

MOTITI

MOTITI

*Report on the
Te Moutere o Motiti Inquiry*

WAI 2521

WAITANGI TRIBUNAL REPORT 2023



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Tui!
Tuituia te heke! Tuituia te kāhotū!
He Ariki Tauira!
Ka pikitia te paepae tuatahi:
– Ko te hikinga tērā o te tapu;
Ka pikitia te paepae tuarua:
– Ko te nohoanga tērā e te iwi;
Te paepae e hira atu ana ia:
– Ko te mana motuhake tērā o Motiti.

Ka rongo te Pō! Ka rongo te Ao!
I te kōrero – i te wānanga –
Kei te wānangananga te ao!
Kei te wānangananga te pō!
Whano! Whanake!
Haramai te toki –
Haumi e!
Hui e!
Taiki e!

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Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Willie Jackson
Minister for Māori Development

The Honourable Kelvin Davis
Minister for Crown Māori Relations

Parliament Buildings
WELLINGTON

21 March 2022

E mihi ana ki a koutou e ngā Minita e tū nei ki te kei o te waka

Please find enclosed our report on the Te Moutere o Motiti inquiry, which follows hearings held in Tauranga and Whakatāne in 2018 and 2019.

At the heart of this report is an allegation that the Crown has breached the principles of te Tiriti by failing to recognise the tangata whenua of Motiti Island as an independent tribal group who warrant their own Treaty settlement. The claimants allege the Crown wrongly assumes the island's tangata whenua are covered by the Ngāti Awa settlement.

Our inquiry focused on a process the Crown undertook, in 2015 and 2016, to assess the claimants' argument that the island's tangata whenua are a distinct tribal group, separate from Ngāti Awa, and that their historical Treaty claims thus remain unsettled. Termed the 'kinship review', this process had the related aim of clarifying who the Crown should engage with in relation to Motiti, by identifying which tribal group or groups have authority to speak for the island. The claimants allege the review was flawed and reached incorrect findings, perpetuating what they see as the Crown's enduring failure to understand their identity, and to recognise their distinct rights on Motiti.

The central inquiry issue was thus whether the Crown, through its kinship review, properly informed itself of the identity of the tangata whenua of Motiti.

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To address this central issue, we had to consider the more fundamental question of who the tangata whenua are. At the request of the claimants and the Crown, we have done so, based on the evidence we received. (We outline our jurisdiction to consider such an issue in chapter 2.)

To assess the claimants' allegation that the Crown wrongly believes they are covered by the Ngāti Awa settlement, we considered a third issue: whether the Ngāti Awa Claims Settlement Act 2005 settled Motiti Island historical claims based on descent from Te Hapū.

The Crown supported an expedited inquiry into these issues, noting it had been unable to reach conclusive views on them in its kinship review, due to the complex and contradictory evidence on the question of tribal identity.

The question of tribal identity and tangata whenua status on Motiti was highly contested among the Māori parties to our inquiry. The claimants, who brought their claim on behalf of Ngā Hapū o te Moutere o Motiti, say Ngāi Te Hapū (the descendants of Te Hapū) are the tangata whenua. Several interested parties say Te Patuwai are the tangata whenua and Te Patuwai are a hapū of Ngāti Awa. These opposing parties agreed that, at some point, Ngāi Te Hapū and some Whakatāne-based tangata whenua became collectively known as Te Patuwai, but they disagreed as to whether these groups thereafter retained distinct identities and separate tribal estates at Motiti and Whakatāne (respectively) or unified to become one people with one rohe encompassing both places.

On the preliminary issue of who the tangata whenua of Motiti are, we find that Te Patuwai are the tangata whenua, that Te Patuwai is a unified tribal identity that affiliates to Ngāti Awa, and that Ngāi Te Hapū is an integral part of the Te Patuwai identity. We also find that Te Whānau a Tauwhao, a hapū of Ngāi Te Rangi, are tangata whenua on Motiti.

On the issue of settlement status, we find that the Ngāti Awa Claims Settlement Act 2005 settled Motiti Island historical claims based on descent from Te Hapū.

On the central issue of whether the Crown, through its kinship review, properly informed itself of the identity of the island's tangata whenua, our findings are mixed. Regarding the review's *outcome*, we think that the preliminary findings the Crown reached in its review were correct and based on sufficient research. Where the Crown refrained from drawing final conclusions, we think that it did so justifiably. It also acted appropriately in supporting a Tribunal inquiry into the questions it had been unable to answer. In these respects, we find that the Crown met its duty to be informed and upheld the principle of partnership.

Regarding the review's *process*, we consider that aspects of the Crown's

initial approach to the review were flawed but that it made meaningful efforts to rectify these flaws during the process.

The kinship review concerned claims about tribal identity and affiliation – matters of fundamental importance in Te Ao Māori. These claims had implications not only for the claimants but for other individuals and groups also. As such, we think that a culturally appropriate approach to resolving them was required – one that prioritised the need for discussion between the groups concerned. We find that the Crown's initial approach to the review fell short of this requirement in three ways: the Crown failed to fully engage with all relevant groups at the outset; it failed to invite all groups to participate in the initial design of the process; and it failed to support and engage in a tikanga based process to resolve the questions under review, instead making an assessment of them itself.

We note that the Crown undertook its kinship review to determine whether the claimants were, or were not, part of a larger, related group for settlement purposes. We see strong parallels between the Crown's role in this situation and its role in clarifying overlapping interests between related groups for settlement purposes. In each case, understandings of customary interests are at stake, different groups' understandings may conflict, and any conflicts ideally need to be resolved. We think that the Crown should have noted these parallels and adopted an approach to the review similar to that appropriate for resolving overlapping interests in the settlement context. The Tribunal has previously made a number of recommendations on what those resolution processes should look like (as we outline in chapter 2).

Though aspects of the kinship review process were clearly flawed, we find that the Crown acted appropriately overall. It conducted the review in a largely open and transparent way and tried to be inclusive of all affected groups (albeit inadequately, at first). It ultimately recognised the need to engage with affected groups earlier in the process, *kanohi ki te kanohi* (face to face), and did so. It also recognised the need to provide a forum for all groups to discuss the issues with each other and did so. It invited all groups to plan how this forum would work. As a result of these corrective actions, all groups with interests in the review ultimately had the chance to share and test their *kōrero* on the issues in question. In these respects, we consider that the Crown acted in good faith and ultimately met its duty of consultation to all groups.

Weighing all the relevant evidence, we do not find that the kinship review process, considered as a whole, breached the principles of partnership and equal treatment. As such, we make no formal recommendations under section 6(3) of the Treaty of Waitangi Act 1975.

As the process was clearly flawed, however, we offer suggestions about how the Crown should approach disputes about tribal identity in general, whenever its recognition of hapū or iwi interests is at stake. We suggest that, when faced with such disputes:

- ▶ In the first instance, the Crown's role is to support all groups concerned to explore these questions themselves and try to reach agreement according to tikanga.
- ▶ Tangata whenua should be involved in the design of this process, and in the design of any research process initiated to help resolve the dispute. The Crown should consider how it can assist in this work.
- ▶ The Crown should be mindful that its proper role in the research process, in the first instance at least, may be to collate and share relevant information with the parties concerned rather than to undertake analysis of the information with a view to reaching conclusions itself.
- ▶ If discussion between the groups concerned breaks down or yields no agreement, the Crown may make its own assessment of the evidence and comment on whether it considers it conclusive or not, and why. However, where the question of identity is highly contested, the Crown should be very cautious about proceeding. Other independent facilitation or resolution processes may need to be considered.

In response to the Crown's request for guidance on how to engage with the tangata whenua of Motiti, we also offer suggestions about how it should engage with Te Patuwai in respect of the island (our guidance does not concern the Crown's engagement with Te Whānau a Tauwhao, as they were not a focus of this inquiry). We suggest that, on all issues concerning Motiti, the Crown should first engage with the Te Patuwai Tribal Committee to receive direction on which entities it should engage with – marae, hapū, or iwi – about that issue. The Te Patuwai Tribal Committee will connect the Crown with the relevant representatives of the marae, the hapū, or the iwi as appropriate.

We sincerely hope these latter suggestions will assist the Crown and the tangata whenua of Motiti to build and maintain a functioning Treaty partnership into the future.

Nāku noa, nā



Judge Miharo Armstrong
Presiding Officer

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The Tribunal would like to thank all staff involved for their assistance preparing this report, especially Kristen Wineera, Margot Schwass, Daniel Morrow, and Joy Hippolite. We also acknowledge the skills of Noel Harris, who designed the maps, and Dominic Hurley and Jim Scott, who typeset the report.

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We would also like to acknowledge everyone who helped host our hearings: the kaumātua, kuia, and tangata whenua of our host marae, the ringawera, caterers, cleaners, and other kaimahi.

Finally, we wish to acknowledge everyone who participated in our inquiry: the claimants and interested parties, for their time and effort in recording and sharing their kōrero tuku iho, personal histories, and perspectives on the issues; technical witnesses, for their reports and oral evidence; the Crown, for the cooperative spirit in which it approached the inquiry and for its evidence; and counsel, for their many contributions over the course of the inquiry.

ABBREVIATIONS

AJHR	<i>Appendix to the Journal of the House of Representatives</i>
app	appendix
CA	Court of Appeal
cl	clause
DIA	Department of Internal Affairs
doc	document
ed	edition, editor
ltd	limited
MACA	Marine and Coastal Area (Takutai Moana) Act 2011
memo	memorandum
MRMT	Motiti Rohe Moana Trust
MSC	Motiti Sub-Committee
NHTMM	Nga Hapū o te Moutere o Motiti
NZCA	<i>New Zealand Court of Appeal</i>
NZCCLR	<i>New Zealand Company and Commercial Law Reports</i>
NZHC	<i>New Zealand High Court</i>
NZLR	<i>New Zealand Law Reports</i>
OTS	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
TMIC	Tauranga Moana Iwi Collective
TRONA	Te Rūnanga o Ngāti Awa
v	and (in legal cases)
vol	volume
Wai	Waitangi Tribunal claim

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 2521 record of inquiry, a select index to which is reproduced in the appendix. A full copy of the index is available on request from the Waitangi Tribunal.

CHAPTER 1

KUPU WHAKATAKI / INTRODUCTION

Te haupapa kōhatu ko motu iti rā tēnei, kāhore he wahia hei tao kai.

This sacred rocky island has detached itself from the great divine, for there is no fire-wood to cook food.¹

1.1 WHAT IS AT ISSUE?

The claimants in this inquiry argue that the Crown has breached the principles of te Tiriti o Waitangi/the Treaty of Waitangi and prejudiced the tangata whenua of Motiti Island by failing to recognise them as a distinct tribal group warranting their own Treaty settlement. The claimants contend the Crown wrongly assumes the tangata whenua of the island were covered by the Ngāti Awa Claims Settlement Act 2005. They say as a result, Motiti tangata whenua have been left with unsettled historical Treaty claims, and the Crown has failed to engage with them as a Treaty partner.²

A key concern of the claimants is a process the Crown undertook, in 2015 and 2016, termed the ‘kinship review’. It sought to assess their claim that the tangata whenua of Motiti are an independent tribal group, separate from Ngāti Awa, and that the Ngāti Awa settlement had thus not settled their historical Treaty claims. This process had the related aim of clarifying who the Crown should engage with in relation to Motiti, by identifying which Māori group or groups had authority to speak for the island. The claimants considered that the kinship review was flawed and reached incorrect findings, perpetuating what they saw as the Crown’s long-term failure to recognise the tangata whenua of Motiti, including their identity and mana on the island. By failing to recognise the tangata whenua of Motiti through the kinship review, the Crown breached te Tiriti, they argued.³

In order to address the claimants’ allegation that the Crown has failed to recognise the tangata whenua of the island, it is logically necessary for us to consider the foundational question of who the tangata whenua are. At the request of claimants and the Crown, we make such an assessment on the basis of the historical and contemporary evidence received in our inquiry.

1. Document A17, p 3

2. Claim 1.1.1(b), p 19; submission 3.3.8, pp 58, 115, 117

3. Claim 1.1.1(b), pp 21, 23–24

This first chapter of our report begins by briefly introducing Motiti Island and some of its defining characteristics. We then set out the key events in the inquiry process, introduce the parties to the inquiry, and list our issues for determination. Finally, we outline the structure the remainder of our report will follow.

1.2 TE MOUTERE O MOTITI / MOTITI ISLAND

Motiti Island sits offshore in the Bay of Plenty, 21 kilometres north-east of Tauranga and 9.3 kilometres north-east of Papamoa Beach. It is a low-lying volcanic plateau, with open plains that drop off into cliffs around much of its coast, and is about ten square kilometres in area.⁴ The seas around Motiti are studded with a network of islets and reefs, including the islets Okarapu, Te Māmangi, Motu Haku, Motu Nau, and Tokoroa, and Otaiti reef.⁵ Tangata whenua have a long relationship with Motiti and its surrounding seas, having cultivated and occupied the land and fished in the rohe moana for centuries.

Motiti Island has several unique and unusual characteristics. It is one of relatively few permanently inhabited offshore islands in Aotearoa,⁶ and notable among them for its long history of occupation and mainly Māori population.⁷ Motiti's resident population has fluctuated over time, including over the last century. About 70 people lived on the island in the early 1900s, somewhere between 90 and 200 in the late 1950s (the evidence varies), and about 40 people today.⁸

Motiti is also wholly privately owned. The northern half of the island is Māori freehold land, held by tangata whenua. The southern half is general land, held by various private landowners. A relatively small area in the south-east of the island is still held by Te Whānau a Tauwhao, a hapū of Ngāi Te Rangi (one of the three largest Tauranga Moana iwi).⁹ Te Whānau a Tauwhao formerly held all of southern Motiti and part of northern Motiti, the Native Land Court having awarded them

4. Document A16, p 2; 'Motiti Island', Wikipedia, https://en.wikipedia.org/wiki/M%C5%8D%C4%AB%C4%AB_Island, accessed 23 September 2021

5. Document A17, p 31; A23(a), vol 6, no 349. Several spellings for this reef's name appeared in the evidence: 'Otaiti', 'Otāiti', 'Ōtāiti', and 'Otaiti'. We use the last, as it appeared the most common. Some witnesses also referred to the reef as 'Te Tau o Taiti'.

6. Excel spreadsheet, 'Dataset: Census usually resident population counts, 2018 Census', Ron Mair, StatsNZ Tauranga Aotearoa, 4 August 2021

7. Document A23(a), vol 4, no 203, p 2330

8. Document A16, pp 80, 106; doc A16(a), p 2039; 'Motiti Island: Population 40, Just How they Like It', *New Zealand Herald*, 6 January 2012, <https://www.nzherald.co.nz/motiti-island-population-40-just-how-they-like-it/YUF6ZWIK6UC724SCOV164AR5OU>, accessed 24 February 2022. The 1956 census listed 93 people living on Motiti (including 75 Māori): doc A16, p 106. By contrast, in 1958, the Motiti Tribal Committee reportedly told officials that 200 Māori lived on the island: doc A16(a), p 2039. Dr O'Malley noted that the 'mobile and seasonal' nature of Motiti's population meant census counts were somewhat unreliable, as some residents would have been absent when they were conducted: doc A16, p 80. This may, at least in part, explain the discrepancy between the census figure and that given by the Motiti Tribal Committee.

9. Te Patuwai hold 728 acres as Māori freehold land; Te Whānau a Tauwhao hold about 86 acres as Māori land; and general land owners hold 724 acres: doc A17, p 45; doc A38(a), p 2.



Te Moutere o Motiti / Motiti Island

Source: Document A23(a), vol 2, no 92, p 387

this land in the 1860s; however, most of it was alienated in the late-nineteenth century.¹⁰

As Motiti Island is private land, there is no public access to it by air or sea.¹¹ The only access points are two private airstrips, one in the north and one in the south, and a landing reserve at Wairanaki, the island's only beach.¹²

Motiti has an unusual territorial local authority arrangement. As it falls outside the jurisdiction of any district council – the only significantly populated offshore island in Aotearoa to do so – the Minister of Local Government is the island's territorial authority.¹³ Under this arrangement, landowners do not pay rates and receive no services.

As such, there is a complete lack of public infrastructure on Motiti. Residents provide their own power and water, dispose of their sewage and rubbish,¹⁴ and create and maintain roads. The landing reserve at Wairanaki has no wharf, meaning boats can land only in calm weather.¹⁵

Motiti is, however, a culturally rich environment. Its long history of occupation, coupled with its isolation and lack of development, have made it a repository of historic and archaeological sites. The island and rohe moana contain many wāhi

10. Document A38(a), pp 31–40; doc A16(a), pp 49–50. We note the circumstances in which this alienation occurred in section 3.2.9.1 of this report.

11. Document A24, p 1

12. Ibid

13. Tuhua (Mayor) Island is the only other permanently inhabited offshore island administered by the Crown. Its resident population is much smaller than Motiti's: 'Administration of Offshore Islands', Department of Internal Affairs, https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Other-Services-Administration-of-Offshore-Islands?OpenDocument, accessed 5 May 2021.

14. Document A24, p 1

15. Ibid

tapu and wāhi taonga (places and cultural resources of special significance to tangata whenua). These include pā sites; burial sites; canoe landing sites; whare sites; sites associated with birth, with ceremonies involving ancestors, and with the gathering of special resources; ancient rock art; stone collections; caves; mahinga kai sites; earth ovens; and traditional trails. Tangata whenua have created a plan to systematically locate and record the island's wāhi tapu and wāhi taonga, in order to protect them from development and help preserve cultural memory.¹⁶

One of Motiti's wāhi taonga which has received scientific recognition is the matakata, or yellow-flowering pōhutukawa (*Metrosideros excelsa* 'Aurea'), which grows on the cliff faces around the island.¹⁷ The Royal New Zealand Institute of Horticulture has confirmed that the matakata is native to Motiti, with all trees of this type in Aotearoa having originated from a pair found on the island in 1940. The matakata has traditionally been significant to tangata whenua with links to Motiti; they have, for example, composed waiata about it and origin stories to explain why its flowers are yellow rather than (the more common) red.¹⁸

Northern and southern Motiti are in markedly different states today. The general land in southern Motiti is agriculturally well-developed. It now hosts one of Aotearoa's largest commercial avocado orchards, whose trees cover 200 acres, along with several smaller avocado orchards and other farms. By contrast, most land in northern Motiti lies fallow and is overrun with fennel. Roads are also in a state of disrepair. Previously, tangata whenua operated a thriving agricultural business on the land, growing extensive crops of kūmara and maize. When these crops were decimated by disease in the 1950s, most whānau were forced to move to the mainland to earn a living. Some whānau have since returned, but not in the numbers that once lived on the island.¹⁹

1.3 KEY EVENTS IN THE INQUIRY PROCESS

1.3.1 Background to the urgent inquiry

In 2015, five individuals filed a claim and application for an urgent hearing on behalf of Ngā Hapū o te Moutere o Motiti. The claimants sought a Tribunal inquiry into various aspects of the Crown's historical and contemporary relationship with, and conduct toward, the tangata whenua of Motiti Island – who, in the claimants' view, are Ngā Hapū o te Moutere o Motiti themselves (we discuss the group's identity further in section 1.4.1).²⁰ Specifically, the claimants alleged the

16. Nepia Ranapia, Daniel Ranapia, Anaru Ranapia, Rereata Rogers, Jane Waldon, Huriwaka Ngawhika, and Eddie Matahaere, *Motiti Island Native Resource Management Plan*, 2nd ed ([Motiti]: Korowai Kāhui o te Patuwai Tribal Council, 2012), pp 141–145

17. Murray Dawson, Jack Hobbs, Graeme Platt, and Jim Rumbal, 'Metrosideros in Cultivation: Pōhutukawa', *New Zealand Garden Journal*, vol 13, no 1 (January 2010), p 14; doc A70, pp 6–7

18. Document A70, pp 6–7; doc A50, pp 24–27. Meremaihi Williams, witness for Te Patuwai Tribal and Rūnanga o Ngāti Awa, referred to the yellow pōhutukawa as 'Turitea – Matakata': doc A50, pp 26–27.

19. Document A16, pp 80, 83, 85

20. Claim 1.1.1

Crown had failed to recognise and engage with Ngā Hapū o te Mouere o Motiti, including in negotiating the settlement of historical Treaty claims; failed to protect their cultural heritage in non-Māori owned parts of the island; and to provide any basic infrastructure on the island. They also outlined grievances relating to the Tauranga Moana Iwi Collective settlement, the development of the Motiti district plan – finalised in 2015 – by the Department of Internal Affairs, and the Crown's process (or lack of one) for dealing with contemporary Treaty claims.²¹

The claimants and the Crown initially agreed to try to resolve these issues without litigation, and the application for an urgent hearing was accordingly adjourned in September 2015.²² By May 2016, the claimants considered these efforts unsuccessful and sought to renew their urgency application.²³ Their grievances now centred on three issues. One was the extension over the Motiti rohe moana of the Tauranga Moana Framework, a co-governance mechanism that Tauranga Moana iwi had recently negotiated with the Crown.²⁴ Another was the Crown's alleged failure to provide for the rangatiratanga and kaitiakitanga of Motiti Māori through the Motiti district plan, or to commit to reviewing the plan. The third was the kinship review, a process which, as noted earlier, the Crown was then undertaking to assess the claimants' assertion that Ngā Hapū o te Mouere o Motiti were an independent tribal group, distinct from Ngāti Awa, and that the Ngāti Awa settlement had thus not settled their historical Treaty claims. Though the Crown reached no final conclusions in its review, it made preliminary findings that did not support the claimants' assertions. The claimants felt the Crown had thereby failed, yet again, to recognise the mana and identity of Ngā Hapū o te Mouere o Motiti.

In assessing the claimants' urgency application, the Tribunal's deputy chairperson Judge Patrick Savage noted that the kinship review was a 'significant issue' as, without recognition from the Crown, Ngā Hapū o te Mouere o Motiti would have no chance to address their historical or contemporary Treaty claims. Nor could they meaningfully participate in negotiations about the Tauranga Moana Framework or any other settlement mechanisms, a limitation that would affect their position within such mechanisms. Moreover, as the kinship review had resulted in no final conclusions about Ngā Hapū o te Mouere o Motiti's status, Judge Savage considered there was 'a real question as to whether the Crown has sufficiently informed itself of the relevant interests in Motiti Island', such that it could 'progress negotiations' on the other issues the claimants had raised.²⁵

Accordingly, in March 2017, the deputy chairperson determined that the issue of Crown recognition – in particular, the kinship review – met the criteria for urgency:

21. Claim 1.1.1(a)

22. Memorandum 2.5.4

23. Memorandum 3.1.11

24. The Tauranga Moana Framework was a mechanism for Crown-Māori co-governance of the Tauranga Moana, negotiated as part of the Tauranga Moana Iwi Collective's Treaty settlement.

25. Memorandum 2.5.9, p13

the applicants' assertions of interests, coupled with concerns as to Crown process in assessing relevant interests, suggests there is a real prospect of the applicants suffering significant and irreversible prejudice if they are neither recognised nor accommodated by the Crown in settlement negotiations and any resulting settlement instruments.²⁶

In granting an urgent hearing, Judge Savage defined its purpose as follows:

The issue for urgent inquiry is whether or not the Crown, by its acts or omissions, policy or practice, in relation to settlement of Treaty of Waitangi claims relating to Motiti Island, has breached or is likely to breach the principles of the Treaty of Waitangi. At issue is the question of whether the Crown has done so by failing to adequately or properly inform itself of the interests of Māori in relation to the island, and thereby prejudicing the Māori and hapū of that island.²⁷

The deputy chairperson also commented that the nature of the interests of Ngā Hapū o te Mouere o Motiti in Motiti Island, and whether they were distinct from those of Te Patuwai, Ngāti Awa, and Ngāti Maumoana, was 'a matter for the substantive hearing of the claim'.²⁸

The Crown supported an expedited Tribunal inquiry into this issue, taking the view that it would benefit both the tangata whenua of Motiti and the Crown.²⁹

1.3.2 Events since urgency was granted

In September 2017, the Tribunal's chairperson, Chief Judge Wilson Isaac, appointed Judge Miharo Armstrong presiding officer of the inquiry. Tania Simpson, Dr Ann Parsonson, and Dr Monty Soutar were appointed at the same time as members of the panel.³⁰ Dr Soutar subsequently recused himself from the inquiry and, in January 2018, Associate Professor Tom Roa was appointed to the panel.³¹

The presiding officer convened a judicial conference in February 2018 at the Tribunal's offices in Wellington. A further judicial teleconference was convened in May 2018 to monitor compliance with directions resulting from the first conference.³²

Hearings for this inquiry began in May 2018. They were held over five separate weeks in Tauranga (at the Trinity Wharf Hotel and Trustpower Baypark Stadium) and in Whakatāne (at Te Mānuka Tūtahi Marae), concluding in September 2019. The first three hearings were dedicated to evidence from the claimants and interested parties. The fourth focused on remaining evidence from interested parties, the Crown's evidence, and the claimants' evidence in reply. Closing submissions were heard in the fifth hearing.

26. Memorandum 2.5.9, p13

27. Ibid, p14

28. Memorandum 2.5.9, p13

29. Memorandum 3.1.30, p1

30. Memorandum 2.5.10

31. Memorandum 2.5.18

32. Memoranda 2.5.20, 2.5.35



Tribunal members outside Mataatua wharenui, Te Mānuka Tūtahi Marae, Whakatāne, at the inquiry's third hearing, 7 December 2018. *From left:* Associate Professor Tom Roa, Judge Miharo Armstrong, Dr Ann Parsonson, and Tania Simpson.

In the course of hearings, the Tribunal made two site visits, one to Motiti Island, led by the claimants and interested parties, and one to Pūpūaruhe, Whakatāne, led by Te Patuwai Tribal and Te Rūnanga o Ngāti Awa. Among other areas of interest, we visited marae and urupā (burial grounds) in each location, and archaeological sites and wāhi tapu on Motiti Island. These visits deepened our understanding of the places, peoples, and issues central to this inquiry, and informed our subsequent deliberations.

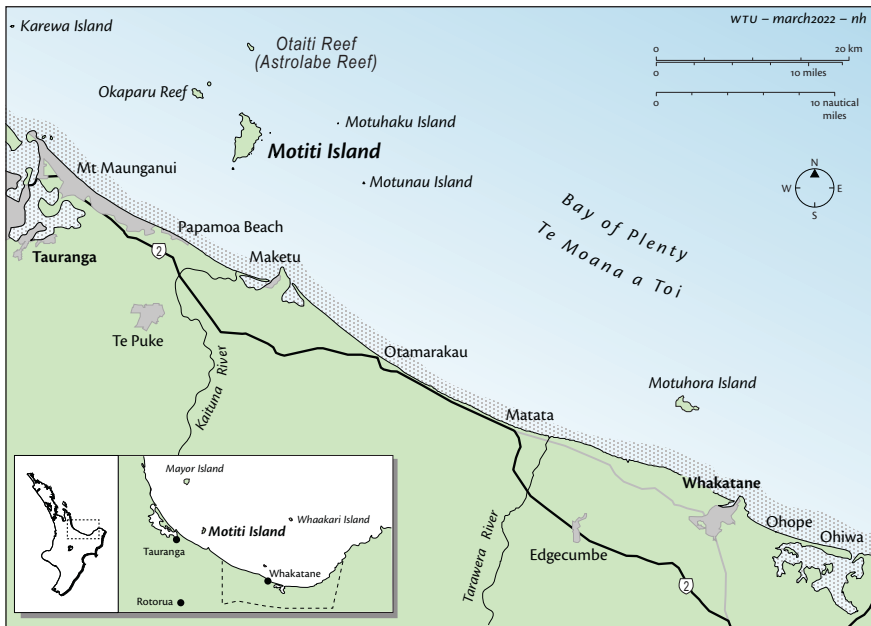
1.4 THE PARTIES TO THIS INQUIRY

For readers unfamiliar with the roles of the various parties to a Tribunal inquiry, we note first that the claimants are the named individuals who have brought a claim against the Crown alleging it breached te Tiriti and thereby caused them prejudice. The Crown is the respondent to the claim. The interested parties are groups and individuals who have obtained permission to participate in the inquiry because it affects their interests or because they have a special interest in it (specifically, 'an interest . . . apart from any interest in common with the public').³³ Having clarified their respective roles, we now introduce the parties to this particular inquiry.

1.4.1 The claimants

The Wai 2521 claim was filed by Graham Hoete, Umuhuri Matehaere, Kataraina Keepa, Jacqueline Taro Haimona, and Te Atarangi Sayers on behalf of Ngā Hapū o te Moutere o Motiti. This was a term they used to denote certain hapū who

33. Commissions of Inquiry Act 1908, s 4A(1)



Map 1: Motiti Island locality map

whakapapa to Motiti Island – namely, Ngāi Te Hapū me ōna karanga hapū,³⁴ the group of hapū who descend from Te Hapū, a rangatira who settled Motiti Island several centuries ago. As a claimant witness explained, only some of these hapū remain in existence – Ngāti Kauaeuera, Ngāti Takahanga, and Ngāti Makerewai. It is in the name of these remaining hapū, under the banner of ‘Ngāi Te Hapū’, that the claimants made their claim.³⁵ The claimants also referred to Ngāi Te Hapū as Te Patuwai ki Motiti (Te Patuwai of Motiti), a name that reflects Ngāi Te Hapū’s affiliation with the wider tribal grouping Te Patuwai. The nature of the Te Patuwai grouping was highly disputed among the Māori parties, however: they agreed that at some point, Ngāi Te Hapū and some Whakatāne-based tangata whenua became collectively known as Te Patuwai, but disagreed as to whether these groups thereafter retained distinct identities and separate tribal estates at Motiti and Whakatāne (respectively), or merged to become one people with one rohe encompassing both places. We examine this dispute in detail in chapter 3, when addressing the question of who the tangata whenua of Motiti are.

34. Claim 1.1.1(a), p 1

35. Document A17, p 22. According to the claimants, Ngāi Te Hapū me ōna karanga hapū originally comprised Ngāti Tūtonu, Ngāti Te Uru, Ngāti Te Ahoaho, Ngāti Ruaroa, Ngāti Pau, Ngāti Kauaeuera, Ngāti Takahanga, and Ngāti Makerewai: claim 1.1.1(a), p 1.



Left to right: Jazmin Aiavao, Erena Rihara Nuku Ulu (witness in support of the Wai 2255 and Wai 2521 claimants), Maraea Rihara Nuku Brown, Kataraina Putiputi Rihara Nuku Keepa (Wai 2521 claimant), and Ihipera Peters (counsel for the Wai 2255 claimants) with pēpi Maliana Peters at the inquiry's second hearing, Trustpower Baypark, Tauranga, 6 September 2018

The claimants say the rohe of Ngā Hapū o te Moutere o Motiti/Ngāi Te Hapū/Te Patuwai ki Motiti encompasses Motiti Island and the surrounding rohe moana.

1.4.2 The Crown

Aotearoa's executive government is 'the inheritor of the obligations that the Queen took on in 1840' when te Tiriti was signed in her name.³⁶ This inquiry mainly focused on Crown actions by the Office of Treaty Settlements and, to a lesser extent, the Department of Internal Affairs. Officials involved in conducting the kinship review and in administering Motiti Island in recent years appeared as witnesses for the Crown.

1.4.3 The interested parties

Five interested parties participated in this inquiry:

- Ngā Hapū o te Moutere o Motiti (Aiavao and others), comprising five individuals who, in 2008, filed their own claim with the Tribunal on behalf of Ngā Hapū o te Moutere o Motiti (Wai 2255). It concerned matters unrelated to the Wai 2521 claim. Some of these claimants are also Wai 2521 claimants.³⁷

36. Dame Sian Elias, interview, 'Tohu' exhibition, National Library of New Zealand, <https://natlib.govt.nz/he-tohu/korero/what-is-the-crown>, accessed 2 September 2021

37. Memorandum 3.1.37



Crown witness Susan van Daatselaar at the inquiry's fourth hearing, Trustpower Baypark, 1 May 2019

- ▶ Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, consisting of Te Patuwai Tribal (a customary tribal forum of Te Patuwai) and Te Rūnanga o Ngāti Awa (the entity that negotiated Ngāti Awa's Treaty settlement and manages iwi members' collective affairs).³⁸
- ▶ Eunice Evans on behalf of the whānau of George Tahere and Merimihiora Faulkner (the Faulkner whānau).³⁹
- ▶ The Rauahi and Aporina Whānau Trust.⁴⁰
- ▶ The Ngāi Te Rangi Settlement Trust, the post-settlement governance entity that represents the 11 hapū communities who affiliate to Ngāi Te Rangi. One of these hapū is Te Whānau ā Tauwhao, who once occupied southern Motiti.⁴¹

The participation of these parties reflected the fact that many Māori with links to Motiti had a special interest in the inquiry or would be affected by it. Several, such as Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, strongly opposed the claimants' argument that Ngāi Hapū o te Moutere o Motiti are the tangata whenua. Rather, they contended that the tribal grouping Te Patuwai is the tangata whenua of Motiti, and Te Patuwai is a hapū of Ngāti Awa.⁴²

38. Memorandum 3.1.15

39. Memorandum 3.1.44

40. Memorandum 3.1.16

41. Memorandum 3.3.3, p [2]

42. Submission 3.3.12(b), pp18–70

1.5 ISSUES FOR DETERMINATION

1.5.1 Background to the statement of issues

The statement of issues for this inquiry was drafted and refined by the claimants and the Crown with input from interested parties, and then finalised on the basis of submissions from counsel.

Claimant and Crown counsel first filed a draft statement of issues in December 2017.⁴³ It was later discussed at the February 2018 judicial conference involving counsel for the claimants, the Crown, Ngā Hapū o te Moutere o Motiti (Aiavao and others), and Te Patuwai Tribal and Te Rūnanga o Ngāti Awa. Following the conference, the Tribunal ordered a refined statement of issues, agreed by all parties, be filed.⁴⁴ The claimants, the Crown, and Ngā Hapū o te Moutere o Motiti (Aiavao and others) filed a refined draft in late February 2018.⁴⁵

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa expressed concern about some aspects of the refined draft. They argued that issue one, asking '[W]ho are the tangata whenua of Motiti Island?', was too broad in scope, saying that on the matter of identity, the principal question for the Tribunal to determine was instead 'Is "Ngā Hapū" a distinct functioning tribal grouping?' However, they accepted the Tribunal would need to undertake a 'thorough review of the history of the hapū on Motiti Island' to answer this question.⁴⁶ They also disputed the use of the term 'tangata whenua' throughout the statement of issues; they preferred 'hapū', they said, 'because one's interest in Motiti must derive from a hapū'.⁴⁷ These groups also wanted the final issue, which related to recommendations, to be dropped. They argued that answers to the questions it posed ('How should the Crown engage with the tangata whenua of Motiti Island?' and 'How should any Treaty of Waitangi claims be addressed?') would depend on the Tribunal's findings on the previous issues. Indeed, for the same reason, they argued it was not yet clear if the Tribunal would need to make any recommendations.

However, the claimants wanted the refined statement of issues to remain unchanged. They defended the scope of issue one, saying the Tribunal must, of necessity, inquire into the identity of the island's tangata whenua in order to answer the question of whether Ngā Hapū o te Moutere o Motiti were distinct – as Te Patuwai Tribal and Te Rūnanga o Ngāti Awa had themselves acknowledged.⁴⁸ They also argued that 'tangata whenua' was a more neutral, and thus appropriate, term to use than 'hapū', saying the latter could 'lead to the inaccurate assumption that hapū are part of a broader iwi hierarchy'.⁴⁹

43. Statement of issues 1.4.1

44. Memorandum 2.5.20, para 3

45. Statement of issues 1.4.2

46. Memorandum 3.1.57, pp 4–5

47. Ibid, p 5

48. Memorandum 3.1.60, p 6

49. Ibid

1.5.2 The statement of issues

After reviewing submissions on the refined statement of issues, we finalised the following statement of issues:

1. Who are the tāngata whenua of Motiti Island?
 - (a) According to history and whakapapa, who are the tāngata whenua associated with Motiti Island; and
 - (b) In relation to 1(a), who continues to hold that status on Motiti island?
2. Did the settlement of the Ngāti Awa historical claims, in the Ngāti Awa Claims Settlement Act 2005, settle Motiti Island claims based on whakapapa from Te Hapū?
3. How has the Crown engaged with the tāngata whenua of Motiti Island?
4. Through its 'kinship review', has the Crown adequately or properly informed itself of the interests of the tāngata whenua of Motiti Island?
5. If the Crown has failed to recognise, or has not adequately or properly informed itself of, the interests of the tāngata whenua of Motiti Island, what prejudice has been caused to the claimants as a result?
6. Subject to findings on issues 1–5, should the Tribunal make recommendations, and if so, in what form, on:
 - (a) How the Crown should engage with the tāngata whenua of Motiti Island.
 - (b) How any extant Treaty of Waitangi claims should be addressed.
 - (c) Any other recommendations the Tribunal thinks fit.⁵⁰

This final wording was largely adopted directly from the refined draft issues prepared by the claimants and the Crown. The draft version of issue six was amended to address Te Patuwai Tribal and Te Rūnanga o Ngāti Awa's concerns, and only a few other minor changes to wording were made.

The content of this report is organised around what we consider to be the three core issues requiring the Tribunal's determination, which we have expressed in the following terms:

- ▶ Who are the tāngata whenua of Motiti Island?
- ▶ Did the settlement of the Ngāti Awa historical claims, in the Ngāti Awa Claims Settlement Act 2005, settle Motiti Island claims based on whakapapa from Te Hapū?
- ▶ Through its kinship review, has the Crown properly informed itself of the identity of the tāngata whenua of Motiti Island?

1.5.3 Determining the tāngata whenua: Tribunal comment

With respect to issue one, we note it is not usual for the Tribunal to determine the tāngata whenua of a particular area, except where required to make binding recommendations. In this inquiry, however, both the claimants and the Crown have asked us to do so. They argued that, if the Tribunal was to form a view on

50. Statement of issues 1.4.3

how the Crown should engage with the tangata whenua of Motiti, it would 'first need to inquire into who the hapū of Motiti Island are'.⁵¹

As outlined in section 1.5.1, issue one was adopted from a refined draft statement of issues prepared by the claimants and the Crown with input from interested parties. Te Patuwai Tribal and Te Rūnanga o Ngāti Awa were the only interested party to submit on the refined draft, and to suggest changes to issue one. Nevertheless, they still supported its inclusion in the statement of issues, irrespective of whether their suggestions were adopted.⁵² In other words, all parties to this inquiry supported the Tribunal determining who the tangata whenua of Motiti Island are.

Apart from the parties' common desire for the Tribunal to make such a determination, there are other compelling reasons to do so. It is only by determining the island's tangata whenua that we can proceed to make findings on issue two – whether the Ngāti Awa Claims Settlement Act 2005 settled claims based on whakapapa to Te Hapū – and the remaining core issue: whether the Crown has properly informed itself of the identity of Motiti tangata whenua through its kinship review. Determining the identity of the island's tangata whenua will also help clarify who the Crown should engage with to resolve contemporary issues facing Motiti, and thereby support the Crown and Motiti tangata whenua in forming a functioning Treaty partnership. Moreover, we have the jurisdiction to carry out this relatively uncommon task; we set it out in chapter 2.

1.5.4 Clarifying the scope of the inquiry

Although we are inquiring into who the tangata whenua of Motiti are, we do not do so in order to make findings on historical claims. In line with the deputy chairperson's decision on urgency, we remain focused on whether the Crown, through its kinship review, has properly informed itself of the interests of Māori in relation to Motiti.⁵³ That is the issue on which we are making Treaty findings. Accordingly, although we consider evidence about tribal relationships and customary interests on Motiti, we do not make findings about how tribal groups have engaged with each other, or what their respective interests on the island are.

By the same token, we are not inquiring into the claimants' contemporary claims in this inquiry (that is, their claims concerning the Motiti district plan, the Tauranga Moana Framework, and lack of infrastructure on the island). Although in chapter 5, we consider how the Crown has engaged with the tangata whenua of Motiti beyond the kinship review, we do so for two reasons only – first, to understand the context for the kinship review, so we can properly assess the Crown's actions on that central issue; and secondly, to inform any recommendations or suggestions we make about how the Crown should engage with Motiti tangata whenua in the future. As already noted, however, this inquiry has general relevance to contemporary claims concerning Motiti, in that our findings may help

51. Statement of issues 1.4.1, p 2

52. Memorandum 3.1.57. They and all other interested parties addressed issue one in their submissions and evidence.

53. Memorandum 2.5.9, pp 13–14

clarify who the Crown should engage with to resolve contemporary issues facing the island.

1.6 NOMENCLATURE

1.6.1 Motiti

There are differing views on the meaning of Motiti Island's name and how it should be spelled – 'Motiti', 'Mōtiti', 'Motīti', or 'Mōtiti'. We have selected a spelling (Motiti) for purely practical reasons – the need to present the name consistently in this report – and our choice reflects no judgement about which version of the name is correct. We outline differing traditions of the name's meaning in chapter 3.

1.6.2 Te Tiriti (the Treaty)

In this report, we use 'te Tiriti' to refer to te Tiriti o Waitangi/the Treaty of Waitangi, except where the reference is adjectival, in which case we use 'Treaty' (for example, 'Treaty principles'). In all cases, we refer to the Māori and English texts together.

1.7 THE STRUCTURE OF THIS REPORT

The rest of our report is organised into five substantive chapters.

In chapter 2, we identify the Treaty principles and duties relevant to the claims before us. Chapters 3 to 5 deal with the three core questions posed in the statement of issues. In chapter 3, we address and make findings on the foundational question of who are the tangata whenua of Motiti. Our analysis is supported by an account of the Māori history of Motiti Island from the time it was first occupied up to the present day, drawn from the evidence presented in our inquiry.

The second core issue for determination – whether the Ngāti Awa Claims Settlement Act 2005 settled Motiti Island claims based on descent from Te Hapū – is addressed in chapter 4. Chapter 5 concerns the third core issue: whether the Crown's 2015–2016 kinship review process breach te Tiriti. Finally, in chapter 6, we consider the implications our findings have for the Crown.

