].

³⁵⁸ Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden p.8.

³⁵⁹ Muriwhenua Land Report, Wai 45, #A7 Reverend Māori Marsden; Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden at 2–8.

³⁶⁰ Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden at 8.

³⁶¹ Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden at 8.

³⁶² Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden at 8.

³⁶³ Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden at 8.

³⁶⁴ Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden at 8.

³⁶⁵ Muriwhenua Fishing Report, Wai 22, #A14 Reverend Māori Marsden at 8.

- 4.165 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) similarly explains mana tangata in reference to whakapapa connections from tūpuna (ancestors),³⁶⁶ and Chris Winitana (Ngāti Tūwharetoa) says that mana tipuna is the right to speak for an ancestor.³⁶⁷
- 4.166 Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) explains that mana is central to all Māori life and custom and provides the examples of:³⁶⁸
- mana atua – spiritual power from the atua;
 - mana whenua – power associated with possession and occupation of tribal land – the histories and legends of the tribe are based in the land;
 - mana moana – authority over the sea;
 - mana o te moana – authority of sea and lakes;
 - mana motuhake – mana through self-determination;
 - mana tangata – the power and status of a person;
 - mana whakatipu – acquired leadership, power and status accrued through one’s leadership;
 - mana tupuna – mana through descent;
 - mana tangata whenua – indigenous rights; and
 - tuku mana whakahaere.

- 4.167 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) discusses the terms ‘mana reo’ and ‘māngai reo’:³⁶⁹

Mana Reo and *Māngai Reo* are similar concepts in Tikanga however they tend to stem from a Pākehā model of representation meaning “one who represents a person, group or kaupapa” or the mostly common term of mandate.

Mana means “prestige” or “authority”, Māngai means “spokesperson, speaker” or “representative” and reo means “to speak”, “one’s language”, “to articulate”. However nowadays we use both of these terms to mean “a person who represents a group or person for a specific purpose”. Mana goes hand in hand with *tapu* (*sacred, spiritual*) one affecting the other.

- 4.168 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) explains that mana is based on whakapapa. “The whakapapa which ultimately links all Iwi and Hapū together provides the papa upon which mana is based because any mana which humans might exercise as a political power could only be legitimised in concert with mana whenua, mana moana, and mana atua.”³⁷⁰

³⁶⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [41].

³⁶⁷ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [18] and [30].

³⁶⁸ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [34].

³⁶⁹ *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [17]–[18].

³⁷⁰ *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [29].

4.169 Jackson says, “The concept of mana as a political and constitutional power thus denotes an absolute authority. It was absolute because it was absolutely the prerogative of Iwi and Hapū, but it was also absolute in the sense that it was commensurate with independence and an exercise of authority that could not be tampered with by that of another polity.” It included a number of different components that may be called the specifics of power such as:³⁷¹

- power to define – the power to define the rights, interests and place of individuals and collectives;
- power to protect – the power to protect, manaaki and be the kaitiaki for everything and everyone within the polity;
- power to decide – the power to make decisions about everything affecting the wellbeing of the people; and
- power to develop – the power to change in ways that are consistent with tikanga and conducive to the advancement of the people.

4.170 Jackson also explains:³⁷²

Within this reality two fundamental prescriptions and proscriptions underpinned mana as a concept of power and determined how it could be exercised within any particular site of power:

- a. Firstly, the power was bound by law and could only be exercised in ways consistent with tikanga and thus the maintenance of relationships and responsibilities.
- b. Secondly the power was held by and for the people, that is it was a taonga handed down from the tipuna to be exercised by the living for the benefit of the mokopuna.

The ramification of those prescriptions was that mana was absolutely inalienable. No matter how powerful rangatira might presume to be, they never possessed the authority nor had the right to give away or subordinate the mana of the collective because to do so would have been to give away the whakapapa and the responsibilities bequeathed by the tipuna. The fact that there is no word in Te Reo Māori for ‘cede’ is not a linguistic shortcoming but an indication that to even contemplate giving away mana would have been legally impossible, politically untenable, and culturally incomprehensible.

In general terms then mana as a concept of power was a culturally and tikanga-specific understanding of political authority. It grew from this land and the history, knowledge and experience which the people took from it. It was a concept of independence and if it was rarely articulated as such it was only because independence was known and lived as the norm by a people who were neither dependent upon nor beholden to any other.

In the context of Iwi and Hapū realities law and political power were like the maihi and amo of a whare tipuna – they held the house of the people together. The inter-relationship between tikanga as law and mana as a concept of power was intimate and indeed inevitable in both a philosophical and practical sense. Law set the parameters of acceptable political behaviour because the exercise of mana was only legitimate if it was tika and pursued according to the law. The law in turn gained its efficacy from the power and certainty of mana, whether it was the mana of a rangatira ensuring compliance through consensus decision making or the mana atua ensuring compliance through the seemingly inexplicable precedents and power of tapu.

³⁷¹ *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [30].

³⁷² *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [36]–[39].

Mana tangata

4.171 The mana and status of people is both tied up in whakapapa (mana tupuna) as well as their skills. As Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) explains, “Ariki and rangatira could be hereditary or selected for their particular skills but their tenure was always subject to what would now be called ‘performance measures,’ that is how well they preserved and defended the well-being of the people, protected their land, and nurtured the relationships implicit in whakapapa. John Rangihau (Tūhoe) once succinctly and accurately described the authority and status of rangatira as being ‘people bestowed’.”³⁷³

4.172 Margaret Mutu (Ngāti Kahu) similarly says, “The role of tribal leaders was, very basically, to ensure the well-being of the tribe. Leadership was passed from one generation to the next with the extent of a chief’s *mana* determined not only by genealogical seniority but also by his or her own personal qualities and abilities to maintain the support and confidence of his/her people.”³⁷⁴

4.173 Ngahihi o Te Ra Bidois (Ngāti Rangiwewehi) explains:³⁷⁵

Mana is often used as an equivalent for the authority that particular individuals carry, and in some respects it conveys a notion of personal power if not omnipotence. However that definition of mana is more likely to be invoked when an individual is considered in isolation from a community of origin. However mana is usually invested not so much in the deeds of the hero but in the collective well-being of the community. For example, mana tangata is bestowed to an individual by the hapū or iwi that they are serving. It is the authority that comes from their hapū or iwi and if the power of a person dwarfs the people then there is no real mana in existence as mana is invested only in those who will advance the interests of the tribe.

Fundamentally, if you do things that will prosper your people, you will gain mana. It is therefore relevant that mana and power lie outside of the individual and with the people. Mana tangata is mana that lies outside the individual with the people.

4.174 David Williams (Pākehā) discusses mana tangata and mana tūpuna together, noting the following:³⁷⁶

The interplay between mana tūpuna and mana tangata in particular has tended to accentuate the importance of accountability between rangatira and people of a tribe both traditionally and today. Rangatira were and are continually required to affirm the consensus of the people in public fora. Thus the institution of the hui and the rūnanga, when people gather to discuss issues of moment, were and remain the real seat of power and law-making. A leader taking his or her people in a direction which is not supported will quickly be corrected or, at length, abandoned in favour of a contender more willing to lead to where the people wish to go.

4.175 Mita Ririnui (Ngāi Te Rangi, Ngāti Ranginui, Ngāti Whakahemo) implicitly makes the connection between mana tipuna, mana tangata and mana whenua:³⁷⁷

³⁷³ *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [33].

³⁷⁴ Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 8.

³⁷⁵ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Statement of Evidence of Ngahihi o Te Ra (19 November 2007) at [5.2].

³⁷⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of David Vernon Williams (30 July 2020) at [56].

³⁷⁷ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Evidence of Mita Michael Ririnui (6 July 2020) at [20].

The relationship with Rangataua and its resources is about mana heke and mana tipu. Mana through whakapapa or mana through personal ability. The leadership of our hapū was based on the exercise of mana. The leadership carried with it the responsibilities to provide for the needs of the groups physically and spiritually. Such responsibilities included mauri ora (survival), tikanga (customs), kawa (procedure), preserving rangatiratanga (leadership and preserving chiefly lines) and the authority to make decisions for the group over the resources within the domain of the hapū.

- 4.176 Dr Ranginui Walker (Whakatōhea) speaks of the enduring importance of mana tangata:³⁷⁸

... when one goes into another tribe's territory one behaves circumspectly and respects the kawa the customs of the local people otherwise you would be takahī, tramping on mana because that's all many of us have left with the land gone, is that mana tangata.

- 4.177 As an example of the implications of having personal mana, Marjorie Huingapani Kurei (Ngāi Tamahaua hapū) talks of her father who was “a knowledge holder (matatau) regarding traditional fishing and kaimoana practices and preserving of kai. He was taught it by our elders.”³⁷⁹ She goes on to explain, “As a reflection of his role as a knowledge holder he was buried high up on a hill of the urupa, underneath a certain tree, facing the fishing grounds.”³⁸⁰

Mana wāhine

Mana wāhine in its simplest definition, refers to the inherent uniqueness, strength, power, influence and authority that is derived not only through whakapapa but to our potentiality.

Paula Ormsby³⁸¹

- 4.178 In relation to the term ‘mana wāhine’, Ani Mikaere (Ngāti Raukawa, Ngāti Porou) says:³⁸²

It should be noted that the very term “mana wahine” is a product of the “patri-fying” of Māori thought and practice. Our tūpuna are most unlikely to have felt the need to refer to “mana wahine” because it was simply the case that all people, female and male, had mana. It is only because the colonists regarded “mana” as an exclusively male characteristic – and because of the enthusiasm with which some Māori men embraced that belief – that it has become necessary to identify “mana wahine” as a phenomenon.

- 4.179 Leonie Pihama (Te Ātiawa, Waikato-Tainui, Ngā Māhanga a Tairi) confirms:³⁸³

Mana Wahine is an assertion of our intrinsic mana as descendants of our tūpuna, as holders and maintainers of whakapapa. An underlying tenet of Mana Wahine is that our tūpuna wāhine have always had critical roles in Māori society.

- 4.180 Pihama, citing Dr Kathie Irwin (Ngāti Porou, Ngāti Kahungunu), states that there is diversity within the context of mana wāhine:³⁸⁴

³⁷⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Ranginui Walker) at 107.

³⁷⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [41].

³⁸⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [41].

³⁸¹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A55 Paula Ormsby at [12].

³⁸² Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at [56].

³⁸³ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama at [6].

³⁸⁴ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama at [19].

In our work with Māori women we need to recognize that they, like any other community of women, are not a homogenous group. A number of other factors influence Māori women's development: tribal affiliation, social class, sexual preference, knowledge of traditional Māori tikanga, knowledge of the Māori language, rural or urban location, identification on the political spectrum from radical to traditional, place in the family, the level of formal schooling and educational attainments to name but a few.

4.181 Mana wāhine is a source of identity.³⁸⁵ Ngahuia Murphy (Ngāti Manawa, Ngāti Ruapani ki Waikaremoana, Ngāi Tūhoe, Ngāti Kahungunu) says, “Our primary identities originate from the wombs of our mothers. In pre-colonial times warriors were named after their mothers and grandmothers, taking on their mana and tapu. Male warriors named their weapons after their mothers and grandmothers. These examples indicate an acknowledgement and celebration of the mana of wahine as a primary source of identity (and also shield of protection).”³⁸⁶

4.182 There is also a theme of the importance of atua wahine to mana wāhine:

- Murphy says, “He wahine, he whenua. Women are the human counterpart of Papatūānuku. We are the ūkaipō, providing, like the whenua, for all the needs of humanity born from our wombs.”³⁸⁷ She goes on to say, “The blood of the womb is the physical offering placed upon the earth to honour our connection to her as the mother of life and the source of our identity, sustenance, and survival. We are the centrepiece of creation, a cosmological tenet laid down by Hineahuone, the first human at Kurawaka.”³⁸⁸ She explains further:³⁸⁹

Throughout our mortal lives Papatūānuku is the source of our sustenance and survival. When we die Hinenuitēpō caretakes our souls. Her supremacy is final and total. Women are the beginning and the end because of these atua. We are the only way in and out of this world through the sacred passage that is the birth canal. We open space through karanga because of Hineahuone and Papa and we close it through waiata because of Hinenuitēpō. Whilst these tikanga continue, the understandings that underpin them and their central significance have been deliberately erased from the record.

In times of transgression in pre-colonial times, wahine led muru plundering parties and at times, war parties to seek utu – the restoration of balance. This is one of the sacred role of wahine dictated by the atua wāhine and our cosmological stories. Maui transgressed sacred laws when he entered Hinenuitēpō without invitation. She restored balance by annihilating him with her vulvic teeth – a symbol of the autonomous mana of wahine. The story is repeated a generation later with Hinetēwaiwa – the atua of women's esoteric and ritual knowledge, and the tohunga Kae. The sacred roles of wahine in restoring balance in times of transgression have been forgotten. Women's ritual knowledges have been deliberately censored, erased and denied as wahine have been reframed as ‘profane’, ‘inferior’ and spiritually polluting by colonial ethnographers.

³⁸⁵ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A67 Ngahuia Murphy; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A55 Paula Ormsby; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Leonie Pihama; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne; Mana Wāhine Kaupapa Inquiry, Wai 2700, #A63 Ella Henry; and *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022).

³⁸⁶ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A67 Ngahuia Murphy at [10].

³⁸⁷ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A67 Ngahuia Murphy at [9].

³⁸⁸ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A67 Ngahuia Murphy at [11].

³⁸⁹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A67 Ngahuia Murphy at [14].

- Ella Henry (Ngātikahu ki Whangaroa, Te Rārawa, Ngāti Kuri) explains:³⁹⁰

On this point, Walker states that the reason for the voice of welcome being the woman's was, "Because of her power to negate *tapu* and evil spiritual influences". This ability to negate spiritual influences extended to carvings, for a female figure was carved into the lintel above guest houses. The presence on the door lintel is an acknowledgement of the importance of women. This in turn is known as '*mana wahine*', which Walker has described as the "Dual generative and destructive power of the female sex. The duality of woman is further elaborated by Johannsen when he writes: "The crucial point in the woman's being is that her life is made up of more varied, mixed and every day contents than that of the male ... she is more robust as regards pollutions of life, just because by nature her life is made of several components". We can assume that Johansen is making delicate reference to menstruation, gestation, and lactation, when he refers to women's 'several components'.

- Tā Pou Temara (Tūhoe) says that "women have the same role as Papatūānuku, which is to look after, nurture and protect the essence of mauri which includes taking care of people and their resources (taonga). Wāhine Māori are the physical manifestation of Papa, they carry in their womb, te whare tangata, the amniotic fluids of life, te wai āhuru, and they give birth to new life and humankind."³⁹¹

4.183 Moe Milne (Ngāti Hine) says that the term *mana wāhine* "is describing an inner strength and ability within Ngāti Hine wāhine that is inherited. As Ngāti Hine wāhine we walk around as if we own our world. We do not prescribe to anybody. It is something that is intrinsically within us."³⁹²

4.184 An expression of *mana wāhine* is also present in relation to partnerships with men:³⁹³

Women were always free to dissolve their connection with a 'husband' and return to their people. No doubt, if this occurred her tribe would have cause for retribution in the form of *utu*, which would reflect badly on the husband, and could result in the exacting of costly revenge for the loss of *mana* to the wife and her *whānau*, because he had proven himself to be an inadequate marital partner.

4.185 Ani Mikaere (Ngāti Raukawa, Ngāti Porou) recounts the stories of Te Rangihaeata and Hineteiwaiwa to show the power and influence *wahine* had:³⁹⁴

Known to the outside world primarily for his military prowess and his steadfast refusal to submit to the Crown, Te Rangihaeata was also a spiritual leader within the *iwi*, well-versed in *karakia*. As the son of Waitohi and the brother of Rangi Topeora, he would have considered it normal for power and influence to be wielded by women as well as by men.

The manuscripts contain a wealth of stories about both men and women who exhibit a wide range of abilities and who perform all manner of roles.

Hineteiwaiwa plays a pivotal role in a number of Te Rangihaeata's accounts. She is revealed not only as a woman with an exceptional array of talents, but also as possessing the wisdom to utilise those talents to maximum effect. It is proposed to focus on Hineteiwaiwa as a way of exploring the implications of our theories of creation for *mana wahine*.

³⁹⁰ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A63 Ella Henry at [46].

³⁹¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [50].

³⁹² Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [32].

³⁹³ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A63 Ella Henry at [61].

³⁹⁴ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at [16]–[18].

Mana in relation to lands/territories/moana

- 4.186 Mana in relation to lands, territories and moana has long been contested between Māori collectives both within and outside courts. We address this point more generally in the methodology section but note specifically in this section that the majority of evidence we cite comes from contested contexts.
- 4.187 What is consistent is the centrality of lands and territories to Māori. For example, Taiaha Hawke (Ngāti Whātua Ōrākei, Te Taoū, Te Uri o Hau, Ngāti Hē, Ngāti Mahuta) gives the following whakataukī: “Pērā anō te Māori ki te kumara; kaore he whenua ka mate noa – A Māori is just like a kumara; it dies without the land.”³⁹⁵
- 4.188 There is also relative consistency when people describe mana whenua in a general way:
- Rima Edwards (Muriwhenua, Te Rārawa, Ngāti Kuri) describes the concept of mana whenua: “This means The Power and the Authority, the Protection of this Authority, the Control of this Authority and the Sanctity of this Authority in whom it is vested.”³⁹⁶
 - According to Tāmami Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe), “A group has mana whenua if they occupy an area of land for a consistent period of time, and fulfil their responsibilities to the land in a manner consistent with tikanga Māori and iho matua.”³⁹⁷
 - Paul Meredith (Ngāti Maniapoto) says, “Mana whenua means power, authority, jurisdiction, influence, or governance over land or territory. When a Māori group can demonstrate mana whenua over a particular parcel of land, that status involves corresponding responsibilities on the group to respect and protect the land itself, the people who live from the land, and the ancestors and deities through which one connects with the land.”³⁹⁸
 - According to Buddy Mikaere (Ngāti Pūkenga, Ngāti Ranginui), there is no black and white definition of mana whenua and it is best described as “the right to speak for the land”.³⁹⁹
 - Roger Pikia (Ngāti Tahu, Ngāti Whāoa, Ngāti Tūwharetoa, Raukawa, Waikato-Tainui, Ngāti Maniapoto, Ngāti Hikairo) similarly says, “I have read Mr Mikaere’s draft brief of evidence. In it, he records a dictionary definition of mana whenua and also his own understanding of the concept as amounting to a ‘right to speak for the land’. These descriptions accord with my own understanding of mana whenua. It also has to be acknowledged that the concept of mana whenua has evolved somewhat over the last century and a half, and that it is no longer necessarily exclusive. However, that

³⁹⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Taiaha (Lance) Joseph Hawke (2 June 2020) at [70].

³⁹⁶ Muriwhenua Land Report, Wai 45, #B2 Rima Edwards at 2.

³⁹⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [117].

³⁹⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [87].

³⁹⁹ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence by Buddy Mikaere in rebuttal (undated) at [33].

does not mean there are not terms and conditions, so to speak, for the use and enjoyment of resources.”⁴⁰⁰

- Ngarimu Blair (Ngāti Whātua Ōrākei) explains mana whenua as meaning “to receive mana from the land as a result of discharging obligations to it. As such, mana whenua is necessarily exercised only by the hapū or iwi that has been living on and with the land for an extended period of time, and so maintaining an ahi kā connection.”⁴⁰¹
- Justin Puna (Ngāti Kurumōkihi, Ngati Marangatūhetaua, Ngāi Tauira, Ngāi Te Ruruku ki Tangoio, Ngāi Tahu) asserts that mana is not obtained by whakapapa alone or mere presence in an area. Puna describes the key elements involved in obtaining mana whenua:⁴⁰²

Ahi kā roa – an undisturbed occupation of a long period. This occupation includes a historical link with the whenua and historical links include kōrero that tie you to those lands.

Whakapapa – a genealogical link to one of the source ancestors who would have occupied the land and had ahi kā roa.

Active participation in kaupapa within the takiwā. In other words, it requires involvement in Hapū matters. You do not qualify as tangata whenua with an infrequent appearance or involvement within the takiwā, you need your presence to be seen and felt.

- Puna goes on to explain, “To be recognised as tangata whenua, you must have whakapapa to the relevant hapū, and be an active participant within that particular takiwā. You must be or have been an active participant in kaupapa (activities) in and around your tūrangawaewae. Having whakapapa links to a hapū, iwi where you are not an active participant, gets you ‘in the door’ but it doesn’t afford you tangata whenua rights. Tangata whenua are the people who have mana over a particular area.”⁴⁰³
- Awhina Waaka (Ngāti Pāhauwera) also reinforces that mana “is as much about responsibility, the responsibility to maintain mauri ora or the healthy state of natural resources, as it is about rights of use”.⁴⁰⁴
- Taiaha Hawke (Ngāti Whātua Ōrākei, Te Taoū, Te Uri o Hau, Ngāti Hē, Ngāti Mahuta) explains:⁴⁰⁵

⁴⁰⁰ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Roger Pikia (1 May 2017) at [5.1].

⁴⁰¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [69].

⁴⁰² *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit by Justin Owen Ian Puna (17 December 2020) at [9].

⁴⁰³ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit by Justin Owen Ian Puna (11 August 2020) at [14]–[15]. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Nga Tikanga Māori e pa ana ki a Tangaroa (22 November 1991) at 8.

⁴⁰⁴ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Awhina Evelyn Waaka (21 November 2013) at [5]. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Nga Tikanga Māori e pa ana ki a Tangaroa (22 November 1991) at 6.

⁴⁰⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Taiaha (Lance) Joseph Hawke for the plaintiff (2 June 2020) at [72].

To me mana whenua means the authority that a Māori kinship group has the privilege to have, by virtue of its constant attention to and respect for its land. I am reminded of the way Pā Henare Tate delivered a message about Māori and our whenua: he would say we have “mana i te whenua”, that is “mana *from* the land”. That has always made sense to me, because an individual or a group simply cannot have dominion over Papatūānuku. We must gain the blessing of Papatūānuku through tending to her and respecting her – this is the practice of kaitiakitanga-guardianship which determines the rights and responsibilities of a people who actively strive to maintain ahi kaa: a consistent presence on the land without interruption.

- Paul Meredith (Ngāti Maniapoto) says there is one universal definition or expression of mana whenua. “I think there is one – there definitely is within Māori tradition the notion of political jurisdiction or authority over an area, which can include excluding others, having that sort of dominion.”⁴⁰⁶
- Marei Apatu (Ngāti Pārarū) says, “Mana moana (those that have authority over the sea) was an expression similar to mana whenua (those that have authority over the land). This ethos sits at the very construct of the Māori world view – the celestial and terrestrial relationship are interwoven.”⁴⁰⁷

4.189 Dayle Takitimu (Te Whānau-ā-Apanui) draws on similar language when describing the mana that Te Whānau-ā-Apanui had over the moana.⁴⁰⁸ She explains:⁴⁰⁹

The iwi have consistently considered themselves to have mana motuhake over the tribal marine territory and have acted accordingly ... The iwi have considered that territorial jurisdiction to include the right to territorial integrity, which includes the right and authority to exclude.

Exclusion is considered a latent right by the iwi because access and accommodation, if it is in accordance with the tikanga of the iwi, is typically permitted, but it remains at the ongoing discretion and/or license of the iwi. Hence, Te Whānau ā Apanui members and outsiders regularly interact with the marine territory of the iwi, but do so under the auspices of the mana of the iwi.

4.190 Justin Puna (Ngāti Kurumōkihi, Ngāti Marangatūhetāua, Ngāi Tauira, Ngāi Te Ruruku ki Tangoio, Ngāi Tahu) contrasts the Māori understanding of mana whenua and mana moana against a common misconception some have with Pākehā views of possession. Puna explains:⁴¹⁰

Mana whenua and mana moana are terms used to describe the territorial rights over the land and sea which the hapū possess, which have been achieved either through whakapapa and ahi kā roa, or through conquest. This is different to a pākehā view of possession of land which is seen as having title to a particular area. Mana whenua and mana moana are a cultural view of rights over land and sea. Māori may not have a title to the land or sea but they have a spiritual, historical, whakapapa and cultural link to the land and sea.

⁴⁰⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 1194.

⁴⁰⁷ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Marei Boston Apatu (10 August 2020) at [55].

⁴⁰⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [63]–[64].

⁴⁰⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [63]–[64].

⁴¹⁰ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit by Justin Owen Ian Puna (11 August 2020) at [21].

- 4.191 Te Iwi Moriori Trust Board discusses the significance of tapu and its connection to mana:⁴¹¹

The important point is that our mana as a people and our mana over the land and sea remained intact in accordance with tikanga Moriori. The Land Court may have deprived Moriori of land ownership but it did not deprive us of our mana in relationship to that land. Mana comes from tapu and tapu comes from the gods. What is given by the gods can only be taken by the gods – not by a court.

- 4.192 Whaimutu Dewes (Ngāti Porou, Ngāti Rangitahi) stresses that mana over territory cannot be understood from a Pākehā viewpoint.⁴¹²

- 4.193 Although he does not use the term “mana whenua” specifically, Maui Solomon (Moriori) describes, “Each tribe exercised territorial rights over a definitive area of land with defined boundaries. As agriculture was not practised, these rights resolved themselves into exclusive privileges of hunting and fishing, and the right to all stranded matter such as whales or timber (H D Skinner).”⁴¹³

- 4.194 Similarly to Maui Solomon, Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) does not specifically use the term mana whenua but notes:⁴¹⁴

Within Whakatōhea, each hapū had their customary land and sea territory, and each hapū would be responsible for acting as kaitiaki (custodians) of their territory. Each hapū has, and still has, their own mana and their own authority in their own customary domain. They control the sea as well as the land.

...

In tikanga, what is in front of you extending from the land out to the sea is your space. You control the sea as well as the land. ‘Takutai moana’ means ‘it’s my coastline’, and is a term I recall my elders using. I never heard them saying ‘tautai moana’ (‘it’s your coastline’).

- 4.195 Hemaima Mariana Hughes (Ngāti Ira) notes that terms like ‘mana moana’ were not used during her childhood but that they knew their whakapapa, who they were and where their lands, pā, urupā and kaimoana-gathering areas were (which included any shared areas), and each hapū respected those specific areas.⁴¹⁵

- 4.196 Tama Hata (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tūhoe, Waikato) states, in relation to the concept of ‘mana moana’, “Seas do not belong to a people, they are entirely their own entity. People cannot claim an oceans mana, it is the oceans in its entirety. Who am I to make myself godlike and to cause the flow and ebb of the oceans? Who am I, a mere mortal, to espouse that my mana is greater than the mana of the guardian of the oceans?”⁴¹⁶

⁴¹¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), “Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets” at 6.

⁴¹² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Whaimutu Dewes) at 525.

⁴¹³ The Fisheries Settlement Report, Wai 307, #B23 Maui Solomon at [6.2]–[6.3].

⁴¹⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (3 August 2020) at [3.1] and [5.2]. This was similar to Hohepa Te Kahika who notes in his affidavit dated 20 February 2020 at [25] that the tikanga was that “You only ever took from where you belong. You never ventured unless ... people from that area take you to where their sources are. That’s respect for another iwi or hapū.”

⁴¹⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Hemaima Mariana Hughes (30 January 2020) at [40].

⁴¹⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Tama Te Waiwhakaruku Hata (14 February 2020) at [44].

- 4.197 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) explains the human dimension of mana whenua:⁴¹⁷

The site of power resided in the institutions of ariki and rangatira operating within particularly Iwi and Hapū, and sometimes through huihuinga or whakaminenga involving a collective of Iwi and Hapū. It was through those institutions that the concept of power was given effect and the exercise of power was given the sanction of law.’ But the existence of mana whenua meant that this human site of power was also located in the land (mana i te whenua) and related to the mana moana and mana atua just as the concept of power was.

- 4.198 Tā Hirini Moko Mead (Ngāti Awa) states:

... it is important to note that there is a homeland, a territory that has been traditionally inhabited by members of an iwi, and that is variously described as te hau kāinga (home), te wā kāinga (home area), te whenua o te iwi (the land of the iwi), te rohe o te iwi (the boundaries of the iwi) or te takiwā o te iwi (the district of an iwi). This was and is a geographically defined region that is also recognised by neighbouring iwi.⁴¹⁸

...

At the time of the signing of the Treaty of Waitangi the land was occupied by a number of iwi and their hapū and though much of the land has been lost the idea of a rohe or takiwā and te hau kāinga remains strong. This geographic identification of an iwi with a particular region also had to be acknowledged by neighbouring iwi who were usually in conflict with each other.⁴¹⁹

The iwi must have a region, large or small, that it has historically occupied for a period of time with evidence of pā sites and cultivations, urupā (burial grounds) and other waahi tapu (sacred sites). A further indication of iwi identity within a particular region is the naming of important rivers, mountains and other landmarks that define the tribal boundaries and regions of importance.⁴²⁰

The various take whenua

- 4.199 A number of references to mana whenua draw on specific take as being critical to establishing mana whenua.⁴²¹

⁴¹⁷ *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [32]. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Nga Tikanga Māori e pa ana ki a Tangaroa (22 November 1991) at 4.

⁴¹⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [17].

⁴¹⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [51].

⁴²⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [52].

⁴²¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [21]–[22]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger (2 June 2020) at [97]–[103]; Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [8]–[16]; *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith o (2 June 2020) at [67]; *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Roger Pikia (1 May 2017) at [3.1]–[3.2]; *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93,

4.200 For example, Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) explains how relationships with the land can be expressed differently through the five take:⁴²²

While the connection between Māori and the land at a spiritual level is enduring, the reality is that there are different ways in which the relationship with particular areas of land come about. These are referred to as *take*, which means ‘the basis of’. There are five different *take* which allow for a closer analysis of the justification of a particular group’s responsibilities vis-à-vis the land.

These are:

- *Take kitea*: responsibilities on the basis of discovering of the land;
- *Take tipuna*: responsibilities on the basis of heritage or *whakapapa*;
- *Take raupatu*: responsibilities on the basis of conquest or war;
- *Take tuku iho*: responsibilities on the basis of gift, including through marriage; and
- *Take hoko*: responsibilities arising from an ‘exchange’, though not a purchase in the Pākehā sense. I will return to this aspect later in my statement.

Take are not mutually exclusive and a group may claim responsibilities and connections to land via different *take*.

Not all *take* provide the same intensity of responsibilities. *Take raupatu*, for example, may extinguish another group’s connection and responsibilities to the land, but doing so does not in of itself achieve a *take tipuna* connection with the land for the conqueror. That would ordinarily be established through marriages between the group that was defeated, and the group successful in battle.

Take, then, is the basis foundation and starting point for assessing land connections. The behaviour of the Māori group in relation to the land will reveal more information about the strengths, weaknesses and longevity of a group’s responsibilities.

I want to emphasise that the language I am using to describe the relationship an iwi has with land following any particular *take* is deliberate. *Take* justifies responsibilities to land, and in my view responsibilities are distinct from ‘rights’. Rights are a European concept that don’t translate well to indigenous cultures because of their concentration on the individual. Rather, and as I have described, Māori are a kinship-based society who calibrate their relationships based on their responsibilities to their *atua* (here, creator), people and land.

Those responsibilities do not give an individual ‘rights’ over the land in the sense that a decision about that land can be taken unilaterally and in isolation from considerations of tikanga. On the contrary, *iho matua* and tikanga values and principles are present in every decision about land with a view to maintaining and enhancing *whanaungatanga*, and restoring balance through *utu* if required to achieve a state of *ea*. These responsibilities are further guided by determining what is best for their community and achieving *iwi tauukiuki* (the continuity of the iwi in the future).

4.201 Others also refer to various types of take:

Rebuttal Evidence of Roger Pikia (23 June 2017); *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [42]; *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed 14 September 2020 at [58]–[65]; The Wairarapa ki Tararua district inquiry, Wai 863, #J5 Nigel Te Hiko at [6.1]–[6.6]; The Wairarapa ki Tararua district inquiry, Wai 863, #J23 Nigel Te Hiko at [2.1]–[5.8].

⁴²² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [97]–[103].

- Laly Haddon (Ngātiwai) refers to the “take tupuna” and “take tikanga” rights of Ngātiwai along the Pakiri coastline.⁴²³ He recalls the deeds and occupation of this area by his ancestors (600 years in unbroken succession) in support of this. The purpose of this evidence appeared to be to show that Ngātiwai was submitting as tangata whenua of the area.
- Roger Pikia (Ngāti Tahu, Ngāti Whāoa, Ngāti Tūwharetoa, Raukawa, Waikato-Tainui, Ngāti Maniapoto, Ngāti Hikairo) explains:⁴²⁴

Ngāti Tahu assumed mana whenua of their rohe through the traditional right of take raupatu (conquest) and consequently take tupuna (intermarriage) when Tahu [Matua] drove former inhabitants Ngāti Ruakōpiri from the area.
- Chris Winitana (Ngāti Tūwharetoa) explains, “Our exclusive mana whenua derives from take raupatu (conquest), take taunaha (naming and bequeathing) and take tipuna (intermarriage and alliance).”⁴²⁵ He also refers to tatau pounamu (formal peace settlements).⁴²⁶
- Ngarimu Blair (Ngāti Whātua Ōrākei) claims Ngāti Whātua Ōrākei holds mana whenua within its rohe on the following bases: take raupatu (taking the land through military conquest); take tūpuna or whakapapa; and ahi kā.⁴²⁷ He says there are a variety of things such as cultivating practices that evidence one’s mana whenua.
- Paul Meredith (Ngāti Maniapoto) says there are fundamental principles that are commonly understood – for example, whenua kite hou (discovery) and taunaha or tapatapa whenua (claiming the land by naming it), take tupuna (ancestral right) and ōhākī (dying bequest), take raupatu (conquest) and take tuku (gifting and transfer).⁴²⁸
- Professor Jacinta Ruru (Raukawa, Ngāti Ranginui) and Mihiata Pirini (Ngāti Tūwharetoa, Whakatōhea) say, “Acquisition of mana whenua occurs over time and begins with the acquisition of land. In accordance with tikanga Māori, land can be initially acquired by these three broad entry points:⁴²⁹
 - take kitenga (right of prior discovery);
 - take raupatu (right of conquest); and
 - take tuku (right of gift).”

4.202 Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) explains that interests in land could only be

⁴²³ Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [8]–[16].

⁴²⁴ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Roger Pikia o (1 May 2017) at [3.1]–[3.2].

⁴²⁵ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [48].

⁴²⁶ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [50].

⁴²⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [23].

⁴²⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [42].

⁴²⁹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed 14 September 2020 at [58].

obtained through recognised take.⁴³⁰ These relate to both rights and obligations to whenua.⁴³¹ These take whenua include take kitenga or take kite whenua hou (discovery),⁴³² take raupatu and take ringa kaha (conquest),⁴³³ take tuku and take tupuna (descent)⁴³⁴ and take taunaha or tapatapa whenua (naming).⁴³⁵ Te Hiko goes on explain the background of Raukawa and how they came to be in the takiwā goes to their mana whenua. Raukawa interests in the takiwā derive from take taunaha, take raupatu and ahikāroa.⁴³⁶ This forms the basis of their mana whenua. In explaining another group's connection to the area, Te Hiko says that Wairarapa Moana received their connection to the area by a Crown grant. which is not a take that would form the basis of mana whenua.⁴³⁷

Take tupuna

4.203 According to Paul Meredith (Ngāti Maniapoto):⁴³⁸

Take tupuna manifested itself through whakapapa (genealogies), which identified the relevant line of descent and succession. Aside from providing a connection to, and understanding of, the cosmological and spiritual realms, whakapapa determines and informs membership of kinship groupings, rank and status. It also reveals relationships and connections to each other and other groups through key linking ancestors, shared identities and eponymous ancestors.

4.204 The following comments were made about mana tupuna:

- Reverend Māori Marsden (Ngāi Takoto, Ngāti Warara) makes the point that, while the Muriwhenua groups came into conflict and political dynamics change, they are all connected by whakapapa and had rights based on take tupuna through that whakapapa.⁴³⁹

Whilst the three principal groupings [of Muriwhenua] retained their identity and sovereignty because of the inter marriages and the fact of kinship and consanguineous relationships, the political dynamics were constantly changing. Political alliances were entered into and dissolved just as quickly. This characteristic has affected the relationships and interpretation of the political dynamics that obtained in Muriwhenua on the arrival of the Pākehā. While, in Pākehā eyes this may appear to create distortions, the reality was that throughout our history the chiefs in Muriwhenua identified with a single iwi but had rights based on take tupuna throughout the region. Panakareoa was a classic example of this ... The point is that it is very easy, by concentrating on the conflict between these chiefs, to

⁴³⁰ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affidavit of Nigel Te Hiko affirmed 3 October 2018 at [2.1]–[2.2].

⁴³¹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affidavit of Nigel Te Hiko affirmed 3 October 2018 at [2.1]–[2.2].

⁴³² *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affidavit of Nigel Te Hiko affirmed 3 October 2018 at [3.1].

⁴³³ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affidavit of Nigel Te Hiko affirmed 3 October 2018 at [4.1].

⁴³⁴ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affidavit of Nigel Te Hiko affirmed 3 October 2018.

⁴³⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affidavit of Nigel Te Hiko affirmed 3 October 2018 at [5.1].

⁴³⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Brief of Evidence of Nigel Huirama Te Hiko dated 22 May 2017 at [2.1]–[2.19].

⁴³⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Brief of Evidence of Nigel Huirama Te Hiko dated 22 May 2017 at [6.1]–[6.6].

⁴³⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [67].

⁴³⁹ Muriwhenua Land Report, Wai 45, #F25 Māori Marsden at 3.

overlook the fact that they were inextricably intertwined. It is easy to overlook the cooperation between them, even in the midst of bitter conflict.

- In regard to Panakareao’s infamous statement “Kihai au i hoko whenua engari he mea tuku naku toku tuara ki Te Reinga”, Marsden interprets it as “whilst he could not sell, he had authority to allow the use of those lands by virtue of the rights derived from take tupuna”.⁴⁴⁰
- According to Eru Manukau,⁴⁴¹ this extends to such things as mana whenua. Manukau says that all Ngāti Whatua hapū claim their mana from Haumoewharangi who conquered the Kaipara, and his children settled in the area.⁴⁴² In the context of the Kaipara area, it seems this may be in relation to mana whenua as well as the broader idea of mana.⁴⁴³
- Paul and Natalie Karaitiana (Ngāi Tahu) say, “We agree that these islands and their coastal marine area are exclusively the right and property of Rakiura Māori who hold mana whenua by direct descent from one or more of the identified tupuna, for occupation and use most particularly during the period of each tītī season.”⁴⁴⁴

4.205 Paul Meredith (Ngāti Maniapoto) connects the importance of whakapapa alongside an ongoing presence to maintain mana whenua: “An iwi and its individual members must constantly pay attention to and serve the whakapapa through which their take tupuna connection with the land is established. Achieving a higher level of interest like mana whenua involves other factors, not least ahi kā.”⁴⁴⁵

4.206 Poihaere Heke-Barrett (Raukawa) notes, in regard to strategic marriage, that those marriages do not suddenly give an iwi (in this case Ngāti Kahungunu) a right to the land.⁴⁴⁶ She comments, “I also want to say that those that married into Raukawa stayed there because they married into tangata whenua – and that’s important to remember. If you marry into another iwi that connects to that iwi who are tangata whenua – it doesn’t make your iwi tangata whenua.”⁴⁴⁷

⁴⁴⁰ Muriwhenua Land Report, Wai 45, #F25 Māori Marsden at 6.

⁴⁴¹ Mr Manukau’s iwi affiliations were not listed.

⁴⁴² The Fisheries Settlement Report, Wai 307, #A21 Eru Manukau at [6].

⁴⁴³ The Fisheries Settlement Report, Wai 307, #A21 Eru Manukau at [6].

⁴⁴⁴ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Questionnaire – Customary Marine Title Application by Paul and Natalie (Pohio) Karaitiana (undated) at 13.

⁴⁴⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [71].

⁴⁴⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affidavit of Poihaere Elizabeth Anne Rangitutia Heke-Barrett affirmed 7 August 2018 at [3.1]–[3.6].

⁴⁴⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affidavit of Poihaere Elizabeth Anne Rangitutia Heke-Barrett affirmed 7 August 2018 at [3.6].

Take kitenga/take kite whenua hou

- 4.207 Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) explains “take kitenga” or “take kite whenua hou” as “the rights to whenua derived through discovery”.⁴⁴⁸ He gives an example:⁴⁴⁹

Rakatāura was the tohunga of the Tainui waka, who married Kahukeke, the daughter of the Tainui captain, Hoturoa. Shortly after the waka arrived in Aotearoa, Rakatāura and Kahukeke journeyed inland. Everywhere they travelled, Rakatāura named significant sites commemorating his wife. These sites included Pirongia-te-aroaro-a-Kahu, Kakepuku-o-Kahu, Wharepūhunga-o-Kahu and Pureora-o-Kahu. He also named places in the Pouakani area including Whakamarumarutanga-o-Kahu.

...

Tia was an ancestor of the Te Arawa waka and journeyed to Aotearoa on that waka. He was the tupuna of Tūrongoihi, Raukawa's wife. Tia was also an earlier explorer of the interior of the central North Island. On his travels inland, he would name places in commemoration of his travels ... [t]hese places include Horohoro-o-ngā-ringā o Tia ... commemoration of his travels such as Taupōnui-a-Tia ... assert an association deriving out of take kite whenua hou through these early ancestors.

Take raupatu/take ringa kaha

- 4.208 Te Hiko further explains, “Take raupatu and take ringa kaha are interconnected. Take raupatu is the act of conquest, whereas take ringa kaha is to successfully defend a conquered area from being re-taken by the vanquished or being conquered in turn.”⁴⁵⁰ He gives an example:⁴⁵¹

In the context of Pouakani, Raukawa rights derived through take raupatu or conquest of the area by Whāita, Wairangi and others.

Having heard the news of the slaying of his sister, the Raukawa chief, Whāita together with his cousins Tamatehura, Ūpokoiti, Wairangi, Ngākohua and Pipito organised a taua seeking retribution for her death. The avenging Raukawa taua attacked the iwi blamed for her killing. They were the Ngāti Kahupungapunga, a populous iwi located in throughout the central North Island. The reprisal was as swift as it was brutal, conquering the hapless Ngāti Kahupungapunga and their allies.

Raukawa forces fell upon their enemies at Pouakani. Here, they took a significant number of Ngāti Hotu and Ngāti Ruakōpiri pā, and took up occupation themselves. These pā included: Ngataamoā; Komako; Te Waokū (located south of Tahataharoa); Ngāwhakaekenga; Te Ika o Ngutuwerā; and Whatapō.

...

In terms of take ringa kaha, Ngāti Kahupungapunga, Ngāti Hotu and Ngāti Ruakōpiri returned to challenge for the land. As a result Raukawa cemented their rights in the Pouakani through take raupatu and take ringa kaha.

⁴⁴⁸ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Affidavit of Nigel Te Hiko at [3.1].

⁴⁴⁹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Affidavit of Nigel Te Hiko at [3.3]–[3.4].

⁴⁵⁰ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Affidavit of Nigel Te Hiko at [4.1].

⁴⁵¹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Affidavit of Nigel Te Hiko at [4.2]–[4.7].

4.209 Paul Meredith (Ngāti Maniapoto) provides the following explanation:⁴⁵²

Because land, ancestors and deities are so interdependent within the Māori worldview, it is also critical to emphasise that a tikanga connection with land could be completely severed only in very rare circumstances, like raupatu (military conquest) followed by occupation by the conquering people.

...

Take raupatu has been described by the Waitangi Tribunal in the Pouākani Inquiry as:

... a right obtained by conquest, with displacement or servitude of the original occupants, followed by occupation of the land by the conquering group.

(footnotes omitted).

The club used in war is known as *patu*, and its blade was known as the *rau*, hence the term for conquest, *raupatu*.

... If a group succeeded in claiming land by *raupatu* but did not establish a permanent community presence on that land, then that group cannot later rely on *take raupatu* to justify a connection with the land.

Acts of raupatu could be more nuanced, perhaps shaped by rangatira relationships and the adoption of strategic alliances or even expressions of mana through generosity.

4.210 Meredith goes on to explain how “ringa kaha” and “ahi kā” are critical to securing mana whenua after a raupatu:⁴⁵³

In relation to Ngapuhi’s invasion of Tāmaki and Ngāti Whātua’s retreat and later return with Waikato support, Meredith states “[a]s I mentioned before, it is a general principle of take raupatu, that raupatu alone did not confer mana whenua or the right of authority and control over the land unless it was followed by continuous occupation or ahi kā.”

...

Maintaining claims to land also relied on *ringa kaha* (strength of the arm) – the ability of the victors to defend the land against challenges. This is also referred to by some as a *Take Ātete*. The word *ātete* means to resist. When Ngāti Whātua returned to Tāmaki, in a demonstration of *ringa kaha*, they eventually erected pā to defend themselves at Ōkahu, Karangahape and Mangere while elsewhere in Te Taoū and Ngaoho had pā at Onewa Te To (Waitaheke), Maunganui (Reretuahū) and Tauhinu (Paewhenua).

4.211 Under cross-examination, Meredith says ringa kaha was associated with “the strong arm”.⁴⁵⁴ That was enforced either by an individual’s own force or by having an army. Although there were political relationships and strategic alliances between iwi and hapū, the key was warding off people or defending rights.⁴⁵⁵

⁴⁵² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [57]–[62].

⁴⁵³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [161].

⁴⁵⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 1194.

⁴⁵⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 1194.

4.212 Alluding to the concept of ringa kaha, Gary Hooker (Te Roroa) says that the Battle of Pikoi may not have amounted to raupatu.⁴⁵⁶ The tikanga of raupatu “requires the former possessors to be driven out in their entirety”.⁴⁵⁷

4.213 Others also emphasise the importance of ahi kā following a raupatu in order to secure mana whenua:

- Maui Weepu (Ngāi Tahu) claims that the Tuhuru hapū have “mana and tino rangatiratanga over the land and sea fishery of Tai Poutini from Kahurangi Point in the North to Piopiotahi in the South because it attaches to their rangatira Tuhuru and his chiefs including Te Koeti Turanga by right of conquest and subsequent occupation”.⁴⁵⁸ He says:⁴⁵⁹

Tuhuru’s rights on Tai Poutini are well established through the principle of Ahi Kā. At Arahura, the hapū’s papatipu marae, the fires have been kept burning by the hapū since Tuhur’s conquest.

- Margaret Kawharu (Ngāti Whātua Ōrākei), in response to assertions that groups, including Te Ākitai and Ngāi Tai ki Tāmaki, have mana whenua in the Tāmaki Makaurau isthmus through pre-defeat connections to the whenua, says:⁴⁶⁰

I accept that Waiohua people did not ‘disappear’ from the isthmus. However, mana whenua is not only about whether individuals from the group remain. It is about political preeminence, particularly via the recognition of the personal mana of key people. The fact is that a Te Taou/Ngāti Whātua force killed the preeminent Waiohua leader Kiwi Tāmaki and took over his main stronghold. Te Taou leader Wahaakiaki took on the name Kiwi Tāmaki after that battle. Peace was made subsequently through marriages of Te Taou men with Waiohua women. I accept that that preeminence was challenged and fought for time to time. But I do not consider this affects Ngāti Whātua Ōrākei’s mana whenua as at 1840.

- Charles Tawhiao (Ngāi Te Rangi) discusses the tikanga around raupatu – the basic understanding being that “if you took the land and you held it, it was yours” regardless of regional variations.⁴⁶¹ In cross-examination, Tawhiao confirms that:⁴⁶²

... by virtue of the conquest of that land, the next thing that occurred was occupation by the descendants, and the continued occupation, the ability to hold the territory and dominance established ahi kā roa. Subsequent to the initial occupation, the take to the land passes down through the generations. He also confirmed it was a combination of these particular things which gives rise to Ngāi Te Rangi having mana whenua in Tauranga Moana. Take raupatu gives them status on the land. Ahi kā roa is what maintains it.

⁴⁵⁶ *Beadle v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Gary Hooker (undated) at [37].

⁴⁵⁷ *Beadle v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Gary Hooker (undated) at [37].

⁴⁵⁸ The Fisheries Settlement Report, Wai 307, #A10 Maui Weepu at [1].

⁴⁵⁹ The Fisheries Settlement Report, Wai 307, #A10 Maui Weepu at [4].

⁴⁶⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu in reply (4 December 2020) at [45].

⁴⁶¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Charles Wahia Tawhiao (4 December 2020) at [38].

⁴⁶² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 1240.

- Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) explains that Raukawa’s presence in their rohe came about by take raupatu:⁴⁶³

Raukawa’s grandsons – Whāita and Wairangi – led tauā into this area and eventually conquered the Ngāti Kahupungapunga

... For the hapless Ngāti Kahupungapunga, as a result of the fighting they were decimated to the point that the iwi no longer exist.

Raukawa have maintained ahikāroa here ever since.

- Maui Solomon (Moriōri) explains that the Moriōri “were a unique people who had set aside warfare and established their own peaceful form of settlement in Rēkohu”.⁴⁶⁴ This is the reason why they didn’t fight back when Ngāti Tama and Ngāti Mutunga invaded Rēkohu in 1835, as it “would be a violation of their custom of peace declared centuries earlier by the paramount chief Nunuku Whenua”.⁴⁶⁵ Regardless of these iwi taking possession of the island, Solomon maintains Moriōri mana whenua was never extinguished.⁴⁶⁶ It is implied because they still exist today and maintained their presence on the islands.⁴⁶⁷

4.214 There is not universal agreement on raupatu. David Wilson (Te Ākitai Waiohua, Ngāti Te Ata) says in cross-examination that “Te Ākitai Waiohua does not agree with this term “raupatu”... Even though Kiwi Tāmaki died, he was succeeded by another, and that was Rangimatoru.”⁴⁶⁸ Conquest is therefore not always clear cut and does not entirely displace the rights and interests of the occupying group. This may be particularly complicated where there is intermarriage.

4.215 Not all attempted raupatu are converted. Paraone Gloyne (Raukawa ki Wharepūhanga) says, “Raukawa originally went down into Kahungunu and tried to get that land by way of conquest in a tikanga Māori way. But we got our arses’ kicked and had to leave that there – so ka pai Ngāti Kahungunu.”⁴⁶⁹

4.216 Mana whenua continues to be defined and redefined by battle. Margaret Mutu (Ngāti Kahu) explains that mana whenua was continuously established by battle, referring to a battle fought between Poroa leading Te Rarawa and Te Houtaewa leading Te Aupōuri, and other battles that establish boundaries in Te Oneroa a Tohe.⁴⁷⁰

Take tuku

4.217 According to Tāmāti Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe):⁴⁷¹

⁴⁶³ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Brief of evidence of Nigel Te Hiko at [2.13]–[2.15].

⁴⁶⁴ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [4.2].

⁴⁶⁵ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [4.3].

⁴⁶⁶ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [4.3].

⁴⁶⁷ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [4.2]–[4.3].

⁴⁶⁸ *Ngāti Whātua Ōrākei Trust v Attorney General* [2022] NZHC 843, Notes of Evidence at 2944.

⁴⁶⁹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Paraone Gloyne at [3.11].

⁴⁷⁰ Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 9.

⁴⁷¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmāti Kruger (2 June 2020) at [121]–[124] and [126].

Tuku means an offer to share, or being presented with the opportunity to share, or bestowing a gift on someone.

When land is concerned, tikanga Māori provides that a gift of land may establish the basis of a group's responsibilities and connection to the land (*take tuku*), while the act of the gifting itself is a *tuku whenua*.

A *tuku whenua* is not a transaction. It is a result of a decision made by a Rangatira on behalf of his kin group for the purposes of establishing or maintaining *whanaungatanga* with another group in a manner that is informed by *iho matua*.

In the context of a *tuku*, the values of *utu* and *ea* are particularly important. A *tuku* is not complete the moment the land is gifted, nor are the gifting group's responsibilities to the land extinguished either. *Utu* – or in this context proportionate compensation – is required to restore the balance between the gifting group and the receipting group in order to return to a state of *ea*.

It is therefore important to consider match of a *tuku*, which is *tango*. *Tango* means to redeem, accept, derive a gain or an advantage, or to meet one's obligations. *Tango* reveals the intentions or aspirations of the receiving party, which allows both parties to assess whether the *utu* and *tango* achieves its moral objective, which could be *ea* depending on the context.

Of course, reaching *ea* does not extinguish the gifting group's connection with the land. That connection lasts forever, with both groups retaining the ability to exercise certain responsibilities to the land, to the enablers of *mana* and the facilitators of the *whakapapa* connection.

By considering a *tuku* from both the giver and receiver's perspective, it demonstrates the underlying reciprocity that is inherent in *tuku*. Again, it is difficult to use the English word 'gift' which is inadequate.

- 4.218 Margaret Mutu (Ngāti Kahu) describes *tuku whenua* as “a very old custom established long before Māori came to New Zealand, [and] can be found throughout the Pacific”.⁴⁷² She refers to Wilkie Rasmussen's discussion of a custom called *henua soo* or *soo henua* in Tongarevan customs (in the Cook Islands) that shares parallels with Muriwhenua/Māori land customs, specifically *mana whenua*.⁴⁷³ Mutu also says that this system is not peculiar to the Pacific and that the system of land tenure, including the allocation of use rights, practised in Switzerland is strikingly similar to Māori systems.⁴⁷⁴

- 4.219 Mutu further explains:⁴⁷⁵

... when a Māori gave over land, it was the land of his ancestors. Giving it over to others did not change the fact that his ancestors had lived there, been buried there, probably fought there and that many generations of the history and traditions of the *hapū* were inextricably woven into that land. To abandon all ties to these things was tantamount to abandoning [sic] one's ancestors and therefore one's *mana* and identity which had come from them. Certainly, as long as the *hapū* continued to live in the vicinity or visit the land, the ties would not be broken.

⁴⁷² Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 13.

⁴⁷³ Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 13–14, citing Rasmussen 1991:8–10.

⁴⁷⁴ Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 13, fn 14.

⁴⁷⁵ Muriwhenua Land Report, Wai 45, #H10 Margaret Mutu at 14.

4.220 Ross Gregory (Te Rārawa, Te Aupōuri, Ngāti Kahu, Ngāpuhi, Ngāi Tahu) explains:⁴⁷⁶

Aroha was the most important thing. If that aroha was abused, the abuser put the *tuku* at risk. An acute sense of judgement and considerable trust was required on the part of the *kaituku*. He had to decide whether it was appropriate for an individual or a group to be bound into the community. The potential recipient would have been subjected to a spiritual challenge by the *kaituku* in order to ensure that his *wairua* was right. There was certainly no written contract or anything like that.

...

In all cases, the link had to be maintained. The *tuku* had to be remembered and passed on in oral tradition within the *whānau*, *hapū* or *iwi*. If a challenge was made the descendants having knowledge of the tradition, could respond. The *tuku* became bound up in the oral tradition of the people. To maintain the *tuku* you need to know about it.⁴⁷⁷

4.221 Margaret Mutu (Ngāti Kahu) says that, if there was a breach of *tuku* whenua, there were responses such as reducing the initial allocation of the *tuku* whenua.⁴⁷⁸4.222 A number people emphasise that the original donors of the land retain *mana* whenua and particular rights:

- Paul Meredith (Ngāti Maniapoto) says, “*Tuku* whenua is a notion of land allocation which permits occupation and use rights while the *mana* whenua of the donor tribe continues over the land. The basis of a connection of land by *tuku* is *take* *tuku*.”⁴⁷⁹
- Margaret Mutu (Ngāti Kahu) explains, “There was also a clear understanding that when these *Pākehā* and their descendants no longer needed to use the land, it would return to the tribe. There was nothing in the discussions leading to the transactions which gave these *Pākehā* the right to sell the land. The land was given only for the use of a particular *Pākehā* and his descendants and the *mana* whenua remained always with the tribe.”⁴⁸⁰
- Ngarimu Blair (Ngāti Whātua Ōrākei) explains:⁴⁸¹

Tuku is a *tikanga* Māori concept whereby an area of land is donated or gifted by the chief/*rangatira* of the *iwi* holding *mana* whenua to another party. The purpose of a *tuku* was usually to establish a new relationship, maintain a previous relationship, secure an alliance or, less often, to repay a debt. Distinct from the *Pākehā* [sic] concept of a gift, the party making the *tuku* retains interests in and responsibilities to the land. According to *tikanga* Māori, there is no such thing as permanent alienation of land unless of course it taken by *Take Raupatu* military conquest (and even then, continuous occupation must follow a *raupatu* in order to establish a connection with the land of any meaningful value).

...

⁴⁷⁶ Muriwhenua Land Report, Wai 45, #F28 Ross Gregory at 5.

⁴⁷⁷ Muriwhenua Land Report, Wai 45, #F28 Ross Gregory at 7.

⁴⁷⁸ Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 12.

⁴⁷⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [108].

⁴⁸⁰ Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 7.

⁴⁸¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [71] and [374.3].

Tuku whenua is the act of allocating a piece of land to another iwi or group (including the Crown, or non-Māori). The tuku is a symbol of mana whenua itself – only the group with mana whenua could carry out such an act. Tuku does not sever mana whenua. Tuku could never operate that way, because the act of tuku is a symbol of mana whenua (or rangatiratanga).

- Henare Rakiihia Tau (Ngāi Tahu, Ngāti Māmoë, Waitaha) describes how tuku whenua worked in their rohe and that it was always subject to Ngāi Tahu rangatiratanga:⁴⁸²

... it was normal in traditional times to make land available for the use, even the exclusive use, of other people coming to live with us. They had to be given enough land for their house and for gardens to feed themselves. It was a human requirement. That was our way, to make available to our friends and to visitors amongst us enough land for them to live on, and mahinga kai areas for their sustenance to make food for their families, and to live in peace amongst us. This would be described ... as a tuku manuhiri, or a tuku whenua right. It was not a complete “ownership right”, or a total property alienation as is spoken of today.