CHAPTER 2

**TE TURE ME TE TIRITI/
THE TREATY CONTEXT****2.1 INTRODUCTION**

As introduced in chapter 1, the claimants in this inquiry allege the Crown breached te Tiriti by failing to recognise Ngā Hapū o te Mouhere o Motiti as a distinct tribal group with historical and contemporary claims not settled by the Ngāti Awa Claims Settlement Act 2005. They argue in particular that the Crown, through its process to assess their tribal status – known as the kinship review – breached the principles of partnership, active protection, and equal treatment.¹

While the Crown did not agree it breached te Tiriti through the kinship review, both parties have acknowledged that in order to address the claimants' allegations, it is necessary for the Tribunal to first determine the identity of the tangata whenua of Motiti Island. We begin this section by briefly setting out our jurisdiction to hear the claim before us, including this key initial task.

We then set out the Treaty principles and duties we consider apply in this inquiry, drawing on the submissions of the parties and the Tribunal's prior consideration of claims relating to the Crown's settlement policies and processes.

2.2 JURISDICTION

Section 6 of the Treaty of Waitangi Act 1975 established the Waitangi Tribunal and its jurisdiction to consider claims. Section 6 of the Act provides that any Māori may make a claim to the Tribunal that they have been, or are likely to be, prejudicially affected by any legislation, policy or practice of the Crown inconsistent with the principles of te Tiriti. If the Tribunal finds that a claim is well-founded, it may recommend to the Crown ways to compensate for, or remove, the prejudice, or to prevent others from being similarly affected in the future. Before it can find a claim to be well-founded, the Tribunal must be satisfied three requirements have been met:

- that the claimant has established a claim falling within one or more of the matters referred to in section 6(1) of the Act;
- that the claimant is, or is likely to be, prejudicially affected by any such matters; and
- that any such matters were, or are, inconsistent with the principles of te Tiriti.

1. Submission 3.3.8, p 99

All three elements must be established before the Tribunal can find a claim to be well-founded, and, in making recommendations, the Tribunal must have regard to ‘all the circumstances of the case’.

We note that addressing tribal identity and tangata whenua status may appear an unusual exercise of the Tribunal’s jurisdiction. As we have stated, however, in the circumstances of our inquiry, it is necessary in order to address the core claim against the Crown. The claimants have alleged the Crown prejudiced them by failing to understand their tribal identity, in particular, that they are an independent tribal group. To assess whether their claim is well-founded, we must determine if the Crown’s understanding of the claimants’ tribal identity has indeed caused them prejudice, or is likely to. And to do this, we must inquire into their tribal identity. Only then can we determine whether the Crown has arrived at its understanding in a manner consistent with Treaty principles.

While it remains relatively uncommon for the Tribunal to make determinations on such matters, except where required to make binding recommendations, there is precedent for engagement with definitional issues within and between claimant communities, particularly in Treaty settlement contexts. We discuss this below.

2.3 TREATY SETTLEMENT-FOCUSED TRIBUNAL INQUIRIES

The Tribunal has now considered claims relating to the Crown’s Treaty settlement policy and processes in a range of urgent inquiries over two decades. As *The Tāmaki Makaurau Settlement Process Report* noted in 2007, settlement-related applications for urgency and resulting inquiries had up to that point taken two typical forms. In the first, known loosely as ‘mandate inquiries’, claimants alleged that they were or would be prejudiced because entities whom ‘the Crown regarded as having a mandate to settle their claims did not have a mandate’. A second strand, known as ‘cross-claims’ or ‘overlapping claims’ inquiries, concerned the common claimant argument that a ‘settlement to which the Crown and a mandated group [were] about to agree unacceptably infringe[d] upon the legitimate interests of another group’.²

With some exceptions, these same types of grievances underpin settlement-related claims and inquiries today. While neither mandating nor cross-claims inquiries are directly equivalent to the circumstances of our own, we note the particular relevance of the findings, analyses, and recommendations of previous settlement-focused reports, most demonstrably, their focus on how the Crown may achieve Treaty compliance in settlement contexts. We note also that inquiries into settlement processes have established that the Tribunal may play a legitimate role in exploring issues of identity within claimant communities, but only insofar as these are relevant to addressing genuine allegations against the Crown. As the Tribunal observed in the *The Pakakohi and Tangahoe Settlement Claims Report*, there is a danger that inquiring into issues of representation and identity when

2. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), p 8

responding to claims ostensibly against the Crown, may ‘mask’ what are in essence internal disputes between ‘closely related kin groups’.³ In those situations, specifically where support for tribal mandates is concerned, the Tribunal must be wary of intervening, ‘except in clear cases of error in process, misapplication of tikanga Maori, or apparent irrationality’.⁴ While sharing this caution, we are confident that the request to determine tangata whenua status in our inquiry, though it reflects an internal dispute, is in fact integral to a fair consideration of the claim that Ngā Hapū o te Moutere o Motiti have been prejudiced by the Crown’s kinship review. Drawing on this jurisprudence and the submissions of the parties, we now outline the principles and duties we consider apply to the circumstances of our inquiry.

2.4 PRINCIPLES AND DUTIES

2.4.1 The principle of partnership

The principle of partnership is central to our inquiry, the claimants having identified it as a principle breached by the Crown’s kinship review.⁵ The Court of Appeal originally described this principle as requiring the Treaty partners to act towards each other ‘reasonably’ and with the ‘utmost good faith’.⁶ In the 1989 *New Zealand Maori Council v Attorney General* decision, the court added a duty for the partners to consult with each other on major issues.⁷

The partnership principle arises from the expectations of the Treaty partners, and concerns the relationship between tino rangatiratanga and kāwanatanga. The Tribunal has suggested that neither kāwanatanga nor rangatiratanga is absolute. Rather, by entering into partnership, each party must ‘take account of the needs and legitimate interests of the other’. This requires a mutual orientation toward compromise, while at the same time, ‘each Treaty partner must respect the authority of the other, within their respective spheres’.⁸ The Tribunal has further observed that partnership under te Tiriti encompasses the need to consider ‘how, in the interests of peace, respective authorities are to be reconciled’.⁹ Treaty jurisprudence has characterised the principle of partnership as deriving from an ‘exchange’ of the article 2 guarantee to protect tino rangatiratanga, for the Crown’s right to exercise kāwanatanga.¹⁰ It is important to add, however, that, for the rangatira who signed te Tiriti in February 1840, kāwanatanga equated to the right to make decisions relating largely to the British sphere of influence and to

3. Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report* (Wellington: Legislation Direct, 2000), p 55

4. *Ibid*, p 57

5. Submission 3.3.8, p 99

6. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 667

7. *New Zealand Maori Council v Attorney-General* [1989] 2 NZLR 142 (CA), 152

8. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, p 20

9. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wellington: Legislation Direct, 1996), p 82; Waitangi Tribunal, *Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims* (Wellington: Legislation Direct, 2004), p 22

10. Waitangi Tribunal, *Te Raupatu o Tauranga Moana*, p 22

international relations; it did not equate to overarching sovereign power. As the Tribunal found in *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o te Raki Inquiry*, northern rangatira ‘did not cede their sovereignty, . . . that is, their authority to make and enforce law over their people and within their territories.’¹¹ In other reports, the Tribunal has described tino rangatiratanga in the context of the Treaty partnership as the mana or ‘full authority’ to ‘possess what is yours’ and to ‘control and manage it in accordance with your own preferences.’¹²

In the settlement context, the Tribunal has concluded that in order to uphold the partnership principle, the Crown must recognise and give effect to the tino rangatiratanga of Māori groups. In the *Te Arawa Mandate Report*, for instance, the Tribunal noted that the Crown should enable hapū and iwi to exercise tino rangatiratanga in the settlement of their claims, and that ‘to attain true reciprocity, there must be consultation and negotiation in practice as well as in name, and flexibility in the application of policies where shown to be strictly necessary. Such reciprocity is the key to durable Treaty settlements.’¹³

We next discuss the four Crown duties associated with the partnership principle we consider relevant to the claim before us: active protection, informed decision-making, consultation, and involving Māori in decision-making.

2.4.2 The duty of active protection

The claimants argue that the Crown’s failure to uphold the Treaty partnership through the kinship review also breached the closely linked principle of active protection.¹⁴ When it acquired kāwanatanga through the Treaty exchange, the Crown assumed a duty to actively protect tino rangatiratanga. While the concept has been applied in Treaty jurisprudence to a range of cultural properties and tangible and intangible assets, the Tribunal has most commonly identified the self-regulation or autonomy of Māori groups and communities as a central form of rangatiratanga requiring active protection.¹⁵ As the Tribunal found in the *Tauranga Moana* report, ‘the Crown has a particular duty to respect and actively protect Māori autonomy, which they are entitled to as the natural expression of their tino rangatiratanga.’¹⁶

An expectation that the Crown do everything in its power to ensure settlement policies and practices actively protect iwi and hapū rangatiratanga has been raised in various settlement-focused reports. As the Tribunal noted in the *Ngāpuhi*

11. Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o te Raki Inquiry* (Wellington: Legislation Direct, 2014), p 527

12. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, 2nd ed (Wellington: Government Printing Office, 1989), p 51; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), p 185

13. Waitangi Tribunal, *The Te Arawa Mandate Report: Te Wahanga Tuarua* (Wellington: Legislation Direct, 2005), p 71

14. Submission 3.3.8, p 99

15. Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report* (Lower Hutt: Legislation Direct, 2015), pp 30–31

16. Waitangi Tribunal, *Tauranga Moana, 1886–2006*, vol 1, p 22

Mandate Inquiry Report, ‘the capacity of Māori to exercise authority over their own affairs as far as practicable within the confines of the modern State’ is key to the active protection of tino rangatiratanga. The Tribunal observed further that, in the settlement space, the Crown ‘has a duty to protect and enhance the Maori customary principle of social, political and economic organisation, or the right of any or all Maori to identify with the communities and support the leaders of their choice, in accordance with Maori custom.’¹⁷

2.4.3 The duty of informed decision-making

The duty of informed decision-making is closely linked to the principle of partnership and the duty of active protection. It is also significant to our inquiry, which centres on the allegation that the Crown prejudiced the claimants by failing to inform itself of their tribal identity through its kinship review. The Court of Appeal observed that partnership in the Treaty context means there is an onus on the Crown, ‘when acting within its sphere to make an informed decision’, to be sufficiently informed ‘as to the relevant facts and law to be able to say it has had proper regard to the impact of the principles of the Treaty’.¹⁸ Subsequent Treaty jurisprudence has refined and given context to this requirement that the Crown’s decisions be well informed. In the *Napier Hospital and Health Services Report*, the Tribunal considered that the active protection of Māori rangatiratanga required the Crown to inform itself adequately, in order to exercise its powers of sovereignty fairly and effectively.¹⁹ Finding that ‘tribal identity is inextricably bound up with rangatiratanga’, the Tribunal’s *Wairarapa ki Tararua Report* said that the ‘Crown cannot honour the guarantee of te tino rangatiratanga unless it understands tribes and the importance of tribal affiliation to ngā iwi Māori. Thus, the duty entails an obligation to know who groups are and how they relate to each other and to their rohe’.²⁰

Commenting further, the Tribunal argued that to uphold te Tiriti, the Crown needed ‘to acquire and maintain a sufficiently sound knowledge of the tribal origins’, because ‘tribal identity is an intrinsic part of rangatiratanga’.²¹ Along these lines, the *Tauranga Moana* report explained that the ‘rights of rangatiratanga, and the responsibilities of kaitiakitanga, were directed towards maintaining the integrity of the ancestral landscape, and with it the tribal identity of the people’.²²

In the settlement context, the Tribunal has stated that the Crown’s duty to act honourably and in good faith obliges it to ‘be fully informed before

17. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: Legislation Direct, 1998), p 215 (Waitangi Tribunal, *Ngāpuhi Mandate Inquiry Report*, p 23)

18. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 40

19. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 67

20. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 3, p 1031

21. *Ibid*, p 1042

22. Waitangi Tribunal, *Tauranga Moana, 1886–2006*, vol 2, pp 504–505

making material decisions affecting Māori.²³ In the *Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report*, the Tribunal emphasised that Treaty-compliant settlement processes demand a ‘sophisticated understanding’ on the Crown’s part ‘of how Māori communities operate in general, and how the ones in question operate in particular’. This high standard of knowledge was essential, it argued, to the Crown’s ability to act fairly and to protect all groups’ interests during settlement.²⁴

2.4.4 The duty to consult

The duty to consult also derives from the principle of partnership, and is clearly intertwined with the duty to be informed. In the Central North Island inquiry, the Tribunal considered the Crown has a duty to ‘consult Maori on matters of importance to them and to obtain their full, free, prior, and informed consent to anything which alters their possession of those lands, resources, and taonga guaranteed to them in article 2’. It added, however, ‘the test of what consultation is reasonable in the prevailing circumstances depends on the nature of the resource or taonga, and the likely effects of the policy, action, or legislation.’²⁵ The courts and Tribunal have also said that the duty to consult does not exist in all circumstances. In some cases, extensive consultation and co-operation will be necessary. In others, the Crown may already have sufficient information to act consistently with the principles of te Tiriti.²⁶

In settlement-focused reports, the duty to consult is generally discussed in connection with the Crown’s duty to be fully informed about the groups affected by a settlement process, and the nature and extent of their interests. The Tribunal has said that to gain this understanding, the Crown must consult with the people concerned.²⁷

In *The Te Arawa Settlement Process Reports*, the Tribunal argued that ‘consultation’, in the Treaty context, requires the Crown to engage in discussion with all relevant groups before forming firm views of its own.²⁸ The Tribunal in *The Tāmaki Makaurau Settlement Process Report* expressed a similar view, but noted that the Crown’s duties to overlapping groups go beyond consultation; it must build relationships with them.²⁹ In both reports, the Tribunal emphasised that where customary interests are at stake, Crown consultation must include kanohi ki te kanohi (face-to-face) hui with the groups concerned; anything less would be culturally inappropriate.³⁰

23. Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, p100

24. Waitangi Tribunal, *The Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report* (Wellington: Legislation Direct, 2003), p 61

25. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 4, pp 1236, 1237

26. Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker’s Ltd, 1995), pp 287–289; *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 683

27. Waitangi Tribunal, *The Te Arawa Settlement Process Reports* (Wellington: Legislation Direct, 2007), pp 29–30

28. Ibid

29. Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, pp 18, 91, 109

30. Ibid, pp 89–90; Waitangi Tribunal, *Te Arawa Settlement Process Reports*, pp 31, 74

2.4.5 The duty to involve Māori in decision-making

In recent years, the Tribunal has increasingly emphasised the need for more equitable Crown-Māori engagement than that entailed by the duty to consult. To give effect to the Treaty partnership, it has argued, the Crown must involve Māori in decision-making. In the *Whaia te Mana Motuhake* report, the Tribunal argued that, if the Crown is to keep its promise to guarantee tino rangatiratanga, it 'should demonstrate a willingness to share a substantial measure of responsibility, control and resource with its Treaty partner . . . enough so that Māori own their own vision'.³¹ This would require it, among other things, to 'use and allow time for Māori decision-making processes to occur'.³² Reflecting on what Treaty partnership means in the social policy sphere, the Tribunal in the *Hauora* report stressed that 'partnership is much stronger than participation. Partnership under the Treaty, underpinned by recognition of tino rangatiratanga, means at least joint decision-making between Crown and Māori agencies and groups, not mere "contributions to" or "participation in" decision-making'.³³ In other words, the Crown must afford Māori the opportunity to co-design policies and processes that affect them.

The Tribunal has also affirmed the need to involve Māori in decision-making within the settlement context. In the *Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report*, the Tribunal argued that, where cultural redress was at stake, the Crown should in the first instance support Māori groups to resolve conflict about overlapping claims themselves. Only if 'conciliatory measures' such as facilitation and mediation had been 'honestly tried and failed', it argued, could the Crown justifiably decide the issues itself.³⁴ The Tribunal saw these measures as a critical part of Treaty-compliant consultation on overlapping claims.

In several reports since then, the Tribunal has suggested or recommended the use of tikanga-based processes to resolve conflict about customary interests in the settlement context, identifying this as the Treaty-compliant approach. We discuss this jurisprudence in section 2.4.7.

2.4.6 The principle of equal treatment

The principle of equal treatment arises from article 3 of te Tiriti. It requires the Crown to act fairly and impartially towards Māori, including by treating hapū and iwi fairly in relation to each other.³⁵ The Tribunal in the *Te Arawa Mandate Report* clarified that this does not necessarily mean 'treating all groups exactly the

31. Waitangi Tribunal, *Whaia Te Mana Motuhake/In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim* (Lower Hutt: Legislation Direct, 2015), p 29

32. Ibid, p 43

33. Waitangi Tribunal, *Hauora: Report on Stage One of the Health and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), p 78

34. Waitangi Tribunal, *Ngāti Tūwharetoa ki Kawerau*, p 67

35. Waitangi Tribunal, *The Te Arawa Mandate Report: Te Wahanga Tuarua* (Wellington: Legislation Direct, 2005), p 73; Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), p 133. We note that in this section we refer to some Tribunal reports that post-date our hearings. We do so insofar as they are relevant to the contextual discussion.

same, where they have different populations, interests, leadership structures, and preferences. Tino rangatiratanga must be respected'. Rather, it means that in treating groups fairly relative to each other, the Crown must 'do all in its power not to create (or exacerbate) divisions and damage relationships'.³⁶

This principle consists of two interrelated duties: the duty to act fairly and impartially towards Māori, and the duty to preserve amicable tribal relations. In regard to the first, the Tribunal has observed that the Crown's guarantee of tino rangatiratanga to all iwi contains another guarantee – that the Crown will 'not, by its actions, allow one iwi an unfair advantage over another'.³⁷ If the Crown fails to fulfil this duty, it risks creating or worsening divisions between tribal groups. This risk is not insignificant, given the 'continuing vitality of Maori tribal organisation and identification' in contemporary times, and that 'tribal rivalry remains healthy and dynamic'.³⁸ The second duty – to preserve amicable tribal relations – acknowledges the potential for the Crown's actions to damage tribal relations, and its obligation to avert this risk. We discuss this below.

2.4.7 The duty to preserve whanaungatanga / amicable tribal relations

The principle of equal treatment also gives rise to the duty to preserve or promote whanaungatanga.³⁹ As described in *The Tāmaki Makaurau Settlement Process Report*, whanaungatanga traditionally referred to the maintenance of relationships between rangatira and their communities, and was vital in sustaining rangatiratanga. The ability of Māori communities to maintain relationships of whanaungatanga remains fundamental to their tino rangatiratanga today.⁴⁰

The articulation of duties to preserve and promote whanaungatanga and amicable tribal relations has emerged in jurisprudence on settlement processes, reflecting their potential (often noted by the Tribunal) to damage relationships between the Māori groups involved. In *The Ngāti Awa Settlement Cross-Claims Report*, the Tribunal stipulated:

the Crown should be pro-active in doing all that it can to ensure that the cost of arriving at settlements is not a deterioration of inter-tribal relations. The Crown must also be careful not to exacerbate the situations where there are fragile relationships within tribes.

It added that, if a settlement process causes 'deteriorating relationships' within or between tribes,

36. Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua*, p 73

37. Waitangi Tribunal, *Maori Development Corporation Report* (Wellington: Brooker's Ltd, 1993), pp 31–32; Waitangi Tribunal, *Maniapoto Mandate Inquiry Report* (Lower Hutt: Legislation Direct, 2020), p 18

38. Waitangi Tribunal, *Maori Development Corporation Report*, pp 31–32; Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua*, p 74

39. Waitangi Tribunal, *The Hauraki Settlement Overlapping Claims Inquiry Report* (Lower Hutt: Legislation Direct, 2020), p 14

40. Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, p 6

the Crown cannot be passive. It must exercise an ‘honest broker’ role as best it can to effect reconciliation, and to build bridges wherever and whenever the opportunity arises. Officials must be constantly vigilant to ensure that the cost of settlement in the form of damage to tribal relations is kept to the absolute minimum.⁴¹

In *The Tāmaki Makaurau Settlement Process Report*, the Tribunal commented that the breakdown of Māori social structures since 1840 has been ‘one of the most devastating consequences’ of the Crown’s failure to give effect to the guarantee of tino rangatiratanga.⁴² Against this backdrop, it emphasised the Crown’s obligation not only to preserve whanaungatanga but to actively protect it.⁴³ Where closely related Māori groups have interests in the same area, this obligation would require the Crown, for instance, to talk to all groups upfront about how Treaty settlement in that area should proceed, instead of pursuing one or more settlements with individual groups. This approach would respect and protect whanaungatanga ties between these groups, rather than potentially damaging them by pitting the groups against each other as overlapping claimants.

Drawing on earlier reports, *The Tāmaki Makaurau Settlement Process Report* summarised the Crown’s duty to protect whanaungatanga, saying the Crown must:

- ▶ understand the relationships (arising both from whakapapa and from politics) between all groups;
- ▶ act wherever possible to preserve amicable tribal relations; and
- ▶ act fairly and impartially toward all iwi, not giving an unfair advantage to one, especially in situations where inter-group rivalry is present.⁴⁴

As noted earlier, in several reports, the Tribunal has suggested or recommended the use of tikanga-based processes to resolve or prevent conflict about customary interests in the settlement context, and noted their importance to preserving whanaungatanga and amicable tribal relations.⁴⁵

In *The Tāmaki Makaurau Settlement Process Report*, the Tribunal argued that partnership under te Tiriti required the Office of Treaty Settlements to be aware of, and comply with, tikanga Māori when dealing with Māori. At its most basic level, adherence to tikanga would require the Crown, when embarking on a settlement with one group, to call a hui with all tangata whenua groups in the district to explain ‘what the Crown was doing’ there and ‘how it would be going about it.’⁴⁶ In the *Te Arawa Settlement Process Reports*, the Tribunal argued the Crown must allow Māori to use their own customary processes to resolve conflict about overlapping interests, viewing this as a requirement of the Crown’s duty to

41. Waitangi Tribunal, *Ngāti Awa Settlement Cross-Claims Report*, pp 87–88

42. Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, p 6

43. *Ibid*, pp 6–7, 101–102

44. *Ibid*, p 101

45. *Ibid*, p 19; Waitangi Tribunal, *Te Arawa Settlement Process Reports*, pp 65, 75; Waitangi Tribunal, *Hauraki Settlement Overlapping Claims*, pp 86–92

46. Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, p 19

actively protect tikanga. Such an approach was equally crucial to preserving tribal relations, it considered.⁴⁷

Most recently, the Tribunal in *The Hauraki Settlement Overlapping Claims Inquiry Report* set out recommendations that the Crown support, promote, and allow for tikanga-based processes to resolve overlapping interests (in this case, in the context of disputes about redress), grounding its recommendations in the principle of partnership and duty of active protection. The Tribunal also recommended the Crown amend its settlement guide, the *Red Book*, to fully express the Crown's commitment to a Treaty-compliant approach to settlements and to explain how it will be implemented.⁴⁸

We consider the principles of partnership and equal treatment, and the duties that flow from them identified here, as we address the core issue in dispute between the claimants and the Crown.

47. Waitangi Tribunal, *Tē Arawa Settlement Process Reports*, pp 65, 75, 195

48. Waitangi Tribunal, *Hauraki Settlement Overlapping Claims*, pp 90–92, 118

CHAPTER 3

KO WAI TE TANGATA WHENUA O MOTITI? WHO ARE THE TANGATA WHENUA OF MOTITI ISLAND?

3.1 INTRODUCTION

This chapter addresses the first of the three issues we have selected for determination: who are the tangata whenua of Motiti Island? As noted, it is unusual for the Waitangi Tribunal to make a determination on the question posed in this chapter; we have already set out our reasons for doing so. Answering this question is a necessary precursor to determining whether the Crown, through its kinship review, properly informed itself of the identity of the island's tangata whenua.

To address such a significant question requires a sound contextual foundation. We therefore begin this chapter with an account of the history and contemporary social/political life of the people or peoples of the island. For ease of reading, our account is divided in two: from the time of the island's first occupation to roughly the mid-twentieth century, and from that point until the present day. Our account is based on the evidence presented in the inquiry that we consider most helpful to the process of determining who are the tangata whenua of Motiti Island.

Elements of the evidence provided by claimants and interested parties were contested – including whakapapa and chronology of tenure and patterns of settlement on the island. Where accounts differ, or where disagreements arose, our account acknowledges them; it also acknowledges the considerable areas of consistency in the evidence. Importantly, the evidence on which this chapter is based varies in nature and source. While section 3.2 draws largely on *kōrero i tuku iho* (oral traditions) and other historical sources and research, section 3.3 – dealing with the more recent history of Motiti Island – relies more heavily on documentary evidence and first-hand testimony. Some witnesses focused largely on their personal experiences of daily life on the island, while others gave evidence about the political structures and entities established to represent the interests of different groups on Motiti; section 3.3 includes both perspectives.

In section 3.4, we turn our attention to the parties' views on what that evidence reveals about tribal identities and the relative interests of different groups on the island. We present our own analysis and conclusions in section 3.5, before setting out our overall finding on the central question: who are the island's tangata whenua?

3.2 MOTITI ISLAND AND ITS INHABITANTS FROM FIRST OCCUPATION

3.2.1 The first inhabitants

When waka arrived in Aotearoa from Hawaiki, peoples known as Te Tini o Toi (the many descendants of Toi) are generally believed to have been occupying the North and South Islands.¹ Some claim that ancient peoples were living in Aotearoa even earlier, when Toi's people arrived (discussed further below).²

In some of the evidence we heard, the early settlement of Whakatāne was traced back to the large iwi Te Tini o Awa, some of whom settled in the Whakatāne area,³ and to the sub-tribe Te Hapuoneone.⁴ The ancestor of Te Tini o Awa was Awanuiārangi 1, a son of Toi.⁵ Te Tini o Awa and other descendants of Toi were living in and around the Whakatāne area at the time the *Mataatua* waka arrived.⁶

Differing accounts of the early settlement of Motiti Island itself were presented to us. The key point of difference concerned the question of whether Awanuiārangi 1 lived on the island. Claimant witness, Nepia Ranapia, traced the settlement of Motiti back to the ancient (pre-Toi) people the Maioriori, saying they were first to claim possession of the island.⁷ In this account, descendants of the Maioriori, the Parehua Upanepane, were living on the island at the time the *Te Arawa* waka arrived.⁸ Giving evidence before us, Nepia Ranapia referred to ancient carvings etched into a rock on the shore at Otutaerehia which he said date back to the time of these people. He said the carvings, a series of koru, relate to 'the migration from the old world[, t]hose ancestors that navigated around the oceans', and that they map the movements of the two atua (deities), Hani and Puna, whom the ancestors brought with them on their voyages.⁹ The full names of these atua are Hani a te waewae kimi atu (Hani, the traveller and questing one) and Puna whakatipu tangata (Puna, caretaker of the fertility of humankind).¹⁰

By contrast, Dr Pouroto Ngaropo, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, said that Toi and Awanuiārangi 1 were early occupants of Motiti and that 'many descendants of Toi' lived on the island.¹¹ A similar view was expressed by the Motiti Hapū Management Plan delegation (which included claimant witnesses Nepia and Daniel Ranapia) in their *Motiti Island Native Resource Management Plan* in 2012. They stated that Awanuiārangi 1 had lived on Motiti alongside the

1. Document A7, p 12. The full name of the ancestor Toi was Toi-te-Huatahi or Toi-Kai-Rakau. Pouroto Ngaropo, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, gave the names Toi Putaihunui and Toi Ngaitehurumanu also: transcript 4.1.4, p 31.

2. Document A17, p 9; transcript 4.1.4, p 29

3. Document A7, pp 7, 14–15; doc A15, p [123]

4. Document A7, pp 14, 25, 27, 28, 35; doc A57, p 16

5. Document A7, pp 7, 12–13. Tā Hirini noted that Taranaki people identify Awanuiārangi 1 as Toi's grandson, not his son.

6. Document A16, p 6; doc A7, p 7; doc A57, p 16; submission 3.3.12(b), p 19

7. Document A17, p 9; transcript 4.1.2, p 73

8. Document A17, p 9

9. Transcript 4.1.2, p 29; doc A17(b), p [7]

10. Transcript 4.1.2, pp 29–30; doc A17, p 39. Hani and Puna are 'Atua ancestors' of Te Arawa and Tainui: doc A87, p 3.

11. Document A64(a), p 43; transcript 4.1.4, p 37



Ancient rock carvings on the shore at Otutaerehia, Motiti Island

Source: Document A17(b), p [7]

Parehua Upanepane people and that Motiti was among the many territories over which Toi reigned.¹²

Dr Ngaropo told us that Toi, Awanuiārangi i, and Awatope – Awanuiārangi i's son – travelled to Motiti together and built a pā there called Te Hoe o Awatope (the oar of Awatope, referring to Awanuiārangi i's having 'left his paddle there').¹³ The name 'Te Hoe Awatope' appears on a map of documented place names of Motiti Island created by Nepia and Daniel Ranapia in 2012.¹⁴

Dr Ngaropo also affirmed the association of the Te Arawa atua Hani and Puna with Motiti, specifically, their role as 'ngā atua kaitiaki o Mōtiti' (guardian deities of Motiti).¹⁵ Himi Takotohiwi, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, referred to Hani and Puna as the two deities who guided the *Te Arawa* waka to Aotearoa.¹⁶

12. Document A89(a), p 2; Nepia Ranapia, Daniel Ranapia, Anaru Ranapia, Rereata Rogers, Jane Waldon, Huriwaka Ngawhika, and Eddie Matahaere, *Motiti Island Native Resource Management Plan*, 2nd ed ([Motiti]: Korowai Kāhui o te Patuwai Tribal Council, 2012), p 29. The *Motiti Island Native Resource Management Plan* is part of the Motiti Island hapū management plan.

13. Document A64(a), p 43; transcript 4.1.4, p 37

14. Document A17, p 59

15. Document A64(a), p 45

16. Document A57, p 10

3.2.2 Arrival of the *Te Arawa* and *Mataatua* waka

These two ancestral waka of the Bay of Plenty area are significant in the traditions of the claimants and interested parties in this inquiry.

After the *Mataatua* waka arrived in Whakatāne, its occupants intermarried with Te Tini o Awa and Te Tini o Toi more broadly.¹⁷ As summarised by technical witness for the claimants, Dr Vincent O'Malley, 'many important Bay of Plenty iwi, including Ngāti Awa, Te Whakatōhea, Tūhoe and others, can trace their origins to the *Mataatua* ancestors and their union with the descendants of Toi.'¹⁸ Ngāti Awa in particular claim Toroa, captain of the *Mataatua* waka, as a founding ancestor, as well as Awanuiārangi I.¹⁹ Through intermarriage, Toroa's people spread throughout the Whakatāne area and into the Urewera district. Toroa himself settled in Whakatāne at Kaputerangi, the pā previously occupied by Toi.²⁰

According to Nepia Ranapia, after the *Te Arawa* waka arrived in the Bay of Plenty, the Ohomairangi people, who had travelled on it, intermarried with the Pare Upanepane people living on Motiti and the two peoples 'merged'. This new grouping became known as the iwi Waitaha (named after an ancestor on the *Te Arawa* waka).²¹ In this account, Waitaha held mana on the island at this time.²²

3.2.3 Ngātoroirangi

An important figure in the history of Motiti Island, Ngātoroirangi is generally acknowledged to have been an early occupant.²³ Originally from Rangiatea (or Ra'iatea), Ngātoroirangi was the tohunga aboard the *Te Arawa* waka and, according to Muriwai Ihakara, witness in support of Ngā Hapū o te Moutere o Motiti, 'the Paramount Chief and High Priest of Ngāti Ohomairangi'.²⁴ Accounts agree that, after an initial visit to Motiti (following which he travelled back to Hawaiiki to avenge a curse), Ngātoroirangi returned to the island with his wife Kearoa and settled there, building a pā named Matarehua at the southern tip of the island, on the islet Taumaihi.²⁵ Thereafter, Ngātoroirangi lived on Motiti ('often travelling to the mainland', according to Mr Ihakara) and was buried on the island.²⁶ According to Nepia Ranapia, Ngātoroirangi died at Waikato and his kōiwi (remains) 'were brought to Motiti and buried there at a place called Te Rangiahopapa'.²⁷

Witnesses for Ngā Hapū o te Moutere o Motiti highlighted Ngātoroirangi's role in performing essential rites on the island and naming it. Nepia Ranapia said

17. Document A7, pp 6–7; doc A16, p 6

18. Document A16, p 6

19. Document A64(a), p 14; submission 3.3.12, p 19

20. Document A57, p 16; doc A7, p 13

21. Document A17, p 9. There were two Waitaha groups at this time, one known as Waitaha-a-Hei, associated with the *Te Arawa* waka, and one known as Waitaha-turautā, identified with Ngāti Awa or Te Tini o Awa: doc A7, p 9. Nepia Ranapia refers to the former.

22. Document A17, p 99

23. Document A16, p 5; doc A15, p 65; doc A64(a), pp 43–46

24. Document A33(a), p 5; see also doc A15, p 635; doc A16, p 5; doc A17, pp 3, 9

25. Document A16, p 5; doc A17, p 41; doc A64(a), pp 43–46

26. Document A33(a), p 5; doc A64(a), pp 45–46

27. Transcript 4.1.2, p 31

Ngātoroirangi had reinstated the atua Hani and Puna in two sacred rocks previously placed on the island by ancient ancestors, the Uru people.²⁸ The Uru people were the first to bring Hani and Puna to Motiti, but took the atua away with them when they eventually left the area. Much later the atua ‘came into the possession’ of Ngātoroirangi, who returned them to the island. According to Nepia Ranapia, in reciting a karakia to reinstate the atua, Ngātoroirangi had also named the island: ‘Motu iti’, meaning ‘install the life force’.²⁹ Mr Ihakara quoted two longer versions of the name handed down through kōrero, ‘Te Motiti-a-Naki’ and ‘Te Motiti-a-Kahumatamomoe’.³⁰

While Nepia Ranapia and others spoke only of one Ngātoroirangi, Mr Ihakara explained that in Te Arawa tradition, Motiti was first visited by a more ancient ancestor, Ngātoroirangi I, from whom the later Ngātoroirangi (Ngātoroirangi II), the tohunga of the *Te Arawa* waka, was descended. In this tradition, it was Ngātoroirangi I who gave Motiti its original name – Tuwhakairi – and completed ‘all [the] rituals of first contact’,³¹ including implanting the mauri (life force) of Hani and Puna on the island and placing guardians upon it.³² In this account, Ngātoroirangi II was ‘well aware of the mauri laid down’ on Motiti by his tipuna when he arrived.³³ In Te Arawa tradition, the ‘legacy of kaitiaki’ on Motiti was thus established by Ngātoroirangi I and enhanced by Ngātoroirangi II through the latter’s rituals and permanent occupation of the island, and by his being buried there.³⁴

In their evidence, Te Patuwai Tribal and Te Rūnanga o Ngāti Awa witnesses referred to Ngātoroirangi II and his settlement of Motiti and acknowledged him as a tipuna of Te Hapū.³⁵ They also credited him with having named the island but gave a different account of the circumstances in which he did so and the meaning of the name. According to Dr Ngaropo, Ngātoroirangi II named the island when he used a wooden object called a ‘Motiti’ to call upon the spiritual realm to help him defeat Manaia and his warriors, who had travelled from Hawaiki to kill Ngātoroirangi.³⁶ Aided by the spirits he had invoked, Ngātoroirangi defeated Manaia.

3.2.4 Te Hapū, Ngāti Ruaroa, Ngāti Awa

3.2.4.1 Te Hapū

Te Hapū was a rangatira who settled Motiti Island and is the eponymous ancestor of Ngāi Te Hapū. Te Hapū’s lineage and its implications are important to

28. Document A17, p 39

29. Ibid

30. Document A33(a), p 3

31. Document A87, p 3

32. Document A33(a), p 3; doc A87, p 3

33. Document A33(a), p 4

34. Document A87, p 3

35. Document A64(a), p 45. The reference is to a taunahatanga (land-claiming chant) ascribed to Te Hapū, in which he recalls Ngātoroirangi II’s occupation of the island.

36. Transcript 4.1.4, pp 156–162

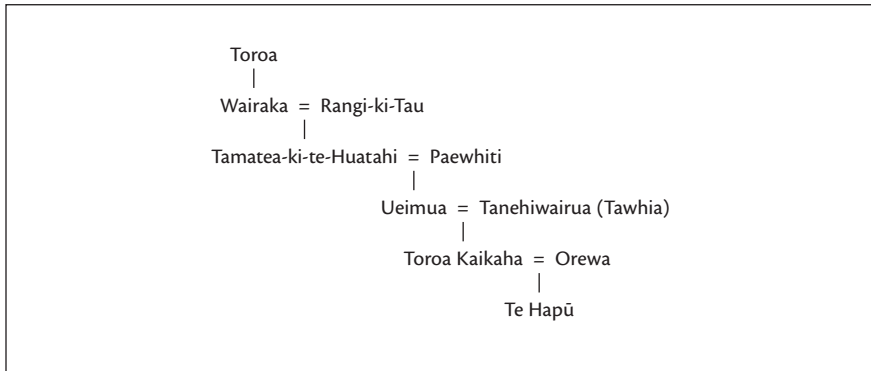


Chart 3.1: Te Hapū's line of descent from Toroa

Sources: Document A17, pp 10, 53, 54; doc A16, pp 6, 96; doc A87, p 2. Other sources give the same primary lineage from Toroa to Te Hapū; see, for example, doc A65, p 13.

determining who are the tangata whenua of Motiti, and are the subject of significant disagreement among the parties.

The claimants and interested parties generally accepted that Te Hapū had ancestral links to both the *Te Arawa* and the *Mataatua* waka, being descended in one line from Waitaha, who arrived on the *Te Arawa* waka,³⁷ and in another from Toroa, captain of the *Mataatua* waka.³⁸ Certain details of his whakapapa are disputed, however.

Whakapapa evidence given by Ngā Hapū o te Mouhere o Motiti traced Te Hapū's line of descent on his father's side as shown in chart 3.1 above.

Other evidence also supported this account, including that from Te Patuwai Tribal and Te Rūnanga o Ngāti Awa witnesses, a whakapapa recorded by Elsdon Best, and testimony given in the Native Land Court.³⁹ Nepia Ranapia appeared to endorse this whakapapa but also provided a version that named Tamatea-ki-te-Huatahi's father as Maiurenui.⁴⁰

On his mother's side, the claimants said Te Hapū descended from the ancestor Waitaha, as shown in chart 3.2 on page 31.

Nepia Ranapia provided evidence of this whakapapa, but also noted in cross-examination that Te Hapū's mother was said to be Muriwai.⁴¹

However, aspects of this whakapapa conflicted with evidence given by Dr Ngaropo, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa. Dr Ngaropo stated that Te Hapū descends directly from Awanuiārangi 11 – the principal Ngāti

37. Document A16, p 5; doc A17, p 11; doc A64(a), p 41

38. Document A16, p 6; doc A17, p 54; doc A64(a), p 42

39. Document A16, p 70; doc A17, p 53; doc A65, p 13

40. Document A17, p 54

41. Transcript 4.1.5, p 207

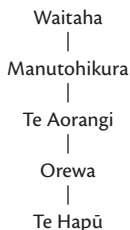


Chart 3.2: Te Hapū's line of descent from Waitaha

Source: Document A17, p 11; doc A87, p 2

Awa ancestor – via his paternal grandmother, whom he named as Tapa (Ueimua's second wife) rather than Tawhia (his first).⁴² The source for this claim was a whakapapa chant recorded in 1898 and allegedly chanted by Tapa's grandfather.⁴³ In reply, Nepia and Daniel Ranapia cited two whakapapa that showed Tapa was not Te Hapū's grandmother; the child she had with Ueimua was Irataketake, not Toroa Kaikaha. One source was from Elsdon Best,⁴⁴ the other from Native Land Court testimony.⁴⁵ Meanwhile, Mr Ihakara provided a whakapapa identifying Ueimua and Tapa's child as Katoatawhaki.⁴⁶ Dr Ngaropo also identified Te Hapū's mother as Ruaroa, a woman of Ngāti Pūkenga (not Orewa of Waitaha).⁴⁷ Despite this, he acknowledged that Te Hapū was 'a descendant of Te Arawa and the Waitaha people'.⁴⁸

With respect to links between Te Hapū and Awanuiārangi 11, Ngā Hapū o te Mouhere o Motiti, Te Patuwai Tribal, and Te Rūnanga o Ngāti Awa gave evidence that Te Hapū's great-grandfather, Tamatea-ki-te-Huatahi, was a half-brother of Awanuiārangi 11.⁴⁹ In some accounts, both men were sons of Wairaka – Tamatea-ki-te-Huatahi from her first marriage to Maiurenui, and Awanuiārangi 11 from her second marriage to Te-Hiinga-o-te-Ra.⁵⁰ In another account, both shared the same father, Te-Hiinga-o-te-Ra.⁵¹

42. Document A64(a), p 18

43. Ibid, p 33; doc A87, p 2

44. Document A89, p 4; doc A83, p 40; Elsdon Best, *Tuhoe: The Children of the Mist*, 2 vols (Auckland: Reed Books, 1996), vol 2, tbl 27

45. Wai 894 RO1, doc A3, p 63; doc A83, pp 41–42. The testimony was given by Werahiko, a Ngāti Pūkenga chief: Wai 894 RO1, doc A3, p 63.

46. Document A87, p 2

47. Document A64(a), pp 36, 39

48. Ibid, p 41

49. Document A17, p 53; doc A53, p 3; doc A64(a), p 17; transcript 4.1.4, pp 66–67

50. Document A17, p 53; doc A64(a), p 17; transcript 4.1.4, pp 66–67

51. Document A53, pp 2–3

As for Te Hapū's earlier ancestry, the claimants and interested parties agreed that Te Hapū is a descendant of Awanuiārangi 1, through Toroa.⁵² They disagreed, however, on the significance of this ancestry: the claimants held that descent from Awanuiārangi 1 did not entail membership of Ngāti Awa in its modern form,⁵³ while Dr Ngaropo asserted that '[i]f you descend from Awanuiārangi 1 you are Ngāti Awa'.⁵⁴

The claimants and interested parties agreed on some basic facts of Te Hapū's life. All the traditions referred to Te Hapū living with his hapū Ngāti Ruaroa at Ōhope (at the mouth of Ōhiwa Harbour) in a pā called Te Horanga, or Te Horanga o Te Hapū (though some witnesses referred to it as Te Horonga).⁵⁵ Te Hapū was married twice, first to a local woman, Waipai (whose iwi we discuss below), and then to Romai, the daughter of Pūkenga (the eponymous ancestor of Ngāti Pūkenga). Te Hapū's first child, Manu Tuhira, was born to Waipai at Ōhiwa and his second child, Roropukai, to Romai on Motiti. After migrating to Motiti with Romai and his hapū Ngāti Ruaroa, Te Hapū lived on the island permanently and died there.⁵⁶

One contested aspect of Te Hapū's life was the place of his birth – especially, whether it was in the Ngāti Awa area. On the first point, some evidence said Te Hapū was born in Ōhiwa.⁵⁷ Other evidence said he was born in Te Urewera (in Ruatoki, according to Daniel Ranapia).⁵⁸ Dr Ngaropo asserted that Te Hapū was born 'in the Ngāti Awa region',⁵⁹ by which he meant the Ōhiwa area. The claimants disputed that Ōhiwa could be legitimately described as such, arguing that a Ngāti Awa identity may not have emerged in Whakatāne at the time of Te Hapū's birth.⁶⁰ We revisit this evidence in the next section.

Parties also disagreed about the tribal identity of Te Hapū's wife Waipai. Te Patuwai Tribal and Te Rūnanga o Ngāti Awa consistently identified Waipai as Ngāti Awa,⁶¹ while the claimants gave no evidence for her iwi (including technical witness Dr O'Malley, who noted only that she was 'a local woman of mana' at Ōhiwa).⁶² Under cross-examination, Nepia Ranapia agreed with counsel that Waipai descended directly from Ueimua (through his son Te Kato a-Tawhaki), but would not commit to whether she was Ngāti Awa.⁶³ Counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa drew our attention to the 2012 *Motiti Island Native Resource Management Plan*, written by Nepia Ranapia and others, which stated

52. Document A64(a), p 18; submission 3.3.8, p 32

53. Submission 3.3.8, pp 30–31

54. Transcript 4.1.4, p 69

55. Document A16, p 7; doc A17, p 10; doc A57, p 4; transcript 4.1.4, p 72

56. Document A17, p 10; doc A16(a), p 2465

57. Document A64(a), p 31; transcript 4.1.4, p 72

58. Document A27, p 5; doc A83, p 37. Wharewera Koopu stated that Ueimua's people left Te Urewera after Te Hapū's father died and that Te Hapū then moved to Ōhiwa: doc A53, p 3.

59. Document A64(a), p 36; transcript 4.1.4, p 72

60. Submission 3.3.8, p 11

61. Document A53, p 4; transcript 4.1.5, p 351

62. Document A17, p 13; doc A16, p 7; transcript 4.1.2, pp 78–79

63. Transcript 4.1.2, pp 78–79

that Waipai was Ngāti Awa; and to a map Nepia and Daniel Ranapia created in 2008, which also identified her as Ngāti Awa.⁶⁴

3.2.4.2 Ngāti Ruaroa

As mentioned earlier, Te Hapū belonged to the hapū Ngāti Ruaroa. The claimants and interested parties mostly agreed that the hapū emerged from events centering on Ueimua, Te Hapū's grandfather. In brief, the agreed elements of the history were that Ueimua lived in the Urewera district with his whānau, including his two younger brothers Tūhoe Potiki (the eponymous ancestor of Tūhoe) and Tanemoeahi (the ancestor of Ngāti Pūkenga).⁶⁵ Witnesses explained that the three brothers were known as Te Tokotoru a Paewhiti – the trio of Paewhiti.⁶⁶ At a certain point, Ueimua was killed by one of his brothers, causing his whānau to leave the Urewera area. In some accounts, Tūhoe Potiki killed Ueimua,⁶⁷ while in another, the two brothers colluded to kill him.⁶⁸ After leaving Te Urewera, Te Ueimua's people travelled to Ōhiwa Harbour in Whakatāne, where they settled and became known as Ngāti Ruaroa.⁶⁹ Ueimua's son, Toroa Kaikaha (Te Hapū's father) settled at Onekawa Kutarere Pā.⁷⁰ After his father died, Te Hapū assumed the leadership of Ngāti Ruaroa and, as mentioned, resided at Te Horanga Pā at Ōhope.⁷¹

The evidence was ambiguous about whether Te Hapū was born before Ueimua's whānau left Te Urewera or after they reached Ōhiwa. At least one account indicated that Te Hapū took part in the move to Ōhiwa,⁷² but (as noted earlier) others located his birth at Ōhiwa.

Himi Takotohiwi, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, gave further details of this history, saying Ueimua's three sons each initiated reprisals against Tanemoeahi and Tūhoe Potiki, which led Tanemoeahi and Tūhoe Potiki to leave the region permanently. He emphasised that Ueimua's murder and the conflicts it generated played a critical role in shaping tribal relations in the region.⁷³

Dr Ngaropo gave an alternative version of Ngāti Ruaroa's origins. He too asserted that the hapū originated in Ōhiwa⁷⁴ in the time of Toroa Kaikaha and Te Hapū, but did not link the creation of the hapū to Ueimua's death. Rather, Dr Ngaropo said Ueimua lived alongside Te Hapū and his father at Ōhiwa.⁷⁵ According to this

64. Document A83(b), p 12; Ranapia, Ranapia, Ranapia, Rogers, Waldon, Ngawhika, and Matahaere, *Motiti Island Native Resource Management Plan*, p 31; doc A23(a), vol 6, no 352, p 4455.

65. Document A53, p 3; doc A83, p 37

66. Document A27, p 24; transcript 4.1.4, p 282

67. Document A17, p 10; doc A16, p 6

68. Document A57, p 3

69. Document A16, p 6; doc A17, p 10

70. Document A57, p 4

71. Submission 3.3.12(b), pp 23, 25

72. Document A53, p 3

73. Document A57, p 3

74. Document A64(a), p 30

75. Ibid, p 36

version, Ngāti Ruaroa took their name from Te Hapū's mother, understood in this case to be Ruaroa (of Ngāti Pūkenga).⁷⁶

The major point of dispute in the evidence about Ngāti Ruaroa concerned their tribal identity: the claimants contested that Ngāti Ruaroa were Ngāti Awa, as Te Patuwai Tribal and Te Rūnanga o Ngāti Awa claimed. The latter parties asserted that Ueimua himself was Ngāti Awa.⁷⁷ Technical witness Professor Tā Hirini Moko Mead described Ueimua as a significant Ngāti Awa ancestor, noting that his descendants had founded important Ngāti Awa hapū (including Te Whānau a Taiwhakaea II, Ngāti Whetenui, and Ngāti Paraheka).⁷⁸ Himi Takotohiwi highlighted that Ueimua was an ancestor of Ikapuku, after whom the ancient Ngāti Awa hapū Ngāti Ikapuku were named.⁷⁹ Tā Hirini further noted that, according to Native Land Court testimony by Tiaki Rewiri, customary rights to some lands in the Whakatāne area derived from Ueimua via his Mataatua ancestry.⁸⁰

Drawing on Tūhoe tradition and scholarship, claimant witness Daniel Ranapia gave evidence that customary authority in the Te Urewera area occupied by Ueimua and his whānau derived from an ancient tribe who predated the *Mataatua* waka, and consequently, the area itself, and Ueimua's people, could not legitimately be described as Ngāti Awa.⁸¹ More specifically, he said that when Ueimua and his siblings first occupied Te Urewera, at Ruatoki, they did so by right of descent from their ancestor Tūranga-piki-toi, and therefore as members of the ancient iwi Ngāi Tūranga.⁸² The customary right to Te Urewera at that time was thus 'an old right predating Ngāti Awa'.⁸³ He explained that Ngāi Tūranga were an 'indigenous' iwi who descended from Toi, and that Ueimua was linked to them through his mother Paewhiti, who was of both Ngāi Tūranga and Mataatua descent.⁸⁴

Daniel Ranapia also cited traditional accounts of Ueimua's murder recorded by historian J B W Robertson, in which the brothers' feud – and the ensuing conflicts – were driven by dynamics between Ngāi Tūranga and Te Hapūoneone (also an ancient hapū), and which made no mention of the Ngāti Awa iwi.⁸⁵ Drawing on Robertson's work, Daniel Ranapia argued that the Ngāti Awa tribal identity had not emerged in the Urewera area – and possibly not in the Whakatāne area – at the time of Te Hapū. In his view, it was therefore inaccurate to describe the descendants of Ueimua and his brothers as Ngāti Awa.⁸⁶

Mr Ihakara gave evidence of Ngāti Ruaroa's origins that also emphasised their ancestral links to Ngāi Tūranga – attributed in this case to Ueimua's wife Tawhia.

76. Document A64(a), p 39

77. Ibid, pp 17, 36

78. Document A85(b), p 29

79. Submission 3.3.12(b), p 23

80. Document A85(b), pp 29–30

81. Document A83, pp 37–40

82. Ibid, p 38

83. Ibid

84. Ibid

85. Ibid, pp 38–39

86. Ibid, pp 39–40

According to Mr Ihakara, Tawhia's Ngāi Tūrangā ancestry was 'an underlying aspect of the rivalry' between Ueimua and his brothers, as 'early arrivals' to Aotearoa 'were viewed as having greater mana than those who came later'. Ueimua's marriage to Tawhia thus increased his mana, fuelling his brothers' discontent.⁸⁷ Evidence from Te Patuwai Tribal and Te Rūnanga o Ngāti Awa gave a different motive for the killing, namely, that Tanemoeahi desired Ueimua's tuakana status.⁸⁸

3.2.4.3 Ngāti Awa

Ngāti Awa trace their origins back to the time of Māui-tikitiki-a-taranga. Dr Ngaropo provided a whakapapa that traced descent from Māui, down 13 generations to Toi, the father of Awanuiārangi 1, the iwi's founding ancestor. He explained that Ngāti Awa had been preceded by Ngāti Ngāinui, who were the descendants of Māui's grandson, Tiwakawaka.⁸⁹ Ngāti Ngāinui were an original tribe of the Whakatāne area who eventually came to be known by the name of Toi's descendants, Te Tini o Toi.⁹⁰

Toi and his whānau had a strong connection with Whakatāne. According to kōrero relayed by Dr Ngaropo, Toi first made landfall in Aotearoa at Whakatāne.⁹¹ He subsequently went to the far north, where Awanuiārangi 1 was born, and later returned to the Bay of Plenty with him.⁹² Toi lived for a time in Whakatāne, at Kaputerangi Pā, and died there. Some of Te Tini o Awa, Awanuiārangi 1's descendants, also settled in Whakatāne.⁹³

Ngāti Awa traditions differ as to the iwi's place of origin, reflecting different accounts of where Awanuiārangi 1 was raised. Some say the iwi originated in Northland, and others, in the Bay of Plenty.⁹⁴ In either case, it is accepted that in ancient times, Ngāti Awa occupied much of Northland, but after persistent conflicts with iwi in the area, fragmented and migrated south. Some went to Taranaki, others to Tauranga, and others to Mahia and later Hawkes Bay and Wairarapa. The descendants of these groups became Te Ati Awa, Ngāti Ranginui, and Ngāti Kahungunu respectively.⁹⁵ A fourth group, which retained the name Ngāti Awa, migrated to the Bay of Plenty and reconnected with their kin Te Tini o Awa, who were living at Whakatāne/Ōhiwa and Rangitaiki.⁹⁶ Further outward migrations occurred from the Bay of Plenty.

87. Document A87, p 2

88. Document A57, p 2

89. Document A64(a), pp 14, 32, 46

90. Transcript 4.1.4, p 33

91. Dr Ngaropo stated, 'When Toi arrived [in Aotearoa] he climbed up to Kaputerangi': transcript 4.1.4, p 32.

92. Transcript 4.1.4, pp 32–35

93. Document A7, p 12; transcript 4.1.4, pp 38–39

94. Dr Ngaropo said that Awanuiārangi 1 was born and raised near Ahipara in Northland: doc A64(a), p 14. However, Tā Hirini, writing in 1994, stated that the traditions relating to Awanuiārangi 1 and his whānau suggest that he grew up in Whakatāne: doc A7, p 7. Tā Hirini also noted that there were 'compelling arguments that favour the Far North as the homeland': doc A7, p 7.

95. Document A7, pp 6–7

96. Ibid, p 7



Te Patuwai representatives and Tribunal members on a site visit to Kaputerangi, Toi's pā, Kohi Point Scenic Reserve, Whakatāne district, 2 December 2018

As noted earlier, Toroa, captain of the *Mataatua* waka, is also a principal ancestor of Ngāti Awa. Dr Ngaropo told us that Toroa descended from Awanuiārangi 1, his father Irakewa being the ancestor's great-great-great-grandson.⁹⁷ According to some Ngāti Awa traditions, Irakewa, 'a powerful priest', came to Whakatāne ahead of the *Mataatua* waka and acquired mana over the land there.⁹⁸ After the *Mataatua* waka arrived at Whakatāne, its occupants intermarried with Te Tini o Awa.⁹⁹

Some Te Tini o Awa migrated away from Whakatāne around this time,¹⁰⁰ but Toroa and others of the *Mataatua* waka remained in the area, living at Kaputerangi, Whakatāne, and elsewhere. Referring to an earlier report by Tā Hirini, counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa said that Toroa and others had thereby 'maintained the mana of Toi and Awanuiārangi 1 through occupation at Kaputerangi and Whakatāne and throughout the tribal rohe'.¹⁰¹ Tā Hirini's report stated that Toi's pā Kaputerangi at Whakatāne is now 'an important historical landmark of Ngāti Awa and indeed of all Mataatua'.¹⁰²

97. Document A64(a), pp 16, 18

98. Document A7, pp 16, 31

99. Submission 3.3.12(b), p 20

100. Document A7, p 9

101. Submission 3.3.12(b), p 20

102. Document A7, p 13

Another important Ngāti Awa ancestor is Awanuiārangi 11.¹⁰³ Awanuiārangi 11 descended from Toroa through his mother, Wairaka (Toroa's daughter), but also through his father Te-Hiinga-o-te-Ra, who was the child of Ruaihona, Toroa's son.¹⁰⁴ Tā Hirini has summarised Awanuiārangi 11's significance to Ngāti Awa as follows: 'Under Awanuiārangi the first, Ngāti Awa is tied to the land, to the mana whenua deriving from Toi. Awanui-a-rangi the second, links Ngāti Awa of today with the tribes of Mataatua, as well as with Nga Puhi of the North.'

At some point after the arrival of the *Mataatua* waka, older tribal groupings were displaced or absorbed, and Te Tini o Awa were one of those from which several new groups emerged, among them Ngāti Awa.¹⁰⁵ Tā Hirini commented that, while most Te Tini o Toi groups 'melted away' in the new political order created by the migration from Hawaiiki to Aotearoa, Ngāti Awa were one of the few who retained their name and thus 'survived as a Toi related iwi'.¹⁰⁶

Differences between the claimants and interested parties about Ngāti Awa's history centered on the criteria for affiliating to the iwi today; that is, on the meaning of Ngāti Awa. The claimants emphasised that the meaning of Ngāti Awa has evolved over time, the name being applied to different groups at different times. Daniel Ranapia told us: 'Not all Toroa's descendants acknowledge today that they are from Ngāti Awa because they descend from Awanuiārangi 1, that is drawing the net far too wide, and that is why the focus is usually on descent from Awanuiārangi 11.'¹⁰⁷

Daniel Ranapia also quoted the Ngāti Awa deed of settlement, which states that Awanuiārangi 11 is 'the paramount and principal identifying ancestor from which all Hapū of Ngāti Awa can trace descent'.¹⁰⁸

Claimant counsel, Karen Feint QC, referred us to the Tribunal's *Ngati Awa Raupatu Report*, which made a distinction between the origins of Ngāti Awa – understood literally as 'the descendants of Awa' – and the modern Ngāti Awa, as it is represented by Te Rūnanga o Ngāti Awa.¹⁰⁹ The report noted that, as Awanuiārangi 1 predated the last wave of migration to Aotearoa, his descendants had spread widely in the North Island and comprised numerous tribes, including Te Ātiawa in Taranaki.¹¹⁰ Ms Feint also pointed to evidence by Tā Hirini that had informed that earlier report, and which stated that the early Ngāti Awa encompassed the ancestors of Mataatua, Ngāti Kahungunu, Ngāti Ranginui, Te Ātiawa, Ngāti Awa, Ngāpuhi, and others.¹¹¹ She also noted that the Ngāti Awa entry in *Te Ara – The*

103. Document A64(a), pp15–16, 42

104. Ibid, p15; doc A17, p53

105. Document A7, p35

106. Ibid, p15

107. Document A83, p40

108. Ibid, p46

109. Submission 3.3.8, pp30–31; Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), pp14–16

110. Submission 3.3.8, pp30–31; Waitangi Tribunal, *Ngati Awa Raupatu Report*, pp14–16

111. Document A7, p6

Encyclopedia of New Zealand states that Ngāti Awa ‘acknowledge’ Awanuiārangi 11 ‘as their eponymous ancestor . . . “from whom Ngāti Awa and their sub-tribes all claim descent”’.¹¹²

Dr Ngaropo, by contrast, held that Awanuiārangi 1 was ‘the eponymous ancestor of all the descendants of Ngāti Awa’.¹¹³ He also commented: ‘Some say that Te Hapū do not whakapapa/descend from Awanuiārangi 11. I do not agree with that assertion. If you descend from Awanuiārangi 1 you are Ngāti Awa and that is my response to that assertion.’¹¹⁴

The claimants responded that, while Te Hapū and his ancestors ‘are Ngāti Awa on that test’, this position overlooks that they are not ‘culturally Ngāti Awa in terms of the “modern” meaning’ of the name.¹¹⁵

3.2.5 Te heke

Several generations after the arrival of the *Mataatua* waka, the rangatira Te Rangihouhiri, a descendant of Toroa, led his people on a heke (migration) from the eastern Bay of Plenty to Maketū following an altercation with a neighbouring iwi.¹¹⁶ Dr O’Malley describes this as one of the most important heke of the many undertaken by the descendants of the *Mataatua* waka.¹¹⁷ The heke occurred gradually over many years.¹¹⁸ Te Rangihouhiri eventually occupied Tauranga – having conquered the resident iwi, Ngāti Ranginui¹¹⁹ – where his descendants became known as Ngāi Te Rangi.¹²⁰ Whether Te Rangihouhiri’s heke was a ‘Ngāti Awa’ heke was a contested point in this inquiry.

Te Hapū and his relative Maruahaira (the founding ancestor of Ngāti Whakahemo) moved westward with their peoples as part of this wider heke.¹²¹ According to Nepia and Daniel Ranapia, Maruahaira decided to join the heke with the intention of going to Oreiwhata in the Pukehina area to settle a dispute with his son-in-law, who was of Waitaha. Upon learning that Maruahaira was leaving his Whakatāne home, Te Hapū decided to take his people westward also.¹²²

112. Submission 3.3.8, p 31; Layne Harvey, ‘Ngāti Awa’, in *Te Ara – The Encyclopedia of New Zealand*, Ministry for Culture and Heritage, <https://teara.govt.nz/en/ngati-awa>, updated 1 March 2017

113. Document A64(a), p 14

114. Transcript 4.1.4, p 69

115. Submission 3.3.8, p 32

116. Document A16, p 6

117. Ibid

118. Ibid

119. Document A85(b), p 6

120. Document A16, p 7

121. Ibid, pp 6–7; submission 3.3.12(b), p 26. In his brief of evidence, Nepia Ranapia did not place Te Hapū and Maruahaira’s migration within the context of this wider heke but, under questioning, clarified that they had joined in the second part of the heke: transcript 4.1.2, p 88. Claimant Graham Hoete stated that Te Hapū’s heke was part of the wider heke – ‘Our people came to Motiti as part of the Te Rangihouhiri migration’ (doc A20, p 1) – as did Dr O’Malley, referencing Judge Walter Edward Gudgeon, ‘Notes on the Paper by Timi Waata Rimini, “On the Fall of Pukehina” and Other Pas’, *Journal of the Polynesian Society*, vol 2, no 2 (June 1893) (doc A16, p 7).

122. Document A17, pp 10–11; doc A27, pp 5–6

Accounts of the heke by the claimants and interested parties agree that, when Maruahaira and Te Hapū reached the Pukehina area, they parted ways. Te Hapū continued westward, while Maruahaira attacked Oreiwhata Pā and besieged Pukehina.¹²³ According to Wharewera Koopu, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, Ngāti Awa were ‘heavily involved’ in these attacks.¹²⁴

Witnesses in support of Ngā Hapū o te Moutere o Motiti said Te Hapū refrained from taking part in these attacks because he did not wish to wage war on his Waitaha relatives.¹²⁵ Elaborating, Daniel Ranapia said that ‘if Te Hapū had joined Maruahaira against Waitaha he would have lost his status as a tangata whenua of Waitaha and this would have prevented him from lifting the tapu upon Motiti.’¹²⁶ Other parties did not comment on Te Hapū’s motive for standing back from the attacks. Dr O’Malley cited a nineteenth-century account of the chiefs’ parting by Timi Waata Rimini, who said that, when farewelling Maruahaira, Te Hapū simply told him to ‘go . . . ashore, whilst I go on to Motiti.’¹²⁷

Dr Ngaropo’s account of Te Hapū and Maruahaira’s part in the heke differed from the one outlined earlier. He said the events at Pukehina took place after Te Hapū and Maruahaira had resumed their journey following a long stay at Te Awa o te Atua – a Ngāti Awa area – during which Te Hapū lived at a pā named Te Poutahi o Te Hapū.¹²⁸ Dr Ngaropo also said that the battle known as Te Patuwai occurred in the early stages of Te Hapū’s heke, just after he left Ōhiwa, when his people were attacked on the water by Ngāi Te Kapo.¹²⁹ This version of the battle of Te Patuwai – which shares common elements with one given by Ngārangi Chapman, witness for the Rauahi and Aporina Whānau Trust¹³⁰ – places the battle considerably earlier in the timeline of Te Hapū’s heke than most others.

Other evidence by Te Patuwai Tribal and Te Rūnanga o Ngāti Awa noted that during the heke, Te Hapū, Maruahaira, and Te Rangihouhiri lived at Tōrere and built a pā there called Hakuranui.¹³¹

The main point of disagreement between the accounts of the heke by the claimants and Te Patuwai Tribal and Te Rūnanga o Ngāti Awa was that the latter argued it was ‘a Ngāti Awa heke.’¹³² In support, Te Patuwai Tribal and Te Rūnanga o Ngāti Awa pointed to evidence from Tā Hirini that Maruahaira and Ngāti Whakahemo were formerly considered Ngāti Awa, and that their Waitaha links were emphasised only later in the Native Land Court.¹³³ They also claimed that most sources show Ngāi Te Rangi were initially part of the Ngāti Awa confederation.¹³⁴ Witness

123. Document A16, p 7

124. Document A53, p 3

125. Document A17, p 11; doc A27, pp 5–6; transcript 4.1.3, p 108

126. Document A27, p 6

127. Document A16, p 88

128. Document A64(a), p 40

129. Ibid

130. Document A39, pp 12–13

131. Document A47(d), p 3

132. Submission 3.3.12(b), p 26

133. Document A85(b), pp 5–7; submission 3.3.12(b), pp 26–27

134. Submission 3.3.12(b), p 26

Wharewera Koopu summarised the heke as ‘a journey of Ngāi Te Rangi which led to the combined forces of both Ngāi Te Rangihouhiri and Ngāti Awa in securing a home for Rangihouhiri’s people and their descendants in Tauranga.’¹³⁵

3.2.6 Te hikina o te tapu (lifting of the tapu) and the settlement of Motiti

The claimants and interested parties concur on some key aspects of the next stage of Te Hapū’s journey – his migration to Motiti. They generally agree that Motiti was tapu at the time Te Hapū travelled there, that he lifted the tapu,¹³⁶ and that he subsequently secured authority over the island. Most accounts also agreed the island was unoccupied because of the tapu when Te Hapū arrived,¹³⁷ but some said Waitaha people were living there at the time.¹³⁸

The most significant dispute concerning this episode in Motiti’s history is whether Te Hapū settled the island by right of his Waitaha lineage, or under the mana and on behalf of Ngāti Awa/Te Patuwai. The parties also differ in their understandings of when he travelled to Motiti, why he chose the island as his destination, and whether he went there under his own authority.

3.2.6.1 Choosing Motiti Island and te hikina o te tapu

Nepia Ranapia gave the following account of the events leading up to Te Hapū’s arrival on Motiti. Motiti had become tapu owing to an incident in which a Waitaha chief, Hikapa, killed one of the chiefs among Te Rangihouhiri’s followers. After the killing, the Waitaha people living on Motiti decided to leave, but before doing so, placed a tapu on the island preventing anyone from going there.¹³⁹

Later, Te Hapū was invited to settle on Motiti by the Waitaha chief, Waiokehu. After leaving Pukehina, Te Hapū went to Maketū and met with Waiokehu, who asked him ‘to uplift the tapu, reoccupy the ancestral lands of Motiti Island and defend the island with his military forces.’¹⁴⁰ According to this account, Te Hapū’s Waitaha lineage was critical to this invitation, as the tapu could only be removed by someone with whakapapa links to those who had laid it.¹⁴¹ Te Hapū agreed but, before going to Motiti, went to Tauranga to consult with Te Rangihouhiri and another prominent chief, Te Whetu o Te Rangi, to gain their blessing for the venture.¹⁴² He then travelled to Motiti and uplifted the tapu.¹⁴³ Through this act, Te Hapū ‘established his people’s right to stay on the island.’¹⁴⁴ As part of the tikanga of lifting the tapu, Te Hapū pledged his son in marriage to Waiokehu’s daughter.¹⁴⁵

135. Document A53, p 3

136. Transcript 4.1.3, p 109; doc A17, p 12; doc A64(a), pp 41–42

137. Document A17, p 12; doc A16(a), p 2566; doc A33(a), p 5

138. Document A64(a), p 40

139. Document A17, p 12

140. Ibid

141. Ibid

142. Ibid

143. Ibid, p 13

144. Ibid

145. Transcript 4.1.6, p 25



Nepia Ranapia, witness for the claimants, giving evidence at the inquiry's first hearing, Trinity Wharf Hotel, Tauranga, 14 May 2018

Relaying Te Arawa tradition, Mr Ihakara said Te Hapū consciously chose Motiti as his destination owing to his Waitaha lineage.¹⁴⁶ He 'invoked his Waitaha whaka-papa and it was this mana that gave him permission to land [on Motiti] and to assume the challenge of clearing the tapu'.¹⁴⁷ According to him, Te Hapū's lifting of the tapu was 'a definite and a specific act of reclaiming the mana of Waitaha' for himself and his people on Motiti.¹⁴⁸

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa made few claims as to why Te Hapū settled on Motiti in particular, but stated that he did so under the mana of Ngāti Awa, or 'under the banner of Ngāti Ruaroa a hapū of Ngāti Awa'.¹⁴⁹ Dr Ngaropo specified that Te Hapū settled the island 'under the authority and the power of Te Patuwai on Motiti',¹⁵⁰ a claim consistent with his evidence that the battle of Te Patuwai – and therefore the genesis of the hapū Te Patuwai – had taken place some time earlier.

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa also contested Nepia Ranapia's account of the placing and lifting of the tapu. While they accepted the island was tapu when Te Hapū arrived, they argued it may have been tapu simply because

146. Document A87, p 2

147. Ibid

148. Transcript 4.1.3, pp 121–122

149. Document A53, p 3; doc A57, p 4; doc A64(a), p 43

150. Document A64(a), p 43

Rangikatua was killed there, not because Waitaha had placed a tapu.¹⁵¹ Tā Hirini was sceptical of the claim that, if a tapu had been placed, it could be lifted only by someone with a Waitaha whakapapa.¹⁵² Dr Ngaropo agreed with the claimants that a tapu had been placed, and that only a Waitaha person could lift it, but gave a very different account of what the lifting of the tapu signified, as outlined below.

Counsel further argued it would have been 'difficult' for Te Hapū to meet with chief Te Waiiokehu at Maketū given that Te Rangihouhiri, whose journey westward preceded Te Hapū's, had earlier defeated Waitaha in battle at Maketū.¹⁵³ This argument placed in doubt the claim that Waiiokehu had invited Te Hapū to settle Motiti. Moreover, counsel said Te Hapū could not have consulted Te Rangihouhiri in Tauranga before heading to Motiti, as Te Rangihouhiri had died at Poroporoheamea before his people reached Tauranga.¹⁵⁴ Nepia Ranapia agreed, under cross-examination, that Te Rangihouhiri moved west before Te Hapū did and that he died before his people reached Tauranga,¹⁵⁵ but stated he would 'stick with our accounts' and noted the timing of these events was 'difficult to pinpoint'.¹⁵⁶

Although Dr Ngaropo agreed with the claimants that Te Hapū's Waitaha lineage enabled him to lift the tapu and assert mana on Motiti,¹⁵⁷ he claimed that in undertaking these acts, Te Hapū had ritually 'cleared' the island of the mana of Waitaha and claimed it for Ngāti Awa, specifically, Te Patuwai. According to him, Waitaha people were living on Motiti when Te Hapū arrived and, in light of his Waitaha whakapapa, 'agreed to allow him to stay'.¹⁵⁸ However, they did so in the knowledge that Te Hapū was both Ngāti Awa and Waitaha and would thereby secure mana over the island not for Waitaha, but for Ngāti Awa/Te Patuwai.¹⁵⁹ In support of this claim, Dr Ngaropo presented a karakia he said Te Hapū had incanted to lift the tapu on Motiti Island.¹⁶⁰ He explained that the karakia worked in three stages to 'clear the mana of Waitaha' on Motiti so that 'the mana can be received by the ancestor Awanuiārangi i'; to establish the mauri and 'present the mana' of Ngāti Awa on Motiti, tracing it from Toi through Toroa to Te Hapū; and finally, to affirm Te Hapū and Te Patuwai as kaitiaki of the island.¹⁶¹ Dr Ngaropo said the karakia was ancient and had been handed down by one of his elders and teachers.¹⁶² Commenting on this evidence, Elaine Butler, witness for the claimants, said she had never heard the karakia and expressed surprise it had not been documented previously. If such a karakia had been recited, she said, she would have expected

151. Submission 3.3.12(b), p 275

152. Document A85(b), p 8

153. Submission 3.3.12(b), pp 27–28; transcript 4.1.2, pp 81, 89

154. Transcript 4.1.2, pp 89–90

155. Ibid, pp 81, 82

156. Ibid, pp 89–90

157. Transcript 4.1.4, p 122

158. Document A64(a), p 40

159. Transcript 4.1.4, pp 151–153

160. Document A64(a), pp 42–43

161. Transcript 4.1.4, pp 151–153

162. Ibid



Dr Pouroto Ngaropo, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, giving evidence at the inquiry's third hearing, Te Mānuka Tūtahi Marae, Whakatāne, 3 December 2018

to hear about it when growing up on the island 'through the tūpunas of that time, korouas, kaumātuas'. But she accepted in principle that it may be authentic.¹⁶³

Ngārangi Chapman supported the view that Te Hapū settled on Motiti under the mana of Ngāti Awa.¹⁶⁴ Her account gave a broader context for Te Hapū's move to Motiti, positing that it was a 'strategic shift' to escape likely retaliation by Ngāi Te Kapo, a Tūhoe group also based at Ōhiwa, following their defeat by Te Hapū in a recent skirmish.¹⁶⁵ According to this account, Te Hapū set off directly for Motiti from Ōhiwa.

Other versions of the history were given in the Native Land Court. In one version, Te Hapū lifted the tapu and settled Motiti with the permission – and at the suggestion – of a Ngāi Te Rangi chief.¹⁶⁶ In another version, he did so on his own initiative upon learning the island was under tapu.¹⁶⁷ Nepia Ranapia also gave details of Te Hapū's landfall on Motiti and lifting of the tapu, saying Te Hapū arrived on the western side of the island, where he ascended a gully and lifted the tapu, naming the area Whāriki Te Papatupu to commemorate the rite.¹⁶⁸

163. Transcript 4.1.5, pp 261–262

164. Transcript 4.1.4, p 665

165. Document A39, p 13

166. Document A16, p 9

167. Ibid

168. Document A17, p 13

3.2.6.2 Settlement of Motiti

As mentioned earlier, Te Hapū's first son, Manu Tuhira, was born at Ōhiwa. His mother was Waipai; Te Patuwai Tribal and Te Rūnanga o Ngāti Awa said Waipai was Ngāti Awa, but Nepia Ranapia was equivocal on this point. After Te Hapū settled Motiti, Manu Tuhira and his own son migrated there to join him.¹⁶⁹ Te Hapū's second son, Roropukai, was born to Romai (of Ngāti Pūkenga) on Motiti soon after she and Te Hapū arrived there.¹⁷⁰

According to Nepia Ranapia, Te Hapū divided the island between his two sons to prevent any future hostility between them, setting down a boundary line that ran from Ōkoronui on the western coast, inland to Te Horete and Kawakawa, to Te Huruhi on the eastern coast.¹⁷¹ Manu Tuhira settled in the northern half of the island, where his descendants built several pā, while Roropukai settled at the southern end.¹⁷²

Roropukai married a Waitaha woman named Ripa-o-te-Rangi, and their son Tūtonu married Hinewai, also of Waitaha.¹⁷³ Tūtonu established his whānau in the south-east of the island.¹⁷⁴ From the time of Tūtonu, Te Hapū's people shared occupation of Motiti with Te Whānau a Tauwhao.¹⁷⁵ Accounts differ as to how Te Whānau a Tauwhao became established on the island. One says the origin of their presence on Motiti was Rawahirua, Hinewai's son to a previous marriage with a Ngāi Te Rangi man.¹⁷⁶ In other Native Land Court testimony – according to which Ripa-o-te-Rangi was both Waitaha and Ngāi te Rangi – the link was Ripa-o-te-Rangi's daughter to a previous marriage, Hinetapu (also Tūtonu's half-sister).¹⁷⁷ According to other evidence, the siblings Rangitupukiwaho and Tauwhao (the eponymous ancestor of Te Whānau a Tauwhao), children of the Whakatāne-based chief Ikapuku, were living on Motiti at this time.¹⁷⁸ In this version, a dispute arose between the two when Rangitupukiwaho discovered Tauwhao's people were living on land belonging to him, leading the siblings to divide the island between themselves, Rangitupukiwaho taking the northern end and Tauwhao the south.¹⁷⁹

All accounts agree that a rift ultimately developed between Te Hapū's descendants and Te Whānau a Tauwhao, resulting in the former occupying the northern part of Motiti and Te Whānau a Tauwhao the southern part.¹⁸⁰ Conflicts between

169. Document A17, p13

170. Ibid, p14

171. Document A16, p10

172. Document A17, pp13–14; doc A16, p10

173. Document A16, p9; doc A17, p14

174. Document A17, p14; submission 3.3.12(b), p29

175. Document A53, p4; doc A16, p10

176. Document A23(a), vol 4, no 203, p 2336; doc A17, p15

177. Document A23(a), vol 4, no 203, pp 2336–2338

178. Document A53, p4; doc A16, p10; doc A65, pp13–15. Mr Koopu and Dr O'Malley use the spelling 'Te Rangitupukiwaho', though Dr O'Malley drops the 'Te'. Tuhapo Tipene uses both 'Te Rangitupukiwaho' and 'Te Rangitipukiwaho'. Mr Tipene refers to this person as male, while Dr O'Malley refers to both siblings as female and Mr Koopu does not give a gender.

179. Document A16, p10; doc A65, pp13–15; submission 3.3.12(b), pp30–31

180. Document A16, p10; doc A23(a), vol 4, no 203, p [18]

the two groups persisted however, displacing different communities at different times. Dr O'Malley comments that this history 'helps to explain the disproportionately large number of pā on Motiti given its small size.'¹⁸¹

Accounts differed as to when and in what circumstances Te Hapū's descendants ceased to identify as Ngāti Ruaroa and became Ngāi Te Hapū. According to Nepia Ranapia, the hapū known as Ngāi Te Hapū formed upon Te Hapū's death.¹⁸² Te Hapū's sons Manu Tuhira and Roropukai 'came together' at this time as 'chiefs of their own land and people under the mana of their father, and were known as Ngāti Te Hapū or Ngāi Te Hapū.'¹⁸³ Ngāi Te Hapū in turn gave rise to the karanga hapū – sometimes referred to as the hapū 'born upon Mōtiti' – who descended in two primary lines from the two brothers.¹⁸⁴ By contrast, Te Patuwai Tribal and Te Rūnanga o Ngāti Awa argued that the Ngāti Ruaroa identity persisted among Manu Tuhira's and Roropukai's descendants for several generations. In support, they referred to a map created in 2008 by Nepia and Daniel Ranapia which recorded the tribal affiliation of pā sites in northern Motiti as 'Ngati Ruaroa & Ngatiawa', and which described Manu Tuhira's descendants as 'Ngati Ruaroa Hapu'.¹⁸⁵

With respect to the karanga hapū, both parties agreed that Manu Tuhira's descendants gave rise to the hapū Ngāti Pau, and Roropukai's descendants to the hapū Ngāti Tūtonu, Ngāti Kauaewera, Ngāti Makerewai, and Ngāti Takahanga.¹⁸⁶ Two of these hapū – Ngāti Tūtonu and Ngāti Pau – are no longer extant. According to Nepia Ranapia and Mr Koopu, Ngāti Tūtonu were superseded by Ngāti Makerewai and Ngāti Takahanga. Mr Koopu said Ngāti Pau were 'superseded' by Ngāti Kauaewera, while Nepia Ranapia said they 'eventually united' with Ngāti Kauaewera.¹⁸⁷ Except for the disagreement about when they emerged, accounts of the origins of these hapū and the basis for their names were largely consistent. Witnesses in this inquiry variously referred to these collective hapū as the karanga hapū of Ngāi Te Hapū,¹⁸⁸ ngā hapū tūrangawaewae,¹⁸⁹ Ngā Hapū Tawhito o Mōtiti,¹⁹⁰ the Ngā Hapū confederation of hapū,¹⁹¹ and Te Patuwai.¹⁹²

The claimants and interested parties also agreed that Ngāi Te Hapū and their karanga hapū were closely linked by whakapapa to iwi on the mainland, including – as the claimants told us – Waitaha, Ngāti Pūkenga, Ngāi Te Rangī, Ngāti Whakahemo, Ngāti Pīkiao, Ngāti Pūkeko, and Ngāti Awa.¹⁹³ All parties also

181. Document A16, p 10

182. Document A17, p 14

183. Ibid

184. Document A53, p 4

185. Submission 3.3.12(b), p 29; transcript 4.1.2, pp 518–519; doc A23(a), vol 6, no 352, p 4455

186. Document A17, p 14; doc A53, pp 4–5

187. Document A53, p 5; doc A17, pp 16, 22

188. The claimants; see, for example, doc A17, p 13.

189. Document A17, p 23

190. Wharewera Koopu for Te Patuwai Tribal and Ngāti Awa: doc A53, p 6.

191. Ngārangi Chapman for the Rauahi and Aporina Whānau Trust: doc A39, p 34.

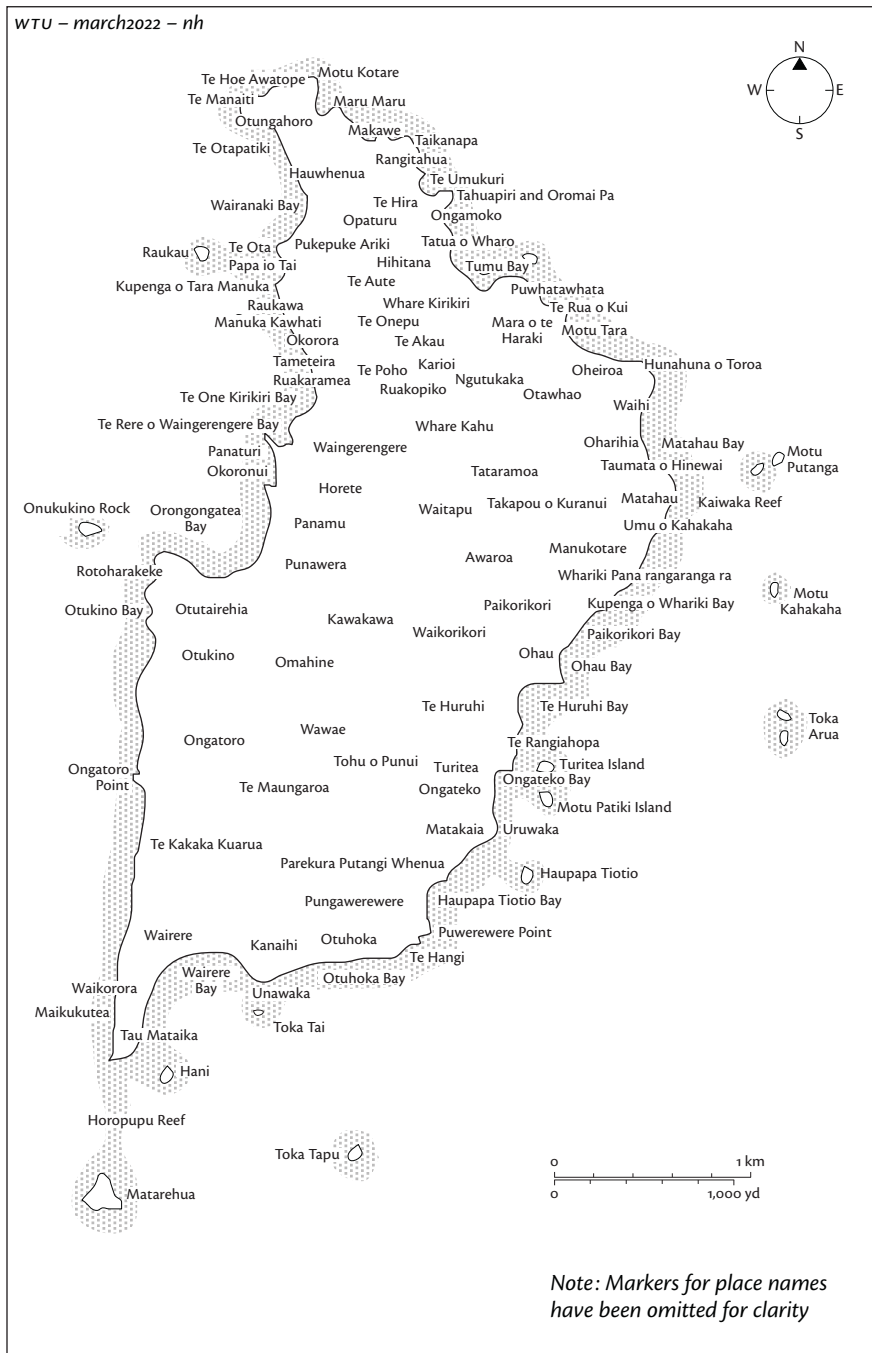
192. Pouroto Ngaropo for Te Patuwai Tribal and Ngāti Awa: doc A64(a), p 21.