Rangatiratanga was of most importance. What was given, could be taken away again. That risk required the people enjoying those tuku whenua or tuku moana rights given to them to observe and respect our tribal Ngāi Tahu mana, or else risk the consequences.

- Ross Gregory (Te Rārawa, Te Aupōuri, Ngāti Kahu, Ngāpuhi, Ngāi Tahu) explains, “Poroa’s tuku was never a relinquishment of Te Rarawa mana over Ahipara. In fact it confirmed our mana. How could we have tuku’d the land if we did not have the mana to do so? We retain that mana today.”⁴⁸³
- Rima Eruera⁴⁸⁴ (Muriwhenua, Te Rārawa, Ngāti Kuri) says, “When Panakareao tuku’d the land at Te Ahu to the missionaries, he was allowing them to live on it as part of his whānau and hapū, inviting them to share his life and community.”⁴⁸⁵ Rima also notes that evidence of this is that Panakareao returned to Te Ahu to die.⁴⁸⁶ He says:⁴⁸⁷

Having taken ill at Oruru, it was his wish to come back to Te Ahu to die. He would not have done that if he did not firmly believe that he still held the mana at Te Ahu. No chief would choose to die on land over which he had no mana.

- Tuku whenua is often signified by a parallel koha of some kind. According to Margaret Mutu (Ngāti Kahu), “It was common practice for a *tuku whenua* to be marked in some way such as the passing over of a *mana tunga* (e.g. a cloak or *mere*) or composition of *waiata* or *whakataukī*. Such items were termed *tohu*, symbols or signs of the transactions. They symbolised not only the transaction but also the binding of the two parties in a long-term agreement. Ultimately, maybe several generations later, both the *tohu* and the land would be returned to its original owners. At no stage in this process was the *mana whenua* of the allocating chief threatened.”⁴⁸⁸

⁴⁸² *Ngai Tahu Māori Trust Board v Attorney-General* CP 559/87, Affidavit of Henare Rakiihia Tau (24 November 1989) at [34]–[35].

⁴⁸³ Muriwhenua Land Report, Wai 45, #F28 Ross Gregory at 4.

⁴⁸⁴ Also known as Rima Edwards.

⁴⁸⁵ Muriwhenua Land Report, Wai 45, #F23 Rima Eruera at 9.

⁴⁸⁶ Muriwhenua Land Report, Wai 45, #F23 Rima Eruera at 16.

⁴⁸⁷ Muriwhenua Land Report, Wai 45, #F23 Rima Eruera at 16.

⁴⁸⁸ Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 8.

4.223 Some examples of *tuku whenua*:

- Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) gives an example from Tūhoe, where the daughter of Sir Apirana Ngata married a man from Tūhoe. When the man passed away, *tikanga* saw the wife would inherit the *whenua*. However, she exercised *tuku* and gave the land back to the Tūhoe *whānau*.⁴⁸⁹ This, in Kruger’s opinion, demonstrated the “reciprocity inherent between two *iwi* with responsibilities to the same piece of land is never forgotten”.⁴⁹⁰
- Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) in his evidence tells the story of Whakaari being given to Te Whānau a Te Ehutu as “*utu*” or compensation for traveling to Whakatāne at the behest of Purahokino, a Ngāti Awa chief, to avenge the death of his beloved son Te Whakapākina.⁴⁹¹ Gage explains, “Te Whakapākina had been killed by a neighboring faction of that tribe. In situations where intra-tribal killing took place, it was customary (and strategic) to invite a third party, a party not too closely related to intercede as part of “*utu*” process. This avoided the spiralling out of control of killings if the broader tribal network became involved in the *utu*.”⁴⁹²
- Te Kahautu Maxwell (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tai, Ngāti Awa, Tūhoe, Ngāti Porou, Ngāti Maniapoto) provides an example of *tuku whenua* in Ngāti Pūkenga:⁴⁹³

An example is Ngāti Pūkenga, renowned as warriors, they were called upon often by other *iwi* to assist in battle. Hence, they were gifted land at Manaia, Hauraki by Ngāti Maru and land at Ngāpeke, Tauranga Moana by Ngāti He. Ngāti Porou ki Harataunga in Hauraki were gifted land by Paora Te Putu of Ngāti Tamaterā for assisting them in battle against Ngā Puhi.

- Ngarimu Blair (Ngāti Whātua Ōrākei) explains that the *tuku* Apihai Te Kawau made to the Crown and Governor Hobson in 1840 “was an exercise of *rangatiratanga* by Apihai on behalf of Ngāti Whātua Ōrākei”.⁴⁹⁴ Blair also explains a “*tuku Rangatira*” to Waikato-Tainui:⁴⁹⁵

Ngāti Whātua Ōrākei also gave land within its *rohe* to Waikato *iwi* such as Ngāti Mahuta and Ngāti Tamoho [sic] in 1837. Blocks of land at Three Kings, Mount Hobson and Pukapuka were given to repay them for their services during the time Ngāti Whātua Ōrākei had withdrawn from the isthmus and received shelter on their lands. These lands were ‘*tuku rangatira*’ (an offering of land between high-ranking *iwi* leaders) and while that kind of *tuku* gave them rights of use and occupation, it was still subject to Ngāti Whātua Ōrākei’s *mana whenua* and *rangatiratanga*.

⁴⁸⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [129]–[130].

⁴⁹⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [130]–[130].

⁴⁹¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [142]–[143].

⁴⁹² *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [142]–[143].

⁴⁹³ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Te Kahautu Maxwell (7 August 2020) at [129].

⁴⁹⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [70].

⁴⁹⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [60]–[61] and [136.4].

...

Ngāti Whātua Ōrākei rangatira often made chiefly gifts – or qualified land transfers – in the nature of *tuku rangatira*, to create, secure and govern political relationships. *Tuku rangatira* meant “the mana or title being retained by the donor rangatira.”

- Margaret Mutu (Ngāti Kahu), talking about the same *tuku* from Apihai Te Kawau to the Crown and Governor Hobson, says, “Our tribal lands were willingly given over under the custom of *tuku whenua* for the use of Pākehā, in particular, the missionaries, but on the clear understanding that such a transaction was carried out primarily to benefit the tribe and to bind the Pākehā and his descendants into the tribes’ structures.”⁴⁹⁶
- Haami Te Whaiti (Ngāti Kahungunu ki Wairarapa, Ngāi Tumapuhia) says *tuku* between Ngāti Kahungunu, Rangitāne and Ngāi Tara “paved the way for Ngāti Kahungunu to reside and eventually become dominant” in the Wairarapa rohe.⁴⁹⁷ He explains the *tūpuna* that arrived later. Tūmapuhia, Māhanga and Te Rangitawhanga, were given land through *tuku* because of their shared *whakapapa* (Kahungunu, Rangitāne and other local *iwi*). He clarifies that land wasn’t the only subject of *tuku*. In one case, there was “an exchange of *waka*” to “enable those Rangitāne who wished to leave the district to cross to Te Waipounamu”.⁴⁹⁸
- Margaret Mutu (Ngāti Kahu) explains how she attended a hui in 1991 in Karikari, and Patana Matiu, as *kaumātua* (elder) and holder of the *mana whenua* for a particular block of land, was asked by his niece for some land for a community hall. He responded “Ka *tuku* au i te *whenua* ki a koe mō tō *whare*. Ka *mutu* tō *mahi* i taua *whenua*, me *whakahoki* mai ki *ahau*”, which translates to “I will give or allocate the land to you for your building. When you finish your business on the land, return it (the land) to me.”⁴⁹⁹
- Walter Ngamane (Ngāti Maru, Ngāti Whanaunga, Ngāti Tamaterā, Ngāti Pāoa, Ngāi Te Rangi, Ngāti Hinerangi) for Marutūāhu describes *whanaungatanga*, *whakapapa* and *mana* as “fundamental principles that underlie *tikanga*”.⁵⁰⁰ He says a good example of these principles in practice is *tuku whenua*, which is “an important part of the history of Ngāti Maru and Marutūāhu”.⁵⁰¹ He gives the example of Te Tawera of Ngāti Pūkenga who received a *tuku* from Ngāti Maru. This *tuku* was due to Te Tawera’s hospitality and their military alliance in the early decades of the 1800s.⁵⁰² He gives another example of a conditional *tuku*, where Taraia allowed Te Whanake land at Ongare to grow crops and only grow crops. However, after a while, they began establishing *kāinga* at Ongare. Taraia sent a messenger with a warning, but it

⁴⁹⁶ Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 7.

⁴⁹⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Brief of evidence in reply Haami Te Whaiti at [6].

⁴⁹⁸ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Brief of evidence in reply Haami Te Whaiti at [9].

⁴⁹⁹ Muriwhenua Land Report, Wai 45, #F12 Margaret Mutu, Joan Metge and Maurice Alemann at 11.

⁵⁰⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane evidence (13 October 2020) at [19].

⁵⁰¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane evidence (13 October 2020) at [25].

⁵⁰² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane evidence (13 October 2020) at [25]–[31].

was ignored. Another messenger was sent, this time with eels and a cartridge for Te Whanake to choose one or the other. Te Whanake chose the cartridge, which ended in war and his eventual defeat where Taraia and other iwi including Ngāti Tamaterā feasted upon Te Whanake's people.⁵⁰³

Take taunaha or tapatapa whenua

4.224 Roger Pikia (Ngāti Tahu, Ngāti Whāoa, Ngāti Tūwharetoa, Raukawa, Waikato-Tainui, Ngāti Maniapoto, Ngāti Hikairo) explains that “take taunaha applies to vacant or unoccupied land”.⁵⁰⁴

4.225 Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) explains take taunaha as “the connection that comes from being the ones that name an area or geographic features. This is an important take as it brings visibility to the connections to that area. Places were often named to recount important events or to recognise the connection of a key tupuna to that area.”⁵⁰⁵ He explains, “As others go on to use those names it becomes a way of recognising the mana of the tangata whenua by referencing the tangata whenua connections.”⁵⁰⁶ Te Hiko gives an example:⁵⁰⁷

The name of the wider area in which the Pouākani block is situated is referred to as Te Pae o Raukawa. This name dates back to the time of the eponymous ancestress Māhina-a-rangi and her journey to her husband's lands.

The name ‘Pouākani’ itself is a relatively recent one ... this name was ascribed to a pou raised in the area that delineated the eastern boundary of the Rohe Pōtae.

... the name is one that links the various iwi in the area and references the events of the Waikato wars and the growth of the Kīngitanga. These were pivotal events in Raukawa history.

According to my elders, the river was named Mangakino by Rakatāura. They said that as he crossed the river he felt a sense of foreboding. This, they said he took as a tohu which he named.

4.226 Morehu Wilson (Ngāti Paoa, Ngāti Whanaunga, Ngāti Maru, Ngāti Tamaterā) explains how the naming of places can be evidence of a relationship to that whenua. “The protocol of naming locations and land features within a Māori context is steeped in customary ritual, and provides tribal connection to those places. Names of ancestors crewing both ancestral vessels have been given to various locations within Tāmaki and the wider district.”⁵⁰⁸

⁵⁰³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane evidence (13 October 2020) at [25]–[31].

⁵⁰⁴ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Rebuttal Evidence of Roger Pikia on behalf of Ngāti Tahu-Ngāti Whāoa Rūnanga Trust (23 June 2017).

⁵⁰⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Third Affidavit of Nigel Te Hiko at [5.1].

⁵⁰⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Third Affidavit of Nigel Te Hiko at [5.2].

⁵⁰⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Third Affidavit of Nigel Te Hiko at [5.3], [5.5] and [5.8].

⁵⁰⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Morehu Anthony Dean Wilson (13 October 2020) at [17].

- 4.227 Tā Hirini Moko Mead (Ngāti Awa), Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) and Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) discuss the travels of the Mataatua waka, which includes an account of the origin of the name Whakatāne.⁵⁰⁹

The Mataatua waka traversed many parts of the North island before coming to the Bay of Plenty. The waka made landfall at Whangaparaoa, then Tauranga, then Te Awa o Te Atua (Matata) and then Kakahoroa. On that journey, some of the children of Muriwai died at sea near the Coromandel peninsular. A rāhui was placed over the Bay of Plenty from Moehau to Tihirau. This is commemorated in the Mataatua definition of its boundaries “Mai ngā Kurī a Wharei ki Tihirau”. Wharei was an occupant on the Mataatua waka.

In its journey, the Mataatua travelled from Tauranga to Whakatāne naming places along the way such as Maketu, Karewa, Waihi, Pukehina, Te Kaokaoroa, Kaupaea, Rurima, Moutoki and Koohi Point. The various accounts of the arrival of the Mataatua have it visiting many places around Aotearoa and like the other waka arrivals they named various places. For instance, Muriwai and Owairaka in Tamaki Makaurau are named after two of our famous tupuna.

The waka travelled past Whakaari and veered towards Moutohora. From there the occupants noticed Kakahoroa as it was known then.

At Kakahoroa, the waka was paddled up the Whakatāne River to Te Punga o Mataatua. It was here that Wairaka (in the Ngāti Awa tradition) saved the Mataatua waka from drifting away from its mooring. In saving the waka she uttered the famous saying “E, kia Whakatāne ake au i ahau!” (Let me act like a man). From that time, the area became known as Whakatāne.

The mauri of the Mataatua is buried at Whakatāne and was signified by Te Manuka Tutaki (the lone standing Manuka tree). The anchor was Te Toka a Taiao which is where the Wairere stream joins the Whakatāne river.

- 4.228 Te Ringahuaia Hata (Ngāti Patumoana) describes an example of connection to place through naming: “Ngāti Patumoana descended from Ruamoko, the younger brother of Tahu, the sons of Hau o Te Rangi. Ruamoko and Tahu (whom Ngāti Ngahere derive from) descend from Tārawa, who was the earliest recognized ancestor of Whakatōhea. Tārawa swam to Aotearoa and when he cast up on the beach the people living at the pā thought he was a rātā log (pae rātā), hence the name Pāerātā when Tārawa came ashore. Another kōrero passed down is that Tārawa came to Aotearoa on the waka Te Arautauta accompanied by two pet fish. He released his pet fish in a spring and the area became known as Ōpōtiki-Mai-Tawhiti, the pets from afar. This is also how Ōpōtiki township got its name.”⁵¹⁰
- 4.229 Hetaraka Biddle (Ngāi Tamahaua hapū) discusses naming of the Ōpēpē awa. According to Ngāi Tamahaua tradition, the name relates to the Maruiwi people who are considered the first inhabitants of the area and who Ngāi Tamahaua whakapapa to. “The Maruiwi women were small in stature and the Ōpēpē stream was a place they would go to deliver their babies. Due to their small frames the babies often died there at the awa. That is why

⁵⁰⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [50]–[54].

⁵¹⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuaia Hata (29 January 2020) at [23].

the name Ōpēpē was given.”⁵¹¹ A waiata tangi was composed to record the significance of the awa and its kōrero:⁵¹²

Me pēnei ana
Te mate i a koe
Me he mate marama
Ka ora mai e
E hika e
Kua pani o tamariki
Kua riro koe hei whakaruruhau e
Whakatutu ai
Nga kapua i opepe
E puanga nei ka rere i te hau e

- 4.230 Paul Meredith (Ngāti Maniapoto) sees take taunaha or tapawhenua as being illustrative and part of the expression of ahi kā:⁵¹³

Hapū and iwi demonstrate their ahi kā and their connection to land through their association with, and knowledge of, the landscape, flora, fauna and tohu or sites of cultural and historical significance. Related to ahi kā, the tikanga or taunaha or tapatapa whenua was claiming the land by naming it. Every hill, valley, stream and forest had been named by Māori and those names have meaning and importance to associated hapū and iwi.

Ahi kā

- 4.231 Ngarimu Blair (Ngāti Whātua Ōrākei) explains the concept of ahi kā:⁵¹⁴

Ahi kā means to live on and tend to land, in order to sustain a way of life for an entire iwi or hapū. Considered together, all of the usual signs of a kinship based community are strong signals of ahi kā: fires for cooking and heating, pā, marae, urupā, kāinga, mahinga kai, fishing sites, and natural landscapes named and respected by the group with mana whenua. The key to ahi kā is a continuous and permanent presence in a particular area.

- 4.232 Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) describes ahikāroa as providing “warmth, light and the opportunity for cooked food”.⁵¹⁵ He explains:⁵¹⁶

⁵¹¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [72] and [73]; Affidavit of Kayreen Tapuke (20 February 2020) at [24].

⁵¹² *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [75]; Affidavit of Kayreen Tapuke (20 February 2020) at [26]. See also at [97] of this Report.

⁵¹³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [76].

⁵¹⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [374.2].

⁵¹⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Affidavit of Nigel Huirama Te Hiko affirmed 3 October 2018 at [6.1].

⁵¹⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 Affidavit of Nigel Huirama Te Hiko affirmed 3 October 2018 at [6.1]–[6.20].

... lighting fires was both time and labour intensive. In order to save on both, throughout night and day, villagers would constantly stoke a centrally located fire.

The constant tending to the village fire, gave rise to the metaphoric expression “keeping the fires burning” or ahikāroa.

... ahikāroa is a traditional concept that is rooted in tikanga Māori. It comes from a presence on the land that has been established by the take whenua that are also rooted in tikanga Māori.

Ahikāroa is not an immediate thing. It develops over generations, and is the maintenance of the fires over time rather than the lighting of the fires.

Raukawa assert that our fires were never extinguished and have maintained a presence in Pouakani (names several hapū and marae etc) since the time of Rakatāura, Kahukeke and Tia.

4.233 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) notes:⁵¹⁷

Under our tikanga, we belong to our customary land and sea through a combination of our whakapapa to the land, the occupation of our ancestors keeping the home fires burning over many centuries (or ahi kā roa, literally the long burning fires), and conquest over other tribes in battle. That is, you obtain and maintain your customary title through whakapapa and occupation, and before colonisation you needed to defend your territorial boundary through battle as well.

Maintaining your ahi kā roa mean that you are there permanently, and you maintain your customary title. So long as the home fires are kept burning at your marae, whether it's big or little hui, or tangihanga or whatever, there is somewhere for people to come back to.

4.234 The importance of ahi kā is a central tenet of mana whenua:

- Tā Pou Temara (Tūhoe) says. “Ahi kā is a metaphor for a iwi and a culture that is alive and vibrant on their land ... The mana to have discussions and to guide decisions over tribal matters is through their relationship and ongoing connection to land. Land gives a Māori mana to karanga and to whaikōrero.”⁵¹⁸
- Tā Tipene O'Regan (Ngāi Tahu) says that “it could be possible to obtain a tikaka-based connection with whenua, or a right of presence, over the effluxion of time through the principle of ahikāroa. Even outright conquest does not, of itself, convey mana whenua unless it is followed by ongoing occupation.”⁵¹⁹
- Charles Tawhiao (Ngāi Te Rangi) references the relationship between Ngāi Te Rangi and Tauranga Moana as “based in our history as an iwi and in our exercise of cultural authority in Tauranga Moana, which has continued unbroken since then ... It is not enough to simply claim mana whenua over a place. The claim must be kept alive just as the long burning fires of ahi kā must be kept alive.”⁵²⁰
- Paul Meredith (Ngāti Maniapoto) points out that to “maintain rights and interests in land, individuals and groups needed to show continuous occupation of an area,

⁵¹⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (3 August 2020) at [3.2] and [3.3].

⁵¹⁸ *Re Edwards* [2021] NZHC 1025 Sworn affidavit of Tā Pou Temara dated 24 January 2022 at [30]–[31].

⁵¹⁹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affirmation of Sir Tipene Gerard O'Regan (17 September 2020) at [38].

⁵²⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Charles Wahia Tawhiao (2 June 2020) at [35].

generally referred to as *ahi kā* (lit fire) or *ahi kā roa* (long-burning fire).⁵²¹ Meredith draws on the whakataukī “Ka wera hoki i te ahi, e mana ana ano – While the fire burns the mana is effective.”⁵²² In order to maintain rights and claims to the land, hapū and iwi need to show continuous occupation in an area.⁵²³

- Wira Gardiner (Ngāti Pikiao, Ngāti Awa, Te Whakatohea, Te Whānau-ā-Apanui) explains that mana whenua is established through an “unbroken connection to the land”. He says, “This notion, known as ahi kaa (burning fires) signals to both internal and external parties who has cultural mandate to determine the affairs of hapū or iwi.”⁵²⁴
- Tāmāti Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) explains that maintaining ahikāroa is critical to establishing mana whenua. He says, “your take is empty without ahi kā roa. So my example would be that if there was histories between yourself and myself and historically you could refer to 20 battles where you won all 20, defeated me, but then after each battle you returned to Rūātoki and never, ever stayed here, the victories of your battles does not equate then to mana whenua.”⁵²⁵
- Maui Solomon (Moriōri) says that Moriōri preserved their mana whenua over the entire of Rēkohu to present day through continuous and unbroken ahi kaa.⁵²⁶ Moriōri who were born in Rēkohu keep the home fires burning on the island. They are the “Pito o te Whenua – those whose lifeblood is forever connected to the whenua of Rēkohu”. Moriōri who were not born on Rēkohu have the right to reclaim their ahi kaa and their cultural links with their whenua and tīpuna by virtue of their birthright and hokopapa links back to Rēkohu.⁵²⁷
- Te Kurataiaho Kapea (Ngāti Whātua Ōrākei, Te Uri o Hau, Ngāti Rongo) explains ahi kā as:⁵²⁸

Ko tēnei mea te ahi kā roa, ko tō noho mau roa ki ō whenua. Ko tō whakatupu kai ki ō whenua. Ko tō taokai ki ō whenua. Ko tō whakatū whare ki ō whenua. Ko tō whakatupu tamariki, whakatupu mokopuna ki ō whenua. Ko tō tanu tūpāpakuki ō whenua.

Ahi kā roa is your continuous occupation of land. It is your growing of food on your lands. It is your erecting houses on your lands. It is your raising of children and grandchildren on your lands. It is your burying of loved ones on your lands.

⁵²¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [72].

⁵²² Te Pīpīwharaua: He kupu Whakamarama No. 130, January 1909, at 6; See also Mead and Grove *Ngā Pēpeha a Ngā Tīpuna* (Victoria University Press, Wellington) at 197.

⁵²³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [35].

⁵²⁴ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Reply Evidence by Harawira Tiri Gardiner (17 February 2017) at [3.1].

⁵²⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 1831.

⁵²⁶ The Fisheries Settlement Report, Wai 307, #B23 Maui Solomon at [6.6].

⁵²⁷ The Fisheries Settlement Report, Wai 307, #B23 Maui Solomon at [7.18].

⁵²⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of Evidence of Te Kurataiaho Lonoholoikahiki Kapea (te reo Māori version) (2 June 2020) at [56]; and *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of Evidence of Te Kurataiaho Lonoholoikahiki Kapea (English version) (2 June 2020) at [56].

- Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) says, “Once interests have been established through the various take whenua then a presence on the land needs to be *maintained* – or ahikāroa maintained – in order to sustain mana o te whenua.”⁵²⁹
- Hauata Palmer (Ngāi Te Rangi) explains:⁵³⁰

Those that are said to have ahi kā, are those that have mana over an area and have maintained continuous occupation of that area. Some aspects that point towards ahi kā being in existence are marae, urupa, whakapapa of those living on the land and kainga.

...

The establishment of mana over areas was based on the mana of a rangatira, and their influence extended across the land and the moana based on markers for example like trees, rocks, hills, rivers, and anything that could easily define a boundary. Furthermore, however long that hapū occupied and defended that land or part of the moana, it pointed to that area belonging to them.
- Paul and Natalie Karaitiana (Ngāi Tahu) say, “in our view ahi kā is about continued representation and practical application of rights handed down to whānau from our tupuna. The tikanga is applied for the benefit of ngā whānau over *many* generations.”⁵³¹
- Marie Moses (Ngāti Pāhauwera) describes ahi kā as “the people that are at the marae and in the area all of the time. They are the heart of the marae and the holders of knowledge, practitioners of the Tikanga and Kaitiakitanga.”⁵³²

4.235 There are a number of ways to illustrate the exercise of ahi kā roa:

- Professor Jacinta Ruru (Raukawa, Ngāti Ranginui) and Mihiata Pirini (Ngāti Tūwharetoa, Whakatōhea) say, “Evidence of take ahikāroa within a hapū or iwi’s boundaries could be shown by simple acts of appropriation for example, the cultivation of small areas of ground. It could also be reinforced by external factors such as recognition by neighbouring hapū or iwi as an important part of the validating process.”⁵³³
- Ngarimu Blair (Ngāti Whātua Ōrākei) claims Ngāti Whātua Ōrākei holds mana whenua within its rohe on the following bases: take raupatu (taking the land through military conquest); take tūpuna or whakapapa; and ahi kā.⁵³⁴ He says there are a variety of things such as cultivating practices that evidence one’s *mana* whenua. “I will ... describe the rohe of Ngāti Whātua Ōrākei by reference to geographical sites of significance that define our rohe, as well as the customary practices such as food cultivating, fishing and seasonal migration. In addition to the mere presence of people

⁵²⁹ The Wairarapa ki Tararua district inquiry, Wai 863, #J23 Nigel Te Hiko at [2.2].

⁵³⁰ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Evidence of Hauata Palmer (6 July 2020) at [11] and [19].

⁵³¹ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Questionnaire – Customary Marine Title Application by Paul and Natalie (Pohio) Karaitiana (undated) at 13.

⁵³² *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Marie Ketia Moses (19 December 2013) at [6].

⁵³³ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed 14 September 2020 at [61].

⁵³⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [23].

within an area, these activities are an important part of establishing and maintaining mana whenua through ahi kā roa (permanent occupation) through, among other things, the ability to feed, shelter and protect the hapū.”⁵³⁵

- 4.236 Dayle Takitimu (Te Whānau-ā-Apanui) discusses ahi kā in the context of associations with “primary hapū”.⁵³⁶ She explains how she has whakapapa to several hapū in Te Whānau-ā-Apanui:⁵³⁷

Notwithstanding this inter-relationship we are acknowledged, in accordance with our tikanga, as having primary hapū affiliations. These primary associations are normally determined by where you physically reside, your involvement in the hapū politic and your contribution and participation in hapū life. This is what we normally refer to as ahi kā; the place where our fires actively burn. While we might have affiliations to other hapū (or iwi) our fires there may be maintained by other whānau members on our behalf. Hence, I say I have primary affiliation to Te Whānau a Hikarukutai and Te Whānau a Tutawake because that is where the occupation of my whānau has been most active in the past.

- 4.237 Many people described types of ahi that correlate to varied relationships and connections to the land:

- Margaret Kawharu (Ngāti Whātua Ōrākei) says:⁵³⁸

[L]ighting a fire and keeping it alight or warm was and still is the *standard* metaphor for permanency of title. Those chiefs with that type of title, or mana whenua to protect, could allocate use rights and invite non-members of their hapū to have access to their land ... Cultivations, fishing circuits, hunting and gathering grounds, the building of pā for defence purposes, food storage houses or pits are all indicators of ahi kā and likely to cover a wide area for seasonal use. Urupā or burial grounds are probably the most compelling markers for permanent title ... In contrast to ahi mātao which is when the fires have gone out and become cold. Ahi mātaotao, the fires have been permanently extinguished (e.g. people have vacated the land permanently).

- Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) states that “ahi indicates the ‘quality’ of the particular *take*. There are different types of *ahi*: *Ahi kā/ahi kā roa* (a permanent presence, or undisturbed settlement in the traditional manner); *Ahi tahutahu* (occasional or periodic presence); and *Ahi mataotao* (a rare presence, like ‘camping’).”⁵³⁹ Kruger explains:⁵⁴⁰

⁵³⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [21]–[22].

⁵³⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [4].

⁵³⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Dayle Lianne Takitimu (24 February 2020) at [4].

⁵³⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (2 June 2020) at [34].

⁵³⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [105]–[107].

⁵⁴⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [106]–[107].

Ahi kā roa means permanency, and is the presiding principle that will legitimise *mana whenua* and *take whenua*. *Ahi kā roa* is often defined in written sources as the “continuous fires of occupation” or similar. Keeping cooking fires lit continuously was a sign of permanency. The fire that sustains the iwi is a metaphor that indicates warmth, shelter, company, safety and security. While *ahi kā* follows any particular *take*, the *take* in return is given legitimacy through *ahi kā roa*. *Ahi kā roa* must be present to ensure the survival of an iwi, and in that way *ahi kā roa* defines an iwi.

It is possible for an iwi or hapū to have *ahi kā roa* within its *rohe* but also have areas of *ahi mataotao*. It is equally possible that an iwi or hapū with *ahi kā roa* can allow another group into its *rohe*, such that the group can establish an *ahi mataotao* connection.

- Kruger also discusses iwi maintaining influence beyond its area of exclusive interests through marriage, and beyond these areas of influence, iwi can claim shared interests. He says that these interests “would often be located at the true limits of the *rohe* of a particular iwi, where two or more iwi may reciprocally acknowledge each other’s interests”.⁵⁴¹ Kruger calls this “‘*ahi tahutahu*’, where there is an occasional presence but the presence is regular or consistent enough for the group to establish and maintain relationships with particular natural features of the land”.⁵⁴²
- Kruger, under cross-examination, says:⁵⁴³

It’s kind of a default position ... if you haven’t got ahi kā roa then the suggestion is do you now claim ahi tahutahu. In some iwi they call it ahi teretere. The metaphor here is that these fires are ... not burning hot but they are occasional fires ... [I]f your attachment and connection to the land is only occasional, then that must be ... ahi teretere or ahi tahutahu. If it’s not that, then ... it may be ahi mātaotao meaning you do have this connection but it’s rather cold ... [T]he significant thing here is that it’s not called ahi weto, which means the fire is completely extinguished ... Ahi mātaotao just means it’s a cold fire which can with effort over time you can relight it can become ahi kā roa in time.
- Paul Meredith (Ngāti Maniapoto) explains, “Another similar term is ahi tahutahu or intermittent fires that have been maintained by limited occupation of the land. Ahi tere (an unstable fire) is a term used when members of the hapū or iwi have not returned to tribal lands to ‘keep the fires burning’ for three or four generations, their rights being pretty much extinguished. Ahi mataotao is a fire that has been abandoned and is therefore completely extinguished.”⁵⁴⁴

⁵⁴¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [110].

⁵⁴² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [110]–[113].

⁵⁴³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 1878.

⁵⁴⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [78].

- Professor Jacinta Ruru (Raukawa, Ngāti Ranginui) and Mihiata Pirini (Ngāti Tūwharetoa, Whakatōhea) say, “Take ahikāroa needs to be maintained. If a hapū or iwi voluntarily left the land either through marriage or otherwise for another location, or if no ancestral descendants returned to the land for several generation, such land could, depending on the tikanga of the iwi, become ahi matatōa (fires that become cold).”⁵⁴⁵
 - Maui Solomon (Moriōri) notes, “It is possible for takata whenua to lose their ahikā on the basis of mataotao.”⁵⁴⁶
 - Paraone Gloyne (Raukawa ki Wharepūhunga) says that what ahi kā, ahi teretere and ahi matao all have in common is the idea of ahi – the fire.⁵⁴⁷ He says the ahi “might have different strengths at different times but it still needs to be lit ... through the traditional take whenua ... The ahi is a tikanga Māori concept so its origins must be tikanga Māori too.”⁵⁴⁸ Gloyne also holds the view that Crown grants cannot form the basis for ahi kā because they don’t come from tikanga.⁵⁴⁹
- 4.238 Justin Puna (Ngāti Kurumōkihi, Ngāti Marangatūhetāua, Ngāi Taurā, Ngāi Te Ruruku ki Tangoio, Ngāi Tahu) sets out that, if “occupation of an area waned over time, then it would be described as ahi tere, a flickering or unstable fire. If occupation of land became non-existent over a two-three generation period then it would be class as ahi mātao.”⁵⁵⁰
- 4.239 Professor Jacinta Ruru (Raukawa, Ngāti Ranginui) and Mihiata Pirini (Ngāti Tūwharetoa, Whakatōhea) talk about the necessity for ahikāroa to be based on what they call “entry points” – these being take kitenga (right of prior discovery), take raupatu (right of conquest) and take tuku (right of gift). They say:⁵⁵¹

Ahikāroa needs to build from one of the three broad entry points, and over time will lead into take tūpuna – an ancestral right.

... ahikāroa alone would not establish a claim to mana whenua – there must be some element of one of the three entry point take to exist for a group to claim mana whenua in accordance with tikanga Māori. Otherwise, Pākehā who have been on an area of land for an extended period of time could claim mana whenua.

...

The acquisition of mana whenua over the long term must be supported by take tūpuna and must be maintained by take ahikāroa.

⁵⁴⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed 14 September 2020 at [62].

⁵⁴⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affirmation of Sir Tipene Gerard O'Regan (17 September 2020) at [40].

⁵⁴⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 843, Affidavit of Paraone Gloyne at [5.13].

⁵⁴⁸ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 843, Affidavit of Paraone Gloyne at [5.13].

⁵⁴⁹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 843, Affidavit of Paraone Gloyne at [5.13].

⁵⁵⁰ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit by Justin Owen Ian Puna (11 August 2020) at [20].

⁵⁵¹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed 14 September 2020 at [59] and [64]–[65]. See also at [4.222] of this Report.

4.240 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) discusses ahi kā roa in the context of maintaining customary title.⁵⁵²

Maintaining your ahi kā roa means that you are there permanently, and you maintain your customary title. So long as the home fires are kept burning at your marae, whether it's big or little hui, or tangihanga or whatever, there is somewhere for people to come back to.

4.241 Mandy Mereaira Hata (Ngāti Ruatakenga) discusses ahikāroa as the people rather than a concept, noting that “the ahikāroa or those who keep the home fires burning at the marae are the keepers of traditional knowledge. And they are responsible for protecting, preserving and maintaining our customary practices. When our whānau return home for the holidays, it is the ahikāroa who teach them about our customary practices and what is ‘tika’ (correct) and what is not.”⁵⁵³

4.242 Hetaraka Biddle (Ngāi Tamahaua hapū) notes that one of the tikanga that was passed from generation to generation was “practicing ahi kā by maintaining a connection with our home, our whenua and our moana, no matter where in the world we were”. Importantly, Biddle notes that this did not entail living at the marae but could be exercised by whānau living away through the provision of goods being sent home, which would ensure the connection to the area was never lost.⁵⁵⁴

Maintenance of mana whenua

4.243 Alongside take, many specific examples of how mana whenua is maintained were present in the evidence:

- Taiaha Hawke (Ngāti Whātua Ōrākei, Te Taoū, Te Uri o Hau, Ngāti Hē, Ngāti Mahuta) on behalf of Ngāti Whātua Ōrākei explains that the protest and occupation of land at Bastion Point is a form of assertion of mana whenua.⁵⁵⁵
- Benjamin Hippolite (Ngāti Koata, Ngāti Toa, Ngāi Tahu, Ngāti Kuia) explains that the mana of Ngāti Koata was maintained by entering into an agreement with the Department of Conservation regarding Takapourewa (an island and reserve) that requires Ngāti Koata permission for people to go onto the island. “This is one step towards recognising our tino rangatiratanga.”⁵⁵⁶
- Taiaha Hawke (Ngāti Whātua Ōrākei, Te Taoū, Te Uri o Hau, Ngāti Hē, Ngāti Mahuta) gives several contemporary examples of expressions of ahi kā – opening events within the tribal area such as award ceremonies, citizenships, economic summits, trade talks, weapons proliferation, business conferences, university graduations, openings of buildings, parks and roads.⁵⁵⁷

⁵⁵² *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (3 August 2020) at [3.3].

⁵⁵³ *Re Edwards* [2021] NZHC 1025, Affidavit of Mandy Mereaira Hata (5 August 2020) at [6].

⁵⁵⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [100] and [101].

⁵⁵⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Taiaha (Lance) Joseph Hawke (2 June 2020) at [27], [42] and [47].

⁵⁵⁶ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [90].

⁵⁵⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Taiaha (Lance) Joseph Hawke (2 June 2020) at [81]–[82].

- Hauata Palmer (Ngāi Te Rangi) explains that aspects that point towards ahi kā being in existence are marae, urupā, whakapapa of those living on the land and kāinga.⁵⁵⁸

4.244 In relation to mana moana, specific practical examples of activities on the moana were referenced more readily. A Chadwick (Te Whānau-ā-Apanui) discusses Te Whānau-ā-Apanui's traditional harvesting of tohorā to show the extent of their mana moana:⁵⁵⁹

Whaling was certainly one example of the extension of our rohe moana, since whales were taken anywhere up to 15 or so miles from shore ... using White Island or Whakaari as a base. All those waters between us and Whakaari were considered Te Whānau-ā-Apanui territory and our iwi mana was laid over it.

Mana over territory as central to identity

4.245 A number of witnesses speak about mana over territory (both whenua and the moana) as being central to identity:

- Taiaha Hawke (Ngāti Whātua Ōrākei, Te Taoū, Te Uri o Hau, Ngāti Hē, Ngāti Mahuta) uses a whakataukī to explain the maintenance of mana whenua: “Kei raro i te tarutaru o te whenua ngā tuinga tupuna – Sacred signs of ancestral heritage lay beneath the surface of the land.” This informs the Ngāti Whātua approach to maintaining its mana i te whenua through the continued practice of kaitiakitanga over the land, sea, forests and estates of its ancestors.⁵⁶⁰
- Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) explains:⁵⁶¹

Through the concepts of mana whenua and mana moana the essence, and identity of a person, hapū, and iwi is culturally and spiritually linked to the whenua and moana of their rohe. Their mana and tapu are intertwined.

- Nganeko Minhinnick (Ngāti Te Ata) says, “Ngāti Te Ata are mana whenua of Matukutūreia. Matukutūreia is Ngāti Te Ata. We are inseparable.”⁵⁶²
- Toro Waaka (Ngāti Pāhauwera) similarly accentuates that “water or wai gives meaning to the identity of tangata whenua”. He explains that if one was asked “Ko wai koe?” this is interpreted as “What waters, river, parts of the ocean are you from?” Accordingly, the Ngāti Pāhauwera statement of identity to manuhiri on their marae and introduction to their rohe will refer to both waters and land.⁵⁶³

⁵⁵⁸ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Evidence of Hauata Palmer (6 July 2020) at [11] and [19].

⁵⁵⁹ The Fisheries Settlement Report, Wai 307, #B10(a) A Chadwick at 2.

⁵⁶⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Taiaha (Lance) Joseph Hawke (2 June 2020) at [88].

⁵⁶¹ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [45].

⁵⁶² *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Nganeko Minhinnick of Ngāti Te Ata Waiohū at [4].

⁵⁶³ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Toro Edward Reginald Waaka (19 December 2019) at [26].

4.246 When describing those who hold and exercise mana whenua, Margaret Kawharu (Ngāti Whātua Ōrākei) says:⁵⁶⁴

The group wielding mana whenua is the “tangata whenua”. The tangata whenua, literally “people of the soil” is a local community whose members recognise collective rights and obligations. Their rights derive from common ties of descent and kinship. Their obligations turn on the hospitality extended to non-members of their community, whether of the same tribe or not. Thus, rangatiratanga, mana whenua and tangata whenua are all terms inextricably linked to the central idea of pride in that identity given to individuals by their kin groups and their present and former lands, marae and wāhi tapu ... shared ritual beliefs and practices underpinning all social enterprise give the people a sense of security in their environment and of legitimacy in their mana whenua

... a tribal group exercises mana whenua over its core rohe through ahi kā – through residence and demonstrating kaitiakitanga and manaakitanga ... mana i te whenua is essential to tuku whenua; one must have an authority from the land to be able to grant conditional rights to another.

Exclusive versus shared mana whenua

4.247 There are a range of conflicting views as to whether mana whenua can be shared. In the dispute over mana whenua in Tāmaki Makaurau, a number of witnesses for Ngāti Whātua Ōrākei emphasised the exclusive nature of mana whenua at least within a “core area”:

- Ngarimu Blair (Ngāti Whātua Ōrākei) says, “But two groups cannot hold mana whenua (or similar interests) at the same time. The very nature of mana whenua demands that it is held and maintained by one iwi and one iwi only. It is certainly a ridiculous notion that multiple iwi including those that have no whakapapa to each other can hold mana whenua for a particular place.”⁵⁶⁵
- Margaret Kawharu (Ngāti Whātua Ōrākei) similarly states that “there cannot be more than one tangata whenua with mana i te whenua”.⁵⁶⁶ Kawharu says further that the concept of shared mana whenua:⁵⁶⁷

... is inconsistent with the generally agreed principles of mana and whanaungatanga. That is not to say that tribal groups might reach shared understandings over the use and occupation of land and waterways at different times, but those understandings require maintaining.

- Kawharu further explains:⁵⁶⁸
- ... from a tikanga perspective, boundaries have never been fixed in the western legal sense, and groups might have moved freely. It is clear that there are always contentious border

⁵⁶⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu for the plaintiff (2 June 2020) at [27]; and *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu on behalf of the plaintiff in reply (4 December 2020) at [12].

⁵⁶⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair for the plaintiff (2 June 2020) at [151].

⁵⁶⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu for the plaintiff (2 June 2020) at [206]–[207].

⁵⁶⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu on behalf of the Plaintiff in reply (4 December 2020) at [5].

⁵⁶⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu in reply (4 December 2020) at [13].

areas, and that lesser interests (through customary use or *tuku*) can attach to land which another group has *mana whenua* over. Similarly, a group may come to an area to make use of its resources, but that group would either be domiciled with the host group temporarily or take those resources home, to their core *rohe*. Only one group can hold *mana whenua* over an area.

- Tāmāti Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe)⁵⁶⁹ agrees that *mana whenua* can sometimes be shared. However, he doesn’t believe that there can be shared *mana whenua* in an *iwi*’s core *rohe*:⁵⁷⁰

[T]o my mind there is no such thing as “shared *mana whenua*” over an *iwi*’s heartland, or core *rohe*. *Iwi* are a territorial, cultural, political, economic nations, where *iwi* and *hapū* connect closely to land and other natural resources within a specified territory. A territory always has a heartland, and the heartland with landmarks is in turn a crucial aspect of the identity of an *iwi*. It is the place of origin, existence and future of the *iwi* and is filled with strong *whanaungatanga* connection traces between the *iwi* and the land. Simply put, if there was no heartland, there would be no *iwi*.

- Kruger, under cross-examination, agrees that more than one group can have responsibilities and take to one piece of *whenua*, and if a group has multiple take, it can strengthen the relationship with the *whenua*.⁵⁷¹ Kruger says that ‘shared’, ‘overlapping areas’ or ‘*ahi tahutahu*’ in respect of *mana whenua*:⁵⁷²

... can’t come into the heartland. It would be on those fringes where *ahi tahutahu* does denote that it is shared on both parties, for both parties. So even if it’s a kind of a fringe area where there are three *iwi*, one cannot claim I have *ahi kā roa* in this area but you only have *ahi tahutahu*. The two concepts are quite different tiers. So it must be *ahi tahutahu* for everyone. So Kaingaroa was that example when we went around the room and people then narrated their histories and their oral tradition and associations with Kaingaroa, we found that for the majority of us we agreed that we only had *ahi tahutahu* and that in some areas we had *ahi mātaotao* ...

- Paul Meredith (Ngāti Maniapoto) “disagrees that the idea of exclusivity is foreign to *tikanga*. Nor is it alien to *te reo Māori* as suggested by Morehu Wilson.”⁵⁷³ Meredith draws on *kupu* such as *rāwaho* (someone considered to be an outsider and often excluded from participating in decision making when it comes to land), *aukati* (a boundary over which others may not pass), *rāhui* or *whakatapua* (setting aside something for the benefit for a certain group but not others), a *rohe potae* (an external boundary of tribal territory) and *pei* or *pana* (to drive away or expel someone or some group, effectively excluding them). He explains, “There are in fact

⁵⁶⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence, in this section Tāmāti Kruger agrees with Dr Maxwell (Ngāi Tai ki Tāmaki) and Mr Mikaere’s (Marutūāhu) position that *mana whenua* can sometimes be shared but that there is no such thing as *mana whenua* over an *iwi*’s heartland or core area (at 1837).

⁵⁷⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmāti Kruger in reply (4 December 2020) at [17].

⁵⁷¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence p.1869.

⁵⁷² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence p.1869.

⁵⁷³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [8].

many examples on the historical record of iwi and hapū asserting the distinct identity and the right to exclude others from their whenua and moana.”⁵⁷⁴

- By way of example, Meredith refers to Rapata Wahawaha of Ngāti Porou who suggests that mana whenua cannot be exercised over another tribe or subtribe’s lands.⁵⁷⁵

Ko te mana tipuna ka mana tonu ki tōna iwi ake hapū rānei. Ka mana anō ki runga ki ōna ake whenua ... Kaore he mana rangatira o tētahi iwi e mana ana ki runga ki ngā whenua o ētahi iwi, me ētahi atu hapū rangatira hoki. Tōna mana ki tōna whenua ake anō, rātou ko tōna hapū, iwi rānei.

[The authority of a chiefly ancestor will prevail over his own tribe or sub tribe. It extends to his lands ... No tribe has chieftainship over another tribe’s lands or chiefs sub tribes. His authority only extends to his own lands his own tribe or sub tribe].

- However, Meredith acknowledges that he has seen examples of shared mana. “On the other hand, I have seen suggestions of shared mana or authority over areas, particularly over land on tribal boundaries where interests were more fluid. I have seen this expressed as mana huihui.”⁵⁷⁶ Meredith draws on historical examples to reflect this proposition, such as comments by Tamihana Te Rauparaha (Ngāti Toa, Ngāti Raukawa) in the Native Land Court: “In 1840 my father fixed the end of Ngāti Apa mana at Manawatu ... It was done at ‘rūnangas’ – heard that it was settled that the ‘mana’ of the 3 tribes should end there ... The ‘mana of Te Āti Awa was because they came with us and shared in our ‘mana’ over the bush and plains.” Meredith considers this suggests mana whenua was shared between Ngāti Toa, Ngāti Raukawa ki te Tonga and Te Ātiawa because the three iwi had migrated south and settled together.⁵⁷⁷
- Meredith goes on to say:⁵⁷⁸

... shared authority might not always be necessarily equal. Expressions such as mana nui and mana iti seem to suggest that there were differing levels of mana over land held by ancestors.

... the fact that mana whenua *can* be shared in some circumstances does not mean it was always shared ... Mana whenua can be shared between two or more groups by agreement, but equally it can be held by only one group in a particular area to the exclusion of others.
- Meredith states that:⁵⁷⁹

⁵⁷⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [8]–[9].

⁵⁷⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [18].

⁵⁷⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [19].

⁵⁷⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [20].

⁵⁷⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [25] and [27].

⁵⁷⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [88].

Mana whenua extends to all parts of the rohe of an iwi where those rights and responsibilities are tended to and carried out. Generally speaking, *mana whenua* was exercised by one predominant tribal identity as a result of their *take* to the land.

There is a difference of views about whether *mana whenua* can be shared in certain specific contexts. In order for that to be tika, the incumbent *mana whenua* group must give its permission for another group to exercise some kind of authority or control over that area (although it would generally be the case that one of these groups has a more predominant interest over the other).

4.248 A number of other witnesses (in various contexts) emphasise non-exclusive or layered *mana whenua* interests:

- Ted Andrews (Ngāti Paoa) and Glen Tupuhi (Ngāti Paoa) say, “Ngāti Whātua Ōrākei has acknowledged that Ngāti Paoa has lead *mana whenua* interests in the east of Auckland and on the North Shore, and Ngāti Paoa has recognised Ngāti Whātua Ōrākei has lead *mana whenua* interests in central Auckland.”⁵⁸⁰ However, Tupuhi in cross-examination recognised that, even in the area that they considered Ngāti Whātua Ōrākei to have lead *mana whenua*, Ngāti Pāoa also has *mana whenua*.⁵⁸¹
- Walter Ngamane (Ngāti Maru, Ngāti Whanaunga, Ngāti Tamaterā, Ngāti Pāoa, Ngāi Te Rangī, Ngāti Hinerangi) explains that sharing and inclusion in relation to the *whenua* and *moana* is a tangible display of fundamental principles, *whanaungatanga*, *whakapapa* and *mana*.⁵⁸² He states that “shared *whenua* and resources is a common tradition among the Marutūāhu tribes”. He explains that “where one of us is, so will the others often be”. This is exemplified in shared *marae* “such as Wharekawa (Ngāti Paoa and Ngāti Whanaunga)”. He says that Tāmaki is no exception to this rule.⁵⁸³
- Roger Pīkia (Ngāti Tahu, Ngāti Whāoa, Ngāti Tūwharetoa, Raukawa, Waikato-Tainui, Ngāti Maniapoto, Ngāti Hikairo) says that the concept of *mana whenua* has evolved over the last century such that it doesn’t necessarily mean exclusive.⁵⁸⁴
- Desmond Kahotea (Ngāi Te Rangī, Ngāti Ranginui, Ngāti Pūkenga) distinguishes the importance of some relationships that have been retained through occupation versus more recent interests recognised through legislation. Not all relationships are of the same nature, type or strength. This recognition of a hierarchy is appropriate and in line with the way in which traditional Māori society viewed relationships to land.⁵⁸⁵
- Paul Meredith (Ngāti Maniapoto) says sharing of land and resources might be the result of strategic alliances formed through *whakapapa* or the result of a conflict

⁵⁸⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 1323.

⁵⁸¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 1323 and 1335–1336.

⁵⁸² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane evidence (13 October 2020) at [24].

⁵⁸³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Walter (Wati) Ngakoma Ngamane evidence (13 October 2020) at [34].

⁵⁸⁴ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Roger Pīkia on behalf of Ngāti Tahu–Ngāti Whāoa Rūnanga Trust (1 May 2017) at [5.1].

⁵⁸⁵ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Desmond Tatana Kahotea on behalf of the Applicant (28 October 2016) at [4.7]–[4.9].

resolution process of maungārongo or houhou i te rongo.⁵⁸⁶ Equally, maungārongo or houhou i te rongo can also result in agreed boundaries delineating the mana whenua or moana of each group.⁵⁸⁷

- Professor Jacinta Ruru (Raukawa, Ngāti Ranginui) and Mihiata Pirini (Ngāti Tūwharetoa, Whakatōhea) say, “Where two iwi or hapū each hold tangata whenua status and have overlapping takiwā, mana whenua may be exercised by them both within the same geographical area.”⁵⁸⁸
- Tā Hirini Moko Mead (Ngāti Awa), Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) and Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) discuss tribal overlaps:⁵⁸⁹

Iwi do not have straight line borders like modern countries. This is because our whakapapa can often not be divided so neatly given our common whakapapa with most of our neighbours. For us, we view our rohe as being in two parts largely. Firstly, an exclusive rohe where Ngāti Awa has sole control. Secondly, in the areas where we overlap with other iwi, we refer to this as a whenua tautohetohe or a contested zone where more than one iwi or hapū had control. While there is an emphasis on battles and contention between the iwi, there is also a substantial history of peaceful and constructive interaction and relationships. Even in the whenua tautohetohe, the iwi accessed the resources on and in the whenua and moana. Sometimes these rights overlapped as well. The exercise of those rights was exclusive to those iwi.

...

There has been a contest for resources at times and in other times there is the application of tikanga that allow for neighbouring groups to co-exist and share resources.

4.249 Shared rights and the exercise of mana by more than one group seems to be more widely accepted when it is in relation to resources (with some people specifically noting that this would happen against the backdrop of a group holding mana whenua):

- A Chadwick (Te Whānau-ā-Apanui) says that some of their tino rangatiratanga rights over their fisheries are shared with other hapū. These rights were also exercised and shared by young and old alike and apply to all activities of sea harvesting.⁵⁹⁰
- Maui Solomon (Moriōri) says:⁵⁹¹

Each tribe exercised territorial rights over a definitive area of land with defined boundaries ... these rights resolved themselves into exclusive privileges of hunting and fishing, and the right to all stranded matter such as whales or timber.

... the stranding of a school of blackfish (Rongomoana) was a time for sharing amongst the various tribal groupings and people for miles around would participate ... These ceremonies

⁵⁸⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [22]–[23].

⁵⁸⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith in reply (4 December 2020) at [22]–[23].

⁵⁸⁸ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed 14 September 2020 at [56].

⁵⁸⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [123] and [124].

⁵⁹⁰ The Fisheries Settlement Report, Wai 307, #B10(a) A Chadwick at 1.

⁵⁹¹ The Fisheries Settlement Report, Wai 307, #B23 Maui Solomon at [6.2]–[6.3].

were regarded as sacred ... It was considered of the highest importance that appropriate karakia were said and offerings made to Pou and Tangaroa (the revered gods of the sharks and sea respectively) and the head of the fish stranded placed on the tuahu as a koha of thanks to appease these gods. These strandings were attributed to the power of the spirit of someone who had recently died, and the larger the stranding, the larger the mana of the deceased.

- Ross Gregory (Te Rārawa, Te Aupōuri, Ngāti Kahu, Ngāpuhi, Ngāi Tahu) says that “it is important to understand that the right was a shared right. A right to share in the occupation of the land under the mantle of Te Rarawa. It was never exclusive.”⁵⁹²
- Wikitōria Hepi-Te Huia (Ngāti Tahu), on behalf of Tauhara North No.2 Trust, explains that mahinga kai rights at Rotokawa were afforded to neighbouring hapū groups because of the close whakapapa relationships.⁵⁹³
- Roger Pikia (Ngāti Tahu, Ngāti Whāoa, Ngāti Tūwharetoa, Raukawa, Waikato-Tainui, Ngāti Maniapoto, Ngāti Hikairo), on behalf of Ngāti Tahu-Ngāti Whāoa, disputes claims of mana whenua by Ngāti Hinerau and Ngāti Hineure, which were based on gathering resources and maintaining seasonal kāinga in the vicinity of Rotokawa. He states that gathering resources is a courtesy and does not amount to mana whenua.⁵⁹⁴
- Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) says, “Resource use by others [in their rohe] may be permitted. However, in the area in which Whānau a Apanui exercise mana, this permission is a privilege and does not establish a right. The hapū of Whānau a Apanui maintain the authority and right to retract this permission at any point.”⁵⁹⁵
- Rereamanu Wihani (Tūhourangi, Tapuika) explains:⁵⁹⁶

There were unwritten rules to traditional fishing areas which everyone understood in Te Ao Māori. We knew whose patch was whose. However, feeding the people was the priority and other hapū were always accommodating in giving a friendly wave and a smile. Sharing is not unusual within our culture.
- Ngarimu Blair (Ngāti Whātua Ōrākei) explains that Ngāti Paoa also fished at Waitematā with Ngāti Whātua Ōrākei, and the two iwi often shared fishing stations. “Ngāti Paoa was able to fish there because Ngāti Whātua Ōrākei gave them permission to do so. It was considered theft if an iwi fished around the isthmus without Ngāti Whātua Ōrākei’s permission.”⁵⁹⁷
- Paul Meredith (Ngāti Maniapoto) states that a common misconception is when visitors have been allocated temporary use rights on another group’s land. This

⁵⁹² Muriwhenua Land Report, Wai 45, #F28 Ross Gregory at 4.

⁵⁹³ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Wikitōria Hepi-Te Huia (1 May 2017) at [2.4].

⁵⁹⁴ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Roger Pikia on behalf of Ngāti Tahu-Ngāti Whāoa Rūnanga Trust (1 May 2017) at [5.4].

⁵⁹⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [106].

⁵⁹⁶ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Primary statement of evidence of Rereamanu Wihapi (22 December 2016) at [29].

⁵⁹⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [59].

arrangement should not be considered as conveying mana over the land to the visiting group.⁵⁹⁸ Meredith says, in the context of the Ngāti Maniapoto/Ngāti Tama Settlement Cross Claims Report, “[w]hile groups may at times move freely on the ground and on the waters of the two harbours, there was nevertheless a clear understanding about *mana whenua*, i.e. proprietary rights giving those who claimed them the right to invite others to share in the access to resources in particular localities”.⁵⁹⁹

Rangatiratanga

4.250 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) explains:⁶⁰⁰

For rangatiratanga is the Māori cultural version of the absolute power encapsulated in the original French concept of sovereignty. It has always been institutionally different but never anything less than the absolute political authority that every culture develops to govern itself.

...

As the word rangatira itself implies rangatiratanga is a power to weave the people together through the lawful protection of their whakapapa and their resources.

...

Rangatiratanga in a sense is the power common to Māori, a statement of independence and absolute self determination according to law.

Fundamental to that power was the inherent authority to determine what the rights of the Iwi should be because *self* determination can mean nothing less. Equally fundamental, it was the ability and authority to determine when those rights had been breached.

4.251 By way of example, Jackson says, “The authority, rights, and law of Ngā Hapū o Tūhoe are a fundamental and essential component of their tino rangatiratanga which has been defined and exercised by them since time immemorial.”⁶⁰¹

4.252 Margaret Kawharu (Ngāti Whātua Ōrākei) explains:⁶⁰²

Rangatiratanga means, “evidence of breeding and greatness”. In essence, it is the proven ability to lead through service. The word itself implies someone who can bring together the strands of a community to make a unified whole. It is a dynamic not static concept, emphasizing the reciprocity between the human, material (for example whenua) and non-material worlds. It involves reciprocity between the individual and their god and reciprocity between the individual and their tribal community. Applied, it means the wise administration of all the assets possessed by a group for that group’s benefit ... a rangatira is a trustee for their people, an entrepreneur in all their enterprises, a leader in war and peace.

...

⁵⁹⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [70].