193. Document A17, p 23

MOTITI

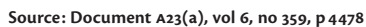
3.2.6.2

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Map 2: Motiti Island place names

Source: Document A23(a), vol 6, no 357, p 4476



recognised Te Hapū as a rangatira of Motiti and an ancestor of Ngāi Te Hapū and the karanga hapū.

However, the claimants and interested parties disagreed on the tribal identity of Ngāi Te Hapū and the karanga hapū. According to the claimants, Ngāi Te Hapū and their karanga hapū were a distinct tribe with a unique identity forged through Te Hapū's settlement of Motiti, but who affiliated most strongly to Waitaha. In support of their view, the claimants cited Native Land Court testimony by two Te Patuwai of Motiti who both described Te Hapū as their 'first ancestor'.¹⁹⁴ Each claimed that Te Patuwai originated from Te Arawa, one saying Te Patuwai were 'a hapu of Waitaha',¹⁹⁵ the other that they descended from the *Te Arawa waka*.¹⁹⁶ One also said that 'Waitaha was the first person before Te Hapu' on Motiti¹⁹⁷ and that, if he (the witness, as a member of Te Patuwai) were not on the island, it 'would belong to the Arawas'.¹⁹⁸

However, Te Patuwai Tribal and Te Rūnanga o Ngāti Awa identified Ngāi Te Hapū and the karanga hapū as Ngāti Awa, referring, for instance, to 'our ancient Ngāti Awa hapū born upon Mōtiti'.¹⁹⁹ Their position was consistent with their view that Ngāti Ruaroa were a hapū of Ngāti Awa – a tribal identity which, in their view, was not erased or usurped in the hapū's shift to Motiti.²⁰⁰ Te Patuwai Tribal and Te Rūnanga o Ngāti Awa also emphasised the significance of Te Hapū's union with Waipai, who (as mentioned) they considered Ngāti Awa; Manu Tuhira's descendants also had Ngāti Awa whakapapa through her.²⁰¹

These conflicting interpretations of Ngāi Te Hapū's tribal identity informed equally divided accounts of the basis on which Ngāi Te Hapū held mana on Motiti – a question that is central to the issue which we must determine in this chapter. The claimants argued that Ngāi Te Hapū's mana derived from Te Hapū and his Waitaha whakapapa. In support, they pointed to the Native Land Court testimony (cited earlier) that 'Waitaha was the first person before Te Hapu', saying this was an explicit statement about how the mana on Motiti was derived. But Te Patuwai Tribal and Te Rūnanga o Ngāti Awa said Ngāi Te Hapū's mana on Motiti derived from their Ngāti Awa whakapapa. Dr Ngaropo – who, as noted earlier, asserted that Te Hapū descends from Awanuiārangi 11 – stated that Awanuiārangi 1 and 11 were the 'source' of the 'indigenous genealogical heritage' of Te Patuwai, including 'the ancient sub-tribes pertaining to Te Patuwai such as; Ngāti Pau, Ngāti Ruatiki, Ngāti Kauwaewera, Ngāti Ahoaho, Ngāti Makerewai, Ngāti Takahanga, and Te Patuwai and the connections that are prestigiously associated with Ngāti Awa'.²⁰²

194. Submission 3.3.8, p 16; doc A16(a), pp 2464, 2465, 2475

195. Document A16(a), p 2463; submission 3.3.8, p 16

196. Document A16(a), p 2478; submission 3.3.8, p 16

197. Document A16(a), p 2469; submission 3.3.8, p 16; doc A83(d), p 2

198. Document A16(a), p 2478; submission 3.3.8, p 16

199. Document A53, p 4

200. Transcript 4.1.4, p 129

201. Submission 3.3.12(b), p 25; transcript 4.1.4, p 283

202. Document A64(a), pp 20–21

He also asserted that Ngāti Awa had established their mana on Motiti well before Te Hapū's time, when the ancestors Toi, Awanuiārangi I, and Awatope built a pā on the island.²⁰³

Arguing from a different angle, Tā Hirini questioned the significance the claimants placed on Te Hapū's lifting of the tapu. He contended that, even if it were Te Hapū's Waitaha whakapapa that qualified him to lift the tapu and settle Motiti, it did not follow that Te Hapū is therefore 'the beginning and the end of tikanga and kawa on Motiti'.²⁰⁴

Accounts of Te Hapū's settlement of Motiti also differed in more subtle ways, placing emphasis on different aspects of the history. For the claimants, Dr O'Malley noted that links between Ngāi Te Hapū and Waitaha were further strengthened through two key marriages on Motiti. Roropukai married the Waitaha woman Ripa-o-te-Rangi, who Nepia Ranapia said was chief Waiokehu's daughter. Their son Tūtonu married Hinewai, also of Waitaha.²⁰⁵ For Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, Mr Koopu emphasised the depth of the whakapapa links between the people of Motiti and Whakatāne, saying intermarriage between the descendants of Te Hapū and of Ikapuku (respectively) began from the time of Te Hapū's sons.²⁰⁶ As such, there had been 'two or three centuries of mobility and fluidity of our tipuna between Mōtiti and Whakatāne'.²⁰⁷ Mr Koopu also stated that Manu Tuhira's migration to Motiti rendered the Ngāti Awa presence on the island 'more prominent', his mother being of Ngāti Awa.²⁰⁸

3.2.7 The origins of Te Patuwai

At a certain point, Ngāi Te Hapū and some mainland hapū became known collectively as Te Patuwai. Accounts of this history agree that the name 'Te Patuwai' refers to an event – a battle on the water – and that it came to denote those hapū who fought alongside each other in the battle. All accounts thus agree that the group of people known as Te Patuwai originated through shared experience of an event that subsequently united them in a common identity. Beyond this basic point, however, accounts of Te Patuwai's creation differ on many points – including when and where the battle took place, who was involved, who participants in the battle were affiliated to,²⁰⁹ whether Te Patuwai were bound by descent from a common ancestor or ancestors, and whether the Te Patuwai label emerged through a deliberate act of renaming or a more organic process of association.

In this section, we summarise the differing versions of the origins of Te Patuwai given in evidence, including accounts of the battle itself, its political significance, and the impact of the new grouping on the identities of the constituent hapū.

203. Transcript 4.1.4, p 37

204. Document A85(b), p 8

205. Document A16, p 9; doc A17, p 14

206. Document A53, p 6

207. Ibid, p 2

208. Ibid, p 4

209. Document A16, p 12

Sometimes, alternative versions were held within parties, as much as between different parties. This evidence illuminates traditional understandings of the nature of the relationship between Ngāi Te Hapū and Te Patuwai, and their respective connections to Motiti. It therefore assists us to assess the parties' arguments on both these points, and thus to determine who the tangata whenua of Motiti are.

3.2.7.1 *Accounts of Te Patuwai's origins*

Many accounts of the origin of Te Patuwai centre around Tawhiwhi, a chief of Ngāti Ikapuku (a Ngāti Awa hapū based at Whakatāne). As told by Nepia Ranapia, the battle of Te Patuwai occurred when Tawhiwhi led a war party of peoples from Ngāti Ikapuku of Whakatāne (mainly Ngāti Te Uru and Ngāti Maumoana) and Ngāi Te Hapū (mainly Ngāti Kauaewera of Motiti) against Whakatōhea. They were intercepted on the water by Whakatōhea and 'all onboard were killed'. The name Te Patuwai, 'meaning "to be attacked on the water", was coined in memory of the event'.²¹⁰ In this account, the battle 'united the peoples of Whakatāne (Ngāti Maumoana/Te Patuwai), Ngāi Te Hapū from Motiti Island, Ngāti Whakahemo from Pukehina, and Ngāti Pūkenga from Tauranga in an alliance known as Te Korowai o Te Patuwai to avenge the battle'.²¹¹

Mr Koopu gave a similar account, saying the event known as Te Patuwai occurred when Tawhiwhi and 30 warriors drowned at sea whilst seeking retribution against a Ngāti Awa chief who had insulted Tawhiwhi's wife. This version featured Tawhiwhi's grandmother, Urumahora, crediting the unifying power of the disaster to the 'extent of her sadness' for all who were lost.²¹² Through her mourning, the event 'united the peoples of Ngāti Maumoana and others of Whakatāne with the ancient hapū of Mōtiti'²¹³ and 'strengthen[ed] tribal alliances'.²¹⁴ Mr Koopu noted that the warriors were 'not only from Ngāti Awa but also [from] other tribes such as Ngāti Whakahemo and Ngāti Pūkenga'.²¹⁵ Mr Koopu also described Tawhiwhi as the 'main ancestor' of Te Patuwai due to his whakapapa links to all the hapū concerned: '[Tawhiwhi] personified the unifying of the whakapapa from Ikapuku and Te Hapū and . . . had strong lineage connections with Ngāti Whakahemo, Ngāti Pūkenga, Waitaha and Ngāti Maru'.²¹⁶ Mr Koopu asserted that Tawhiwhi's primary affiliation was to Ngāti Maumoana of Ngāti Awa and his 'Ngāti Awa ancestors' Ikapuku and Te Hapū. Mr Koopu also acknowledged Te Hapū as a 'primary ancestor' of Te Patuwai.²¹⁷

The earlier two accounts share much in common with testimony given in the Native Land Court by Tiaki Rewiri. Tiaki Rewiri was a well-known leader within

210. Document A17, p19

211. Ibid

212. Document A53, p8

213. Ibid

214. Ibid, p2

215. Ibid, pp8–9

216. Ibid, p2

217. Ibid

Te Patuwai who played a prominent role in Native Land Court cases concerning Motiti and Te Patuwai lands at Whakatāne. He had strong links to Te Patuwai at Motiti and Whakatāne, and was also of Te Whānau a Tauwhao.²¹⁸ Witnesses in this inquiry variously described him as ‘a chief of Te Patuwai’,²¹⁹ ‘one of the leading chiefs’ of Te Patuwai,²²⁰ and a ‘tupuna . . . an ancestor and . . . a tohunga’.²²¹ Mr Takotohiwi also expressed the view that Tiaki Rewiri was a somewhat divisive figure whose participation and skill in Native Land Court cases had alienated others with competing claims.²²²

Tiaki Rewiri stated that Te Patuwai formed upon Tawhiwhi’s death.²²³ In one hearing, Tiaki Rewiri gave details about the battle, saying it occurred in Ōhiwa,²²⁴ and provided context for the war party’s pursuit of Whakatōhea. He said Ngāti Awa had recently occupied Motiti to help Ngāi Te Hapū fend off an attack by Ngāi Te Rangi; in return, members of Ngāi Te Hapū had returned to Whakatāne with Ngāti Awa to help them fight Whakatōhea.²²⁵

In a later hearing, Tiaki Rewiri and Timi Waata disputed the ancestral origin of the group named Te Patuwai, and who they really were. Tiaki Rewiri argued the ‘original ancestor’ of Te Patuwai was Tawhiwhi:

Timi Waata says that Te Hapu was the original ancestor of Te Patuwai. I say no. I say Tawhiwhi was the original ancestor of that tribe – though Tawhiwhi was descended from that ancestor and also from Awanuiarangi. Tawhiwhi was drowned at sea. Te Patuwai of Whakatane were formerly called N Ikapuku, those of the same name living at Motiti were called Ngāi Te Hapu – but when Tawhiwhi was drowned at sea the tribe took the name of Patuwai.²²⁶

He added that Tawhiwhi also descended from Te Puia.²²⁷

Tiaki Rewiri also gave evidence about the composition of Te Patuwai. He said the 30 people in Tawhiwhi’s war party were Ngāi Te Hapū and Ngāti Kauwae, all of them ‘descendants’ (or ‘relations’) of Tawhiwhi,²²⁸ and that the name Te Patuwai was given to Ngāi Te Hapū, Ngāti Kauwae, and Ngāti Maumoana.²²⁹ He later clarified that Ngāti Maumoana were descendants of Te Puia and a hapū of Ngāti Awa.²³⁰ Asked if he knew that the ‘four principal hapus of Te Patuwai’ were Ngāti

218. Document A38(a), p 42

219. Transcript 4.1.4, p 130; doc A27, p 12

220. Document A57, p 21

221. Transcript 4.1.4, p 297

222. Ibid, pp 271–272

223. Document A16, pp 11–12; doc A16(a), pp 2858–2859, 2946–2947, 2950

224. Document A16(a), pp 2858–2859

225. Document A16, pp 11–12; doc A16(a), pp 2858–2859

226. Document A16(a), pp 2946–2947

227. Ibid, p 2950

228. Ibid

229. Ibid

230. Ibid, p 2960

Takahanga, Ngāti Makerewai, Ngāti Kauwaewera, and Ngāti Pau, Tiaki Rewiri replied that they were ‘hapus of Te Patuwai as well as N[gati] Maumoana – N[gati] Maumoana is the take [origin] of Te Patuwai.’²³¹ (We discuss Native Land Court evidence about which hapū make up Te Patuwai in section 3.2.9.2.) He also said that ‘the thirty persons [in the waka] were not of Motiti. They were of Whakatāne and were going to fight Te Whakatohea.’²³²

Later in the hearing, Tiaki Rewiri gave evidence that elaborated on this claim. He explained that the people known in common as Te Patuwai were all originally Ngāti Ikapuku, but that in the period after Tawhiwhi’s death and before the new name Te Patuwai took hold, some of their number living on Motiti had adopted – or come to be known by – the name of their Motiti kin, Ngāi Te Hapū: ‘The Patuwai are all come from Ikapuku but when Tawhiwhi and others were killed at sea the name Ikapuku was abandoned[,] the name Ngai Te Hapu descended to the people living at Motiti.’²³³

Under questioning, he further explained that the name Te Patuwai was later applied more broadly – and erroneously, in his view – to all Ngāi Te Hapū, though only those individuals among them who were from Whakatāne, that is, Ngāti Ikapuku, were deserving of the name:

Q: When this land [the Whakatāne lot known as Pekapekatahi] was returned did the name Patuwai ‘rest’ on Ng Te Hapu?

A: Yes because some of the people of Whakatane were at Motiti – the rest of the people of Ng Te Hapu were called Te Patuwai though they had no right to the name.²³⁴

Himiona Te Orenui, a witness at the same hearing, also gave what Tā Hirini described as important evidence about Te Patuwai’s origins.²³⁵ Like Tiaki Rewiri, he held that Te Patuwai emerged as a response to Tawhiwhi’s death, when Ngāti Ikapuku and Ngāi Te Hapū – who he affirmed were distinct hapū – both came to be called Te Patuwai.²³⁶ His evidence of the links between these hapū and how they became Te Patuwai differed in some respects from Tiaki Rewiri’s. According to Himiona Te Orenui, Tawhiwhi belonged to Ngāi Te Hapū, not Ngāti Ikapuku, and the 30 men killed with him formerly belonged to Ngāti Ikapuku. These men were subsequently (while still alive) called Ngāi Te Hapū – during which time they were known only by this name – then, after their deaths, Te Patuwai. Unlike Tiaki

231. Document A16(a), p 2961

232. Ibid, p 2964

233. Ibid, p 2997

234. Ibid, p 3011

235. Document A85(b), p 17. We saw differing evidence of Himiona Te Orenui’s affiliations. Nepia Ranapia stated that he was ‘Ngāti Takahanga (Motiti)’: doc A17(b), p [2]. Vivien Hahipene noted that he was of Ngāti Pikiao descent: doc A91(a), p 5. In the Native Land Court in 1895, Himiona explained he was not an owner of Motiti North (though his close kin were) because, at the time the land was divided, he had ‘elected to go with N Pukeko’: doc A16(a), p 3060.

236. Document A85(b), p 17; doc A16(a), p 3080

Rewiri, Himiona Te Orenui claimed that all the descendants of Te Hapū were legitimately called Te Patuwai, along with all the ‘proper descendants’ of Ikapuku.²³⁷

Commenting on the Native Land Court testimony cited earlier, Tā Hirini expressed the view that ‘[t]here is little doubt that the historical and whakapapa relationships between Ngāi Te Hapū and Ngāti Ikapuku are inter-related, as is their merging into Te Patuwai following the death of Tawhiwhi.’²³⁸

The accounts of Te Patuwai’s origins outlined earlier place the founding event well after Te Hapū’s settlement of Motiti, and well after his death. As already mentioned, in another version, the battle of Te Patuwai took place just after Te Hapū embarked on his migration, when his people were attacked in the water at Ōhiwa by Ngāi Te Kapo. Dr Ngaropo and Ms Chapman both gave accounts of this tradition.

As told by Dr Ngaropo, the ensuing battle inflicted ‘huge loss of life’ on the two tribes involved, Ngāti Ruaroa and Ngāti Ue. Due to the devastating losses suffered by his people, Te Hapū named the battle Te Patuwai. Thereafter, he continued on the next leg of the heke, travelling with Maruahaira and Te Rangihouhiri.²³⁹

According to Ms Chapman (and recounted in part earlier in the chapter), the trigger for the attack was a previous skirmish in which Te Hapū had defeated Ngāi Te Kapo. Anticipating retaliation, Te Hapū’s people planned ‘a strategic shift to Mōtiti Island on a permanent basis’ and set out from Ōhiwa directly for the island. They were attacked while crossing the Bay of Plenty, suffering ‘great losses’, while ‘the survivors continued on to Mōtiti.’²⁴⁰ Once there, they changed their name to Te Patuwai ‘in memory, and in respect, for those killed, and buried at sea.’²⁴¹

Ms Chapman made two further points. First, Te Hapū himself approved and oversaw the name change, undertaking protocols to “dous[e] the flame” known as nga karanga hapū of Te Hapū, and re-igniting a new fire known from that day forth as Te Patuwai.²⁴² Secondly, the Te Patuwai name commemorated all who were lost in the battle, including the aggressors – though the latter were not called by the name. In this account, the name change was a conciliatory gesture signifying a commitment to peace: when Te Hapū ‘constituted Te Patuwai after the battle at sea’, he ‘proclaimed a cease to the war.’²⁴³ According to Ms Chapman, this was a strategic move by Te Hapū’s people to avert the danger of being killed off by larger groups; the change of identity was thus a practical aid in their efforts to build relationships with other iwi, including former foes.²⁴⁴

Ms Chapman’s version of the battle of Te Patuwai and the context for it – but not the subsequent renaming rites – matches an account given by Elsdon Best. Dr O’Malley comments that Best’s version is not supported in nineteenth-century

237. Document A85(b), pp 17–18; doc A16(a), p 3081

238. Document A85(b), p 16

239. Document A64(a), p 40

240. Document A39, pp 12–13

241. Ibid

242. Ibid, pp 34–35

243. Ibid, p 34

244. Ibid, pp 34–35

Native Land Court testimony, and that Best seems to have ‘conflated Te Hapū’s migration to Motiti with the story of the later clash with Whakatōhea.’²⁴⁵ Best’s version may have held some currency among Te Patuwai in the twentieth century, however, with some members apparently referring to it in an account of the tribe’s history in 1970 (see section 3.2.10.2).²⁴⁶

3.2.7.2 *Te Patuwai: key points of disagreement*

The claimants and the interested parties were sharply split on one important question in particular: whether Te Patuwai was a collective/alliance of hapū who retained their distinct identities and tribal estates, or a single, unified tribe that subsumed the identities and estates of the constituent hapū.

Arguing the former, Nepia Ranapia said that, properly understood, Te Patuwai was ‘a confederacy of tribes’ who aligned on occasion for political purposes ‘under the Te Patuwai banner.’²⁴⁷ Ngāi Te Hapū were part of the Te Patuwai confederation, but this did not affect their tribal identity and unique status as the people with mana on Motiti, both of which were anchored in their descent from Te Hapū. This argument was supported by Dr O’Malley’s summary of the relationship between Ngāi Te Hapū and Te Patuwai: he said that ‘[w]hile all Ngāi Te Hapū could claim to be Patuwai, not all Patuwai were Ngāi Te Hapū or could claim rights at Motiti.’²⁴⁸

Nepia Ranapia, who considered that Ngāi Te Hapū and the Whakatāne-based tribes who made up Te Patuwai retained separate and distinct rights, substantiated this view by quoting Te Puhi Kehukehu, an early nineteenth-century chief on Motiti:

Ko mātau ngā tangata e noho ana i tēnei moure mai rā anō, ko rātau te whānau whanui e noho mai i tua whenua, ko mātau nga rangatira.

We are the people that live on this island, those relatives live on the mainland, we are the chiefs and we should say what happens here.²⁴⁹

By contrast, Mr Koopu held that ‘Te Hapū and his descendants were subsumed into Te Patuwai of Ngāti Awa as Mana tāngata of Mōtiti.’²⁵⁰ He said Te Patuwai became the ‘principal identity’ of the hapū involved in the early nineteenth century, when they unified at a time of conflict triggered by the Ngāpuhi raids.²⁵¹ Ms Chapman said Ngāi Te Hapū consciously relinquished their identity shortly after the battle at sea, becoming Patuwai at that time: ‘Ngāi te Hapū of 300 years ago

245. Document A16, p 8

246. Document A16(a), p 2309

247. Document A17, p 19

248. Document A16, p 125

249. Document A17, pp 23–24

250. Document A53, p 4

251. Ibid, p 7

were ceremoniously put to sleep through a distinct series of tikanga referred to as mate-moana and nehu-moana protocols.²⁵²

The claimants also disagreed with Te Patuwai Tribal and Te Rūnanga o Ngāti Awa about whether the hapū known as Te Patuwai were connected solely by a common event (or series of events), or also by a common ancestor or ancestors. Explaining the claimants' perspective, Nepia Ranapia said the events that led to the Te Patuwai name being coined took place many generations after Te Hapū settled Motiti, during which time his descendants developed a distinct identity. This identity was 'not obscured by the Te Patuwai alliance . . . that is why we emphasise that Te Patuwai is not an ancestor, but an event'.²⁵³

Finally, the claimants and interested parties disagreed as to which hapū make up Te Patuwai today. The claimants argued that Te Patuwai is a confederation encompassing Te Patuwai, Ngāti Whakahemo, and Ngāti Pūkenga. Te Patuwai Tribal and Te Rūnanga o Ngāti Awa rejected this claim, arguing that Ngāti Whakahemo and Ngāti Pūkenga are indeed whanaunga of Te Patuwai, but do not thereby come under Te Patuwai.²⁵⁴

3.2.8 Conflict and social disruption in the nineteenth century

The period from the early 1800s until around 1867 (the year of the first Native Land Court case about Motiti) is significant in the history of Motiti Island. It was marked by several events that directly bear on the central determination we must make in this chapter. These include the Ngāpuhi raids, which here (as in many other places) prompted the movement of people to larger centres of population that might be more easily defended; the arrival of Pākehā traders and the growth of the flax trade; the 1866 land confiscation in the Eastern Bay of Plenty; and of course, the New Zealand Wars. All these developments affected the occupation of Motiti, relationships between hapū and iwi on the island and on the mainland, and iwi and hapū relationships with the Crown – relationships that were complex, shifting, and (as the diverging witness accounts demonstrated) are still disputed. The events referred to here also provide context for the Native Land Court evidence summarised in the next section.

3.2.8.1 Disruptions in the occupation of Motiti, 1818–52

The claimants and interested parties agreed that, from 1818 to the early 1850s, a series of tribal conflicts disrupted the occupation of Motiti. Dr O'Malley noted there were 'upheavals in residence on the island' during this time, including periods when it was deserted or minimally occupied.²⁵⁵

The first of these conflicts were the Ngāpuhi raids on Motiti in 1818 and 1831. The claimants and interested parties agreed that after the 1818 raid, in which many Te

252. Document A39, p 9

253. Document A94, p 2

254. Submission 3.3.12(b), pp 37–38; doc A85(b), p 11

255. Document A16, p 16

Whānau a Tauwhao were killed, Te Patuwai of Motiti withdrew to Whakatāne²⁵⁶ – though Nepia Ranapia stated only some went to Whakatāne, while the rest scattered more widely (including to Tauranga and into Ngāti Pikiao territory).²⁵⁷ According to Mr Koopu, Ngā Hapū Tawhito o Mōtiti helped Ngāpuhi to attack Te Whānau a Tauwhao during the 1818 raid, a version of the history Dr O'Malley also noted, though he referred to the Motiti hapū involved as Ngāi Te Hapū.²⁵⁸

Ngāpuhi reportedly found Motiti deserted when they attacked in 1831,²⁵⁹ but were heavily defeated there by Te Whānau a Tauwhao (now in possession of fire-arms), who had covertly followed them to the island.²⁶⁰

Further conflict between Ngāi Te Rangi and Te Arawa affected Motiti from the early 1830s until the mid-1850s. It is thought to have been triggered by competition for control of flax in the area after a flax trading station (and thriving flax trade) was established at Maketū in 1830.²⁶¹ Te Arawa seized control of Maketū from Ngāi Te Rangi in 1836 – a conflict known as the battle of Te Tumu – and claimed rights to Motiti as part of the victory; they also revived an ancient claim to the island through their ancestor Ngātoroirangi.²⁶² Motiti was largely unoccupied for several years thereafter, but both iwi planted crops and released animals on the island, thereby asserting claims to it.²⁶³ In 1840, Te Whānau a Tauwhao returned in force to plant crops and were subsequently attacked by Te Arawa, prompting the Crown to intervene in 1844.²⁶⁴ In 1845, Te Arawa, Ngāi Te Rangi, and other iwi reached a peace agreement covering the wider Bay of Plenty area, but remained in dispute about Motiti. However, there was tacit agreement that, in light of this dispute, no one would occupy or otherwise claim the island.²⁶⁵

Conflict flared again in 1852 when a section of Te Arawa desecrated a Te Whānau a Tauwhao urupā in southern Motiti. This prompted the Te Whānau a Tauwhao and Ngāi Te Rangi rangatira Hori Tupaea to return to the island with his people, and to build a pā at Karioi. Te Arawa eventually withdrew all claims to Motiti, formally making peace with Hori Tupaea in 1856.²⁶⁶

The evidence does not conclusively show how long Te Patuwai stayed away from Motiti after leaving in 1818, but suggests that, for reasons of safety, they did not return in force until about 1852. According to Dr O'Malley, while some Te Whānau a Tauwhao had returned by 1830, there are no records of Te Patuwai having done

256. Document A16, pp 15–16; doc A15, p 293; doc A16(a), p 2518; doc A17, p 25; doc A53, p 7

257. Transcript 4.1.2, pp 76–77; doc A17, p 25

258. Document A53, p 8; doc A16, p 15

259. Document A16, p 16

260. Document A38(a), p 3. Dr O'Malley stated it was Ngāi Te Rangi and their allies Ngāti Hauā who defeated Ngāpuhi on Motiti: doc A16, p 16.

261. Document A16, p 16; doc A38(a), p 3; doc A53, p 11

262. Document A38(a), pp 8, 9

263. Document A16, pp 17, 18; doc A38(a), p 3

264. Document A38(a), p 3

265. Document A16, p 21; doc A38(a), pp 3–4

266. Document A38(a), p 4

so by this time, though he noted small parties may have returned periodically.²⁶⁷ Bruce Stirling, technical witness for the Ngāi Te Rangi Settlement Trust,²⁶⁸ noted that Motiti was ‘left unoccupied’ in 1845 when the peace agreement failed to resolve claims to the island, and that in the same year, Te Patuwai – encouraged by ‘the prospects of peaceful occupation of Motiti’ – had sought Hori Tuapea’s permission to return; they were refused.²⁶⁹ Both witnesses said Te Patuwai returned to the island in 1852,²⁷⁰ a claim that aligns with Native Land Court testimony by two Te Patuwai who said they went to live on the island at this time.²⁷¹

Once both Te Patuwai and Te Whānau a Tauwhao had returned to Motiti, Te Patuwai occupied the northern part and Te Whānau a Tauwhao the southern part.²⁷² Dr O’Malley noted that some Te Arawa encountered Patuwai living at Otungahoro in north-western Motiti in 1852, and that a decade later this site was described as the ‘principal Patuwai settlement.’²⁷³ In 1863, after Hori Tupaea left Motiti, Te Patuwai also took possession of the pā he had built at Karioi.²⁷⁴

Accounts of Motiti people withdrawing to and staying on the mainland between 1818 and 1852 diverged on some points, including whether and how these events affected their tribal identity. One of the subtler points of disagreement concerned who Te Patuwai lived with in Whakatāne after fleeing Motiti in 1818. According to Nepia Ranapia, the people of the island who went to Whakatāne (the rest scattering elsewhere) lived with Ngāti Pūkeko.²⁷⁵ But Mr Koopu said the whole of Ngā Hapū Tawhito o Mōtiti (or Ngāi Te Hapū and their karanga hapū) went to Whakatāne to live with their Ngāti Maumoana kin – knowing them to be trusted allies – and also lived ‘alongside’ Ngāti Pūkeko at Pupuaruhe, Rangataua, and Pahou.²⁷⁶ Giving evidence for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, Mr Koopu emphasised that, during their years in Whakatāne, Ngā Hapū Tawhito o Mōtiti continued to intermarry with Ngāti Maumoana and other local hapū, leading to further ‘consolidation, intertwining and binding’ of their whakapapa.²⁷⁷ As he saw it, the threats from Ngāpuhi ‘cemented the kin relationships that existed with Ngāti Awa,’ leading to Ngā Hapū Tawhito o Mōtiti becoming ‘subsumed within Ngāti Awa as the hapū Te Patuwai’ at this time.²⁷⁸

Dr O’Malley, on the other hand, acknowledged that Ngāi Te Hapū (or ‘Patuwai ki Motiti’) and Ngāti Maumoana (or ‘Patuwai ki Whakatāne’) were closely related

267. Document A16, p 22

268. Though Mr Stirling appeared for the Ngāi Te Rangi Settlement Trust, Te Whānau a Tauwhao commissioned his report.

269. Document A38(a), pp 3–4, 11–12

270. Document A16, p 22; doc A38(a), p 12

271. Document A16, p 46; doc A16(a), pp 2469, 2473

272. Document A53, pp 11–12

273. Document A16, p 23

274. Ibid, pp 28, 49; doc A16(a), p 2522

275. Transcript 4.1.2, pp 76–77

276. Document A53, p 7

277. Ibid, pp 8, 12

278. Ibid, pp 7, 8

by intermarriage, but nevertheless maintained they were ‘not one and the same.’²⁷⁹ Daniel Ranapia argued that Te Patuwai of Motiti fled to Whakatāne only because Maketū, their obvious first choice of refuge (in his view), had already fallen to Ngāpuhi.²⁸⁰ He emphasised that ‘Motiti and Maketū were closely connected’ at this time, Ngāti Takahanga having a kāinga at Maketū named Ngā Whara (or Te Whara), which they had built with Ngāti Whakahemo.²⁸¹ Daniel Ranapia gave further evidence that Ngāti Pikiao, some of whom also resided at Maketū, were closely linked to Te Patuwai of Motiti and that some claimed Te Hapū as an ancestor.²⁸²

Finally, the claimants emphasised that, despite Te Patuwai’s relative absence from Motiti during this period (1818–52), they nevertheless maintained a presence on the island. Nepia Ranapia gave evidence that Motiti was unoccupied ‘for a short period’ only and that the chiefs Te Puhī Kehukehu, Tupaea, and Te Ahikaiata stayed on the island after the 1818 Ngāpuhi raid.²⁸³ Daniel Ranapia pointed to Native Land Court testimony by Tiaki Rewiri that 30 Te Patuwai had returned to Motiti and reoccupied Otungahoro Pā at the time of the battle of Te Tumu (in the mid-1830s).²⁸⁴ In the Native Land Court, Hone Te Whetuki also attested to Ngāi Te Hapū’s long presence on Motiti, saying his ancestors ‘lit a fire upon that [island] a long time ago and it still burns now’, that Hori Tupaea had tried to extinguish it ‘but it was not put out’, and that ‘The Patuwai never left the island.’²⁸⁵ Evidence on this point was relevant to the claimants’ assertion that Te Patuwai of Motiti had maintained ahi kā roa (continuous occupation) on the island from the time of Te Hapū until the present.²⁸⁶

3.2.8.2 *The New Zealand Wars, 1860–68*

From 1860 to 1864, a series of battles between Crown forces and Māori took place in Taranaki, Waikato, and Tauranga during a sustained Crown campaign to suppress the Kīngitanga movement and impose Crown authority in the central North Island. Many Ngāi Te Rangi supported the Kīngitanga, in which their Waikato-based Tainui allies were closely involved. By contrast, many Te Arawa were not supporters, having a history of rivalry with Tainui iwi.²⁸⁷

A number of hapū in the Bay of Plenty took part in these conflicts, fighting either against or with the Crown, including members of Te Arawa, Ngāi Te Rangi – including the hapū Te Whānau a Tauwhao²⁸⁸ – and Te Patuwai of Whakatāne

279. Document A16, p 125

280. Document A83(d), p 18

281. Ibid, pp 16–17, 18

282. Ibid, pp 3–4

283. Document A17, p 25

284. Document A83(d), p 22

285. Document A16, p 45; doc A16(a), 2465–2466

286. Submission 3.3.8, p 20

287. Document A16, p 25

288. Ibid, pp 25–27

and Motiti.²⁸⁹ As the involvement of these hapū in wider conflicts affected the occupation of Motiti and hapū/iwi relationships in the area, it is relevant to our consideration of who the island's tangata whenua are.

3.2.8.2.1 Ngāi Te Rangi, Te Arawa, and the Crown

Te Whānau a Tauwhao and other Ngāi Te Rangi hapū participated in battles against the Crown in support of the Kingitanga, including at Pukehinahina (Gate Pā), in which 35 British troops were killed, and Te Ranga.²⁹⁰ This led the Crown to brand Te Whānau a Tauwhao and many other Ngāi Te Rangi hapū as rebels. In 1865, the Crown proclaimed that all lands belonging to Ngāi Te Rangi were subject to the New Zealand Settlements Act 1863 and thus liable for confiscation.²⁹¹ The lands in question comprised over 200,000 acres in Tauranga, together with 'such portions of Motiti or Flat Island as shall be adjudged to belong' to the iwi.²⁹² The Crown later agreed to abandon its claim to Motiti but failed to do so formally, creating ambiguity about whether the Native Land Court had jurisdiction over the island.²⁹³

Many Te Arawa fought with the Crown in its campaign against the Kingitanga and their supporters, and were thus recognised by the Crown as loyalists.²⁹⁴

3.2.8.2.2 Te Patuwai involvement in the wars

In February 1864, six months after the Crown invaded Waikato, officials reported that half the adult males of Te Whānau a Tauwhao living on Motiti at Orangatia had 'joined the "insurgents"' in Waikato, but none of the 35 Te Patuwai on Motiti at Otungahoro had done so.²⁹⁵ Imperial troops arrived in Tauranga in January 1864 and, a few months later, attacked Pukehinahina (Gate Pā), followed by Te Ranga.

In July 1864, some Te Patuwai – according to one Native Land Court witness, nearly all the members of Ngāti Makerewai and Ngāti Kauaewera²⁹⁶ – returned to Whakatāne from Motiti at the request of the tribes at Whakatāne.²⁹⁷ A newspaper of the time reported that 20 men, women, and children 'had left the island and "gone over to the King"' – a claim Dr O'Malley described as 'unconfirmed'.²⁹⁸ The article also stated that 200 men of Ngāti Awa and Whakatōhea had 'escorted' the 20 Te Patuwai in their canoes 'along the beach as far as Pukehina'.²⁹⁹

289. Ibid, pp 26–27

290. Document A38(a), p 14; 'War in Tauranga', Ministry for Culture and Heritage, <https://nzhistory.govt.nz/war/war-in-auranga/gate-pa>, last modified 22 October 2021

291. Document A16, pp 37–38

292. 'Proclamation', 27 June 1865, *New Zealand Gazette*, 1865, no 22, p 187; doc A16, p 38

293. Document A16, pp 40–41

294. Ibid, pp 25, 44

295. Ibid, pp 25–26; AJHR, 1864, E-2, p 13

296. Submission 3.3.12(b), pp 41–42; doc A16(a), p 2976

297. Document A16, pp 26–27

298. Ibid, p 26; 'Maketu', *New Zealand Spectator and Cook's Strait Guardian*, 23 July 1864, p 3

299. Document A16, p 26; 'Maketu', *New Zealand Spectator and Cook's Strait Guardian*, 23 July 1864, p 3

Not long after, some Te Patuwai went from Whakatāne to Taranaki to fight against the Crown, and were later taken prisoner at Waitōtara.³⁰⁰ They were held in Wellington until after the war – when a chief of Ngāti Pūkeko negotiated their release – and subsequently went to live in Whakatāne with Ngāti Pūkeko.³⁰¹ We encountered conflicting accounts as to where these Te Patuwai were from: the claimants cited Native Land Court testimony that they were from Whakatāne,³⁰² while Te Patuwai Tribal and Te Rūnanga o Ngāti Awa highlighted other testimony from the same case that these people were ‘Te Patuwai of Motiti’.³⁰³

Members of Te Patuwai of Motiti fought with the Crown several times during the New Zealand Wars. In 1864, alongside Te Arawa, they fought at Matata in the battle of Kaokaoroa against East Coast and other Māori, including Ngāti Awa, who were travelling to join the Kīngitanga.³⁰⁴ They also fought as part of Crown forces in the Tauranga Bush Campaign of 1867, and in pursuit of Te Kooti in Te Urewera in 1868.³⁰⁵ In 1869, in recognition of their service, the Tauranga civil commissioner requested that a red ensign flag be presented to ‘the Patuwai of Motiti’, stating that ‘this hapū are deserving of this attention from the Government’.³⁰⁶

3.2.8.2.3 Crown conflict with Ngāti Awa

In 1865, the killing of two men in the Eastern Bay of Plenty – the missionary Carl Völkner at Ōpōtiki, followed by the Government agent James Fulloon at Whakatāne – triggered Crown aggression toward Māori in the area.

In the wake of the killings, the Crown undertook military action against Ngāti Awa and other local iwi, followed by extensive land confiscation. A Crown force of 500 men, mainly Te Arawa and other Māori, invaded Ngāti Awa territory between August and October, and Ōpōtiki and Whakatāne were placed under martial law to aid the capture of Völkner’s and Fulloon’s killers.³⁰⁷ In January 1866, the Crown proclaimed that 440,000 acres of land in the eastern Bay of Plenty were

300. Document A16, p 27

301. Ibid; submission 3.3.12(b), p 42

302. Document A16, p 27; doc A16(a), p 2934

303. Document A16(a), p 2976; submission 3.3.12(b), p 425

304. Document A16, p 27; doc A95, p 17. Dr O’Malley stated ‘some Ngāi Te Hapū men’ fought at Kaokaoroa, while the source he relied on (a report by Dr Kahotea) says ‘some Te Patuwai based at Motiti’: Dr Des Kahotea, ‘Te Moutere o Motiti’ (commissioned cultural heritage report, Auckland: Environment Court, 2010), p 5. In light of this discrepancy, we use the phrase ‘members of Te Patuwai of Motiti’ to reflect the wording of Dr O’Malley’s source, as well as the contemporaneous use of the name by the Tauranga civil commissioner when requesting a flag for the Motiti hapū who fought with the Crown (though we acknowledge that Government identifications of hapū were not always reliable). We further note that, while O’Malley referred to the 2012 version of Dr Kahotea’s report, the only version filed in evidence dates to 2010. In that version, Dr Kahotea gave no sources for the statements Dr O’Malley drew on. Throughout his report, however, Dr Kahotea used the name ‘Ngaitēhapū’ to refer to Te Hapū’s descendants in the time before they became known as Te Patuwai and, thereafter, Te Patuwai or Te Patuwai of/ki Motiti: doc A16, p 27; doc A23(a), vol 4, no 203, p [9].

305. Document A16, p 27

306. Ibid, pp 27–28; doc A16(a), p 2333

307. Document A95, p 18

confiscated under the New Zealand Settlements Act 1863, on the basis that the iwi of those lands had ‘engaged in rebellion’ against the Crown. About 245,000 acres of this land lay within the Ngāti Awa rohe.³⁰⁸

Later, some confiscated land was returned to hapū members who could prove their loyalty to the Crown, but it was no longer held under customary title and often did not match the land the recipients had previously owned.³⁰⁹ As a result, rights to some returned land later came to be disputed in the Native Land Court. This was the case with two lots of Whakatāne land awarded to Te Patuwai in 1875: lot 32 (Pekapekatahi), consisting of 7,654 acres, and lot 29 (Pupuaruhe), consisting of 1,330 acres.³¹⁰ We discuss evidence from these cases in the next section.

3.2.8.2.4 Other awards of land

In addition to the blocks at Whakatāne, Te Patuwai were granted other lands in the wake of the New Zealand Wars. These were located in Te Awa o Te Atua within an area of land allocated to Te Arawa. Te Patuwai received two lots in the parish of Matata, one of 1,306 acres (allotment 19), which they sold to the Crown in 1874,³¹¹ and one of 21 acres (allotment 9), which they tried to sell to the Crown in 1879.³¹² In the Native Land Court, Timi Waata explained how Te Patuwai came to be granted these lands; he said that during the wars, and after some Te Patuwai had left Motiti for Whakatāne in 1864, the section of Te Patuwai who remained on the island went with Ngāti Pūkenga and Te Arawa to Matata: ‘that is how the people of Te Patuwai at Matata came to be put into the land there and the Patuwai who had come to Whakatane previously were not made owners at Matata.’³¹³

3.2.8.3 Inter-tribal relationships and conflict involving Te Patuwai, 1820s–60s

We heard evidence that Te Patuwai of Motiti participated in various conflicts between other iwi and hapū during this period, and received *tuku whenua* (gifts of land) from some of the groups they allied themselves with.

Drawing on the Native Land Court evidence of Tiaki Rewiri, Daniel Ranapia stated that Te Patuwai of Motiti and Ngāti Pūkenga helped Ngāti Maru to attack Ngāti Awa in Whakatāne in the 1820s, after an incident in which Ngāti Awa prevented Ngāti Maru from crossing their land.³¹⁴ Mr Ranapia gave further evidence that in the 1830 battle of Taumatawiwi, Te Patuwai of Motiti again fought alongside Ngāti Maru and their allies (Ngāti Whātua and Te Tawera) against Waikato, Ngāti

308. Waitangi Tribunal, *Ngāti Awa Raupatu Report*, pp 66, 152

309. Document A16, p 28

310. Ibid, pp 28–29

311. Ibid, p 35. Dr O’Malley noted that, according to Native Land Court testimony, Te Patuwai received 1,900 acres at Te Awa o Te Atua. However, an 1869 plan of the confiscated lands in that area shows a 1,306-acre block awarded to Te Patuwai, and the block Te Patuwai later sold to the Crown was exactly this size.

312. Ibid, p 36; doc A16(a), pp 223–229

313. Submission 3.3.12(b), p 42

314. Document A83(d), p 19

Haua, and Ngāi Te Rangi.³¹⁵ He said Te Patuwai returned to Hauraki after the battle, while the remainder of Te Patuwai of Motiti went to Rotoiti.³¹⁶ Te Patuwai fought in support of Ngāti Maru once more at Parekaukau in the 1830s, alongside Ngāti Whakahemo and Ngāti Pūkenga, to avenge Ngāti Maru's defeat at Taumatawiwi.³¹⁷

In return for their support in these conflicts, Ngāti Maru gifted Te Patuwai and other allies land at Whangamatā³¹⁸ and Manaia.³¹⁹ According to research by Buddy Mikaere and Shane Ashby, Te Patuwai received the land at Manaia as a hapū of Ngāti Pūkenga.³²⁰

Native Land Court records mention other land sharing arrangements involving Te Patuwai. In the 1894 Motiti rehearing, one witness specified that some Te Patuwai, but not all, had shares in Ngāti Pūkenga lands at Whāngarei, Tauranga, and Maketū, as well as at Manaia.³²¹ In another case, a witness stated that Te Patuwai, Ngāti Whakahemo, Ngāti Pūkeko, and Ngāti Pūkenga received land from Ngāti Hinekura at Paehinahina, near Lake Rotoiti (in what claimant witness Daniel Ranapia called 'Te Arawa heartland') in about 1830.³²² In 1895, Himiona Te Orenui gave evidence that Te Patuwai fought in the 1836 battle of Te Tumu, helping Te Arawa to defeat Ngāi Te Rangi and regain control of Maketū. He explained this was how Te Patuwai came to have interests in Maketū land. Himiona also stated he had heard Ngāti Awa did not fight in this battle.³²³

Daniel Ranapia argued that these conflicts, *tuku whenua*, and land-sharing arrangements showed there was a 'Te Arawa section of Te Patuwai' – a group within Te Patuwai who not only shared *whakapapa* and *mana whenua* with Te Arawa but actively affiliated with them politically.³²⁴

He gave further evidence supporting this view, some of which related to events surrounding the murders of Völkner and Fulloon. In July 1865, the trading schooner *Maruiwi* had sailed to Whakatāne, breaching an aukati that Ngāti Awa supporters of the Pai Marire movement had placed over their rohe (and beyond it) after Völkner's killing. Wi Maruki of Ngāti Kauaewera, Te Puhi of Ngāti Makerewai, and several other members of Te Patuwai of Motiti were aboard the ship at the time. The *Maruiwi* was known to be a Te Arawa-owned vessel.³²⁵ Daniel Ranapia gave evidence that Wi Maruki owned it,³²⁶ that Te Puhi was the ship's master,³²⁷ and that some people perceived it as 'a Patuwai vessel'.³²⁸

315. Document A83(d), pp 20–21

316. Ibid, p 21

317. Ibid

318. Ibid

319. Ibid

320. Ibid; Wai 686 RO1, doc 12, p 16 n

321. Document A83(d), pp 21–22

322. Ibid, pp 19–20

323. Ibid, p 22

324. Ibid, p 16

325. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 48; doc A83(d), p 25

326. Document A83(d), p 25

327. Ibid, p 27

328. Ibid, p 26

During the 1866 trial for the murder of Fulloon (who was killed a few days after the *Maruiwi* arrived, for sailing to Whakatāne in breach of the aukati), some witnesses referred to the Te Patuwai people aboard the *Maruiwi* as Te Arawa.³²⁹ Wi Maruki's son, Wiremu Maruki, also introduced himself by saying 'I belong to the Te Patuwai a section of the Arawa and live at Motiti'.³³⁰ Other witnesses described how, after taking Te Puhī and his crew prisoner, Ngāti Awa Pai Marire adherents wanted to kill them but others interceded.³³¹ The crew were ultimately passed to Ngāti Pūkeko, who let them escape.³³²

Responding to this evidence, Tā Hirini disagreed that the *Maruiwi* belonged to Te Patuwai, saying Daniel Ranapia had misinterpreted the historical record on this point.³³³ He also emphasised that members of Te Patuwai and Ngāti Awa each fought 'against their own kin' in the New Zealand Wars, suggesting that in this political context, conflict between Te Patuwai of Motiti and Ngāti Awa groups could not be taken as evidence of a fundamental division within Te Patuwai.³³⁴

The claimants highlighted 1994 research by Tā Hirini that appeared to support their view that, at this time, Te Patuwai on Motiti were separate from Te Patuwai on the mainland and had their own political affiliations. Describing Ngāti Awa's rohe in the 1860s, Tā Hirini had stated:

Ngāti Awa controlled land and sea, including some islands out to sea which at one time stretched from Tuhua (Mayor Island) to Whakaari (White Island). By the 1860s the island domain had become reduced somewhat but only because the hapu of Ngāti Awa living on the islands near Tauranga had developed to the point of being independent though still linked by whakapapa to the founding body. By the 1860s the Islands of Ngāti Awa were the Rurima group, Moutohora (Whale Island), Volkner Rocks, and Whakaari (White Island).³³⁵

Asked by the claimants whether he stood by this evidence, Tā Hirini affirmed that he 'stand[s] by the evidence set out in our research reports from the 1990s'.³³⁶

3.2.9 Native Land Court investigations, evidence, and awards

In the late-nineteenth century, cases were heard in the Native Land Court that shed light on the relationship between Ngāi Te Hapū and Te Patuwai, and how the names of these two groups were used and understood at the time. The claimants and interested parties in this inquiry all referred to these cases when making their respective arguments about who are the tangata whenua of Motiti Island today.

329. Ibid, pp 25, 27

330. Ibid, p 27

331. Ibid, p 26

332. Waitangi Tribunal, *Ngāti Awa Raupatu Report*, p 48

333. Document A85(b), p 23

334. Ibid, pp 23–24

335. Document A7, p 82

336. Document A85(b), p 4

3.2.9.1 Overview of the cases**3.2.9.1.1 Motiti**

From 1867 to 1912, Motiti Island was the subject of a series of Native Land Court cases. The 1867 case was a ‘highly contested’ title investigation in which several parties claimed rights to Motiti.³³⁷ They included a group of individuals on behalf of the Te Arawa hapū Ngāti Whakaue, Ngāti Uenukukopako, and Ngāti Pikiao; Hori Tupaea on behalf of Te Whānau a Tauwhao (who claimed through Hikutu – the son of Tauwhao and Tamaoho); Te Rangitukehu on behalf of Ngāti Awa (who also claimed through Hikutu); Hone Te Whetuki on behalf of Patuwai (who claimed through Te Hapū); Te Waata on behalf of Ngatitatakainga; and Wi Kepa (whose affiliation was not recorded).³³⁸ In its decision, the court divided the island between Te Whānau a Tauwhao and Te Patuwai, awarding 1,090 acres in southern Motiti to Hori Tupaea on trust for himself and Te Whānau a Tauwhao, and 565 acres in northern Motiti to Te Whetuki and Te Puhī Kirika on trust for themselves and Te Patuwai.³³⁹

Te Patuwai objected to the court’s decision, first, because they claimed rights to the whole island,³⁴⁰ and secondly, because the court’s dividing line cut through the area they were occupying, including the centre of Karioi Pā.³⁴¹ The court-imposed boundary lay well north of the one Te Hapū had set down when dividing the island between his two sons, and which at least some Te Patuwai recognised as the southern boundary of Te Patuwai land on Motiti in the early 1850s (Te Whānau a Tauwhao’s territory lying south of it).³⁴² Relative to that longstanding boundary, the court’s line reduced the extent of Te Patuwai land on Motiti by over 300 acres.³⁴³ Despite the court’s ruling, Te Patuwai continued to occupy and use the land immediately south of the court-imposed boundary.³⁴⁴ Dr O’Malley noted that the tribe actively opposed the boundary for nearly 20 years, until they received further land in southern Motiti.³⁴⁵

In 1884, a case was held to subdivide the southern part of Motiti, as a result of which the land formerly awarded to Hori Tupaea on trust for Te Whānau a Tauwhao was split into two blocks: a 200-acre block (Motiti A) set aside as an inalienable reserve for the owners (now named as Akuhata Tupaea and 21 others), and an 890-acre block (Motiti B), which was transferred to George Douglas, a Pākehā who had leased southern Motiti since 1868 and purchased interests in it over time.³⁴⁶

337. Document A16, p 41

338. Ibid, pp 41–42, 44; doc A16(a), p 2512

339. Document A38(a), p 28; doc A16, pp 51–52

340. Document A16, p 126

341. Ibid

342. Document A16, p 22; doc A16(a), p 2482

343. Document A16, pp 22, 68

344. Ibid, p 63

345. Ibid, p 126

346. Document A38(a), pp 5–6. Te Whānau a Tauwhao opposed Douglas’s application to have the land transferred to him, since it was held on trust for the hapū and thus technically inalienable when he purchased interests in it: *ibid*, p 5.

In 1885, and with the approval of the Government, Te Patuwai negotiated an exchange of land with Douglas, receiving 166 acres in southern Motiti in return for a block of land at Tauranga (which the Government had earlier offered the iwi as compensation for the prejudicial placement of the 1867 boundary). The 166 acres (part of Motiti B) comprised an area of land immediately south of the court's boundary that Te Patuwai had continued to occupy after the 1867 decision. This block was awarded to 'certain natives of the Patuwai Tribe', specifically, 187 individuals whom Te Patuwai themselves had named as rightful owners.³⁴⁷

The next Native Land Court case, in 1891, began as a hearing into applications to partition the 565 acres awarded to Te Patuwai, but ultimately proceeded as a determination of relative interests in the land.³⁴⁸ As a result of the case, a two-acre urupā was partitioned off and the rest of northern Motiti awarded collectively to 134 members of Te Patuwai.³⁴⁹

In 1894, the court held a rehearing into the list of 134 owners of northern Motiti determined in 1891. Three claimants – Ngawhika Otimi, Tiaki Rewiri, and Wi Tere Whakahau – challenged the legitimacy of the list, saying it included some Te Patuwai who lacked rights on Motiti and excluded others who had rights there. As a result of the case, the parties agreed that two acres would be set aside at Wairanaki as a communal landing place³⁵⁰ and one acre at Oromai as a communal urupā reserve (this area replacing the two acres set aside in 1891). They also agreed that the rest of northern Motiti would be divided between the three claimant groups, each of whom comprised one or more karanga hapū. The court awarded 203 acres to Wi Tere Whakahau and 54 members of Takahanga and Ngāti Pau (Motiti North C); 129 acres to Tiaki Rewiri and 34 others of Kauaewera and Ngāti Te Uru (Motiti North D); and 230 acres to Ngawhika Otimi and 61 members of Ngāti Makerewai (Motiti North E).³⁵¹

Motiti North was later found to be 25 acres smaller than had been thought, and in 1911, this shortfall was deducted pro rata across the three main blocks (C, D, E).³⁵²

3.2.9.1.2 Whakatāne

The court also heard cases concerning the two blocks of land that had been awarded to Te Patuwai in 1875 as compensation for land confiscation in the

347. Document A16, pp 60, 62–63, 64. In 1886, some Te Patuwai complained that 'the whole of Ngāti Pūkenga' had been admitted into the block. Years later, after the original list of owners had been lost (and official efforts to find it failed), it was thought that some Ngāti Pūkenga and Whānau a Apanui names had been admitted out of 'friendship'. After a special legislative provision, the matter went to the Native Land Court in 1904 and the block was awarded to the 187 owners: *ibid*, pp 63, 66–67.

348. *Ibid*, pp 69–70. Ngamanu Te Wharau and Te Puhi Rereka had made applications for partition in the late 1880s but, during the hearing itself, it transpired that they sought all 565 acres for Ngāti Makerewai. Against their claim, Tiaki Rewiri claimed all 565 acres for all the hapū of Te Patuwai collectively. As neither party sought to subdivide the land, the court decided to determine relative interests instead: *ibid*, pp 69–70.

349. *Ibid*, p 70

350. *Ibid*, p 82

351. *Ibid*, p 72; doc A16(a), p 2694

352. Document A16, p 73

eastern Bay of Plenty. In 1895, it was asked to determine relative interests in the Pekapekatahi block, and in 1905, to partition the Pupuaruhe block. As noted by Dr O'Malley, a key point of dispute in these cases was whether Te Patuwai of Motiti were entitled to a share of these Whakatāne lands.

In the Pekapekatahi case, some argued that the land had been awarded to Te Patuwai in return for military service, while others said Te Patuwai had ancestral rights to the land and that shares should be awarded on this basis. In its decision, the court removed some of the original 109 owners on the basis that they were not Te Patuwai, and awarded equal shares to all remaining owners, irrespective of whether they were Te Patuwai of Motiti or Whakatāne.³⁵³

In the Pūpūaruhe case, the court similarly found that 'very many persons were improperly admitted' to the original list of owners, removed 13 people it considered were not Te Patuwai, and awarded equal shares to all remaining owners.³⁵⁴ However, in an appeal against its decision, the court changed its thinking; it found that, though some people on the 1875 list were not Te Patuwai by birth – including those it had struck off – it was fair to say they were Te Patuwai by marriage, and were thus entitled to share in the land.³⁵⁵

In both court cases, some argued that the Whakatāne people who originally claimed the blocks for Te Patuwai in 1875 had strategically listed Motiti people as owners, though they lacked rights there (according to these witnesses), simply to meet the population threshold required for Te Patuwai to receive the land.³⁵⁶

3.2.9.2 Differing interpretations of the evidence before the Native Land Court

As noted, the claimants and interested parties in our inquiry all referred to the Native Land Court evidence from these cases. However, their readings of the evidence differed significantly.

3.2.9.2.1 The 1867 title investigation

The claimants relied on evidence from this case to show that the Patuwai of Motiti regarded Te Hapū as their founding ancestor; that through him they affiliated most strongly to Waitaha/Te Arawa; and that they derived their mana on Motiti from Te Hapū and his Waitaha ancestors, not Ngāti Awa.

Some of the key testimony to which the claimants referred was given by Hone Te Whetuki (a chief of Ngāti Takahanga) and Wi Maruki (a chief of Ngāti Kauaewera). Te Whetuki appeared on behalf of 'the Patuwai hapu of Waitaha . . . related to the Arawa'³⁵⁷ and introduced himself by saying:

353. Document A16, pp 30–33

354. Ibid, p 34

355. Ibid, pp 34–35

356. Ibid, pp 31, 33–34. According to some evidence, the number of names on the list determined the size of the lot to be awarded: doc A66(c), p [33].

357. Document A16, p 44; doc A16(a), p 2463

I live at Motiti, I belong to the Ngāi Te Hapu of Patuwai. My ancestors have lit a fire upon that island a long time ago and it still burns now. Te Hapu is the name of my first ancestor, he is an ancestor of the Patuwai. From Te Hapu descended Roropukai, from him Tutonu, from him Tohiora, from him Kaitarau, from him Whare Potae, from him Te Whetuki, I am the last.³⁵⁸

Te Whetuki also gave evidence that ‘Waitaha was the first person before Te Hapu’ on Motiti.³⁵⁹ Wi Maruki gave similar evidence, stating he belonged to ‘the Patuwai’ and that Te Hapū was ‘our first ancestor’. He further testified that Patuwai were ‘descended from a person who came in the Arawa canoe’ and that, if he (Wi Maruki – seemingly referring to Te Patuwai) were not on Motiti, ‘it would belong to the Arawas’.³⁶⁰

Dr O’Malley highlighted evidence given to the court by various other witnesses, including people of Te Patuwai who claimed rights to Motiti through Te Hapū (one of whom said Ngāti Pikiao also had a claim through Te Hapū), and people of Te Arawa who endorsed the Te Patuwai claims. Among the latter were members of Ngāti Pikiao, one of whom explained that, as his claim was through an ancestor only, his right to visit Motiti was contingent on Te Patuwai’s consent. Another witness from Ngāti Pikiao acknowledged that Te Arawa had not lived on Motiti for some time, but emphasised the iwi’s strong links to the island through their ancestors on the *Te Arawa waka*.³⁶¹ One witness who belonged to Ngāti Pūkenga also claimed rights through Te Hapū.³⁶²

Dr O’Malley also pointed to evidence by Rangitukehu, recorded by the court as giving the Ngāti Awa case. Rangitukehu stated that he belonged ‘to Te Whanau a Tauwhao that is my tribe at Motiti and to the Ngātiawa at Whakatane’, and said he claimed rights on Motiti through the ancestor Hikutu – through whom Te

358. Submission 3.3.8, p16; doc A16(a), p 2464

359. Document A16(a), p 2469; submission 3.3.8, p16; doc A83(d), p 2. We note that, in discussing this case, Dr O’Malley sometimes used ‘Ngāi Te Hapū’ to denote Te Hapū’s descendants where his sources say ‘Te Patuwai’ or ‘Patuwai’: doc A16, p 2; transcript 4.1.2, pp 217, 232–234. In other words, his presentation of Native Land Court evidence does not always accurately reflect the record. For example, when discussing Te Whetuki’s evidence, Dr O’Malley stated that Te Whetuki listed ‘all the men of Ngāi Te Hapū living on Motiti . . . whose names he knew’, when Te Whetuki’s recorded words were ‘These are the names of the persons belonging to the Patuwai who are living on Motiti’: doc A16, p 45; doc A16(a), p 2464. Dr O’Malley also noted that Te Whetuki gave a ‘list of Ngāi Te Hapū pā on Motiti’, when Te Whetuki introduced the list by saying ‘these are the names of the pas of the Patuwai at Motiti’: doc A16, p 45; doc A16(a), p 2465. Similarly, Dr O’Malley stated that ‘Te Whetuki maintained under questioning that Ngāi Te Hapū had held possession and authority over Motiti from the time of Te Hapū onwards’, when Te Whetuki’s words were ‘I have held possession and authority over the land ever since my first ancestor till the present time’: doc A16, p 45; doc A16(a), p 2466. While O’Malley’s wording in the last example could be justified by Te Whetuki’s testimony about his ancestor Te Hapū, we note that Te Whetuki did not actually say ‘Ngāi Te Hapu’.

360. Document A16(a), p 2478; submission 3.3.8, p 16

361. Document A16, pp 47–48

362. Document A16(a), p 2516

Whānau a Tauwhao staked their claim.³⁶³ Rangitukehu also identified Te Patuwai as Ngāti Awa, saying they were ‘a section of the Ngāti Awa’ – according to Dr O’Malley, one of the few witnesses to do so.³⁶⁴

Daniel Ranapia highlighted later Native Land Court testimony by Tiaki Rewiri about the outcome of the 1867 title investigation (which had taken place in Tiaki Rewiri’s youth). Under questioning in the Pekapekatahi case in 1895, Tiaki Rewiri denied the land had been awarded to Te Patuwai:

Q: Did not the Court in delivering judgement for Motiti state that the land was awarded to Te Patuwai – descendants of Te Hapu?

A: The court said this land is awarded to the descendants of Te Hapū. I did not hear any mention of Te Patuwai.³⁶⁵

While court records show the court did award the land to ‘Te Patuwai’ (as outlined earlier), Daniel Ranapia argued Tiaki Rewiri’s statement was ‘valid’, as ‘the land belonged to the hapū, and each claimed their own rights. . . . The lands are not an amalgamated interest under Te Patuwai.’³⁶⁶

Commenting on the title investigation as a whole, the claimants pointed out that all the Te Patuwai witnesses advanced their claims under the ancestor Te Hapū, and successfully so, while Ngāti Awa advanced their rights under a different ancestor, Hikutu, and were unsuccessful.

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa also engaged with evidence from the 1867 case. Himi Takotohiwhi drew attention to the fact that all who made a claim under the name Te Patuwai identified as Te Patuwai in their testimony – including those who said they were Ngāi Te Hapū – and that the resulting grant of land was made in trust for Te Patuwai. For him, these facts confirmed that ‘Patuwai is the overarching tribal identity for Mōtiti.’³⁶⁷ Mr Takotohiwhi also stated that it could not be assumed that, when Te Whetuki said he was ‘Ngāi Te Hapū’, he was referring to an actual group of that name. He suggested that the hapū known as Ngāi Te Hapū would no longer have existed at that time, and argued that, when Te Whetuki said he was ‘Ngai Te Hapu of Patuwai’, it was a way of saying that ‘he and Te Patuwai are the descendants of Te Hapu.’³⁶⁸

Finally, counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa emphasised that interpretation of the evidence in this case must take into account the political context created by the New Zealand Wars, a point Dr O’Malley made equally clearly. Both argued that, for one thing, Ngāi Te Rangi were still considered ‘rebels’ when the case was heard, and Te Arawa loyal to the Crown. For another, the threat of confiscation of Ngāi Te Rangi lands, including on Motiti, remained live

363. Document A16(a), p 2512

364. Document A16, p 48; doc A16(a), p 2512. The full quote reads ‘I know the Patuwai tribe. They are a section of the Ngatiawa [through?] whom they claim.’

365. Document A83, p 36

366. Ibid

367. Document A57, pp 6–7

368. Ibid, p 7

at the time of the hearing. Moreover, counsel noted that Ngāti Awa had recently been branded as ‘rebels’ and their land confiscated following the murder of James Fulloon. Dr O’Malley likewise noted that this ‘highly politicised context’ influenced the kind of evidence witnesses gave: Te Patuwai claimants foregrounded their links to Te Arawa, while Te Whānau a Tauwhao claimants distanced themselves from Ngāi Te Rangi.³⁶⁹ Counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa further noted that both claimant groups distanced themselves from Ngāti Awa.³⁷⁰

The claimants countered Mr Takotohiwi’s assertion that the 1867 case confirmed that Te Patuwai was the ‘overarching identity’ for Motiti, saying this view failed to acknowledge that the Te Patuwai claim was not advanced as a Ngāti Awa claim,³⁷¹ and as such, did not affirm that Te Hapū’s descendants on Motiti are Ngāti Awa.

Despite the parties’ differing interpretations, it is clear the Te Patuwai name was widely used at the time of this case, and that the case itself was presented as a Te Patuwai one. However, there was also a strong emphasis on descent from Te Hapū as the ‘first ancestor’ who conferred rights to Motiti.

3.2.9.2.2 The 1891 hearing into relative interests in the Motiti North block

Dr O’Malley highlighted that all witnesses in this case claimed rights to Motiti through descent from Te Hapū. However, in justifying their claims, they gave differing definitions of Te Patuwai and differing accounts of the origins of the Te Patuwai name.

Dr O’Malley drew attention to evidence given by Ngamanu Te Wharau – who claimed the whole block for Ngāti Makerewai³⁷² – and Tiaki Rewiri – who claimed the block for all Te Patuwai hapū. Like witnesses in other hearings, Ngamanu stated that Te Hapū was the ancestor on whom he based his claim, that Te Hapū was of Waitaha, that Te Hapū’s people were called Ngāi Te Hapū (or Ngāti Hapū; the spelling is indistinct), and that the name Patuwai derived from an event rather than an ancestor.³⁷³ Ngamanu claimed that Ngāti Makerewai alone were entitled to the land, that they were ‘the only real hapu of the Patuwai tribe’,³⁷⁴ and that ‘it was the N Makerewai hapu of Patuwai to whom this land was awarded.’³⁷⁵ He further stated that ‘N Takahanga, N Pau, N Kauawera I can’t say are hapus of the Patuwai tribe’,³⁷⁶ and indicated that hapū who derived their claims from Ngāti Awa or Ngāi Te Rangi had no valid claims to Te Patuwai land on Motiti.³⁷⁷

Tiaki Rewiri rejected Ngamanu’s claim that only Ngāti Makerewai had rights to the land. He appeared in the case for Ngāti Te Uru, Ngāti Kauawera, Ngāti

369. Document A16, p 44; submission 3.3.12, pp 45–46

370. Submission 3.3.12, p 47

371. Submission 3.3.8, p 16

372. Document A16, p 69; doc A16(a), p 2553

373. Document A16(a), pp 2544, 2547–2548; doc A16, p 69

374. Document A16(a), p 2549

375. Ibid, p 2556

376. Ibid, p 2553

377. Document A16, p 69; doc A16(a), p 2553

Pau, Ngāti Takaha [Takahanga], and Ngāti Makerewai, stating that ‘these are all the hapu names rightfully belonging to the Patuwai.’³⁷⁸ He explained that Tohiora (one of Roropukai’s sons) was the ancestor of Ngāti Pau and Ngāti Takahanga, and Tūtonu (another of Roropukai’s sons) the ancestor of the others.³⁷⁹ Tiaki Rewiri also gave evidence that Te Hapū descended from Toroa through Wairaka but not Awanuiārangi 11, that Ngāti Awa lineage was not a valid basis for claiming the Patuwai land on Motiti, and that Ngāti Whakahemo was not a hapū of Patuwai.³⁸⁰

To support his claim that Ngāti Makerewai were the only ‘real hapū’ of Te Patuwai, Ngamanu gave an account of the origins of the Te Patuwai name that differed from others given in the court (outlined in section 3.2.7). According to him, the Patuwai name was first given to the son of Ahoaho – the chief of Ngāti Ahoaho, one of the karanga hapū – to commemorate the killing of Rangikamutuhia by Tawhirangi, a chief of Whakatōhea. (Tawhirangi had taken her prisoner, and she asked him to delay killing her while she went to the water to wash, but he beheaded her in the water.) The Te Patuwai name was then given to Ngāti Makerewai (the name ‘Makerewai’ also referred to the same event, Ngamanu said).³⁸¹

In giving judgment on the cases of people whose rights were disputed, the court distinguished those who were ‘members of the Patuwai Tribe’ (who it admitted as owners) from those who were not considered Te Patuwai. On this basis, it found members of Ngāti Whakahemo and Ngāti Pūkenga should be excluded from ownership of Motiti North.³⁸²

3.2.9.2.3 The 1894 rehearing into the partitioning of the Motiti North block

Dr O’Malley highlighted that, in this case too, all witnesses based their rights to the Patuwai land on their descent from Te Hapū. He summarised the key evidence – given by Ngawhika Otimi and Tiaki Rewiri – as follows:

The court heard that some of those who were Te Patuwai were not descended from Te Hapū and had no rights on Motiti. On the other hand, all of the descendants of Te Hapū were called Te Patuwai. In other words, while all of Ngāi Te Hapū were Patuwai, the two groups were not synonymous: there were other people called Patuwai who could not trace descent from Te Hapū and had no rights at Motiti. Ngāti Maumoana at Whakatāne was specifically pointed to as a Patuwai party who had no rights at Motiti.³⁸³

378. Document A16(a), p 2557

379. Ibid, p 2558

380. Document A16, p 70. Tiaki Rewiri’s assertion that Ngāti Awa lineage was not a valid basis for claiming Te Patuwai land on Motiti seems to have been directed at Ngamanu Te Wharau, to whose claim he objected. He strongly denied Ngamanu was Te Patuwai, noting that Ngamanu’s father was Ngāti Pūkenga and his mother Ngāti Awa: doc A16(a), p 2562. But he also allowed that Ngamanu had rights of occupation on Motiti through his mother, who had been ‘married in Whakatāne’. The court upheld the claim of Ngamanu’s whānau: doc A16(a), pp 2615–2616.

381. Document A16(a), pp 2547–2548

382. Submission 3.3.12(b), p 38; doc A16, p 70; doc A16(a), pp 2602, 2615

383. Document A16, p 71

We note that Ngāi Te Hapū are referred to quite often in evidence given in this case, and in the 1891 case, but not all witnesses used the name in the same way. Some used it *alongside* the karanga hapū names, rather than as a collective term for the karanga hapū. Wi Tere Whakahau, for example (who appeared for Ngāi Te Hapū, Ngāti Pau, and Ngāti Takahanga), listed the hapū of Te Patuwai as Ngāi Te Hapū, Ngāti Pau, Ngāti Takahanga, Ngāti Makerewai, Ngāti Kauae, and Ngāti Te Uru. He stated that all were descended from Te Hapū and had a right to Motiti North.³⁸⁴ Similarly, Te Ngawhika referred to Ngāi Te Hapū, Ngāti Pau, and Ngāti Takahanga as separate hapū. But unlike Wi Tere, he considered Ngāti Pau and Ngāti Takahanga were ‘not hapū name[s] of the descendants of Te Hapū’, while Ngāi Te Hapū was.³⁸⁵ He also gave evidence that all Te Hapū’s descendants were called Te Patuwai, ‘formerly’ and ‘now’.³⁸⁶

3.2.9.2.4 The 1895 Pekapekatahi case

As noted earlier, this case was held to determine relative interests in the Pekapekatahi block (lot 32) in Whakatāne that had been awarded to Te Patuwai after the New Zealand Wars. Much evidence in this case centred on the question of whether Te Patuwai of Motiti were entitled to share in the block, given its location in Whakatāne. As such, in the Native Land Court, numerous witnesses expressed views on the respective rights of Patuwai at Whakatāne and at Motiti.³⁸⁷

In this inquiry, the claimants relied chiefly on testimony from the Pekapekatahi case to support their claim that the Patuwai of Motiti were distinct from the Patuwai of Whakatāne. From the claimants’ perspective, the crucial evidence for this claim was testimony that descent from Te Hapū did not confer land rights at Whakatāne, only Motiti.

Several witnesses in the Pekapekatahi case provided relevant evidence, including Tiaki Rewiri, Timi Waata Rimini (of Ngāti Pūkeko and Ngāti Awa), and Himiona Te Orenui. As already noted in section 3.2.7, Tiaki Rewiri said the creation of Te Patuwai was triggered by the death of Tawhiwhi, when Ngāti Ikapuku and Ngāi Te Hapū mutually adopted the Te Patuwai name commemorating the fatal event at sea:

Timi Waata says that Te Hapu was the original ancestor of Te Patuwai. I say no. I say Tawhiwhi was the original ancestor of that tribe – though Tawhiwhi was descended from that ancestor and also from Awanuiarangi. Te Patuwai of Whakatane were formerly called N Ikapuku, those of the same tribe living at Motiti were called Ngai Te Hapu – but when Tawhiwhi was drowned at sea the tribe took the name of Patuwai.³⁸⁸

384. Document A16(a), p 2675. On the relationship between these hapū, Wi Tere stated ‘there are no subdivisions, but certain hapus occupy certain places. They have lived like that from ancestral times.’

385. Ibid, p 2649

386. Ibid

387. Document A16, p 31

388. Document A16(a), pp 2946–2947

According to the claimants, Tiaki Rewiri further asserted that Te Patuwai were made up of two distinct hapū, each of whom had separate ancestral lands at Whakatāne and Motiti. He explained that descent from the ancestor Te Hapū gave no rights to land at Whakatāne: 'We [Te Patuwai of Whakatāne] do not live at Whakatāne by right of descent from Te Hapū. That ancestor has no right whatever here.'³⁸⁹ Restating this point later in the hearing, he argued that most of the Patuwai of Motiti listed as owners had

no ancestral rights to lands in Whakatāne from the time of the ancestors until the time the land was confiscated. Had there been no confiscation they would not have owned any land in Whakatāne. My reason for allowing them the shares I propose is owing to them having lived with Te Patuwai and being called by that tribal name.³⁹⁰

The claimants noted Tiaki Rewiri's clarification that the ancestors through whom Ngāti Awa/Te Patuwai ki Whakatāne claimed rights to the land were Taiwhakaaea Te Ratuhahaua and Te Puia. Tiaki Rewiri argued that most of Te Patuwai of Motiti should accordingly receive lesser shares because 'they don't belong to us but are merely called [Te] Patuwai'.³⁹¹ Conversely, Tiaki Rewiri was clear that Ngāti Maumoana (or Te Patuwai of Whakatāne) had no ancestral right to Motiti: 'N Maumoana . . . have no right in Ng[ai] Te Hapū lands'.³⁹²

Tiaki Rewiri further asserted that the Te Patuwai of Whakatāne were 'the Patuwai proper' and the people of Motiti 'not the Patuwai proper' – save for those among them who were descended from Taiwhakaaea and Te Puia. He explained that the 'proper' name of the others on Motiti – Te Hapū's descendants – was Ngāi Te Hapū.³⁹³

The claimants highlighted that, although other witnesses disputed some of Tiaki Rewiri's claims – Timi Waata, for example, saying that Te Hapū was the ancestor of Te Patuwai, and Himiona Te Orenui that all Te Hapū's descendants were Te Patuwai³⁹⁴ – nevertheless, they either explicitly agreed that descent from Te Hapū gave no rights to land at Whakatāne (only Motiti)³⁹⁵ or did so tacitly, claiming rights to the Pekapekatahi block not through their ancestor Te Hapū, but in recompense for military service.³⁹⁶ Other witnesses also referred to the Patuwai of Motiti as Ngāi Te Hapū, Timi Waata agreeing that this was the hapū's 'proper name'.³⁹⁷

389. Document A16, pp 31–32; doc A16(a), p 2963

390. Document A83(d), p 7; doc A16(a), p 3028

391. Document A16(a) p 3028

392. Document A27, p 6; doc A16(a), p 2962

393. Document A16, p 31; doc A16(a), pp 2957, 2964

394. Document A16(a), pp 2946–2947, 3081

395. Document A83(d), pp 7–8; doc A16(a), p 2991

396. Document A83(d), p 8

397. Ibid, pp 8, 9

In his analysis of the Pekapekatahi case, Daniel Ranapia noted that Tiaki Rewiri's questioning of the Ngāi Te Hapū witnesses purposefully revealed their Te Arawa identity, a strategy which, in his view, suggested that Tiaki Rewiri did not view them as Ngāti Awa.³⁹⁸ Daniel Ranapia also concluded that, while the evidence showed the Te Patuwai name was disputed, Tawhiwhi's whānau held the strongest right to it by virtue of their close link to the central figure in the tribe's founding event, the battle of Te Patuwai.³⁹⁹

In sum, the claimants highlighted testimony from the Pekapekatahi case suggesting that the Patuwai of Whakatāne and Motiti had different ancestors and (through them) different tribal estates. They said the testimony also indicated that the name Te Patuwai properly denoted descendants of the Ngāti Awa ancestors Taiwhakaaea and Te Puia only, while those who claimed descent from Te Hapū were properly known as Ngāi Te Hapū.

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa advanced several arguments in response to the evidence given in the Pekapekatahi case. First, they emphasised that, despite Tiaki Rewiri's evidence, the court awarded the land to all Te Patuwai owners in equal shares. Tā Hirini stated that the court had thereby come to the view that Te Patuwai were 'one people'.⁴⁰⁰

Secondly, they cast doubt on the integrity of Tiaki Rewiri's evidence, noting that confiscation had created a context in which members of Te Patuwai were competing for land with each other.⁴⁰¹

Thirdly, Te Patuwai Tribal and Te Rūnanga o Ngāti Awa highlighted testimony that contradicted Tiaki Rewiri's – namely, testimony that the Te Patuwai of Motiti and Whakatāne were the same people and should receive equal shares in the land. Tā Hirini, for example, pointed to evidence by Timi Waata Rimini that the two groups had previously been united for an extended period, including before they lived together at Whakatāne, while they lived at Whakatāne (after the 1818 Ngāpuhi raids), when they returned to Motiti (in the early 1850s), and later moved to Maketū (during the New Zealand Wars):

Te Patuwai formerly always went in a body to the wars in which that tribe were engaged. All of them went to Haowhenua [Taumatawiwi] they all came back after that war to Rotoiti. In those days there were not two sections of Te Patuwai. Te Patuwai of Motiti and Whakatane were one people. They moved to Rotoiti to Piripai at Whakatane. I saw them living there when I was a boy, before 1858 . . .

When Te Patuwai emigrated to Motiti; Mohi Himiona and Tareti remained at Whakatane everyone else went including Rewiri and Iharaia. They lived at Otungahoro at Motiti – I saw a large house belonging to Rewiri there – all his goods

398. Ibid, pp 14–15

399. Ibid, p 15

400. Document A85, pp 7, 29

401. Submission 3.3.12(b), p 47

were – Ihairaira lived there – Purehoewai and the great many other persons in Tiaki Rewiri's list – and about the beginning of the Pakeha war Te Patuwai left Motiti for Maketu.⁴⁰²

As Te Patuwai Tribal and Te Rūnanga o Ngāti Awa pointed out, Timi Waata went on to say that several pā in Whakatāne associated with Ngāti Maumoana and Patuwai – who he defined as descendants of Te Hapū – were always shared between the two groups:

The pas mentioned by Tiaki Rewiri are the pas of N' Awa, the tribes who have always lived in this district. I have not heard of any pa which belonged exclusively to N' Maumoana or to Patuwai. I always heard during my residence in this district that N' Maumoana is a hapu of N' Pukeko. Therefore I claim for the Patuwai of Motiti equal interests with the persons whom Tiaki Rewiri calls N' Maumoana. The Patuwai are descendants of Te Hapu.⁴⁰³

Tā Hirini further noted that, while Tiaki Rewiri claimed Te Hapū was the only ancestor for land rights at Motiti, his was 'not a universally accepted opinion . . . then or now'.⁴⁰⁴

Fourthly, Tā Hirini drew attention to an aspect of the testimony in this (and the lot 29) case that, in his view, showed that 'Te Patuwai have aligned with their iwi of Ngāti Awa since before colonisation': the fact that 'all' witnesses in these cases referred repeatedly to Ngāti Awa and their tīpuna, including Taiwhakaea 1, Te Kuratapirirangi, Ikapuku, Te Rangitipukiwaho 1, and Taiwhakaea 11.⁴⁰⁵

The claimants criticised some of Te Patuwai Tribal and Te Rūnanga o Ngāti Awa's interpretations of the evidence. Against Tā Hirini's claim that the court had found Te Patuwai were 'one people', claimant counsel argued that the court had simply decided it lacked the power to differentiate shares to reflect relative interests in this case.⁴⁰⁶ In his comment on the court's judgment, Dr O'Malley said the court had failed to examine the issues raised by Tiaki Rewiri's evidence.⁴⁰⁷

Dr O'Malley also defended the integrity of Tiaki Rewiri's evidence, arguing it was unlikely to reflect an 'anti-Motiti bias' given Tiaki Rewiri was born on Motiti and claimed rights both there and at Whakatāne through different ancestral lines.⁴⁰⁸ The claimants further noted that Native Land Court records spanning many years show Tiaki Rewiri consistently maintained his stance that rights to Motiti derived from Te Hapū, and rights to Whakatāne from Taiwhakaea and Te Puia.⁴⁰⁹ They also made the point that Tiaki Rewiri was not alone in claiming Te

402. Document A85(b), p 17; doc A16(a), pp 3056–3057

403. Document A85(b), p 17; doc A16(a), p 3059

404. Document A85(b), p 20

405. Ibid, p 9

406. Submission 3.3.8, p 24

407. Document A16, p 33

408. Ibid, pp 12–13

409. Document A83(d), pp 9–10, 15

Hapū lacked customary rights in Whakatāne – that other descendants of Te Hapū had said the same.

3.2.9.2.5 The 1905 Pūpūaruhe case

The claimants also highlighted evidence from this case to support their argument that Te Patuwai at Motiti and Te Patuwai at Whakatāne were distinct. In this case (held to partition another block of confiscated land returned to Te Patuwai, as noted earlier), Tiaki Rewiri again testified that ‘Te Hapu had no mana over Whakatane lands.’⁴¹⁰ However, he suggested this block be distributed almost equally between Te Patuwai at Motiti and at Whakatāne, saying Te Patuwai living permanently on Motiti should receive five shares, and those who lived on the block itself, six shares.⁴¹¹

Dr O’Malley drew attention to other testimony from this case that Te Patuwai of Motiti, though originally listed as owners of the Pupuaruhe block, had no genuine rights there. Pauawha Te Meihana claimed that Ngāti Maumoana – who he said were closely associated with Ngāti Pūkeko – had initially sought the block for themselves but numbered too few to qualify for it, so ‘a list was made up of all the Motiti people including those living at other places and the Patuwai tribe was established.’⁴¹² Te Meihana also stated that the Patuwai name was recent and referred to a ‘section’ of the people who had encountered a disaster at sea and who were previously known as Ngāti Maumoana.⁴¹³ Another witness, Ngawhiki Te Otimi, similarly said that Motiti people had been added to the Te Patuwai claim to the Pupuaruhe block in order to meet the numbers required for a separate award.⁴¹⁴

Dr O’Malley also related comments the court made about the basis for membership of Te Patuwai. In appeals resulting from the 1905 case, the court noted that the commissioners who had awarded the block in 1875 ‘described these persons as the Patuwai, but it seems to us that they used the word Patuwai as a descriptive name, not as a definition.’⁴¹⁵

Summing up the Native Land Court evidence as a whole, Dr O’Malley, on behalf of the claimants, said Ngāi Te Hapū witnesses’ varied answers to the question of which tribe they affiliated to showed the strength of their connections to different Bay of Plenty groups, and so too, ‘the difficulty of defining them reductively as a hapū of Ngāti Awa.’⁴¹⁶

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa pointed to parts of the evidence that supported the existence of a Te Patuwai identity, but also spoke of the challenge of interpreting testimony given in a different historical context, and the risks of relying on it too heavily. They argued that the ‘120–150 years of events and

410. Document A16, p 33

411. Ibid

412. Ibid, pp 33–34

413. Ibid, p 34

414. Ibid

415. Ibid, p 35

416. Ibid, p 69

whakapapa' since the Native Land Court cases took place were critical to understanding the tribal identity of Te Patuwai today.⁴¹⁷

In terms of tracing the use and understanding of the Ngāi Te Hapū and Te Patuwai names, both names appear in all the Native Land Court cases relating to Motiti from 1867 to 1895. Not all witnesses who claimed rights to Motiti through Te Hapū identified as Ngāi Te Hapū, but all identified with one or more karanga hapū, and with Te Patuwai. Witnesses descended from Te Hapū also had differing understandings of which tribal groupings 'Ngāi Te Hapū' and 'Te Patuwai' referred to.