⁵⁹⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Paul Edward Meredith (2 June 2020) at [103].

⁶⁰⁰ *R v Tamati Mason* [2012] NZHC 1361, Brief of Evidence of Moana Jackson (10 January 2005) at [55]–[58].

⁶⁰¹ *R v Tamati Mason* [2012] NZHC 1361, Brief of Evidence of Moana Jackson (10 January 2005) at [10].

⁶⁰² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (2 June 2020) at [24] and [26].

The effective exercise of rangatiratanga over a particular area of land, either by discovering the land in the first place or wresting it from a previous occupier by force, will result in the survival of the beneficiaries of that rangatiratanga. Consolidation of the group's occupation of the whenua will assure power and political control over the domain. Such power has been called mana whenua.

- 4.253 As explained simply by Maui Solomon (Moriōri) “only Moriōri have a right to make decisions affecting Moriōri”.⁶⁰³
- 4.254 Wiremu Hodges (Ngāti Pāhauwera) says rangatiratanga “denotes a terrestrial role as Kaitiaki and our status through Whakapapa to exercise” mana tipuna, mana whenua and mana moana.⁶⁰⁴ He adds that rangatiratanga “bestowed not just the right of access to resources but also the responsibility to preserve the mauri and conserve the species”.⁶⁰⁵
- 4.255 Justin Puna (Ngāti Kurumōkihi, Ngāti Marangātūhetaua, Ngāti Tauira, Ngāti Te Ruruku ki Tangoio, Ngāti Tahu) says, “Rangatiratanga is about self-determination, self-management, sovereignty, the right to exercise authority. It is about having the mana to determine what you would like to aspire to and what direction you feel you need to take.”⁶⁰⁶

MANAAKITANGA

- 4.256 A number of people refer to the importance of manaakitanga to uphold both the mana of others and one's own mana. Moe Milne (Ngāti Hine) says “manaakitanga is the process of giving to others, but it is about “te mana āki” or enhancing the mana of others, and in doing so upholding your own mana”.⁶⁰⁷
- 4.257 A common example of the exercise of manaakitanga is connected to the provision of kai:
- James Rickard (Ngāti Porou) explains:⁶⁰⁸

[At Whaingaroa] I floundered and gathered shellfish like many other Māori whānau (families) to feed our families and supplement our incomes.

...

During Princess Te Puea's time the people from Turangawaewae marae in Ngaruawahine would bring their truck out to collect kutai (mussels) for hui, especially the Coronation anniversary which catered for thousands of visitors over a week of celebration.

Kutai were gathered from Pipirua, an island adjacent to Te Kopua and specifically reserved for hui purposes. Being able to carry out this function helped the Tainui people of this area to fulfil their manaakitanga (caring for) obligations. This also helped them to retain and enhance their mana.
 - Joseph Davis (Ngāti Hei) states, “The mana of the tangata whenua is based, in part, on an ability to provide kai moana for such events. Kai moana is considered to be

⁶⁰³ The Fisheries Settlement Report, Wai 307, #B023 Maui Solomon at [7.12].

⁶⁰⁴ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Wiremu Iterema Sylvester Hodges (11 December 2013) at [27].

⁶⁰⁵ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Wiremu Iterema Sylvester Hodges (11 December 2013) at [32].

⁶⁰⁶ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit by Justin Owen Ian Puna (11 August 2020) at [43].

⁶⁰⁷ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [122].

⁶⁰⁸ *Tainui Hapū v Waikato Regional Council*, NZEnvC 131 Auckland A063/2004, Statement of Evidence of James (Tex) Rickard on behalf of Tainui Hapū (undated) at [8]–[10].

fundamental to the perpetuation of cultural and related social activities. For these reasons water quality and the productivity of the environment within the Regional Coastal Plan is highly valued by the Waikato Tainui people.”⁶⁰⁹

- Margaret Kawharu (Ngāti Whātua Ōrākei) says. “Manaakitanga can be described as generosity, care-giving, or compassion and is an expression of one’s mana, one’s status and authority, through acts of kindness and caring. To manaaki or give generously and provide hospitality is a mana-enhancing activity. It also creates an obligation on the visitor to reciprocate in the future. Thus mana, manaaki and tuku are closely related concepts in Te Ao Māori.”⁶¹⁰
- Benjamin Hippolite (Ngāti Koata, Ngāti Toa, Ngāi Tahu, Ngāti Kuia) explains:⁶¹¹

People who came from different areas to a hui supplied the kai of that area, and that was an expectation. For example, when it was time for the Queen’s pokai, the D’Urville Island Māori were expected to bring delicacies from the rohe, so they would take dried fish, dried paua, and dried tuere. It was hoped that tuere would be brought by the D’Urville Island people. Often tītī would be brought as well depending on the date of the pokai. As Ngāti Koata are a coastal people, we took along the kai from the coast and that is the same today. For example, at weddings today the mana of a wedding is often dependent upon the type of kaimoana that is on the table. It enhanced mana and still does today. The mana of the hui is dependant [sic] upon what is on the table.

Ngāti Koata are a very hospitable people. Our view is that it is alright to run out of food for ourselves, but it is very embarrassing to run out for manuhiri. Mana attaches to the provision of food. If we could not supply food from our rohe, we would lose our mana. My father told me that the biggest embarrassment for an iwi is not having enough food to give to the manuhiri. Providing food gives an iwi mana because it shows that the iwi has authority, strength and is trustworthy. Mana reflected the Ngāti Koata rangatiratanga over the rohe.

- Reuben Perenara (Ngāti Rangitahi) says the tikanga his father brought him up with was that “if you should catch an excess of fish, over and above what is required for you, your whānau [your immediate family, your extended family], your hapū [the groups of whanau resident around your marae], that excess is a gift that is to be shared with all others fairly”.⁶¹²

4.258 Te Kahautu Maxwell (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tai, Ngāti Awa, Tūhoe, Ngāti Porou, Ngāti Maniapoto) discusses the varying degrees of manaakitanga:⁶¹³

There are different levels of manaakitanga accorded a person. It depends on the level of whanaungatanga, whether a close blood whānau member or a whanaunga. Sometimes the whanaunga relationship is stronger than the whanaungatanga to a blood relative this may be due to close association through work, sports and friendship. These types of

⁶⁰⁹ *Wilson v Waikato Regional Council* [2021] NZEnvC 131 Statement of Evidence of Joseph Davis for the Applicant (28 August 2020) at [78].

⁶¹⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (2 June 2020) at [35].

⁶¹¹ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [97]–[98].

⁶¹² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Eighth affidavit of Reuben Brian Perenara in support of the CP 395/93 Plaintiffs position in regards the HCR 418, and in reply to various affidavits filed in opposition to that position at 4.

⁶¹³ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Te Kahautu Maxwell (7 August 2020) at [99].

relationships and as well as their strengths will determine what level of manaakitanga is given. Then, of course, there is the status of a person, the mana and the tapu associated with them. This determines a manaakitanga of the highest level to maintain the mana of the person and the mana of the iwi (host).

- 4.259 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) discusses the concept of manaakitanga in the context of mana and rangatiratanga:⁶¹⁴

We have the right to exercise our customary authority (mana and rangatiratanga) in relation to our own seascape. For the same reason, we would not go into other tribal (iwi) seascapes because we would be challenged. Our customary areas are not as rigid as Western boundaries however. Other Whakatōhea hapū can come into our sector, for instance, we wouldn't stop Ngāti Patu coming to fish in our area. The tikanga is that we share the kai because our hapū of Whakatōhea are related to each other by whakapapa, and it is part of our collective responsibility to care for our whanaunga, as they do for us (this is known as manaakitanga).

However, distinction between permitting access to our sea territory as a matter of manaakitanga and having the customary authority to act as the kaitiaki. Ngāti Rua holds the mana in Ngāti Rua's sea territory. For instance, if somebody drowns out there in our rohe, Ngāti Patu would not do the karakia, I would, because it's my customary area.

- 4.260 Mandy Mereaira Hata (Ngāti Ruatakenga) notes that the collection of kaimoana for sustaining whānau and manuhiri is part of their traditional ways of doing things and how they practise manaakitanga.⁶¹⁵
- 4.261 Pepper Hudson (Ngāi Tamahaua hapū) states, "Manaakitanga and feeding the people was instilled in us as part of our cultural upbringing, and ... we were taught to never let manuhiri go away hungry."⁶¹⁶
- 4.262 A key Moriori tikanga concerns the sharing of resources.⁶¹⁷ Te Iwi Moriori Trust Board states that "tikanga, whanaungatanga and manaakitanga of te Iwi Moriori, requires the sharing of ... resources".
- 4.263 Karen Mekomoko (Ngāti Patumoana, Te Upokorehe, Ngāi Tamahaua hapū) describes manaakitanga as including the exercise of hospitality, looking after others that are weak, old, hungry or homeless and showing respect to manuhiri and being hospitable. Mekomoko notes, "After defeating Ngāi Tūhoe at Maraetotara, Te Whakatōhea displayed manaakitanga through providing them access to Te Moana o Tairongo, knowing the value of the resources to sustain the people."⁶¹⁸
- 4.264 Tā Pita Sharples (Ngāti Kahungunu) discusses the importance of aroha as a reciprocal relationship between people and peoples.⁶¹⁹

⁶¹⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (3 August 2020) at [6.5] and [6.6].

⁶¹⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Mandy Mereaira Hata (5 August 2020) at [51].

⁶¹⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Pepper Hudson (20 February 2020) at [39].

⁶¹⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), "Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets" at 8.

⁶¹⁸ *Re Edwards* [2021] NZHC 1025, Affidavit Karen Stefanie Mekomoko (30 January 2020) at [39]–[42].

⁶¹⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Pita Sharples) at 129. The authors acknowledge this section is entitled Manaakitanga but we are of the view that this quote from Tā Pita Sharples about aroha also speaks to manaakitanga.

Aroha is something which exists between the group and to enlarge it requires obligation and privilege, relationship so that all benefit and I think that's a key factor that it's for the group to benefit and not the individual.

I believe that is the pivotal value around which Māori society was organised and it reflects a set of privileges and obligations that each folk has with the rest of his community.

- 4.265 Importantly, while not discussing manaakitanga specifically, many raise the importance of sharing kai caught or collected with kaumātua and whānau or being given as a koha to support marae kaupapa such as tangihanga.⁶²⁰ These practices were considered obligatory and an essential aspect of sustaining the collective.

UTU AND EA

- 4.266 The interrelated concepts of utu and ea are key principles that explain and motivate dispute resolution in a Māori context. Hara is also a key component of this dispute resolution framework.

- 4.267 In the context of dispute resolution generally, Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) in his evidence for *R v Mason*⁶²¹ states:⁶²²

One of the most important aspects of tikanga, is that while some might be enforced simply through a belief or faith in the sacredness to ensure our compliance, we also had proper political institutions to enforce any sanction that might be required.

...

Our old people saw law or tikanga as a way to manage changing circumstances, where differences could be mediated through an understanding of cause and imbalance. The stories of our laws are passed to us through whakapapa and are the cornerstone of what may be termed Māori jurisprudence.

- 4.268 Jackson also describes the general process of resolving disputes within te ao Māori:⁶²³

In exercising the rights of a rangatira in relation to members of the Iwi or Hapū, leaders had to act within a framework of rules derived from the precedents of their own ancestral law and mana. If a dispute arose within an Iwi or Hapū it signalled a breakdown in the whakapapa relationship. Resolution required a rebuilding of the relationship through available precedents and their consequent political enforcement.

...

In protecting the Iwi or Hapū against others the rights were derived from the same source and were mediated by the reality that every Iwi and Hapū ultimately had common origins. Whakapapa reached across and between Iwi in a way which ensured that any conflict of laws could be resolved through shared precedents.

⁶²⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Leeann Martin (20 February 2020) at [24], [28] and [30].

⁶²¹ *R v Tamati Mason* [2012] NZHC 1361.

⁶²² *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [18] and [22].

⁶²³ *R v Tamati Mason* [2012] NZHC 1361, Brief of Evidence of Moana Jackson (10 January 2005) at [95]–[96].

- 4.269 In the same case, Jackson in oral explains that “from a Māori law point of view the issue first is what is the relationship and how has the relationship been damaged?”⁶²⁴ He then goes on to say:⁶²⁵

... reconciliation should never imply subordination of one by another ... It was to recognise the place of both and seek a way to rebuild the relationships and so in that sense a specific hara, a specific wrong is part of that much wider context of the need for relationship building.

- 4.270 Tā Eddie Taihakurei Durie (Rangitāne, Ngāti Kauwhata, Ngāti Raukawa) explains that utu is less about revenge than it is about balance and not only within the dispute resolution process:⁶²⁶

The land, people and life forms were thought to be governed by cycles. By the law of utu, what is given is returned or that taken is retrieved. “Utu” was not just “revenge”, as popularly portrayed, it was a mechanism for the maintenance of harmony and balance. Survival depended on the maintenance of the cycles of nature, and on the maintenance of cycles in human relationships. The latter is illustrated in the careful Māori attention to reciprocal obligations, the maintenance of bloodlinks through arranged marriages and the institution of gift exchange.

- 4.271 Tā Hirini Moko Mead (Ngāti Awa) and Tā Pou Temara (Tūhoe) explain the concept of hara:⁶²⁷

The concept of “hara” at a simplified level means: the transgression of tapu; the commission of a wrong; and the violation of tikanga resulting in an imbalance. This requires a restoration of balance or the achieving of a state of “ea”.

We consider it is useful to start with an example that illustrates this. The following example is from Tūhoe, Ruatāhuna.

One day a kuia (elderly woman) went and visited a family.

When the kuia got to the home, the dog of the family that she was visiting attacked her. The dog drew blood from her leg and tore her flesh.

The owners of the dog rushed outside, took the dog away and then tended to the injuries of the kuia.

It was a hara on behalf of the dog owners for the dog to have attacked the kuia. The shedding of blood is significant as it meant there was a transgression of tapu (as blood is sacred). The offence also resulted in mana became [sic] imbalanced.

The owners of the dog knew that they had committed a hara and that there had been a breach of tikanga.

⁶²⁴ *R v Tamati Mason* [2012] NZHC 1361, Notes of Evidence (3 May 2012) at 8. This answer was given by Moana Jackson in the context of the Crown’s hypothetical question where someone from Te Arawa has an incident with a New Zealand citizen of Indian origin. The question from the Crown was “is there an ability of Māori law to deal with that kind of matrix, that factual situation?” (at 5).

⁶²⁵ *R v Tamati Mason* [2012] NZHC 1361, Notes of Evidence (3 May 2012) at 12.

⁶²⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Sixth affidavit of Reuben Brian Perenara in support of the applicant’s case regarding the High Court rule 418 preliminary questions as referred back to this court by Her Majesty’s Privy Council; Exhibit C *Custom Law: Address to the New Zealand Society for Legal and Social Philosophy*, Chief Judge ET Durie (22 July 1994) at 329.

⁶²⁷ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [60]–[61]. See also at [2.56] of this Report.

In response, they went to their waka huia (treasure box) and brought out a pounamu (greenstone) that had significant value. They gave this to the kuia as compensation for the hara.

The kuia had every right to impose a muru (ritual plundering and restorative justice process that entails the redistribution of wealth). However, she accepted the pounamu as payment for the wrong that had been committed.

This meant that the issue became ea (satisfied, settled, mana rebalanced).

This shows the successful resolution of a hara. A hara was committed by the dog biting the kuia and action was required to address the hara and achieve a state of ea. The notion of ea indicates the successful closing of a sequence and the restoration of relationships, or the securing of a peaceful outcome.

4.272 Mead and Temara further explain that, where a hara has been committed, there is an “intergenerational need for a state of ea”.⁶²⁸ One of the examples they draw on is that of Rua Kēnana, who they describe as “a Tūhoe Prophet that in about 1906 established the “New Jerusalem” in the Urewera and led the Iharaia (Isralite [sic]) faith”.⁶²⁹ They set out what happened to him: “Rua Kēnana was convicted of ‘moral resistance’ to an attempted arrest and served 18 months in prison. The Iharaia faith went into a serious decline after the events arising from Rua’s arrest. These events have been a source of grievance since they occurred.”⁶³⁰

4.273 Mead and Temara go on to explain:⁶³¹

... a hara was committed (by the Crown) against Rua Kēnana;

this impacted not only the mana of Rua Kēnana himself but also had an impact on the mana of his descendants; and

despite the death of Rua Kenana, a state of ea still needed to be reached many years later (hence the reason for the pardon and restoration of mana to the individual and his descendants).

4.274 Ultimately, in recognition of this hara and the need to achieve a state of ea, the Rua Kēnana Pardon Act 2019 was granted Royal Assent by the Governor-General in a ceremony at Maungapōhatu on 21 December 2019.

4.275 Professor Jacinta Ruru (Raukawa, Ngāti Ranginui) and Mihiata Pirini (Ngāti Tūwharetoa, Whakatōhea) explain utu and ea:⁶³²

Utu involves a process which seeks to find a way to restore equilibrium or balance. In tikanga, this process must continue until ea is reached. Ea may not result in all affected

⁶²⁸ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [68].

⁶²⁹ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [70].

⁶³⁰ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [70].

⁶³¹ *Ellis v R* [2022] NZSC 114, Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (31 January 2020) at [70].

⁶³² *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed (14 September 2020) at [81]–[82].

parties feeling happy with the outcome but there is an acceptance of the process and its outcome.

4.276 Margaret Kawharu (Ngāti Whātua Ōrākei) explains that the concept of utu is about reciprocity:⁶³³

The principle of reciprocity and the fulfilment of obligation underpins all Māori social interaction and exchange. The concept of utu encompasses both positive and negative reciprocity within a single holistic system in Māori thinking and a fundamental driver of Māori life. Emphasis is placed on maintaining relations. The social forms and practices of utu and whakautu, giving and taking, are seen for example in ceremonial welcomes to visitors at any Māori gathering, the generous hospitality expressed in food, especially the hākari, the presentation of koha or gifts, the exchange of taonga on special occasions linking important people, and the emotional and spiritual attachment to ancestral land, especially demonstrated by the desire to take the tupāpaku home for burial.

For everything given and taken, a reciprocity and return of some kind is required. Those who give, gain mana, those who receive must restore the balance ... If the balance is not restored then compensation must be taken.

An aspect of utu is tuku ... Ngāti Whātua Ōrākei uses the term “tuku Rangatira” to denote an allocation made between those highest in their respective authorities. It is rangatiratanga in action, where residual rights remaining intact and an attendant expectation of reciprocity from the recipient is generated.

4.277 Tā Tipene O'Regan (Ngāi Tahu) describes utu:⁶³⁴

In tikaka, the process of utu, in the sense of reciprocal balance, is not finished until a solution is reached.

... all the parties have to work together to find a solution that can be digested by everyone who belongs at the table.

All those who are affected must be part of the process and ultimately accept the solution.

Negotiations must continue until all parties accept the process has concluded.

Any outcome that involves the whenua as a means of redress to another iwi/hapū affects the mana whenua. In accordance with tikanga, they must also be involved in the process of utu.

Taka whenua involvement in the process is not just as matter of letting them be heard – they must also accept that an outcome has been reached too.

4.278 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) explains utu as:⁶³⁵

... a virtue that considers how one should respond, solve or acknowledge. At the heart of utu is the idea that balance must be achieved by reciprocity, whether by compensation or by revenge. Utu is usually proportionate to the action that has caused a particular state to be unbalanced, and is always directed at repairing and enhancing whanaungatanga.

⁶³³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu (2 June 2020) at [30]–[33].

⁶³⁴ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affirmation of Sir Tipene Gerard O'Regan (17 September 2020) at [49]–[52].

⁶³⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [7]–[8].

4.279 In oral evidence in the *Mercury NZ Ltd v Waitangi Tribunal* proceedings,⁶³⁶ Peter Addis (Te Ātiawa) and Paul Meredith (Ngāti Maniapoto) state that there is no one single term in Māori for the notion of redress.⁶³⁷ Addis explains:⁶³⁸

... oranga, was ... a word that came up extensively in the historical literature ... the obviously [sic] one is the word “utu” ... but *whakatika* was also a word that was commonly used as was whakaora and ritenga as well.

4.280 Addis also explains that utu is much more complex than revenge. “It invokes notions of payment, reciprocity, and balance in particular”, “keeping things in equilibrium.”⁶³⁹ Addis draws on Allan Hanson’s 1983 book called *Counterpoint and Māori Culture* to explain how going from a state of ea “where things are essentially in balance” and then “some sort of hara occurs ... throwing the system out of balance ... It then becomes incumbent on that community or that person to try and fix that imbalance, a *take* has been created for that purpose ... At that point, an utu process kicks in, the aim of which is to re-establish that original state of ea.”⁶⁴⁰ Addis clarifies that the balance and restoration of that balance can pertain to mana, relationships and tapu.⁶⁴¹

4.281 Addis acknowledges that:⁶⁴²

... sometimes to achieve that balance, it requires a greater response than what was the actual loss too ... it’s a relative term ... the balance isn’t just a ‘one for one’ balance, sometimes the balance, the restoration of balance, required more than the original hara to fix the scales in their proper place as it were.

4.282 One of the main characteristics of utu is:⁶⁴³

the notion of escalation utu processes invariably it seems somehow upping the ante on something that happened to a person or to a group. This is probably easiest to see in the revenge aspect of utu ... there is this concept of an eye for an eye [but] in the traditional Māori world, it seems to be not that idea. It seems to be the idea of two eyes for one eye.

4.283 Paul Meredith (Ngāti Maniapoto) says it can “also be the same case when gifting”.⁶⁴⁴

4.284 Once a hara occurs, there is “imbalance”, which requires “the affected party to go through a process to address that imbalance” and “any failure to do that ... to address the imbalance is seen as a failure on the part of that person and can affect the mana of that person”.⁶⁴⁵ That failure is described “as mate, so it creates a state of melancholy ... which can affect communities and individuals”.⁶⁴⁶ “It creates a sort of an obligation as it were in the mind of that person, in the mind of that community, if it’s a community thing to address

⁶³⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654.

⁶³⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 20–21.

⁶³⁸ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 20–21.

⁶³⁹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 21–22.

⁶⁴⁰ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 22.

⁶⁴¹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 50–51.

⁶⁴² *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 23.

⁶⁴³ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 23.

⁶⁴⁴ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 23.

⁶⁴⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 23.

⁶⁴⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 23.

that imbalance because what is at stake was the mana of that person.”⁶⁴⁷ Notion of escalation can also be seen in koha. Some marae keep a record so that, when they visit other marae, they can reciprocate in kind and if possible increase the value of the koha.⁶⁴⁸

4.285 Meredith raises the question as to who determines ea. He goes on to say it is “those who have suffered [who] determine when kua ea”.⁶⁴⁹

4.286 It is clear from many of the examples that acts of utu were seen as a reflection of mana. Tā Kim Workman (Ngāti Kahungunu, Rangitāne) gives the following examples:⁶⁵⁰

There was one chief who was fined for stealing goods and was outraged by the quantum of the fine and complained that it was not nearly enough. He insisted that he be fined four times more because that was more in line with his mana ...

Another leader who was sentenced to prison complained that he didn’t want to go there and asked to be executed instead because to take away his freedom and to live in one of those hell holes was uncivilised.

4.287 We see from the section 27 report written by Associate Professor Khylee Quince (Ngāpuhi, Te Roroa, Ngāti Porou, Ngāti Kahungunu) in *Solicitor-General v Heta*⁶⁵¹ that the idea of “balance” also pertains to the health of the individual. “[T]he cornerstones of a healthy Māori identity [are] the need for balance in the constituent elements of Te Taha Tinana (the physical aspect), Te Taha Wairua (the spiritual aspect), Te Taha Whānau (the family aspect) and Te Taha Hinengaro (the psychological aspect).”⁶⁵²

4.288 Maanu Paul (Ngāti Awa) writes:⁶⁵³

In order to reach a state of Te Ao Marama, the balance has to be struck. Referred to as UTU, the term itself takes on many guises. When there has been a HARA, an offence of any nature, there must be an utu to restore the balance that the offence has created. Without restoring this balance, an individual will find himself sloping down the stages of whakama, because he is in a state of nama/owing, has not repaid for the offence committed, as if in purgatory.

...

The ultimate point to get to is ‘ka ea’. If the utu does not meet the hara, and the mana has not been repaid, then whakamā will ensue.

4.289 He describes whakamā as “generational and will thus attach from generation to generation”.⁶⁵⁴

4.290 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) says utu “is not about revenge. It is about a price to be paid to restore harmony. It is a step towards reconciliation. It is part of the process ... of achieving justice and acknowledgement of hurt and then finding a

⁶⁴⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 24.

⁶⁴⁸ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 24.

⁶⁴⁹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Addis and Paul Meredith) at 69.

⁶⁵⁰ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Kim Workman) at 60–61.

⁶⁵¹ *Solicitor-General v Heta* [2018] NZHC 2453.

⁶⁵² *Solicitor-General v Heta* [2018] NZHC 2453, s 27 report by Khylee Quince (18 September 2018) at 7.

⁶⁵³ *R v Tamati Mason* [2012] NZHC 1361, Cultural Advisor Report by Maanu Paul (5 July 2012) at [20].

⁶⁵⁴ *R v Tamati Mason* [2012] NZHC 1361, Cultural Advisor Report by Maanu Paul (5 July 2012) at [31].

way to address the hurt.”⁶⁵⁵ He goes on to clarify “the notion of matching the act could be problematic if it’s seen that this is a violent act, a physically violent act, therefore we’ll match it with physical violence. It didn’t necessarily imply that but if you like, there was a comparability in the response needed to deal with a particular act.”⁶⁵⁶

- 4.291 Professor Jacinta Ruru (Raukawa, Ngāti Ranginui) and Mihiata Pirini (Ngāti Tūwharetoa, Whakatōhea) indicate that a state of “ea” can only be reached if all parties are involved in the resolution process:⁶⁵⁷

Tikanga evolves and adapts to fit situations. So while the Crown’s actions cannot be undone, in tikanga Māori a resolution is always possible.

...

Any tikanga based solution must acknowledge and respect the mana of all those involved and affected. In tikanga Māori, that must include tangata whenua and mana whenua groups where whenua is involved as part of the resolution process.

...

In tikanga, a state of ea could not be reached unless all affected parties, were involved in the process of resolution – this would otherwise be inconsistent with the principles of whanaungatanga and mana. In our opinion, a state of ea could not be reached where whenua is involved unless tangata whenua were involved and respected in the process.

Muru

- 4.292 Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) explains that muru is the plundering of an individual, whānau, hapū or iwi.⁶⁵⁸ It is restorative.⁶⁵⁹ It has the purpose of restoring mana.⁶⁶⁰ It is also an act that is done with aroha.⁶⁶¹ When the group that was about to be subject to muru lays in front of the aggrieved party all of their taonga, it is shown that restoration is wanted. This left both parties mana.⁶⁶²
- 4.293 Peter Adds (Te Ātiawa) similarly explains that muru was “a very common device that was used in Māori communities for the purposes of redress ... muru was about the ritualised removal of a persons’ private property ... a really common form of social control in Māori communities across the country”.⁶⁶³ He thinks that the translation of muru as “robbery”

⁶⁵⁵ *R v Tamati Mason* [2012] NZHC 1361, Notes of Evidence (3 May 2012) at 11.

⁶⁵⁶ *R v Tamati Mason* [2012] NZHC 1361, Notes of Evidence (3 May 2012) at 12.

⁶⁵⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed (14 September 2020) at [81], [83] and [85].

⁶⁵⁸ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [101]–[104].

⁶⁵⁹ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [102].

⁶⁶⁰ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [101]–[104].

⁶⁶¹ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [103].

⁶⁶² *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [104].

⁶⁶³ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Adds) at 28.

or “plunder” is completely wrong.⁶⁶⁴ He goes on to provide an example of *murū* in Taranaki in 1873:⁶⁶⁵

Te Kahuikararehe ... [from Te Namu Pā, Ōpunake] eloped with Lydia [from Parihaka] when ... he was already married to ... Betty ... [t]he people living closest to *Te Namu Pā* turned up at *Te Namu Pā* to take the property of the whole village, not just *Te Kahui's* stuff.

...

Not only did the people of *Te Namu* have to sit back and watch this happen to their property, they were also expected to provide *manaakitanga* to the people that were coming to get their stuff. They had to feed the people that were coming to get the material from *Te Namu Pā* and group after group turned up to get there [sic] stuff ...

Betty's relations from Parihaka turned up at *Te Namu* ... They were naked according to the description. They were covered in mud. They had scratched themselves and there was blood coming from various parts of their body and they came in ... And the rest of the party came in.

At one point in the ceremony a fire started in one of the huts at Te Ngamu [sic] Pā. People were really worried that the fire was in a house where there was an old man said to be living, at which point the whole process stopped. Both parties, the people from Te Ngamu [sic] and Parihaka rushed in to save the man who they thought was in the house. In the event, there was no one in the house.

... it demonstrates of course that the theatre and the rules around *murū* and the primary rule of *murū* apparently was that there was no one ... to get physically hurt in the process

...

By the end of the visit ... there was virtually nothing left at Parihaka.

[This process of *murū*] sanctified the divorce of Te Kahui and Betty so Te Kahui and Lydia could end up in a new marriage.⁶⁶⁶

Te Kahui's mana and his whanaunga in Te Namu, “in that context skyrocketed” and not only his mana but the mana of his Whanaunga living at Te Ngamu [sic] as well also skyrocketed as a result of the process. Interestingly, not just their mana, the mana of the people visiting Te Ngamu [sic] to take the stuff also increased. Why, because this was an overt statement to the rest of the world ... ‘I must be somebody because I'm going to take part in a *murū* – or be *murū'd*’.

4.294 Paul Meredith (Ngāti Maniapoto) explains that the “term *murū* has a notion of forgiveness and shows remorsefulness ... it's mana enhancing to show forgiveness, and remorsefulness”.⁶⁶⁷ He provides the example of a Pākehā grandfather that blocks the tauā *murū* coming across the bridge but the whānau show their remorse by waiting till he is asleep and taking their goods to present to the ope for *murū*.⁶⁶⁸

4.295 Tā Pou Temara (Tūhoe) describes a similar concept to *murū* – a ‘tauā’:⁶⁶⁹

⁶⁶⁴ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Adds) at 28.

⁶⁶⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Adds) at 29–31.

⁶⁶⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Adds) at 32.

⁶⁶⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Paul Meredith) at 45.

⁶⁶⁸ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Paul Meredith) at 45.

⁶⁶⁹ *Clarke v Takamore* [2010] 2 NZLR 525, Affidavit of Pou Temara (31 July 2008) at [24]–[26].

The climax of my whaikōrero was to place a taua on the whānau of the deceased and by association the hapū of the Marae. Other tribes would call taua a muru. But a taua is when you place a restriction or you demand compensation for some deed that has insulted or upset people.

4.296 Temara also says:⁶⁷⁰

Tikanga was being used to seek compensation for another set of tikanga. The compensation I called for was no less than a greenstone weapon ... Ko te utu he pounamu” and this was paid three months later.

4.297 According to Ngahuia Murphy (Ngāti Manawa, Ngāti Ruapani ki Waikaremoana, Tūhoe, Ngāti Kahungunu), muru was often instigated by wahine:⁶⁷¹

In times of transgression in pre-colonial times, wahine led muru plundering parties and at times, war parties to seek utu – the restoration of balance. This is one of the sacred role of wahine dictated by the atua wāhine and our cosmological stories.

4.298 Similarly, Ella Henry (Ngātikahu ki Whangaroa, Te Rārawa, Ngāti Kuri) says “muru (the call for utu) was often at the request or instigation of women”.⁶⁷²

4.299 Professor Jacinta Ruru (Raukawa, Ngāti Ranginui) and Mihiata Pirini (Ngāti Tūwharetoa, Whakatōhea) explain, “There is no role for the Crown to lead in determining the appropriate use of muru.”⁶⁷³ They say, “Muru must be expressed in accordance with tikanga Māori at the behest of the tangata whenua.”⁶⁷⁴

Tatau pounamu

4.300 Maanu Paul (Ngāti Awa) says:⁶⁷⁵

Where tikanga is an available avenue to guide a dispute resolution process, it is the most appropriate mechanism to guide the dispute resolution process for our people.

An example of this is the negotiation of tatau pounamu (greenstone door) a binding contract to ensure peace. Tatau simply meaning door and pounamu signifying an everlasting, unbreakable and eternal peace pact. The key context for such agreements was that their legitimacy and meaning were dependent upon the realities of tikanga as law and mana as a concept of power.

An example of this may be the offering of a rākau (tree) to acknowledge the tragic event in a manner that seeks to offer peace ... the impact of a tatau pounamu is life long.

4.301 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) describes tatau pounamu:⁶⁷⁶

Tatau pounamu was a restorative process used after particularly serious wrongs or a breakdown in relationships between say hapū [sic] caused by warfare and it was design [sic] specifically ... to deal with more serious issues and so there was formalisation ... of the

⁶⁷⁰ *Clarke v Takamore* [2010] 2 NZLR 525, Affidavit of Pou Temara (31 July 2008) at [25]–[26].

⁶⁷¹ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A67 Ngahuia Murphy at [15].

⁶⁷² Mana Wāhine Kaupapa Inquiry, Wai 2700, #A63 Ella Henry at [41].

⁶⁷³ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed (14 September 2020) at [88].

⁶⁷⁴ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Joint Affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini affirmed (14 September 2020) at [89].

⁶⁷⁵ *R v Tamati Mason* [2012] NZHC 1361, Cultural Advisor Report by Maanu Paul (5 July 2012) at [28]–[30].

⁶⁷⁶ *R v Tamati Mason* [2012] NZHC 1361, Notes of Evidence (3 May 2012) at 25.

need to bring back the collectors together and the utu that might be exacted in that case would also then reflect the gravity of the office ...

4.302 Jackson also says:⁶⁷⁷

The negotiation of tatau pounamu (greenstone door – a binding contract to ensure peace) is one example of Iwi and Hapū regularly treating with each other, as are instances where for example coastal Hapū allowed access by inland Hapū to gather kaimoana in return for reciprocal access to the resources of the forest etc.

The key context for such agreements was that their legitimacy and meaning were dependent upon the realities of tikanga as law and mana as a concept of power. Those who negotiated them therefore had to have the legal standing to do so, and the agreement they made had to be consistent with the prescriptions and proscriptions inherent in the tika exercise of mana.

4.303 According to the examples provided by Chris Winitana in *Tūwharetoa Māori Trust Board v Waikato Regional Council*,⁶⁷⁸ tatau pounamu is a peace agreement and can be brokered via marriage.⁶⁷⁹

4.304 Ella Henry (Ngātikahu ki Whangaroa, Te Rārawa, Ngāti Kuri) also cites evidence that explains tatau pounamu: “Biggs ... notes that marriages between victorious chiefs and women from the defeated party were a feature of peace making ... peace making included the exchange of weapons, known as tatau pounamu.”⁶⁸⁰

Social organisation and peace making

4.305 Traditionally, given the importance and unifying concept of whakapapa, intermarriage was strategic and a common way of resolving disputes or creating kinship connections between groups to foster relationships. Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) explains:⁶⁸¹

Traditional strategic marriages were an important part of establishing take to the whenua. [The] purpose of strategic marriages were to:

- promote peace between hapū;
- provide opportunity for trade and access to resources; and
- produce offspring with whakapapa connection to the various tupuna connected to the land.

4.306 Moe Milne (Ngāti Hine) explains:⁶⁸²

Tomo or arranged marriages, were common practice in Ngāti Hine. It was not marriage in the Pākehā sense, it was arranged “moea”, ka moea te tāne me te wahine, kia whai uri; the consummation of man and woman to produce offspring. Often marriage was between

⁶⁷⁷ *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [52] and [53].

⁶⁷⁸ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93.

⁶⁷⁹ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [105]–[108].

⁶⁸⁰ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A63(a), Ella Henry “Rangatira Wahine: Māori Women Managers & Leadership” at 83.

⁶⁸¹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Nigel Te Hiko) at [7.2], [7.3] and [7.8].

⁶⁸² Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62, Moe Milne at [91].

relatives as a way of keeping land within the hapū. Often third cousins would be married. A distinct part of the tomo, was that everybody was involved in the relationship.

4.307 Rereata Makiha (Te Mahurehure, Te Aupōuri, Te Arawa) emphasises the role of wahine in this peace making in the context of “puna roimata” (a deep tangi). “There is a recognition here that wāhine were the everlasting peace makers. To settle disputes or grievances wāhine were often married off to other tribes ‘ki te hohou i te rongo’ or te rongotaketake, everlasting peace. An example was the marriage of Matire Toha from Te Waihangehange and Ngāti Juta to Kakati (Potatau Te Wherowhero’s younger brother) to settle the dispute between Ngāpuhi and Tainui.”⁶⁸³

4.308 In response to the question “who and what is the tribe” of Ngāi Tahu, Tā Tipene O’Regan (Ngāi Tahu) explains that “social and political organisation ... [was] a deliberate outcome of rangatira marriage arrangements and directly linked to the politics and resource ownership of the tribe. [This was also] reflected in non-rangatira marriage and inter-whānau access to use rights in the wakawaka by which mahinga kai were and are divided.”⁶⁸⁴ In separate evidence, he draws an analogy:⁶⁸⁵

Tomo was the traditional practice or custom of chiefly intermarriages between iwi. It could perhaps be compared to the strategic alliances forged by marriages arranged for members of the British royal family in the Victorian era (and earlier). Such alliances were all carefully orchestrated.

4.309 Examples of such marriages:

- Haami Te Whaiti (Ngāti Kahungunu ki Wairarapa, Ngāi Tumapuhia) discusses how a “lasting peace was brought about and cemented through intermarriage, Ngā-rangi-topetope and Hineitārewa is one such marriage”.⁶⁸⁶
- Te Whaiti also talks about a significant tipuna, Ngaoko-i-te-rangi, who was important to all of the coastal people of Wairarapa, including Ngāi Tūmapuhia-a-rangi in the north and Ngāti Ira in the south. He explains that his death caused a huge backlash that saw several avenging taua coming from as far away as Whāngārā and resulted in some redistribution of authority and intermarriage.⁶⁸⁷
- Ross Gregory (Te Rārawa, Te Aupōuri, Ngāti Kahu, Ngāpuhi, Ngāi Tahu) explains that Ereonora and Whangatauatia were extremely influential in the north in their own right. He says, “It was no doubt this fact which influenced Panakareao’s mātua in arranging the marriages with those women ... His right to become a Kaitiaki was consolidated by those marriages.”⁶⁸⁸

4.310 There were some differences on the extent to which intermarriage resulted in the transference of land based rights and mana whenua.

⁶⁸³ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A71 Rereata Makiha at [17].

⁶⁸⁴ The Fisheries Settlement Report, Wai 307, #B9 Tipene O’Regan at 2–3.

⁶⁸⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affirmation of Sir Tipene Gerard O’Regan (17 September 2020) at [31].

⁶⁸⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Summary of Evidence of Haami Te Whaiti at [38].

⁶⁸⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Brief of Evidence of Haami Te Whaiti at [6].

⁶⁸⁸ Muriwhenua Land Report, Wai 45, #F28 Ross Gregory at 2–3.

- 4.311 Nigel Te Hiko (Raukawa, Waikato-Tainui, Ngāti Tūwharetoa, Ngāti Kauwhata, Ngāti Tukorehe, Ngāti Raukawa ki te Tonga) explains:⁶⁸⁹

[A] marriage did not automatically grant rights to land to the spouse or the spouse's people. Rather, rights to lands fell to their progeny. When rights have been established through marriage then it is through that whakapapa connection to the eponymous tūpuna, who had the pre-existing mana whenua.

...

The point of marriage is to provide a connection into the mana whenua that the existing tangata whenua has. When Raukawa marries into Ngāti Kahupungapunga it is to access the mana whenua that comes from that whakapapa and add those connections to other take that Raukawa might have. What it doesn't do is somehow pick up mana whenua and simply transplant it to the Raukawa whakapapa.

- 4.312 According to Wikitōria Hepi-Te Huia (Ngāti Tahu), alliances and peace settlements between neighbouring hapū sometimes provided for intermarriage/naming rights but that did not often confer mana whenua status, rather only access rights.⁶⁹⁰ To this end, Hepi-Te Huia disputes that Ngāti Tūwharetoa have mana whenua in respect of Rotokawa and that they only have access. She claims that Ngāti Tahu/Ngāti Whaoa maintain ahi kā roa and mana whenua over Rotokawa.⁶⁹¹

- 4.313 David Wilson (Te Ākitai Waiohua, Ngāti Te Ata) emphasises the connection that intermarriage creates in an inclusive way:⁶⁹²

Ngāti Whātua claim that these strategic intermarriages cemented their rights and interests in the whenua. But this is like saying that they intermarried with us but not us with them. Whakapapa has two sides and you can't wipe out one. We see these marriages not only as a means of peace making between Waiohua and Ngāti Whātua to avoid further conflict but as a way of continuing to connect us by whakapapa to the land that our tūpuna held.

- 4.314 Margaret Kawharu (Ngāti Whātua Ōrākei) says:⁶⁹³

Well, as far as I understand, it was relatively common practice to fight and then find a way to make peace. And there are a number of ways of doing that. Dog skin cloaks and various ceremonies, gift exchanges, women also come into this ... there's two things going on with intermarriage. There's a reconciliation and there's also a slight, there's a connection with the people that were there, have been there, but also a dominating influence also I think.

- 4.315 Kawharu agrees that the intermarriages between Te Ākitai Waiohua and Te Taoū are an example of whanaungatanga and the joining of whakapapa and agrees that it preserves a Te Waiohua link to the whenua.⁶⁹⁴ However, she qualifies this and states that it is "under the auspices of" Ngāti Whātua Ōrākei.⁶⁹⁵ She says, "I mean there's a peace and there's a

⁶⁸⁹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affidavit of Nigel Te Hiko at [7.3] and [7.8].

⁶⁹⁰ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Rebuttal Evidence of Wikitōria Hepi-Te Huia on behalf of Tauhara North No.2 Trust (23 June 2017) at [2.6].

⁶⁹¹ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Rebuttal Evidence of Wikitōria Hepi-Te Huia on behalf of Tauhara North No.2 Trust (23 June 2017) at [2.8]–[2.12].

⁶⁹² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [34].

⁶⁹³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 295.

⁶⁹⁴ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 296.

⁶⁹⁵ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 295.

reconciliation but there's a recognition that the balance of power has shifted also, I would say.”⁶⁹⁶

- 4.316 Tā Hugh Kawharu (Ngāti Whātua) notes the nature of land ownership in accordance with iwi and hapū rights has changed with colonial introduction of land titling:⁶⁹⁷

Rights of use in land once allocated by an iwi/hapū authority and held by individuals subject to the paramount right of the iwi or hapū have been transmuted into ownership of shares and protected in law. Such rights no longer require, for example, occupation of the land, application of the occupier's labour to it and community service which, in the ultimate, was a preparedness to die in defence of the community ... Such ownership may now of itself confer tangata whenua status on the owner in the tribal area where the land is located.

- 4.317 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) says:⁶⁹⁸

A marriage alone does not confer mana whenua, rather it is contingent on the permanency value of those arrangements.

This arrangement plays out in relation to whenua as well. The spouse who moves to live with the other iwi becomes part of the whakapapa of that iwi. However that spouse does not gain mana whenua rights over the land. Instead the spouse of the iwi with mana whenua has a duty to give protection, honour, security and appropriate livelihood lifestyle to their spouse while they live there together ... Their children from their marriage however inherit mana whenua rights to the land.

Other dispute resolution principles or mechanisms

- 4.318 Shadrach Rolleston (Ngāi Te Rangi, Ngāti Ranginui, Ngāti Hāua) provides a number of central principles that guide dispute resolution within the context of the MV *Rena* disaster and kōrero with tangata whenua groups. They are:⁶⁹⁹

- rangatira ki te rangatira – engaging chief to chief;
- kanohi ki te kanohi – engaging face to face;
- te kanohi kitea – ‘seen face’ or fronting up;
- nā te kakano – from the seed (engaging early); and
- ki tai wīwī, ki tai wāwā – flexibility in the engagement process.

- 4.319 Associate Professor Khylee Quince (Ngāpuhi, Te Roroa, Ngāti Porou, Ngāti Kahungunu) also emphasises the importance of kanohi ki te kanohi in resolving disputes:⁷⁰⁰

Face to face (kanohi ki te kanohi) reconciliation between parties involved in conflict is the centrepiece of Māori dispute resolution practice ... it is essential that wrongdoing is addressed directly, so that parties can air their mamae (grievances/hurt), attempt to forge

⁶⁹⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence at 295.

⁶⁹⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [14(b)].

⁶⁹⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger in reply (4 December 2020) at [31]–[32].

⁶⁹⁹ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Shadrach Rolleston (28 October 2016) at [4.4].

⁷⁰⁰ *Solicitor-General v Heta* [2018] NZHC 2453, s 27 report by Khylee Quince (18 September 2018) at 10.

consensus solutions if necessary, and move on. The personal price for wrongdoing is shame.

4.320 Paul Meredith (Ngāti Maniapoto) discusses hākari and other actions that were traditionally used to resolve disputes. To sort out disputes, people would often have kōrero around a hākari to show manaakitanga. It was mana enhancing about how much food you could give your visitors.⁷⁰¹ Meredith provides examples of dispute resolution such as:

- when some people didn't have the resource to be able to give a paremata or return hākari so “in the end, *ka tuku whenua ...*” (they ended up giving whenua instead);⁷⁰²
- tāpae toto – when taonga was gifted;⁷⁰³
- uru maranga – justified killing as opposed to kōhuru or murder;⁷⁰⁴
- whakawā – after church when the community will gather and people will raise issues and there would be redress given;⁷⁰⁵
- panaia – banishment;⁷⁰⁶ and
- raupatu and raukatau.⁷⁰⁷

4.321 Marjorie Huingapani Kurei (Ngāi Tamahaua hapū) notes that the tikanga of collectiveness meant that, where there was a conflict, “the whole community was involved in finding a resolution”.⁷⁰⁸

4.322 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) was asked by the Court whether a hui would occur in te ao Māori dispute resolution process in circumstances where someone has committed wrongdoing, been arrested and accepted responsibility for their actions. He says in reply:⁷⁰⁹

Admission of the wrong or even a denial of the wrong, would trigger a process ... you would expedite the process of reconciliation. That wouldn't then necessarily lead to a hui ... that sort of large public gathering ... can further victimise and traumatise the person hurt and our people were really aware of that and so there would be a hui, but it wouldn't be the sort of hui that we've come to accept with the term. It would be a meeting with a particular purpose and the people who were there would have been trained, they were indeed tohunga to work towards a reconciliation and try to find a solution.

4.323 In the Wairarapa ki Tararua district inquiry, a tikanga wānanga on redress was held where the participants discussed the impact of redress concerning land on third parties. In this context, Paul Meredith (Ngāti Maniapoto) explains, “Whenever you have a dispute, the

⁷⁰¹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Paul Meredith) at 47.

⁷⁰² *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Peter Adds and Paul Meredith) at 53–54.

⁷⁰³ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Paul Meredith) at 48.

⁷⁰⁴ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Paul Meredith) at 48.

⁷⁰⁵ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Paul Meredith) at 48.

⁷⁰⁶ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Paul Meredith) at 48.

⁷⁰⁷ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Paul Meredith) at 48–49.

⁷⁰⁸ Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [10].

⁷⁰⁹ *R v Tamati Mason* [2012] NZHC 1361, Notes of Evidence (3 May 2012) at 24–25.

main thing is that everyone involved has to walk away with their *mana* intact or the ability to restore their *mana*.”⁷¹⁰ In terms of third parties, Meredith raises:⁷¹¹

... the concept of “hau” whereby “you gift this taonga to someone else, then this taonga is taken by someone else. That person then has to redress you – the relationship of the person who they stole it off, but also that the hau of that original owner also is included ... there’s some restoration there needed”. Hau is not so much about third parties but acknowledges there are parties who had original interests in that taonga, that property.

Evolution and continuity of dispute resolution

4.324 Tā Tipene O’Regan (Ngāi Tāhu) discusses how tikanga around dispute resolution has evolved over time. He states, “Over time, practices evolve. Disputes over the kawa of a marae that would have resulted in the launching of a war party in the past are now determined by negotiating and renegotiating matters.”⁷¹²

4.325 Paki Nikora (Ngāti Rongo, Tūhoe) discusses how their marae disciplined Tame Iti following 16 January 2005, where he discharged a firearm at the New Zealand flag at the welcoming ceremony of the Waitangi Tribunal. They convened their “own Court hearing” inside of their “ancestral meeting house” where the kaumatua “considered all the matters to be adjudged and that they too, disciplined Tame”.⁷¹³

MAURI

4.326 Tahu Potiki (Ngāi Tahu, Ngāti Māmoë) explains that:⁷¹⁴

Mauri is the actual life force connection between the gods and earthly matter. It is stated that all things have a mauri including inanimate objects so it can be found in people, animals, fauna, fish, waterways, rocks, mountains. The mauri is ... also the generator of the health of a person or place.

Mauri ... is transportable by the experts familiar with appropriate protocols.

Barlow states:

Everything has a mauri. The mana of kaitiaki and atua can be utilised to create a mauri to protect a particular hunting ground. This was done through imbuing a mauri into a physical object such as a stone or stick.

The mauri is ... a life.

4.327 Mauri can be restored. In fact it is arguable that it cannot be extinguished at all merely diminished or caused to lie dormant.⁷¹⁵

4.328 Mauri is described by various people:

⁷¹⁰ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Notes of Evidence (Paul Meredith) at 69.

⁷¹¹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654 (Paul Meredith) at 69.

⁷¹² *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affirmation of Sir Tipene Gerard O’Regan (17 September 2020) at [26].

⁷¹³ *R v Iti* [2007] NZCA 267/06, Notes of Evidence, (Paki Nikora) at 104.

⁷¹⁴ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki (23 December 2016) at [8.1]–[8.10].

⁷¹⁵ *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, Cultural Values Assessment and Analysis by Tahu Potiki (August 2016) at [9.13].

- Mason Durie (Ngāti Kauwhata, Rangitāne) describes mauri as:⁷¹⁶
[embodying] familiar notions of wellness, health, levels of vitality, energy, spirituality, awareness, identity, integrity and alertness and engagement beyond the self.
A flourishing mauri is evidenced by vitality, spiritual enlightenment, enthusiasm, emotional strength, a capacity to engage – all experienced within social and physical environments that align with human resilience.
A languishing mauri has the opposite associations: low energy, despondency, uncertainty, shame, a reluctance to engage, and environments that aggravate personal bleakness.
- Desmond Kahotea (Ngāi Te Rangi, Ngāti Ranginui, Ngāti Pūkenga), explains that mauri is sometimes referred to as being “a framework for which specific and measurable social, cultural, environmental, and economic values are understood”.⁷¹⁷ Mauri is also a metaphysical value that can be managed by karakia conducted by experienced tohunga.⁷¹⁸ Karakia was conducted to mitigate the negative impact of the MV *Rena* wrecked on the reef for the purpose of placing a rāhui over the area to protect the mauri.⁷¹⁹
- Haami Piripi (Te Rārawa) explains that “the significant habitats of our flora and fauna house the mauri and spiritual essence of our ancestors”.⁷²⁰

4.329 Specific examples of mauri are also provided:

- In *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council*, Ngahihi o Te Ra Bidois (Ngāti Rangiwewehi) highlights that the negative effect on the Awahou River from water extraction had a negative effect on their mana.⁷²¹
- Reverend Māori Marsden (Ngāi Takoto, Ngāti Warara) says:⁷²²
Allow me to conclude with a special reference to the ‘Mauri’ of the toheroa ... I remember at a special meeting of Ngāitakoto where the elders expressed misgivings about the Mauri of the Toheroa being made ‘noa’ and being depleted in the near future because they were being [sic] commercialised, a grave ‘hara’ or sin against the Atua for a freely bestowed gift. They predicted that in less than 20 years the toheroa would disappear because the Mauri would remove itself, and the removal of Mauri or life-force, would spell doom to the toheroa. For them, it was not so much the use or even over-use of the resource but rather the abuse and misuse of the mauri and its tapu. It would create an imbalance in the fragile network of the eco-systems of the Oneroa-a-Tooe and even the abundance of Schnapper and other seafoods would be seriously depleted.

⁷¹⁶ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Mason Harold Durie (23 December 2016) at [22]–[24].

⁷¹⁷ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Desmond Tatana Kahotea (28 October 2016) at [9.4], referring to Dr Kepa Morgan.

⁷¹⁸ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Desmond Tatana Kahotea (28 October 2016) at [9.6].

⁷¹⁹ *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Desmond Tatana Kahotea (28 October 2016) at [9.1]–[9.7].

⁷²⁰ Ko Aotearoa Tēnei, Wai 262, #P3 Haami Piripi at [36].

⁷²¹ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Statement of Evidence of Ngahihi o Te Ra (19 November 2007) at [5.4].

⁷²² Muriwhenua Land Report, Wai 45, #C17 Reverend Māori Marsden at 8.

- Waiohau Te Haara (Ngāti Rangi) says, “All things have their own Mauri. Takauere (taniwha) embodies the mauri of the geothermal waters of Ngāwhā.”⁷²³
- Joseph Davis (Ngāti Hei) explains, “The land and the sea are the source of spirituality and mauri for Ngāti Hei. Our history and whakapapa are intimately tied to the spiritual stories and beliefs that have been passed down from generations before. We have traditions and values that we associate with our rohe and we are protective of them.”⁷²⁴
- Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) gives an example of the large boulders at the mouth of the Motu River having the mauri of the kahawai in the boulders, which is one example of a hapū being connected to certain fish through mauri.⁷²⁵
- Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) and Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) say, “Te mauri o te wai is paramount for life, our eco-system and for Ngāti Awa generally.”⁷²⁶
- Hemana Manuera (Ngāti Awa) states that it is possible for mauri of water to be degraded. “Hypothetically, the mauri of water could be negatively affected through human involvement. For example, by diverting water or extracting it so much that it is depleted.”⁷²⁷
- Tania Hopmans (Ngāti Marangatūhetaua, Ngāti Kurumōkihi, Ngāi Tauira, Ngāti Whakaari, Ngāi Tahu) explains that the use and occupation of Tangitū is integral to the distinct identity and mana of the hapū. “Tangitū has a mauri of its own. This mauri binds the spiritual world with the physical world. All elements of the natural world have mauri and it is this mauri that connects the Hapū with Tangitū”.⁷²⁸
- Te Ringahuia Hata (Ngāti Patumoana) says, “All beings in this realm possess a mauri, or a life force, they have something to say and something to share, the sea, the fish, the shellfish, the crabs, the shells, the pebbles and gravel, the rocks and boulders, the sand and earth, the trees, the birds, and the winds. They speak to each other just as we communicate daily.”⁷²⁹

⁷²³ *Beadle v Minister of Corrections*, NZEnvC Wellington A074/2002, Evidence of Waiohau (Ben) Te Haara in Reply (undated) at [49].

⁷²⁴ *Wilson v Waikato Regional Council* [2021] NZEnvC 131 Statement of Evidence of Joseph Davis (28 August 2020) at [80].

⁷²⁵ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [64]–[65].

⁷²⁶ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Joint Statement of evidence of Te Kei Merito and Hohepa (Joe) Mason at [52].

⁷²⁷ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Statement of Evidence of Hemana Eruera Manuera (29 March 2019) at [46].

⁷²⁸ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Tania Marama Petrus Hopmans (3 April 2017) at [73].

⁷²⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [65].

KAITIAKITANGA

- 4.330 Kura Paul-Burke (Ngāti Awa, Ngāti Whakahemo) describes kaitiakitanga as incorporating “one universe, where all living things are connected. This includes animals, fish, plants, forests, sea and humans. Kaitiaki are manifested in tangible and intangible forms and are not always human.”⁷³⁰
- 4.331 Colin Reeder (Ngā Pōtiki) describes the closest English equivalent to kaitiakitanga “is protection, guardianship, stewardship or trusteeship. However, these words merely form the basis of what this concept means”. He adds that for his iwi, “Ngā Pōtiki, kaitiakitanga has manifested in different forms over time. Despite its different manifestations, its underpinning [sic] principle and inherent obligation of guardianship remains constant. It is a principle that is intrinsically connected to assertions of tino rangatiratanga, mana whenua, mana moana and ahi kā.”⁷³¹

Invokes obligations

- 4.332 The concept of kaitiakitanga is said to invoke particular obligations and duties:
- Angeline Greensill (Kokako, Tainui, Ngāti Tahinga, Ngāti Rangatiratanga, Ngāti Mahanga, Ngāti Te Ata, Waiohau, Ngāti Ruanui) says, “Our hapū are obliged to actively protect our area for future generations through the practice of kaitiakitanga no matter what the cost. It is our responsibility to keep and guard hapū interests and taonga. It is us (Tainui o Tainui ki Whaingaroa) who are responsible for the preservation and guardianship of Whaingaroa Harbour. It is we who are obligated to nourish and control the relationship between our peoples and our natural world.”⁷³²
 - According to David Topia Rameka (Ngāti Tūwharetoa, Ngāti Kurapoto, Waikato-Tainui, Ngāti Rangitahi, Ngāti Tahu) on behalf of Tūwharetoa Māori Trust Board, kaitiaki “have an intrinsic duty to safeguard the mauri of the environment, including to ensure the physical and spiritual health of the environment is maintained, protected and enhanced”.⁷³³
 - Nganeko Minhinnick (Ngāti Te Ata) highlights, “It is our role as kaitiaki to protect our tupuna and our culture, so that future generations can exercise their kaitiakitanga.”⁷³⁴
 - Waiohau Te Haara (Ngāti Rangi) explains that being a kaitiaki means being responsible for the land, and for the water that flows through and under it, for future generations.⁷³⁵ He goes on to say that “kaitiakitanga is a contemporary concept that

⁷³⁰ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence by Kura Paul-Burke (22 December 2016) at [3.3].

⁷³¹ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Colin Francis Reeder (6 July 2020) at [18].

⁷³² *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of Angeline Greensill on behalf of Tainui Hapū (undated) at [24].

⁷³³ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of David Topia Rameka (4 June 2017) at [21].

⁷³⁴ *Minhinnick v Minister of Corrections* [2004] NZEnvC A43/04, 6 April 2004, Statement of Evidence of Nganeko Minhinnick of Ngāti Te Ata Waiohau (undated) at [6].

⁷³⁵ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Waiohau (Ben) Te Haara (undated) at [6]–[7].

has appeared in legislation recently and kaitiaki have the responsibility to ensure the land is used creatively to bring harmony; we look after it and it looks after us”.⁷³⁶

- Margaret Kawharu (Ngāti Whātua Ōrākei) says, “Duties of kaitikitanga meant trying to protect significant sites from desecration by non-Māori. Sometimes that also meant exercising kaitiakitanga on behalf of or in cooperation with those who had historical associations but who lived at a distance.”⁷³⁷
- Puhanga Tupaea (Ngāti Koata, Ngāti Kuia) talks about the “severe obligations” that are imposed on people to act as kaitiaki and protectors of knowledge (in this context of the artistic expression of mātauranga Māori).⁷³⁸
- Theona Heaslip (Ngāi Tahu) says, “Each whānau on a manu [family muttonbirding territory] is responsible for caring and protecting the environment on land and around their manu coastal areas, which encompasses foreshore and seabed. Although we may express our opinion how a whānau or individual treats and respects their coastal area adjacent to their manu, we don’t have the right to tell them to stop doing it.”⁷³⁹
- Gerald Brenton Aranui (Ngāti Pāhauwera) on behalf of Ngāti Pāhauwera states, “Ngāti Pāhauwera whānau have strong kaitiakitanga views about caring for the beach and the people who go there.”⁷⁴⁰ He continues to provide examples on the ways this duty has been enforced in recent times stating, “We try and make sure people don’t dump rubbish everywhere and we put rubbish bins in the area. We also erected some long drop toilets. Sometimes we have to mow the sides of the roads for safety reasons. My uncle has also taken his digger down there to open up the bar when the river is blocked or the mouth is in a position that puts beach users at risk.”⁷⁴¹
- Bevan Taylor (Ngāti Marangatūhetāua, Ngāti Kurumokihi, Ngāi Tauira and Ngāi Tahu) in respect of Maungaharuru-Tangitū hapū says, “The gathering of kai and resources has a reciprocal obligation on the Hapū as kaitiaki (guardians). Tangitū has a mauri (life force), so if we do not look after or respect Tangitū in accordance with our kawa and tikanga, its mauri will be detrimentally affected and there will be dire consequences for our Hapū.”⁷⁴²
- Tama Hata (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tūhoe, Waikato) states, “Māori alike have their customs to manage, to preserve and restore the marine and coastal areas under the responsibilities of guardianship. We, the caretakers of the tribes and sub-tribes have the task of retaining the health of the oceans and its sacred mana, its great mana.”⁷⁴³

⁷³⁶ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Waiohau (Ben) Te Haara (undated) at [19].

⁷³⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Margaret Anne Kawharu in reply (4 December 2020) at [41].

⁷³⁸ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [29].

⁷³⁹ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Submission against Denis Tipene’s Customary Marine Title Application by Theona Heaslip (undated) p.68.

⁷⁴⁰ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Gerald Brenton Aranui (26 November 2013) at [8].

⁷⁴¹ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Gerald Brenton Aranui (26 November 2013) at [8].

⁷⁴² *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit Bevan Maihi Taylor (11 August 2020) at [34].

⁷⁴³ *Re Edwards* [2021] NZHC 1025, Affidavit of Tama Te Waiwhakaruku Hata (14 February 2020) at [48].

- David Williams (Pākehā) states that kaitiakitanga is “a term which denotes the obligation of stewardship and protection. These days it is most often applied to the obligation of whānau, hapū and iwi to protect the spiritual wellbeing of the natural resources within their mana. It is difficult to divorce kaitiakitanga either from mana, which provides the authority for the exercise of the stewardship or protection obligation; and tapu, which recognises the special or sacred character of all things and hence the need to protect the spiritual wellbeing of those resources subject to tribal mana.”⁷⁴⁴
- Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) notes, “Under our tikanga, our ancestral connection to Tangaroa gives us the right to enjoy the bounty of the sea, but those rights are conditioned by our responsibility to nurture our ancestor. We must exercise kaitiakitanga as the custodians of our rohe moana (customary sea territory). Acting as the kaitiaki includes a responsibility to maintain the spiritual connection and respect for Tangaroa. Spiritual protocols need to be conducted when there are deaths at sea, whether they be people or taonga species such as whales, and karakia performed to whakawatea te tapu (clear the tapu). It may be necessary to impose a rāhui for a period. Rāhui can also be imposed if resources are under threat.”⁷⁴⁵
- Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) states:⁷⁴⁶

An obligation for us as mana whenua and as kaitiaki is the need to protect resources when they have been under threat or to avoid exploitation of limited taonga. This obligation is derived from our whakapapa connections to the area. In spite of legislation and the raupatu of our lands over successive government and generations, for Ngāti Ira, mana tuku iho never dies but it endures forever. The same applies to the Takutai Moana. We have always asserted our mana moana and kaitiakitanga and that will never change. The knowledge about these processes were passed down from our parents and grandparents and have able equipped our generations to carry on the obligations of kaitiakitanga today and into the future.

Connected to whakapapa/mana

- 4.333 Gregory Lloyd White (Ngāti Tama) sees whakapapa to an area as being a vital component of kaitiakitanga. He considers that kaitiaki can only exercise kaitiakitanga in their own rohe – they are part of the whenua with tūpuna descending from the whenua itself. A person cannot call themselves a kaitiaki just because they carry out activities similar to a kaitiaki. It is culturally offensive to have persons who are not kaitiaki referred to as such. He says:⁷⁴⁷

The fundamental component of kaitiakitanga is whakapapa. It is whakapapa that links individual kin to each other, to a specific location, resources, ngā Atua, as well as the dearly departed.

- 4.334 Te Ringahua Hata (Ngāti Patumoana) explains, “Traditionally, only coastal hapū were allowed access to the kaimoana grounds at Ōhiwa. If food was required by inland whānau,

⁷⁴⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of David Vernon Williams (30 July 2020) at [63].

⁷⁴⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (3 August 2020) at [6.1].

⁷⁴⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [53].

⁷⁴⁷ *Director-General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203, Statement of Evidence (Cultural) of Gregory Lloyd White on behalf of Te Rūnanga o Ngāti Tama (14 June 2019) at [69]–[77].

then those on the coast would be called and it was they, and only they who were permitted to harvest from *Te Kete o Tairongo*. Such measures and controls were in place to ensure the resource was adequately looked after – the exercise of kaitiakitanga.”⁷⁴⁸

- 4.335 Kaitiakitanga is not a birth right but a birth obligation that is inherited from generations past and passed down in perpetuity. The obligation can be impacted (but not extinguished) by land loss, whether by confiscation or sale. It can also be restored by the acquisition of more land within the kin group rohe. It is not transient and cannot be imposed outside the rohe. Another aspect of kaitiakitanga is that it incorporates communication between the ever present dead, the environment, the living, and usually the relevant matter(s) at hand. Sean Ellison (Taranaki, Ngāi Tahu, Ngāti Porou, Te Arawa) makes a similar point by implication. He explains, “The tribal groups of Whaingaroa are the custodians and guardians of the harbour, the sea and waterways, and the land. This is a right from ancient times. It comes from Maui, from Kupe, from Rakataura, from Hoturoa and the old people.”⁷⁴⁹

- 4.336 Hetaraka Biddle (Ngāi Tamahaua hapū) notes:⁷⁵⁰

It is important for our hapū to retain the ability to exercise kaitiakitanga over these areas keeping the site and people safe. That goes hand in hand with recognising and respecting hapū rangatiratanga to monitor, protect and preserve these important areas in accordance with our tikanga. It is also important that the hapū maintains the mana to determine what historical information is provided to the general public about these sites and in what manner that information will be delivered.

...

It is our duty as kaitiaki to protect and preserve these areas for our people and for future generations.

- 4.337 Similarly, Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) discusses mana moana and kaitiakitanga:⁷⁵¹

In te ao Māori, there are tikanga values that guide our relationship to the takutai moana. They are built on mana Motuhake, mana whakahaere, mana takeake and notions of kaitiakitanga, aroha, and manaakitanga.

While our ability to carry out our customary rights has been continually threatened and put under pressure by the actions of the Crown, the underlying rights, including those to the coastal area within our rohe, remains. Our customary right to the moana takes into account the needs of our future generations to retain and manage the ancestral inheritance that our tīpuna entrusted to us.

⁷⁴⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuaia Hata (21 February 2020) at [101].

⁷⁴⁹ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of Sean Ellison on behalf of Tainui Hapū (undated) at [8].

⁷⁵⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [14] and [48]. See also *Te Waka Hi ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Nga Tikanga Māori e pa ana ki a Tangaroa (22 November 1991) at 10–11.

⁷⁵¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [32] and [33].

- 4.338 Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) explains the interrelationship between kaitiakitanga and mana:⁷⁵²

For example, if hapū and iwi care for the pipi bed, or fishing grounds well, they are viewed favourably, it enhances their mana and reputation, and also strengthens their connection to those taonga and their rohe. This also works in reverse. If iwi and hapū fail to care for their taonga, this reduces their mana and their connection to the taonga. Such a failure therefore has both spiritual and practical implications for tangata whenua. Their rights of possession and occupation of their whenua, moana or taonga can be lost where they fail to uphold their kaitiaki responsibilities.

- 4.339 He sees kaitiakitanga as being “essentially the responsibility aspect of mana. It recognises the responsibility of iwi and hapū to protect and look after the whenua, moana and taonga within their rohe. It also reflects the fact that iwi and hapū do not see themselves as owning the whenua, or moana, in the sense that we understand ownership today.”⁷⁵³

- 4.340 Agnes Clarke (Ngāti Rangī) makes a similar point: “As kaitiaki we are responsible for not only the physical but the spiritual well-being of Ngāwaha. We must ensure that the mauri of our taonga remains healthy and our ability to do that through generations reflects directly on our mana.”⁷⁵⁴

- 4.341 Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) and Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) explain:⁷⁵⁵

When you are a kaitiaki you are the guardian of the resource for everybody. That doesn't necessary [sic] mean you have the sole mana over the resource; kaitiaki need to exercise their guardianship for the benefit of the eco-system as a whole. The guardianship is over all living things and is not just restricted to human sustenance. If all living things are sustained then the people are sustained.

- 4.342 They go on to explain:⁷⁵⁶

In our view, the erosion of te mauri o te wai has a negative effect on the ability of the hapū to be kaitiaki and Te Rūnanga to support that. This is particularly the case if the mauri has departed te wai. The ability for the hapū to exercise kaitiakitanga at this stage is gone.

If the mauri is diminished, or gone, the kaitiaki are not fulfilling their responsibility.

Informs relationships

- 4.343 Te Ururoa Flavell (Ngāti Rangiwewehi) explains how the kaitiakitanga relationship is reciprocal between Ngāti Rangiwewehi and their awa. He states that “an integral part of

⁷⁵² *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [49].

⁷⁵³ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [55].

⁷⁵⁴ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Agnes Te Haara Clarke (August 2001) at [4].

⁷⁵⁵ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Joint Brief of Evidence of Hohepa Joseph Mason and Te Kei (O Te Waka) Wirihana Merito (29 April 2019) at [56]. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Nga Tikanga Māori e pa ana ki a Tangaroa (22 November 1991) at 11–12 and 19.

⁷⁵⁶ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Joint Brief of Evidence of Hohepa Joseph Mason and Te Kei (O Te Waka) Wirihana Merito (29 April 2019) at [67]–[68].

this is the Awahou Stream. It forms part of our marae and the activities we conduct here. The stream, together with the springs from which it derives, continues to be intertwined with our people in a mutually beneficial relationship of kaitiakitanga and respectful reciprocal use and protection.”⁷⁵⁷

- 4.344 Tania Hopmans (Ngāti Marangatūhetaua, Ngāti Kurumōkihi, Ngāi Tauira, Ngāti Whakaari, Ngāi Tahu) cites the statements of association in the Maungaruru-Tangitū Hapū Deed of Settlement to explain what the role of kaitiaki means to Maungaharuru-Tangitū hapū.⁷⁵⁸

The Hapū as kaitiaki (guardians) have the responsibility to take care of ngā awa within their takiwā. Central to these responsibilities is the maintenance of customary practices and the sustainable use of natural resources. This kaitiaki role is an all-encompassing one, providing for the protection of biodiversity, the utilisation and maintenance of resources, for present and future generations and the restoration and enhancement of damaged ecosystems. Decisions about how to look after taonga species and places within the takiwā are based on mātauranga Māori and implemented through tikanga practised by the Hapū as tāngata whenua for many generations.

Actively exercised

- 4.345 Ngarimu Blair (Ngāti Whātua Ōrākei) emphasises the active dimension of kaitiakitanga.⁷⁵⁹

Most importantly I have visited most of the sites I talk about in this evidence, and continue to visit them on a regular basis. I frequently wānanga (meet and discuss) at these sites with whānau, iwi members, students as part of a walking lecture and for anyone who is interested in learning more about these sites. I consider this as an active expression of my obligations as a kaitiaki for these kōrero and these sites our tūpuna lived and loved.

- 4.346 Tracy Hillier (Ngāi Tamahaua hapū) discusses examples of kaitiakitanga in practice, some of which encompassed modern examples, including monitoring of boats and their catch, rubbish collections, planting days, monitoring freedom campers, monitoring vehicles on Opape Beach, projects focused on maintaining kaimoana levels, programmes aimed at teaching hapū members customary fisheries and wai Māori skills, care and protection of wildlife and rāhui.⁷⁶⁰

Distinct from ownership

- 4.347 David Topia Rameka (Ngāti Tūwharetoa, Ngāti Kurapoto, Waikato-Tainui, Ngāti Rangitīhi, Ngāti Tahu) makes the point that kaitiakitanga obligations apply irrespective of ownership: “This issue concerns the responsibility of Ngāti Tūwharetoa to undertake their duties of custodianship, stewardship and guardianship over their lands, resources and taonga. The Kaitiaki principle applies in respect of all Tūwharetoa taonga whether in the ownership of Ngāti Tūwharetoa or not.”⁷⁶¹

⁷⁵⁷ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Brief of Evidence of Te Ururoa Flavell (undated) at [4.2].

⁷⁵⁸ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Tania Marama Petrus Hopmans (3 April 2017) at [105].

⁷⁵⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Ngarimu Alan Huiroa Blair (2 June 2020) at [11].

⁷⁶⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Tracy Francis Hillier (20 February 2020) at [93].

⁷⁶¹ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of David Topia Rameka (4 June 2017) at [32].

4.348 A different point in relation to ownership is made by Hemana Manuera (Ngāti Awa) who states, “A person or iwi may be kaitiaki over land or water, but that is not ownership as once we leave this world someone else will take over as kaitiaki or guardian.”⁷⁶²

4.349 Karen Mokomoko (Ngāti Patumoana, Te Upokorehe, Ngāi Tamahaua hapū) reiterates the sentiments above: “We do not own the takutai moana in a Western sense. Under our tikanga we are ‘of’ the takutai moana and of the moana as a whole. It is our duty to take care of it for future generations, whoever they may be.”⁷⁶³

4.350 In discussing the idea of ownership, Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) states:⁷⁶⁴

The old people always said the moana was ours. I struggle with the word “ownership”. That term does not fit with our thinking. But I do not follow the Pākehā idea that Māori only occupy places in their lifetime. I have always been brought up that the moana belongs to us, it is ours, and it always has been. We belong to the moana and the moana belongs to us. This is even more so for me whose connections to Te Whakatōhea and Ngāti Ira have been maintained by other whānau members who like our grandfather fiercely protected all that we inherited to maintain for future generations.

We do not use the word ownership, but that does not mean that we accept that we have lesser rights. They are different in kind, but they equate to the same thing: absolute authority and control over what is ours. We claim ownership, because we are working within a Pākehā system.

4.351 Wiremu Hodges (Ngāti Pāhauwera) conceptualises kaitiakitanga as a protective mechanism to preserve mauri or life essence:⁷⁶⁵

Kaitiakitanga principles provided the foundation for the ease with which this duty and responsibility is carried out. For Pāhauwera, the principle of Kaitiakitanga in concise terms is the “preservation of mauri and the conservation of species”. This description of Kaitiakitanga was fully endorsed by our late revered Tribal Rangatira Tohara Mohi. It applies to Ngāti Kahungunu generally and Ngāti Pāhauwera specifically. He emphasised the belief of all Māori that everything in this world has its own Mauri – life essence – which is extinguishable if not properly protected, or wisely conserved, as in unsustainable over use to the point of depletion.

Comes in many forms

4.352 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) explains:⁷⁶⁶

Taniwha can be loosely defined as ‘guardians’ or ‘spirit-beings’ of waterways. Taniwha also occupy parts of the takutai moana within their area providing spiritual protection to the resources of the waters and all its beings (both above and below the waters) and in a variety of ways. Taniwha take many physical and spiritual forms in Te Whakatōhea.

...

⁷⁶² *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Statement of Evidence of Hemana Eruera Manuera (29 March 2019) at [54].

⁷⁶³ *Re Edwards* [2021] NZHC 1025, Affidavit Karen Stefanie Mokomoko (30 January 2020) at [27].

⁷⁶⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [51] and [52].

⁷⁶⁵ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Wiremu Iteareama Sylvester Hodges (11 December 2013) at [29].

⁷⁶⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (25 January 2022) at [27] and [29].

The taniwha's protective role is why some taniwha are also referred to as kaitiaki – those that 'look after the area or resource'. Kaitiaki is a more contemporary word used nowadays and has a less fearful connotation attached to it.

4.353 Amoamo goes on to give examples and descriptions of taniwha:

- “Ngāti Rua has a taniwha in the Tirohanga stream named Tama Ariki. We do not view taniwha as dangerous or bad demons: this is the way Pākehā narratives tend to describe taniwha. However they are spiritual deities that can be invoked and called upon in times of need, or if there is imminent danger to the people. If a person knows the relevant tikanga or kawa for the taniwha, then they will not run into any trouble or be harmed.”⁷⁶⁷
- “The most commonly known taniwha is located at Pakihikura mouth where the taniwha Whanaunga Kore resides. Anyone who crosses the bar without paying heed to the proper ritual or karakia will find themselves stranded on the bar.”⁷⁶⁸

4.354 Taniwha or kaitiaki can come in different forms.⁷⁶⁹ For example, Himiona Munroe (Ngātiwai) talks about how taniwha appeared as animals to warn of danger and are considered tūpuna.⁷⁷⁰ He points out kaitiaki that are stingrays, seals, dolphins and whales.⁷⁷¹ He also talks about the relationship between certain people and specific taniwha – it was considered that those people had been selected to look after the taniwha.⁷⁷²

4.355 Tahu Potiki (Ngāi Tahu, Ngāti Mamoe) says:⁷⁷³

Kaitiaki took many forms such as eels, sharks, lizards and birds. Some were merely carriers of a message or warning whilst others were dedicated to protect certain areas or individuals.

The extent of their mana or the level of dedication to one particular location determined the levels of restriction. Kaitiaki not only protected people but also resources often being the first to be seen at the beginning of a hunting season for example.

Where they were known to reside then the area had a wāhi tapu status. To the extent these areas are still known then they continue to dictate levels of ritualistic behaviour amongst Māori.

4.356 Tā Pou Temara (Tūhoe) discusses “those deities in the natural world that mediate the relationships between humankind and act as indicators of events that may befall tangata at any given place”.⁷⁷⁴ He provides the following examples:

- Rehutai “the sentinel of the foreshore waters who resides in the Pōhutukawa”.⁷⁷⁵

⁷⁶⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (25 January 2022) at [32].

⁷⁶⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Riaki Amoamo (25 January 2022) at [33].

⁷⁶⁹ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [40].

⁷⁷⁰ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [66].

⁷⁷¹ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [58], [61] and [63].

⁷⁷² Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [58].

⁷⁷³ *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, Cultural Values Assessment and Analysis by Tahu Potiki (August 2016) at [8.8]–[8.10].

⁷⁷⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [23].

⁷⁷⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [24].

- The koeau lizard “is responsible for guarding the fresh waters who resides in the Tōtara the spouse of the Pōhutukawa”.⁷⁷⁶
- “The kaikawaka is the mediator for the Tōtara and the Pōhutukawa”.⁷⁷⁷
- The tuatara “resides at the islands. Its role is to warm the swirling winds and tidal winds to maintain the divine energy that belongs to Tangaroa ... the mutton bird is the mediator ...”⁷⁷⁸

4.357 Temara also provides the example of Te Tahi, the kaitiaki of Whakaari. He tells of his origin and the ongoing protection he provides in the area:⁷⁷⁹

In Mātaatua, Te Tahi, according to Ngāti Awa narratives, is one of those tipua who is now the kaitiaki of Whakaari. Te Tahu was a Tohunga of Ngāti Awa. His people suspected him of causing floods on the lowland crops using his power as a Tohunga so one day his people abandoned him on Whakaari. Te Tahi summoned up the taniwha that dwelled off the shore of Whakatāne and capsized the waka killing all his people. He uttered the saying: Waiho mā te whakamā e patu – let shame be their punishment.

I also know that kaitiaki personally. It is because of Te Tahi one my own nephews is still alive. He was stubborn and didn’t want to come back to Ruatāhuna during the Whakatāne river floods. He was swept away on his gorse in the flood and went missing. When I was told, I began to pray hard to Te Tahi. Not long after, one of my relations found him swept ashore on the bank of the Whakatāne river still alive and walking back. He asked him what happened and that we all thought he was swept away, he said he was underwater drowning and near death and then he felt something push him up out of the flood and threw him on the bank. I believe in taniwha and kaitiaki to this day and often recite karakia to them. Kaitiaki protect areas where we gather kai. Only the kaitiaki will allow us to gather kai by way of signs (tohu). You cannot be arrogant as if its your right to just take kai – it isn’t.

4.358 Other examples in evidence:

- Laly Haddon (Ngātiwai) explains that “the Tukaea bird is the guardian of all waters of Ngātiwai”.⁷⁸⁰
- Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) says that “the taniwha/guardian of Ōhiwa is Tutarakauika who is physically manifested as a whale”.⁷⁸¹
- Benjamin Hippolite (Ngāti Koata, Ngāti Toa, Ngāi Tahu, Ngāti Kuia) lists octopus, shark, stingray and tuatara as shapes that kaitiaki or taniwha can take on. Children were told that the taniwha ensured they complied with laws, whereas the tuatara is a kaitiaki of knowledge because of its long life.⁷⁸²

⁷⁷⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [24].

⁷⁷⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [24].

⁷⁷⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [25].

⁷⁷⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [84]–[86].

⁷⁸⁰ Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [28].

⁷⁸¹ *Re Edwards* [2021] NZHC 1025, Joint Brief of Evidence of Dr Te Kei (O Te Waka) Wirihana Merito and William Bruce Stewart (24 January 2022) at [36].

⁷⁸² Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [40] and [80].

- Puhanga Tupaea (Ngāti Koata, Ngāti Kuia) talks about the morepork, whai or sunfish (there are competing stories), ruru, taniwha, dogs and tuatara.⁷⁸³
 - Hetaraka Biddle (Ngāi Tamahaua hapū) notes that whai (stingray) and orca are kaitiaki for Ngāi Tamahaua. To Ngāi Tamahaua “the Whai and the Orca are at the top of the food chain and therefore preserve and protect order within the mātaimai and eco system so that the hapū are able to continue to use the moana as a food basket to sustain them”.⁷⁸⁴
 - Marjorie Huingapani Kurei (Ngāi Tamahaua hapū) reiterates the significance of orca and whai, further noting that sightings of whai or octopus were considered signs. For example, a whai sighting meant “you had taken enough kai moana and it was time to stop, or it was a reminder to take your rubbish away”.⁷⁸⁵
 - Tracy Hillier (Ngāi Tamahaua hapū) states that, due to the significance of orca to the hapū, the tikanga following a stranding was that “we would try to re-float the whale but if it dies that we observe the tikanga of being there with the whale and reciting karakia while it is buried on the beach at Opape”.⁷⁸⁶
- 4.359 Morehu Wilson (Ngāti Paoa, Ngāti Whanaunga, Ngāti Maru, Ngāti Tamaterā) in his evidence describes Ūreia, a taniwha of Marutūāhu:⁷⁸⁷
- Ūreia frequented the waters of Te Waitematā, and in particular would scratch his back at a rock known as Te Roūtu o Ūreia (or in some dialects Te Rōtu o Ūreia), situated below Te Okā Pā, Point Erin. As noted, the naming of tohu whenua (landmarks) is steeped in customary traditions and the naming of this wāhi tapu reinforces the relationship of Marutūāhu with central Auckland.
- 4.360 Sean Ellison (Taranaki, Ngāi Tahu, Ngāti Porou, Te Arawa) tells the story of Te Ataiorongo, a taniwha of Whāingaroa (Raglan). Originally a man, Te Ataiorongo was killed by his brother-in-law Horeta who left his body at sea and lied about what happened to Te Ataiorongo’s wife. Te Ataiorongo returned as a spirit to warn his wife of what had happened and guide her to safety in Kāwhia. Te Ataiorongo’s son eventually returned to Horeta’s village, on reaching adulthood, and avenged his father’s death. Te Ataiorongo remains as a taniwha at Whāingaroa, his lair is at Te Kōpua, in the Pokohue Stream.⁷⁸⁸
- 4.361 Lanning Simpkins (Ngāti Rangiwewehi) gives evidence about Waipupu Mahana, the name of a small hot water spring lake owned by the Haira whānau at Horohoro. He discusses

⁷⁸³ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [34], [39]–[44] and [59].

⁷⁸⁴ *Re Edwards* [2021] NZHC 1025, Affidavit Hetaraka Biddle (20 February 2020) at [94]–[96].

⁷⁸⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [45]. Kurei notes further that certain sea creatures had symbolic meaning, the sighting of which were viewed as omen. She discusses an example of the sighting of a pink and white whale not far from the marae, which resulted in a gathering at the wharenui for karakia (at [46]).

⁷⁸⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Tracy Francis Hillier (20 February 2020) at [108].

⁷⁸⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Morehu Anthony Dean Wilson (13 October 2020) at [53].

⁷⁸⁸ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of Sean Ellison (undated) at [7].

how the spring has its own kaitiaki named ‘Korowhakatipua’ and gives the appearance of a crocodile/log.⁷⁸⁹

4.362 Te Rangikahere Bidois (Ngāti Rangiwewehi) talks about a spring traditionally known as Te Waro-uri. The common name is Te Puna o Pekehāua or Taniwha Springs. The springs are celebrated as the lair of the taniwha Pekehāua.⁷⁹⁰

4.363 Kaitiaki also extend beyond animals. Rapata Romana (Te Aupōuri, Ngāti Kuri, Ngāti Rehia, Te Ringa Maui, Te Ringa Matau, Te Ringa Kaha, Ngāti Here, Ngāti Kohatu) refers to Iranui, the sleeping lady who is one of the kaitiaki of Muriwhenua.⁷⁹¹

I would like to talk about Iranui, the sleeping lady. In appearance, this mountain range looks like a woman asleep. When you are travelling on the road to Waitiki and you look North to Maunga Unuwahao in the area of Kapowairua, you will see this lady Iranui, resting. Our ancestors have said that she is one of the guardians of Muriwhenua.

Kaitiaki taniwha

4.364 Benjamin Hippolite (Ngāti Koata, Ngāti Toa, Ngāi Tahu, Ngāti Kuia) explains that kaitiaki are stories used to preserve natural resources and to warn people of the consequences of disobeying tikanga.⁷⁹² He describes how:⁷⁹³

... if we disobeyed laws, our old people would say that a taniwha would come after us. All we had to see was a shape, and we would quickly get out of the water. We did not want to risk the possibility of a taniwha coming after us, so we would obey the tikanga of our elders. The stories of our old people were used that way to ensure that our kai would always be there.

4.365 The presence and function of kaitiaki therefore ultimately played a role in regulating the behaviour of people. Himiona Munroe (Ngātiwai) explains there are rules around ensuring taniwha are looked after and do not appear to criticise breaches of tikanga such as not breaking kina on the rocks.⁷⁹⁴

4.366 Eru Koopu (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāti Awa) notes the taniwha Whanaungakore watches over the people of Pākowhai (or Māori Town as it is known to some) to ensure that they are not doing bad things.⁷⁹⁵

4.367 Waiohau Te Haara (Ngāti Rangī) says:⁷⁹⁶

The tikanga concepts of taniwha was a term used by tohunga to determine either the appropriateness or inappropriateness of certain action that must be taken by the tribe whenever there was a disaster or mishap within the tribe that was about to occur. There

⁷⁸⁹ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Statement of Evidence of Lanning Patrick Tutakiahani Simpkins (16 November 2007) at [4.1].

⁷⁹⁰ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Brief of Evidence of Te Rangikaheke Bidois (November 2007) at [6.11].

⁷⁹¹ Muriwhenua Land Report, Wai 45, #F31 pp.11–12.

⁷⁹² Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [39], [40] and [58].

⁷⁹³ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [40].

⁷⁹⁴ Ko Aotearoa Tēnei, Wai 262, #B11 Himiona Munroe at [66].

⁷⁹⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Eru Koopu (21 February 2020) at [11].

⁷⁹⁶ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Waiohau (Ben) Te Haara (undated) at [15] and [16].

were occasions when the interpretation of the tribes [sic] future was at stake in terms of battles or loss of leadership.

The seer or tohunga had a kaitiaki role. His role was to interpret any unnatural phenomena or occurrence like an unusual sighting, such as a log floating upstream against the current. That sighting would be deemed a taniwha. In summary a taniwha was regarded as the manifestation of an unnatural occurrence. Taniwha were used to support the decision making of a tohunga. They are not regarded as a taonga and should not be confused with what is tapu. This is an entirely different matter.

- 4.368 He goes on to say, “In the old days Taniwha were used to explain the inexplicable and if bad things occurred, it might be explained as the Taniwha being offended”.⁷⁹⁷
- 4.369 For example, Tania Hopmans (Ngāti Marangatūhetaua, Ngāti Kurumōkihi, Ngāi Tauira, Ngāti Whakaari, Ngāi Tahu) describes the regulatory effect of kaitiaki:⁷⁹⁸

Kōrero tuku iho recount that Tangitū is named after a strong-willed young woman from the takiwā. Tangitū was an excellent diver and collector of kaimoana who could stay submerged for long periods of time. Against advice, Tangitū went diving into a hole from which she never returned. Tangitū manifested herself as a whale and is an important kaitiaki for the Hapū. According to tradition, if tikanga or kawa were not properly observed when gathering kaimoana or other resources, Tangitū the kaitiaki would appear. The Hapū believe that, as a kaitiaki, Tangitū has the power to protect her people, particularly in the event of natural disasters. She has been known to use her tail to unblock the mouth of Te Ngarue and Pākuratahi Streams, or lie across the mouth as protection in the event of high seas. There are other kaitiaki who live in Tangitū, including Uwha, at Arapawanui, who takes the form of an eel or octopus, and Moremore, the son of Pania (of the reef), who swims the coastline in the form of a mako.

- 4.370 Rihi Vercoe (Ngāti Awa) points out the spiritual dimension of kaitiaki. She states, “Kaitiaki values and practices are integral sacred components of Kauae Runga-Kauae Raro, the Celestial (Spiritual) and Terrestrial (Physical) domains.”⁷⁹⁹
- 4.371 A similar point is made by Puhanga Tupaea (Ngāti Koata, Ngāti Kuia) who explains that spiritual concepts such as the belief in taniwha and in the knowledge of animals “have a reality for Māori and are part of our natural laws. We have a different mindset, where we see the spiritual beyond the purely physical, and accept things beyond what is obvious without requiring explanations.”⁸⁰⁰

MOVEMENT OF TANIWHA

- 4.372 Paraone Gloyne (Raukawa ki Wharepūhunga) explains how some of the Raukawa taniwha have moved with their people:⁸⁰¹

⁷⁹⁷ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Evidence of Waiohau (Ben) Te Haara in Reply (undated) at [50].

⁷⁹⁸ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Tania Marama Petrus Hopmans (3 April 2017) at [84].

⁷⁹⁹ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Statement of Evidence of Rihi Vercoe at [11].

⁸⁰⁰ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [33].

⁸⁰¹ The Wairarapa ki Tararua district inquiry, Wai 863, #J21 Paraone Gloyne at [5.3]–[5.4] and [5.6]–[5.10].

Part of the Raukawa connection to the area is that we have a relationship with taniwha who live in the Waikato River. The saying is – he ‘piko he taniwha’ – at every bend a taniwha.

In the Mangakino area that taniwha is Rangikakeke. He is still there today.

...

I have never heard any kōrero around any taniwha associated with Ngāti Kahungunu following them when they settled at Mangakino.

That is important because taniwha are spiritual creatures. When they follow an iwi who move to a different area this is a sign of support, a sign that they continue to be the kaitiaki of the iwi. That is an important part of establishing the deeper spiritual connections to any area. It is part of what makes it more than just staying somewhere.

When Raukawa hapū moved south to the Ōtaki area then some taniwha moved with them. They can do that because they are spiritual beings and use the water as a spiritual medium to travel so that can be wherever people need them to be.

When you talk to Ngāti Raukawa ki te Tonga now they can tell you about the taniwha who live the rivers in the Horowhenua.

This is part of the connection that Ngāti Raukawa ki te Tonga have which gives mana whenua in that area. They have established that spiritual connection and have rights based in tikanga.

- 4.373 Wallace Wihongi (Ngāti Mahia, Te Uri o Hua, Ngāti Hine) explains, “A taniwha adapts to its environment and if its home is affected, it moves on.”⁸⁰²



⁸⁰² *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Wallace Wihongi (undated) at [12].

SECTION FIVE

The environment

- 5.1 Many people emphasise the centrality of the environment to Māori. For example, Laly Haddon (Ngātiwai) states, “When you look at the principles of the Māori people, not just Ngātiwai, their whole philosophy and doctrine is built around a concern for their environment.”¹
- 5.2 The environment was seen as a source of:²
- identity;
 - food;
 - livelihood;
 - a place of recreation.
- 5.3 The hapū of Te Whānau ā-Nuku and Te Whānau ā-Kahurautao, for example, explain that their lives are intimately intertwined with the moana. They rely on the moana “firstly as a source of food, secondly as a livelihood and thirdly as a place of recreation”.³ The hapū describe their fishing rights as encompassing a “body of tradition and historic working knowledge gained over hundreds of years. These rights form an inseparable part of our language, our spiritual and social customs, our education, our leadership training and our self-esteem.”⁴ We see the inseparable relationship these hapū have with their rohe moana from the time of their tīpuna to now. It influences almost every aspect of their everyday lives, and the strength of these matters reflect on their mana. To act other than in accordance with “the guardianship bestowed on our hapū by our tīpuna” is considered by them as a “betrayal of our responsibilities”.⁵
- 5.4 Apirana Mahuika (Ngāti Porou) describes how Ngāti Porou are a coastal people, and since the beginning, the iwi have relied on the sea for “cultural, economic and spiritual needs”.⁶ Fishing traditions and their historical significance are embedded in Ngāti Porou history. Mahuika says “[t]he story of Māui, our ancestor, attests to our fishing tradition, as his

¹ Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [23].

² The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao p.1.

³ The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao p.1.

⁴ The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao p.4.

⁵ The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao p.4.

⁶ The Fisheries Settlement Report, Wai 307, #B8(c) Apirana Mahuika at [3]–[4].

canoe Nukutaimemeha rests in petrified form on Mt Hikurangi”.⁷ Ngāti Porou haka and waiata attest to their long-held fishing tradition – “Hara mai ki rato o Waiapu, Kia kite koe Te Awemapara, E te paripari Ti hei Taruke”. Mahuika says Maunga Hikurangi is their beacon and a navigational point for deep sea fishermen of their tribe.⁸

- 5.5 Sean Ellison (Taranaki, Ngāi Tahu, Ngāti Porou, Te Arawa) describes the foreshore as “a special place of learning [where] one may watch and study the stars and sea” as well as gather resources for kai, for weaving and for rongoā.⁹ It is a “landing places for canoes and sea vessels, both past and present are here – physical vessels and spiritual vessels”.¹⁰
- 5.6 Carol Hemoana Gage (Ngāti Ira) notes the importance of the moana to Ngāti Ira, saying it continues to be “a life source for our whānau, hapū and iwi”.¹¹ This is reiterated by Hemaima Mairana Hughes (Ngāti Ira), who notes that not only does the “Takutai Moana provide us with bounteous food, it is also a rich source of rongoā”.¹²
- 5.7 Te Kahautu Maxwell (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tai, Ngāti Awa, Tūhoe, Ngāti Porou, Ngāti Maniapoto) describes the interconnected understanding Māori share in respect of te taiao:¹³

The Māori worldview on the takutai moana is a whakapapa, a genealogical link, a god, a living being a god, an ancestor.

Takutai Moana is a part of the moana where the gods reside; Tangaroa, the personification of all fish, Kiwa, the lord and guardian of the ocean, which is called the Great Ocean of Kiwa (Te Moana nui a Kiwa) and his wife is Hinemoana the ocean goddess (Best). Within the moana, there are many gods; Rakahore the personification of the rocks, Rimurapa the personification of seaweed, Hinetūākirikiri personification of sand, Hinekarikari the personification of the rippling wave, Pūwhakarahara personification of the whales, Takaaho personification of the sharks etc. All beings have a whakapapa that link all beings to Io-matua-te-kore the Supreme Being this includes man, te tangata.

CONNECTED TO THE SPIRITUAL WORLD

- 5.8 The whakapapa connection that links humans to the environment and all beings into an interconnected web is discussed by Tahu Pōtiki (Ngāi Tahu, Ngāti Mamoe) when drawing the connection back to Ranginui and Papatūānuku.¹⁴ Sean Ellison (Taranaki, Ngāi Tahu, Ngāti Porou, Te Arawa) makes an additional point about the atua manifested in the

⁷ The Fisheries Settlement Report, Wai 307, #B8(c) Apirana Mahuika at [3]–[4].

⁸ The Fisheries Settlement Report, Wai 307, #B8(c) Apirana Mahuika at [3]–[4].

⁹ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of Sean Ellison (undated) at [6].

¹⁰ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of Sean Ellison (undated) at [6].

¹¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Carol Hemoana Gage (13 February 2020) at [101] and [103].

¹² *Re Edwards* [2021] NZHC 1025, Affidavit of Hemaima Mariana Hughes (30 January 2020) at [51].

¹³ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Te Kahautu Maxwell (7 August 2020) at [117].

¹⁴ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki on behalf of the Applicant (23 December 2016) at [4.1]–[4.12].

environment being the lens through which Māori explain the natural world and what happens in it:¹⁵

The seashore is the space where one can clearly witness the movement and exchange of energies, and the preparation, bustling and adaptation made by the divine influences of the gods as they perpetually seek to express the inherent universal balance and harmony, one with another, within the ever-changing reality of the physical world. It is the open space, the courtyard on which the voices of all the divine influences of the gods are heard, seen, felt and sensed. As the tide comes in so Tangaroa stands to deliver his speech, and Hinewainui and Hinemoana move forward with cries of welcome and support, as they gently massage Papatūānuku. As the tide recedes it is Papatūānuku, and Tāne, and Hinewao, and Rakahore, and Hinetuakirikiri, and Hineone, and others who reach out to take hold of the life essence of the courtyard, and allow their individual and collective influences to be expressed and felt by all present. Each one of them has their own story, and each one of them has something to say. According to some, during the creation of the world, the gods began to fight, one with another, and Tangaroa and Tane continue to quarrel. The physical manifestation of their dispute may be seen on the foreshore.

- 5.9 Tā Eddie Taihakurei Durie (Rangitāne, Ngāti Kauwhata, Ngāti Raukawa) gives the following account of the interplay of tangata, whenua and atua:¹⁶

It may reveal that Māori saw themselves not as masters of the environment but as members of it. The environment owed its origins to the union of Rangi, the sky, and Papatūānuku, the earth mother, and the activities of their descendant deities who control all natural resources and phenomena. The Māori forebears are siblings to these deities. Māori thus relate by whakapapa (genealogy) to all life forms and natural resources. There are whakapapa for fish and animal species just as there are for people. The use of a resource, therefore, required permission from the associated deity. In this order, all things were seen to come from the gods and the ancestors as recorded in whakapapa.

Also in this world-view, Māori were the land. It was part of them by direct descent from the earth mother. Land, or whenua, is represented in the whenua, or placenta, of women. Māori are born out of the whenua. There are whakapapa today that trace living persons from Papatūānuku.

The whenua, or land, thus passes through the whenua, or placenta. The right to the land in an area is by descent from the gods and the original ancestors of that place. Tangata whenua were thus the descendants of the original people of a particular locality.

- 5.10 Wiremu Paraone¹⁷ also explains how atua Māori and spiritual concepts are central to and dictate how the tribe interact with and manage their relationship with te taiao (the natural world). Paraone explains:¹⁸

To be able to understand the depth and the foundation upon which our people lived their lives, we must first understand their spiritual beliefs as practiced by their leaders, priests, and people as a whole, in their time. In the matter before us in regards to our fishing rights

¹⁵ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of Sean Ellison (undated) at [4].

¹⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Sixth affidavit of Reuben Brian Perenara in support of the applicant's case regarding the High Court rule 418 preliminary questions as referred back to this court by Her Majesty's Privy Council; Exhibit C *Custom Law: Address to the New Zealand Society for Legal and Social Philosophy*, Chief Judge ET Durie (22 July 1994) at 328.

¹⁷ Hapū/iwi affiliations not stated.

¹⁸ Muriwhenua Fishing Report, Wai 22, #B33, Wiremu Paraone at [2(b)].

and traditional and customary grounds, we must first examine their spiritual concepts before we are able to understand how they were able to control their fishing areas and all that entails.

Let me explain; if one of the tribe wished to build a canoe, he first prayed to his guardian. The well known guardian of forest life was Tāne, and the guardian of the essence of life in the sea was Tangaroa. In all decided tribal areas, there were different spiritual guardians. These were the guardians of each tribal boundary. These guardians in their work was and is their life force. They were the guardians of the land and sea with the help of different tribes. The reserves that had tapu places on them was complete – you transgressed under pain of death. The fish life and shellfish that we know was kept in abundance because of this.

- 5.11 Bevan Taylor (Ngāti Marangatūhetaua, Ngāti Kurumokihi, Ngāi Tauira and Ngāi Tahu) similarly discusses the importance of Tangaroa to the identity of Maungaruru-Tangitū hapū and their takiwā:¹⁹

Tangitū (the sea within our takiwā) is within the domain of Tangaroa-i-te-Rupetu (also known as Tangaroa). Tangaroa is the spiritual guardian of the moana (sea), waterbodies, and all within them. The descendants of Tangaroa and our Hapū are connected by whakapapa. Tangaroa's descendants include the whales, waves, ocean currents and fish life. Tangaroa is seen as a whole and indivisible entity including the moana, coastal waters, beds, rocks, reefs and beaches, springs, streams, rivers, swamps, estuaries, wetlands, flood plains, aquifers, aquatic life, vegetation and coastal forests. So the domain of Tangaroa goes from the tihi tapu (sacred peaks) of Maungaharuru to Tangitū – ki uta ki tai – from mountain to sea.

- 5.12 Tā Pita Sharples (Ngāti Kahungunu) gives a view that whakapapa to Ranginui and Papatūānuku is greater than any iwi whakapapa and gives the ultimate right to fishing and its benefits. “The conclusion that all Māori whakapapa back to Papa and Rangi is universally accepted as correct. Therefore, given our ancestral connection to those atua and to Tangaroa, it must be right that all Māori are entitled to enjoy the benefits of the sea. The submission that the rights of the sea were only traditional tribal rights is self serving. Whakapapa to Rangi and Papa, and not necessarily our whakapapa to our tribes, provides us with the claim right to enjoy the fruits of the sea.”²⁰
- 5.13 Te Ringahua Hata (Ngāti Patumoana) describes the foreshore as a culturally significant place: “It is where we may witness the presence of all the divine influences of Ngā Atua at the same time in the aspects that they themselves choose to us, approaching and retreating, ascending and descending, tussling with one another, caring for and nurturing one another, teaching us lessons and warning us when danger is near. This is the universe in miniature, being played out on the courtyard of Ngā Atua Māori for us to witness, and learn from, and understand. The foreshore is a special wānanga and our sacred space.”²¹
- 5.14 When discussing rāhui, Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) states, “The placing of Rāhui are part of the matrix of understandings that arise from our whakapapa relationships to Tangaroa and Tānemahuta and the deep respect we have to ensure there

¹⁹ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Bevan Maihi Taylor (11 August 2020) at [19].

²⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Second affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (11 March 1998) at [23].

²¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahua Hata (29 January 2020) at [64].

is a balance in these relationships for the mutual survival of us all that a are protected by these deities both in the physical and spiritual realms that we live. The practices of Rāhui and karakia do not exist in isolation from this other. They are part of how we maintain these connections every day.”²²

- 5.15 Karen Mokomoko (Ngāti Patumoana, Te Upokorehe, Ngāi Tamahaua hapū) states, “Our tikanga relating to the takutai moana stretches back to the creation of the land and the sea. In Māori lore, we are spiritually connected to Pāpātuanuku, Ranginui, their children and all beings created on earth. Our connection with Tangaroa can be inconceivable for some non-Māori, but to us the connection is spiritual and shapes who we are and the way we live.”²³
- 5.16 Ani Keefe (Ngāti Pāhauwera) recognises that “we maintain our spiritual connection to the area when we sing the waiata about the awa and the moana”.²⁴ This exemplifies one of the many ways Māori continue to spiritually exist with the environment in traditional and modern times.
- 5.17 Colin Reeder (Ngā Pōtiki) states that, although “physical use and occupation is important ... our tikanga also involves the connection in a spiritual non tangible sense. Both the physical and spiritual worlds are connected in a state of balance.”²⁵ Accordingly, he goes on to explain that what “this means is that our connection to Rangataua must be viewed through a variety of lenses. For example, our tikanga dictates that we do not need to be physically occupying and using in a physical sense ever part of Rangataua. As long as we retain and maintain the spiritual connection our mana and connection will continue.”²⁶
- 5.18 Building upon Reeder’s kōrero, Matire Duncan (Ngā Pōtiki) details, “There is a very strong spiritual dimension to our moana and awa including Rangataua. There is tikanga about their names, their use and their past and their future. A spiritual connection is as strong as a physical connection, just as spiritual adverse effects are as legitimate and painful to Ngā Potiki as are the physical adverse effects.”²⁷

CENTRAL TO IDENTITY

- 5.19 The environment was seen as being central to the identity of hapū and iwi.
- 5.20 Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) explains how many hapū and iwi identities are shaped by significant natural features in their rohe. He also says:²⁸

²² *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [63].

²³ *Re Edwards* [2021] NZHC 1025, Affidavit of Karen Stefanie Mokomoko (30 January 2020) at [25].

²⁴ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Ani Keefe (21 November 2013) at [4].

²⁵ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Colin Francis Reeder (6 July 2020) at [54].

²⁶ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Colin Francis Reeder (6 July 2020) at [56].

²⁷ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Matire Duncan (6 July 2020) at [9].

²⁸ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [31].

It is also common for hapū and iwi to identify themselves by the features of their rohe, or important resources. For example, Waikato Tainui take their name from the Waikato river. Another hapū of Tūhoe, is called Te Urewera, and is located at both the northern and southern boundaries of the Urewera forest. Te Patuwai takes its name from the battle on the moana and reflects the connection to the moana. It also reflects an important association with Ngāti Pukenga and Ngāti Whakahemo. Te Whānau a Tauwhao is also known as Papaunahi due to their specialist fishing practices. Ngāti He and the other hapū and iwi of the Rangataua are known as ‘Ngā Papaka a Rangataua’. Ngā Potiki are also known as the whale people, in reference to the traditions associated with their maunga which are petrified whales, and which symbolise and attract the many beached whales in their rohe and the importance of these whales to them.

- 5.21 Te Rangikaheke Bidois (Ngāti Rangiwewehi) makes a similar point in relation to water. The puna and awa are more than a mere physical presence and resource. They are central to the identity of the iwi, as reflected in their pepeha. “Their life and ours are intertwined.”²⁹
- 5.22 Wi Huata (Ngāti Pāhauwera) explains that the “Mohaka River, the whenua and the moana are the life force of the Pāhauwera people: they are vital to the health and well-being of the whānau, they have healing powers (for example bathing in the seawater for healing), can feed the multitudes, provide rongoa”.³⁰
- 5.23 Often hapū relationship with the environment feature in traditional kōrero that details their identification with a certain area. Bevan Taylor (Ngāti Marangatūhetaua, Ngāti Kurumokihi, Ngāi Tauira and Ngāi Tahu) says, “The Hapū identify themselves to Tangitū, as they do with Maungaharuru. Accordingly, Tangitū features in our pepeha (tribal saying) and whakataukāki (tribal proverb) recited by our kaikōrero (orators) such as myself on Tangoio Marae, and our tamariki mokopuna (children) alike.”³¹
- 5.24 Justin Puna (Ngāti Kurumōkihi, Ngāti Marangatūhetaua, Ngāi Tauira, Ngāi Te Ruruku ki Tangoio, Ngāi Tahu) similarly recognises that “Tangitū is not just a resource, it is something the Hapū are related to through whakapapa and therefore when you look at it, it is seen as an entity in its own right and needs to thrive, be nurtured, etc. It is a living entity and needs to be cared for because it is our tipuna.”³²
- 5.25 Matire Duncan (Ngā Pōtiki) states, “The connectiveness of things in our world means that I view Rangataua as part of the whole. It is not a separate entity, it was part of our world, our tribal domain both physically and spiritually. But that does not mean we have mana or kaitiaki responsibilities over everything. We have our areas and others have theirs. There are layers of interests.”³³

²⁹ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Brief of Evidence of Te Rangikaheke Bidois (November 2007) at [6.1].

³⁰ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Wi Derek Huata/King (5 December 2013) at [6].

³¹ *Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Bevan Maihi Taylor (11 August 2020) at [21].

³² *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit by Justin Owen Ian Puna (11 August 2020) at [38].

³³ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Matire Duncan (6 July 2020) at [11].

SOURCE OF SUSTENANCE

- 5.26 Wikitoria Hepi Te Huia (Ngāti Tahu) states that, since the arrival of the tupuna ariki Tahu Matua, “i whāngaia e te whenua tō tātou iwi ko Ngāti Tahu” (our whenua has sustained, nurtured and nourished our people).³⁴
- 5.27 Huia Pacey (Tūwharetoa) discusses the importance of the Tarawera River for herself and her people. “Tangata whenua have taken water and food from the river for many, many generations. Our eponymous ancestor Tuwharetoa i te Aupōuri, grew to manhood and died of old age, within sight of the Tarawera River. Tohi rites were practised at various places along the river. Generations learnt ... to take eel, kōura, kākahi, inanga, tāmure, and kahawai ... and used the river as a constant communication route with waka transporting goods and people up and down the river ...”³⁵
- 5.28 Marama Cooper (Ngāi Tahu) uses the whakataukī “He pātaka kai mō te iwi katoa – It is the food storage for all the tribe” when referring to the foreshore and seabed around the tītī islands.³⁶
- 5.29 In reference to a different type of sustenance, Te Rangikaheke Bidois (Ngāti Rangiwewehi) discusses the tradition for Ngāti Rangiwewehi people to bathe in the Awahou River after a long time away “to reconnect them to their whenua and their awa, and to cleanse and refresh them, spiritually and physically”.³⁷
- 5.30 Ranginui Keefe (Ngāti Pāhauwera) states that in “former times all the hapū needed to be mobile for survival and they ranged over a wide area of coastal and inland area” to access food and other resources at times that “they were fat, ripe and plentiful” in accordance with the Māori calendar. The interchangeable nature of the land and coast as a source of sustenance is demonstrated in the recognised saying:³⁸
- Tangitū ki te Moana, Maungaharuru ki uta.
Ka pa a Tangitu ka huakina a Maungaharuru.
Ka pa a Maungaharuru ka huakina a Tangitū.
Tangitū at sea, Maungaharuru inland
When Tangitū is closed Maungaharuru is open
When Maungaharuru is closed Tangitū is open
- 5.31 For instance, various Ngāti Pāhauwera deponents discuss the integral role hāngī stones have in providing sustenance to the community both historically and continually.³⁹ Wiremu Hodges (Ngāti Pāhauwera) describes, “If manaakitanga is central to our cultural values

³⁴ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Wikitoria Hepi-Te Huia on behalf of Tauhara North No.2 Trust (1 May 2017) at [5.8].

³⁵ *Marr v Bay of Plenty Regional Council* [2010] NZEnvC 347 (Kawerau Paper Mill), Statement of evidence of Huia Ann Pacey (2009) at [5].

³⁶ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Submission by Marama Cooper (8 October 2014) p.78.

³⁷ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Brief of Evidence of Te Rangikaheke Bidois (November 2007) at [6.12].

³⁸ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Reply evidence of Ranginui Keefe (18 December 2020) at [11]–[12].

³⁹ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Olga Ringakopi Rameka (21 August 2007) at [11].

(and it is) then hangi stones are vital to the scale of providing it. Hangi stones to Pāhauwera are like Pounamu to Ngāi Tahu in the taonga sense.”⁴⁰ Angela Culshaw-Kaisa⁴¹ in her evidence cites Ann La Porta to reinforce this point, which states, “Ngāti Pāhauwera people presented specially selected hangi stones to dignitaries, to other tribes on special occasions as they were seen as a gift from the ancestors to the present and future generations.”⁴²

- 5.32 Te Ringahuia Hata (Ngāti Patumoana) says, “The foreshore provides us with nourishment in all forms to sustain our physical, mental, emotional and spiritual wellbeing. It is a place we offer and receive prayer, a sacred space where we conduct spiritual rituals of protection and guidance, a place where we take our ill, dying and deceased to pray, heal, and embalm, a place where we may purify ourselves physically, and in spirit, mind and body, a place of leisure and of play, a place of learning and a place of life and death.”⁴³
- 5.33 Hata further notes that Ōhiwa is referred to as ‘Te Kete o Tairongo’ or ‘the food basket of Tairongo’ and the moana referred to as ‘Ko te kai hoki i Waiau’, ‘the food bowl that feeds the world’. These names refer to the historical abundance of food that existed in the harbours and oceans of Toi, which have sustained the hapū of Whakatōhea as well as surrounding hapū and iwi.⁴⁴
- 5.34 Tracy Hillier (Ngāi Tamahaua hapū) states, “Our hapū identity is intricately tied to our whakapapa to our tīpuna and our relationship with our whenua, including our whenua Takutai and our rohe moana. To us, there is no separation, these are all one. Our spiritual and physical connection to these significant lands, forests, maunga, awa, puna and moana of Ngāi Tamahaua is what nourishes our people and therefore is what gives us our identity. It also upholds the mauri of our hapū.”⁴⁵
- 5.35 Kayreen Tapuke (Ngāi Tamahaua hapū) reiterates this sentiment, stating that the Takutai moana forms part of Ngāi Tamahaua’s identity: “The moana and the taonga of Tangaroa ... is what sustains the people and nourishes them.”⁴⁶
- 5.36 Charles Tawhiao (Ngāi Te Rangi) outlines, “Eating food from Tauranga Moana is an essential part of being able to identify who we are. It is not just about eating and fuelling the body, it is also about continuing the tradition that makes us who we are. I witnessed this with my father and especially the old people. I saw that eating food out of Te Awanui was their way of reconfirming their ancient and long-standing links with Tauranga Moana.”⁴⁷
- 5.37 Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) states, “The moana provides us with food to sustain our physical being. It is a place where we offer prayer, a sacred space where

⁴⁰ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Wiremu Itereama Sylvester Hodges (11 December 2013) at [47].

⁴¹ Iwi affiliations not provided.

⁴² *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Angela Jenny Culshaw-Kaisa (31 August 2007) at [13].

⁴³ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [63].

⁴⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [100].

⁴⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Tracy Francis Hillier (20 February 2020) at [43].

⁴⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Kayreen Tapuke (20 February 2020) at [65].