3.2.10 Tribal identity from the late-nineteenth century

The questions the Native Land Court cases raise about tribal identity, and what the names 'Ngāi Te Hapū' and 'Te Patuwai' truly connote, are central to the determination we must make in this chapter. In addition to the court records, the parties provided other evidence that also shed useful light on these questions of identity – and, again, led to sometimes divergent interpretations. We turn to this evidence now.

3.2.10.1 *The recognition of tribal identity on and beyond the island*

From the late-nineteenth century, the people of Motiti were affected by the establishment of various administrative and decision-making bodies under Government legislation. The way these bodies decided to recognise, represent and involve the people of Motiti – and how those affected responded to these decisions – gives some insight into how tribal identities have been understood on and beyond the island over time.

Giving evidence on behalf of the claimants, Dr O'Malley told us that if, in the latter half of the nineteenth century, Te Patuwai on Motiti 'were not described simply as a tribe', they were more likely to be associated with Te Arawa than Ngāti Awa (as seen, for example, in Native Land Court records and grants to Te Patuwai of land allocated to Te Arawa).⁴¹⁸ However, in the twentieth century, 'the links with Mataatua generally and Ngāti Awa in particular tended to be emphasised more', both by members of Te Patuwai and within official administrative frameworks (which are described in the account of Motiti's contemporary social and political life that follows).⁴¹⁹

The Native Committees Act 1883 enabled Māori to elect 'officially sanctioned committees that could arbitrate in local disputes and investigate customary land titles for the information of the Native Land Court'. Twelve districts were proclaimed under the Act in 1884. Motiti initially sat within the Rotorua district, but in 1886 was included in a new 'Ngaiterangi' district established at Ngāi Te Rangī's request.⁴²⁰

417. Submission 3.3.12(b), pp 44–45

418. Document A16, pp 35–36, 85

419. Ibid, pp 85, 90

420. Ibid, p 86

Over the next three years, Ngāti Awa also sought to negotiate a district of their own, but did not seek to include Motiti Island within it.⁴²¹ They made an initial proposal for a district area, then expanded the area in response to officials' feedback that it contained too few people. Later, they took a different approach and joined in coalition with Te Patuwai and other neighbouring groups to propose a district. This time they did not specify any boundaries, leaving officials to determine them, but still made no mention of Motiti. Making its case to the Native Minister in 1889, the coalition wrote:

We, the Ngatiawa, N'Pukeko, Ngaitaiwhakaea, Te Patuwai, Te Pahipoto, Ngatiahi, Warahoe, Te Tawera, N'Rangitihi, Ngamaihi, Ngaitamaoki and all our Hapus residing on the shores of the Bay of Plenty and in the Province of Auckland, hereby request that a Committee for our district be appointed under the Act of 1883 in as much as you have power to define smaller Native Committees . . . We consider that the district occupied by the Hapus and Tribes above enumerated is large enough to form a Native Committee District.⁴²²

Some members of Te Patuwai supported the Kotahitanga movement, a political movement that sought recognition from the Pākehā Government for the Paremata Māori (Māori parliament) and for Māori rights over their own people and lands. In 1899, the two representatives from Motiti in the Kotahitanga Māori parliament were included within the boundaries of 'te Tairawhiti ki Maketu me Rotorua Te arawa [*sic*]', not the Mataatua boundaries.⁴²³ The Crown played no role in determining the Māori parliament's electoral boundaries, as it did not support the initiative.⁴²⁴

The Maori Councils Act 1900 provided for Māori to elect Māori councils within defined districts that would play a role in overseeing the 'health, welfare and "moral well being" of their communities'.⁴²⁵ Under this Act, Motiti was included in the boundaries of the Te Arawa district rather than the Mataatua one.⁴²⁶

In 1901, Tiaki Rewiri and 49 others of Te Patuwai petitioned the Native Minister to exclude Motiti from the Te Arawa Maori Council boundaries. They further requested that he 'exempt us & our Island of Motiti from the operation of any Council whatsoever, let it remain a Maori reserve for us and for our children'. The petitioners identified themselves as 'the members of the hapu and tribe of Te Patuwai hapu of Ngati Awa residing at Motiti (Island) and at Whakatane'.⁴²⁷

At their 1903 general conference, representatives of the various councils established under the Maori Councils Act 1900 debated which council should administer Motiti Island. The Tauranga Maori Council sought to include it in their district,

421. Ibid, p 87

422. Ibid

423. Ibid, pp 85–86; 'He Panuitanga', *Jubilee: Te Tiupiri*, vol 2, no 62 (28 September 1899), p 1

424. Document A16, p 85

425. Ibid, p 88

426. Ibid

427. Document A16(a), p 213; doc A16, p 88

the Te Arawa council objected, and the Mataatua council made no comment. The conference resolved that the question was 'for the Natives dwelling on Motiti to decide' and that 'a majority of them must settle in which district they would prefer to be included'.⁴²⁸

In 1904, 53 Motiti islanders decided they did not wish to be included in any existing district and petitioned Parliament to create a separate council district for Motiti. As the petition was not filed as evidence, exactly how the petitioners identified themselves is unclear. The Native Affairs Committee supported the petition, recommending it be referred to the Government for favourable consideration.⁴²⁹

In 1905, 29 people signed an alternative petition requesting Motiti be included within the Mataatua Maori Council district. Tiaki Rewiri spoke in support of the petition at the 1905 general conference of Māori councils, saying it was appropriate for Motiti to join Mataatua because their lands and people were in that rohe. The conference minutes suggest the petition was made on behalf of 'nga tangata o Motiti' (the people of Motiti).⁴³⁰

In 1928, Takotohiwi Ngahau and others again petitioned Parliament to exclude Motiti from the Arawa Maori Trust Board District⁴³¹ and place it under the Mataatua Maori Council District. The petitioners, who said they 'reside at Motiti Island', identified themselves as 'members of the Patuwai tribe which is a sub-tribe of the Ngatiawa people' and stated that, aside from about three Te Arawa people, all Māori living on Motiti were Patuwai. They also said they had 'no community of tribal interest with other natives living in the Te Arawa Maori Council District', and that their interests would best be served by including them 'with other portions of their own people viz: the Patuwai tribe in the Matatua Maori Council District'.⁴³²

The Native Department's registrar endorsed their petition, commenting that most residents of Motiti were members of Te Patuwai, 'a section of which lives at Whakatane, in fact, some of them live at the two places, sometimes at Motiti and sometimes at Whakatane', and that 'the sympathies of [that] people are with the Whakatane people and not with Te Arawa'.⁴³³ The Arawa Maori Trust Board was also sympathetic to the petition.⁴³⁴

The boundaries of the Mataatua district were changed to include Motiti in 1931.⁴³⁵

428. Document A16, p 89; 'Report of the General Conference', AJHR, 1903, G-1, p 6

429. Document A16, pp 89–90; 'Reports of the Native Affairs Committee', AJHR, 1904, I-3, p 20

430. Document A16, p 90; doc A16(a), pp 924–925

431. Document A16, p 90. The trust board, originally set up for a different purpose, had in 1925 taken on the roles and responsibilities formerly held by the Te Arawa Maori Council.

432. Document A16(a), p 879

433. Ibid, p 877

434. Document A16, p 91

435. Ibid

3.2.10.2 The use of the Ngāi Te Hapū and Patuwai names: differing interpretations

A key disagreement between the parties centered on the use of the Ngāi Te Hapū name from the late-nineteenth century until the early 1990s. The claimants argued that the name remained in use during this period, while Te Patuwai Tribal and Te Rūnanga o Ngāti Awa disagreed, saying that records of the period refer only to Te Patuwai, not Ngāi Te Hapū. Tā Hirini told us ‘since the beginning of colonisation, and especially during the New Zealand Land Wars era, up to the present day, you will find references to Te Patuwai and Motiti dating back to 1863.’⁴³⁶ Likewise, witnesses in this inquiry – from both the claimants and the interested parties – cited various sources referring to the people of Ngāi Te Hapū as Te Patuwai. For example:

- Census records from 1874, 1878, 1881, and 1886 recorded the only Māori people living on Motiti as Te Patuwai.⁴³⁷
- Two newspaper articles from 1870 and 1874 referred to those living on Motiti as ‘Patuaai’ and ‘Te Patuwai’.⁴³⁸
- The Tauranga civil commissioner, H T Clarke, referred to the hapū in northern Motiti as Te Patuwai in a letter requesting an ensign for ‘Patuwai of Motiti’ in 1868;⁴³⁹ in a report to the House of Representatives in 1870;⁴⁴⁰ and in his correspondence about the disputed Native Land Court boundary in the 1870s and 1880s.⁴⁴¹
- Native Land Purchase Department records from 1879 and an entry in an appendix to the journals of the House of Representatives in 1878 regarding the potential sale, and sale, of the allotments in Matata granted to Te Patuwai refer to ‘the Patuwai tribe’ and ‘Patuwai’.⁴⁴²
- Among 20 people who voted in the Eastern Māori electorate in 1908 and gave their address as Motiti, 14 said their hapū was Patuwai, one Patuwai and Ngāti Takahanga, two ‘Ngāti Makiriwai’, and one Ngāti Takanga (probably Ngāti Takahanga). The remaining two people said their hapū were Ngāti Ranginui and ‘Ngai Tauwhau’.⁴⁴³
- In 1930, Umuhuri Kerekeha wrote to Native Minister Apirana Ngata requesting a flag for Tamatea-ki-te-Huatahi wharenui (meeting house) on Motiti, beginning his letter ‘Ko matou ko Te Patuwai e noho ana ki Motiti’ (‘we, members of Te Patuwai living on Motiti’ and signing it from himself ‘ana na Te Patuwai katoa’ (‘or rather from the whole of the Patuwai tribe’).⁴⁴⁴

436. Document A85(b), pp 8–9

437. Document A16, p 56

438. Ibid, pp 54–55

439. Ibid, pp 27–28; doc A16(a), p 2333

440. Document A85, p 20

441. Document A16, p 53

442. Document A16(a), pp 224–229; AJHR, 1878, G-4, p 5

443. Document A16, pp 57–58

444. Document A16(a), pp 235, 238

- ▶ In a 1985 report, the Waitangi Tribunal wrote that the northern half of Motiti Island was populated by 'Patuwai, a subtribe of Ngāti Awa of the Whakatane district'.⁴⁴⁵

Tā Hirini also told us that the name Ngāi Te Hapū is rarely found in the historical record. He said he had never seen it referred to outside of Native Land Court and related contexts, texts such as Best's *Tuhoe*, and late nineteenth-century issues of the *Journal of the Polynesian Society*.⁴⁴⁶ He also reported that he found no instances of the name in a search of the Papers Past website.⁴⁴⁷ Responding to these statements, Daniel Ranapia noted Tā Hirini had overlooked a reference to Ngāi Te Hapū by kaumātua Joe Mason in the Ngāti Awa raupatu inquiry (Wai 46). Giving evidence for Ngāti Pūkeko, Mr Mason had stated that Ngāti Maumoana were 'related through marriage to a hapu called Patuwai of Whakatane and also Ngai TeHapu [sic] of Motiti Island'.⁴⁴⁸

We were not presented with any historical written evidence to show that people identified as Ngāi Te Hapū in the years following the Native Land Court cases involving Motiti, up until 1992.

However, documents filed by Dr O'Malley suggested that historical knowledge of Ngāi Te Hapū existed within Te Patuwai in the later twentieth century. In 1970, a welfare officer interviewed several 'elders of the Te Patuwai tribe' in Whakatāne to help him clarify the connection between the Patuwai Maori Committee and the Ngāti Maumoana and 'Ngati-Kaurerewa' (Ngāti Kauaewera) hapū. Reporting on the outcome of the interview, the officer wrote that Te Patuwai 'appears to have originated from a clan called Ngai-Te Hapu who occupied land at Ohiwa and who later fled via canoes to Motiti with the intention of settling there'. He added that Ngāi Te Hapū had been known as Te Patuwai since their defeat on the water by Ngāi Te Kapo, and had since 'intermarried with Ngati Awa to a considerable extent and are looked upon as a portion of that tribe'.⁴⁴⁹

The officer also reported that the elders 'of the Patuwai tribe' had 'never heard of' the subtribes Ngāti Maumoana and 'Ngati Kaurerewa' – and that 'it could be then that these sub-tribes could be better known in the Motiti Island area'.⁴⁵⁰

3.2.10.3 Visual symbols of tribal identity

3.2.10.3.1 Marae

We heard evidence about the three marae affiliated with Te Patuwai, along with views on what their location and design say about tribal identity. Two of the marae are on Motiti Island – Te Ruakopiha (also known as Tamatea-ki-te-Huatahi) and

445. Waitangi Tribunal, *Report of the Waitangi Tribunal on a Motiti Island Claim* (Wellington: Waitangi Tribunal, 1985), p 2

446. Document A85, p 20

447. Submission 3.3.12(b), p 51

448. Document A23(a), vol 3, no 144, p 1311

449. Document A16(a), p 2309. This account closely follows that given by Elsdon Best in *Tuhoe*.

450. Document A16(a), p 2309



Tamatea-ki-te-Huatahi wharehau, Te Ruakopiha Marae, Motiti Island



Te-Hiinga-o-te-Rā wharehau, Hihitaua Marae, Motiti Island



Toroa wharenui, Toroa Marae, Pūpūaruhe, Whakatāne

Source: Te Rūnanga o Ngāti Awa, *Ngā Marae o Ngāti Awa* (e-booklet, Whakatāne: Te Rūnanga o Ngāti Awa, 2018)

Te-Hiinga-o-te-Ra (also known as Hihitaua). The other, Toroa, is in Whakatāne. Both Motiti marae are located at Karioi, and Toroa Marae is at Pūpūaruhe.

The wharenui Tamatea-ki-te-Huatahi was opened in 1900 by Ngāti Takahanga, and the wharenui Te-Hiinga-o-te-Ra in 1901 by Ngāti Makerewai. A wharekai (dining hall) was built on each marae a few decades later.⁴⁵¹ The wharenui Toroa was built in 1952 by members of Te Patuwai, Ngāti Pūkeko, and Ngāti Awa on the site of an earlier wharenui.⁴⁵²

Claimant and interested party witnesses pointed out that the concepts and designs within each wharenui are thematically linked across the three marae. For example, different aspects of the maramataka (Māori calendar) for planting, harvesting, and fishing in the Te Patuwai rohe are carved into the arms of each wharenui; symbols relating to navigation and mapping of the Te Patuwai rohe moana appear in each wharenui; and each wharenui has a complementary cosmological theme.⁴⁵³ According to the witnesses from Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, the tipuna who designed and carved the wharenui created these thematic links deliberately to show the connection between Te Patuwai on Motiti and the mainland.

We heard evidence that links between the tipuna featured in the three marae also show the unity of Te Patuwai.

451. Document A16, p 82 6

452. Document A57, pp 16–17

453. Ibid, pp 8–9, 11–12, 14–15, 18; doc A39, pp 19, 32–33; transcript 4.1.2, p 532



Wiremu Shortland and Mariana Williams inside Toroa wharenui during the Tribunal's site visit to Toroa Marae, Pūpūaruhe, Whakatāne, 2 December 2018

The wharenui themselves are named after the captain of the *Mataatua* waka (Toroa) and two of his grandsons, one of whom – Tamatea-ki-te-Huatahi – is an ancestor of Te Hapū, and the other – Te-Hiinga-o-te-Ra – of Awanuiārangi II. As noted earlier, these ancestors have another connection: Tamatea-ki-te-huatahi was the son of Wairaka (Toroa's daughter) by her second husband, while Te-Hiinga-o-te-Ra was Wairaka's first husband, with whom she had Awanuiārangi II. Counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa argued that the naming of

the two Motiti wharenui ‘memorialised’ this ‘Mataatua relationship’, a claim that claimant witness Nepia Ranapia accepted.⁴⁵⁴

Mr Takotohiwi also drew attention to whakapapa links between the tipuna featured in the three wharenui, noting that in Toroa ‘the Tekoteko and Koruru above the Maihi are both Ruaihona, the father of Te Hiinga-o-te-Ra at Mōtiti . . . The woman at the base of the Pou waho is Wairaka, daughter of Toroa, and mother to Tamatea-ki-te-Huatahi at Mōtiti.’⁴⁵⁵ He added that Toroa was built facing westward ‘to incorporate his Maunga Putauaki and facing towards his two grandchildren on Mōtiti.’⁴⁵⁶

On our site visit to Toroa Marae, we observed another reference to Motiti within the wharenui: tukutuku panels depicting the matakata (yellow pōhutukawa) flower native to Motiti Island. Text for the site visit written by Te Patuwai Tribal and Te Rūnanga o Ngāti Awa noted the significance of the matakata to Te Patuwai, saying it was a Patuwai ‘tipua’ imbued with ‘tapu’ (sacredness), and that accordingly, the tukutuku depicting it also refer to Patuwai wāhi tapu (sacred places) in general.⁴⁵⁷ The text also noted that all the tukutuku work within Toroa ‘belongs to Pūpūaruhe/Mōtiti and belongs to Te Patuwai’, that the creation of the panels was coordinated by Hawiki Ranapia, and that he had installed them with Wetini Ranapia.⁴⁵⁸

On the claimant side, Nepia Ranapia drew our attention to carvings in the wharenui Tamatea-ki-te-Huatahi that commemorate Te Hapū and his descendants from his marriage to Romai: ‘Te Hapū is the tāhū o te wharenui. The tekoteko is Roropukai, Tutonu is the amo to the left and Mautara [Tutonu’s son] the amo to the right.’⁴⁵⁹ He also noted that the dining hall next to the wharenui is named after Hinewai, Tutonu’s Waitaha wife.⁴⁶⁰

However, claimant witness Daniel Ranapia firmly rejected the idea that the three marae were linked. He described the claim as ‘false’, as the marae ‘were not reserved for the same Hapū and the same persons.’⁴⁶¹ He emphasised that Tamatea-ki-te-Huatahi (Ruakopiha) belongs to Ngāti Takahanga, and Te-Hiinga-o-te-Ra to Ngāti Makerewai.⁴⁶² He told us Toroa Marae originally belonged to Ngāti Hokopu, and that its whare, having been built by them, was ‘not created in any manner as related to Motiti or Te Hapū.’⁴⁶³ In addition, Daniel Ranapia asserted that Motiti people had their own traditions about the origin and significance of the matakata (yellow pōhutukawa) that were distinct from Ngāti Awa traditions.⁴⁶⁴

454. Transcript 4.1.2, p 75

455. Document A57, p 17

456. Ibid

457. Document A70, p 7

458. Ibid, p 8

459. Document A94, p 3

460. Ibid, p 4

461. Document A83, p 52

462. Ibid

463. Ibid, p 53

464. Ibid, pp 44–45



The 'Te Hapu' flag, flown during tangihanga on Motiti Island since the early twentieth century

Source: Document A23(a), vol 6, no 360

3.2.10.3.2 Flags

During the twentieth century, two flags were flown on the Te Patuwai marae at Motiti: one reading 'Te Hapu' and the other 'Te Rangitupukiwaho'. Both still fly on Motiti today, offering some insight into the nature of tribal identities on the island and relationships between groups. The flags are raised when tangihanga are held on either of the Motiti marae.⁴⁶⁵ One witness said they are flown together on these occasions, with 'Te Hapu' set above and 'Te Rangitupukiwaho' below,⁴⁶⁶ while another said they were usually flown together in this way.⁴⁶⁷

Tuhapo Tipene, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, explained that each flag was originally made from a red ensign flag to which the people had added white lettering spelling out the tipuna names. Te Patuwai requested ensign flags for Motiti in 1898, 1904, and 1932, giving an idea of the flags' probable age.⁴⁶⁸ The 'Te Hapu' flag has since been heavily mended and 'Te Rangitupukiwaho' remade.⁴⁶⁹

We were told that the 'Te Hapu' flag is only flown, or 'can only be flown', on Motiti Island.⁴⁷⁰ Claimant witnesses told us that the flag has been flying 'for a

465. Transcript 4.1.5, p 196; transcript 4.1.3, p 66; doc A65, p 16

466. Document A65, pp 12, p 16

467. Transcript 4.1.5, p 270

468. Document A65, p 15

469. Ibid, p 16

470. Transcript 4.1.2, p 313; transcript 4.1.3, p 66

long time’ and, throughout this time, has stood as a marker of Te Hapū’s mana on Motiti.⁴⁷¹ Nepia Ranapia claimed that the flag has signified or embodied a Ngāi Te Hapū identity:

Q: newspapers and other things may not have a written record [of Ngāi Te Hapu from the late-nineteenth century until today], but there is still, through that period, an identifying with Ngāi Te Hapū . . . ?

A: Kei te tika [correct]. The records . . . show Te Patuwai and I believe that’s correct, but the identity is on Motiti and that identity is at our tangis with the flag, so that stays with us.⁴⁷²

One claimant witness referred to the flag as a ‘Ngāi Te Hapū’ flag.⁴⁷³

One witness said she had seen the ‘Te Hapū’ flag flown only at Ruakopiha (Tamatea-ki-te-Huatahi) Marae, but we saw evidence that it and ‘Te Rangitupuki-waho’ were also flown at Te-Hiinga-o-te-Ra Marae.⁴⁷⁴

3.2.10.3.3 Urupā

There are two Te Patuwai urupā (burial grounds), one at Motiti and one at Pūpūaruhe in Whakatāne. We heard evidence that members of Te Patuwai have long been able to choose which urupā they are to be buried in. Eunice Evans, witness for the whānau of George Tahere and Merimihiora Faulkner, told us: ‘Patuwai hapu whānau whānui [extended family] decide where they want to be laid to rest either at Whakatane or [at] Motiti Island. These choices [are] given to us through our whakapapa and history.’⁴⁷⁵

Mr Koopu gave evidence that members of the same immediate whānau are not necessarily buried at the same urupā, citing his own ancestors as examples: ‘My grandfather is buried on Motiti. His brother is buried at Pupuaruhe. Their mother is buried on Motiti. Her sister is buried at Pupuaruhe. My grandmother is buried alongside my grandfather on Motiti. Her sister is buried at Pupuaruhe.’⁴⁷⁶

Both witnesses argued that the ability of Te Patuwai from Motiti or Whakatāne to lie in rest at either urupā reflects the unity of Te Patuwai.⁴⁷⁷

During our site visit to Pūpūaruhe, we observed that some tīpuna referred to by the claimants as Ngāi Te Hapū were buried at the Pūpūaruhe urupā. Several witnesses drew our attention to a monument at the Pūpūaruhe urupā commemorating Tiaki Rewiri, and which bears an inscription crediting him with having brought Motiti under the authority of the second Mataatua council:

471. Transcript 4.1.5, pp 195–196; doc A86, p 5

472. Transcript 4.1.5, p 196; doc A86, p 5

473. Transcript 4.1.3, p 66

474. Transcript 4.1.5, pp 256, 270; doc A86(b)

475. Document A40, p 5

476. Transcript 4.1.4, p 298. Te Patuwai Tribal and Te Rūnanga o Ngāti Awa witness Karen Faulkner-Tutaki gave similar evidence: doc A54, p 3.

477. Transcript 4.1.4, p 298; doc A40, p 5

He kaumatua marama tenei no runga ia Mataatua na ana ka riro a Motiti ki raro i te mana o te Kaunihera o Mataatua tuarua.⁴⁷⁸

A revered elder statesman of Mataatua who ceded the authority of Motiti to the second Mataatua Council.

3.3 CONTEMPORARY SOCIAL AND POLITICAL LIFE ON MOTITI ISLAND

3.3.1 Introduction

After the Second World War, some Motiti Islanders began migrating to the mainland to look for work. As described by Dr O'Malley, many of them 'gravitated towards' Toroa Marae in Whakatāne.⁴⁷⁹ In 1959, an assistant district officer estimated that about 200 members of 'the Patuwai Sub Tribe' lived at Whakatāne and said their numbers had been 'swelled considerably in the last few years by the younger people of Motiti coming to live and build in Whakatāne', especially around Toroa Marae.⁴⁸⁰ According to Dr O'Malley, this movement toward Toroa 'further help[ed] to blur distinctions between the Whakatāne and Motiti groups'.⁴⁸¹

Records indicate that 23 families were living on Motiti in 1953.⁴⁸² Five years later, there were about 200 Māori on the island.⁴⁸³

By about 1963, most families on Motiti had been forced to move to the mainland due to financial hardship caused by the 'black rot', a fungal disease that devastated the island's kūmara and maize crops. The disease may have spread to Motiti via jute sacks which the islanders used to sell and store their produce.⁴⁸⁴ The failure of these crops – formerly the islanders' main source of income – devastated Motiti's export economy. Many families went to Whakatāne and Tauranga.⁴⁸⁵ While some people had returned to the island by 1967,⁴⁸⁶ most stayed away for many years, returning slowly over the next few decades.

Several Māori reservations were established on Motiti in the 1970s, including a reservation set aside as a landing stage in 1974 (Motiti North G), a reservation and recreation reserve in 1977 (Motiti B12), and a Māori reservation for a school site and recreation reserve, also in 1977 (Motiti B1).⁴⁸⁷ These lands were all reserved for the benefit of Te Patuwai.⁴⁸⁸ Another reservation (Motiti B20) was established in 1974 for the benefit of "Patuwai Hapu" and Maoris generally.⁴⁸⁹

478. Document A57, p 21

479. Document A16, p 91

480. Ibid, p 92; doc A16(a), p 2288

481. Document A16, p 91

482. Document A16(a), p 274

483. Ibid, p 2039

484. Document A19, p 29; doc A16, p 93

485. Document A16(a), pp 2036, 2042

486. Document A16, pp 93–94; doc A16(a), p 2042

487. Document A85, pp 18 fn 38

488. Document A16(a), pp 239–244; doc A85, pp 17–18

489. Document A16(a), p 2296

By 1983, eight families were living on Motiti.⁴⁹⁰ The 2006 census listed 27 residents, and in 2013, 27 Māori were recorded as living on the island, with 15 occupied and 48 unoccupied dwellings.⁴⁹¹ At the time of our inquiry, about 40 people lived on Motiti (as previously noted). Throughout these decades, Motiti's population was mobile and shifted seasonally.⁴⁹²

The 1990s began a period of new political developments with significant implications for the people of Motiti – among them, the Treaty settlement process; the Resource Management Act 1991, which led to the development of a Motiti district plan; and legislation affecting the takutai moana, which introduced new frameworks for asserting rights in the moana. In 2011, the *Rena* disaster presented the island and its people with unprecedented environmental challenges. In response to all these developments, members of Te Patuwai formed new groups and entities to represent and safeguard the interests of Motiti. In the process, conflict arose about how kaitiakitanga on Motiti should be exercised and – with relevance to the focus of this chapter – by whom.

This section surveys key events and developments affecting Motiti Island and its people over this period. We begin with the establishment of various tribal/hapū forums and entities, and the evolution of their roles and functions. We then turn to other key contemporary developments, including the advent of district and hapū management plans, and the *Rena* disaster. Throughout, the differing perspectives of claimants and interested parties are noted. This section concludes with evidence of a more personal kind – the recollections and observations of the Motiti people who appeared before us as witnesses. They gave powerful accounts of the experience of living on Motiti Island during the middle and later decades of the twentieth century. Their personal perspectives on matters of tribal identity and relationships go directly to the central question this chapter addresses: who are the tangata whenua of Motiti Island.

3.3.2 Te Patuwai and Motiti Tribal Committees

3.3.2.1 *The establishment of Te Patuwai Tribal Committee*

In 1891, the people of Te Patuwai created a Patuwai Native Tribal Council, which superseded an older traditional council.⁴⁹³ As a forum established by the people, the Patuwai Native Tribal Council operated independently of any Government legislative provision.⁴⁹⁴ The council continued under this name until the 1930s, when it was renamed the Te Patuwai Tribal Committee. The Te Patuwai Tribal Committee – also referred to more recently as the Te Patuwai Tribal Executive Committee – still exists and has an important role today.⁴⁹⁵ The Te Patuwai Tribal

490. Document A16(a), p 2031

491. 'Motiti Island: Population 40, Just How they Like It', *New Zealand Herald*, 6 January 2012; doc A16, p 148

492. Document A16, pp 84–85

493. Document A17, pp 5–6

494. Transcript 4.1.4, p 258

495. Document A57, p 5; doc A47(a), pp 4–5. Though the two names seem to be interchangeable, in order to avoid confusion we use the former name in this report.

Committee serves and administers Te Patuwai Tribal, a forum encompassing members of Te Patuwai more broadly.

Mr Takotohiwi told us that Te Patuwai Tribal Council/Committee chairmen were Motiti-based from 1903 to 1940, and later based at Pūpūaruhe.⁴⁹⁶ According to him, the transition to Whakatāne took place once the majority of Patuwai were based at Pūpūaruhe, at which point the committee decided that ‘decisions for both Pūpūaruhe and Motiti will be decided at Tribal meetings held mainly at Pūpūaruhe’. He added that today, some meetings are held at Motiti and elsewhere.⁴⁹⁷

However, claimant Umuhuri Matehaere denied that the Te Patuwai Tribal or its committee were based on Motiti until 1940, saying the forum on Motiti during this time was in fact ‘Motiti Tribal’.⁴⁹⁸ He told us that Te Patuwai Tribal ‘was created for Te Patuwai ki Whakatāne’ and ‘the Motiti Island Tribal Committee was created entirely separately for Motiti Island’.⁴⁹⁹ Though he did not say so explicitly, Mr Matehaere was clearly referring in this statement to the Motiti Island Tribal Committee created in the late 1940s – which we discuss below.

Meanwhile, Te Patuwai Tribal and Te Rūnanga o Ngāti Awa gave evidence about Te Patuwai Tribal’s relationship with Te Rūnanga o Ngāti Awa (whose role is discussed in more detail later) and the Te Patuwai marae. This evidence shed light on the structure of Te Patuwai Tribal, which enables Te Patuwai to operate at the marae, hapū, and iwi levels.

At the iwi level, Te Patuwai maintains a relationship with Te Rūnanga o Ngāti Awa. Leonie Simpson, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, explained that the board of Te Rūnanga o Ngāti Awa includes one representative each from Te Patuwai and Ngāti Maumoana who are nominated/elected three-yearly by their hapū. With respect to Motiti-related matters, these two representatives are the rūnanga’s primary point of contact, but it may interact directly with Te Patuwai Tribal or, when appropriate, the Motiti Marae Committee.⁵⁰⁰ Another witness explained that these representatives ‘report to the Tribal on all iwi matters and then take our concerns and input back to the [Rūnanga’s] board to feed into the iwi matters addressed by the Rūnanga’.⁵⁰¹

At the marae level, each Te Patuwai marae is administered by a marae committee: Toroa by the Pūpūaruhe Marae Committee, and Te Ruakopiha and Te-Hiinga-o-te-Ra by the Motiti Marae Committee.⁵⁰² The marae committees are responsible for the day-to-day running of the marae⁵⁰³ and operate under their own authority. They also report to Te Patuwai Tribal ‘as a way of communicating’

496. Document A57, p 6; transcript 4.1.5, p 299

497. Document A57, p 6

498. Transcript 4.1.5, p 299

499. Document A82(b), p 7

500. Transcript 4.1.5, p 28

501. Document A47, p 10

502. Transcript 4.1.4, p 607. Ms Williams explained that each Motiti marae used to have its own committee but that the two committees merged as people left the island.

503. Document A47, p 9; doc A68, pp 2–3; transcript 4.1.5, p 300

and may contact the Tribal 'if [they] need help'.⁵⁰⁴ There are representatives from each marae on the Te Patuwai Tribal Committee.⁵⁰⁵

Each marae also has trustees, whose role also covers Māori reservations associated with Te Patuwai. Until a few years ago, the trustees were the same across all three marae, but now, they are appointed separately for Toroa Marae and for Motiti marae.⁵⁰⁶ Under the earlier arrangement, trustees were selected at Te Patuwai Tribal hui and formally came under the authority of Te Patuwai Tribal, but this is no longer true of Motiti marae trustees.⁵⁰⁷ Marae trustees report back to Te Patuwai Tribal.⁵⁰⁸

Mr Takotohiwi told us that, while marae committees look after the running of the marae, Te Patuwai Tribal and its committee are responsible for 'the whenua and moana and the politics', including Te Patuwai's interactions with outside agencies and authorities.⁵⁰⁹ Mr Takotohiwi also explained that the Te Patuwai Tribal Executive Committee (or Te Patuwai Tribal Committee) reports to Te Patuwai Tribal; that is, to 'the whole of the Patuwai people', and '[d]irections are given from these Tribal meetings to the Executive Committee who thereby conduct the business on behalf of the people'.⁵¹⁰

Today, Te Patuwai Tribal – which, according to Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, encompasses all members of Te Patuwai and includes the Te Patuwai Tribal Committee – is a tikanga-based forum, rather than a statutory or incorporated entity. Through it, people of Te Patuwai 'meet, discuss, share and initiate action in relation to the affairs of Te Patuwai'.⁵¹¹ In their evidence, Te Patuwai Tribal and Te Rūnanga o Ngāti Awa highlighted minutes from a 1933 Te Patuwai Tribal Committee meeting that express a commitment to the unification of Te Patuwai across Motiti and Whakatāne:

I tu te hui o te hapu o Te Patuwai, ki Motiti me Pupuaruhe, kia Toroa. Ko te kaupapa o tenei hui he whaka kotahi i te hapu o Te Patuwai, mai i Motiti ki Whakatāne nei, i ana mahi, i ana tikanga, i ana whakahaere katoa.⁵¹²

A gathering of all the subtribes was arranged for Patuwai residing on Motiti to Pūpūaruhe through to Toroa. The reason for the gathering was the bringing together of the various hapū associated with Te Patuwai both from Motiti and Whakatāne in all their endeavours, protocols and management.

504. Document A57, p 5; transcript 4.1.5, p 343

505. Document A57, p 5

506. Transcript 4.1.4, pp 607, 642–643; doc A47, p 9. The new arrangement for trusteeships resulted from a 2016 Māori Land Court decision.

507. Transcript 4.1.4, pp 645–646

508. Ibid, p 605

509. Document A57, p 5; doc A68, pp 2–3

510. Document A57, pp 4–5

511. Submission 3.3.12(b), p 1; doc A47, pp 5–69

512. Document A57(c), p [9]

The claimants contested two aspects of the account of Te Patuwai Tribal's structure outlined earlier. First, Mr Matehaere rejected the claim that, in the case of Motiti, issues beyond the marae are properly dealt with by Te Patuwai Tribal. He argued instead that the Motiti Marae Committee is 'the proper forum for decisions relating to Motiti Island'.⁵¹³ He nevertheless agreed under questioning that the Motiti Marae Committee's principal role is to administer the marae,⁵¹⁴ that Te Patuwai Tribal has an interest in Motiti, and that the Motiti Marae Committee recognises this interest through its practice of reporting to the Tribal.⁵¹⁵ Secondly, Mr Matehaere rejected the claim that Te Patuwai Tribal encompasses all the people of Te Patuwai, saying that Motiti Islanders 'have never traditionally been under Te Patuwai Tribal'.⁵¹⁶ In part, this stance reflected his view that the Te Patuwai Tribal Committee was not based on Motiti up until 1940, as Mr Takotohiwi claimed.

3.3.2.2 The establishment of the Motiti Tribal Committee (Motiti Maori Committee) and the Patuwai Maori Committee

The Maori Social and Economic Advancement Act 1945 provided for the election of tribal executives and, under them, tribal committees within defined tribal districts.⁵¹⁷ Tribal districts were proclaimed under this Act in 1948. For reasons unknown, Motiti was included in the Ranginui Tribal District, which was located within Tauranga County.⁵¹⁸ A Ngatiawa Tribal District was also established under the Act, within which a Patuwai Tribal Committee area was declared. However, the area encompassed Whakatāne lands only; no offshore islands were mentioned.⁵¹⁹ The evidence suggests that at this point, the existing Te Patuwai Tribal Committee – which, as noted earlier, was established in 1891 on a customary basis outside of any legislative context – became caught up in the governmental framework established by the Act and began exercising its responsibility within the newly defined (and more limited) committee area stipulated by the legislation.

Meanwhile, in the late 1940s, a separate Motiti Tribal Committee (sometimes called the Motiti Island Tribal Committee) was also established under the Act. It played an active role in supporting the welfare of the island and its residents until at least the mid-1960s.⁵²⁰ Among other initiatives, it tried to establish a marine reserve around the northern part of Motiti Island to protect fish stocks and enable Māori on the island to continue their customary fishing practices, on which they depended heavily for food.⁵²¹

With the creation of the Motiti Tribal Committee, and the restriction of the Te Patuwai Tribal Committee's official area of jurisdiction to Whakatāne,

513. Document A82(b), p 9

514. Document A68, pp 2–3; transcript 4.1.5, p 300

515. Transcript 4.1.5, pp 342–343

516. Document A82(b), p 7

517. Document A16, p 92

518. Ibid, pp 91–92

519. Ibid, p 92

520. Ibid; doc A16(a), pp 268–275, 2022–2023, 2037–2118

521. Document A16(a), p 2113

administrative responsibility for Whakatāne and Motiti (respectively) seems to have been divided between the two committees. This division seems to have continued as long as the Motiti-based committee was active.

In 1959, the Motiti Tribal Committee gained the powers of a tribal executive, which were available to committees operating in isolated areas.⁵²² It appears to have sought these powers chiefly for logistical reasons, including the island's distance from the mainland, the unreliability and cost of transport, and limited radio communication.⁵²³ The committee noted that executive powers would also 'enable us to make bylaws in respect to fishing etc' under the 1945 Act and 'facilitate applications for subsidies'.⁵²⁴

The Maori Welfare Act 1962 amended the 1945 Act by providing for district councils along with a National Māori Council. Under this Act, the Tauranga tribal area, including Motiti, was transferred from the Waiariki region to the Waikato–Maniapoto District Council. The chairman of the Motiti Tribal Committee objected, telling the Tauranga Tribal Executive in 1963 that the committee should remain in the Waiariki district 'on the grounds that their tribal affiliation as Ngāti Patuwai was with those of Whakatāne'.⁵²⁵ The Tauranga Tribal Executive agreed.⁵²⁶ However, at about this time, most families on Motiti left the island due to the ruinous impact of the black rot.

By 1968, some Te Patuwai had changed their thinking about which district Motiti should be affiliated with. The 'Motiti Island Maori Committee' told the Tauranga Tribal Executive it now wished to be under their control, and thus under the jurisdiction of the Waikato–Maniapoto Department of Maori Affairs.⁵²⁷ Motiti was duly transferred from Waiariki to Waikato–Maniapoto.⁵²⁸

Meanwhile, the Patuwai Maori Committee⁵²⁹ at Whakatāne remained in the Waiariki district but nevertheless seems to have assumed some responsibility for the affairs of Motiti.⁵³⁰ Dr O'Malley suggested it did so at times when the Motiti Maori Committee appeared to the Patuwai Maori Committee to be inactive.⁵³¹ Mr Matehaere suggested the Motiti Tribal Executive's lack of success in securing Government funding for maintenance and other work on Motiti was one reason the people had 'started turning to their mainland relations for help'.⁵³²

Letters between Government officials in 1974 show that at this time, some Te Patuwai of Motiti again sought to affiliate with an executive in Tauranga 'rather

522. Document A16, pp 92–93; doc A16(a), pp 2088, 2089

523. Document A16(a), pp 2088, 2089

524. Ibid, p 2089

525. Ibid, p 2045

526. Document A16, p 93; doc A16(a), p 2044

527. Document A16, pp 93–94; doc A16(a), pp 2041, 2042

528. Document A16, p 94

529. It appears that, from the late 1960s to the early 1980s, 'tribal' committees established under the 1945 Act were officially renamed 'Maori' committees.

530. Document A16, p 94

531. Transcript 4.1.2, p 237; doc A16, p 94

532. Document A82(b), p 8

than being part and parcel of the [Patuwai] Maori Committee at Toroa Marae.⁵³³ The Patuwai Maori Committee apparently supported such a change, as did the Tauranga executive.⁵³⁴ The official correspondence gives some insight into arrangements for administering Motiti during the preceding decade, with one official writing:

It has been indicated that there was a previous arrangement that Motiti be affiliated to Patuwai of Whakatane, for purposes of administration, however, it transpires that Motiti is somewhat out on a limb, and it would be more appropriate for a fresh Maori Committee, say in the name of Motiti, to be formed, and currently affiliated to [a Tauranga executive].⁵³⁵

In response, the other official explained that, although the Motiti Maori Committee had in 1963 sought to remain with the Waiariki District Council,

it would appear that in the years that . . . followed the affairs of the Motiti Island people were vested in the Patuwai Maori Committee. There appears to be some dissatisfaction with this arrangement, by members of the Motiti Island people who are living in Tauranga and Mr Ranapia and Mrs Nuku and others now wish to set up a separate committee for Motiti island with headquarters in Tauranga and affiliated to the Tauranga Maori Executive. These people feel that the present set up with headquarters at Whakatane is too far away from the Island and makes attendance at meetings difficult as well as expensive.⁵³⁶

A decade later, another Government official gave a similar account of these events, stating:

Ngati Patuwai has always been a part of the Waiariki District since the migration of Islanders to Whakatane, Te Puke, Tauranga in the late 1950s and early 1960s as a result of pest destruction to their maize crops and kumara. Later, members returned to the Island and some wanted to come under the Tauranga-Moana District, however, the majority of Ngati Patuwai in Whakatane decided in the late 1960s to stay with Waiariki and have done so and been affiliated ever since.⁵³⁷

Dr O'Malley noted that the outcome of efforts to (re)establish a Motiti tribal committee in 1974 is unclear.⁵³⁸ Ambiguity remains as to whether a Motiti-specific committee existed in the 1970s and 1980s, and if so, which committee was chiefly responsible for administering Motiti during this period.