⁴⁷ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Charlie Wahia Tawhiao (14 December 2017) at [38].

we conduct rituals, a place where we may purify ourselves in spirit, mind and body, a place of leisure and play, and a place of learning.”⁴⁸

- 5.38 Ariana Edwards (Te Whakatōhea) states, “The whānau of Ngāti Muriwai have utilised the takutai moana resources from times of old. The takutai moana has been the main source [of] sustenance and survival for the descendants of Ngāti Muriwai Hapū. The takutai moana is steeped in our whakapapa, heritage and cultural beliefs and values.”⁴⁹
- 5.39 In discussing the relationship of Te Whakatōhea to the marine environment, Tuwhakairiora Williams (Te Whakatōhea) notes, “The takutai moana is us and we are the takutai moana. Ko au te takutai moana, ko te takutai moana ko au. It is our soul and identity as it is our source of sustainability and well-being. Our spiritual connection is deep as it is intimate.”⁵⁰
- 5.40 Karen Mokomoko (Ngāti Patumoana, Te Upokorehe, Ngāi Tamahaua hapū) states, “The association between the Mokomoko whānau and the sea has been an integral part of who we are for numerous generations. The importance of marine life is not just for sustaining the people, it’s paramount to our existence. The sea and all things in it are our pātaka, a primary source of sustenance and survival.”⁵¹
- 5.41 In terms of nourishment, some discuss the importance of wai tai as well as wai māori generally as being a source of rongoā:
- Tracy Hillier (Ngāi Tamahaua hapū) discusses healing and bathing rituals: “It is our practice to take people who are unwell to Wainui-Atea which describes water in its natural state whether it be the ocean, awa, or puna. The sacredness of the wai is central to hāhi ringatu.”⁵²
 - Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) says, “The moana has also always been a place of healing and rejuvenation. It is a place where we as a people have gone to when we have needed purification of some sort.”⁵³
 - Te Ringahuaia Hata (Ngāti Patumoana) states, “Our hospital, the medicinal remedies of the land the bush and the sea, the salt water (Wai Tai), freshwater (Wai Māori) surround the lands and cleanse and heal us. Wai Māori was used to prepare men for battle, and Wai Tai was used to cleanse and heal their wounds on their return. I remember my aunties often speaking about how their mothers would take the deceased down to the sea to embalm them. Ancient karakia rituals before the taking of resources to make rongoā were normal practice. We continue these rituals today. The ill or sick would be led to the water to bathe their wounds and karakia recited to assist them.”⁵⁴
- 5.42 Harry Tuapawa (Ngāti Pāhauwera) describes the central role of driftwood in respect of the everyday living conditions of Ngāti Pāhauwera rohe. Specifically, he says, “Ngāti Pāhauwera do not see the driftwood from the beach as being kua mate, dead, we ask

⁴⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [34].

⁴⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Adriana Edwards (21 February 2020) at [15].

⁵⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Tuwhakairiora (Tu) Williams (21 February 2020) at [5].

⁵¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Karen Stefanie Mokomoko (30 January 2020) at [26].

⁵² *Re Edwards* [2021] NZHC 1025, Affidavit of Tracy Francis Hillier (20 February 2020) at [102].

⁵³ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [50].

⁵⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuaia Hata (29 January 2020) at [67] and [68].

the Gods for it and recognise that it has its own mana and that it is special because it has been through the ocean's treatment process.”⁵⁵

- 5.43 Tania Hopmans (Ngāti Marangatūhetaua, Ngāti Kurumōkihi, Ngāi Taura, Ngāti Whakaari, Ngāi Tahu) recognises that all natural resources are regarded as gifts from “ngā atua kaitiaki, including those within Tangitū”. She says, “Tangaroa was central to the lives of the Hapū tipuna and remains significant to the Hapū whānau living today. Tangitū provides cultural, spiritual and physical sustenance, and as such, shapes the identity of the Hapū. The principal status of Tangitū is recognised by the Hapū in their mihi, whaikōrero, whakairo, kowhaiwhai and tukutuku on their marae, whakatauaki, kōrero tuku iho and waiata.”⁵⁶ The vast range of natural resources available meant “the hapū had nourishment all year without having to leave their tribal boundaries”.⁵⁷

INTERCONNECTED IN NATURE

- 5.44 A number of people emphasise the interconnected nature of the environment:

- Nganeko Minhinnick (Ngāti Te Ata) describes the Waikato River as a single indivisible being: “We see the Waikato River as being the nucleus of all waterways, and this includes the Kopuera stream, within Tainui ...”.⁵⁸ This description is analogous for the Māori viewpoint on whakapapa, the interconnected relationship of people with the environment. She also says that “for the local people, the river is seen as a whole, a single unity. Development which affects one part is seen to have a cumulative effect. Traditional usage and practice continue to be affected and deterioration in water quality is seen to be causing harm to fish life.”⁵⁹
- Sean Ellison (Taranaki, Ngāi Tahu, Ngāti Porou, Te Arawa) states, “When people pollute the ocean, they pollute us. And when pollution is released into the water, the water becomes polluted. That spreads to all things within the water – physically, spiritually and energetically. If water is polluted how can we cleanse ourselves.”⁶⁰
- Te Rangikaheke Bidois (Ngāti Rangiwewehi) highlights the importance of the springs and the stream as two parts of the one body. The puna cannot be separated from the awa. His point is that the awa would not exist without the springs – it is essential to the wellbeing of the awa. “This is not merely a physical reality, it is how we conceive the two. They do not exist independently and are a holistic entity which has one life, one essence, one being ... So when we see the puna being degraded, we

⁵⁵ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Harry Ihaia Tuapawa (31 August 2007) at [21].

⁵⁶ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Tania Marama Petrus Hopmans (3 April 2017) at [74].

⁵⁷ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Tania Marama Petrus Hopmans (3 April 2017) at [63].

⁵⁸ *Huakina Development Trust v Waikato Valley Authority* [1986] NZPT 87 (9 May 1986) Supporting evidence of Nganeko Minhinnick as Managing Director of the Huakina Development Trust at [4].

⁵⁹ *Huakina Development Trust v Waikato Valley Authority* [1986] NZPT 87 (9 May 1986), Submissions in support of objections by Nganeko Minhinnick presented on behalf of the Tainui Trust Board, The Huakina Development Trust and the Trustees of Waahi Marae. Witness: James Ernest Ritchie (16 November 1984) p.3.

⁶⁰ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of Sean Ellison on behalf of Tainui Hapū (undated) at [9].

also see the awa as being harmed. The mauri or life force of the stream is dependant on how the springs are being treated also.”⁶¹

5.45 The interconnected nature of the land from the sea is also emphasised:

- Kayreen Tapuke (Ngāi Tamahaua hapū) states, “The rohe moana meets the rohe whenua and together creates mana moana and mana whenua of the hapū. There is no disconnection between the land and the sea, they are one.”⁶²
- According to Maggie Ryland (Ngāti Porou), “tikanga does not separate the land from the sea for without each other there is no balance. The same philosophy may also apply to Kauae runga and Kauae raro. The conjunction of these two elements illustrate the balance of all things that begin and belong to god.”⁶³
- Laly Haddon (Ngātiwai) similarly says, “Ngātiwai did not measure its boundaries by the high water mark. The rohe was all one and the same whether it was on land or sea. That is why we say Ngātiwai has manawhenua, manamoana over our rohe.”⁶⁴
- Sean Ellison (Taranaki, Ngāi Tahu, Ngāti Porou, Te Arawa) describes how “Papatūānuku is the land, whether it is above the ocean or beneath it”.⁶⁵
- Joseph Davis (Ngāti Hei) explains, “The Ngāti Hei turangawaewae (place to stand) encompasses both ki uta (land) ki tai (and sea). We are people of the sea: from Tangaroa (God of the sea) and Hinemoana and guided to Aotearoa by Tangaroa. Hinemoana and another important god Ranginui (god of the Heavens and the stars), also by their many mokopuna (grandchildren), the tohorā (whales), the manu (birds) of Tāwhirimātea (god of the winds and the rain). Many other lesser gods played their part.”⁶⁶
- Under cross-examination, Te Kurataiaho Kapea (Ngāti Whātua Ōrākei, Te Uri o Hau, Ngāti Rongo) agrees that, if a tribe has mana over the land, they also have mana over the takutai moana next to that land.⁶⁷
- Henare Rakiihia Tau (Ngāi Tahu, Ngāti Mamoe, Waitaha) says, “At the Titi islands what applied on the land also applied in the sea. The principle is that we comply with the customs and traditions of usage that were left to us by the ancestors. Those customs were implemented under our tribal rangatiratanga. That is our inheritance.”⁶⁸ Rakiihia Tau also goes on to say “we consider land and sea as inseparable, but at the same time recognise that the uses of the respective resources are separate. This is the reason for a whakapapa, as taught to us by our elders, to relate all the parts of the

⁶¹ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Brief of Evidence of Te Rangikaheke Bidois (November 2007) at [4.1]–[4.4].

⁶² *Re Edwards* [2021] NZHC 1025, Affidavit of Kayreen Tapuke (20 February 2020) at [66].

⁶³ Ko Aotearoa Tēnei, Wai 262, #E6 Maggie Ryland at [3.5(b)].

⁶⁴ Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [32].

⁶⁵ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of Sean Ellison (undated) at [8].

⁶⁶ *Wilson v Waikato Regional Council* [2021] NZEnvC 131 Statement of Evidence of Joseph Davis (28 August 2020) at [54].

⁶⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence p.46.

⁶⁸ *Ngai Tahu Māori Trust Board v Attorney-General* CP 559/87, Affidavit of Henare Rakiihia Tau (24 November 1989) at [31].

natural world, but also to categorise the parts, and so to separate the resources of each division for the use of mankind.”⁶⁹

- Tama Hata (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tūhoe, Waikato) states, “According to my elders, Māori regard the term Takutai Moana as a term coined by Pākehā law for a section of a marine and coastal area. This area stretches from the sands on the shore to the sea shallows. According to Māori thought the great expanse and reaches of the sea are of one body. The shores are where the god Tangaroa and the god Tāne meet, and Papa-tū-ā-nuku is at the ocean floor linking these two guardians. Although Pākehā law separates the ocean into parts, the ocean is the ocean.”⁷⁰
- James Rickard (Ngāti Porou) talks about the interconnection between Tangaroa and people: “Tangaroa is an Atua to be respected. His children feed us and we are obliged to protect their domain so that they can continue to sustain future generations.”⁷¹

INFORMS WHERE MĀORI LIVED

5.46 Some people talk about the alignment of the Māori way of life and tikanga to the environment and the seasons. For example, the environment was instrumental in informing where Māori live:

- Maui Solomon (Moriōri) explains that the environment dictated where Māori/Moriōri would settle. Each settlement was strategically located around food resource – they all had a sea frontage, broadleaf forest and inland taranikau forest to catch kaimoana and kaimanu.⁷²
- Roger Pīkia (Ngāti Tahu, Ngāti Whāoa, Ngāti Tūwharetoa, Raukawa, Waikato-Tainui, Ngāti Maniapoto, Ngāti Hikairo) describes, “The environment dictated the migration of people. Ngāti Tahu were nomadic in nature, moving between kāinga in response to different seasons. In summer there was a migration to the plateau due to the cooler weather and in winter, Ngāti Tahu would migrate to the villages along the river where the geothermal fields were.”⁷³
- Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) and Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) discuss how “Ngāti Awa tīpuna always established their kāinga near clear, clean productive wai. That is the wai sustains the life of various life giving forms that live within it and it is absolutely

⁶⁹ *Ngai Tahu Māori Trust Board v Attorney-General* CP 559/87, Affidavit of Henare Rakihia Tau (24 November 1989) at [75].

⁷⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Tama Te Waiwhakaruku Hata (14 February 2020) at [47].

⁷¹ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of James (Tex) Rickard (undated) at [45].

⁷² The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [4.7].

⁷³ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Roger Pīkia (1 May 2017) at [3.4]–[3.6].

essential for the life of the people who live close to it. The mauri of the people remains as strong as the mauri of the wai.”⁷⁴

- Isobel Beronica Thompson (Ngāti Pāhauwera) reflects on her lifetime living in Pāhauwera, their understanding being that “access to our coastline has always been there for all of us” and such removal or restriction to access would “mean plunging us back into a great loss ... taking away from communities their life line, their wairua”.⁷⁵
- Tuariki Delamere (Ngāti Patumoana) lists the land occupied by Ngāti Patumoana prior to the British invasion and says, “These settlements were largely coastal in order to access and make use of our rich marine and coastal resources.”⁷⁶
- Te Ringahuia Hata (Ngāti Patumoana) states, “The Pā was strategically placed at the entrance of Ōhiwa harbour which enabled the hapū to regulate, manage and control the costal path and harbour mouth, not just to traders, government official, settlers or missionaries but also served to regulate and control mana moana over the area of any hapū accessing kaimoana.”⁷⁷
- Tā Hirini Moko Mead (Ngāti Awa), Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) and Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) states that many pā have been established in the Ōhope and Ōhiwa due to the abundance of kaimoana, wildlife, plant life and vegetation.⁷⁸ The pā provide protection to these resources.⁷⁹
- Genevieve Ruwhiu-Pupuke (Ngāi Tamahaua hapū, Te Whakatōhea) explains that the establishment and location of pā sites maintained the association with the takutai moana. Specifically, she notes:⁸⁰

Our pā were positioned atop pukē/hills or under or near maunga ... or in close vicinity to the moana/sea ... Other pā were located near rivers and the ngāhere/forest ... The use of such locations afforded the pā and the iwi/hapū and whānau that lived there, protection and ideal vantage points for any approaching ope taua (war party or enemy), access to kai moana and other bords and animals, and transportation both for trade and, if needed, escape routes. The common design for pā is known as Pā Maioro. These pā were designed with teihana (a lookout) that was used to scope and keep an eye on the surroundings both in war time but also in relation to weather forecast and reading of the moon cycles (known as maramataka). This played an integral role in the day to day living of our tūpuna.

⁷⁴ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Joint Brief of Evidence of Hohepa Joseph Mason and Te Kei (O Te Waka) Wirihana Merito (29 April 2019) at [40].

⁷⁵ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Isobel Beronica Thompson (10 December 2019) at [17].

⁷⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Tuariki John Edward Delamere (18 February 2020) at [13].

⁷⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuia Hata (29 January 2020) at [43].

⁷⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [75].

⁷⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020) at [75].

⁸⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Genevieve Ruwhiu-Pupuke (30 January 2020) at [22]–[25].

- Ruwhiu-Pupuke notes further, “Māra kai (food gardens) were set up within the centre of the Pā Maioro. This allowed for both constant working and harvesting of the māra and provided resources during confinement to the pā during war or bad weather.”⁸¹

THE SEASONS AND THE MARAMATAKA

5.47 The seasons and the maramataka also influence Māori life:

- Benjamin Hippolite (Ngāti Koata, Ngāti Toa, Ngāi Tahu, Ngāti Kuia) explains that the right time and way to do things was determined by nature, seasons, weather – “everything has a season and a reason”.⁸²
- Moe Milne (Ngāti Hine) discusses the tupuna Hine-ā-Maru and her approach to agriculture and sustaining her people. “Te Maara ā Hine-ā-Maru can be considered as her strategic planning framework. It determined the activities of the hapū. It meant aligning activities of the hapū to the environment and its seasons ... This is an important lesson Hine-ā-Maru has left for us; to remember to not get caught up in the battle and neglect the māra kai. Ko te māra kai, ko te tangata. The people are our garden, and we must nurture them before anything else.”⁸³
- Chris Winitana (Ngāti Tūwharetoa) says, “The tikanga set in place to establish how we relate to the natural environment in the best interests of all parties, are laid down in nature’s own calendar. The children of Rangī and Papa (Tāne Māhuta, Tangaroa etc) oversee as guardians these natural calendars and systems whereby all things fit.”⁸⁴ Maramataka is the traditional resource management system of Māori. Its basis is in whakapapa and whanaungatanga. Its implementation is holistic.⁸⁵
- Rapata Romana (Te Aupōuri, Ngāti Kuri, Ngāti Rehia, Te Rīnga Maui, Te Rīnga Matau, Te Rīnga Kaha, Ngāti Here, Ngāti Kohatu) explains how the maramataka dictated many of the rules around fishing. “On the specific days for fishing (thus according to the Māori Maramataka/Calendar) the men would go out deep sea fishing. When the darkness did fall before their return the tribe would gather on the beach and light a big fire to guide the fishermen home.”⁸⁶
- Wi Huata (Ngāti Pahauwera) describes the Māori calendar as “their guide to cultivating, hunting, gathering, harvesting of food from the whenua, awa, moana”.⁸⁷
- George Hawkins (Ngāti Pahauwera) explains the role of the Māori calendar during fishing is to “work it off the full moon and if the sea is calm you can’t go wrong”.⁸⁸

⁸¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Genevieve Ruwhiu-Pupuke (30 January 2020) at [28].

⁸² *Ko Aotearoa Tēnei*, Wai 262, #H11 Benjamin Hippolite at [31] and [62].

⁸³ *Mana Wāhine Kaupapa Inquiry*, Wai 2700, #A62 Moe Milne at [59].

⁸⁴ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [77].

⁸⁵ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, Statement of Evidence of Chris Winitana (4 June 2017) at [79]–[80].

⁸⁶ *Muriwhenua Land Report*, Wai 45, #F31 Rapata Romana p.4.

⁸⁷ *Re Ngāti Pahauwera* [2021] NZHC 3599, Affidavit of Wi Derek Huata/King (5 December 2013) at [6].

⁸⁸ *Re Ngāti Pahauwera* [2021] NZHC 3599, Statement of George Albert Hawkins (11 December 2013) at [17].

- Marjorie Huingapani Kurei (Ngāi Tamahaua hapū) explains, “We were taught that the stars and the moon signal to the fish that it is the time to migrate and this signals to the people that the season is to start and that they are fat. The sun, the moon and stars are all related to the sea and the land and when harvesting is to take place. Our stories show the seasons whakapapa to our atua. Our understanding of the seasons and the sea and the land is that they are all interlinked.”⁸⁹
 - Pepper Hudson (Ngāi Tamahaua hapū) notes, “My parents used the Māori calendar and were guided by the tides and moon for net fishing, spearing, or line fishing.”⁹⁰
 - When talking about tūpuna, Leelyn Ruwhiu (Te Whakatōhea, Tūhoe, Ngāti Porou) says, “They moved with the seasons, often retreating inland to Toatoa in the winter months for hunting and utilising the inland resources and returning to the seaside in the warmer months to dive or fish, grow māra kai and orchards of fruit and nuts. This was a traditional practice that followed the cycle of the moon, known as maramataka, which sustained their life and survival and interaction with the natural world.”⁹¹
- 5.48 Henare Rakiihia Tau (Ngāi Tahu, Ngāti Mamoe, Waitaha) describes how his tūpuna migrated around Te Waipounamu from natural resource to natural resource depending on the season. “Our people ranged around most of the South Island following the trails that led from one natural resource to another. The seasons were important because one source of food or clothing would often only be available at one season of the year, so the ranging of the people tended to be controlled by the seasons.”⁹² He goes on to say that “my people ranged widely for a wide variety of different things. They had places of permanent settlement, but the people living there depended on the produce of nature from sources which were distant from those settlements and which were themselves distant from each other.”⁹³
- 5.49 Henare Rakiihia Tau (Ngāi Tahu, Ngāti Mamoe, Waitaha) also describes how the maunga and stars were used to navigate when fishing:⁹⁴
- For fishing at great distances from land we were taught that directions were taken both from the prominent mountains of the South Island, and also from the stars ... the stars were important in estimating the distance offshore, from alignments at certain times of year, and in relation to the Maunga Karanga. By this term is indicated the locator or guiding mountains to which we look back when we go out to sea.⁹⁵
- 5.50 Leeann Martin (Ngāi Tamahaua hapū) notes, “There is a cycle that goes from the top of the maunga to the sea; it is all connected and seasonal and there is a special time to go to certain areas when the kai is fat and in prime condition. With fishing and kai from the

⁸⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [40].

⁹⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Pepper Hudson (20 February 2020) at [53].

⁹¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Leelyn Raiha Ruwhiu (30 January 2020) at [45].

⁹² *Re Tipene* [2016] NZHC 3199, Brief of Evidence of David Armstrong (31 August 2015), Exhibit marked DA-55, Wai 27, #J-10 Evidence of Henare Rakiihia Tau, David Higgins, Trevor Howse, Peter Ruka and Barry Brailsford at [4.4].

⁹³ *Re Tipene* [2016] NZHC 3199, Brief of Evidence of David Armstrong (31 August 2015), Exhibit marked DA-55, Wai 27, #J-10 Evidence of Henare Rakiihia Tau, David Higgins, Trevor Howse, Peter Ruka and Barry Brailsford at [4.5].

⁹⁴ *Ngai Tahu Māori Trust Board v Attorney-General* CP 559/87, Affidavit of Henare Rakiihia Tau (24 November 1989) at [47].

⁹⁵ *Ngai Tahu Māori Trust Board v Attorney-General* CP 559/87, Affidavit of Henare Rakiihia Tau (24 November 1989) at [46].

moana the tides, winds, sea currents and migration patterns are aligned with the sun, the moon and the stars. The cycle is all interlinked. I have learned to respect the whenua and the moana as kaitiaki.”⁹⁶

- 5.51 Carol Hemoana Gage (Ngāti Ira) notes, “Mahi at the moana was seasonal and followed the moon and the stars ... We also followed the weather patterns, the tides, the direction of the winds and the behaviours of nature. Our tīpuna would also read the signs from Whakaari. The direction of the plume would tell them about the winds and when it was a good time to fish or dive. It would tell them a lot about the weather and change of the tides.”⁹⁷ For example, it dictated whether the koroua went out to gather tītī.⁹⁸
- 5.52 Hetaraka Biddle (Ngāi Tamahaua hapū), in discussing historical pā site Te Taiharuru, notes that it “is a good place to watch for signs of changes in the sea and tides. I remember my brother Matenga speaking of Te Taiharuru as being our natural warning system. Our kōrero is that no matter where you are in the world, if you hear a certain type of sound (waves rushing is) you know it is Taiharuru warning of a Tsunami.”⁹⁹ Biddle further notes that “specialists within the hapū would use the Māori calendar, the stars and the moon, and their surrounds as tohu (signs) for the right time of the year. I have heard kōrero that some hapū members could predict by the phases of the moon what type of fish would be available. When certain stars appeared, such as Autahi (the morning star) or Meretuahiahi (the afternoon star) they would know that certain fish would appear.”¹⁰⁰
- 5.53 Hohepa Te Kahika (Te Whakatōhea) notes, “There was a season for everything. There is a season for the harvesting time of the mussel, the kina. When you see the Pōhutukawa, the flowers, and the colouring of the flowers ... that’s when you are best to harvest your kina.”¹⁰¹

PROVIDES MARKERS AND TOHU

- 5.54 Environmental features can create natural boundaries and serve as markers or tohu:
- Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) describes how “iwi boundaries were often marked by natural geographical features such as rivers, streams, plains and mountains” but goes on to say that “these physical markers were just one consideration in defining the *rohe* of an iwi”.¹⁰² David Wilson (Te Ākitai Waiohua, Ngāti Te Ata) similarly says, “Tikanga does not define tribal boundaries by formal straight

⁹⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Leeann Martin (20 February 2020) at [41].

⁹⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Carol Hemoana Gage (13 February 2020) at [54] and [55].

⁹⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Carol Hemoana Gage (13 February 2020) at [57].

⁹⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [83].

¹⁰⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [90].

¹⁰¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Hohepa Te Kahika (20 February 2020) at [22]. This was also discussed by Heremaia Warren in his affidavit of 21 February 2020 at [121]–[131]. He described different types of tohu such as the smoke above Whakaari, clouds above Moutohorā, flowers in bloom and ripeness of berries to indicate weather patterns, harvesting times and gathering times for kaimoana.

¹⁰² *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [109].

lines. There is more of an emphasis on resources, landmarks and significant geographical features.”¹⁰³

- Te Ururoa Flavell (Ngāti Rangiwewehi) sets out the area and specific land blocks surrounding the rohe of Ngāti Rangiwewehi and the two springs, Hamurana and Taniwha, “which are cornerstones of our Ngāti Rangiwewehi identity”.¹⁰⁴
- Tahu Potiki (Ngāi Tahu, Ngāti Mamoe) discusses how the environment holds *tohu* that serve as markers for certain knowledge or activities. “There are an absolute, myriad of sacred stones, rocks, and reefs that dominate the coastline. They often serve a purpose rather than create an obstacle. They are points to stop and pray on a journey, markers to direct travellers or hunters, or they make up part of a map that recalls ancestral tale.”¹⁰⁵
- Toro Waaka (Ngāti Pāhauwera) says in “reciting the boundary of Te Kahu o Te Rangi in 1879, my ancestor Wepiha Wainohu also explicitly confirmed that the area of Te Kahu o Te Rangi includes the moana, because it points out two mahinga kai in the area, Maungaharuru inland, and Tangitū in the sea. The translation is: ‘*Out in the sea is a rock, its name is Tangitū, it is a fishing ground. From there he looked shoreward to Maungaharuru a mountain which abounds with pigeon.*’”¹⁰⁶
- Hetaraka Biddle (Ngāi Tamahaua hapū) discusses the use of reference points within the environment such as the marae hilltop and surrounding hills to locate various fishing grounds.¹⁰⁷
- Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) states, “We as a people operate and live by the motions of the Taiao ... Everything we did as a hapū depended on the motions of the Taiao happening at the time, and our actions naturally aligned with our Tikanga. The notions of protection, tapu, aroha, manaakitanga etc. were all at the forefront of what we did. Our Tohunga and Pou Tikanga were key elements in this process. They would all observe elements in this process. They would observe the elements of the environment and watch for *tohu* to determine whether it was safe to gather kai, whether a natural disaster was going to occur and whether it was the right time to voyage among other things. This Tikanga is still practiced today. Whakaari remains to be a common place where our Tohunga watch regularly.”¹⁰⁸
- Te Ringahuaia Hata (Ngāti Patumoana) also refers to Whakaari, indicating, “One of the key *Tohu* ... was whether Whakaari was smoking or not and how dark the clouds were above her. So long as there was a consistent ‘letting off of steam’ then she didn’t pose any risk and it meant we could go fishing.”¹⁰⁹

¹⁰³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [63].

¹⁰⁴ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* [2008] NZRMA 395, Brief of Evidence of Te Ururoa Flavell (undated) at [3.9]–[3.10].

¹⁰⁵ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tahu Potiki (23 December 2016) at [7.11].

¹⁰⁶ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Toro Edward Reginald Waaka (19 December 2019) at [66].

¹⁰⁷ Affidavit of Hetaraka Biddle (20 February 2020) at [91].

¹⁰⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [60] and [61].

¹⁰⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Ringahuaia Hata (29 January 2020) at [117].

- Donald Kurei (Te Whakatōhea, Ngāti Ira) also discusses *tohu* for reading the season, weather patterns and to warn of imminent risks.¹¹⁰ The *kuia* would look at the mist and visibility at the Waioweka Gorge to determine whether swimming in the river could occur and at the clouds and weather patterns above Whakaari to determine whether it was safe.¹¹¹ Kurei notes further that these *tohu* guided Ngāti Ira *tikanga* and *kawa*. If the *tohu* weren't followed, an *aituā* such as sickness or death would follow.¹¹²
- Henare Tau (Ngāi Tahu, Ngāti Mamoe, Waitaha) draws the example “that the distance from Aoraki (Mount Cook) to Kaiapoihia could be estimated at sea so as to travel an approximately equal distance in that direction out to sea, to locate one of our important fishing grounds and that in this navigation one relied on the stars at the appropriate time of year for catching fish”.¹¹³
- Tony Walzl (Pākehā) on behalf of Maungaharuru-Tangitū discusses the relationship of *hapū* with respect to observing the environment while gathering *kai*:¹¹⁴

[T]he fact that a certain tree was in leaf or flower would be a sign that a certain species of *kaimoana* was ready to harvest. *Kaumātua* referred to several flowering plants that were used as signals. *Harakeke* in bloom was a signal that the crayfish were starting to come in. When the *pōhutukawa* or *kōwhai* was in flower, the *kina* were fat. Flowering of *harakeke* and *kowhai* were signs that *pāua* and mussels were also ready to harvest. Aside from plants, the presence of certain moths indicated that it was a good time to catch eels ... The presence of some species could be an indicator that certain *kaimoana* would be in the same area: for example, the presence of octopus and the likelihood of there being *pāua* and crayfish in the area. Being able to read the weather and closely observe the sea was vital for the safety of *Hapū* fishers.

- 5.55 Irene Huka Williams (Tūhoe) discusses the use of *tahu* for alerting people to their presence:¹¹⁵

In previous time our people used *tahu* as that symbol and *tahu* were dug out trunks of *tōtara* tree, some of them were made out of *tōtara* tree or other, other species and they were pulled up in – they were still standing trees. They were still alive trees and they were dug out into hollow shells. Um, they struck these trees and these trees um, made a bellowing sound. Okay bellowing sound, not much difference from what you hear when you hear a shotgun fired and those bellowing sounds alerted other neighbouring *hapū* and other *lwi* that you were in the vicinity, vicinity of the area. Also it alerted to um, it alarmed people of encroaching enemies.

- 5.56 Williams clarifies that the use of the shotgun by Tame Iti was symbolic of the *tahu* and the “sound to make people aware that there’s an incoming *manuhiri* ... or there’s an encroaching enemy onto the *Marae* out there, to prepare themselves”.¹¹⁶ She elaborates further that this type of ritual and ceremony with guns has been practised at *tangihanga*

¹¹⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Donald Ati Kurei (19 February 2020) at [49]–[52].

¹¹¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Donald Ati Kurei (19 February 2020) at [49]–[52]. Hemaima Mariana Hughes (Ngāti Ira) reiterated the *kōrero* regarding *ngā tohu* a Whakaari in her affidavit dated 30 January 2020 at [44] and [45].

¹¹² *Re Edwards* [2021] NZHC 1025, Affidavit of Donald Ati Kurei (19 February 2020) at [52].

¹¹³ *Ngai Tahu Māori Trust Board v Attorney-General* CP 559/87, Affidavit of Henare Rakihiia Tau (24 November 1989) at [47].

¹¹⁴ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Tony Walzl (10 August 2020) at [235].

¹¹⁵ *R v Iti* [2007] NZCA 267/06, Notes of Evidence, Irene Huka Williams p.30.

¹¹⁶ *R v Iti* [2007] NZCA 267/06, Notes of Evidence, Irene Huka Williams pp.35–36.

before at the late Sir John Turei and Dr Hirini Melbourne’s tangihanga (which the Prime Minister and High Commissioner of Police attended and no arrests were made), and this responsibility and role lay with Tame Iti on all occasions.¹¹⁷ Tame Iti (Tūhoe) says, “At the signal of the firing of the gun, that was when all the other rituals began. The rituals of manuopera, the chants – the chants, recitals, that’s when they began, and they began to move forward and the fires were lit – the fire was lit and the cars were burnt.”¹¹⁸

- 5.57 Tania Hopmans (Ngāti Marangatūhetaua, Ngāti Kurumōkihi, Ngāi Tauira, Ngāti Whakaari, Ngāi Tahu) says, “The principal status of Tangitū is recognised by the Hapū in their mihi, whaikōrero, whakairo, kowhaiwhai and tukutuku on their marae, whakatauki, kōrero tuku iho and waiata.”¹¹⁹

SPECIFIC RULES DEVELOP AROUND IT

- 5.58 Puhanga Tupaea (Ngāti Koata, Ngāti Kuia) discusses how there were strict rules around who could gather materials and how much could be gathered in the context of weaving. It was obvious that there was a full list of laws and practices that were known and enforced by all the adults amongst Ngāti Koata and anyone else in the area, and they had been through generations.¹²⁰ It is clear from Tupaea’s evidence that tikanga and rules around gathering resources derive from everyday use and practice and are continually made and remade based on interactions between people and the environment.¹²¹

- 5.59 There were specific rules governing behaviour in relation to the environment:

- Winiata and Marian Paraone (both Te Aupōuri, Ngāti Kuri) discuss the various rules around fishing. “One of the first things to be affected was the fishing ... They would fish by the moon and the tide. You didn’t catch fish in certain conditions, they had to be fat, and the same for shellfish.”¹²²
- James Rickard (Ngāti Porou) in support of Tainui hapū speaks of tikanga that governed how to gather kai within the domain of Tangaroa, including giving the first fish caught back to Tangaroa, never eating Tangaroa’s children on the beach, fishing by the moon and obeying the natural laws and placing rāhui when there is a drowning.¹²³
- Rangimorehu Kereopa (Ngāti Tahinga, Tainui, Ngāti Hine) in support of Tainui hapū says that tikanga was given to us that governed how we interacted with our environment – do not eat kaimoana or open them by the sea, only collect what you need, leave the small ones and so on. These tikanga are intergenerational and passed

¹¹⁷ *R v Iti* [2007] NZCA 267/06, Notes of Evidence, Irene Huka Williams pp.36–37.

¹¹⁸ *R v Iti* [2007] NZCA 267/06, Notes of Evidence, Tame Wairere Iti p.66.

¹¹⁹ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Tania Marama Petrus Hopmans (3 April 2017) at [74].

¹²⁰ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea at [82].

¹²¹ Ko Aotearoa Tēnei, Wai 262, #H10 Puhanga Tupaea.

¹²² Muriwhenua Land Report, Wai 45, #F29 Winiata and Marian Paraone p.5.

¹²³ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of James (Tex) Rickard (undated) at [12]–[13].

down. Tikanga does not allow for the support of discharges of polluted waters into Tangaroa.¹²⁴

- Rereamanu Wihani (Tūhourangi, Tapuika) provides some of the rules for fishing they were taught, for example, seafood was not to be eaten or shelled (koha) on the beach. It must be taken home. It would bring bad luck (makutu) to do that, and it was a sign of disrespect to Tangaroa.¹²⁵ It is important to give back to Tangaroa with either a kuku (mussel) or fish thrown back along with the final karakia.¹²⁶
- David Potter (Ngāti Rangitihi) describes that large catches were distributed throughout the town in the traditional way, starting with the sick and elderly. His father always made certain that the nuns at the Convent had fresh fish for Friday.¹²⁷
- Theresa Thornton (Ngāti Pāhauwera) outlines the continuing practices around fishing passed down by older generations and regularly taught to tamariki and mokopuna such as karakia before you start and “no gutting your fish on the beach, no scaling them there either”.¹²⁸ Owen Jerry Hapuku on behalf of Ngāti Pāhauwera reiterates that environmental indicators would often signal, for example, “that the day was not so good so you’d just stay home”.¹²⁹
- Hauata Palmer (Ngāi Te Rangi) explains, “In order to take fish or any other resource from the moana, the right way to approach this is to ensure to ‘tono’ or ask permission from the tangata whenua that hold the mana whenua. This is done out of respect and acknowledgement that the right to access or utilise those resources comes first and foremost from tangata whenua. Breaking this tikanga, as with all transgressions, causes offence and can lead to disputes.”¹³⁰
- Robert Selwyn (Ngāi Tamahaua hapū) notes, “A common practice for our hapū was the distribution of kaimoana to whānau and particularly kaumātua, following a fishing expedition or the gathering of shellfish. In turn this would be repaid in kind when one had the next opportunity.”¹³¹
- Hetaraka Biddle (Ngāi Tamahaua hapū) notes that a key tikanga was bringing enough kaimoana for those unable to collect their own such as whānau with tamariki or kaumātua.¹³²

¹²⁴ *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of Rangimorehu Kereopa (undated) at [10] and [12].

¹²⁵ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Primary statement of evidence of Rereamanu Wihapi (22 December 2016) at [19].

¹²⁶ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Primary statement of evidence of Rereamanu Wihapi (22 December 2016) at [20].

¹²⁷ *Marr v Bay of Plenty Regional Council* [2010] NZEnvC 347 (Kawerau Paper Mill) Statement of David Potter at [3.4].

¹²⁸ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Reply evidence of Theresa Pauline Thornton (21 December 2020) at [13].

¹²⁹ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Owen Jerry Hapuku (17 December 2019) at [12].

¹³⁰ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Evidence of Hauata Palmer (6 July 2020) at [22].

¹³¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Robert Selwyn (21 February 2020) at [8].

¹³² *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [105].

- Arapeta Mio (Ngāi Tai) notes that the mussels had to be fat to be gathered. If they were small, you gave them back and gathered something else. Further, kai would be split to feed those unable to gather and those that were sick.¹³³
- Marjorie Huingapani Kurei and Pepper Hudson (both Ngāi Tamahaua hapū) note the use of special kete for gathering kai. There was strict tikanga observed to prevent cross-contamination, with specific kete for kaimoana and māra kai and kete for general uses.¹³⁴
- In respect of gathering kaimoana, Awhina Waaka (Ngāti Pāhauwera) lists additional rules including “kaimoana is never gathered for personal gain or for sale and if people got a lot of fish it was dropped off at the homes of the old people; bags that have carried or cooked meat or fish were not ... used for diving; and if you turn rocks over whilst searching for Kaimoana put them back the way you found them”.¹³⁵
- Tony Walzl (Pākehā) on behalf of Maungaharuru-Tangitū hapū adds that traditional methods of regulation in respect of kaimoana also includes using “their hand to assist in measuring shellfish” as well as monitoring the colour of pāua to assess its age and condition. The objective was never to take the largest shellfish or fish. He explains the key rationale amongst hapū interviewees was “to leave some of the bigger shellfish to ensure a good gene pool for the future”.¹³⁶
- Dylan Harvey (Ngāi Tahu) similarly notes that “our tikanga dictates and guides our relationship with our takutai moana. Some of the people I go with, mainly my uncles, do karakia before they start fishing. We follow tikanga to protect our takutai moana and to make sure that there are enough resources for everyone.”¹³⁷
- Carlo Ellis (Ngāi Tukairangi) discusses the role of reading environmental indicators to manaaki the area. He states, “For instance there are times where we see an overabundance of a particular species and we can cull by targeted fishing like Parore. While at other times we notice a lack of species and reduce the frequency of fishing especially for particular species that needs to thrive. This may involve self-imposed rāhui, community rāhui, informal restrictions and other methods.”¹³⁸
- Rehua Smallman (Ngāti Pūkenga) states, “As with all things in Te Ao Māori, there is a tikanga associated with the use of the Tāhuna and its resources. In general, the tikanga or practices of our ancestors in managing the resources of the Tāhuna are mostly applied common sense. For example when harvesting from the Tāhuna – taking only sufficient for immediate needs; leaving the smaller stocks behind and applying the occasional rāhui for conservation purposes to allow stocks to replenish.”¹³⁹

¹³³ *Re Edwards* [2021] NZHC 1025, Affidavit of Arapeta Mio (14 April 2020) at [39]; Affidavit of David Peters (24 July 2020) at [12].

¹³⁴ Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [43]; Affidavit of Pepper Hudson (20 February 2020) at [54].

¹³⁵ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Awhina Evelyn Waaka (21 November 2013) at [9].

¹³⁶ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Affidavit of Tony Walzl (10 August 2020) at [230]–[231].

¹³⁷ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Dylan Kane Harvey (11 August 2020) at [18].

¹³⁸ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Evidence of Carlo Jason Ellis (7 July 2020) at [31].

¹³⁹ *Re Reeder on behalf of Ngā Pōtiki* [2021] NZHC 2726, Affidavit of Rehua Tom Smallman (7 July 2020) at [41].

REQUIRES SUSTAINABILITY

5.60 Conservation and sustainability are central features in descriptions of the relationship of Māori to the environment:

- Laly Haddon (Ngātiwai) describes, “Thousands of shellfish were born and died. The tangata whenua ate hundreds, but they were always careful not to take too many or from the wrong place, for their gift was precious and forever.”¹⁴⁰ She goes on to explain that her tūpuna practised resource sustainability such as protection of mahinga kai.¹⁴¹
- Benjamin Hippolite (Ngāti Koata, Ngāti Toa, Ngāi Tahu, Ngāti Kuia) explains, “We always looked after our kaimoana. We never took more than what was required, because we know that one day we would need extra for hui, tangi or manuhiri.”¹⁴² Although he does not make the point explicitly, Hippolite emphasises using natural resources in a way that is sustainable through the use of several examples such as the gathering of harakeke, eeling, hunting kererū, fishing, transplanting kaimoana and gathering tītī.¹⁴³
- Mereraina Uruamo (Ngāti Kuri) states, “Conservation principles underpinned gathering of fibres – like cutting the outer leaves only of the harakeke.”¹⁴⁴
- Maria Horne (Ngāti Whakaeue, Ngāti Whakahemo, Ngāti Awa) says that, when whānau dive, then they share the catch with aunties and uncles who can no longer go for themselves. They take only enough to feed themselves, leaving the rest for future days. This is manaakitanga (to care) for whanaunga (relatives) in Maketū and the marine environment.¹⁴⁵
- Wayne Ngata (Ngāti Porou) describes the important principle that can be derived from the story of Ngae is Ngae’s greed in eating not part of but all of Tinirau’s pet whale Tutunui. He says that this sets the resource conservation ethic.¹⁴⁶
- Winiata and Marian Paraone (both Te Aupōuri, Ngāti Kuri) talk about sustainability and limits: “They [the local hapū] would protect the fishing ground, let it build up again. Also, what you catch, you eat, if it’s not for kai, you leave it there.”¹⁴⁷
- Te Rua Rakuraku and Donald Kurei (both Te Whakatōhea, Ngāti Ira) say, “The moana ... is a place where we offer prayer, a sacred space where we conduct rituals, a place where we may purify ourselves in spirit, mind, and body, a place of leisure and play, and a place of learning. Our obligation is to ensure that what human activity that

¹⁴⁰ Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [27].

¹⁴¹ Ko Aotearoa Tēnei, Wai 262, #A30 Laly Haddon at [58].

¹⁴² Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [39].

¹⁴³ Ko Aotearoa Tēnei, Wai 262, #H11 Benjamin Hippolite at [11], [13], [15], [31], [39], [40], [49] and [99].

¹⁴⁴ Ko Aotearoa Tēnei, Wai 262, #D7 Mereraina Uruamo at [5] and [11].

¹⁴⁵ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Primary Statement of Evidence of Maria Brenda Horne (3 January 2017) at [45].

¹⁴⁶ Ko Aotearoa Tēnei, Wai 262, #E3 Wayne Ngata at [4.8.4].

¹⁴⁷ Muriwhenua Land Report, Wai 45, #F29 Winiata and Marian Paraone p.5.

occurs in that spiritual realm is done to ensure balance for mutual well-being and survival.”¹⁴⁸

- Danny Pohipi (Te Whānau-ā-Apanui) reiterates these ideas noting that they made sure food stocks weren’t plundered and bird stocks were rotated to ensure sustainability.¹⁴⁹
- Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) notes further:¹⁵⁰

If too much kai (food) is taken, the offender is told. We know that pāua grow small in our rohe, so we don’t mind undersized pāua. But we do mind if people take too many and we care about the sustainability of the stocks.

...

Kaitiakitanga (guardianship) is not only exercised when people are breaching tikanga. But it also informs and regulates our own behavior towards our resources. For example, when planning a hui whānau or family reunion, it is important to plan it around when the kaimoana (food) is fat and ready. It would not be wise to have an event during winter when the food stocks such as mussels and pāua were not available. This is based on common sense as well as our close relationship with the moana.
- Gage, in discussing the significance of whaling to Whānau-ā-Apanui, notes that “as kaitiaki, we ensured that the hunting of whales was regulated by strict tikanga to ensure their sustainability”. Further, practices relating to whales evolved to the exercise of kaitiakitanga through advocacy rather than use to ensure their survival.¹⁵¹ Gage also notes that “each hapū within Whānau-ā-Apanui are kaitiaki of seaweed within their rohe. It is their duty to ensure seaweed is gathered properly ... and not damaged ... as part of the sustainable management of the seaweed.”¹⁵²
- Hetaraka Biddle (Ngāi Tamahaua hapū) notes that, as part of their kaitiaki role, certain members of the hapū check in with whanaunga to ensure they are keeping within limits to protect the kaimoana stock.¹⁵³
- Marjorie Huingapani Kurei (Ngāi Tamahaua hapū) notes that gathering of kaimoana was based on an understanding of when was the best time to gather, for example, when the crays or other food was at its best and also when it would do the least damage to the population. Sustainability of the kaimoana resources is a vital part of their tikanga.¹⁵⁴
- Pepper Hudson (Ngāi Tamahaua hapū) states, “We were taught only to take from the moana what was needed in order to preserve those resources in accordance

¹⁴⁸ *Re Edwards* [2021] NZHC 1025, Joint affidavit of Te Rua Rakuraku and Donald Kurei (21 January 2022) at [21].

¹⁴⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Danny Craven Pohipi (21 February 2020) at [21].

¹⁵⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Danny Craven Pohipi (21 February 2020) at [45] and [47].

¹⁵¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [128] and [129].

¹⁵² *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [130].

¹⁵³ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [104]. This is reflected in the affidavit of Leeann Martin (Ngāi Tamahaua) of 20 February 2020 who notes at [40] and [42] the importance of respecting areas as kaitiaki to ensure the preservation of taonga and kai resources for the future generations. This included practices that allowed kai to rest and rejuvenate to ensure the mana and mauri of an area was looked after. This included avoiding areas overfished or overused and not using a resource for a time.

¹⁵⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [40].

with kaitiakitanga ... Our Ngāi Tamahaua practices have been put in place to protect our ancestral knowledge, and also to maintain kaitiakitanga over our environments and food sources, for the future of our hapū and future mokopuna.”¹⁵⁵

- Toni Ngoungou-Martin (Ngāi Tamahaua hapū) states, “When gathering kai, we only ever took enough to feed our whānau. The environment of the rocks and sea would not be disturbed just to look or play. Respect was a big thing taught to us; we must respect the moana, the tamariki of Tangaroa, all whānau, and care for the environment. The sea, everything in the sea, the land and the people, all these things are an interlinking system that must be cared for as a whole. If one part of the whole is suffering, it affects all the other parts. These practices serve to reinforce our respect for this environment and what it provides for us, as well as helping us to be good kaitiaki of this area.”¹⁵⁶

5.61 Maggie Ryland (Ngāti Porou) links the idea of sustainability to the placing of tapu and rāhui, which ensure the continuity of fish stock. She says, “The placement of tapu, taniwha and kaitiaki over nurseries and spawning ground [is a] protective system still classified as the most effective.”¹⁵⁷

5.62 The evidence of Huitau Te Hau (Rongomaiwahine) speaks to the multi-generational dimension of sustainability – the role of the tribe to protect their rohe moana as similar to a legal duty they must abide by. This duty has been passed down from ngā atua and is very real for Rongomaiwahine. He uses a whakataukī to describe the very real consequence it may have for them:¹⁵⁸

Ka huri he rangai maomao ki tua atu o Nukutaurua, e kore a muri e hoki atu – Once the fish has gone from Nukutaurua, it is indeed gone forever.

5.63 This illustrates Rongomaiwahine are not only concerned about the impact of the Sealord deal on them but mō ngā uri whakaheke. What emerges is that tikanga and the role it plays between relationships of people and the taiao are multi-generational and always prioritises the collective.

IMPACT OF ENVIRONMENTAL DECLINE

5.64 A Chadwick (Te Whānau-ā-Apanui) describes how the decimation of natural resources, including the fisheries and kahawai, has a very real and long-lasting impact that is felt by the hapū and wider hāpori at a variety of levels.¹⁵⁹ These impacts include:¹⁶⁰

- a decrease in the numbers of fish, including significant species such as kahawai and the resulting biological effect that has in their awa and moana;

¹⁵⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Pepper Hudson (20 February 2020) at [52] and [79]; Affidavit of Marjorie Huingapani Kurei (20 February 2020) at [43].

¹⁵⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [21].

¹⁵⁷ Ko Aotearoa Tēnei, Wai 262, #E6 Maggie Ryland at [3.7].

¹⁵⁸ The Fisheries Settlement Report, Wai 307, #A22 P Ricky, H Te Hau and H Christy, p.3.

¹⁵⁹ The Fisheries Settlement Report, Wai 307, #B10(a) A Chadwick p.3.

¹⁶⁰ The Fisheries Settlement Report, Wai 307, #B10(a) A Chadwick p.3.

- an inability to partake in important cultural occasions such as the harvesting of kahawai;
 - a detrimental affect on the ability to transmit mātauranga to younger generations;
 - the hāpori having to look elsewhere for a stable food resource, to make up for it or to go without; and
 - loss of money to the local hāpori because the sale of fish is key to the local economy.
- 5.65 Some people indicate that there are practical consequences of hara towards the environment and tikanga not being followed:
- According to Te Whānau ā-Nuku and Te Whānau ā-Kahurautao, it is related to mana, and the impoverishment of the environment has the impact of weakening their hapū in numerous ways.¹⁶¹
 - According to James Rickard (Ngāti Porou) in support of Tainui hapū, the existing pipelines and ponds in Raglan have caused significant damage throughout Poihākena, Te Kōpua and the harbour. Kaumātua went to Te Rua o Te Ataiorongo to apologise to him and request his help to stop the hara and protect his land. Eight drownings occurred off the Raglan coast (directly related to the hara).¹⁶²
- 5.66 Many discuss their concerns with the health of the resources as a result of overfishing and overuse as well as from increased pollution to waterways and loss of habitat.¹⁶³

¹⁶¹ The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao p.4.

¹⁶² *Tainui Hapū v Waikato Regional Council*, ENC Auckland A063/2004, Statement of Evidence of James (Tex) Rickard (undated) at [23].

¹⁶³ *Re Edwards* [2021] NZHC 1025, Affidavit of Leeann Martin (20 February 2020) at [18]. Martin also notes that participation in conservation projects is a way of maintaining her connection to her whenua as well as fulfilling her obligation of kaitiakitanga (at [46]); Affidavit of Hohepa Te Kahika (20 February 2020) at [31].

SECTION SIX

Social organisation

THE IMPORTANCE OF THE COLLECTIVE

6.1 According to Reverend Māori Marsden (Ngāi Takoto, Ngāti Warara):¹

The basic thesis is that within any waka grouping, the members of that group are required to subscribe to various principles. These are loyalty and commitment to the group, adherence to the traditions, customs, and value systems of the group, commitment to waka, iwi, hapū, whānau obligations deriving from kinship and blood relations. Each individual was conditioned to regard his social grouping to which he belonged as an organism rather than organisation. In other words, he was a member of an organ with a body sharing a common life. That was the basic thesis on which the Māori social structures were founded.

6.2 Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) explains that “[individual] rights always depended upon collective responsibilities which ensured that the ultimate welfare of the Iwi, Hapū or whānau was both the determinant and arbiter of a person’s interests”.²

6.3 Jackson also says:³

“Kāore te tōtara e tū mokemoke ai,” that is, “A totara tree never stands alone.” And so whether it’s a person hurt or the person doing the harm, they can never be seen alone. They are always part of that wider grouping and therefore the consequences of any wrong impact on the whole grouping ...

6.4 Sandra Cook (Ngāti Tahu) makes a similar observation when she says that “the consistent tribal position is that customary rights are collective rights which, depending on the circumstances, are exercised by individuals in accordance with the relevant customs and tikanga”.⁴

6.5 Owen Hapuku (Ngāti Pāhauwera) provides examples on the many roles one can carry out to contribute to the wider collective and that when “you are a child, your parents work out how you can contribute to the whānau. Some contribute as divers, some contribute as fisherman, and some people contribute in other ways.” He also says it “is the role of

¹ Muriwhenua Land Report, Wai 45, #F25 Māori Marsden p.3.

² *R v Tamati Mason* [2012] NZHC 1361, Brief of Evidence of Moana Jackson (10 January 2005) at [92].

³ *R v Tamati Mason* [2012] NZHC 1361, Notes of Evidence (3 May 2012) p.20.

⁴ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014) at [15].

our parents, aunts, uncles and grandparents to pass on these traditions – instructing us, for our future, for our wellbeing, about where to go, so we could feed ourselves”.⁵

6.6 Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) similarly explains:⁶

All resources within the rohe for want of a better description, were generally collectively owned. An individual might have exclusive ownership over personal articles of clothing, adornments, weapons, tools or a particular māra (garden). Certain families might also have what would amount to an exclusive claim over certain mussel rocks or fishing grounds. However, it is important to note that those rights are hapū-derived.

The key point is that those rights stem from belonging to a hapū group. Families may contribute to the mana of the hapū group by the exercise of traditional kaitiakitanga over certain resources, and by the act of keeping the home fires burning within the hapū territory.

The mana over the whenua and moana was therefore collective; and that system of ownership continues to exist today particularly in relation to the moana.

6.7 Dr Te Maire Tau and Pat Hutana (both Ngāi Tahu) orient individual rights as being derived from the collective:⁷

An important principle is that we are Ngāti Tahu and therefore part of the Ngāi Tahu/Ngāti Mamoe community. We do not exist on our own simply because we are land owners of beneficiaries. We are land owners and beneficiaries because of our iwi and hapū identity. Our rights are exclusive because we belong to a collective whole called Ngāi Tahu.

6.8 Paul Cleaver (Ngāi Tahu) reiterates the importance of the collective. He says that “[tikanga] is about doing what is right for all, not just for one whānau. There are copious amounts of Tītī gathers and fisherman, that have the same rights that Mr Tipene is asking for. This would be a disaster and a breakdown of Tikanga, which would cause division and discord.”⁸ Lesley Rewi (Ngāi Tahu) also says “[tikanga] is a fundamental belief practised for the protection, interests, and wellbeing of a community hapū/iwi in this case the tītī community. Not to their exclusion.”⁹

6.9 Pepper Hudson and Toni Ngoungou-Martin (both Ngāi Tamahaua hapū) discuss the importance of the Ōpape pā community for the survival of the hapū. Kaimoana and māra kai sustained the pā and all was shared.¹⁰ Ngoungou-Martin states:¹¹

Mum talked about the families that she grew up with at Ōpape, and how everyone in Ngāi Tamahaua worked towards hapū wellbeing and development. Hunting, fishing, diving, kai from the ngāhere, fruit and berries were all shared between whānau. The families shared

⁵ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Brief of evidence of Owen Jerry Hapuku (17 December 2019) at [11].

⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [103]–[105].

⁷ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Memorandum of meeting with Dr Te Maire Tau/Pat Hutana (12 October 2014) at [26].

⁸ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Submission by Paul Cleaver (7 October 2014) p.77.

⁹ *Re Tipene* [2016] NZHC 3199, Affidavit of Sandra Helen Cook (30 October 2014), Annexure: Questionnaire – Customary Marine Title Application by Lesley Rewi (undated) p.104.

¹⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Pepper Hudson (20 February 2020) at [33] and [36] and Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [13].

¹¹ *Re Edwards* [2021] NZHC 1025, Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020) at [8], [9] and [13].

all resources and kai, especially to the elderly and those who could not go out due to disability or illness.

The Pā at ōpape was the core of Ngāi Tamahaua life, everyone went, everyone contributed to what was being held at the marae. The kaupapa of mahitahi, kaitahi, manaakitanga, kaitiakitanga and looking after each other was what they lived by. Diving and fishing in the moana out the front of the marae, working in the extensive gardens in front of the beach, and working in their various roles and responsibilities on the marae was a typical part of their lives and up-bringsings.

...

In Ngāi Tamahaua, the concern has always been for the whole community. Everything was shared, so that everyone would benefit ... these teachings and practices of community care for one another are being handed down from my generation to the next generation. For example, if anyone in our family collects mussels, kina, crayfish or fish, it will be shared among the whānau.

- 6.10 Te Rua Rakuraku (Te Whakatōhea, Ngāti Ira) also discusses the importance of the community for hapū survival, noting, “Each whānau had different roles in kai gathering ... We would bring it all together at the end of the day and allocate it out to whose whānau at the Pā.”¹² Rakuraku notes further, “Each whānau had their areas to look after and take care of and that’s how we survived as a community and hapū for generations. Sharing everything and feeding all the whānau was our norm.”¹³

- 6.11 Although there is an emphasis on the collective, the individual is not irrelevant. As Ani Mikaere (Ngāti Raukawa, Ngāti Porou) explains:¹⁴

Whether female or male, young or old, teina or tuakana, each person plays their part in establishing the precedents that are bequeathed to later generations. Without the unique characteristics of each and every individual, the strength of the collective is diminished.

THE MARAE

- 6.12 The marae is one of the central collectives around which life revolved:

- Matemoana McDonald (Ngāti Hē) describes Maungatapu Marae as “a place that is functional in all things important to us. It is a place that can cater to the needs of manuhiri (visitors), a place we effectively practice our tikanga and manaakitanga (hospitality), where we farewell our loved ones when they passed over, where we celebrate and where we come together as whānau.”¹⁵
- David Taipari (Ngāti Maru, Ngāti Whanaunga, Ngāti Pāoa, Ngāti Tamaterā) explains that “Hotunui [a marae] is an iconic taonga of Ngāti Maru and all the Marutūahu tribes,

¹² *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [40] and [41].

¹³ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Rua Rakuraku (19 February 2020) at [40] and [41].

¹⁴ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Ani Mikaere at [44].

¹⁵ *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2020] NZEnvC 43, Statement of Evidence of Matemoana McDonald (8 April 2019) at [21].

embodying the spiritual presence of the ancestors and tribal histories”.¹⁶ He goes on to draw an analogy between the marae and an ancestor:¹⁷

At the deeper level, the house represents the body of the ancestor. Hence, the carved koruru at the apex of the bargeboards is his face, the bargeboards are his arms ending in the raparapa which are his fingers, the ridgepole is his backbone supported on the poutokomanawa (“heart-supporting post”), the rafters are his ribs, and the interior his belly or bosom.

At a cosmological level, the whole structure of the house constitutes a whakapapa and mātauranga ecosystem ... The visual similarity of the curling painted kōwhaiwhai patterns to the curling tendrils of the gourd (hue) reflects a deeper cultural symbolism, which compares a geneological tree to the growth of the gourd.

- David Wilson (Te Ākitai Waiohua, Ngāti Te Ata) on behalf of Te Ākitai Waiohua says that “[for] Te Ākitai Waiohua, the marae is central to our tikanga. That is where we go to deal with our issues. That is because the marae is a space that we can control. Our practices and kawa there are followed. If we have issues between our whanaunga the marae is where we go to resolve it. We do things our way on our marae.”¹⁸
- Charles Tawhiao (Ngāi Te Rangi) agrees with Ngarimu Blair (Ngāti Whātua Ōrākei) that marae are an indicator of one’s mana whenua. “Absolutely, it speaks to cultural authority. It would not be possible to establish a marae without that authority, either by you asserting that authority or by having that authority granted to you by mana whenua.”¹⁹

6.13 Tā Hirini Moko Mead (Ngāti Awa) draws together the threads of whakapapa and use when explaining the status of the marae:²⁰

Because it is characteristically named after an ancestor and because hundreds of members of the group from several generations long since gone played their part in maintaining the mana of the hapū, there is also a mystical quality to the meeting house, an element of ihi, wehi, and wana. In other words the whare tipuna has awe, it has authority, it is imbued with the mana of those gone by and it is tapu, highly respected and symbolic of the group and all that it stands for. The members of the hapū identify with the wharenui as a physical representation of their ancestor long departed from whom there are all descended. The marae was and indeed is the place where important decisions were and are made.