533. Document A16(a), p 2306

534. Document A16, p 94; doc A16(a), p 2307

535. Document A16(a), p 2306

536. *Ibid*, p 2307

537. Document A16, p 95; doc A16(a), p 2024

538. Document A16, pp 94–95

The evidence of Nepia Ranapia pointed to the fate of the Motiti Tribal/Maori Committee. He said that his father, Hawiki Ranapia Hiha – referred to in the 1974 letter cited earlier – was ‘the last chairman of the Motiti Tribal Committee’ and that, when he passed away, ‘the Patuwai Tribal in Whakatāne took over, as many of our people had moved there.’⁵³⁹ The date of Hawiki Ranapia Hiha’s death was not given in evidence.

Documents filed by Dr O’Malley include selected papers from a Government file held by Archives New Zealand titled ‘Motiti Maori Committee 1953–1985’. These papers contain no records relating to the Motiti Maori Committee after 1968, no records at all from the 1970s, and 1980s records relating mainly to the Patuwai Maori Committee. They also include 1983 correspondence about the Motiti Recreational Reserve, whose secretary was ‘I Nuku’. One letter to Mr Nuku refers to ‘your committee’, but the identity of this committee is unclear.⁵⁴⁰

We saw other evidence that Motiti-based bodies existed in the 1970s and 1980s. Mr Matehaere said a Hinewai Marae Committee was formed in the mid-1970s for the purpose of repairing the two marae on Motiti, and held its first meeting on the island in 1976. A Motiti Island Advisory Committee existed in 1984, as evidenced by a claim to the Waitangi Tribunal filed by the committee’s secretary in that year. In its report on the claim, the Tribunal named the claimant as ‘the Patuwai Tribal Committee’, and commented that the Motiti Island Advisory Committee ‘appears to be virtually the same body as the Patuwai Tribal Committee.’⁵⁴¹

The evidence also shows that the Patuwai Māori Committee was involved with Motiti-related matters in the 1980s. In 1983, for example, the committee applied to the Waiariki district council for funding to renovate a marae on Motiti.⁵⁴² A Patuwai Māori Committee newsletter from 1985 sought to notify ‘every individual Patuwai member’ of a Te Patuwai Tribal meeting at Toroa Marae to discuss business of concern to ‘the whole tribe’, including governance of Māori land on Motiti.⁵⁴³

In 1990, a committee called Te Mana o Motiti was formed to respond to a Local Government Commission set up to consider how offshore islands, including Motiti, should be administered, and which districts they should sit within, if any. According to Mr Matehaere, Te Mana o Motiti was opposed to Motiti coming under any district authority.⁵⁴⁴

3.3.3 Te Rūnanga o Ngāti Awa and the iwi’s relationship with Motiti

Established under the Te Runanga o Ngati Awa Act 2005, the rūnanga is the representative body and mandated governance entity for all the hapū of Ngāti Awa. It manages the collective affairs of the iwi’s members, in accordance with

539. Document A17, p 48

540. Document A16(a), pp 2020–2118

541. Document A82(d), pp 4–5; Waitangi Tribunal, *Report on a Motiti Island Claim*, p 2

542. Document A16(a), p 2036

543. Ibid, p 2025

544. Document A82(b), p 9

its charter.⁵⁴⁵ We heard evidence that the rūnanga is mainly involved with Motiti's affairs when iwi representation is required, rather than at the hapū or marae level. For example, the Bay of Plenty Regional Council would not recognise the Motiti Island hapū management plan unless Te Patuwai Tribal could show it was endorsed by a statutory iwi entity – in this case, Te Rūnanga o Ngāti Awa.⁵⁴⁶

3-3-3.1 Differing views on Ngāti Awa's relationship to Motiti

The claimants maintained that Ngāti Awa (and, by inference, the rūnanga) have only recently become involved in Motiti's affairs and, in doing so, have impinged on the islanders' autonomy. Ms Keepa stated that in the past, the iwi left 'Motiti to run themselves . . . without interference for years', and suggested its recent involvement with the island has been influenced by Motiti whānau on the mainland: 'Sadly, many of our people on the mainland had a lot to do with including Ngāti Awa in what is going on between them, the Crown, and Motiti.'⁵⁴⁷ Mr Matehaere asserted that it 'is against tikanga Motiti to operate under a mainland iwi', arguing that 'the focus on iwi is a modern phenomenon and not of any relevance to the way that our ancestors operated on Motiti Island'.⁵⁴⁸ He suggested the iwi has taken more interest in Motiti since the *Rena* disaster and settlement, saying before that, 'no one in Ngāti Awa wanted to know Motiti'.⁵⁴⁹ Ms Butler expressed concern that Ngāti Awa might take control of Motiti.⁵⁵⁰

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa affirmed the iwi's traditional links to Motiti, and argued that its role with respect to the island is one of support rather than control. Ngarongaro Wikeepa, for instance, said that to her knowledge Ngāti Awa 'has never attempted to exert control and authority over Mōtiti' but rather has responded to Te Patuwai Tribal's requests for help in dealing with Government agencies.⁵⁵¹ Mata Wikeepa asserted it is 'absolutely untrue' that 'Ngāti Awa is telling the people of Te Patuwai what to do. Ngāti Awa know better'.⁵⁵² Explaining the rūnanga's position on the Motiti hapū management plan in the Environment Court in 2012, Dr Ngaropo described Ngāti Awa's relationship to Motiti as follows:

The Hapu Management Plan has been ratified [by the rūnanga] in support of firstly and foremost through the Patuwai Tribal. We as Ngāti Awa take our direction from that. We as Ngāti Awa take our direction from the marae, Tamatea Ki Te Huatahi and

545. Submission 3.1.22, p 3; 'Governance', Te Rūnanga o Ngāti Awa, <https://www.ngatiawa.iwi.nz/governance>, accessed 1 February 2021

546. Transcript 4.1.3, p191; see also Doug Arcus, Alan Watson, and Wiremu Puke, 'Motiti Proposed District Plan: Decisions of Hearings Commissioners', 2 vols (Wellington: Department of Internal Affairs, 2007), vol 1, p 25

547. Document A19(a), p 31

548. Document A82(b), p 1

549. Document A82, p 5

550. Document A86, p 3

551. Document A51, p 13

552. Document A58, p 4

Te Hinga Ō Te Rā; the Tangata Whenua of our kinship relationship ties through Ngāti Awa to Patuwai on the island.⁵⁵³

Commenting on his evidence, the court described Dr Ngaropo as having ‘confirmed that [Ngāti Awa’s] role was to support those who whakapapa to Motiti, but not to assert control by Ngāti Awa over the Island – *Motiti ki Motiti*’.⁵⁵⁴

3.3.3.2 *The Ngāti Awa Treaty settlement agreement*

In 1996, Ngāti Awa mandated Te Rūnanga o Ngāti Awa to represent them in Treaty of Waitangi settlement negotiations. Tā Hirini Moko-Mead, the rūnanga’s then-chair, was the iwi’s chief negotiator. Negotiations ran from 1997 to 2002, when a deed of settlement was signed, and in 2005, the Ngāti Awa Claims Settlement Act was passed. The Act lists Te Patuwai as one of 22 hapū covered by the settlement.

We heard conflicting evidence about various aspects of the settlement negotiations, but do not traverse it here, as it is not our role to comment on that settlement process (as we explain in section 4.3.3.4). However, we note one specific disagreement concerning the proposal that Te Rūnanga o Ngāti Awa become the territorial authority for Motiti – a role the iwi tried (but failed) to negotiate as part of its settlement.⁵⁵⁵ The claimants questioned whether the iwi itself had actually reached agreement on this proposal before the rūnanga pursued it with the Crown; Tā Hirini maintained it had, at the rūnanga’s 1996 hui-a-tau in Auckland. Though minutes of that hui record no such resolution, Tā Hirini recalled that no one present had opposed the proposal – a recollection he said others shared – and that, given the less-formal hui procedures of the time, there had been ‘no need for a formal resolution’.⁵⁵⁶

Tā Hirini also said it was Pairama Ranapia (Nepia Ranapia’s brother), a settlement negotiator with close links to Motiti, who proposed at the hui-a-tau that Ngāti Awa become the territorial authority for Motiti. In Tā Hirini’s words, Mr Ranapia had argued that ‘the hapū of Te Patuwai themselves were not able to [act as the territorial authority] and therefore needed the expertise and support of the Rūnanga’.⁵⁵⁷ According to Tā Hirini, Mr Ranapia had previously told the rūnanga that Te Patuwai ‘would much . . . prefer the Rūnanga to be the territorial authority for Motiti . . . than any local government entity’.⁵⁵⁸

3.3.4 *The Motiti Rohe Moana Trust*

In 2009, a group of people associated with Motiti created the Motiti Rohe Moana Trust (the Trust). The claimants in this inquiry either belonged to or supported the Trust. The creation of the Trust and its claims to represent the tangata whenua of Motiti have been, and remain, a source of conflict between the claimants and

553. Document A71, p [8]

554. Document A23(a), vol 4, no 211, p 2381

555. Memorandum 3.2.52(a), para 28; doc A85(b), p 25

556. Memorandum 3.2.52(a), paras 28–28.2; doc A85(b), p 25

557. Document A85, p 24

558. Ibid, p 23

interested parties opposing them. This section outlines the circumstances of the Trust's creation, the kinds of activities it has undertaken, and its impact on relationships within Te Patuwai.

3.3.4.1 Establishment of the Trust and of Ngā Hapū o te Moutere o Motiti

In August 2009, under the leadership of then-chair Umuhuri Matehaere, the Motiti Marae Committee passed a resolution that the Motiti Marae Committee 'holds Jurisdiction/Authority according to Tikanga Maori for all Political Agendas pertaining to Motiti Island and Rohe Moana'.⁵⁵⁹ This marked a significant change from the existing Te Patuwai Tribal system, whereby political matters relating to Motiti and/or Whakatāne were dealt with by Te Patuwai Tribal. At the same time, the marae committee appointed an interim committee – later called a subcommittee – to help it carry out this resolution.⁵⁶⁰ As described by Mr Matehaere, the subcommittee was created 'to assist Motiti tangata whenua to progress many tasks that needed to be researched and/or actioned'.⁵⁶¹

At a Motiti Marae Committee meeting on 24 October 2009, the committee noted that 'Rohe Moana' was seeking a mandate and that the 'Sub Committee [were] proceeding with their hui'.⁵⁶² A document of the subcommittee dated 16 November 2009 records that five trustees were 'elected at Motiti' on 24 October 2009 to form a trust that would be known as the Motiti Rohe Moana Trust: Umuhuri Matehaere, Gloria Hirini, Graham Hoete, Paretaihinu Nuku, and John Rihara Nuku.⁵⁶³ On 10 December 2009, the Motiti Rohe Moana Trust deed was signed at Mount Maunganui.⁵⁶⁴ Minutes from a marae committee meeting on 30 January 2010 record that the 'Rohe Moana' is 'established', and lists the trustees.⁵⁶⁵

The Trust's deed states that it is 'the mandated organisation of Nga Hapū o te Moutere o Motiti for the purposes of fisheries, aquaculture, resource management and other matters within the Motiti Rohe Moana'.⁵⁶⁶ According to claimant witness Hugh Sayers, the Trust's purpose is 'to conserve, protect and enhance the biological diversity, ecological integrity and cultural legacy of the Motiti Rohe Moana while facilitating compatible use'.⁵⁶⁷ Mr Matehaere told us the Trust was established because 'we needed a legal entity that could represent tangata whenua in various proceedings',⁵⁶⁸ with Mr Sayers specifying that a legal entity was needed 'in order to engage with the Crown'.⁵⁶⁹ Mr Matehaere also said the Trust was 'a vehicle for achieving the progress and protection of Motiti',⁵⁷⁰ and was created out

559. Document A82, p 10

560. Ibid; doc A82(a), p 15

561. Document A22, p 11

562. Document A82(a), pp 17–18

563. Document A40(b), p [1]

564. Document A82(a), p 17; doc A23(a), vol 2, no 79, p 323

565. Document A82(a), p 21

566. Document A23(a), vol 5, no 276, p 3561

567. Document A29, p 5

568. Document A22, p 11

569. Transcript 4.1.3, p 183

570. Document A22, p 11

of frustration that ‘nothing was being done’ to progress Motiti-related issues under the Te Patuwai Tribal structure.⁵⁷¹

Those who created the Trust also established ‘Ngā Hapū o te Moutere o Motiti’ to denote the group of people the Trust purported to represent. Mr Matehaere explained that this was intended to be an ‘inclusive’ group encompassing ‘all who have whakapapa links to a primary ancestor of Ngā Hapū o Te Moutere o Motiti’, including Te Whānau a Tauwhao. According to him, however, Te Whānau a Tauwhao declined an invitation to participate in the Trust.⁵⁷²

3.3.4.2 *Conflicting opinions about the Trust’s legitimacy*

3.3.4.2.1 *The question of mandate*

Whether the Trust has a mandate to represent the people of Motiti emerged as a point of contention in our hearings. Claimant witnesses stated, and the Trust itself has claimed, that it represents the people of Motiti,⁵⁷³ while others argued that it has no such mandate and is essentially a private group.⁵⁷⁴ Mr Matehaere and Mr Sayers maintained that the Trust was mandated at a Motiti Marae Committee meeting after a series of open hui and wānanga,⁵⁷⁵ while others claimed it was never mandated or supported at the marae committee level.⁵⁷⁶

Under questioning, Mr Matehaere and Mr Sayers explained that the Trust’s creators originally envisaged the Trust would have a register of iwi members to whom it would be accountable, as the Trust deed states. However, the trustees decided early on, following legal advice, that it would instead be a ‘purpose trust’ and thus have no members.⁵⁷⁷ They did not say when this change in vision occurred, but the evidence suggests in about 2011.⁵⁷⁸ The Trust deed was never changed to reflect this decision.⁵⁷⁹

Mr Sayers stated that the Trust ‘has [n]ever represented itself as speaking for the hapū’,⁵⁸⁰ and, as a purpose trust, has not claimed to be a mandated body for the people of Motiti.⁵⁸¹ However, we saw evidence that, when engaging with the Crown in 2013, the Trust did claim to represent ‘all tangata whenua with customary interests in Motiti Rohemoana’, and to be ‘the mandated organisation of Ngā Hapū o te Moutere o Motiti’ for certain purposes.⁵⁸² Under cross-examination by counsel for the Faulkner whānau, Mr Matehaere appeared to accept a statement

571. Transcript 4.1.2, p 357

572. Ibid, pp 325, 352, 369

573. Document A22, p 11; doc A29, p 5; doc A23(a), vol 5, no 276, p 3561

574. Document A40, pp 10–11; doc A40(a), pp 2, 9

575. Document A82, pp 10–11; doc A82(a), pp 8, 11–27; transcript 4.1.3, pp 183–184

576. Document A40, p 10; doc A51, p 11

577. Transcript 4.1.2, pp 359–360; transcript 4.1.3, pp 184–185

578. Transcript 4.1.3, pp 203–204, 206

579. Transcript 4.1.2, p 359

580. Transcript 4.1.3, p 197

581. Ibid, p 203

582. See, for example, doc A23(a), vol 5, no 276, p 3561.

that the Trust had brought ‘a large number of claims in different jurisdictions . . . on behalf of the hapū of Motiti.’⁵⁸³

Though Mr Matehaere maintained that the Trust’s establishment was mandated, he conceded that the process the Trust followed to purportedly represent Motiti hapū members had not accorded with tikanga.⁵⁸⁴

Mr Sayers gave evidence that the Environment Court has rejected several challenges to the Trust’s ‘standing and mandate’ in proceedings in that court.⁵⁸⁵ Under cross-examination, he clarified that the court had not thereby affirmed the Trust’s right to speak for the hapū, but had affirmed their right to speak for themselves, as Māori, in relation to Motiti.⁵⁸⁶

3-3-4.2.2 Opposition to the Trust from Te Patuwai Tribal

The Trust’s establishment created tension between its trustees and the Te Patuwai Tribal Committee, which considered the Trust had been formed illegitimately and did not have the support of Te Patuwai.

In November 2009, immediately after the Trust’s establishment, the Te Patuwai Tribal Committee chair sought to injunct the Motiti Marae Committee in the Māori Land Court for ‘unauthorised establishment of a subcommittee’ and ‘misrepresentation of mandate (tribal)’ after learning it had established the subcommittee (the precursor to the Trust).⁵⁸⁷ The court concluded there was insufficient evidence to make an injunction, but noted there were ‘communication issues’ between the three groups and offered facilitation to ‘see if they could come together.’⁵⁸⁸

According to Mr Matehaere, Te Patuwai Tribal later placed an aukati on himself and founding trustee John Nuku after a Te Patuwai Tribal hui in Whakatāne at which the two trustees tried to table reports about the Trust’s establishment. Mr Matehaere said that consequently, he now goes to Whakatāne only for tangihanga.⁵⁸⁹ Himi Takotohiwi, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, said the Te Patuwai Tribal chair, Nepia Ranapia, had placed the aukati.⁵⁹⁰

In 2010, Nepia Ranapia wrote to the Department of Internal Affairs strongly denouncing the Trust.⁵⁹¹ He asserted that Ngāti Awa was the recognised iwi of Motiti Island; the Te Patuwai Tribal Committee and Te Rūnanga o Ngāti Awa were the legal entity for Motiti; the Te Patuwai Tribal Committee was the island’s

583. Transcript 4.1.2, p 359

584. Ibid, pp 359–360

585. Document A29, pp 3–4

586. Transcript 4.1.3, p 197

587. Māori Land Court application, 5 November 2009, A20090017769

588. Māori Land Court, decision, 21 May 2010, 5 Waikato Maniapoto minute book 60 (5 WMN 60)

589. Document A82, p11. Mr Matehaere did not specify whether the aukati banned him from Toroa Marae or from Te Patuwai Tribal Committee hui, but comments by Karen Feint suggest the latter: see transcript 4.1.4, p 233.

590. Transcript 4.1.4, p 233

591. Document A40(a), pp 9–10

longstanding administrator; and the Trust had no mandate to represent the people of Motiti. He urged the department to ‘work with Tangata Whenua Te Patuwai Tribal and Te Rūnanga o Ngāti Awa through the appropriate channel.’⁵⁹²

In 2012, as chairman of the Korowai Kahui o Te Patuwai Tribal Council, Nepia Ranapia wrote to the Trust reiterating Te Patuwai Tribal’s role as the longstanding and ‘traditional’ administrative entity for Motiti Island, and declaring that ‘The structure of the . . . Trust has cut across *Kawa & Tikanga* by proposing and creating an iwi under Nga Hapu o te Moutere o Motiti’ (emphasis in original). He argued that ‘this structure takes away the “*Mana*” of the “*Tipuna*” [:] there is no greater insult to Maori, this situation literally trampled on the elders of Te Patuwai Hapu and the Whanau Whanui’ (emphasis in original).⁵⁹³

3.3.4.2.3 Rift between the Trust and the Motiti Island Marae Committee

Within about a year of the Trust’s formation, the Korowai Kahui o Te Patuwai Tribal Council placed an aukati on the marae atea at Tamatea-ki-te-Huatahi, where some Motiti Marae Committee meetings were held. The aukati permanently forbade the Trust from meeting there and the Trust’s ‘leader’ from going there.⁵⁹⁴ (Whether the leader in question was Mr Matehaere or John Nuku, who also had a prominent role in the Trust, was unclear to us.) However, the Trust and the marae committee seem to have retained a working relationship beyond this point.⁵⁹⁵ Hugh Sayers said the marae committee initially supported the Trust, but the relationship deteriorated after the election of new marae committee members who opposed it – a result he claimed Te Patuwai Tribal engineered by bringing in Whakatāne-based people to vote.⁵⁹⁶ According to Mr Matehaere, the relationship finally broke down about a year before our inquiry, when the committee refused to accept the Trust’s reports.⁵⁹⁷

In 2016, the marae committee issued a public notice stating that it ‘disassociates itself from [the Trust] and commits itself to its marae Ruakopiha and Te Hihitaua’, and noting that the Trust’s chair had recently affirmed the Trust ‘was not a sub-committee of the Motiti Island Marae Committee and did not represent [that committee] and its community’.⁵⁹⁸

Whether and how often the Trust reported back to the Motiti Marae Committee was another point of disagreement.⁵⁹⁹ We found evidence of six written reports having been prepared between 2010 and 2016, at least two of which were received at marae committee meetings, in 2014 and 2015.⁶⁰⁰

592. Document A40(a), pp 9–10; doc A40, p 9

593. Document A40(a), pp 2–3

594. Ibid, p 2; doc A40, p 10

595. For instance, we saw evidence that the Motiti Marae Committee accepted two reports from the Trust in 2014 and 2015: doc A82(a), p 30; doc A45, p [3].

596. Transcript 4.1.3, p 235

597. Document A22, p 11

598. Document A40(c), p [1]

599. Document A40, p 10; transcript 4.1.3, p 185

600. Document A82(a), p 30; doc A45, p [3]; doc 46, p [2]; doc A78, pp [3], [6]–[7], [13]

3.3-5 The Motiti district and hapū management plans

In 2016, a Motiti district plan, the ‘Motiti Island Environmental Management Plan’, became operative after an 11-year process of drafting, submissions, revisions, mediation, and appeals in the Environment Court and High Court. Initiated by the Department of Internal Affairs (DIA) and developed by a consultant planner, it was the first such plan for Motiti. The department was prompted to create the plan by the Environment Court, after a 1995 application for subdivision consent in southern Motiti triggered discussion about a regulatory framework for the island.⁶⁰¹

According to evidence filed by Leonie Simpson, chief executive officer of Te Rūnanga o Ngāti Awa, a Te Patuwai Tribal Committee research working party was mandated to respond to the draft district plan in 2006. With support from Environment Ngāti Awa (a unit within the rūnanga), its response was submitted in 2007.⁶⁰² However, although two people representing a ‘working party’ – probably the Te Patuwai Tribal working party – made an oral submission in 2007,⁶⁰³ Government and court records suggest that neither Te Patuwai Tribal nor the Te Patuwai Tribal Committee participated formally in the district plan process at any stage; that is, they neither made submissions on the draft plan nor took part in appeals.⁶⁰⁴ During our hearings, counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa explained that ‘Te Patuwai Tribal . . . took the view that they weren’t going to recognise the authority of [the] DIA to prepare a plan and therefore effectively boycotted the processes’, though various members of Te Patuwai took part in them.⁶⁰⁵ According to Ms Paul, Te Patuwai Tribal and the Te Patuwai Tribal Committee did, however, engage in hapū-based discussion of the plan, including supporting members’ understanding of the plan.⁶⁰⁶

Alongside the district plan process, and with the Te Patuwai Tribal Committee’s support, the Korowai Kahui o Te Patuwai Tribal Council developed a Motiti Island hapū management plan, completed in 2012, to which Nepia Ranapia was a key contributor. The plan included a ‘Native Resource Management Plan’ (already referred to in sections 1.2, 3.2.1, and 3.2.4.1) and ‘Native/Cultural Policy Management & Administration Plan’.⁶⁰⁷

Te Patuwai Tribal ratified the hapū management plan in 2012, as did Ngāti Makino, and later Te Rūnanga o Ngāti Awa (although the rūnanga initially refused to, according to Nepia Ranapia and Hugh Sayers).⁶⁰⁸ The hapū management plan

601. Document A23(a), vol 4, no 214, p 2539

602. Document A63(a), pp 3–12

603. Arcus, Watson, and Puke, ‘Motiti Proposed District Plan’, vol 2

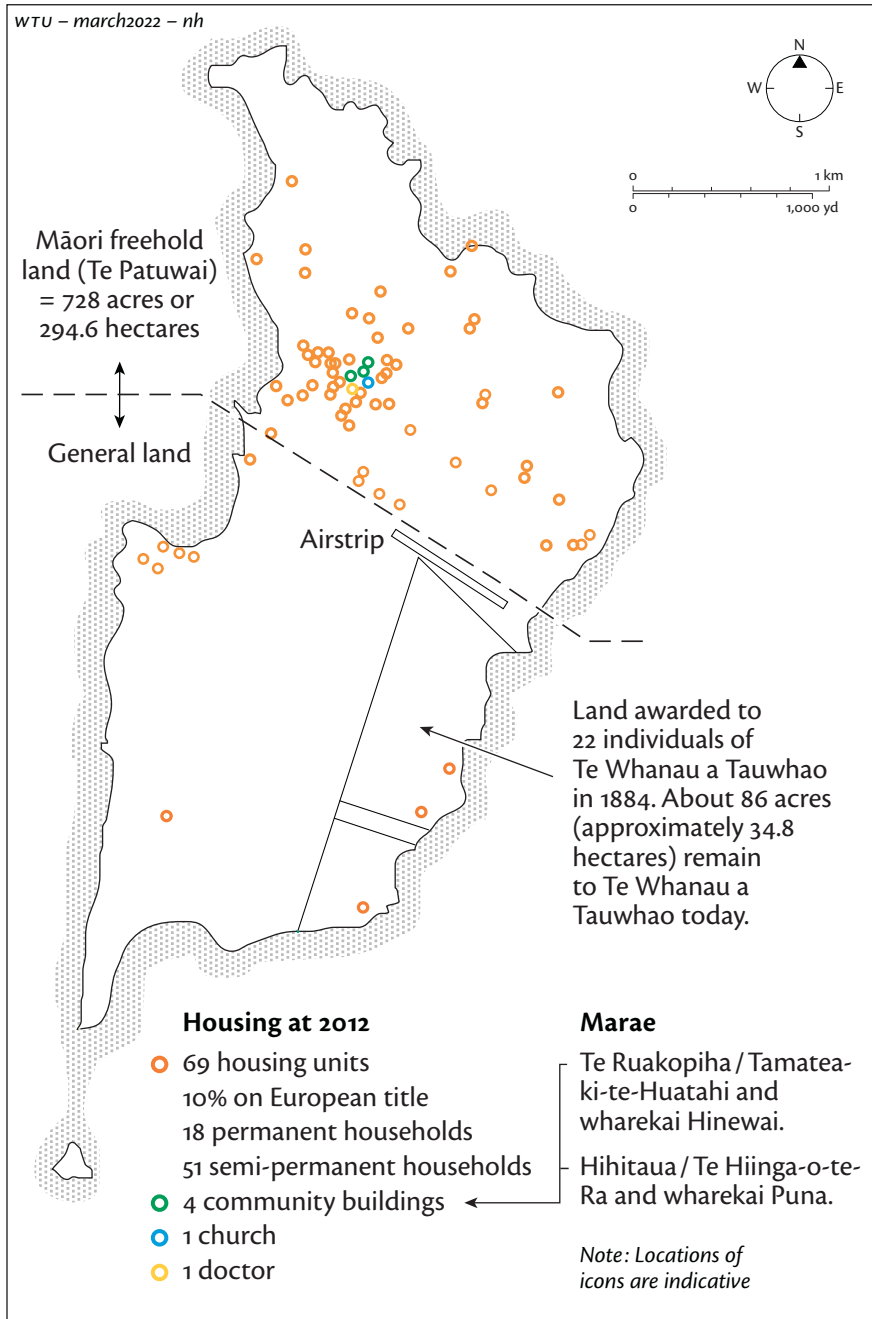
604. Neither group is listed as a submitter in volume 2 of Arcus, Watson, and Puke, ‘Motiti Proposed District Plan’, or as participants in the relevant Environment Court and High Court directions, decisions, and minutes: see, for example, doc A23(a), vol 4, nos 209, 211, 214, 217, 221, 224.

605. Transcript 4.1.3, p 191

606. Document A55, pp 3, 6

607. Ranapia, Ranapia, Ranapia, Rogers, Waldon, Ngawhika, and Matahaere, *Motiti Island Native Resource Management Plan*

608. Document A71, p [8]; transcript 4.1.5, p 22



Map 4: Motiti Island housing

Source: Document A23(a), vol 6, no 362, p 4481

was subsequently recognised by the Bay of Plenty Regional Council and the Crown.⁶⁰⁹

With respect to identity, the plan states that ‘Ngāti Te Hapū [are] the people of the land’ and ‘[hold] manawhenua status’ on Motiti, and ‘Te Patuwai is the voice of the people.’⁶¹⁰

Following appeals hearings in 2012, the Environment Court directed that parties consider integrating the hapū management plan with the proposed Motiti district plan to form a ‘Whole of Island Resource Management Plan’, suggesting this was ‘the most appropriate approach’ for Motiti.⁶¹¹ Though some Māori parties and Crown officials made efforts to do so, the plans were not integrated to the satisfaction of any Māori parties, all of whom remain unhappy with the operative district plan.⁶¹² The court acknowledged that the final plan was ‘a compromise’ and that tangata whenua would ideally have more input into it in future.

The development of the district plan deeply troubled many Te Patuwai people. Some opposed its imposition of Crown authority in respect of Motiti; some objected to the Crown’s process, saying tangata whenua were not consulted on the first draft of the plan; and some objected to the final plan, saying it failed to provide for tino rangatiratanga. They also criticised the Crown for insisting on proceeding with the plan despite tangata whenua’s strong objections.⁶¹³

In 2012, the Environment Court noted that, while there had been ‘strong resistance’ to a district plan among Māori affiliated to Motiti, by the end of appeals hearings that year all parties involved ‘agreed that there should be a plan’, although ‘its form was still in dispute.’⁶¹⁴

Along with Te Rūnanga o Ngāti Awa, several rūpu Māori o Motiti took part in the appeals against the plan, including the Motiti Rohe Moana Trust, the Motiti Marae Committee, and the Motiti Subcommittee of Motiti Marae. All supported an appeal by Nadia Haua – concerning the Crown’s failure to consult with Motiti landowners, and the impact of subdivision on Māori⁶¹⁵ – and the Trust also supported an appeal by Graham and Simmone Hoete objecting to the plan’s lack of provision for Māori values and practices. The Environment Court noted that both appeals shared a similar vision for Motiti, one ‘focussed around preserving the island’s uniqueness, including lack of infrastructure and any ruling body,’⁶¹⁶ and that both supported a hapū management planning approach to the district plan.⁶¹⁷

609. Transcript 4.1.3, p 191; transcript 4.1.2, p 145

610. Ranapia, Ranapia, Ranapia, Rogers, Waldon, Ngawhika, and Matahaere, *Motiti Island Native Resource Management Plan*, pp 7, 9

611. Document A23(a), vol 4, no 211, pp 2376, 2407

612. Ibid, no 229, pp 2774–2891; doc A47, p 16; submission 3.3.8, p 82; submission 3.3.12(b), p 95

613. Transcript 4.1.2, p 329

614. Document A23(a), vol 4, no 211, p 2379

615. Ibid, p 2392

616. Ibid, p 2393

617. The court observed that, while only the Hoete appeal explicitly sought such an approach, ‘the same objective seems implicit in the Haua appeal’: *ibid*, p 2396.

It noted these commonalities existed ‘despite internal divisions’ between the Māori parties involved.⁶¹⁸

We heard and saw evidence that the development of the district plan had divided Te Patuwai, and brought tensions about mandate to a head. In 2010, for example, after learning that the Department of Internal Affairs had worked with the Trust to commission a cultural heritage report to inform the district plan,⁶¹⁹ the Te Patuwai Tribal chair, Nepia Ranapia, accused the department of ‘doing a back door deal’ with the Trust and ‘allowing [it] to compete against the Te Patuwai Tribal Working Party’.⁶²⁰ The Motiti Marae Committee seems to have supported the commissioning of the report,⁶²¹ but in 2011, the court noted that ‘difficulties’ between it and the Trust had delayed the report’s completion.⁶²²

In our inquiry, Graham Hoete maintained that ‘[o]ur people selected [the Trust] as the body to engage with the DIA over the proposed Plan’.⁶²³

We also heard conflicting evidence about how the parties viewed the final district plan. The claimants opposed the plan, saying it ‘removes tāngata whenua from any decision-making on the Island’.⁶²⁴ Mr Matehaere and Hugh Sayers claimed that Te Rūnanga o Ngāti Awa and Te Patuwai Tribal had approved, or signed off on, the plan in 2013, effectively betraying the interests of tangata whenua. But this claim seemed at odds with the position expressed by Te Rūnanga o Ngāti Awa and Te Patuwai Tribal in this inquiry. Briton Williams, Ruihi Shortland, and Puti Koopu, for example, stated that the plan ‘is not fully recognised by members of Te Patuwai. We find these processes and the assertion of authority to be contrary to our position’.⁶²⁵ Similarly, counsel asserted that Te Rūnanga o Ngāti Awa and Te Patuwai Tribal have ‘grievances’ about the plan which are tied to the ‘critical issue’ of ‘the mana motuhake of our hapū in relation to Motiti and the territorial authority status’.⁶²⁶ Giving evidence in court in late 2013, Mr Matehaere himself clarified that, though a rūnanga official had signalled support for the plan, she appeared to have made a ‘personal executive decision’ to do so, since neither Te Rūnanga o Ngāti Awa nor Te Patuwai Tribal had passed any resolution supporting the plan.⁶²⁷

618. Document A23(a), vol 4, no 211, p 2393

619. Prepared by Des Kahotea, the report was sometimes referred to by the Environment Court as a ‘cultural impact assessment report’: see, for example, *G & S Hoete v Minister of Local Government* Environment Court Mt Maunganui, ENV-2010-AKL-000119, 120, 124, minute, 2 May 2011, <https://www.dia.govt.nz/pubforms.nsf/URL/EnvironmentCourtMinute19042011.pdf>.

620. Document A40(a), pp 9–10

621. *G & S Hoete v Minister of Local Government* Environment Court Mt Maunganui, ENV-2010-AKL-000119, 120, 124, minute, 13 September 2010, <https://www.dia.govt.nz/pubforms.nsf/URL/MotitiEnvironmentCourtMinutesPreHearingConference25August2010.pdf>, p 2

622. *G & S Hoete v Minister of Local Government* Environment Court Mt Maunganui, ENV-2010-AKL-000119, 120, 124, minute, 2 May 2011, <https://www.dia.govt.nz/pubforms.nsf/URL/EnvironmentCourtMinute19042011.pdf>, p 2

623. Document A20, p 9

624. Document A82, p 6

625. Document A47, p 16

626. Submission 3.3.12(b), p 94

627. Document A23(a), vol 4, no 215, pp 2580–2582

3.3.6 Other post-1990 developments

3.3.6.1 *Te Patuwai Tribal activities*

We heard evidence that in the last 20 or so years, Te Patuwai Tribal has dealt with matters including customary marine title, resource consents, trust deeds, the Motiti Rohe Moana Trust, the *Rena* disaster (detailed below), and ‘general Mōtiti issues’; and with bodies including the Department of Internal Affairs, the Ministry for Primary Industries, and New Zealand Police.⁶²⁸

Two witnesses mentioned Te Patuwai Tribal’s involvement in two specific Motiti-related fisheries matters. First, it opposed the proposed Ngāi Te Rangi Rohe Moana, which encompassed Motiti, in 2006.⁶²⁹ Secondly, in 2018, it investigated pāua poaching on Motiti with the Ministry of Primary Industries.⁶³⁰

From 2011 to 2016, Te Patuwai Tribal also responded to the *Rena* disaster, working with the Motiti Island Marae Committee on the initial clean-up and participating in legal processes about the fate of the wreck.⁶³¹

Ms Wikepa gave evidence that the ongoing task of maintaining the three Te Patuwai marae is, and traditionally has been, met by Te Patuwai Tribal: ‘all efforts and labours’, including fundraising and hands-on work, ‘have been done by Te Patuwai under the auspices of the Te Patuwai Tribal’.⁶³²

Te Patuwai Tribal has also organised various educational and cultural activities associated with Motiti Island.

Whauhuia Koopu, Paretai Williams, and ngā rangatahi o Te Patuwai, witnesses for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, told us Te Patuwai have held many wānanga ‘to maintain, sustain, and retain our Patuwaitanga’, including several on Motiti. One wānanga, co-led by Graham Hoete, involved a tour of the island: ‘A convoy of tractor-trailers travelled the whole island with Te Patuwai minds absorbing Te Patuwaitanga.’ In another, Mr Matehaere outlined whānau whakapapa links to the land: ‘we recall Koro Eddie Matehaere stopping in pad-docks, telling certain ones to get off the trailers to say this land is yours and to explain why’.⁶³³ A raranga wānanga piu piu (piu piu-weaving workshop) was also held on Motiti, one of three organised to create piu piu for the Te Patuwai Ngāti Maumoana kapa. At these wānanga:

The harakeke was collected from pā harakeke of Pūpūaruhe, Mōtiti-Te Hinga o te ra and the whare of Nanny Amokura. Traditional piupiu of Mōtiti were made with muka and rimurimu which we adopted. All rimurimu came from the beaches of Mōtiti. The tipare design was inspired by the [Te Ruakopiha marae] wharekai Hinewai pattern. The mens’ piupiu design has three diamonds representing our whai and our three marae.⁶³⁴

628. Document A57, p 5; doc A55, p 6; doc A63, pp 7–8

629. Document A63(a), p 7

630. Document A57, p 5

631. Document A55, pp 8–9

632. Document A51, p 4

633. Document A48, p 21

634. Ibid, pp 21–22

According to Koopu, Williams, and ngā rangatahi o Te Patuwai, the Tribal has also held waiata wānanga so that ‘Te Patuwai and Ngāti Maumoana [can] share songs of our hapū, for our marae and in preparation to represent our hapū’ at festivals.⁶³⁵ Te Patuwai festival performances have featured waiata about the matakata (yellow pōhutukawa), and Te Patuwai’s relationship with Motiti’s seas and stingrays (‘the kaitiaki of Motiti’); and haka about Te Hapū, and the impact of the *Rena* disaster.⁶³⁶

Koopu, Williams, and ngā rangatahi o Te Patuwai also provided evidence of a Te Patuwai mokopapa held on Motiti in 2016, at which whaea from several whānau received tā moko.⁶³⁷ According to them, these moko were ‘Te Patuwai moko’ that celebrated each whaea’s ‘whakapapa, their Te Patuwaitanga.’⁶³⁸

As noted earlier (section 3.3.2.1), the claimants argued that Te Patuwai Tribal does not rightfully have authority to make decisions concerning Motiti. Explaining this stance, Mr Matehaere said it is ‘against our tikanga’ for the Tribal to make decisions about Motiti ‘when they are located 80km away . . . at Pūpūaruhe Marae.’⁶³⁹ He agreed that it is ‘[t]rue in a sense’ that the current Te Patuwai Tribal structure, with the marae committees and Te Patuwai Tribal Committee, ‘broadly reflects the traditional arrangements [of] the people’ in the nineteenth century – a description put to him by counsel for the Faulkner Whānau. However, he considered that this ‘[d]idn’t mean to say that Motiti should lose their rights to making decisions on Motiti.’⁶⁴⁰

Ms Haimona expressed the view that Te Patuwai Tribal does not represent her interests as a member of Ngāi Te Hapū, but acknowledged that other people who ‘know they are Ngāi Te Hapū’ or Ngāti Makerewai ‘strongly support’ Te Patuwai Tribal.⁶⁴¹

3.3.6.2 *Te Rūnanga o Ngāti Awa activities*

As noted earlier, the rūnanga supported a Te Patuwai Tribal Committee research working party to respond to the proposed Motiti district plan in 2006 and 2007. The rūnanga submitted on the plan in 2007;⁶⁴² supported an appeal against it by Nadia Haua from 2011 to 2014;⁶⁴³ and took part in a related High Court appeal in

635. Document A48, p 22

636. Ibid

637. Ibid, p 23

638. Ibid

639. Document A82, p11. Mr Matehaere acknowledged that some tribal hui are now held on Motiti, but he implied that they are held too infrequently (‘few and far between’) to be of significance.