6.14 Tā Tipene O’Regan (Ngāi Tahu) explains that having a marae does not always equate to having mana whenua:²¹

¹⁶ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of David Errol Taipari (13 October 2020) at [14].

¹⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of David Errol Taipari (13 October 2020) at [17] and [18].

¹⁸ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, brief of evidence of David Wilson (13 October 2020) at [46].

¹⁹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence p.1268 in agreement with Ngarimu Blair, *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Notes of Evidence, p.670.

²⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [37].

²¹ *Mercury NZ Ltd v Waitangi Tribunal* [2021] NZHC 654, Affirmation of Sir Tipene Gerard O’Regan (17 September 2020) at [23]–[24].

Māori may sometimes build a marae outside of their takiwā e.g. urban marae. This does not, however, give them mana whenua or create a connection, in tikanga [sic], with the whenua itself.

I can draw parallels with the experiences at the marae in Mangakino from my own background within Kāi Tahu. The situation seems comparable to Ngā Hau e Whā Marae and the Rehua Marae in Ōtautahi which are not traditional Kāi Tahu marae. The kaumātua and/or the paepae is normally, but not necessarily, a Kāi Tahu speaker. In the case of Rehua Marae the land is vested in the Upoko Runaka of Kai Tahu from Kaikoura to Arowhenua in South Canterbury. The classic example, however is the Mataamua Marae in Rotorua which was vested in Tuhoe by Te Arawa as I understand it for their own convenience. On that marae the kawa is Tuhoe (paeke) but there is no suggestion that Tuhoe holds mana whenua.

6.15 The importance of Hoani Waititi marae for urban Māori in Auckland mirrors the role of marae for hapū within their traditional takiwā:

- Tā Pita Sharples (Ngāti Kahungunu) explains, “As marae in a very traditional sense could only be administered by a tribe and built on tribal land, many Māori first discouraged the establishment of Hoani Waititi. However we endeavoured to create an identity for ourselves, thereby accommodating the needs of our new people. The significance of this is that marae is the focal point in the social, cultural, political and spiritual development and well being of Māori people. The marae is the basis for our identity, our tūrangawaewae – our birthright in Māoridom and which establishes our place in Māori society. The marae provides a place where various Māori customs can be carried out with their full dignity and spirituality such is the case with tangihanga (funerals).”²²
- Tā John Tūrei (Tuhoe) relates the experiences to a collective identity: “Combined, the practices of burying whenua and the dead at Waipareira clearly demonstrate in accordance with my understanding of tikanga Māori, that the people of Waipareira have taken on particular identity of their own. While many of my contemporaries relate to their traditional tribal homelands, many of our children and grandchildren do not. Instead, they have joined together under the umbrella of the Whānau and Hoani Waititi marae, providing for themselves a contemporary Māori identity. In doing, so they are able to provide emotionally, financially and culturally for one another as do the traditional groups which exist by kinship.”²³

6.16 Tā Pita Sharples (Ngāti Kahungunu) goes on to describe the general development of marae outside of the traditional hapū takiwā, which is not exclusive to the urban or pan-iwi experience:²⁴

It is important to note that now, marae exist beyond their traditional sense. For example there are tribal marae which rest outside the rohe of their respective people,

²² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at [43].

²³ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of John Te Ahikaiaata Joseph Turei (28 January 1998) at [38].

²⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at [48].

accommodating the migration of hapū members from a particular tribe in a new location. Examples of these marae include Te Mahurehure Marae in Pt Chevalier and Tira Hou in Panmure. Secondly, there are other pan-tribal maraes in existence which cater for collectives of people who are not linked by genealogy, but by a common purpose or shared existence. These include University maraes, Anglican maraes and Catholic maraes throughout Auckland.

6.17 Takirangi Smith²⁵ discusses the traditional marae and how it was a space for healing:²⁶

So in terms of my knowledge about *kawa* is that it's a really important part of the – relates to the *kawa* of the *marae* and the *kawenga whare* occurs around the doorway. And on the doorway, you have a figure up there, Hinenuitepō and Hinenuitepō separates *te ao mārama* from the *pouritanga* or from the *pōuri* within the *whare*. So, in daylight, like you have the light – you have all the light and the traditional *whare* is on the *marae ātea* and the old *whares* had no windows, so they tended to be really dark right at the back and the light sort of got a bit more as you go to the front.

The traditional *whare* was a healing space, the internal during daylight, if anybody was like suffering from a *patu ngākau* there's two places that they would either go. Inside of the whare the darkest place at the back, or if there was a *kumara* pit around, they put them in the *kumara* pit and close the door. So, that darkness is associated with healing and in particular, a hole healing from *pouritanga*. And tied up with that are two *tipuna*, Rongo and Hinenuitepō. A lot of the times you will see that those figures are at the entrance of the doorway. And the reason for that is because they are the *kaitiaki* of what's inside that *whare* to protect [sic] the inside of that *whare*.

6.18 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) connects both the marae and hapū together:²⁷

In Tūhoe tradition, as with the traditions of many other iwi, the marae-hapū is where community and leadership are concentrated. This has remained so for Tūhoe even throughout the period of colonisation ... We meet monthly to discuss matters that require marae-hapū leadership, provide feedback to other marae-hapū in the rohe and enhance networking, collaboration with other marae-hapū in the rohe to serve the purpose of the iwi.

For example, if a dignitary would visit Tūhoe, Te Uru Taumatua will consult with our marae-hapū as to the most appropriate venue to host them. Depending on the Kaupapa (purpose/issue) for the visit, Te Kura Whare may be appropriate, but equally it may be a marae-hapū in a different part of the rohe. Those decisions lie with the marae-hapū leadership, to be determined in accordance with our Tūhoe tikanga (which we sometimes call “Tūhoetanga”).

6.19 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) in a different legal context discusses the marae ātea. He explains that Ngāti Rongo governs the marae ātea at Tauarau and Tūhoe governs the marae ātea in the valley of Rūātoki.²⁸ Kruger goes on to say that:²⁹

²⁵ Iwi affiliation not provided.

²⁶ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Takirangi Smith p.81.

²⁷ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [7]–[8].

²⁸ *R v Iti* [2007] NZCA 267/06, Notes of Evidence, Tāmati Kruger, pp.90–91.

²⁹ *R v Iti* [2007] NZCA 267/06, Notes of Evidence, Tāmati Kruger pp.91–92.

... the Marae ātea is the expanse of dirt that is in front of the ancestral meeting house. The ancient name of this space is the Marae ātea of Tūmatauenga and Tāne Te Wanganga. The other name that is given to this space, the other name given to this space by Tūhoe is Tumo Pukapuka and – it is there that the word is – there is verbal fight. That a person can be killed or challenged.

... it is called the Marae Ātea of Tūmatauenga and Tāne Te Wananga because the anxious for their manuhiri. Firstly, if the manuhiri is coming with a purpose – with an intent to trample the customs and the protocols and the procedures of the Marae then the application of Tūmatauenga, then the rules of Tūmatauenga are replied to the welcome. But if the intent of the visiting party or the visitors is to come and discuss and it is for discussing or debate, discussion of matters of peace, that are peaceful in nature, then the protocols, the domain becomes the protocol of Tāne Te Wananga. Although it is important that Tūhoe carries both. The Marae Ātea is likened to the entire boundary of Tūhoe. For those – the people who are seated on the oratory seat on the Pae, on the sacred seat of orators, they are caring for the life force in the essence of Tūhoe. It is the senior who stands before this sacred seat, and it is that person who is responsible – who is charged with the responsibility of welcoming or determining how the people are coming to approach ... Their task, their responsibility for the welcome is to take care of, is to be responsible for the welcoming of the visitors. That is why the Marae Atea is considered to be the sovereignty place of Tūhoe, the whole entire tribe of Tūhoe, the Marae Atea can be considered as the entire area of Tūhoe.

- 6.20 Tame Iti (Tūhoe) says, “The Marae Ātea is the realm of Tūmatauenga, the Lord of Conflict. This is the place where I may spit, I may show my penis, I may shoot at their flag. I am allowed. I am permitted under the ritual law of Tūmatauenga to do these things on the Marae Ātea, that is my right.”³⁰

THE RELATIONSHIP BETWEEN WHĀNAU, HAPŪ AND IWI

- 6.21 Tā Hirini Moko Mead (Ngāti Awa) describes the relationship between hapū and iwi generally:

Characteristically the iwi embraces many hapū whose members acknowledge descent from a common ancestor. Descent from a common ancestor be that Pourourangi (Ngāti Porou), Kahungunu (Ngāti Kahungunu), Apanui Waipapa (Te Whānau a Apanui), Mahaki (Te Aitanga a Mahaki) or Awanuiārangi II (Ngāti Awa) is an essential and unavoidable element of what constitutes and defines an iwi. The iwi is logically larger than a hapū, is far more numerous and has access to a much wider resource base.³¹

In my opinion, the concept of iwi cannot be fully appreciated or understood without considering the units which underpin iwi, namely the whānau and the hapū and their critical importance to the entire structure. The defining features of the building blocks flow into the unit called iwi and give significance and meaning to the whole. These traditional categories have retained a contemporary relevance by at the very least providing a means of identification and belonging that is based on common and shared descent through blood. There can be no stronger ties and connections. The antiquity of the concept of iwi

³⁰ *R v Iti* [2007] NZCA 267/06, Notes of Evidence, Tame Wairere Iti p.79.

³¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson JJ), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [49].

is beyond any sustainable doubt and its ancestry predates the Treaty of Waitangi and indeed, European contact itself.³²

6.22 The relationship between iwi and hapū in the specific context of the Ngāti Awa confederation is also explained by Mead in separate but related proceedings:³³

Ngāti Awa sees itself as a confederation of iwi and not strictly as a collection of hapū. It is made up of iwi (tribes) that have a long history of association with one another ...

The principal tribes of Ngāti Awa can be described as “iwi hapū” a term which highlights their present reality. The term “iwi hapū” was introduced into the literature by the late Ruka Broughton in his thesis on Ngā Rauru ... He described Ngā Rauru as an “iwi hapū” that is, as something larger than a hapū ... Implied in his scheme is that an iwi hapū is of the statute of an iwi, that it has a long history, has several hapū associated with it [sic], is politically and economically important and it is part of an alliance or confederation of other iwi hapū.

Ngāti Rauru is thus different from Tūhoe or Te Whānau a Apanui or Ngāi te Rangi in that it is not an independent stand alone iwi. Ngāi Tahu, Ngāti Awa and Tūhoe are similar entities but of differing population sizes. Each is an independent, fully separated iwi that has stood the test of history, has survived many threats to its integrity and is recognised by all other iwi as being iwi, meaning tribe. Each has many marae-owing social units within it and when all are added together the resources of the larger unit are considerable. Each can be described as an effective political unit which protects the interests of all groups within it and will act when the integrity of the unit is threatened either from within or from outside of it.

...

The iwi hapū might well be the units O'Regan describes as primary hapū. They are the most important groups within the confederation now called iwi or tribe. They hold it together, give mana (prestige) and economic power to threaten the unity of the confederation.

Within Ngāti Awa there are several groups capable of upsetting the unity, cohesion and strength of the tribe. What holds them all together are:

- (a) common interlocking whakapapa;
- (b) an important historical event which forced them to unite;
- (c) a history of working together;
- (d) a perceived advantage to stay together; and [sic]
- (e) an inability to stand alone.

...

Ngāti Awa is acting on the principle that the social organisation reflects the realities and the needs of the people only. The system of whānau, hapū and iwi was dynamic and ever changing. A split off into other iwi is shown in the case of Ngāti Awa. Today's iwi consists of well-established 'iwi hapū' who hold the confederation together and hapū who are expected to be marae-based. The hapū is the group that owns and runs a marae, that holds the ceremonies of life and death, that organises various fund raising activities on behalf of the group and who anchors the whole social organisation upon the ground ...

³² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [101].

³³ The Fisheries Settlement Report, Wai 307, #B16 Hirini Moko Mead p.6–9.

In traditional times there was a village located on the land of the group and the layout of the village reflected the organisation of whānau that made up the hapū. People could see the organisation and understand how it worked by observing the behaviour of villagers ...

6.23 Cleve Barlow (Ngāpuhi) says, “Moving from the invariant meaning to the general use of the term, “iwi” has a number of different meanings in different contexts and is a fluid concept.”³⁴

6.24 A Chadwick (Te Whānau-ā-Apanui) gives an example of hapū coming together into their iwi groups and even inter-iwi groups for specific take. He explains how Te Whānau ā-Kaiao did this in order to protect their moana:³⁵

Te Hapū joined the rest of Te Whānau-ā-Apanui in the Horouta Tribal Council around the 1900 when the Council laid down its own “Regulations” for the management of coastal kai moana gathering. These included fines, permits and rāhui of various areas, and reinforced the mana hapū over our waters.

6.25 Tā Timoti Kāretu (Tūhoe, Ngāti Kahungunu) and Professor Te Wharehuia Milroy (Tūhoe) say, “Though hapū and whānau each have their own mana, iwi also have mana, the mana to protect the whānau and hapū, a mana which is truly ancient.”³⁶

6.26 Manuka Henare (Ngāti Hauā, Te Aupōuri, Te Rarawa, Ngāti Kahu) similarly states, “Iwi, was and is a term which includes a larger grouping of hapū or what is commonly known as a tribe. Iwi were often alliances of hapū who from time to time collected together as a mutually interdependent political or military unit.”³⁷ Henare describes a historical scenario regarding the practical aspect to traditional collective formation occurrences. He says that “if you’re living in Waikato and 10,000 British troops are tramping through your land you need something bigger than a whānau to protect yourself, iwi has become very important to Māori since colonisation since the Courts have worked against Māori in terms of the Treaty and all its promises”.³⁸

6.27 In addition, Henare explains the term iwi was used for “describing non-hapū or more correctly, pan-hapū collectives which were present in the 19th Century”.³⁹ Henare states, “Migrations within Aotearoa have been a feature of Māori life before Pākehā and colonisation.” He sets out that, “Māori have formed small, then larger groupings of communities depending on the state of the economy, the environment, population

³⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Dr Cleve Dufty Barlow at [23].

³⁵ The Fisheries Settlement Report, Wai 307, #B10(a) A Chadwick p.1.

³⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor James Te Wharehuia Milroy and Professor Timoti Samuel Karetu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (unsigned) at [13].

³⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Manuka Henare in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (29 January 1998) at [8].

³⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Manuka Henare) at 30.

³⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Manuka Henare in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (29 January 1998) at [10].

growth and politics of each generation. The large pā communities of Maungakiekie (Mt Eden), Pouerua, Parihaka and so on are evidence of this pattern of living.”⁴⁰

6.28 Henare also touches on the historical development of Māori social classification: “All Māori knowledge refers to whānau first, then later on in the story of your tribe you became a hapū or whatever, so when you analyse this very carefully there is a logical order of things and the iwi today or since the 1850s might be part of that continuing story of people.”⁴¹

6.29 Professor Ngapere Hopa (Waikato, Ngāti Tūwharetoa) states that “there is very little evidence that the so-called “iwi” existed as the whole cloth in 1840. Traditionally, the ideal was translated on the ground only when some lineage/hapū actualised it temporarily to resolve disputes or to take up arms against their own kin in some cases and non-kin in others.”⁴²

6.30 Hopa also describes the evolving dynamics and understandings of hapū and iwi over time:⁴³

I think that while the term hapū refers to lineages has also persisted, that new groupings emerge, there is heaps of evidence to point to those kinds of new forms that sometimes involve hapū or involve members or reps from different hapū into new groupings and I think that among those groupings that the whole issue of iwi the fleshing out of it to represent to convey a grouping with some permanency, a socio political unit is a product of a kind of organic evolutionary but nonetheless normal pattern that occurs in human society in interaction with another.

... iwi is not just limited to groups who can claim their whakapapa, that historically and continuing it has been used loosely to refer to people of a place, of another culture, and so on.

6.31 Tā Hugh Kawharu (Ngāti Whātua) emphasises the hapū as the central political power of Māori society:⁴⁴

It was the subtribe or hapū that was the politically and economically viable unit of Māori society, exercising and defending its dominion over a given tract of land and water, and organising its social and cultural activities within it.

6.32 Ultimately, Kawharu concludes “as traditionally, both hapū and iwi structures are strong, and the age old tension between these two political and social units remains. Yet tribal

⁴⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Manuka Henare in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (29 January 1998) at [25].

⁴¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Manuka Henare) at 30.

⁴² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Professor Ngapere Kaihina Hopa in support of the second to fourth plaintiffs in relation to the hearing of the preliminary questions (30 January 1998) at 11.4.

⁴³ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Ngapere Kaihina Hopa) at 38–39.

⁴⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [7].

lore teaches us and modern experience confirms, that neither can function properly without the other.”⁴⁵

- 6.33 Tā Eddie Taihakurei Durie (Rangitāne, Ngāti Kauwhata, Ngāti Raukawa) gives the following account of hapū:⁴⁶

The historical record is that previously the land was occupied by autonomous hapū – or smaller bands bound by descent from common ancestors for whom the groups were named. These regularly divided or regrouped, adopting new titles demonstrative of their changing identities.

In those days, unity depended on the leadership of rangatira and the maintenance of alliances with local hapū and distant iwi on the basis of ancient ancestral links reinforced by subsequent marriages. It may also be considered that until they reached the zenith of their ascendancies, the rangatira had need to be responsive to the will of their constituents.

In brief, hapū names and allegiances changed regularly, hapū divided or fused according to the demands of the day and the extent to which individual leaders could draw several hapū about them. Some ancient names survived, the names of recent leaders in the genealogical tree were introduced and some old names were subsequently resurrected.

The hapū were also so mobile, and genealogies were so maintained, that the hapū of one place could link to others throughout the main islands of New Zealand.

- 6.34 Tā Hirini Moko Mead (Ngāti Awa), by contrast, places less emphasis on power sitting with the hapū themselves:

The iwi is a political entity that maintains an alliance of hapū which can be difficult to maintain as each hapū also engaged in arranging alliances of its own. Nonetheless it would be completely incorrect to suggest that hapū were free agents. They were significantly affected by iwi obligations and the mana of the iwi leadership.⁴⁷

In the context of traditional era when many political issues settled through warfare so during that time there was constant shifting of alliance while battles fought out and while wrongs committed in the past were then put right. So in that context yes a fair bit of fluidity but once you removed warfare from the equation then tribal group settled down into more settled groupings.⁴⁸

- 6.35 Tā Hugh Kawharu (Ngāti Whātua) agrees that kinship is a common cause for alliance:⁴⁹

Nevertheless recognition of the wider descent group, the iwi or tribe, was more than a recognition of a common origin. It provided a rationale for alliances internally and externally,

⁴⁵ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [17].

⁴⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Sixth affidavit of Reuben Brian Perenara in support of the applicant's case regarding the High Court rule 418 preliminary questions as referred back to this court by Her Majesty's Privy Council; Exhibit C *Custom Law: Address to the New Zealand Society for Legal and Social Philosophy*, Chief Judge ET Durie (22 July 1994) at 327.

⁴⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [57].

⁴⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Hirini Moko Mead) at 403.

⁴⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [8] and [9].

in peace and in war. The iwi had its own infrastructure, objectives and responsibilities. For certain purposes, usually war or fisheries, iwi obligations were remembered, iwi infrastructure invoked and iwi resources mobilised in pursuit of a common objective.

This iwi responsibility of protecting the resource base and hence survival of its constituent hapū is a constant theme in Māori tradition both pre and post contact. In Ngāti Whatua's case, the iwi had no prerogative of rule over hapū by fiat. Instead the iwi had an obligation to protect the interests of each of its hapū – and this for the reason that if one hapū was picked off, as it were, those who remained were made significantly weaker by the loss. So it was in the area of fisheries. Rather than fishing rights inhering at iwi level, it is, in my experience, more correct to speak of fishing obligations at iwi level – the obligation ... to ensure the sustainability of the resource itself; and the obligation to ensure access to it as against the designs of competing iwi.

6.36 Tā Hirini Moko Mead (Ngāti Awa) goes on to say, “The iwi unit was very much a self-contained entity that took care of its affairs with as much diplomacy as was necessary and with the threat of resorting to warfare when diplomacy failed. The iwi acts like an independent tribal nation that was jealous of its mana and was prepared to fight even its neighbours to maintain its political standing.”⁵⁰ Indeed, Hirini explains that such action is expected of an iwi: “Many groups wanting to be recognised as iwi are actually not capable of carrying out the functions of iwi and the iwi they claim does not actually exist on the ground, that is, there is no structure, no organisation and no marae.”⁵¹

6.37 But it is not common cause alone that unites hapū into an iwi:⁵²

It cannot be said that if people are brought together under a single issue or kaupapa that group can be called an iwi. In our view, if a genealogical connection to an ancestor is not present it cannot be said that that group is a true iwi. If the group is cultivating food, for example clearing land for gardens, then that group would be called an ohu; if going to do battle, then a taua; if gathering for a tangihana, then an ope; if travelling along the road, then a tira; if gathered in one place, a whakaminenga, a paenga, huihuinga, rauhiinga, rauikatanga, hunga or hanga; although however they are each of them gathered for a single purpose, none of them can be considered an iwi.

6.38 Dr Ranginui Walker (Whakatōhea) rejects the notion that a common ancestor is required for iwi identity:⁵³

⁵⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [61].

⁵¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [70].

⁵² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor James Te Wharehuia Milroy and Professor Timoti Samuel Karetu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (unsigned) at [21]. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [16].

⁵³ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Ranginui Walker in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at 4.1(a).

There was no such thing as a static or immutable tribal polity comprised of related hapū deriving from a common ancestor. The boundaries of hapū collectives shifted according to need and purpose as hapū entered or departed from the collective.

- 6.39 Tā Hugh Kawharu (Ngāti Whātua) does not place the responsibility with either hapū or iwi but simply notes the responsibilities of collective whakapapa:⁵⁴

... but if we look at other kinds of resources in addition to the human, that is the concern for the exercise of the rangatiratanga of hapū and iwi land, forests, fisheries, esoteric law, these dimensions of rangatiratanga are exclusively in the domain of the kin group, the descent group, always have been and I see no reason why that should change.

- 6.40 Tā Pita Sharples (Ngāti Kahungunu) takes a similar position to Professor Walker that, while hapū must trace their whakapapa to a common ancestor, the same is not true of iwi.⁵⁵ Instead, the commonalities of an iwi might include pūkōrero (traditional stories), maunga, awa, whakatauākī (proverbs) and wāhi tapu.⁵⁶ Regardless, Sharples explains that the essential values of a hapū are transferable to the urban context, where members do not necessarily share whakapapa:⁵⁷

... we went through a process of reconstructing our hapū value systems which involved concepts such as manaakitanga (display of kindness), awhi (to encourage) and tautoko (to prop up or support).

These concepts which form our hapū value system are parts of the all-encompassing relationship of aroha (love) which exists between all Māori, regardless of their tribal origin.

- 6.41 Tā John Turei (Tūhoe) also agrees that an iwi is a collective of people around common cause rather than common whakapapa, providing examples he considered could be called iwi:⁵⁸

I have always understood iwi to mean “people” or “the people of”. There are many phrases which are used in general conversation between people or by speakers in a formal setting on the paepae, which incorporate the term iwi. For example, when a speaker on the paepae uses the expression “e ngā iwi” to greet manuhiri, that person greets the group in its entirety without distinguishing people within that group. This is because the expression “iwi” captures all those people present who have gathered for the purpose of formally coming onto the marae and does not involve a kinship requirement.

I do not disagree that traditional tribal groupings, whose members are genealogically linked to an eponymous ancestor, such as Ngāti Porou, Waikato or Ngāti Kahungunu are “iwi”.

⁵⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Hugh Kawharu) at 547.

⁵⁵ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at [26]–[28]. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Second Affidavit of John Te Ahikaiata Joseph Turei in Reply (11 March 1998) at [3].

⁵⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at [34(a)].

⁵⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at [37]–[38].

⁵⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of John Te Ahikaiata Joseph Turei (28 January 1998) at [21] and [22].

However a large group of people who exist together for a common purpose do not have to be joined by kinship to be called an “iwi”. For example the people of Parihaka, Kotahitanga and Ringatū are all examples of pan tribal collectives which could be referred to as “iwi”. This is because, iwi is an all-embracing term such that it is used to gather together and distinguish certain large groups from other large groups, but not to exclude individuals.

6.42 Various witnesses give their thoughts on the meaning of “iwi”, etymologically and practically:

- Tā Pita Sharples (Ngāti Kahungunu) says “iwi is not used by the Māori Language Commission to mean tribes, rather it has been applied to include, for example, community, broader social group and race”.⁵⁹ Sharples also says, “Every Māori knows that in today’s common usage iwi can be used to mean both ‘the tribe’ and ‘the people’. The Treaty of Waitangi uses hapū for ‘tribe’ and iwi for ‘people’.”⁶⁰
- Tā Hugh Kawharu (Ngāti Whātua) says, “Such a group would probably consist of a number of semi autonomous subgroups whose ancestor was a descendant of the ancestor of the parent tribe. Such subgroups might also be called tribes. More generally, however, they were called a subtribe or hapū of some 8–10 generations’ depth, and were themselves made up of a number of extended family groups of 3–5 generations’ depth.”⁶¹
- Tā Timoti Kāretu (Tūhoe, Ngāti Kahungunu) and Professor Te Wharehuia Milroy (Tūhoe) are “of the firm view that current attempts to broaden or dilute the original meaning of the word iwi reflect the fact that as the Māori language is used less and less, people forget the original meaning of the word iwi and use it incorrectly or inappropriately. As the language loses ground as a language of ordinary use amongst people, these people lose the ability to express themselves in a full way in Māori as a language of ordinary discourse for everyday purposes. We consider that that is the essential reason for the fact that the view of people who are not speakers of the Māori language as a first language of communication is different to the view of those whose primary language of communication has been and remains Māori. The purport of spoken Māori is increasingly lost to those whose language of preference is now English. In our view there is no doubt as to the meaning of the word iwi, it has one true or correct meaning, that is a group which takes its source from the mana of a single ancestor to whom the group is genealogically connected – a tribe.”⁶²

⁵⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Second affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (11 March 1998) at [14].

⁶⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Second affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (11 March 1998) at [25].

⁶¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [4].

⁶² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor James Te Wharehuia Milroy and Professor Timoti Samuel Karetu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (unsigned) at [9].

6.43 Tāmati Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) says:⁶³

... the centre of an iwi is its hapū or community and so it is there that the iwi's power is concentrated. Physical centres of the hapū then become sites of power, authority and influence within the iwi's *rohe* (heartland). These sites comprised of marae ātea, which was reserved for political debate and decision-making, papakāinga, which contained the family homesteads and the village, pā being the wider neighbourhood and includes an gardens and areas of industry such as fishing and clothing production and urupā, the burial sites. Geographically then, most members of the iwi were concentrated in the centre of the *rohe*, as was the power and authority of that group. Towards the boundaries of the site of influence there would be a decentralising of power and so there any influence and power over whenua along the margins of the boundary would be shared with neighbouring iwi.

6.44 Tā Eddie Taihakurei Durie (Rangitāne, Ngāti Kauwhata, Ngāti Raukawa) makes the following comments on iwi groupings:⁶⁴

- “Iwi” was a term of general description for the people of a locality, district or region and denoted that they generally came from a common source. “Iwi” also came to be used for the Māori as a people (te iwi Māori).
- “Iwi” referred also to the connected hapū of a district.
- “Iwi” was also used for a combination of hapū for a particular war or expedition that included some only of the district hapū, or individuals of different hapū.
- “Iwi” combinations took various names in the same manner as hapū, but usually from a more remote and thus common ancestor.
- As the combination varied, different names were used, the most recent, common ancestor, the main ancestor of the prime leader or the name of the leaders hapū.
- Combinations of related hapū fought each other under different iwi titles.
- “Iwi” was also applied to unrelated hapū or individuals when several hapū embarked on a common venture. Non-kin combinations became more usual in the 19th century. Alternatively, the several groups stood under the hapū name of the most prominent leader.
- Hapū could fuse for a combined venture or could retain their separate identities but they generally divided into their autonomous units when the venture was over.
- District hapū generally stood united in war but independent in peace.
- During the 19th century, however, “iwi” became more regularly to mean the several hapū of a region standing under the name of a common, remote and famous ancestor.

6.45 Tā Hirini Moko Mead (Ngāti Awa) explains that hapū have their origin in whānau:

⁶³ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmati Kruger (2 June 2020) at [108].

⁶⁴ Custom Law, Chief Judge Eddie Durie, January 1994 at pp.24–25 as cited in *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Ranginui Walker in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at 6.2. See also *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at [28].

As the whānau continues to grow and generational depth increases a time comes when the whānau will become so large in number that it will either have to divide into several whānau or be regarded as a hapū. By that time it will be acting like a hapū and will be recognised by other hapū as being no longer a whānau. The promotion to hapū is signalled by the establishment of a marae or by the intention to do so.⁶⁵

The first thing to say about a hapū is that it consists generally of more than one whānau and the units within it are bound as before by strong kinship ties and by the whakapapa principle. Indeed, the prerequisite that a hapū must be more than one whānau cannot be avoided. A hapū is defined in the dictionary (Williams 19;57: 36) as follows: pregnant, conceived in the womb, and as a section of a large tribe, clan, or secondary tribe. The term itself emphasises the importance of being born into the group. The metaphor used by our ancestors was that of a pregnancy (hapū), of the belly swollen by pregnancy, and of the members being born of the same womb.⁶⁶

- 6.46 Manuka Henare (Ngāti Hauā, Te Aupōuri, Te Rarawa, Ngāti Kahu) explains the interpretation of iwi as people: “In the case of the earliest traders and missionaries who were first referred to as ‘tangata Pākehā’, so as to distinguish them from ordinary people, ‘tangata Māori’. As the process of European settlement intensified the establishment of a new phraseology of identification was required which did rely on kinship ties. Thus the terminology te iwi Māori, (the Māori people) and te iwi Pākehā (the Pākehā people) came into common parlance.”⁶⁷ To demonstrate this point, Henare refers to a letter of Edwards Hongi, the nephew of Hongi Hika:⁶⁸

A letter of 1825 written by Edward Hongi, nephew of Hongi Hika, which is possibly the earliest example of Māori writing by a Māori author. The letter includes the sentence:

E tuhi tuhi kino pea te tuhi tuhi a te tangata Māori i te mea kino No wait e iwi pai o te tangata kino o te tangata pai a hea oti te Pākehā o reira kia kite au.

- 6.47 The accompanying translation of the sentence (which is understood to have been prepared by Edward Hongi or Reverend William Yate) reads:

Perhaps both the writing and the words of New Zealanders are bad to whom will the bad men go when they die and to whom will the good men go.

In this early stage of encounter history, Edward Hongi is referring to two sets of people, namely Māori and Pākehā. In his letter he addresses another group of people, the English, other from Māori.

- 6.48 Tā Hugh Kawharu (Ngāti Whātua) supports the position that, while hapū may always be in flux, whakapapa remains at the higher, iwi level: “Thus descent from the relevant ancestor was the key determinant of membership in the relevant hapū and its iwi.

⁶⁵ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [29].

⁶⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [32].

⁶⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Manuka Henare in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (29 January 1998) at [9].

⁶⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Second Affidavit of Manuka Henare in reply to affidavits in opposition filed by the Fisheries Commission and Treaty tribes (11 March 1998) at [3].

Consanguineal ties could link an individual to any number of hapū and iwi...”⁶⁹ but “while population numbers waxed and waned over time due, inter alia, to absorption through conquest and intermarriage, all tribes or iwi retained detailed knowledge of their links to one another and to the canoes that brought their forebears to Aotearoa,”⁷⁰ the end result being that “iwi names persisted for centuries. Hapū names changed often. Migration, moreover, was common and generally made under the impetus of warfare or an increasing pressure on resources.”⁷¹

6.49 Whereas once residence in the takiwā might have been an essential characteristic of membership of an iwi or hapū,⁷² it is now recognised as a less essential element with so many Māori having migrated to urban centres.⁷³

6.50 Professor Patu Hohepa (Ngāpuhi) describes the multi-dimensional nature of iwi:⁷⁴

Iwi can be both all-embracing as well as restrictive, depending on its contextual use. Iwi can be used to refer to groups of various kinds: eg.

te iwi Māori the Māori people, referring to that ethnic group

te iwi Pākehā the Pākehā people, referring to that ethnic group

te iwi o Ahia the people of Asia, referring to the people that geographical area

te iwi kainga the people of the home community, referring to a discrete community

nga iwi o tea o peoples of the world, referring to humanity in general.

In other words, there is no clear single structure which be said to by iwi.

6.51 Professor Ngapere Hopa (Waikato, Ngāti Tūwharetoa) also points out that, “the historical movement of hapū and of Māori does not lend itself to a rigid definition of iwi or the representations of iwi”.⁷⁵

⁶⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [6].

⁷⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [11].

⁷¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [12].

⁷² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [6].

⁷³ See *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [14(a)].

⁷⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Patrick Wahanga Hohepa on behalf of second – fourth plaintiffs in relation to the hearing of the preliminary question (11 March 1998) at [7].

⁷⁵ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Professor Ngapere Kaihina Hopa in support of the second to fourth plaintiffs in relation to the hearing of the preliminary questions (30 January 1998) at 8.6.

HAPŪ AS SIGNIFICANT RIGHTS HOLDERS

6.52 Some witnesses emphasise the centrality of hapū as rights holders.⁷⁶

6.53 Tā Pou Temara (Tūhoe) provides the following whakataukāki coined by Te Huia Raureti, a rangatira of Ngāti Maniapoto in the 19th century:⁷⁷

Ko te hapū e kore e kīa he hapū ki te kore he marae, ko te marae e kore e kīa he marae ki te kore he whare, ko te whare e kore e kīa he whare ki te kore he tangata, ko te tangata e kore e kīa he tangata ki te kore he whenua.

A hapū cannot be a hapū if there's no marae, a marae cannot be a marae if there's no house, a house cannot be a house if there's no people, a people cannot be a people if there's no whenua.

6.54 Temara says that this “whakataukāki highlights how the social institutions of Māori were organised within hapū with marae being the central aspect of the base of hapū decision making structures”.⁷⁸

6.55 That position is supported by Tā Hirini Moko Mead (Ngāti Awa):⁷⁹

The hapū was the basic political unit (Schwimmer 1966:34) within Māori society. It occupied an area of land, and controlled a number of resources, such as mahinga kai (seafood gardens), specific fishing grounds, wetlands and forest lands. The leader of the hapū was the chief, its rangatira or ariki (high chief). The primary function of the leader was to ensure that the group survived and that its land base and resources were protected and defended. The hapū was responsible for its own defence and could enter into alliances to protect its integrity, its resources and its people. It could count on the assistance of related neighbouring hapū of the same iwi if attacked by an outside force.

6.56 Tā Pou Temara (Tūhoe) says:⁸⁰

One of the other key feature of Māori authority structures is the centrality of hapū. Hapū are a collective of whānau that descend from a common eponymous ancestor.

...

Hapū rangatiratanga is the assertion and maintenance of the collective rights and responsibilities of hapū to advance their own political, social economic, and cultural wellbeing for the betterment of all descendants who whakapapa to that hapū. This enables hapū to determine their own future and destiny, because what is good for the hapū, eventually benefits the iwi and other polities that may coexist with in one place upon a broader scale.

6.57 Further examples of people emphasising the centrality of the hapū:

⁷⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Principles for the Allocation of Quota: Report for the Māori Fisheries Commission at 10 and 15 where Whaimutu Dewes notes that resources from the sea belong to specific whānau or collectively to hapū, with each whānau/hapū being clear about where their rights are, with trespassing rarely occurring.

⁷⁷ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [9]–[12].

⁷⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [12].

⁷⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [40].

⁸⁰ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [10] and [13].

- Tā Hirini Moko Mead (Ngāti Awa) states that “the fisheries are in fact the properties of the hapū of Ngāti Awa” as opposed to being common property of all Māori.⁸¹ Ngāti Awa took the view that the Crown could not affect their rights in tikanga, recognising that tikanga is an established value system of Ngāti Awa law and should be recognised at the same level as the common law rights of the Crown.⁸²
- Rikirangi Gage (Te Whānau-ā-Apanui, Ngāti Porou) notes that “[a] tikanga that relates to gathering kaimoana was that you always take care of others before you take care of yourself. This tikanga reflected that resources were shared and belonged to the hapū, not to individuals.”⁸³
- Dr Moana Jackson (Ngāti Kahungunu, Ngāti Porou) says “[in] many rohe effective governance on a day to day level actually resided in the Hapū, and as the word ‘hapū’ itself means to be pregnant or swelling with life it was the site of power where life affirming (and life threatening) decisions were most regularly made”.⁸⁴
- In a joint brief of evidence, Dr Hohepa Mason (Ngāti Awa, Ngāti Pūkeko) and Dr Te Kei Merito (Ngāti Awa, Ngāti Pūkeko, Ngāti Rangataua, Ngāti Hokopū, Ngāi Tamapare) explain that “the prerogative of kaitiakitanga is that of local hapū. The Rūnanga has a role as the iwi authority to support and enable the hapū to address these important matters.”⁸⁵
- A Chadwick (Te Whānau-ā-Apanui) states that the hapū is the main rights holder although this does not preclude the sharing of rights between hapū and people.⁸⁶
- Te Whānau a Nuku and Te Whānau a Kahurautao, two hapū of Te Whānau-ā-Apanui, explain that tino rangatiratanga “gives [the hapū] the authority to decide what, when and how” they wish to share their fisheries, if they so choose.⁸⁷ It is their right to manage all aspects of their fisheries. These hapū say they have a “hapū right”, specific to their in-shore rocks, reefs and enclosed waters including freshwater streams and ponds and jointly to offshore grounds that are shared with neighbouring hapū and their iwi.⁸⁸ They state that hapū have entitlement to every fishing activity that goes on within their rohe and an obligation of management passed down from their tīpuna.⁸⁹
- Dr Ranginui Walker (Whakatōhea) states, “I would understand a traditional tribe or hapū to mean the basic functioning integrated land holding political grouping.

⁸¹ The Fisheries Settlement Report, Wai 307, #A27 Hirini Moko Mead p.6.

⁸² The Fisheries Settlement Report, Wai 307, #A27 Hirini Moko Mead pp.3–4.

⁸³ *Re Edwards* [2021] NZHC 1025, Affidavit of Te Kou Rikirangi Gage (21 February 2020) at [121].

⁸⁴ *R v Tamati Mason* [2012] NZHC 1361, Affidavit of Moana Jackson (24 April 2012) at [35].

⁸⁵ *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, Joint Brief of Evidence of Hohepa Joseph Mason and Te Kei (O Te Waka) Wirihana Merito (29 April 2019) at [55].

⁸⁶ The Fisheries Settlement Report, Wai 307, #B10(a) A D Chadwick.

⁸⁷ It is noted that this evidence is not attributed to a specific person but rather on behalf of these two hapū. The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao p.3.

⁸⁸ The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao p.3.

⁸⁹ The Fisheries Settlement Report, Wai 307, #A30 Te Whānau ā-Nuku and Te Whānau ā-Kahurautao pp.3–4.

Essential to the identity of that is possession of land, tūrangawaewae, a place to stand.”⁹⁰

- Russel Gibbs (Poutama), describes hapū and whānau as having their “own autonomy” and as “the ultimate rights holders”.⁹¹
- Mandy Mereaira Hata (Ngāti Ruatakenga) notes, “In our tikanga, customary title resides in the hapū, and therefore that is the starting point in considering the MACA claims. The hapū has the mana and rangatiratanga in relation to its customary territory, even though hapū can also come together as an iwi ... It is not up to the iwi to make decisions for us. Our tikanga requires that Ngāti Rua collectively decides ... what will be done in the name of Ngāti Rua.”⁹²
- Carol Hemoana Gage (Ngāti Ira) alludes to the centrality of hapū by reference to the kīanga “Mā Ngāti ira e kōrero mo Ngāti Ira – Only Ngāti Ira will speak for Ngāti Ira”. She notes that the kīanga is significant because “Ngāti Ira have always spoken for, and represented themselves and remained independent”, noting further that, notwithstanding that Ngāti Ira co-existed with whanaunga and other hapū, it focused on its own affairs.⁹³ Donald Kurei (Te Whakatōhea, Ngāti Ira) further emphasises this point, noting that Ngāti Ira are the kaitiaki of their rohe whenua and moana and they respect other hapū – while Ngāti Ira are united under the iwi mantle of Whakatōhea when they leave, when they are at home, they are Ngāti Ira.⁹⁴
- Hetaraka Biddle (Ngāi Tamahaua hapū) notes that mana whenua resides with the hapū.⁹⁵ Tracy Hillier (Ngāi Tamahaua hapū) reiterates this, noting that “nobody represents Ngāi Tama but Ngāi Tama, no one speaks for Ngāi Tama except Ngāi Tama”.⁹⁶

6.58 Maui Solomon (Moriōri) describes how Moriōri were divided into six main tribes on the main island and two on Rangiauria (Pitt Island) located near fur seal breeding colonies. Settlements were based around hapū groupings ranging between 30 and 50 individuals. There were thought to be approximately 2,300 people.⁹⁷

6.59 Te Iwi Moriōri Trust Board expands on this when discussing the importance of land boundaries and hapū groupings on the island:⁹⁸

These land boundaries were acknowledged and respected by the various hapū groupings on the island. They were not transgressed nor crossed without appropriate permission’s

⁹⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Ranginui Walker) at 103.

⁹¹ *Director-General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203, Statement of Evidence of Russell Gibbs (14 June 2019) at [1]–[3].

⁹² *Re Edwards* [2021] NZHC 1025, Affidavit of Mandy Mereaira Hata (5 August 2020) at [8].

⁹³ *Re Edwards* [2021] NZHC 1025, Affidavit of Carol Hemoana Gage (13 February 2020) at [23] and [24].

⁹⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Donald Ati Kurei (19 February 2020) at [53].

⁹⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Hetaraka Biddle (20 February 2020) at [41].

⁹⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Tracy Francis Hillier (20 February 2020) at [39].

⁹⁷ The Fisheries Settlement Report, Wai 307, #A9 Maui Solomon at [4.2] and [4.7].

⁹⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), “Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets” at 7.

being given and granted. But sharing resources was also an essential element of tikanga Moriori. For example, whenever there was a stranding of Rongomoana or pilot whales along the coastline of a particular hapū, this was a signal for other whanau and hapū groups to share in the kai, but [there] first has to be an acknowledgement of the mana of the group upon whose whenua the whales had beached themselves. Once the tohunga has performed the rites over the first Rongomoana, their kinsmen from other settlements were invited to participate and share the kai. These occasions were accompanied by ritual and observance of tapu. The belief of our ancestors was that the whales were driven to shore by the spirit of the recently departed member of the clan. The more important the person, the larger the group of beached whales. The eye of the first whale would be plucked out and placed on the tuahu as a gift to Maru, Tangaroa and Pou, the various Moriori guardian of the ocean.

- 6.60 These statements on the rights and standing of hapū can, however, be contrasted with the comments of Tā Hirini Moko Mead (Ngāti Awa) on the limits of those rights and interests:⁹⁹

... even though the hapū acted as an “autonomous” body and enjoyed a large measure of control over everyday affairs, it could not stand alone in both a military and a social sense. The hapū was part of a larger social and political entity called an iwi. The hapū formed the building blocks of the larger entity traditionally referred to as the iwi.

THE FLEXIBILITY OF SOCIAL ORGANISATION

- 6.61 A recurring theme in Tā Hirini Moko Mead’s (Ngāti Awa) evidence is that Ngāti Awa acted on the principle that the social organisation reflects the realities and the needs of the people. The system of whānau, hapū and iwi was dynamic and ever-changing. Ngāti Awa’s social organisation is flexible, yet traditional systems of leadership and organisation are still present today. Its modern hapū structure reflects efforts to meet contemporary problems that are common to other iwi.¹⁰⁰

- 6.62 Tā Hirini Moko Mead (Ngāti Awa) describes the history of Ngāti Awa from its origins and social evolution at Rarotonga, the Hokianga to the Bay of Plenty and Taranaki. He explains that, throughout that time, various iwi and hapū formed and branched off as their own autocratic unit, for example, Te Ātiawa, Ngāti Te Rangi, Tūhoe and Te Whānau-ā-Apanui.¹⁰¹ He says, “Ngāti Awa social organisation has historically been flexible and still is today – new groups can be accommodated such as the urban dwelling “taura here” or formerly extinct hapū can be re-established and given new life.”¹⁰² What must be maintained, regardless of the flexibility and development, is a common whakapapa link:¹⁰³

As ngare is defined by Williams (1957:229) as family or as a “number of people connected by blood.” As defined here the term best fits the whānau unit but if the principle is extended

⁹⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [45].

¹⁰⁰ The Fisheries Settlement Report, Wai 307, #B16 Hirini Moko Mead p.14.

¹⁰¹ The Fisheries Settlement Report, Wai 307, #B16 Hirini Moko Mead pp.4–5.

¹⁰² The Fisheries Settlement Report, Wai 307, #B16 Hirini Moko Mead p.14.

¹⁰³ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [76].

to cover the capacity to whakapapa to common ancestors the word can be applied generally to all three units of the social system. The urban hapū of Ngāti Awa and taura here also qualify as ngare. Church groups and urban authorities such as MUMA and Waipareira Trust are not ngare. They are not connected by blood and so fail the primary test of shared descent from a common eponymous ancestor recognised as the founding ancestor of the iwi.

- 6.63 Dr Ranginui Walker (Whakatōhea) gives a view that the nature and evolution of iwi and hapū structures has changed in post-colonial times. However, this does not mean that it was once static. Rather, new branches formed and broke off from whakapapa lines regularly:¹⁰⁴

Historically, it was not unusual for new tribal entities to emerge as a result of marriage, warfare, and new alliances. Not infrequently, new hapū would form from the junior line of the chief family. For instance, Tahu Pōtiki was the junior brother of Porourangi (Ngāti Porou). Tahu Pōtiki lusted after Porourangi's wife, and after a tribal meeting over how the scandal should be dealt with, Tahu Pōtiki left and headed down to the South Island. In the process of establishing himself and his line in the new territory, Tahu Pōtiki conquered the Ngāti Mamoe people. His new tribe became known as Ngāi Tahu.

- 6.64 In disagreeing that the traditional view of Māori society based on whānau, hapū and iwi continues to apply, Walker says “this description of traditional Māori society is simplistic and incomplete. It suggests that the social units in Māori society were static, that the tribal polities were immutable and that kinship was the ‘only’ basis for association. This was not the position. Māori society has always been characterised by dynamism and adaptation. Accordingly, the types of iwi groupings varied.”¹⁰⁵ His view extends beyond to all types of governance and collectivisation adopted by Māori:

Modern hapū are remnants of hapū or hapū collectives of traditional times. The modern reality of Māori is that they no longer live in compact kin based tribal collectives on a defined land base. People live in scattered whānau units, both within and outside the old tribal boundaries. Although tribalism survives as an ideology for many Māori, tribes become manifest only occasionally, and for particular purposes. These include trust board and rūnanga (tribal council) meetings, and hui (assemblies) for rites de passage such as weddings, birthdays, and tangihanga (funerals). To this list is added Waitangi Tribunal hearings on marae, land claim meetings and meetings of mandated claims negotiators. Except for Tribunal hearings, and hui for rites de passage, it would be unusual for more than 10% of tribal constituents to attend these assemblies.¹⁰⁶

These large pan-tribal organisations are recognised by the state as appropriate delivery mechanisms for the devolution of state funded programmes and education, health, skills training and the rehabilitation of offenders. These major organisations, with score or so urban marae in Auckland, are the surrogate tribes for tribal refugees and victims of the

¹⁰⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Ranginui Walker in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at 7.2.

¹⁰⁵ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Ranginui Walker in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at 6.1.

¹⁰⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Ranginui Walker in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at 10.1.

diaspora. They bear testimony to both the persistence of Māori culture, and the dynamic ability of Māori to remould the ideological structure of the society that bears them.¹⁰⁷

When I first came to Auckland in 1946 to go to school I pretty soon became acquainted with a group called Ngāti Akaranga, the people of Auckland. Then I heard that there was another category called Ngāti Poneke the people of Wellington. Then in the mid and late 60s I learned of a grouping called Ngāti Ōtara and I was fascinated by what I read about this new grouping that emerged in the context of a new suburb created to house the homeless of the inner city area that I made it a subject of my study for my PhD dissertation which is called Māori in a Metropolis and as far as I could see, Ngāti Ōtara fulfilled all the customary procedures, the social activities and caring for each other that I remember my hapū performing when I was a little boy. So I was very impressed with that. Subsequently, they developed in the western suburbs Te Whānau Waipareira and I had – some doings with that group and as far as I was concerned, they were fulfilling the traditional functions that hapū in the home districts once fulfilled.¹⁰⁸

- 6.65 Tā Eddie Taihakurei Durie (Rangitāne, Ngāti Kauwhata, Ngāti Raukawa) gives the view that tikanga adapts to reflect the social and political order of people, which itself changes:¹⁰⁹

Māori currently present the iwi as the main governing unit – the iwi being a confederation of peoples, claiming authority over a prescribed area and possessed of corporate functions exercised through a central organ. Certain enactments establishing rūnanga provide examples of this. It appears, however, that the modern iwi arrangement represents the latest stage in a history of tribal restructuring. I doubt it should be seen, or represented, as having always existed.

- 6.66 Dr Ranginui Walker (Whakatōhea) holds the view that the Māori response to colonisation has been to collectivise beyond whakapapa lines.
- 6.67 He gives the example of Te Tokanganui-a-noho, the marae at Te Kūiti, gifted to Ngāti Maniapoto by Te Kooti Arikirangi:¹¹⁰

The conceptual design of the house, stressed ancestral links between East Coast and Tainui tribes, by depicting Mahinārangi and Tūrongo at the base of the two pillars bearing the ridge pole. Tūhoe and other tribes who supported Te Kooti are also represented among the 28 carved poupou in the house. Canoe ancestors who linked them include: Hoturoa (Tainui), Paikea (Ngāti Porou), Tamatea (Takitimu), Tamatekapua (Te Arawa), and Toro a (Mataatua). This linking of founding ancestors from different tribes, in a single house, was a political statement on the need for a pan-Māori identity to counter the cultural invasion of Pākehā.

¹⁰⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Ranginui Walker in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at 12.3.

¹⁰⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Ranginui Walker) at 102.

¹⁰⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Sixth affidavit of Reuben Brian Perenara in support of the applicant's case regarding the High Court rule 418 preliminary questions as referred back to this court by Her Majesty's Privy Council; Exhibit C *Custom Law: Address to the New Zealand Society for Legal and Social Philosophy*, Chief Judge ET Durie (22 July 1994) at 327.

¹¹⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Ranginui Walker in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998) at 8.4.

6.68 Tā Hirini Moko Mead (Ngāti Awa) acknowledges the common characteristics of an iwi as being of great importance are:¹¹¹

- descent from a common tupuna;
- a cultural and historical identity supported by shared tradition;
- political organisation;
- multiple hapū;
- multiple marae;
- multiple urupā;
- a defined rohe or takiwā;
- acknowledgment by other iwi; and
- common heritage, common history and common interests.

6.69 Mead notes that the status and function of an iwi in modern times is determined by what the members of that iwi expect, noting that the ability to deliver some, if any, of the services is firmly linked to whether settlement with the Crown has been effected and resources are available:¹¹²

- (a) To protect the mauri of the iwi, hapū and whānau;
- (b) To protect the taonga and heritage of the iwi, its legacy of waiata, whakapapa, whakatauki, kupu tuku iho, pakiwaitara, taonga, art work and history;
- (c) To maintain, protect and develop the mana of the iwi, its constituent hapū and members and to uphold its integrity as an iwi and to uphold its essential characteristics, its protocols and its mauri.
- (d) To conduct the affairs of the iwi on behalf of and in conjunction with its constituent hapū;
- (e) To protect, develop and manage those assets and taonga of symbolic value which belong to all members of the iwi such as maunga, awa, moana, wāhi tapu, whenua rāhui, te marae matua, land and commercial assets;
- (f) To bring benefits to all hapū and their members that are not only symbolic but are also practical such as education grants, development grants, grants to improve maintenance of marae, research facilities, assistance to establish small businesses and so on;
- (g) To represent the interests of all hapū within the iwi at pan-iwi hui and when dealing with Government on issues that affect all or nearly all of the hapū;
- (h) To enter into alliances with other iwi and non-iwi organisations when appropriate;

¹¹¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [79] and [82].

¹¹² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [84].

- (i) To receive compensation from Government for grievances of the past, to receive its share of fisheries assets and any other assets and to put these to work to service the needs of all members of the iwi;
 - (j) To establish a central authority to carry out the functions of iwi and to obtain funding to do so.
- 6.70 Reverend Māori Marsden (Ngāi Takoto, Ngāti Warara) explains that “[whilst] the three principal groupings [Ngāti Kuri, Ngāi Takoto and Te Aupōuri] retained their identity and sovereignty, because of the intermarriages and the fact of kinship and consanguineous relationships, the political dynamics were constantly changing. Political alliances were entered into and dissolved just as quickly”.¹¹³
- 6.71 David James Alexander (Pākehā) further explains that “to survive, and to be able to retain some space within a political landscape full of other hapū equally concerned about ensuring their own survival, required the building of alliances”.¹¹⁴ He describes that some ways of achieving this was through commonality of ancestors or connection to the same ancestors as well as creation of new bonds and reinforcing old bonds by way of intermarriage.
- 6.72 Professor Ngapare Hopa (Waikato, Ngāti Tūwharetoa), in discussing historical Māori traditional organisation, states that “flexibility of choice was an essential feature of “traditional” Māori social organisation because whakapapa and the rule of bilateral affiliation made membership of both paternal and maternal lineages (hapū) possible. A critical determinant was however, continued occupancy if “ahi ka” (burning fires) or usufruct rights over resources were to be sustained. Kinship or relatedness meant that boundaries were not impermeable. People could move in and out of settlements whose composition might include whānau from other lineages and whose number could fluctuate through fission and fusion, through re-alignment and as events such as feuding, warfare and /or acts of vengeance warranted.”¹¹⁵ Hopa goes on to state that “a key feature of Māori society is the genius of its people to adapt and re-organise in order to meet the demands and challenges of a changing social environment. A proper understanding of the term “iwi” must involve appreciation of this dynamic in Māori society.”¹¹⁶ In particular, Hopa notes:¹¹⁷

... fluidity was at the core of political alliances in Māori political traditionals and that sometimes hapū came together and might have called themselves iwi in terms to pursue a common cause or resolve a problem. Once the resolution was sought they fell back traditionally into their old autonomous semi nomadic units, there was no centralisation but this fluidity underwent testing in the context of colonisation and I believe iwi not only is relating to people forming into cohesive units is itself a product of change and evolution

¹¹³ Muriwhenua Land Report, Wai 45, #F25 Māori Marsden p.3.

¹¹⁴ *Re Ngāti Pāhauwera* [2021] NZHC 3599, Reply evidence of David James Alexander (21 December 2020) at [25].

¹¹⁵ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Professor Ngapare Kaihina Hopa in support of the second to fourth plaintiffs in relation to the hearing of the preliminary questions (30 January 1998) at 1.3.

¹¹⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Professor Ngapare Kaihina Hopa in support of the second to fourth plaintiffs in relation to the hearing of the preliminary questions (30 January 1998) at 5.1(b).

¹¹⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Ngapare Kaihina Hopa) at 47.

and of adaptation and that what has happened and is happening is that iwi has been devised as a concept retrospectively in the ethnogenesis process to talk about or understand aspects of Māori thought and culture including its social structure and social organisation.

- 6.73 Hopa also refers to examples surrounding Māori historical collective organisation outside the traditional notions of hapū and iwi:¹¹⁸

The canoe migrations of Te Arawa and Tainui (among others), the departure of Tahu Potiki to establish a new tribe in the South Island, the Confederation of Northern Tribes, the assertion of tribal unity in the form of the Kotahitanga movement and Kingitanga, Te Kooti's pan-tribal Ringatu Church, the non-tribally based Ratana Church, the plethora of state initiated Māori trust boards, the New Zealand Māori Council, the Māori Women's Welfare League, the National Māori Congress, the recent reincarnation of the Māori Parliament, Te Runanga Ko Huiarau, are but a few examples of the Māori genius to adapt, indigenise, construct and reconstruct social units according to their social environment and needs changed.

- 6.74 Hopa goes on to say, "As Māori enter the 21st century, urban Māori organisations have emerged as the quintessential bodies for dealing with the needs of a large urban Māori population and the social ills of urban Māori. They are representative of the revolutionary continuum of basically Māori adaption and indigenisation of a non-Māori environment."¹¹⁹
- 6.75 Manuka Henare (Ngāti Hauā, Te Aupōuri, Te Rarawa, Ngāti Kahu) discusses the influence of identity on social organisation as Māori. He states that "the ability to identify yourself seems to be related to your life experience, whether born in the country, whether close to the urban marae or born in the cities, so the life experience of the people, the age has a lot to do as to which level they begin their identity as a person".¹²⁰

TRADITIONAL TRIBAL STRUCTURES ARE ENDURING

- 6.76 Henare Ngata (Ngāti Porou) says that traditional tribal structures (in that context he was speaking of Ngāti Porou) that have their origins in their culture and history cannot be displaced by a latter-day creation of statute.¹²¹
- 6.77 Tā Timoti Kāretu (Tūhoe, Ngāti Kahungunu) and Professor Te Wharehuia Milroy (Tūhoe) support this position and, as expert speakers of te reo Māori, made their point with reference to language:

¹¹⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Professor Ngapare Kaihina Hopa in support of the second to fourth plaintiffs in relation to the hearing of the preliminary questions (30 January 1998) at 2 and 6.3.

¹¹⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First Affidavit of Professor Ngapare Kaihina Hopa in support of the second to fourth plaintiffs in relation to the hearing of the preliminary questions (30 January 1998) at 9.2.

¹²⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Manuka Henare) at 29.

¹²¹ The Fisheries Settlement Report, Wai 307, #B28(f) Henare Ngata at [9].

Connection by genealogy from a single famous ancestor is the original and true meaning of this word. Ko te whanaungatanga ā-whakapapa mai i te tipuna rongonui te tūturutanga o te tikanga o tēnei kupu.¹²²

...

To someone raised with the Māori language and Māori custom and tradition from the time of birth to adulthood there is no doubt and no argument as to the meaning of the word iwi. It has one essential characteristic that is the need for genealogical link to an ancestor. There are no doubt those whose motivations arise not from faithful adherence to the Māori language and Māori custom who would wish it otherwise but no matter how great the aroha which may be employed in the utilisation of that term iwi, aroha cannot make an iwi that which is not.¹²³

- 6.78 Regardless, Tā Hugh Kawharu (Ngāti Whātua) states there is acceptance that some aspects of the role of iwi has changed. “Over time, the work of iwi and the infrastructure under which they operate has changed, but their basic role has remained constant – to protect, where necessary, the interests of individual members and constituent whānau and hapū, and to maintain and enhance the mana of the collective. Warfare has waned in popularity, but it remains an important role of iwi organisations to engage in less physical conflict in order to protect iwi, hapū or individual interests.”¹²⁴
- 6.79 Despite progress made from traditional leadership to the Māori trust and post-settlement governance entity models, Kawharu notes that “dimensions of the iwi heritage remain important to individuals and groups alike within the tribe, and much effort is expended in maintaining them. These include marae, urupā, wāhi tapu generally, and esoteric lore.”¹²⁵
- 6.80 Dr Ranginui Walker (Whakatōhea) disagrees completely with the notion that modern iwi trust boards and settlement entities represent traditional forms of leadership:¹²⁶
- if we ever arrive at settlement then Whakatōhea leaders will form a corporate body and join the corporate culture. That is the choice we have, I don’t think we can in any way claim such a body is a traditional structure it has no land base, it will have a financial base.
- 6.81 When considering the use of the word ‘iwi’ in mōteatea, Tā Tamati Reedy (Ngāti Porou) states, “I conclude that in traditional song poetry, the term iwi is invariably intended to mean tribe from the earliest to the most recent examples. There is no example where iwi

¹²² *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor James Te Wharehuia Milroy and Professor Timoti Samuel Karetu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (unsigned) at [11].

¹²³ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor James Te Wharehuia Milroy and Professor Timoti Samuel Karetu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (unsigned) at [22].

¹²⁴ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [16].

¹²⁵ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [15(e)].

¹²⁶ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Ranginui Walker) at 109.

is used to describe a non-kin group. There is no example where iwi is used to describe an entire race of people.”¹²⁷

- 6.82 Considering how urban Māori collectives are distinct from iwi, Tā Hugh Kawharu (Ngāti Whātua) notes, “Many have flourished and then faded, others have maintained function and identity, and a few have become complex, highly capitalised businesses. Welfare promotion, not kinship, is their keynote. Their socially and culturally integrated approach, however, gives the provision of welfare services its Māori character.”¹²⁸ He then concludes, “Urban Māori organisations lack the wairua and checks and balances of the kinship system, a specific ancestor-oriented history and heritage, and a pre Treaty mana whenua. Their operational focus is on the human resource of the Māori population without discrimination as to tribal affiliation. They are neither iwi nor hapū.”¹²⁹
- 6.83 Professor Patu Hohepa (Ngāpuhi) gives examples of the enduring and changing nature of traditional Māori tribal structures with reference to the general but often vague understanding of the term ‘iwi’. “Iwi can also be used in a restrictive sense, defining what you want it to define. Ethnologists and anthropologists have used the word iwi to mean “tribe” or “tribal nation” in their various attempts to explain Māori society structures in terms of clearly defined structures. It is this perception of reality which has narrowed the meaning of the term iwi to mean tribe or tribal nation, which cannot be supported by traditional names of groups. While there are groups which continue to exist today that have defined their group solidarity with names beginning with Ngati / Nga (Group of), or Te Whanau o (The extended family of), Te Uri o (The Descendants of), there is no group with a formal name beginning with Te Iwi o (The Tribe of).”¹³⁰
- 6.84 Hohepa refers to his own tribal histories to explain the enduring nature to which such traditional understandings on tribal boundaries and structure continue:¹³¹

for Ngapuhi we are different, we have many ancestors and canoes and many mountains, we do not stick to the principle of other iwi, one waka, one ancestor, one canoe, the second part is that our beginnings of being iwi was the distribution of kohiwi of the skeletons of the ancestors taken to the burial caves round our territory, those are the boundaries of our iwi and now many of our dead lie in cemeteries not only through Aotearoa but overseas and its those bones that call us as iwi to look after them.

¹²⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Tamati Muturangi Reedy for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [27].

¹²⁸ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [22].

¹²⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998) at [23].

¹³⁰ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), First affidavit of Professor Patrick Wahanga Hohepa on behalf of second – fourth plaintiffs in relation to the hearing of the preliminary question (11 March 1998) at [8].

¹³¹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Notes of Evidence (Patrick Wahanga Hohepa) at 90.

COLLECTIVE DECISION MAKING

- 6.85 It was common for decision making to be done on a collective basis. However, there were often community-appointed rangatira who were responsible and accountable to the collective for their decisions. Waiohau Te Haara (Ngāti Rangī) explains that the traditional decision-making process of Ngāti Rangī means “[there] must be discussion which may lead to consensus. The Kaumātua (Elders) listened and continue to listen carefully and move/d towards what they believe/d to be the opinion of the hapū. After considering these opinions they would and continue to make a decision for the hapū.”¹³²
- 6.86 Paul Meredith (Ngāti Maniapoto) discusses examples he has read of ‘rūnanga’, where “it wasn’t just the rangatira and the tohunga” who participated, rather they were public assemblies where “matters [were] brought up and redress determined”.¹³³ Everyone was allowed to have their say, however some people, ‘mana kōrero’, held more sway.¹³⁴
- 6.87 Henare Rakīhia Tau (Ngāi Tahu, Ngāti Mamoe, Waitaha) talks about decisions in relation to the management of the Tītī Islands and emphasises whakapapa as being necessary as well as the collective nature of the decisions:¹³⁵

The decisions are made to the allocation of catching areas or wakawaka, the siting of houses, the welfare of the mutton birders and the protection and rules governing the environment. These decisions are determined by those who possess whakapapa or genealogy rights to our Tītī Islands. These decisions are collective decisions.

- 6.88 The importance of consensus-based decision making is emphasised:
- According to Maui Solomon (Moriōri), each tribe had its own ariki however “[decision] making was usually by consensus but invariably, views differed and sometimes issues were hotly debated for many days before arriving at a conclusion. The most dramatic example of this decision-making process in action occurred at the hui of 160 Moriōri chiefs and tribes at Te Awapatiki in 1835 ... Although many of the younger chiefs advocated resisting the armed invaders, the senior chiefs and tohungas held sway over the gathering and persuaded their people not to break with their 500 year tradition of peace as was laid down by Nukunuku Whenua and his predecessors. The consensus decision was to instead hold fast to their traditions of peace and to share the island resources with the invading tribes.”¹³⁶
 - Reverend Māori Marsden (Ngāi Takoto, Ngāti Warara) reiterates the point that “political decisions were arrived at by consensus”. Marsden recounts an example of Nopera Panakareao’s role in pre-Treaty land transactions where, despite identifying more closely with Te Rarawa, by virtue of his whakapapa, he regarded himself as having certain rights within Ngāti Kahu. “Therefore in many cases he was acting in terms of his Ngāti Kahu rights when dealing with Ngāti Kahu land transactions (take

¹³² *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Waiohau (Ben) Te Haara (undated) at [10].

¹³³ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Paul Meredith p.44.

¹³⁴ The Wairarapa ki Tararua district inquiry, Wai 863, #4.11 Paul Meredith pp.44–45.

¹³⁵ *Re Tipene* [2016] NZHC 3199, Brief of Evidence of David Armstrong (31 August 2015), Exhibit marked DA-55, Wai 27, #J-10 Evidence of Henare Rakīhia Tau, David Higgins, Trevor Howse, Peter Ruka and Barry Brailsford at [5.13].

¹³⁶ The Fisheries Settlement Report, Wai 307, #B23 Maui Solomon at [6.4].

tūpuna) while still retaining his position as a Rarawa chief. He was also a descendant of Te Whetakitini the daughter of Tuwhakaterere the founding ancestor of Ngāi Takoto. By virtue of that fact he could claim certain rights within Ngāi Takoto. It was very clear those rights were neither dominant nor exclusive. He certainly could not act in a way which affected the rights of his relations – without obtaining their consent.”¹³⁷ This relates to the interconnected nature of te ao Māori and the importance placed on whakapapa, whanaungatanga and obligations to whānau, hapū and iwi (the collective). This is useful in regard to political and legal decision making in te ao Māori. Panakareao could not make decisions according to tikanga if he did not obtain the consent of the collective/consensus.

- Mandy Mereaira Hata (Ngāti Ruatakenga) notes that her hapū had appointed her and “Uncle Te Riaki” “to act on their behalf”.¹³⁸ She goes on to say that “it is expected that we maintain that support by regular updates to the hapū. Since we are acting on behalf of the hapū, we are accountable to the hapū, and expected to act according to the collective decisions of the hapū.”¹³⁹
- 6.89 Robert Mahuta (Tainui, Ngāti Mahuta) explains that wānanga and hui are important to stress-test ideas, particularly when they affect so many. The Māori fisheries negotiators held hui around the motu where they were explaining the basis for the agreement, allaying fears and “confronting the inevitable criticism which is part and parcel of the Māori modus operandi”.¹⁴⁰
- 6.90 Tā Pou Temara (Tūhoe) centralises the concept of wānanga. He says, with respect to Ngāti Rangī, “[there] is the tika (right way) to progress matters or provoke a deeper level of discussion before any long term commitment is made by the hapū. Whānau who may wish to progress a project within the boundaries of Ngāti Rangī, may involve other whānau, the marae would be the ideal place to bring these whānau together to discuss the matter further. Those who are uncertain as well as those who are opposed would also be encouraged to participate in the discussions. Discussions would continue right up to the time of making the decision. With the views known and the discussions nearing their conclusion the Taumata would render a final decision, based on the wellbeing of the hapū of Ngāti Rangī.”¹⁴¹
- 6.91 The importance of consent and permission was also emphasised as were the limits on what rangatira could do. For example, Tuini Sylva (Ngāti Kuri) asserts that her grandfather, Rewiri Hongi, chief at Kapowairua, did not sell their land because their people would have nowhere else to go and he knew he would need to seek approval from Ngāti Kuri.¹⁴²

Rewiri Hongi has been blamed for something he didn’t do, selling land at Te Pahi, Muriwhenua and Kapowairua. He was a rangatira, he was not so stupid as to sell his land. If he had wanted to, he would have had to get the permission of the whole tribe, Ngāti Kuri,

¹³⁷ Muriwhenua Land Report, Wai 45, #F25 Māori Marsden p.4.

¹³⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Mandy Mereaira Hata (5 August 2020) at [5].

¹³⁹ *Re Edwards* [2021] NZHC 1025, Affidavit of Mandy Mereaira Hata (5 August 2020) at [5].

¹⁴⁰ The Fisheries Settlement Report, Wai 307, #B28(e) Robert Mahuta at [6].

¹⁴¹ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Reuben Clarke in support of the Minister of Corrections (undated) at [14].

¹⁴² Muriwhenua Land Report, Wai 45, #F33 Tuini Sylva p.1.

including Te Rau Karora and the other chiefs. He never sought that permission because he knew that if he sold the land his people would have nowhere to stay.

- 6.92 Reverend Māori Marsden (Ngāi Takoto, Ngāti Warara) explains that chiefs did not have the right to sell or absolutely alienate lands because of the nature of Māori collective rights in land:¹⁴³

Panakareao simply did not have the power to sell. No chiefs had the right to sell or absolutely alienate lands. The extent of their powers was to *tuku* with all the limitations and prohibitions attached thereto. All lands were held in common ownership and no individual, whether chief or *whanaunga* enjoyed individual ownership. The fact that “payments” were apparently made does not change the nature of the transaction. Any so-called “payments” for land may be explained by the institution of “*manatunga*” – the exchange of gifts under the concept of “*tuku whenua*” to establish ongoing relationships and to seal the *tuku*.

- 6.93 Ella Henry (Ngātikahu ki Whangaroa, Te Rārawa, Ngāti Kuri) also talks about limits:¹⁴⁴

Mana was vested in the chief, which gave that person status and power, but the autonomous relationship between the chiefs and their tribe acted as a constraint on the power of the chief, especially in regard to the expectations which a chief could impose on the tribe. Though chiefs maintained the *mana* of the *iwi*, or *hapū*, each individual member of the tribe retained a high degree of autonomy.

TUAKANA/TEINA

- 6.94 Waiohau Te Haara (Ngāti Rangī) explains:¹⁴⁵

I am recognised as a Tuakana (senior elder) of the *whānau* most closely associated with the land known as Tuwhakino. The Tuakana is recognised as the senior person in relation to others of a *whānau* or *hapū*. The proposed prison site (D2) is part of Tuwhakino and is now owned by the Minister. At one time this particular block was owned by my grandfather. I am the senior *kaitiaki* representative in relation to the block and Tuwhakino generally.

...

Tikanga comprises various concepts and one of them is the Tuakana / Teina mentioned above. Literally this means elder and younger but in effect it is much more important. I will say it is the manner by which one exercises eldership towards *whānau*, *hapū* and *iwi*. The balance between *teina* and *tuakana* has to be based on trust and transparency.

In Māori cultural terms, the *tuakana* had rights above that of *teina*. It was offensive for a *teina* to publicly correct or disagree with the *tuakana*; in by gone days it could have resulted in banishment for the offender or some other form of discipline. Today discussion and ideally consensus is the preferred option.

...

In Ngāti Rangī and I believe the wider Ngā Puhi, *tuakana* is important because it denotes seniority. It does not mean that that person is right and everybody else is wrong. It is not an exclusive concept. However, it is relevant to our decision making process and to the question of who has authority to speak on particular issues.

¹⁴³ Muriwhenua Land Report, Wai 45, #F25 Māori Marsden p.9.

¹⁴⁴ Mana Wāhine Kaupapa Inquiry, Wai 2700, #A63 Ella Henry at [35].

¹⁴⁵ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Waiohau (Ben) Te Haara (undated) at [2], [8]–[9] and [38]–[44].

...

What I would like to emphasise, is that I have never relied on my tuakana status in coming to my opinions I have consulted with others and we have reached a consensus view ... leadership is related to ability as well as tuakanatanga. It also related to the question of who is accepted by the whānau or the hapū. I agree that it is not related solely to age or gender. However, I do not accept that the concept of tuakanatanga is not of any relevance. It is one of the bases on which I have mandate to speak in relation to the Tuwhakino block and on other matters relating to Ngāti Rangi.

- 6.95 Christina Davis (Ngāti Muriwai, Te Whakatōhea) references Tā Hirini Moko Mead (Ngāti Awa) when discussing whakapapa and specifically tuakana/teina, stating, “With whakapapa, ‘a child is born into a kinship system, which is already in place and has been for many generations’, [informs] Mead. He adds, ‘one’s whakapapa is affected by a number of principles ... the order of birth is important: the mātamua is accorded more mana than others. It is also affected by tuakana/teina principle, which is also the order of birth. The older sibling has priority over the younger and this principle works its way to the last born ...’”.¹⁴⁶

- 6.96 Wallace Wihongi (Ngāti Mahia, Te Uri o Hua, Ngāti Hine) also talks about the relationship between tuakana and teina:¹⁴⁷

The elders of my hapū Ngāti Mahia and Te Uri o Hua have told me that Heta Te Haara was one of the paramount chiefs of Ngāti Rangi. He had sovereignty over the land and was one who made chiefly decisions. In keeping with the tikanga and Māori tradition, this mantle would pass to the eldest male and in this instance that would be Ben Te Haara. Associated to this mantle is the privilege of being tuakana – the ability to guide others in the whānau and Ngāti Rangi.

In the old days this order was essential and if transgressed a muru or retribution followed and if serious enough a war party would be put together to deal with the teina.

...

In our marae Ururangi we teach that Tāne was the firstborn of Io and his wife. In the primeval Ururangi, Tāne formulated a process whereby the offspring of Io would develop and grow. Typically, a teina Tūmataunga thought he knew best and opposed the plan. A battle ensued in the place Awarua and Tū was vanquished and banished to Kaihewa. Tuakanatanga thus existed among the Gods.

- 6.97 Mac Anania (Ngāti Rangi) also says that the “matua tuakana/teina relationship stems from rangatiratanga. It is a place of standing or birth within your family structure or whakapapa. The tuakana has a preferred place of privilege as an elder over the teina.”¹⁴⁸ Anania also says that “it is the responsibility of other teina hapū to tautoko the tuakana hapū”.¹⁴⁹
- 6.98 Associate Professor Khylee Quince (Ngāpuhi, Te Roroa, Ngāti Porou, Ngāti Kahungunu) says that, within a young person’s peer group, the tuakana/teina (senior/junior)

¹⁴⁶ *Re Edwards* [2021] NZHC 1025, Affidavit of Christina Davis (21 February 2020) at [14], quoting Mead, *Tikanga Māori: Living by Māori Values*, 2003, at 42.

¹⁴⁷ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Wallace Wihongi (undated) at [7] and [20].

¹⁴⁸ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Mac Anania (undated) at [15].

¹⁴⁹ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Mac Anania (undated) at [17].

relationship between cousins and siblings of the same gender provides an additional support network for decision making and behaviour. There are particular expectations of leadership and care placed upon the tuakana or senior relatives – especially on the mātāmua or eldest child in a family.¹⁵⁰

- 6.99 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) discusses the concept of taharua as being close with that of tuakana/teina:¹⁵¹

The concept of “taharua” in Whakatōhea, which loosely translates as two-sides, two tribes, or bilineal. In whakapapa terms, this applies when one of your parents is from one marae/hapū and the other parent belongs to another marae/hapū. One foot in each camp if you like. However this concept is important when it comes to relationships as it solidifies whakapapa connections to both side with equal importance. Taharua goes hand in hand with tuakana teina which determines who has speaking rights over the other according to who is older or younger in the whakapapa line.

- 6.100 Amoamo expresses that taharua is the right to stand on behalf of both of your parents. In his case, he can whakapapa to all of Te Whakatōhea but only speaks at two marae when it comes to tangihanga, stating that “I can weave whakapapa of the visitors coming on to the marae to us and in turn our values of manaakitanga and aroha ki tētahi play out through our ability to exercise our tikanga and Kawa” and that taharua doesn’t negate one side of your whakapapa – rather, it enhances both.¹⁵²

RANGATIRA

- 6.101 Tamati Waaka (Te Whānau-ā-Apanui, Ngāi Tai, Te Whakatōhea, Ngāti Awa, Ngāti Pūkeko, Tūhoe) emphasises the important role that rangatira have “as someone who possesses the skills necessary to maintain mana and was regarded as the repository for the mana of the collective”.¹⁵³ He goes on to provide a list of talents required of a rangatira in reference to Te Rangikaheke and Himiona Tikitu. He notes the importance both put on manaaki tangata, conducting discussions and being courageous as important attributes:¹⁵⁴

Te Rangikaheke

1. He mōhio ki te whakahaere i ngā kōrero o te mahi kai. Has command of the knowledge, science and technology of food acquisition and production.
2. ... o te tangohanga whare, waka, pātaka, hereimu. Has command of the knowledge, technology, rituals and traditions pertaining to the construction and acquisition of houses, canoes, storehouses and cooking sheds.
3. Ka mōhio ia ki te whakahaere i ngā kōrero mo te whawhai, toa tonu ki te riri, hopu tūpāpaku tonu atu, whati rawa mai ka riri, nana ano i whakahoki atu te whati. He

¹⁵⁰ *Solicitor-General v Heta* [2018] NZHC 2453, s 27 report by Khylee Quince (18 September 2018) p.8.

¹⁵¹ *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [9].

¹⁵² *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [10]–[12].

¹⁵³ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [37].

¹⁵⁴ *Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council* [2017] NZEnvC 073, Statement of Evidence of Tamati Waaka (4 January 2017) at [38]–[41].

knows how to conduct discussions on the strategies of warfare and is himself courageous in battle, is not afraid to kill, and can turn adversities into victories.

4. Ko te kōrero manuhiri anō tētahi. Inviting and welcoming visitors is another (talent).
5. Ko te kōrero runanga anō tētahi. Conducting meetings of the people to discuss important issues is another.
6. Ko te atawhai anō tētahi. Yet another is being able to offer hospitality and to take care of people.”

Himiona Tikitū

1. He kaha ki te mahi kai. Has the knowledge of and is industrious in obtaining or cultivating food.
2. He kaha ki te whakahaere i ngā raruraru. Able to mediate, manage and settle disputes.
3. He toa. Is courageous at war.
4. He kaha ki te whakahaere i te riri. A good strategist and leader in war.
5. He mōhio ki te whakairo. Has knowledge of the arts of carving.
6. He atawhai tangata. Knows how to look after people.
7. Te hanga whare nunui, waka rānei. Has command of the knowledge and the technology to build large houses or canoes.
8. He mōhio ki ngā rohe whenua. Has a sound knowledge of the boundaries of tribal lands.

6.102 Karen Mekomoko (Ngāti Patumoana, Te Upokorehe, Ngāi Tamahaua hapū) states, “Rangatiratanga can be practiced by a person or by the people. It encompasses a level of authority (as a custodian) over all your land and rohe and responsibility for the welfare and customs of your people. This includes the health and wellbeing of the people, their resources, welfare, sustenance and defence.”¹⁵⁵

6.103 Rangatira are also said to have a number of other roles:

- Being a kaitiaki of their rohe. Ross Gregory (Te Rārawa, Te Aupōuri, Ngāti Kahu, Ngāpuhi, Ngāi Tahu) says that “[in] my view Panakareao was a Kaitiaki over our lands. His mana and status as a rangatira required it. His right to become a Kaitiaki was consolidated by [his] marriages. As Kaitiaki, Panakareao was required to protect the land and its people.”¹⁵⁶ Robin Hapi (Ngāti Kahungunu) confirms that a rangatira prevents against depletion of a resource by conservation practices. Conservation practices may include controlling access to a resource but must always be fair and equitable for all.¹⁵⁷

¹⁵⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Karen Stefanie Mekomoko (30 January 2020) at [31].

¹⁵⁶ Muriwhenua Land Report, Wai 45, #F28 Ross Gregory p.2.

¹⁵⁷ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), Affidavit of Robin Hapi in support of application to join second and third respondents (27 September 1994); Exhibit A *The Report* (9 November 1993) at 5.

- Margaret Mutu (Ngāti Kahu) discusses the responsibility of a rangatira to ensure their people are behaving appropriately in the rohe of another tribe. “In establishing inter-tribal alliances, land allocations could be made. Responsibility for the tribe coming in to occupy those lands could be left in the hands of the rangatira of sufficient mana within that tribe who, it was naturally expected, would ensure that members of that tribe did not offend the host tribe in any way.”¹⁵⁸

6.104 The importance of the role of rangatira in upholding mana was demonstrated in Te Iwi Moriori Trust Board’s recount of the invasion of Ngāti Mutunga and Ngāti Tama. When discussing what response should be made to the invasion, it recounts the following:¹⁵⁹

Sickened by fighting and killings, the paramount chief Nunuku Whenua who was closely related to the disputing tribes came amongst the people and decreed that from this day forward never again would there be war. He said “Are you fish who will eat you own young?”. He decreed from that day forward that men would only fight with wooden staffs called Tupuari and on drawing first blood the fight would end and honour was satisfied. Nunuku told the people “The day you disobey, may your bowels rot”. From that time forward, the people obeyed for fear of transgressing the covenant laid down by Nunuku.

...

The rangatahi urged that they had the greater numbers and although many would fall, they would eventually prevail. But the Ariki and Rangatira of the tribes forbid any transgression of Nunuku’s law. To them, it would have meant a loss of mana to have recommenced warfare and cannibalism which had been abandoned centuries earlier. By adhering to the laws of Nunuku, our ancestors were expressing their most deepest beliefs in tikanga Moriori. They were expressing their own mana in terms of their relationship with the land and other fellow human-beings.

6.105 Tāmami Kruger (Ngāti Koura, Ngāti Rongo, Ngāi Tūhoe) describes the concept of kōrero rangatira as a “chiefly understanding”. “Because of the way Māori conceive of whenua as a relationship with responsibilities and consequences, land cannot be “sold”, but a right of occupancy can be extended by either he kōrero rangatira (sanction by a rangatira) or whakaritenga tikanga – a loreful choice.”¹⁶⁰ In Kruger’s opinion, Ngāti Whātua Ōrākei offered Hobson a chiefly licence to occupy Tāmaki Makaurau and an advantage of security and safety and also provided liberty to trade. The money and goods given by Hobson were a tākoha or a taonga to acknowledge the fact that a kōrero rangatira had taken place and the two leaders had a chiefly understanding.¹⁶¹

TOHUNGA

6.106 Tohunga were specially chosen and trained repositories of knowledge. Moe Milne (Ngāti Hine) says, “Tohunga were considered experts in their particular fields and held

¹⁵⁸ Muriwhenua Land Report, Wai 45, #H10 Margaret Mutu p.11.

¹⁵⁹ *Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* (HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J), “Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets” at 3, 4 and 5.

¹⁶⁰ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger on behalf of the plaintiff (2 June 2020) at [143].

¹⁶¹ *Ngāti Whātua Ōrākei Trust v Attorney-General* [2022] NZHC 843, Statement of evidence of Vivian Tāmami Kruger on behalf of the plaintiff (2 June 2020) at [143]–[145].

knowledge of a spiritual kind that was passed down through the generations. There were tohunga whakapapa, mahi rongoā, matakite. Both women and men were tohunga and this knowledge or spiritual abilities have descended through whakapapa to wāhine within Ngāti Hine today.”¹⁶²

- 6.107 Tā Pou Temara (Tūhoe) explains that “[esoteric] and spiritual knowledge is knowledge that is restricted or tapu and only the sagacious few, the elite, are privy to that knowledge. In the Māori world, this elite are known [sic] as Tohunga”.¹⁶³ He goes on to say:¹⁶⁴

Those that are fortunate to be raised steeped in the knowledge of whakapapa, history, and Tikanga are known as Tohunga Whakapapa, Tohunga Whaikōrero or Pou Tikanga. It is these knowledge keepers that ensure the integrity of the relationships between the various realms.

...

Tohunga, or experts in the spiritual arts are tapu as they enter the realm of tapu in order to invoke, apply and protect places and people from harm and misfortune. However, they are not as tapu as women. They are expert practitioners of rituals.

Tohunga experts are chosen spiritual practitioners of invoking, applying and removing tapu from people, areas and buildings. However you can never remove tapu from certain areas such as mountains and rivers. This is because they were placed by the Gods before humankind came along and Tohunga cannot remove their tapu.

Tohunga must also possess the right whakapapa to have authentic authority over any particular place or peoples. Unsurprisingly Tohunga are drawn from senior genealogical lines of iwi much like the whakapapa of rangatira. There are examples of rangatira having dual roles. Tohunga can also be wahine. There are many examples of Tohunga wahine in many hapū and iwi.

...

Tohunga are tapu because they are a direct link to the appropriate atua or to the pantheon of atua. Atua are tapu and tapu come from atua. Therefore, the mandate of the Tohunga come from their whakapapa and from the atua. They become repositories of esoteric knowledge and as we already know, this kind of knowledge is tapu and not for general dissemination. Tohunga are the kauwaka or the mediums and mouthpieces of the atua.

While whakapapa was a key criterion, it is not unknown for people who do not have senior whakapapa, becoming Tohunga. They were the chosen of the gods to these positions. However, these examples are very few.

All iwi have histories of Tohunga. I recall at this Hingaangaroa of the famous Te Rāwheoro in Hauiti, Tologa Bay. Te Rangiūia was a later Tohunga of the same where wānanga. Moihī Te Matorohanga was also an associate Tohunga at Te Rāwheoro. He had his own where wānanga at Pāpāwai in Te Wairarapa. Te Whakatohea is no exception to these practices.

- 6.108 Temara (Tūhoe) goes on to list some of the important roles and responsibilities tohunga have:¹⁶⁵

¹⁶² Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Moe Milne at [90].

¹⁶³ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [72].

¹⁶⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [9], [69]–[71] and [73]–[75].

¹⁶⁵ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [76]–[79] and [81].

Tohunga were the protectors of the community and its individuals from the shafts of makutu, or, they were involved in imposing them. They had the gift of seeing into the future. This was called matakite. From this ability they were able to formulate ways of avoiding disaster. They could read the stars and make predictions as to whether the stars foretold an abundant year or a year of scarcity.

They could cure the sick. In short they were the go to people when misfortune befell the individual or the collective. They could either administer spiritual assistance or prescribe the appropriate rongoā to collect from the forest or the waters.

They had amazing memories. Elsdon Best records that Te Makarini, a Tohunga of Tūhoe, recited whakapapa in the 19th century for nearly three days, pausing only to eat and sleep ...

Tohunga knew karakia and its different forms. This was their communication to the appropriate atua. Like whakapapa, karakia is tapu. Tohunga understand what tapu is and how it could be negotiated.

...

In order to maintain their access to the atua, there were certain protocols or tikanga that they observed and lived by. Their personage was tapu with the head being the most tapu. Even modern Tohunga are aware of this and take care not to place themselves in a position where food may pass over their heads especially in a restaurant. The question is why? Tohunga refrained from anything that could contaminate that tapu state and render them un-tapu. A simple fact of today like washing in hot water was not an option, as hot water was considered 'cooked' and therefore could not be applied to the tapu body of a Tohunga ... Some Tohunga were so tapu that they did not wash. These kinds of Tohunga tended to live apart from the community

...

Tohunga were the keepers of history, hindsight and foresight. They were founts of wisdom gathered over the many experiences of their calling ... Tohunga were integral to the everyday life of the community but came to the fore in times of crisis.

- 6.109 Waiohau Te Haara (Ngāti Rangi) talks about tohunga having a kaitiaki role, including to interpret unnatural phenomena such as a log floating against the current, which would be deemed a taniwha – a taniwha being a manifestation of an unnatural occurrence.¹⁶⁶
- 6.110 Another important function of tohunga is in relation to tapu. Wallace Wihongi (Ngāti Mahia, Te Uri o Hua, Ngāti Hine) also points out that an important function of tohunga is the ability to remove or lift tapu from the land.¹⁶⁷ Louis Rapihana (Te Whakatōhea, Te Whānau-ā-Apanui, Ngāi Tama, Ngāti Rua, Ngāti Patu, Ngāti Ngāhere) also mentions that tohunga have many responsibilities, including “putting wāhi tapu boundaries in place, lifting tapu from wāhi that may need to be used for noa activities, maintaining and protecting wāhi tapu from inappropriate uses and acting as knowledge keepers for wāhi tapu locations”.¹⁶⁸

¹⁶⁶ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Waiohau (Ben) Te Haara in support of the Minister of Corrections (undated) at [16].

¹⁶⁷ *Beadle and Wihongi v Minister of Corrections*, EnvC Wellington A074/2002, Statement of Evidence of Wallace Wihongi in support of the Minister of Corrections (undated) at [14].

¹⁶⁸ *Re Edwards* [2021] NZHC 1025, Affidavit of Louis Agassiz Schenker Rapihana (31 March 2022) at [4.5].

- 6.111 Te Riaki Amoamo (Te Whakatōhea, Ngāti Patumoana, Ngāti Ruatakenga) says a tohunga is someone that is “highly skilled and expert” and are “lifelong roles in Te Ao Māori. They are expert in traditional customs, arts, rituals and karakia all underpinned by Tikanga. Examples are Tohunga Whakairo (master carver), Tohunga Wete Reo (linguist), Tohunga Tā Moko (moko, tattoo expert).”¹⁶⁹ “Women can also be Tohunga or Pūkenga depending on the skills they possess ...”¹⁷⁰
- 6.112 Amoamo goes on to discuss the role of a “pou tikanga”:¹⁷¹
- Pou Tikanga roles who are kaitiaki of knowledge and whakapapa, kaitiaki of their marae tikanga and kawa to maintain the future wellbeing of their hapū. They are fluent in te reo Māori and practitioners of Tikanga. Pou means “to appoint or anoint” or a “support pole, ridgepole”...
- Pou Tikanga are lifelong roles and taken up by destiny, fate or they are trained roles, and māngai reo are short-term roles of a specific purpose. That is why Pou Tikanga have the final say in the hapū or iwi, because of their mana, authority and knowledge to protect the interests of the tribe.
- 6.113 Tā Pou Temara (Tūhoe) also discusses the concept of pou tikanga. He says that “[those] that are fortunate to be raised steeped in the knowledge of whakapapa, history and Tikanga are known as Tohunga Whakapapa, Tohunga Whaikōrero or Pou Tikanga.”¹⁷² He says that the “local Tohunga and Pou Tikanga from the hapū and iwi will know the traditional knowledge of the area and which areas are tapu and out of bounds, and which areas have varying degrees of tapu”.¹⁷³ In the modern day where, for example, a developer wishes to build houses in an area where there were once pā tahito, the precise locations of these pā are able to be determined by tohunga and pou tikanga.¹⁷⁴

¹⁶⁹ *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [28].

¹⁷⁰ *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [29].

¹⁷¹ *Re Edwards* [2021] NZHC 1025, Second Affidavit of Te Riaki Amoamo (21 February 2022) at [21] and [22].

¹⁷² *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [9].

¹⁷³ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [65].

¹⁷⁴ *Re Edwards* [2021] NZHC 1025, Affidavit of Tā Pou Temara (24 January 2022) at [90].

Appendix: Number of briefs reviewed and sources

WAITANGI TRIBUNAL REPORTS

Wai 22

1.	Muriwhenua Fishing Report, Wai 22 #A13 Miraka Szászy's evidence (undated)
2.	Muriwhenua Fishing Report, Wai 22 #A14 Reverend Maori Marsden's submissions (undated)
3.	Muriwhenua Fishing Report, Wai 22 #B30 Chairman of Ngai Takoto Trust – Reverend Harold Petera's submissions (March 1987)
4.	Muriwhenua Fishing Report, Wai 22 #B33 Wiremu Herewini Paraone submissions (undated)
5.	Muriwhenua Fishing Report, Wai 22 #B57 Submissions by Niki Kanara (Conrad) and Piri Paraone and Ratima Petera (undated)
6.	Muriwhenua Fishing report, Wai 22, #C12 Affidavit of Matiu Rata in support of application for judicial review (undated)
7.	Muriwhenua Fishing Report, Wai 22 #D6 P Hohepa's position paper "Fisheries and the Maori People" (delivered at the Seminar on Fisheries for Maori Leaders, University of Auckland, 13-15 August 1976). Disclaimer: may not be primary source evidence.

Wai 45	
8.	Muriwhenua Land Report, Wai 45, #A6 Brief of evidence of Miraka Szászy
9.	Muriwhenua Land Report, Wai 45, #A7 / A14 Submission by Reverend Māori Marsden on behalf of Te Aupouri, Ngāti Kuri and Ngāti Takoto
10.	Muriwhenua Land Report, Wai 45, #B2 Rima Eruera (Edwards) submission (B2)
11.	Muriwhenua Land Report, Wai 45, #C10 Ross Gregory plan of introduction
12.	Muriwhenua Land Report, Wai 45, #C17 Reverend Māori Marsden's submissions on 6 March 1991 (a member of Aupouri, Ngatikahu and Te Rarawa by direct descent and one of the original claimants on behalf of Ngaitakoto in particular)
13.	Muriwhenua Land report, Wai 45, #C22 Statement of evidence by Hirini Paerangi Matunga (7 March 1991)
14.	Muriwhenua Land Report, Wai 45, #F12 Evidence from Dr Margaret Mutu, Dame Joan Metge and Maurice Alemann for Wai 45
15.	Muriwhenua Land Report, Wai 45, #F19 Submission for the Waitangi Tribunal – Muriwhenua Land Claim (Anne Salmond) (undated)
16.	Muriwhenua Land Report, Wai 45, #F23 Rima Eruera's evidence for the Muriwhenua Land Claim
17.	Muriwhenua Land Report, Wai 45, #F25 Maori Marsden evidence for the Muriwhenua Land Claim
18.	Muriwhenua Land Report, Wai 45, #F28 Evidence of Ross Gregory for Muriwhenua Land Claim
19.	Muriwhenua Land Report, Wai 45, #F29 Evidence of Winiata and Marian Paraone for the Muriwhenua Land Claim
20.	Muriwhenua Land Report, Wai 45, #F31

	Evidence of Rapata Rapine Romana in the Muriwhenua Land Claim
21.	Muriwhenua Land Claim, Wai 45, #F33 Submissions by Tuini Sylva in the Muriwhenua Land Claim
22.	Muriwhenua Land Report, Wai 45, #H10 Submissions of Crown counsel in opposition to application by claimants for interim find and recommendations in respect of the Paki Farm Park
23.	Muriwhenua Land Report, Wai 45, #H19 Evidence of Pita M Pangari
24.	Muriwhenua Land Report, Wai 45 #M3 Evidence about “Maori law”
Wai 262	
25.	Brief of evidence of Laly Paraone Haddon
26.	Brief of evidence of Hori Te Moanaroa Parata
27.	Brief of evidence of Wiremu McMath
28.	Brief of evidence of Himiona Peter Munroe
29.	Brief of evidence of Bruce Gregory
30.	Brief of evidence of Houpeke Piripi
31.	Brief of evidence of Rapata Romana
32.	Brief of evidence of Niki May Lawrence
33.	Brief of evidence of Rapine Simon William Nicholas Robert Murray
34.	Brief of evidence of Mata Ra-Murray
35.	Brief of evidence of Haana Waitai Murray
36.	Brief of evidence of Mereraina Uruamo
37.	He kupu korero na Te Kapunga Matemoana Dewes. Evidence statement of Te Kapunga Matemoana Dewes (31 July 1998)
38.	He kupu korero na Wayne James Ngata. Evidence statement for Wayne James Ngata (31 July 1998)

39.	He kupu korero na Piripi Rairi Aspinall. Evidence statement for Piripi Rairi Aspinall (31 July 1998)
40.	He kupu korero na Maggie Ryland. Summary of evidence statement for Maggie Ryland (31 July 1998)
41.	He kupu korero na Apirana Tuahae Mahuika. Evidence statement for Apirana Tuahae Mahuika (12 April 1999)
42.	He kupu a Laura Thompson. Statement of evidence for Laura Thompson (9 April 1999)
43.	Evidence statement for Reverend Eru Potaka-Dewes (11 April 1999)
44.	Evidence statement for Hirini Te Aroha Pani Clarke (11 April 1999)
45.	Evidence statement of Hunaara Tangaere II (6 August 1999)
46.	Statement of evidence of Alfred Madsen Elkington for Hearing 6-10 December 1999
47.	Statement of evidence of Terewai Grace Grace for Hearing 6-10 December 1999
48.	Statement of evidence of Puhanga Patricia Tupaea for Hearing 6-10 December 1999
49.	Statement of evidence of Bejamin Turi Hippolite for Hearing 6-10 December 1999
50.	Statement of evidence of Priscilla Paul for Hearing 6-10 December 1999
51.	Statement of evidence of Huia Elkington for Hearing 6-10 December 1999
52.	Supplementary brief of evidence of Huia Elkington for Hearing 6-10 December 1999
53.	Statement of evidence of Kathleen Hemi for Hearing 6-10 December 1999
54.	Statement of evidence of James Elkington for Hearing 6-10 December 1999
55.	Brief of evidence of Hori Turi Elkington for hearing 6-10 December 1999
56.	Brief of evidence of Kate Parahi on behalf of Ngati Kahungunu
57.	Brief of evidence of Ross Young Scott on behalf of Ngati Kahungunu
58.	Brief of evidence of Rerekohi Ahiahi Robertson on behalf of Ngati Kahungunu
59.	Brief of evidence of Alice Hopa on behalf of Ngati Kahungunu
60.	Brief of evidence of Wero Karena on behalf of Ngati Kahungunu

61.	Brief of evidence of Piri Sciascia on behalf of Ngati Kahungunu
62.	Brief of evidence of Abel George Clark on behalf of Ngati Kahungunu
63.	Brief of evidence of Waka Gilbert on behalf of Ngati Kahungunu
64.	Brief of evidence of Charles Kohi II King on behalf of Ngati Kahungunu
65.	Brief of evidence of Murray Hemi on behalf of Ngati Kahungunu
66.	Brief of evidence of Mere Joslyn Whaanga on behalf of Ngati Kahungunu
67.	David Williams <i>Matauranga Maori and Taonga: The Nature and Extent of Treaty Rights Held by Iwi and Hapu in Indigenous Flora and Fauna Cultural Heritage Objects Valued Traditional Knowledge</i> (Waitangi Tribunal Publications, 2001)
68.	Brief of evidence of Sir Ian Hugh Kawharu
69.	Statement of evidence of Mason Durie on behalf of Ngati Wai, Ngati Kuri, Te Rarawa
70.	Statement of evidence of Dr Hirini Moko Mead for the Ngati Porou claimants in the Wai 262 inquiry (17 May 2002)
71.	Statement of evidence of Haami Piripi on behalf of Te Rarawa (2006)
72.	Updating evidence of Ross Young Scott on behalf of Ngati Kahungunu (11 August 2006)
73.	Updating evidence of Philip Lewis Rasmussen on behalf of Ngati Kahungunu (11 August 2006)
74.	Statement of evidence of Rei Mokena Kohere in support of the Ngati Porou Wai 262 claims (14 August 2006)
75.	Evidence statement of Tate Pewhairangi in support of the Ngati Porou claims (10 August 2006)
76.	Statement of evidence of Mark Kopua on behalf of Ngāti Porou (2006)
77.	Statement of evidence of Hirini Te Aroha Pani (Syd) Clarke in support of the Ngati Porou Wai 262 claims (14 August 2006)
78.	Statement of evidence of Connie Pewhairangi in support of the Ngati Porou Wai 262 claims (14 August 2006)
79.	Corrected statement of evidence No.2 of Dr Apirana Tuahae Mahuika (17 August 2006)
80.	Brief of evidence of Piripi Walker dated 14 August 2006

81.	Hearing #1: Flora and Fauna Claim (Wai 262) 15-19 September 1997, Tamatea Marae, Motuiti and Ngati Wai Trust Board, Whangarei
82.	Hearing #5: Flora and Fauna Claim (Wai 262) 10-14 August 1998, Pakirikiri Marae, Tokomaru Bay
83.	Hearing #8: Flora and Fauna Claim (Wai 262) 26-26 July 1999, Rahui Marae, Tikitiki
84.	Wai 262 – Indigenous Flora & Fauna Inquiry Te Reo Transcripts for Ngāti Porou Claimants for the hearing held 23-26 August 1999 at Rahui Marae, Tikitiki
Wai 307	
85.	The Fisheries Settlement Report, Wai 307, #A009 Affidavit of Maui Ashley Solomon for and on behalf of himself, his whānau, hapū and members of Te Iwi Moriori in Rekohu, Pitt Island and mainland NZ in support of claim for urgent hearing on Sealords Fisheries Deal (29 September 1992)
86.	The Fisheries Settlement Report, Wai 307, #A10 Submission by Maui Weepu for Tuhuru (A10)
87.	The Fisheries Settlement Report, Wai 307, #A13 Affidavit of M K Bradley, Rūnanga a Rangitane o Wairau
88.	The Fisheries Settlement Report, Wai 307, #A21 Submission by E Manukau for Ngāti Whātua
89.	The Fisheries Settlement Report, Wai 307, #A22 Submission by P Ricky, Huitana Te Hau and Hirini Christy for Rongomaiwahine
90.	The Fisheries Settlement Report, Wai 307, #A27 Submission by H M Mead for Rūnanga o Ngāti Awa
91.	The Fisheries Settlement Report, Wai 307, #A30 Submissions for Te Whānau ā-Nuku and Te Whānau ā-Kahurautao (ētahi hapū o Te Whānau-ā-Apanui)
92.	The Fisheries Settlement Report, Wai 307, #B7(b) Affidavit of T C Mohi (Te Rūnanganui o Ngāti Kahungunu)
93.	The Fisheries Settlement Report, Wai 307, #B8(b) Statement of Kakapaiwaho Kururangi Tibble
94.	The Fisheries Settlement Report, Wai 307, #B8(c) Affidavit of A Mahuika (Te Rūnanga o Ngāti Porou)

95.	The Fisheries Settlement Report, Wai 307, #B9 Submission of T O'Regan re the meaning of iwi and hapū
96.	The Fisheries Settlement Report, Wai 307, #B10(a) Submission of A D Chadwick on behalf of Te Whānau ā-Kaiaio (tētahi hapū o Te Whānau-ā-Apanui) dated 6 Oct 1992
97.	The Fisheries Settlement Report, Wai 307, #B16. Submission H Mead on the Nature of Modern Māori Social Units, produced by T Woods
98.	The Fisheries Settlement Report, Wai 307, #B23. Submission of M Solomon for Te Iwi Moriori
99.	The Fisheries Settlement Report, Wai 307, #B28(e). Affidavit of Tā Robert Te Kotahi Mahuta in <i>Te Runanga o Wharekauri Rekohu Inc v Attorney-General</i> [1993] 2 NZLR 301 dated 17 Oct 1992 and shared with the Tribunal
100.	The Fisheries Settlement Report, Wai 307, #B28(f). Affidavit of Henare Kohere Ngata in <i>Te Runanga o Wharekauri Rekohu Inc v Attorney-General</i> [1993] 2 NZLR 301 dated 16 Oct 1992 and shared with the Tribunal
Wai 2700	
101.	Mana Wāhine Kaupapa Inquiry, Wai 2700, #A17 Brief of evidence of Ani Mikaere dated 20 January 2021
102.	Mana Wāhine Kaupapa Inquiry, Wai 2700, #A19 Brief of evidence of Leonie Pihama dated 20 January 2021
103.	Mana Wāhine Kaupapa Inquiry, Wai 2700, #A55 Speaking notes of Paula Ormsby dated 23 February 2021
104.	Mana Wāhine Kaupapa Inquiry, Wai 2700, #A62 Kōrero Taunaki ā (brief of evidence by) Moe Milne dated 30 June 2021
105.	Mana Wāhine Kaupapa Inquiry, Wai 2700, #A63 Brief of evidence by Ella Y Henry dated 21 June 2021
106.	Mana Wāhine Kaupapa Inquiry, Wai 2700, #A67 Brief of evidence by Dr Ngahuaia Murphy 30 June 2021
107.	Mana Wāhine Kaupapa Inquiry, Wai 2700, #A71 Brief of evidence of Rereata Makiha dated 2 July 2021

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| 108. | Supporting evidence of Nganeko Minhinnick (18 March 1986) |
| 109. | Submissions in support of objections by Nganeko Minhinnick presented on behalf of the Tainui Trust Board, The Huakina Development Trust and the Trustees of Waahi Marae. Witness: James Ernest Ritchie (16 November 1984) |

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| 110. | Statement of evidence of Te Kerei Anihana for Ronald and Riana Wihongi (August 2001) |
| 111. | Statement of evidence of Dr Cleve Barlow for Ronald and Riana Wihongi (August 2001) |
| 112. | Statement of evidence of Shayron Lee Beadle (August 2001) |
| 113. | Statement of evidence of Richmond Douglas Beetham for the Friends & Community of Ngawha Inc (August 2001) |
| 114. | Statement of evidence of Roger Brand for the Friends & Community of Ngawha Inc (August 2001) |
| 115. | Statement of evidence of Agnes Te Haara Clarke for Ronald and Riana Wihongi (August 2001) |
| 116. | Statement of evidence Chanel Victoire Clarke for the Friends & Community of Ngawha Inc (August 2001) |
| 117. | Statement of evidence of Eileen McNicol Clarke (August 2001) |
| 118. | Statement of evidence of Naki Cooper for Ronald and Riana Wihongi (August 2001) |
| 119. | Statement of evidence of Douglas Baden Cuneen for Friends & Community of Ngawha Inc (August 2001) |
| 120. | Statement of evidence Michael Isaac for the Friends & Community of Ngawha Inc (August 2001) |
| 121. | Statement of evidence of Maata Lee for Ronald and Riana Wihongi (August 2001) |
| 122. | Statement of evidence of Toi Mahi for Ronald and Riana Wihongi (August 2001) |
| 123. | Statement of evidence of Robin Martin for Ronald and Riana Wihongi (August 2001) |
| 124. | Statement of evidence of Torrence Ogle for Ronald and Riana Wihongi (August 2001) |

125.	Statement of evidence of Matt Rakena for Ronald and Riana Wihongi (August 2001)
126.	Statement of evidence of Rangi Thompson for Ronald and Riana Wihongi (August 2001)
127.	Statement of evidence of Hori Rakete for Ronald and Riana Wihongi (August 2001)
128.	Statement of evidence of David Rankin for Ronald and Riana Wihongi (August 2001)
129.	Statement of evidence of Alice Mary Gwendolen Sheppard for the Friends & Community of Ngawha Inc (August 2001)
130.	Statement of evidence of Riana Wihongi (August 2001)
131.	Statement of evidence of Ronald Te Ripi Wihongi (August 2001)
132.	Statement of evidence of Waiora Wihongi for Ronald and Riana Wihongi (August 2001)
133.	Statement of evidence of Paul Wihongi for Ronald and Riana Wihongi (August 2001)
134.	Statement of evidence of Raewyn Tipene for Ronald and Riana Wihongi (August 2001)
135.	Statement of evidence Millie Vujcich for the Friends & Community of Ngawha Inc (August 2001)
136.	Statement of evidence of Steve Williams for Ronald and Riana Wihongi (August 2001)
137.	Statement of evidence of Vernon Richard Cross Warren for the Friends & Community of Ngawha Inc (September 2001)
138.	Statement of evidence of Michael John McGlynn on behalf of the Minister of Corrections (10 September 2001)
139.	Affidavit of Keith Murray Gibson (10 September 2001)
140.	Statement of evidence of Derek Stephen McCoy on behalf of the Minister of Corrections (11 September 2001)
141.	Affidavit of Rodney Edward Clough (11 September 2001)
142.	Affidavit of evidence of Patricia Mary Scott (12 September 2001)
143.	Affidavit of evidence of William Bruce Shaw (12 September 2001)
144.	Affidavit of Keith Murray Gibson (13 September 2001)

145.	Statement of evidence of Bella Edmonds in support of the Minister of Corrections
146.	Statement of evidence of Garry Lee Hooker for the Friends & Community of Ngawha Inc
147.	Statement of evidence of Mac Anania in support if the Minister of Corrections
148.	Statement of evidence of Mac Anania in support of the Minister of Corrections (undated)
149.	Supplementary statement of evidence of Harold Francis Bhana on behalf of the Minister of Corrections
150.	Statement of evidence of Harold Francis Bhana on behalf of the Minister of Corrections
151.	Affidavit of Albert Victor Clarke for the Ngati Rangi Ahu Wheuna Trust
152.	Statement of evidence of Reuben Clarke in support of the Minister of Corrections (undated)
153.	Statement of evidence of Rueben Clarke in support of the Minister in reply
154.	Affidavit of Xavier Gee Nang Oh (undated)
155.	Statement of evidence of Gary Hooker for the Friends & Community of Ngawha Inc (undated)
156.	Statement of evidence of Michael John McGlynn on behalf of the Minister of Corrections in reply (undated)
157.	Statement of evidence of Andrew Sarich in support of the Minister of Corrections (undated)
158.	Statement of evidence of Bella Tari in support of the Minister of Corrections (undated)
159.	Statement of evidence of Waiohau (Ben) Te Haara in support of the Minister of Corrections (undated)
160.	Evidence of Waiohau (Ben) Te Haara in reply (undated)
161.	Statement of evidence of McLaen Neil Gordan Te Haara in support of the Minister of Corrections (undated)
162.	Evidence of McLaen Gordon Te Haara in reply (undated)
163.	Statement of evidence of Wallace Wihongi in support of the Minister of Corrections
164.	Statement of evidence of Wallace Wihongi in support of the Minister in reply

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165.	Statement of evidence by William Gregory Whewell on behalf of the Minister of Corrections in rebuttal (21 January 2003)
166.	Statement of evidence of Tuherea Kaihau in support of Nganeko Minhinnick (2 October 2003)
167.	Statement of evidence of Rodney Clough on behalf of the Minister of Corrections (November 2003)
168.	Statement of evidence of Noreen Barton on behalf of the Minister of Corrections (November 2003)
169.	Statement of evidence of Allen Beagley on behalf of the Minister of Corrections (November 2003)
170.	Statement of evidence of Justine Bray on behalf of the Minister of Corrections (November 2003)
171.	Statement of evidence by Leanne Field on behalf of the Minister of Corrections (November 2003)
172.	Statement of evidence of Rau Hoskins on behalf of the Minister of Corrections (November 2003)
173.	Statement of evidence of Philip Millichamp on behalf of the Minister of Corrections (November 2003)
174.	Statement of evidence by Wayne Otway on behalf of the Minister of Corrections in rebuttal (November 2003)
175.	Statement of evidence of William Shaw on behalf of the Minister of Corrections (November 2003)
176.	Statement of evidence of Bryan Spencer on behalf of the Minister of Corrections (November 2003)
177.	Statement of evidence of Charlie Tawhiao on behalf of Minister of Corrections (November 2003)
178.	Statement of evidence of Tahuna Minhinnick (December 2003)
179.	Statement of evidence of Michael Campbell Copeland on behalf of the Minister of Corrections (undated)
180.	Statement of evidence by Buddy Mikaere on behalf of the Minister of Corrections (undated)
181.	Statement of evidence by Buddy Mikaere on behalf of the Minister of Corrections in rebuttal (undated)

182.	Statement of evidence of Nganeko Minhinnick of Ngati Te Ata Waiohua
183.	Statement of evidence of Roimata Minhinnick (undated)
184.	Statement of evidence of Robert Pryor on behalf of the Minister of Corrections (undated)
185.	Statement of evidence of Brownie Rauwhero on behalf of the Minister of Corrections (undated)
186.	Statement of evidence by Grant Hawke on behalf of the Minister of Corrections in rebuttal (undated)
187.	Statement of evidence of Pare Rauwhero on behalf of the Minister of Corrections (undated)
188.	Statement of evidence by Charlie Tawhiao on behalf of the Minister of Corrections in rebuttal (undated)
189.	Statement of evidence of Roger Ward on behalf of the Minister of Corrections (undated)
<i>Tainui Hapu v Waikato Regional Council ENC Auckland A063/2004</i>	
190.	Notes of evidence taken before Judge D F G Sheppard and Commissioners R Dunlop and P A Catchpole (23 February 2004)
191.	Statement of evidence of Gary James Allis
192.	Statement of evidence of Mark Bulpitt Chrisp
193.	Statement of evidence of John Milton Crawford
194.	Statement of evidence of Robert Allen Docherty
195.	Statement of evidence of Sean Ellison on behalf of Tainui Hapū (undated)
196.	Statement of evidence of Angeline Greensill on behalf of Tainui Hapū (undated)
197.	Affidavit of Rewi Maniapoto Gregory
198.	Statement of evidence of Malibu Hamilton
199.	Statement of evidence of Josephine Kereopa
200.	Statement of evidence of Rangimorehu Kereopa on behalf of Tainui Hapū (undated)
201.	Statement of evidence of James (Tex) Rickard on behalf of Tainui Hapū (undated)

202.	Statement of evidence of Sheryl Aroha Roa
203.	Statement of evidence of Michael James Safey
204.	Statement of evidence of Lesley Syme
205.	Statement of evidence of William Nisbet Vant
<i>Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council [2008] NZRMA 395</i>	
206.	Evidence of Anne Lloyd Nicholas (28 September 2007)
207.	Evidence of Richard Peter Hunt (5 October 2007)
208.	Statement of evidence of Sandra Rose Te Hakamatua Lee (November 2007)
209.	Statement of evidence of Gina Mohi (November 2007)
210.	Brief of evidence of Te Rangikaheke Bidois (November 2007)
211.	Statement of evidence of Brian Henry Easton (November 2007)
212.	Statement of evidence of Andrea Rickard (November 2007)
213.	Statement of evidence of Dr Marian Mare (9 November 2007)
214.	Statement of evidence of Lanning Patrick Tutakiahani Simpkins (16 November 2007)
215.	Statement of evidence of Ngahihi o Te Ra (19 November 2007)
216.	Statement of evidence of Anthony Gerard Bryce (28 November 2007)
217.	Statement of rebuttal evidence of Paul Francis Cooper (28 February 2008)
218.	Statement of rebuttal evidence of Richard Peter Hunt (29 February 2008)
219.	Statement of rebuttal evidence of Anthony Gerard Bryce (April 2008)
220.	Statement of further rebuttal evidence of Richard Peter Hunt (12 April 2008)
221.	Evidence of Eric George Cawte (undated)
222.	Rebuttal evidence of Eric George Cawte (undated)
223.	Further rebuttal evidence of Eric George Cawte (undated)
224.	Evidence of Paul Francis Cooper (undated)

225.	Statement of evidence of Anthony Peter Cussins (undated)
226.	Statement of rebuttal evidence of Anthony Peter Cussins (undated)
227.	Statement of rebuttal evidence of Stephen Paul Finnemore (undated)
228.	Brief of evidence of Mr Te Ururoa Flavell (undated)
229.	Evidence of David Kingston Rowe (undated)
230.	Rebuttal evidence of David Kingston Rowe (undated)
<i>Marr v Bay of Plenty Regional Council [2010] NZEnvC 347</i>	
231.	Statement of evidence of Huia Ann Pacey (2009)
232.	Statement of evidence of Richard Mark Allibone (5 March 2010)
233.	Statement of evidence of Ian Kenneth Grant Boothroyd (5 March 2010)
234.	Statement of evidence of Robert James Greenaway (5 March 2010)
235.	Statement of evidence of Ernie Hacker (5 March 2010)
236.	Statement of evidence of Christopher Wayne Hickey (5 March 2010)
237.	Statement of evidence of Neale Alan Hudson (5 March 2010)
238.	Statement of evidence of Tracy Joanne Freeman (5 March 2010)
239.	Statement of evidence of Anthony Peter Johnson (5 March 2010)
240.	Statement of evidence of Henare Kapa (5 March 2010)
241.	Statement of evidence of Brice Landman (5 March 2010)
242.	Statement of evidence of John Mahanga (5 March 2010)
243.	Statement of evidence of Lindsay John Ngahau Marr (25 May 2010)
244.	Statement of evidence of Philip Hunter Mitchell (5 March 2010)
245.	Statement of evidence of James Charles Newfield (5 March 2010)
246.	Statement of evidence of Henry Pryor (5 March 2010)

247.	Evidence of Robert Christopher Donald (1 April 2010)
248.	Statement of evidence of Dr Bruce William Lang Graham (1 April 2010)
249.	Statement of evidence of Dr Gavin Douglas Kemble (1 April 2010)
250.	Statement of evidence of Lindsay John Marr and Tiipene Perenara Marr as spokespersons for Nga Uri O Ngati Rangitihi (8 April 2010)
251.	Statement of evidence of Andre Paterson (16 April 2010)
252.	Rebuttal evidence of Christopher Wayne Hickey (27 April 2010)
253.	Rebuttal evidence of Anthony Richard Mark Allibone (30 April 2010)
254.	Rebuttal evidence of Ian Tracy Freeman (30 April 2010)
255.	Rebuttal evidence of Ian Kenneth Grant Boothroyd (30 April 2010)
256.	Rebuttal evidence of Ian Robert James Greenaway (30 April 2010)
257.	Rebuttal evidence of Anthony Neale Alan Hudson (30 April 2010)
258.	Rebuttal evidence of Anthony Peter Johnson (30 April 2010)
259.	Rebuttal evidence of Henry Pryor (30 April 2010)
260.	Statement of David Potter
<i>Ngāi Te Hapū Incorporated & Anor v Bay of Plenty Regional Council [2017] NZEnvC 073</i>	
261.	Statement of evidence on behalf of the applicant by Colin John Barker (27 October 2016)
262.	Statement of evidence on behalf of the applicant by Dr Brett James Beamsley (28 October 2016)
263.	Statement of evidence on behalf of the applicant by Richard Owen Boyd (28 October 2016)
264.	Statement of evidence of Antoine Coffin on behalf of the applicant (28 October 2016)
265.	Statement of evidence on behalf of the applicant by Sharon De Luca (28 October 2016)
266.	Statement of evidence on behalf of the applicant by Andrew James Dodd (28 October 2016)

267.	Statement of evidence on behalf of the applicant by Keith Frentz (28 October 2016)
268.	Statement of evidence of Harawira Tiri Gardiner on behalf of the applicant (28 October 2016)
269.	Statement of evidence of Desmond Tatana Kahotea on behalf of the applicant (28 October 2016)
270.	Statement of evidence on behalf of the applicant by Francesca Kelly (28 October 2016)
271.	Statement of evidence on behalf of the applicant by Roger Charles King (28 October 2016)
272.	Statement of evidence on behalf of the applicant by Simon John Mitchell (28 October 2016)
273.	Statement of evidence on behalf of the applicant by Captain John Dealey Owen (28 October 2016)
274.	Statement of evidence of Shadrach Rolleston on behalf of the applicant (28 October 2016)
275.	Statement of evidence on behalf of the applicant by Wade Nathan Robertson (28 October 2016)
276.	Statement of evidence on behalf of the applicant by Philip Maxwell Ross (28 October 2016)
277.	Statement of evidence on behalf of the applicant by Konstantinos Zacharatos (28 October 2016)
278.	Statement of evidence of Nicholas Ashley Conland – Bond Quantification (25 November 2016)
279.	Statement of evidence of Peter John Cressey – Human Health (25 November 2016)
280.	Statement of evidence of John Hudson – Natural Character and Natural Landscape and Features (28 November 2016)
281.	Statement of evidence of John Edward Brodie – Ecology, Ecotoxicity, Water Quality and Sediment Quality (30 November 2016)
282.	Statement of evidence of Camiel De Jongh – Wreck Removal (30 November 2016)
283.	Statement of evidence of Reuben Francis Fraser – Planning (30 November 2016)
284.	Statement of evidence of Lance Thomas Marshall – Wreck Deterioration (30 November 2016)

285.	Primary statement of evidence of Frances Ngawiki Clarke for Te Rūnanga o Ngāti Whakaue ki Maketū and Te Arawa Takitai Moana Kaumatua Forum (22 December 2016)
286.	Primary statement of evidence of Shaw Trevor Mead on behalf of the iwi appellants (22 December 2016)
287.	Primary statement of evidence of Tane Junior Ngawhika for Te Arawa Takitai Moana Kaumatua Forum and Te Rūnanga o Ngāti Whakaue ki Maketū Inc. (22 December 2016)
288.	Statement of evidence by Kura Paul-Burke on behalf of the Korowai Kāhui o ngā Pakeke o te Patuwai (22 December 2016)
289.	Primary statement of evidence of Tohu Ripeka Te Whata for Te Arawa Takitai Moana Kaumatua Forum and Te Rūnanga o Ngāti Whakaue (22 December 2016)
290.	Primary statement of evidence of Rereamanu Patana Wihapi (22 December 2016)
291.	Primary statement of evidence of Aroha Gwenvillan Wilkinson for Te Rūnanga o Ngāti Whakaue ki Maketū Inc. and Te Arawa Takitai Moana Kaumatua Forum (22 December 2016)
292.	Primary statement of evidence of Barrie William Wilkinson for Te Runanga o Ngati Whakaue ki Maketu Inc And Te Arawa Takitai Moana Kaumatua Forum (22 December 2016)
293.	Statement of evidence of Nepia Ranapia on behalf of the Korawai Kāhui o nga Pakeke o te Patuwai (The Korawai) (22 December 2016)
294.	Primary statement of evidence of Manu Hughes Pene for Te Rūnanga o Ngāti Whakaue ki Maketū Inc. and Te Arawa Takitai Moana Kaumatua Forum (22 December 2016)
295.	Primary statement of evidence of Paku Akuhata on behalf of the iwi appellants (23 December 2016)
296.	Primary statement of evidence of Elaine Rangi Butler on behalf of the iwi appellants (23 December 2016)
297.	Primary statement of evidence of Margaret Meteria Clarke for Te Rūnanga o Ngāti Whakaue ki Maketū Inc. and Te Arawa Takitai Moana Kaumatua Forum (23 December 2016)
298.	Statement of evidence of Mason Harold Durie (23 December 2016)
299.	Statement of evidence of Robert James Greenaway on behalf of the Mount Maunganui Underwater Club Inc (23 December 2016)

300.	Primary statement of evidence of Peretini Hawea-a-Rangi Te Whata for Te Arawa Takitai Moana Kaumātua Forum and Te Rūnanga o Ngāti Whakaue (23 December 2016)
301.	Statement of evidence of Russell James Hawkins on behalf of the Mount Maunganui Underwater Club Inc (23 December 2016)
302.	Primary statement of evidence of Nadia Haua on behalf of the iwi appellants (23 December 2016)
303.	Statement of evidence of Wayne Allan Kennedy on behalf of the Mount Maunganui Underwater Club Inc (23 December 2016)
304.	Primary statement of evidence of Alice Kiwa on behalf of the iwi appellants (23 December 2016)
305.	Primary statement of evidence of Peri Kohu on behalf of the iwi appellants (23 December 2016)
306.	Primary statement of evidence of Thomas Abraham McCausland for Te Arawa Takitai Moana Kaumatua Forum and Te Rūnanga o Ngāti Whakaue ki Maketū Inc (23 December 2016)
307.	Primary statement of evidence of Vervies Punohu McCausland for Te Arawa Takitai Moana Kaumatua Forum and Te Rūnanga o Ngāti Whakaue ki Maketū Inc (23 December 2016)
308.	Primary statement of evidence of Te Wano Ngahana Ngatipeehi Walters for Te Rūnanga o Ngāti Whakaue ki Maketū Inc and Te Arawa Takitai Moana Kaumatua Forum (23 December 2016)
309.	Statement of evidence of Tahu Potiki on behalf of the applicant (23 December 2016)
310.	Statement of evidence of Ian Murray Sherwood on behalf of the Mount Maunganui Underwater Club Inc (23 December 2016)
311.	Primary statement of evidence of Rehua Smallman on behalf of the iwi appellants (23 December 2016)
312.	Primary statement of evidence of Liam Te Wherowhero Tapsell for Te Rūnanga o Ngāti Whakaue ki Maketū Inc. and Te Arawa Takitai Moana Kaumatua Forum (22 December 2016)
313.	Primary statement of evidence of Peretini Hawea-a-Rangi Te Whata for Te Arawa Takitai Moana Kaumatua Forum and Te Rūnanga o Ngāti Whakaue ki Maketū Inc (23 December 2016)
314.	Statement of evidence of Michael John Torr on behalf of the Mount Maunganui Underwater Club Inc (23 December 2016)

315.	Primary statement of evidence of Mabel Wharekawa-Burt on behalf of the iwi appellants (23 December 2016)
316.	Primary statement of evidence of Maria Brenda Horne for Te Rūnanga o Ngāti Whakaue ki Maketū and Te Arawa Takitai Moana Kaumatua Forum (3 January 2017)
317.	Statement of evidence of Buddy Mikaere on behalf of the iwi appellants (3 January 2017)
318.	Primary statement of evidence of Graeme Aitken on behalf of the iwi appellants (3 January 2017)
319.	Primary statement of evidence of Donna Mareé Meteria Clarke for iwi appellants (3 January 2017)
320.	Primary statement of evidence of James Douglas Marshall Fairgray for iwi appellants (3 January 2017)
321.	Primary statement of evidence of Hohepa Joseph (Joe) Harawira QSMON on behalf of the iwi appellants (3 January 2017)
322.	Primary statement of evidence of Des Heke Kaiawha on behalf of the iwi appellants (3 January 2017)
323.	Statement of evidence of Tamati Waaka (4 January 2017)
324.	Primary statement of evidence of Vernon Richard Cross Warren for iwi appellants (7 January 2017)
325.	Primary statement of evidence of Hamish Gordon Rennie for iwi appellants (8 January 2017)
326.	Brief of evidence for Awhi Awhimate (13 January 2017)
327.	Brief of evidence for Raewyn Marcell Bennett (13 January 2017)
328.	Brief of evidence for Chris Clarke (13 January 2017)
329.	Brief of evidence of Dr Sir Noble Toby Curtis (13 January 2017)
330.	Brief of evidence for William Emery (13 January 2017)
331.	Brief of evidence for Timi Te Po Hohepa (13 January 2017)
332.	Brief of evidence for Te Ariki Morehu (13 January 2017)
333.	Brief of evidence for Arama Karama Piriaka (13 January 2017)
334.	Brief of evidence for Niven Rae (13 January 2017)

335.	Brief of evidence for Elaine Tapsell (13 January 2017)
336.	Brief of evidence for Maru Haerepo Poihipi Tapsell (13 January 2017)
337.	Brief of evidence for Justin (Joe) Te Kowhai (13 January 2017)
338.	Brief of evidence for Wharekonehu Wally Te Moni (13 January 2017)
339.	Brief of evidence for Reverend Graham Kahu Te Rire (13 January 2017)
340.	Brief of evidence for Piki Thomas (13 January 2017)
341.	Brief of evidence of Piatahi Carey Bennett (16 January 2017)
342.	Reply evidence on behalf of the applicant by Michael Campbell Copeland (17 February 2017)
343.	Expert Joint Witness Statement Public Health (31 January 2017) (Donna Clarke, Peter Cressey, Mason Durie, William Kapea, Francesca Kelly)
344.	Expert Joint Witness Statement Ecology (1 February 2017) (Rick Boyd, John Bordie, Sharon De Luca, Shaw Mead, Kura Paul-Burke, Phil Ross)
345.	Expert Joint Witness Statement Wreck Removal/Salvage and Wreck Degradation (2 February 2017) (Graeme Aitken, Colin Barker, Brett Beamsley, Camiel De Jongh, Roger King, Lance Marshall)
346.	Expert conferencing – Draft Agenda: Joint Witness Statement: Natural Character and Landscape (2 February 2017) (Wade Robertson, John Hudson)
347.	Expert conferencing – Joint Witness Statement: Recreational Diving (3 February 2017) (Simon Mitchell, Robert Greenaway, Michael Torr)
348.	Expert Joint Witness Statement Planning (3 February 2017) (Reuben Fraser, Keith Frentz, Hamish Rennie, Vern Warren)
349.	Expert conferencing – Joint Witness Statement: Economic Effects (8 February 2017) (Michael Copeland, Douglas Fairgray)
350.	Reply evidence on behalf of the applicant by Colin John Barker (17 February 2017)
351.	Reply evidence of Dr Brett Beamsley (17 February 2017)
352.	Reply evidence of Richard Owen Boyd (17 February 2017)
353.	Statement of rebuttal evidence of John Edward Brodie – Ecology, Ecotoxicity, Water Quality and Sediment Quality (17 February 2017)
354.	Reply evidence of Antoine Coffin (17 February 2017)

355.	Reply evidence of Sharon De Luca (17 February 2017)
356.	Reply evidence of Andrew Dodd (17 February 2017)
357.	Reply evidence of Reuben Francis Fraser – Planning (17 February 2017)
358.	Reply evidence of Keith Frentz (17 February 2017)
359.	Reply evidence of Dr Desmond Kahotea (17 February 2017)
360.	Reply evidence of William Albert Haku Kapea (17 February 2017)
361.	Reply evidence of Francesca Kelly (17 February 2017)
362.	Reply evidence of Roger King (17 February 2017)
363.	Reply evidence by Harawira Tiri Gardiner (17 February 2017)
364.	Reply evidence of John Dealey Owen (17 February 2017)
365.	Affidavit in reply of Tahu Potiki (16 February 2017)
366.	Reply evidence of Wade Robertson (17 February 2017)
367.	Reply evidence of Shadrach Rolleston (17 February 2017)
368.	Reply evidence of Philip Maxwell Ross (17 February 2017)
<i>Tūwharetoa Māori Trust Board v Waikato Regional Council [2018] NZEnvC 93</i>	
369.	Statement of evidence of Aroha Campbell (1 May 2017)
370.	Statement of evidence of Nicholas Clarke (1 May 2017)
371.	Statement of evidence of Andrew Michael Collins (1 May 2017)
372.	Statement of evidence of Malcolm Alister Grant (1 May 2017)
373.	Statement of evidence of Wikitōria Hepi-Te Huia on behalf of Tauhara North No. 2 Trust (1 May 2017)
374.	Statement of evidence of Mason Daryl Jackson (1 May 2017)
375.	Statement of evidence of Buddy Mikaere (1 May 2017)
376.	Statement of evidence of Dr Edward Kazimierz Mroczek (1 May 2017)

377.	Statement of evidence of Roger Pikia on behalf of Ngāti Tahu-Ngāti Whaoa Rūnanga Trust (1 May 2017)
378.	Statement of evidence of Steven Michael Sewell (1 May 2017)
379.	Brief of evidence of Sheryl Aroha Roa for the Waikato Regional Council (12 May 2017)
380.	Evidence of Philip Hunter Mitchell on behalf of the Tūwharetoa Māori Trust Board (4 June 2017)
381.	Statement of evidence of Matiu Northcroft on behalf of Tūwharetoa Māori Trust Board (4 June 2017)
382.	Statement of evidence of David Topia Rameka on behalf of Tūwharetoa Māori Trust Board (4 June 2017)
383.	Evidence of Gina Alice Rangi on behalf of the Tūwharetoa Māori Trust Board (4 June 2017)
384.	Evidence of Bruce Stirling on behalf of the Tūwharetoa Māori Trust Board (4 June 2017)
385.	Statement of evidence of Chris Winitana on behalf of Tūwharetoa Māori Trust Board (4 June 2017)
386.	Rebuttal evidence of David Anderson Armstrong (23 June 2017)
387.	Rebuttal evidence of Aroha Campbell (23 June 2017)
388.	Rebuttal evidence of Andrew Michael Collins (23 June 2017)
389.	Rebuttal evidence of Wikitōria Hepi-Te Huia on behalf of Tauhara North No.2 Trust (23 June 2017)
390.	Rebuttal evidence of Mason Daryl Jackson (23 June 2017)
391.	Statement of evidence of William Thomas Meek (23 June 2017)
392.	Statement of evidence of Roger Pikia on behalf of Ngāti Tahu-Ngāti Whaoa Rūnanga Trust (23 June 2017)
393.	Rebuttal evidence of Buddy Mikaere (28 June 2017)
<i>Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council [2019] NZEnvC 196</i>	
394.	Affidavit of Raewyn Marcelle Bennett on behalf of Ngāti Pikiao Environmental Society Inc (NPES) as to standing under s 274 RMA (15 August 2018)
395.	Affidavit of Reon Roger Tuanau (15 August 2018)

396.	Joint statement of groundwater experts (Sian France, Michael Goff, Anthony Kirk, Philip Kelsey, Blair Thornburrow) (1 November 2018)
397.	Joint statement of regional planning experts (Malory Osmond, Dylan Makgill, Bridget Robson, Keith Frentz, Greg Carlyon, Craig Batchelar) (14 March 2019)
398.	Joint statement of district planning experts (18 March 2019)
399.	Statement of evidence of Dr Stephen Gordon Chiles (Noise Peer Review) on behalf of the applicant (29 March 2019)
400.	Statement of evidence of Mark Leslie Cox (Employment Effects) on behalf of the applicant (29 March 2019)
401.	Statement of evidence of Keith Frentz (Planning – District Matters) on behalf of the applicant (29 March 2019)
402.	Statement of evidence of Michael Hilka Joachim Gleissner (Company overview and project description) on behalf of the applicant (29 March 2019)
403.	Statement of evidence of Michael David Goff (Groundwater) on behalf of the applicant (29 March 2019)
404.	Statement of evidence of Nevil Ian Hegley (Noise) on behalf of the applicant (29 March 2019)
405.	Statement of evidence of Hamish Joyce (Operational and Construction Overview) on behalf of the applicant (29 March 2019)
406.	Statement of evidence of Hemana Eruera Manuera (29 March 2019)
407.	Statement of evidence of Malory Michaela Osmond (Regional Planning Matters) on behalf of the applicant (29 March 2019)
408.	Statement of evidence of Wade Nathan Robertson (Landscape Architect) on behalf of the applicant (29 March 2019)
409.	Statement of evidence of Craig Barry Batchelar on behalf of Whakatāne District Council Planner (12 April 2019)
410.	Statement of evidence of Dylan Cloan Makgill – Planning (12 April 2019)
411.	Statement of evidence of Ann Lloyd Nicholas – Section 42a Reporting Officer: District Consents (12 April 2019)
412.	Statement of evidence of Rebecca Keren Ryder on behalf of Whakatāne District Council – Landscape Architect (12 April 2019)
413.	Statement of evidence of Maureen Fraser on behalf of Sustainable Otakiri Incorporated (29 April 2019)

414.	Statement of evidence of Lee Heappey on behalf of Sustainable Otakiri Incorporated (29 April 2019)
415.	Statement of evidence of Malcolm And Sally Hayler on behalf of Sustainable Otākiri Incorporated (29 April 2019)
416.	Statement of evidence of Lesley Joy Mckeown on behalf of Sustainable Otakiri Incorporated (29 April 2019)
417.	Joint brief of evidence of Hohepa Joseph Mason and Te Kei (O Te Waka) Wirihana Merito (29 April 2019)
418.	Statement of evidence of Kelvin Brian McCartie and Gillian Patricia McCartie on behalf of Sustainable Otakiri Incorporated (29 April 2019)
419.	Statement of evidence of Lesley Joy Mckeown on behalf of Sustainable Otakiri Incorporated (29 April 2019)
420.	Brief of evidence of Tuwhakairiora O'Brien (29 April 2019)
421.	Statement of evidence of Anita Gray on behalf of Sustainable Otakiri Incorporated (29 April 2019)
422.	Statement of evidence of Christine Bridget Robson on Planning Matters on behalf of Te Rūnanga O Ngāti Awa (29 April 2019)
423.	Brief of evidence of Leonie Te Aorangi Simpson (29 April 2019)
424.	Statement of evidence of Sarah Jane Van Der Boom on behalf of Sustainable Otakiri Incorporated (29 April 2019)
425.	Statement of evidence of Gregory John Carlyon on behalf of Sustainable Otākiri Incorporated Planner (30 April 2019)
426.	Statement of reply evidence of Dylan Cloan Makgill – Planning (9 May 2019)
427.	Statement of rebuttal evidence of Craig Barry Batchelar on behalf of Whakatāne District Council Planner (10 May 2019)
428.	Statement of rebuttal evidence of Mark Leslie Cox (Employment Effects) on behalf of the applicant (10 May 2019)
429.	Statement of rebuttal evidence of Keith Frentz (Planning – District Matters) on behalf of the applicant (10 May 2019)
430.	Statement of rebuttal evidence of Michael Hilkja Joachim Gleissner (Company Overview And Project Description) on behalf of the applicant (10 May 2019)
431.	Statement of rebuttal evidence of Michael David Goff (Groundwater) on behalf of the applicant (10 May 2019)

432.	Rebuttal statement of evidence of Nevil Ian Hegley (Noise) on behalf of the applicant (10 May 2019)
433.	Statement of rebuttal evidence of Hamish Joyce (Operational and Construction Overview) on behalf of the applicant (10 May 2019)
434.	Statement of rebuttal evidence of Hemana Eruera Manuera (10 May 2019)
435.	Statement of rebuttal evidence of Malory Michaela Osmond (Regional Planning) on behalf of the applicant (10 May 2019)
436.	Statement of rebuttal evidence of Wade Nathan Robertson (Landscape Architect) on behalf of the applicant (10 May 2019)
437.	Statement of evidence of Rihi Vercoe (undated)
<i>Director-General of Conservation v Taranaki Regional Council [2019] NZEnvC 203</i>	
438.	Statement of evidence of Haumoana White on behalf of Ngā Hapū o Poutama (9 August 2018)
439.	Revised brief of evidence of Bruce Stirling (31 August 2018)
440.	Statement of evidence of Michael Peter John Dreaver (engagement with tangata whenua) on behalf of the New Zealand Transport Agency (17 May 2019)
441.	Statement of evidence of Russell Gibbs on behalf of Poutama Kaitiaki Charitable Trust and D & T Pascoe (14 June 2019)
442.	Statement of evidence of Desmond Gibbs on behalf of Poutama Kaitiaki Charitable Trust and D & T Pascoe (14 June 2019)
443.	Statement of evidence of Debbie Pascoe on behalf of Poutama Kaitiaki Charitable Trust and D & T Pascoe (14 June 2019)
444.	Statement of evidence of Tony Pascoe on behalf of Poutama Kaitiaki Charitable Trust and D & T Pascoe (14 June 2019)
445.	Statement of evidence of Paul Silich on behalf of Te Rūnanga o Ngāti Tama (14 June 2019)
446.	Statement of evidence of Paul Robert Thomas on behalf of Te Rūnanga o Ngāti Tama (History) (14 June 2019)
447.	Statement of evidence (Cultural) of Gregory Lloyd White on behalf of Te Rūnanga o Ngāti Tama (14 June 2019)
448.	Supplementary statement of evidence of Russell Gibbs on behalf of Poutama Kaitiaki Charitable Trust and D & T Pascoe (17 June 2019)

449.	Statement of rebuttal evidence of Michael Dreaver (Tangata Whenua Engagement) on behalf of the NZ Transport Agency (5 July 2019)
<i>Tauranga Environmental Protection Society Inc v Tauranga City Council [2020] NZEnvC 43</i>	
450.	Statement of evidence in chief of Braddyn Thomas Coombs on behalf of Transpower New Zealand Limited (1 February 2019)
451.	Statement of evidence in chief of Selina Corboy on behalf of Transpower New Zealand Limited (1 February 2019)
452.	Statement of evidence in chief of Malcolm James Hunt on behalf of Transpower New Zealand Limited (1 February 2019)
453.	Statement of evidence in chief of Chris Horne on behalf of Transpower New Zealand Limited (1 February 2019)
454.	Statement of evidence in chief of Richard Joyce behalf of Transpower New Zealand Limited (1 February 2019)
455.	Statement of evidence in chief of Douglas McNeill on behalf of Transpower New Zealand Limited (1 February 2019)
456.	Statement of evidence in chief of Raewyn Lesley Moss on behalf of Transpower New Zealand Limited (1 February 2019)
457.	Statement of evidence in chief of Dr Hannah Mueller on behalf of Transpower New Zealand Limited (1 February 2019)
458.	Statement of evidence in chief of Caleb Sjardin on behalf of Transpower New Zealand Limited (1 February 2019)
459.	Statement of evidence in chief of Colin Michael Thomson on behalf of Transpower New Zealand Limited (1 February 2019)
460.	Statement of evidence in chief of Matthew Walker on behalf of Transpower New Zealand Limited (1 February 2019)
461.	Statement of evidence of Paula Michelle Golsby (8 February 2019)
462.	Statement of evidence of Rebecca Keren Ryder (11 February 2019)
463.	Statement of evidence of Stephen Kenneth Brown (15 March 2019)
464.	Brief of evidence of Peter Te Ratahi Cross on behalf of Ngāi Tūkairangi Trust (25 March 2019)
465.	Brief of evidence of Paul Joseph Stanley (25 March 2019)

466.	Statement of evidence of Taikato Taikato on behalf of The Maungatapu Marae Trust (25 March 2019)
467.	Statement of evidence of Parengamihi Gardiner on behalf of Maungatapu Marae Trust (3 April 2019)
468.	Statement of evidence of Matemoana McDonald on behalf of Maungatapu Marae Trust (3 April 2019)
469.	Statement of evidence of Hinerongo Walker on behalf of Maungatapu Marae Trust (3 April 2019)
470.	Reply evidence of Braddyn Thomas Coombs on behalf of Transpower New Zealand Limited (3 April 2019)
471.	Reply evidence of Chris Horne on behalf of Transpower New Zealand Limited (3 April 2019)
472.	Reply evidence of Douglas McNeill on behalf of Transpower New Zealand Limited (3 April 2019)
473.	Reply evidence of Paula Michelle Golsby (4 April 2019)
474.	Statement of evidence of Matemoana McDonald on behalf of Maungatapu Marae Trust (8 April 2019)
475.	Rebuttal evidence of Rebecca Keren Ryder on behalf of Tauranga City Council and Bay of Plenty Regional Council (undated)
476.	Notes of evidence taken before the Environment Court (hearing commenced 29 April 2019)
<i>Wilson v Waikato Regional Council [2021] NZEnvC 131</i>	
477.	Statement of evidence of Joseph Davis for the applicant (28 August 2020)
478.	Evidence of John Robert Hudson for the applicant (28 August 2020)
479.	Statement of evidence of David Graham Mansergh (11 September 2020)
480.	Graphic evidence in chief of David Graham Mansergh (11 September 2020)
481.	Evidence of Bridget Mary Gilbert on behalf of the appellant (Landscape and Visual Effects) (25 September 2020)
482.	Evidence of Rebecca Keren Ryder Landscape Architect as a summoned witness for the Court (25 September 2020)
483.	Rebuttal evidence of Joseph Davis for the applicant (16 October 2020)
484.	Rebuttal evidence of John Robert Hudson for the applicant (16 October 2020)

485.	Rebuttal evidence of John Robert Hudson for the applicant to accompany video (28 October 2020)
486.	Evidence of Bridget Mary Gilbert on behalf of the appellant (Landscape and Visual Effects) (3 November 2020)
487.	Affidavit of Joseph John Davis (8 December 2020)
488.	Notes of Evidence

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***Te Waka Hi Ika o Te Arawa v Treaty of Waitangi Fisheries Commission* HC Auckland, CP 395/93, CP 122/95 & CP 27/95, 4 August 1998, Paterson J**

489.	Affidavit of Elaine Rawinia Tapsell in support of the applicant's case regarding the High Court Rule 418 preliminary questions as referred back to this Court by Her Majesty's Privy Council; Exhibit Te Arawa Mangai Nui Upoko Tutakitaki, Te Ihu o te Waka ki Maketu (20 June 1990).
490.	Principles for the Allocation of Quota: Report for the Māori Fisheries Commission; Exhibit A Apirana Mahuika Nga Tikanga Māori e pa ana ki a Tangaroa (22 November 1991).
491.	Affidavit of Robin Hapi in support of application to join second and third respondents (27 September 1994); Exhibit A The Report (9 November 1993).
492.	Sixth affidavit of Reuben Brian Perenara in support of the applicant's case regarding the High Court Rule 418 preliminary questions as referred back to this Court by Her Majesty's Privy Council; Exhibit C Custom Law: Address to the New Zealand Society for Legal and Social
493.	Affidavit of Phillip Levuka Corbett in support of Te Waka Hi Ika o Te Arawa Inc (18 December 1997).
494.	Affidavit of Piatarahi Maria Kerr in support of the applicant's case regarding the High Court Rule 418 preliminary questions as referred back to this Court by Her Majesty's Privy Council (18 December 1997).
495.	Affidavit of Te Wano Ngahana Ngatipeehi Waata in support of opposition to amend notice to strike out and in support of application for case stated (18 December 1997)
496.	First affidavit of Professor Ngapare Kaihina Hopa in support of the second to fourth plaintiffs in relation to the hearing of the preliminary questions (30 January 1998)
497.	Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998)

498.	Affidavit of Hirini Moko Mead for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998)
499.	Affidavit of Tamati Muturangi Reedy for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (25 February 1998)
500.	Affidavit of Professor Sir Hugh Kawharu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (15 February 1998)
501.	First affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998)
502.	First affidavit of John Te Ahikaiata Joseph Turei (28 January 1998)
503.	First affidavit of Professor Ranginui Walker in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (28 January 1998)
504.	First affidavit of Manuka Henare in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (29 January 1998)
505.	First affidavit of Professor Ngapare Kaihina Hopa in Support of the second to fourth plaintiffs in relation to the hearing on the preliminary questions (30 January 1998)
506.	Te Kupu a te Toi Huarewa (Professor) James Te Wharehuia Milroy rāua ko te Ahorangi (Professor) Timoti Samuel Kāretu (25 February 1998)
507.	Affidavit of Professor James Te Wharehuia Milroy and Professor Timoti Samuel Karetu for the Treaty of Waitangi Fisheries Commission in relation to hearing of preliminary question (unsigned)
508.	Second affidavit of Manuka Henare in reply to affidavits in opposition filed by the Fisheries Commission and Treaty tribes (11 March 1998)
509.	First affidavit of Professor Patrick Wahanga Hohepa on behalf of second – fourth plaintiffs in relation to the hearing of the preliminary question (11 March 1998)
510.	Second affidavit of Professor Ngapare Kaihina Hopa in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (11 March 1998)
511.	Second affidavit of Professor Pita Sharples in support of the second to fourth plaintiffs in relation to the hearing of the preliminary question (11 March 1998)
512.	Second affidavit of John Te Ahikaiata Joseph Turei in Reply (11 March 1998)
513.	Second affidavit of Dr Cleve Dufty Barlow in reply to affidavits in opposition filed by the various parties in relation to the preliminary question (11 March 1998)
514.	Affidavit of Angeline Elizabeth Ngahina Greensill in support of the plaintiff, and in reply (13 March 1998)
515.	First affidavit of Dr Cleve Dufty Barlow

516.	Eighth affidavit of Reuben Brian Perenara in support of the CP 395/93 plaintiffs position in regards the HCR 418, and in reply to various affidavits filed in opposition to that position
517.	Principles for the Allocation of Quota: Report for the Māori Fisheries Commission
518.	"Rekohu (Chatham Islands) Submission to Te Ohu Kai Moana on Proposed Models of Allocation for Pre-settlement Assets"
519.	Notes of Evidence
Clarke v Takamore [2010] 2 NZLR 525	
520.	Affidavit of Henare Heremia in support of the statement of defence (31 July 2008)
521.	Affidavit of Tamati Kruger in support of the statement of defence (31 July 2008)
522.	Affidavit of Don Takamore in support of the statement of defence (draft) (31 July 2008)
523.	Affidavit of Josephine Takamore in support of the statement of defence (31 July 2008)
524.	Affidavit of Nehu Takamore in support of the statement of defence (31 July 2008)
525.	Affidavit of Pou Temara in support of the statement of defence (31 July 2008)
526.	Affidavit of Don Takamore in support of the statement of defence (Sworn) (8 August 2008)
527.	Affidavit of Rangi Karaitiana McGarvey being a translation of the affidavit of Henare Heremia (27 August 2008)
R v Tamati Mason [2012] NZHC 1361	
528.	Affidavit of Moana Jackson (24 April 2012)
529.	Affidavit of Tamati Mason (24 May 2011)
530.	Brief of evidence of Moana Jackson (10 January 2005)
531.	Cultural Advisor Report – hui held 5 July 2012 at Waikeria Prison (Maanu Paul)
532.	Notes of evidence, 3 May 2012
Ngāti Hurungaterangi v Ngāti Wahiao [2016] 3 NZLR 378	
533.	Affidavit of Hamuera Walker Mitchell (6 September 2013)
534.	Deed poll agreement for the Trust (29 August 2008) Exhibit to affidavit of Hamuera Walker Mitchell
535.	Arbitration decision (7 June 2013) Exhibit to Affidavit of Hamuera Walker Mitchell.

Re Tipene [2016] NZHC 3199	
536.	Affidavit of Denis Wiremu Tipene (sworn 14 November 2011)
537.	Affidavit of Michael Richard Skerrett for Te Rūnanga o Ngāi Tahu (31 July 2015)
538.	Letter of Stewart Bull on behalf of certain Rakiura Tītī Committee Members (30 August 2015)
539.	Affidavit of Sandra Helen Cook attaching evidence from Te Rūnanga o Ngāi Tahu (affirmed 30 October 2014)
540.	Pūkenga's report of Jane Ruby Karina Davis (undated version – sent to counsel 6 November 2015)
541.	Exhibit DA-20 to the affidavit of David Anderson Armstrong (affirmed 31 August 2015) <i>Ngai Tahu Maori Trust Board v Attorney-General</i> CP 559/87 Affidavit of Henare Rakihia Tau in support of application for declaration
542.	Exhibit DA-26 to the affidavit of David Anderson Armstrong (affirmed 31 August 2015) Evidence of Paddy Gillroy
543.	Exhibit DA-27 to the affidavit of David Anderson Armstrong (affirmed 31 August 2015) Submission to the Waitangi Tribunal from Rakiura Māori Land Incorporated
544.	Exhibit DA-28 to the affidavit of David Anderson Armstrong (affirmed 31 August 2015) Mahinga Kai, the submission of Atholl Anderson
545.	Exhibit DA-29 to the affidavit of David Anderson Armstrong (affirmed 31 August 2015) Evidence of Paddy Gillroy
546.	Exhibit DA-38 to the affidavit of David Anderson Armstrong (affirmed 31 August 2015) Draft affidavit of Sandra Helen Cook affirmed October 2014
547.	Exhibit DA-55 to the affidavit of David Anderson Armstrong (affirmed 31 August 2015) Mahinga Kai, Evidence of H R Tau, David Higgins, Trevor Howsee, Peter Ruka and Barry Brailsford
548.	Affidavit of Denis Wiremu Tipene (31 March 2016)
549.	Brief of evidence of Denis Wiremu Tipene (undated)
Taranaki-Whanganui Conservation Board v The Environmental Protection Authority [2018] NZHC 2217	
550.	Cultural values assessment by Tahu Potiki (Ngāi Tahu, Ngāti Mamoe)
Solicitor-General v Heta [2018] NZHC 2453	
551.	Section 27 report, Khylee Quince (18 September 2018)

Mercury NZ Ltd v Waitangi Tribunal [2021] NZHC 654, The Wairarapa ki Tararua district Inquiry

552.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J4 Vanessa Eparaima (22 May 2017)
553.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J5 Nigel Te Hiko (22 May 2017)
554.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J20 Poihaere Elizabeth Anne Rangitutia Heke-Barrett (7 August 2018)
555.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J21 Paraone Gloyne (5 October 2018)
556.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J22 Affidavit of Te Hapuku Munro Rikiriki (5 October 2018)
557.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J23 Affidavit of Nigel Huirama Te Hiko (3 October 2018)
558.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J24 Affidavit of Vanessa Eparaima (5 October 2018)
559.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J43 Haami Te Whaiti (19 November 2018)
560.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J43(b) Summary of evidence of Haami Te Whaiti (19 December 2018)
561.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J79 Brief of evidence in reply of Haami Te Whaiti (23 May 2019)
562.	The Wairarapa ki Tararua District Inquiry, Wai 863, #J95 Brief of evidence of Nigel Huirama Te Hiko (5 July 2019)
563.	The Wairarapa ki Tararua District Inquiry, Wai 863, #4.11
564.	Joint affirmation of Jacinta Arianna Ruru and Mihiata Rose Pirini (14 September 2020)
565.	Affirmation of Sir Tipene Gerard O'Regan (17 September 2020)

Re Edwards [2021] NZHC 1025

566.	Affidavit of Muriwai Maggie Jones (3 April 2017)
567.	Affidavit of Te Ringahuia Hata (29 January 2020)
568.	Affidavit of Hemaima Mariana Hughes (30 January 2020)
569.	Affidavit Karen Stefanie Mokokoko (30 January 2020)
570.	Affidavit Leelyn Raiha Ruwhiu (30 January 2020)

571.	Affidavit Genevieve Ruwhiu-Pupuke (30 January 2020)
572.	Affidavit of Moka Kainga Maata Puru (3 February 2020)
573.	Affidavit of Carol Hemoana Gage (13 February 2020)
574.	Affidavit of Tama Te Waiwhakaruku Hata (14 February 2020)
575.	Affidavit of Tuariki John Edward Delamere (18 February 2020)
576.	Affidavit of Anna-Marei Kurei (19 February 2020)
577.	Affidavit of Donald Ati Kurei (19 February 2020)
578.	Affidavit of Te Rua Rakuraku (19 February 2020)
579.	Affidavit of Hetaraka Biddle (20 February 2020)
580.	Affidavit of Marjorie Huingapani Kurei (20 February 2020)
581.	Affidavit of Tracy Francis Hillier (20 February 2020)
582.	Affidavit of Pepper Hudson (20 February 2020)
583.	Affidavit of Majorie Huingapani Kurei (20 February 2020)
584.	Affidavit of Leeann Martin (20 February 2020)
585.	Affidavit of Toni Cherie Ngoungou-Martin (20 February 2020)
586.	Affidavit of Kayreen Tapuke (20 February 2020)
587.	Affidavit of Hohepa Te Kahika (20 February 2020)
588.	Affidavit of Christina Davis (21 February 2020)
589.	Affidavit of Larry Takamoana Delamere (21 February 2020)
590.	Affidavit of Adriana Edwards (21 February 2020)
591.	Affidavit of Robert Edwards (21 February 2020)
592.	Affidavit of Te Kou Rikirangi Gage (21 February 2020)
593.	Affidavit of Te Ringahuia Hata (21 February 2020)
594.	Affidavit of Eru Koopu (21 February 2020)
595.	Affidavit of Danny Craven Pohipi (21 February 2020)
596.	Affidavit of Robert Selwyn (21 February 2020)
597.	Affidavit of Tuwhakairiora (Tu) Williams (21 February 2020)
598.	Affidavit of Heremaia Warren (21 February 2020)

599.	Affidavit of Dayle Lianne Takitimu (24 February 2020)
600.	Affidavit of Te Aururangi Davis (14 April 2020)
601.	Affidavit of Muriwai Jones (14 April 2020)
602.	Affidavit of Arapeta Mio (14 April 2020)
603.	Affidavit of Leonie Te Aorangi Simpson (1 May 2020)
604.	Affidavit of David Peters (24 July 2020)
605.	Affidavit of Tā Hirini Moko Haerewa Mead, Dr Hohepa (Joseph) Mason and Te Kei (O Te Waka) Wirihana Merito (19 May 2020)
606.	Affidavit of David Vernon Williams (30 July 2020)
607.	Affidavit of Te Riaki Amoamo (3 August 2020)
608.	Affidavit of Mandy Mereaira Hata (5 August 2020)
609.	Joint affidavit of Te Rua Rakuraku and Donald Kurei (21 January 2022)
610.	Affidavit of Te Ringahuia Hata (24 January 2022)
611.	Affidavit of Tā Pou Temara (24 January 2022)
612.	Joint brief of evidence of Dr Te Kei (O Te Waka) Wirihana Merito and William Bruce Stewart (24 January 2022)
613.	Affidavit of Te Riaki Amoamo (25 January 2022)
614.	Affidavit of Muriwai Jones (26 January 2022)
615.	Third affidavit of Te Kou Rikirangi Gage (1 February 2022)
616.	Third affidavit of Tracy Hillier (1 February 2022)
617.	Joint affidavit of Tracy Hillier, Concheta Pepper Hudson and Toni Cherie Ngoungou-Martin (8 February 2022)
618.	Joint brief of evidence of Dr Te Kei (o te Waka) Wirihana Merito and William Bruce Stewart in reply (8 February 2022)
619.	Affidavit of Nepia James Tipene (16 February 2022)
620.	Second affidavit of Te Riaki Amoamo (21 February 2022)
621.	Fourth affidavit of Donald Ati Kurei (23 February 2022)
622.	Affidavit of Louis Agassiz Schenker Rapihana (31 March 2022)
623.	Affidavit of Nepia James Tipene (21 February 2020)
624.	Affidavit of Hetaraka Biddle (undated)

<i>Re Reeder on behalf of Ngā Pōtiki [2021] NZHC 2726</i>	
625.	Affidavit of Colin Francis Reeder (3 April 2017)
626.	Affidavit of Charlie Wahia Tawhiao (14 December 2017)
627.	Affidavit of Hauata Palmer (15 December 2017)
628.	Evidence of Quinton Ivan George Bidois (6 July 2020)
629.	Affidavit of Erana Te Hei Koko Brewerton (6 July 2020)
630.	Affidavit of Victoria Carroll (6 July 2020)
631.	Evidence of Peter Ratahi Cross (6 July 2020)
632.	Affidavit of Matire Duncan (6 July 2020)
633.	Brief of evidence of Marama Hikatangata Furlong (6 July 2020)
634.	Affidavit of Desmond Kahotea (6 July 2020)
635.	Evidence of Desmond Parekura Heke Kaiawha (6 July 2020)
636.	Brief of evidence of Ronald Te Pio Kawe (6 July 2020)
637.	Evidence of Hauata Palmer (6 July 2020)
638.	Affidavit of Colin Francis Reeder (6 July 2020)
639.	Further affidavit of Colin Francis Reeder (6 July 2020)
640.	Evidence of Mita Michael Ririnui (6 July 2020)
641.	Brief of evidence of Titihuia Ririnui (6 July 2020)
642.	Affidavit of Bruce Stirling (6 July 2020)
643.	Affidavit of Poihaere Walker (6 July 2020)
644.	Evidence of Carlo Jason Ellis (7 July 2020)
645.	Brief of evidence of Huikakahu Brian Kawe (7 July 2020)
646.	Evidence of Waraki Te Pewa Paki (7 July 2020)
647.	Evidence of Albert Puhirake Ihaka (7 July 2020)
648.	Evidence of Kihi Ngatai (7 July 2020)
649.	Further affidavit of Desmond Kahotea (17 July 2020)
650.	Affidavit of Rahera Aroha Ohia (7 July 2020)
651.	Affidavit of Rehua Tom Smallman (7 July 2020)

652.	Affidavit of Niclas Czerney Rasmus Johansson (7 October 2020)
653.	Affidavit of Te Kahautu Maxwell (7 August 2020)
654.	Further affidavit of Te Kahautu Maxwell (7 August 2020)
655.	Affidavit of Martin Fisher (16 December 2020)
656.	Affidavit of Dr Terrence Green (29 January 2021)
657.	Affidavit of Jonathan Lewis West (12 April 2021)
<i>Re Ngāti Pāhauwera [2021] NZHC 3599</i>	
658.	Brief of evidence of Fred Hancy (31 August 2007)
659.	Brief of evidence of Angela Jenny Culshaw-Kaisa (31 August 2007)
660.	Brief of evidence of Cordy Tawa Huata (31 August 2007)
661.	Brief of evidence of Piripi Nuku (31 August 2007)
662.	Brief of evidence of Beverley Janet Rameka (31 August 2007)
663.	Brief of evidence of Olga Ringakopi Rameka (31 August 2007)
664.	Brief of evidence of Wayne Taylor (31 August 2007)
665.	Brief of evidence of Marama Teresa Te Aho (31 August 2007)
666.	Brief of evidence of Harry Ihaia Tuapawa (31 August 2007)
667.	Brief of evidence of Wiremu Junior Winiata (31 August 2007)
668.	Brief of evidence of Wiki Williams (31 August 2007)
669.	Brief of evidence of Peggy Lillian Cottle (10 September 2007)
670.	Transcript of Mohaka Māori Land Court hearing (18-22 February 2008)
671.	Statement of Nell Adsett (21 November 2013)
672.	Affidavit of Bella Carol Gadsby (21 November 2013)
673.	Statement of Angela Hawkins (21 November 2013)
674.	Affidavit of Janet Huata (21 November 2013)
675.	Affidavit of Ani Keefe (21 November 2013)
676.	Affidavit of Frances Emily Whale (21 November 2013)
677.	Affidavit of Raymond Russell Edwards (25 November 2013)
678.	Affidavit of Gerald Brenton Aranui (26 November 2013)

679.	Affidavit of William Henry Culshaw (26 November 2013)
680.	Affidavit of Arthur Thorpe Gemmell (26 November 2013)
681.	Affidavit of Maadi Te Aho (27 November 2013)
682.	Affidavit of Awhina Evelyn Waaka (27 November 2013)
683.	Affidavit of Tama Turanga Huata (28 November 2013)
684.	Affidavit of Hiro Hamilton (5 December 2013)
685.	Affidavit of Wi Derek Huata/King (5 December 2013)
686.	Statement of Jean McIver (9 December 2013)
687.	Affidavit of Maraea Aranui (10 December 2013)
688.	Statement of George Albert Hawkins (11 December 2013)
689.	Affidavit of Wiremu Itereama Sylvester Hodges (11 December 2013)
690.	Affidavit of Fred McRoberts (11 December 2013)
691.	Statement of Hazel Elizabeth Kinita (12 December 2013)
692.	Affidavit of Marie Ketia Moses (19 December 2013)
693.	Affidavit of Darren Botica (23 December 2013)
694.	Affidavit of Tiwana Aranui (10 January 2014)
695.	Statement of Shane Warren Tuapawa (2 February 2014)
696.	Affidavit of Vilma Marie Hape (7 February 2014)
697.	Affidavit of Stuart Lorris Halliday (10 February 2014)
698.	Affidavit of Henare Wainohu (6 March 2014)
699.	Affidavit of James William Adsett (25 March 2014)
700.	Affidavit of El Maadi Te Aho (11 April 2014)
701.	Affidavit of Bruce Howard Te Kahika (11 April 2014)
702.	Affidavit of Anjelco Petkovich (11 April 2014)
703.	Affidavit of Colin Culshaw (21 May 2014)
704.	Affidavit of David Gordon Tihau Bishop (5 November 2014)
705.	Affidavit of Tania Marama Petrus Hopmans (3 April 2017)
706.	Affidavit of Malcolm J Kingi (3 April 2017)

707.	Affidavit of Taape Tareha O'Reilly (3 April 2017)
708.	Affidavit of Theresa Pauline Thornton (27 November 2019)
709.	Affidavit of Ketia Katy Waaka (28 November 2019)
710.	Affidavit of Arthur Thorpe Gemmell (10 December 2019)
711.	Brief of evidence of Kuki Green (10 December 2019)
712.	Brief of evidence of Isobel Beronica Thompson (10 December 2019)
713.	Brief of evidence of Gaye Hawkins (11 December 2019)
714.	Affidavit of Bonny Vi Hatami (12 December 2019)
715.	Brief of evidence of Bonny Vi Hatami (13 December 2019)
716.	Brief of evidence of Charles Seymour Arundel Lambert (13 December 2019)
717.	Statement of Luis James McDonnell (13 December 2019)
718.	Brief of evidence of David Alexander (17 December 2019)
719.	Brief of evidence of Owen Jerry Hapuku (17 December 2019)
720.	Brief of evidence of Mana Mauricina Keefe (19 December 2019)
721.	Brief of evidence of Gladys Myra Nelson (19 December 2019)
722.	Brief of evidence of Toro Edward Reginald Waaka (19 December 2019)
723.	Affidavit of Toro Edward Reginald Waaka (17 February 2020)
724.	Affidavit of Rapihana Te Kaha Hawaikirangi (18 February 2020)
725.	Affidavit of Marei Boston Apatu (10 August 2020)
726.	Affidavit of Tamati Tuaroa Cairns (10 August 2020)
727.	Affidavit of Diane Jean Lucas (10 August 2020)
728.	Affidavit of Laurence Bunny O'Reilly (10 August 2020)
729.	Affidavit of Matthew Harry Pinkerton (10 August 2020)
730.	Affidavit of Elizabeth Dale Pishief (10 August 2020)
731.	Affidavit of Hera Taukamo (10 August 2020)
732.	Affidavit of Shane Richard Hatara Taurima (10 August 2020)
733.	Affidavit of Kay Taape Tareha-O'Reilly (10 August 2020)
734.	Affidavit of Tony Walzl (10 August 2020)

735.	Affidavit of Martin Fisher (11 August 2020)
736.	Affidavit of Roderick Nigel Kerry Hadfield (11 August 2020)
737.	Affidavit of Rapihana Te Kaha Hawaikirangi (11 August 2020)
738.	Affidavit by Tania Marama Petrus Hopmans (11 August 2020)
739.	Affidavit of Richard Mark Nicholas (11 August 2020)
740.	Affidavit of Patrick Parsons (11 August 2020)
741.	Affidavit by Justin Owen Ian Puna (11 August 2020)
742.	Affidavit of Bevan Maihi Taylor (11 August 2020)
743.	Affidavit of Peter Arthur Allan (24 September 2020)
744.	Affidavit of Reece Thomas O'Leary (24 September 2020)
745.	Affidavit of Anthony Cyril Clifford (25 September 2020)
746.	Affirmation of Nichola Ann Nicholson (25 September 2020)
747.	Reply evidence of Ranginui Keefe (18 December 2020)
748.	Affidavit of Monique Lisa Andrew (27 November 2020)
749.	Affidavit of Philip Cleaver (27 November 2020)
750.	Affidavit of Ashley Nevil Gould (27 November 2020)
751.	Affidavit of Richard James Jennings (27 November 2020)
752.	Affidavit of Craig Alan Lawson (4 December 2020)
753.	Affidavit of Daryl Richard Sykes (4 December 2020)
754.	Reply affidavit of Renata Bush (17 December 2020)
755.	Affidavit by Justin Owen Ian Puna (17 December 2020)
756.	Reply affidavit of Marama Kaneihana Tareha-Te Hata (17 December 2020)
757.	Reply affidavit of Hoani Allen Taurima (17 December 2020)
758.	Affidavit of Tony Walzl (17 December 2020)
759.	Reply affidavit of Tania Marama Petrus Hopmans (18 December 2020)
760.	Reply evidence of David James Alexander (21 December 2020)
761.	Reply evidence of Toro Edward Reginald Waaka (21 December 2020)
762.	Reply evidence of EL Maadi Te Aho (22 December 2020)

763.	Brief of evidence of Mary Lynne Brown (undated and unsigned)
764.	Brief of evidence of Craig Braden Innes (undated and unsigned)
765.	Brief of evidence of Dylan Kane Harvey (undated and unsigned)
766.	Brief of evidence of Hawi Pere Huata (undated and unsigned)
767.	Brief of evidence of Tuki Fraser Huata (undated and unsigned)
768.	Brief of evidence of Dr Paul David Husbands (undated and unsigned)
769.	Brief of evidence in reply of Malcolm James Kingi (undated and unsigned)
770.	Brief of evidence of Te Kaha (undated and unsigned)
771.	Brief of evidence of Mere Katene (undated and unsigned)
772.	Brief of evidence of Malcolm James Kingi (undated and unsigned)
773.	Brief of evidence of Dr Leland Ruwhiu (undated and unsigned)
774.	Brief of evidence of Sona Piripi Selwyn (undated and unsigned)
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775.	Statement of evidence of Ngarimu Alan Huiroa Blair for the plaintiff (2 June 2020)
776.	Statement of evidence of Taiaha (Lance) Joseph Hawke for the plaintiff (2 June 2020)
777.	Statement of evidence of Te Kurataiaho Lonoholoikahiki Kapea on behalf of the plaintiff (te reo Māori version) (2 June 2020)
778.	Statement of evidence of Te Kurataiaho Lonoholoikahiki Kapea on behalf of the plaintiff (English) (2 June 2020)
779.	Statement of evidence of Margaret Anne Kawharu for the plaintiff (2 June 2020)
780.	Statement of evidence of Vivian Tāmati Kruger on behalf of the plaintiff (2 June 2020)
781.	Statement of evidence of Paul Edward Meredith on behalf of the plaintiff (2 June 2020)
782.	Statement of evidence of Charles Wahia Tawhiao on behalf of the plaintiff (2 June 2020)
783.	Statement of evidence of David Vernon Williams on behalf of the plaintiff (2 June 2020)
784.	Dr Korohere Crossley Bishop Lloyd Ngāpō evidence on behalf of second defendant (13 October 2020) – Te Reo Māori

785.	Dr Korohere Crossley Bishop Lloyd Ngāpō evidence on behalf of second defendant (13 October 2020) – English
786.	Reply evidence of Ngarimu Alan Huiroa Blair on behalf of the plaintiff (4 December 2020)
787.	Reply statement of evidence of Margaret Anne Kawharu (4 December 2020)
788.	Statement of evidence of Vivian Tāmāti Kruger on behalf of the plaintiff in reply (4 December 2020)
789.	Statement of evidence of Paul Edward Meredith on behalf of the plaintiff in reply (4 December 2020)
790.	Statement of evidence of Charles Wahia Tawhiao on behalf of the plaintiff in reply (4 December 2020)
791.	Reply statement of evidence of David Vernon Williams (4 December 2020)
792.	Brief of evidence of Ted Andrews and Glen (Joe) Tupuhi (13 October 2020)
793.	Tipa Shane Compain evidence on behalf of the Second Defendant (13 October 2020)
794.	Brief of evidence of Nigel Hikurangi Denny (13 October 2020)
795.	Harry Haerengarangi Mikaere evidence on behalf of the second defendant (13 October 2020)
796.	Terrence John McEnteer evidence on behalf of second defendant (13 October 2020)
797.	Debra Liane Ngamane evidence on behalf of second defendant (13 October 2020)
798.	Walter (Wati) Ngakoma Ngamane evidence on behalf of the second defendant (13 October 2020)
799.	William Kapanga Peters evidence on behalf of second defendant (13 October 2020)
800.	Statement of evidence of Hauauru Eugene Raymond Rawiri on behalf of the second defendant (13 October 2020) – Te Reo Māori
801.	Statement of evidence of Hauauru Eugene Raymond Rawiri on behalf of the second defendant (13 October 2020) – English
802.	Brief of evidence of Hayden Te Hira Solomon (13 October 2020)
803.	Statement of evidence of David Errol Taipari for the second defendant (13 October 2020)
804.	Statement of evidence of Morehu Anthony Dean Wilson on behalf of the second defendant (13 October 2020)

805.	Brief of evidence of David Wilson (13 October 2020)
806.	Brief of evidence of Karen Akamiria Wilson (13 October 2020)
807.	Notes of Evidence, 6 February 2021

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808.	Transcript of hearing before the Māori Appellate Court (4-6 March 1958)
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809.	Notes of evidence taken before Judge C J McGuire (12 June 2006)
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810.	Affidavit of Charlie Wahia Tawhiao in support of application for leave to intervene and be heard on appeal (29 March 2018)
811.	Affidavit of Henri (Harry) Jacques Burkhardt in support of application for leave to intervene in and be heard on appeal (4 April 2018)
<i>Ellis v R</i> [2022] NZSC 114	
812.	Agreed statement of facts filed pursuant to s 9 of the Evidence Act 2006 (Hirini Moko Mead, Pou Temara) (31 January 2020)