640. Transcript 4.1.2, p 357

641. Transcript 4.1.3, p 64

642. Beverley Hughes to Keith Frentz, submission on draft Motiti district plan, 21 May 2007, [https://www.dia.govt.nz/diawebsite.nsf/Files/Motitisubmission211/\\$file/Motitisubmission211.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Motitisubmission211/$file/Motitisubmission211.pdf)

643. *G & S Hoete v Minister of Local Government* Environment Court Mt Maunganui, ENV-2010-AKL-000119, 120, 124, minute, 16 December 2012, <https://www.dia.govt.nz/pubforms.nsf/URL/MotitiIslandPre-hearingconferenceminute14December.pdf>; *G & S Hoete v Minister of Local Government* [2012] NZEnvC 282, <https://www.dia.govt.nz/diawebsite.nsf/Files/Motiti-EC-interim-decision-and-directions-20-Dec-2012>

2013.⁶⁴⁴ In these processes, it advocated, among other things, for the creation of a Motiti Island hapū management plan and it endorsed the completed plan. The rūnanga also engaged with Motiti landowners about the district plan.⁶⁴⁵

Ms Simpson gave further evidence that, since 2000, the rūnanga has supported the Te Patuwai Tribal Committee to deal with Motiti-related resource management issues – including the *Rena* disaster and dealings with the Trust⁶⁴⁶ – and to oppose the proposed Ngāi Te Rangi rohe moana.⁶⁴⁷ She said the rūnanga had also worked ‘with Te Patuwai and Ngāti Maumoana’ on Ngāti Awa’s Natural Resources Strategy, Marine and Coastal Area Act application, and submissions on the New Zealand Coastal Policy Statement and Bay of Plenty Regional Coastal Plan.⁶⁴⁸ Counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa noted that the iwi had pursued a Māori fisheries settlement on behalf of all Ngāti Awa hapū, including Te Patuwai/ Ngāti Maumoana.⁶⁴⁹

3.3.6.3 *Motiti Rohe Moana Trust’s activities*

According to Mr Sayers, the Trust has participated in more than 20 separate legal proceedings relating to the environment since its establishment in 2009.⁶⁵⁰ These include appeals against the Bay of Plenty Regional Council over plans and policies affecting the Motiti rohe moana, and resource consents allowing the *Rena* to be left on Otaiti reef; and against the Department of Internal Affairs over the Motiti district plan. The Trust has also sought recognition of customary rights in the Motiti rohe moana under the Foreshore and Seabed Act 2004, and the Marine and Coastal Area (Takutai Moana) Act 2011.⁶⁵¹ Other activities include the commissioning of a cultural heritage report to inform the district planning process,⁶⁵² opposition to resource consent applications on Motiti, and involvement in proceedings about fresh water and access issues on the island.⁶⁵³ Outside of legal proceedings, the Trust has engaged with various Crown agencies on fisheries, marine, and resource management issues.⁶⁵⁴

The claimants described the Trust as fulfilling a ‘responsibility to assert . . . and exercise tino rangatiratanga and kaitiakitanga over the Motiti Rohemoana.’⁶⁵⁵ They stressed the urgent need for such action at a time when the health of the moana has been seriously undermined, in their view, by decades of overfishing by outside groups.⁶⁵⁶ Hugh Sayers stated that the Trust has worked since 2009 ‘to ensure the

644. *Motiti Avocados Ltd v Minister of Local Government* [2013] NZHC 1268

645. Document A63(b), p [1]

646. Document A63, p 7

647. Document A63(b), p [1]

648. Ibid

649. Submission 3.3.12(b), p 63

650. Document A29, p 5

651. Ibid, pp 6–11, p 16

652. Kahotea, ‘Te Moutere o Motiti’

653. Document A29, pp 6–11, p 16

654. Ibid, p 16

655. Document A1, p 4

656. Document A22, p 12

rohemoana is managed sustainably and in line with the tikanga of the people of Motiti,⁶⁵⁷ a kaupapa he described as ‘tika and pono’.⁶⁵⁸

However, we also heard evidence that Te Patuwai’s view on the Trust’s involvement in environmental matters is ‘fragmented’. Some hapū members support its activities but a majority oppose them, we were told.⁶⁵⁹ Witnesses for interested parties opposing the claimants criticised the Trust for acting on behalf of Motiti tangata whenua without (in their view) having a mandate to do so.⁶⁶⁰ Some also expressed cynicism about its stated aims, accusing it of pursuing a private agenda.⁶⁶¹ Other witnesses opposing the claimants argued that the establishment of new entities and use of litigation to exercise kaitiakitanga in recent years has undermined the unity of Te Patuwai, and the tikanga basis on which Te Patuwai Tribal ordinarily operates.⁶⁶² Adrienne Paul, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, argued that the Trust, by operating as a vehicle to ‘oppose the hapū in certain legal processes’, had had a particularly negative impact on the hapū:

There are many reasons why the hapū does not support MRMT . . . But more importantly, the hapū do not support MRMT due to a large mistrust of certain people operating MRMT and the fact that MRMT have been in the same processes as the hapū but arguing an opposing position, which inflames the mistrust and separates them further from the view of Te Patuwai.⁶⁶³

We heard that communication between the Trust, and the Motiti marae and Te Patuwai Tribal committees, has broken down over the last decade. Ms Evans, who lives on Motiti part-time and is closely involved in the Motiti marae committees and Te Patuwai Tribal Executive Committee, said she learns of the Trust’s activities only through media reports.⁶⁶⁴ The Te Patuwai Tribal Committee chair said he was unaware (at the time of our inquiry) that legally recognised wāhi taonga/wāhi tapu sites had recently been established in the Motiti rohe moana as a result of appeals pursued by the Trust.⁶⁶⁵

3.3.6.4 The Rena disaster

In October 2011, the cargo ship *MV Rena* struck Otaiti reef and later sank there, spilling oil and cargo into the surrounding waters and onto Motiti’s shores. In the

657. Umuhuri Matehaere to chief executive, Bay of Plenty Regional Council, submission on proposed plan change 9 to the water and land plan, 14 December 2016, <https://www.boprc.govt.nz/media/612197/025-2016-12-14-motiti-rohe-moana-trust-submissions-proposed-plan-change-9-region-wide-water-quantity.pdf>, p [1].

658. Document A29, p 5

659. Document A55, p 10

660. Document A40, p 14; doc A51, pp 11, 12; doc A55, p 7

661. Document A51, p 11; doc A58, p 5

662. Document A40, p 13; doc A51, p 11; doc A55, pp 9–10

663. Document A55, p 10

664. Document A40, p 14

665. Transcript 4.1.4, p 232

ensuing weeks, months, and years, various groups who claimed interests in Motiti and/or Otaiti reef took part in efforts to deal with the wreck and its impacts on the island and moana; we heard evidence about many of these efforts.

3.3.6.4.1 Immediate aftermath and later litigation, 2011–16

Irihapeti Betty Dickson, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, told us that shortly after the wreck, Maritime New Zealand convened a public meeting. There, Te Patuwai whānau nominated her to be the response liaison person for ‘Te Patuwai, Mōtiti’, a role in which she mediated between the authorities and the people of Motiti on the official response to the disaster.⁶⁶⁶ The Motiti Island Marae Committee also worked to help clean up the spill, supported by Te Patuwai Tribal.⁶⁶⁷ Many other groups took part in the clean-up, including mainland Te Patuwai and Tauranga Moana iwi. According to Ms Paul, a Motiti Marae Committee member at the time, ‘Everyone came together in this situation to try and help bring Mōtiti back to life.’⁶⁶⁸

A range of groups claiming to represent the interests of Motiti Island took part in later litigation about the fate of the wreck: the Motiti Rohe Moana Trust, the Te Patuwai Tribal Committee, Te Rūnanga o Ngāti Awa, the Māori Marae Reservation Trustees, the Korowai Kahui o Te Patuwai Tribal Council, Motiti Environmental Management Incorporated (consisting mainly of landowners on Motiti), Ngāi Te Hapū Incorporated, and three individuals of Te Patuwai.⁶⁶⁹

With a couple of exceptions, these groups opposed an interim decision, made by a commission of inquiry in 2016, to grant resource consents to the ship’s owners allowing them to leave the wreck on the reef.⁶⁷⁰ In 2016, claimant Elaine Butler appealed the decision on behalf of Ngāi Te Hapū Incorporated, an entity she said she established to ‘have a voice under the mana of Te Hapū’ to promote removal of the wreck.⁶⁷¹ While those groups who shared her position initially supported the appeal, they ultimately withdrew, some having agreed settlements with the ship’s owners, including Te Rūnanga o Ngāti Awa and Te Patuwai Tribal.⁶⁷² The appeal was unsuccessful.

In their evidence about the *Rena*, the claimants recounted that authorities had consistently overlooked or refused to engage with the Motiti Rohe Moana Trust and its efforts to help resolve the disaster.⁶⁷³

666. Document A60, p 6. According to Ms Dickson, the Crown initially assumed that the Department of Conservation would act as response liaison for Motiti, but she was nominated instead because ‘none of us accepted or wanted’ that.

667. Document A55, p 8

668. Ibid

669. Document A23(a), vol 6, no 369, p 49

670. The Korowai Kahui o te Patuwai Tribal Council and Motiti Environmental Management Incorporated supported the decision to leave the wreck on the reef: doc A23(a), vol 6, no 369, p 4503.

671. Document A86, p 34

672. Document A23(a), vol 6, no 369, pp 120, 124

673. Document A22, pp 32–34

3.3.6.4.2 How the Environment Court viewed Ngāi Te Hapū

In its 2017 decision on the appeal against the granting of resource consents to the *Rena*'s owners, the Environment Court noted that 'longstanding divisions' on Motiti made it 'unclear as to whether any one of [the above-listed] groups is mandated to speak for all those who ahi kā to the island'.⁶⁷⁴ However, it did make findings about who holds mana whenua on Motiti, based on consideration of evidence about tribal history in the area.

The court found that 'Ngāi Te Hapū – Te Patuwai and Te Whānau a Tauwhao are tangata whenua, and therefore they are the kaitiaki of Ōtāiti, with mana whenua over Motiti and its associated islands and reefs'.⁶⁷⁵ It further found:

Only Ngāi Te Hapū – Te Patuwai and Te Whānau a Tauwhao have direct mana whenua over Motiti and its associated islands and reefs. The relationship that Ngāti Awa has to Ōtāiti can only be through Te Patuwai who have maintained ahi kā on Motiti. Thus Ngāti Awa and all their hapū (who are not Ngāi Te Hapū – Te Patuwai or Te Whānau a Tauwhao) do not have direct kaitiaki responsibilities other than those based upon their whakapapa and tribal affiliations to Te Patuwai, their broader connections to Te Moana a Toi and their use of Ōtāiti and other reefs in the Bay of Plenty as a fishing ground.⁶⁷⁶

3.3.6.5 The Ngāti Maumoana question

In recent decades, Te Patuwai Tribal and Te Rūnanga o Ngāti Awa have recognised Ngāti Maumoana as a hapū of Motiti, applying the name to those Te Patuwai who affiliate to the Motiti marae. The claimants objected to this, arguing that Ngāti Maumoana have no interests in Motiti and that their name should thus not be associated with the island.

According to Tā Hirini, the ancient hapū Ngāti Maumoana was absorbed into Te Patuwai, then revived in the early 1980s by kaumātua from Te Patuwai, Ngāti Pūkeko, and other Ngāti Awa hapū as part of an iwi effort to revive dormant hapū. He said it was these kaumātua who identified the two marae on Motiti as Ngāti Maumoana marae.⁶⁷⁷

By contrast, Nepia Ranapia gave evidence that Ngāti Maumoana were absorbed into Ngāti Pūkeko, have interests only in Ngāti Pūkeko lands in the Whakatāne district, and have no mana whenua on Motiti.⁶⁷⁸ Mr Ranapia stated that the Te Patuwai Tribal Committee proposed Ngāti Maumoana as a Motiti hapū, lodging its proposal with Te Rūnanga o Ngāti Awa in about 2000.⁶⁷⁹ According to Ms Keepa, the name was first applied to Motiti people in about 1990, when the rūnanga requested a hapū name for the Motiti marae. Following discussion at a Te Patuwai Tribal hui, the kaumātua present decided it would be Ngāti Maumoana.

674. *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 073 at 50

675. Document A86, p 4; doc A23(a), vol 6, no 369, p 27

676. Document A86, p 4; doc A23(a), vol 6, no 369, pp 28–29

677. Document A85(b), pp 18–19; memo 3.2.52(a), paras 18–19

678. Document A17, pp 47–48

679. Ibid, p 47

She said the issue of the name arose again in 2005 at another Te Patuwai Tribal hui, at which a majority chose to retain it – in part, according to Ms Keepa, because Motiti marae would thereby receive more funding from the rūnanga.⁶⁸⁰

Asked why they sometimes referred to the tangata whenua of Motiti as ‘Te Patuwai’ and other times as ‘Te Patuwai/Maumoana’, Puti Koopu, Briton Williams, and Ruihi Shortland explained ‘[w]hen we refer to Ngāti Maumoana, it’s only for our Te Rūnanga o Ngāti Awa representation, because for us, Ngāti Maumoana is also within Te Patuwai, so it’s only for that purpose.’⁶⁸¹

Other evidence suggested this may not be an uncommon view today. Minutes from a 2016 Te Patuwai Tribal hui record that some discussion ‘centred around the establishment of Ngati Maumoana. It was explained [it was] for the purposes of two votes only for Te Runanga o Ngati Awa.’⁶⁸²

Recently, some Te Patuwai people have advocated reallocating the Maumoana name to Toroa Marae and applying karanga hapū names to the two Motiti marae, but the outcome of their efforts is unclear. Minutes of a 2017 Te Patuwai Tribal meeting record the Te Patuwai Tribal chairperson as saying that the hapū had requested Te Hiinga Marae Committee be revived and that

Te Hiinga will come under the jurisdiction of Ngāti Makerewai, Tamateahuatahi under the jurisdiction of Ngāti Takahanga, Toroa for Ngāti Maumoana and Te Patuwai for Mōtiti and Pūpūaruhe, Whakatāne. All three marae are under the guidance of the Tribal Committee/Executive.⁶⁸³ Ngāti Maumoana comes under Taiwhakāea in history, they formed an alliance with Ngāti Pūkeko over time. We need to address our correct histories. . . . We need full hapū support to push this with TRONA. It will be raised at their meetings through your delegates, the Chairman, and Kahui Kaumatua reps.⁶⁸⁴

Ms Haimona stated that in light of these discussions, the rūnanga ‘has realised’ it needs to remove the Maumoana name from Motiti.⁶⁸⁵ However, it was unclear to us whether this is in fact the rūnanga’s position; we saw no evidence that it intends to remove the name.

3.3.6.6 Other kaitiaki structures operating on Motiti

Some tikanga-based kaitiakitanga roles on Motiti are recognised in statute, including those that relate to the church, the marae, and fishing permits.

Motiti Marae Māori Reservation trustees are appointed by the Māori Land Court under the Te Ture Whenua Maori Act 1993 to administer the church and the marae on the reservation land in the centre of the island.⁶⁸⁶

680. Document A84, pp 3–4

681. Transcript 4.1.4, p 625

682. Document A23(a), vol 6, no 336, p 4497

683. Document A21, p 7; doc A23(a), vol 6, no 370, p 4514

684. Document A23(a), vol 6, no 370, pp 4514–4515

685. Document A21, p 7

686. Document A23(a), vol 6, no 369, p 4503

As mentioned in section 3.3.2.1, all three Te Patuwai marae – and other Māori reservations associated with Te Patuwai – were formerly administered by the same trustees, whom Te Patuwai Tribal would select. But since a court decision in 2016, Motiti marae trustees have been appointed separately.⁶⁸⁷ Te Patuwai Tribal hui minutes show that these trustees still report back to the Tribal, however.⁶⁸⁸

In its decision on the *Rena* appeal, the Environment Court responded to a claim by Te Patuwai Tribal that it represents ‘the marae based interests of Te Patuwai on Motiti’, noting that ‘only the marae reservation trustees appointed under the Te Ture Whenua Maori Act 1993 have the right to represent the “marae based” interests of Te Patuwai’.⁶⁸⁹

Other legally appointed kaitiaki for Motiti are the two gazetted Tangata Kaitiaki/Tiaki for Motiti Island, appointed under the Fisheries (Kaimoana Customary Fishing) Regulations 1998, whose role is to issue permits under these regulations. These kaitiaki act on behalf of Tauranga Moana iwi, whose rohe moana, which extends into the waters around Motiti, was gazetted under the regulations in 2004.⁶⁹⁰

Two other groups with interests in Motiti have sought to establish rohe moana under the regulations: Ngāi Te Hapū Incorporated, in 2013, and Ngā Hapū o te Moutere o Motiti, in 2017. No new tangata kaitiaki have been appointed as a result, due to an unresolved dispute about these groups’ claims to represent tangata whenua in the area.⁶⁹¹

3.3.6.7 Some final comments

The claimants and interested parties alike expressed unhappiness and regret at the discord and division that have developed among the people of the island since the early 1990s. Both considered that wider political developments in this period have played a role in weakening relationships among the people. Developments such as the district plan, resource management and fisheries legislation, and the effects of the *Rena* disaster have required tangata o Motiti to secure recognition in a Pākehā legal framework, and engage in legal proceedings, if they are to have a voice on matters affecting Motiti. This, in turn, has prompted the ad hoc creation of new entities to represent Motiti’s interests. As Ms Paul put it: ‘The problem was that in order for our people to be heard in . . . processes [relating to the district plan and the *Rena* disaster], they had to establish an entity to gain mana and recognition by Te Ao Pakeha processes.’⁶⁹²

687. Māori Land Court, directions, 11 February 2016, 116 Waikato Maniapoto minute book 149–150 (116 WMN 149–150); transcript 4.1.4, pp 642–643, 645–646

688. See, for example, doc A23(a), vol 6, no 370, pp 4514–4515.

689. Document A23(a), vol 6, no 369, p 20

690. Transcript 4.1.4, pp 427–428; doc A60, p 12. Ms Dickson and John Nuku were appointed to these roles in 2004, with the support of the Motiti Marae Committee and Te Patuwai Tribal.

691. Document A23(a), vol 5, no 336, p 4365; claim 1.1.1(b), pp 11–12

692. Document A55, p 7

Witnesses on both sides expressed the view that these pressures have turned members of Te Patuwai against each other, and undermined the tikanga basis on which they ordinarily operate. In Ms Evans' words:

All of those processes and proceedings have created division amongst our own people who have found themselves in legal battles, giving evidence against each other.

Our pakeke are being used for various agendas to try to progress funding, legal claims, validate new legal entities and so on, all the while the way we have operated under tikanga at the island has been walked all over (te taka hi te mana o Te Patuwai).⁶⁹³

The climate of dissent and tension alluded to here contrasts sharply with the picture of daily life on Motiti presented by witnesses, including kaumātua who grew up there in the middle decades of the twentieth century. While their accounts speak of isolation, a lack of public infrastructure, and other unique challenges associated with the island's independence from any territorial authority, they also attest to Motiti's strengths – the resilience of the community, the continuity of tradition, and the uninterrupted exercise of mana motuhake until recent times. We turn to a selection of these accounts now.

3.3.7 Daily life and tribal identity on Motiti in contemporary times

Witnesses gave evidence not only of their experiences of life on the island and of moving between the island and the mainland but also of how they understand their identity. The following section reflects the range of perspectives we heard and also the diversity of the parties in our inquiry. They included people born and raised on Motiti, people born and raised on the mainland, and people of different generations.

3.3.7.1 *Living on the island*

Several kaumātua gave accounts of growing up on Motiti in the 1930s to 1950s. Claimant Kataraina Keepa was born in 1931 and brought up on Motiti 'as part of a whānau with long and deep connections to the Island'.⁶⁹⁴ She spoke of the strong community spirit and communal activity that characterised life on Motiti during her youth. Among other things, she recalled that fishing 'united the community', in part because those with boats would share their weekly catch with others,⁶⁹⁵ and that the Motiti Island Tribal Committee played a prominent role in collective life. She told us committee meetings were 'very important to the people'; that she and other children used to attend them with their parents; and that the committee's

693. Document A40, pp13–14

694. Document A19(a), p1. Ms Keepa explained that her mother said that she was born in Te Puke but her birth certificate states that she was born on Motiti.

695. Ibid, p21



Tangata whenua and inquiry participants show Tribunal members and staff sites of significance on Motiti Island during a site visit, 18 May 2018

responsibilities included coordinating the community to harvest crops, ensuring everyone had access to spring water, dealing with incidents of crime on the island, and interacting with Government authorities.⁶⁹⁶ She also recalled that much of community life was spent at the two Motiti marae,⁶⁹⁷ and that kaumātua were shareholders in the land on which the marae and church stand.⁶⁹⁸

Claimant Umuhuri Matehaere was born on Motiti Island in 1943 and raised there.⁶⁹⁹ He spent some time with his great-grandmother in Whakatāne, moved to Tauranga with his whānau, and now lives in Matapihi.⁷⁰⁰ He too recalled the strong sense of community that existed on the island in the 1940s and 1950s, and the centrality of the marae to the community:

When I was growing up, [Motiti] was very much a communal village, with the houses clustered around Te Karioi Pā. . . . We rarely had houses further out from the central cluster around the marae. It gradually branched out further, but originally all the large families lived close together, with many people in one home.

696. Document A19(a), pp 7–8, 10

697. Ibid, p 6

698. Ibid

699. Document A22, p 1

700. Document A82(b), p 4

... the marae and the church were the centre of the community. All the main community events happened, and all necessary decisions were made on the marae.⁷⁰¹

Mr Matehaere emphasised that in the 1940s and 1950s, Motiti was more isolated than it is today. As a result, Motiti Islanders developed their own practices, in which young people were immersed and schooled:

Back then, life on Motiti was an existence of its own, with virtually no contact with the outside world: no telephone, no radio, no television. We were taught by our parents, grandparents and the community what they practised on the island. Being brought up on the island by elders gives you particular insights into the way things were done, and why they were done that way.⁷⁰²

Another result of the islanders' isolation was that they depended on each other in most areas of life, which required them to maintain good relationships: 'It was a community effort living on Motiti: you had to get on together or you wouldn't survive.'⁷⁰³ Mr Matehaere told us that inclusive, consensus-based decision-making was a feature of community life at that time; when issues arose, 'It was a community open to all, and we would talk as a community until a decision was reached.'⁷⁰⁴

Meri Mihiora Faulkner, witness for the Faulkner whānau, said she was born on Motiti in 1929 and grew up there until she had to leave the island for work at the age of 18. Her husband was also born on the island. She too emphasised the whanaungatanga that existed among all the families on Motiti, whereby '[e]veryone helped no matter what the situation. There was always time for a cup of tea, time to share workloads – family ties. ... everyone was just one big happy family.'⁷⁰⁵

Ms Faulkner recounted that, when she was young, Motiti Islanders lived almost self-sufficiently ('[t]he only thing we bought was flour and sugar'). Families grew their own vegetables and those with cows would share their meat with others.⁷⁰⁶ The maize and kūmara crops which most families grew for a living covered 'nearly all the island', and Ms Faulkner recalled tending them before and after school.⁷⁰⁷ She too indicated that life on Motiti at that time involved hard work and cooperation: 'The important thing then was helping our parents and all our whanau. It was part of our living and they were happy days.'⁷⁰⁸

When most islanders migrated to the mainland in the 1950s and 1960s due to the failure of Motiti's crops, the island environment changed. Ms Keepa recounted

701. Document A22, pp 4, 7

702. Ibid, p 4

703. Ibid, p 7

704. Ibid

705. Document A42, paras 15, 25

706. Ibid, para 21

707. Ibid, paras 19–20

708. Ibid, para 23

that the dance hall and other buildings ‘fell into disuse and slowly deteriorated.’⁷⁰⁹ Nepia Ranapia recalled that cattle were brought in to graze former crop land in the 1970s, inadvertently causing the spread of fennel, which later grew unchecked over the island.⁷¹⁰ Mr Matehaere stated that much Māori land on Motiti now lies fallow.⁷¹¹ He and Ms Keepa also told us that, when most people left the island, Motiti and its rohe moana became increasingly subject to use and abuse by outsiders, including commercial and recreational fishers and divers, leading to significant depletion of its fisheries.⁷¹²

Claimant witness Daniel Ranapia moved to Motiti in 2001 at the age of 18, after visiting regularly as a child, and now lives there on his ancestral whenua – one of about 30 permanent residents.⁷¹³ He said that, despite the relative ease of living on Motiti today, with the benefit of solar power, air transport, and other modern technology, the island’s remoteness still motivates residents to ‘try to be as self-sufficient as possible, much as our forebears were.’⁷¹⁴ Apart from the orchards and gardens cultivated by residents, he described the general environment on the island as ‘bleak’ and ‘full of fennel.’⁷¹⁵

3.3.7.2 *Living between Motiti and the mainland*

A number of witnesses emphasised their dual links to Motiti and Whakatāne, as members of Te Patuwai. Claimant Jacqueline Taro Haimona said she has whakapapa connections to Motiti through her father, and grew up in Whakatāne. She explained that the Haimona whānau have ahi kā at both Whakatāne and Motiti, and that her father is buried at Pūpūaruhe urupā along with ‘his parents, aunties, grandmother, and other close whānau, all of whom whakapapa to Motiti.’⁷¹⁶

Ms Haimona recounted that, although she and her whānau were ‘townies’, living as they did at Whakatāne, those from the island recognised them as ‘Motiti whānau’. She recalled her father’s relations from Motiti visiting her whānau at Whakatāne. Ms Haimona said that she first visited Motiti at the age of eight and that a relation recalls her visiting twice as a child.⁷¹⁷

Meri Mihiora Faulkner – who, as noted earlier, left Motiti in the late 1940s – spoke of her continued association with the island and longstanding involvement in the marae at both Motiti and Whakatāne, where she now lives: ‘I continue to support our Marae at Motiti and here in Whakatane . . . We spent many years involved at Tamateakitehuatahi, Tehingaotera, and Toroa Marae. I continue to attend the Marae and Tribal meetings at Whakatane.’⁷¹⁸

709. Document A19(a), p 30

710. Transcript 4.1.2, p 537

711. Ibid, p 321

712. Document A19(a), pp 32–33; transcript 4.1.2, p 319

713. Document A27, p 1

714. Ibid, pp 1–2

715. Transcript 4.1.2, p 525

716. Document A21, pp 1, 2

717. Ibid, p 3

718. Document A42, para 29



Claimant Graeme Hoete (driving tractor) with other inquiry participants and tangata whenua during the Tribunal's site visit to Motiti Island, 18 May 2018

Eunice Evans, Meri Mihiora Faulkner's daughter and witness for the Faulkner whānau, told us that her parents (who were born on Motiti, as previously noted) were heavily involved in tribal activities at Toroa Marae.⁷¹⁹ She said that after moving to the mainland – where, among other things, they established a kōhanga reo at Toroa Marae – her parents continued to visit Motiti 'as often as possible', often taking their children.⁷²⁰ Ms Evans has continued this association; she is a part-time resident on Motiti and owns a house there.

Ms Evans also outlined her understanding of the concept of 'Patuwaitanga', saying it refers to the Te Patuwai tribal structure or ethic, based on tikanga, whereby members participate in tribal and hapū affairs across Motiti and Whakatāne. She said her whānau practises Patuwaitanga: she was 'brought up between all three Marae'; has been 'actively involved in matters pertaining to Motiti Island and Whakatāne', including as a member of the Te-Hiinga-o-te-Ra and Pūpūaruhe marae committees; and her whānau 'continue to work at all three marae'.⁷²¹ In her view, one does not need to live on Motiti to have rights and responsibilities to the island:

719. Document A40, p 2

720. Ibid

721. Ibid, pp 3, 4

We view our whānau as tangata whenua as we have a close association with the land and waters surrounding Motiti Island. Whether we are residents today or reside elsewhere, or through inter-marriages makes no difference to the affinity we have for Motiti Island which is our turangawaewae.⁷²²

Liza Faulkner, Ms Evans' sister and witness for the Faulkner whānau, is also a landowner on Motiti. She told us that her father was a member of the paepae on all three Patuwai marae, and a chairman of the Toroa Marae Committee. She recalled that, as a child, she had visited Toroa Marae with her father, helped to maintain the marae, and attended marae meetings. During these meetings, the wharekai was 'usually always packed with Patuwai whanau' from Motiti, Whakatāne, Tauranga, Auckland, and elsewhere who had gathered 'to discuss the issues of Te Patuwai'.⁷²³

Liza Faulkner also relayed stories of visiting and staying on Motiti as a child, then of living on the island as a young mother. Though her children were young at the time, she made sure they 'would be at the Marae so that they were able to help wherever they could and learn the kawa and tikanga of the Marae, and the ways of Te Patuwai'.⁷²⁴ She too was involved in the Motiti marae, helping to host visitors and attending marae committee meetings. She recalled of these meetings that '[i]ssues were reported back to Te Patuwai Tribal in Whakatane, otherwise, Motiti worked autonomously when it came to issues that we were able to deal with'. She emphasised that whānau on Motiti and the mainland were in '[c]onstant contact'.⁷²⁵

Though she now lives on the mainland, Liza Faulkner told us she continues to take her grandchildren back to Motiti.

Ngārangi Chapman, a witness for the Rauahi and Aporina Whānau Trust, told us that her whānau are 'ahikāroa of Te Patuwai and Ngāti Awa respectively' and are based on Motiti as well as at Whakatāne and in Pūpūaruhe and Pekapekatahi.⁷²⁶ A resident of 'Te Patuwai lands',⁷²⁷ Ms Chapman said that she grew up participating in Te Patuwai activities, including Tribal hui, Treaty of Waitangi commemorations, tangihanga, fundraising, wānanga, mahi toi (arts), maara kai (growing food), kohi kai (food gathering), hī ika (fishing), kapahaka, and hākinakina (sports).⁷²⁸

Ms Chapman said she has been a marae reservation and wāhi tapu trustee for all three marae, and served as executive vice chair for the Te Patuwai Tribal Committee. She told us that, in this latter role, she has engaged with the Crown on various matters, including Te Patuwai customary protection of the Motiti rohe moana.⁷²⁹

Ms Chapman pointed out to us the connections between the three marae, in

722. Document A40, p 2

723. Document A41, p 8

724. Ibid, p 5

725. Ibid, p 8

726. Document A39, p 3

727. Ibid

728. Ibid, p 6

729. Ibid

particular, the ‘celestial maramataka and navigation tools’ carved into all three wharenui by Te Ikanui, a Te Patuwai expert navigator, commander, and tohunga whakairo.⁷³⁰

She spoke further about the traditional knowledge required to navigate the ‘extensive’ fishing grounds of Te Rohe Moana o Te Patuwai, which encompass Motiti and its associated reefs, and to transport people and cargo safely between the island and the mainland. She said this knowledge is part of Te Patuwai tikanga, and has been handed down over generations to ‘successive keepers’, including Te Ikanui, and by him to Joseph Grant, known as ‘Uncle Boy’.⁷³¹ Ms Chapman said Uncle Boy would often tell her stories of his expeditions at sea with Te Ikanui, detailing his teacher’s skill at navigating in any conditions – ‘during storms, rough seas, dense fog, even in the dark.’⁷³² He once told her how, after dropping a boatload of kūmara and maize at Tauranga, he and Te Ikanui were enveloped in dense fog as they headed back to Motiti Island at twilight. In darkness, and with only the sound of the water and the temperature of the air to go by, Te Ikanui guided them safely back to Wairanaki Bay at Motiti.⁷³³ Ms Chapman said the tradition of narrating such stories and practices was itself a form of Te Patuwai tikanga, reaffirming Te Patuwai’s mana over the rohe moana.⁷³⁴

Ms Chapman gave further evidence that Te Patuwaitanga was a fundamental part of her life and identity, saying she was ‘groomed from within the womb of my mother to gain an intimate understanding of who Te Patuwai was and is today, in a present day context, and what entitlements and obligations were inherent in this sense of belonging and heritage.’⁷³⁵ This education took place ‘inside tribal and sub-tribal political, social and economic activity, and matters concerning the overall prosperity of our people.’⁷³⁶

Irihapeti Betty Dickson, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, was born and raised in Tauranga and moved to Motiti with her young daughter in 1980, when few people lived there (‘[y]ou could count the residents on one hand’). She stated that over the last 40 years, she has ‘kept our whānau connections to Te Patuwai robust’ by serving in administrative roles on the Motiti Island Marae Committee and the Te Patuwai Tribal Committee, and as a scribe for the Motiti Island Reservations Trust.

She described the relationship between the Motiti marae and the Te Patuwai Tribal Committee in the 1980s:

The Pa [on Motiti] would be used for tangihanga mainly and if there were any issues, mainly to do with renovations of Tamateakitehuatahi these would be taken back to Pūpūaruhe Whakatāne to the Patuwai Tribal Committee. This was mainly

730. Ibid, pp 31–33

731. Ibid, p 19

732. Ibid, p 20

733. Ibid, pp 20–21

734. Ibid, p 22

735. Ibid, pp 3–4

736. Ibid, p 3

because the majority of Te Patuwai lived on the mainland and only a handful of whanau, retired kuia and koroua and farmers lived on the island at the time. If there were any pressing issues then these would be relayed back to the Tribal the majority of [whose meetings] were held in Whakatāne.⁷³⁷

3.3.7.3 *Personal views on tribal identity*

Many witnesses gave evidence about their tribal identity, and in doing so, took a stance either for or against the assertion that Te Patuwai consists of two distinct groups: Ngāi Te Hapū/Te Patuwai ki Motiti, and Te Patuwai ki Whakatāne.

3.3.7.3.1 *Claimant views on identity*

Ms Keepa said that Te Patuwai on Motiti have always had a distinct identity associated with Te Hapū, but she also acknowledged Te Patuwai's links with Ngāti Awa:

We have always been Motiti Patuwai, and have been fighting to keep this name. As kids, we heard the name, Te Hapū, and we all grew up knowing Patuwai was one of our hapū and that Ngāti Awa is one of our iwi. We all have several hapū and iwi.

Motiti is Te Hapū. The Te Hapū flag was always used.⁷³⁸

Ms Keepa also presented several waiata that had been composed on the island, and which were influenced by the experience of being an island culture and of travelling across the water to the mainland.⁷³⁹

Elaine Rangī Butler was born on Motiti, raised there by her grandparents, and continues to live on the island today. She told us that she descends from Ngāti Takahanga and Ngāti Makerewai, clarifying that these are 'hapū under the auspices of Ngāi Te Hapū'.⁷⁴⁰

Ms Butler is chair of the Motiti Marae Māori Reservation Trust, a role in which she said she represents Ngāti Makerewai at Te-Hiinga-o-te-Ra, and Ngāti Takahanga at Tamatea-ki-te-Huatahi.⁷⁴¹

On the issue of identity, Ms Butler strongly rejected the claim that Ngāi Te Hapū is an ancient and sleeping hapū who have been revived only recently. She told us she 'was brought up Ngāi Te Hapū', and recalled 'my father always said to us that Te Patuwai was an event, and then he would ask "but who is the tupuna? That is the key to your identity". We always knew our tupuna was Te Hapū. You cannot whakapapa to an event.'⁷⁴² Ms Butler gave further evidence that the Ngāi Te Hapū identity is alive and recognised by others: 'It is common knowledge that we are

737. Document A60, p 2

738. Document A19(a), p 5

739. Ibid, pp 28–30

740. Document A86, p 1

741. Ibid, p 2

742. Ibid, pp 1, 7

Ngāi Te Hapū. I go to a lot of tangihanga and people always mihi to me as Ngāi Te Hapū, including in Tauranga Moana.⁷⁴³

Ms Butler further asserted that she ‘has never classed [her]self as Patuwai’.⁷⁴⁴ She acknowledged that others identify as Te Patuwai and have a right to do so, but maintained that within Te Patuwai, those who descend from Te Hapū comprise a distinct group with a unique connection to Motiti: ‘I do accept that some choose to refer to themselves as ‘Patuwai’, but the question there is which tupuna you whakapapa to. If you can whakapapa to Te Hapū then you are Ngāi Te Hapū/Te Patuwai ki Motiti.’⁷⁴⁵

Ms Butler emphasised that the mana on Motiti derives solely from Te Hapū (‘Te mana o Motiti is Te Hapū’) and argued that Ngāti Takahanga and Ngāti Makerewai ‘are hapū of Ngāi Te Hapū, not Ngāti Awa’.⁷⁴⁶

As such, while accepting that many Whakatāne-based Te Patuwai – namely, those descended from Te Hapū – have rights on Motiti, she held that Ngāti Awa do not: ‘We acknowledge many of those in Whakatane whakapapa to Te Hapū and so they belong to Motiti, but the issue is that we do not want to see Ngāti Awa taking control of the island’.⁷⁴⁷

Mr Matehaere told us he is of Ngāi Te Hapū, Te Patuwai, Ngāti Makerewai, Ngāti Takahanga, Ngāti Pūkenga, Ngāi Tauwhao, Ngāti Whakahemo, and Tūwharetoa descent.⁷⁴⁸ In his view, Ngāi Te Hapū me ōna karanga hapū have a unique identity by virtue of their origins on Motiti Island.⁷⁴⁹ He acknowledged that Ngāi Te Hapū are Te Patuwai, but maintained they ‘are not a Whakatane-based iwi’, noting in support that ‘the Te Hapū flag is only flown on Motiti’.⁷⁵⁰ He went on to explain: ‘I have Ngāti Awa whakapapa, but the point is that when I stand on Motiti I am not standing there as Ngāti Awa, I stand as a Ngāi Te Hapū, Te Patuwai, Ngāti Makerewai, Ngāti Takahanga, Te Whānau a Tauwhao’.⁷⁵¹

Mr Matehaere further clarified that, for him, the question of identity as it relates to Motiti ‘is not about iwi and hapū . . . so much as being an islander, a “Motitian” if you will’.⁷⁵² He stated that, during his youth, ‘identity was never identified, never discussed’. He continued: ‘I did not understand the hapū name, Te Patuwai, until years later after I had left school. All we knew was that we were “from the island”. The island was our identity. . . . It wasn’t about Te Patuwai’.⁷⁵³

743. Ibid, p 5

744. Ibid, p 2

745. Ibid, pp 2–3

746. Ibid, pp 1, 2

747. Ibid, pp 2–3

748. Document A22, p 1

749. Document A82(b), p 1

750. Ibid

751. Ibid, pp 1–2

752. Ibid, p 2

753. Document A22, pp 4–5

Mr Matehaere gave an example of how this identity was expressed when he was growing up, recalling that during pōwhiri at Tamatea-ki-te-Huatahi Pā, the ‘common saying’ during the whaikōrero was ‘ko Motiti ki uta, ko Motiti ki waho’:

The haukāinga were always referred to as being ‘ki uta’, because we were standing on our tūrangawaewae looking out over the sea to the mainland. Those Motitians who were visiting the island were ‘ki waho’. Both the haukāinga and manuhiri spoke that way.⁷⁵⁴

According to Mr Matehaere, ‘the manuhiri always recognised those on the pae as the people of Motiti, they did not refer to Te Patuwai or any other hapū’.⁷⁵⁵

Mr Matehaere suggested that this Motiti-specific identity became less distinct when most people left the island in the mid-twentieth century: ‘The exodus to the mainland had unintended consequences. Many islanders moved to Whakatane, and looking back I think this is how the distinction between Te Patuwai tūturu and Te Patuwai ki Motiti became blurred.’⁷⁵⁶

Mr Matehaere claimed that a distinction between Te Patuwai ki Motiti and Te Patuwai tūturu (or Te Patuwai ki Whakatāne) can nevertheless be seen today.⁷⁵⁷ He argued that the rangatahi (youth) who grew up in Whakatāne as part of Ngāti Awa have a different outlook to his mokopuna who grew up in Tauranga,⁷⁵⁸ saying the latter ‘do not cite a Ngāti Awa pepeha. They still go to the island regularly, and they meet their relations from Whakatane when they go there.’⁷⁵⁹ He also told us he had never heard Te Hapū’s name mentioned at Toroa Marae until after the filing of the current claim (Wai 2521).⁷⁶⁰ Mr Matehaere further observed that nearly all the kaumātua involved in the Motiti Tribal Committee in the 1950s – all of whom lived on the island – came from different whānau than the Whakatāne-based kaumātua who took part in the Ngāti Awa settlement negotiations in the mid-1990s.⁷⁶¹ Claimant counsel explained that, while this did not mean the Whakatāne kaumātua did not also whakapapa to Motiti, it suggested a distinction remains between Te Patuwai ki Motiti and Te Patuwai ki Whakatāne.⁷⁶²

Lastly, Mr Matehaere expressed the view that Ngāti Awa’s Treaty settlement resources have led more Te Patuwai to affiliate with the iwi in recent years, under the influence of arrangements such as marae grants from the iwi – which, to his knowledge, began after the settlement.⁷⁶³

Nepia Ranapia gave evidence that ‘Te Patuwai ki uta’ and ‘Te Patuwai ki waho’

754. Document A82(b), p 2

755. Ibid

756. Document A22, p 10

757. Document A93, p 1

758. Document A82(b), pp 4, 5

759. Ibid, p 5

760. Ibid, p 3

761. Document A93, p 1

762. Submission 3.3.8, pp 43–44

763. Document A82(b), p 5

is a proverb expressing the distinction between Te Patuwai who live on their lands at Pūpūaruhe and those who are ‘from Motiti’, respectively. According to him, Te Patuwai in Whakatāne who identify as Tawhiwhi’s family call themselves ‘Te Patuwai tūturu (the true Patuwai)’.⁷⁶⁴

Ms Haimona explained that she ‘did not grow up knowing Ngāi Te Hapū’.⁷⁶⁵ She first learned of her whakapapa to Te Hapū and links to Ngāti Takahanga during a kōrero about whakapapa given by Nepia Ranapia at a wānanga on Motiti in 2009. Ms Haimona told us she had embarked on a process of learning her family history after her father died a year earlier,⁷⁶⁶ and that during his life, her father ‘did not say much about Motiti’.⁷⁶⁷

Reflecting on why ‘[w]hakapapa was not spoken about’ in her own and other claimants’ whānau, Ms Haimona spoke of an important development in the island’s history in the 1940s and 1950s – namely, ‘the Christian influence on those living on the Island’,⁷⁶⁸ many of whom became born-again Christians at that time. She suggested this led to a rejection of traditional knowledge, and relayed that one of her cousins from Motiti recalled ‘whakapapa records and taonga being taken outside and burnt’ during this time.⁷⁶⁹

Ms Haimona also reflected on why the Ngāti Awa identity has been dominant among whānau with links to Motiti:

for a long time, many people thought it was better for us to go with the mainland and identify as Ngāti Awa under Te Patuwai, rather than staying being Motiti. I believe this was because so few people knew our history, partly due to tribal politics, and partly due to the Crown only dealing with iwi.⁷⁷⁰

Daniel Ranapia told us he is of Ngāti Kauaewera, Ngāti Pau, and Ngāti Takahanga descent. He presented a whakataūāki from his grandfather’s kuia – Himiona Te Orenui’s daughter – which he said his grandfather had relayed to him through kōrero: ‘the true name of the people of Motiti is Ngāti Te Hapū’.⁷⁷¹

3.3-7-3-2 Interested parties’ views on identity

In her reflections on identity, Liza Faulkner argued that Te Patuwai are ‘one people’ and always have been. She told us that her ancestors’ whakapapa identifies ‘whānau that have a deep seated connection to both Whakatane and Motiti, as one people Patuwai, one that continues today’.⁷⁷²

Ms Faulkner also recounted that, in her years living on Motiti, she had never

764. Document A17, p 19

765. Document A21, p 6

766. Ibid, p 5

767. Ibid, p 3

768. Ibid, p 6

769. Ibid

770. Ibid

771. Document A27, p 3

772. Document A41, pp 4, 11

heard the terms ‘Te Patuwai ki uta, Te Patuwai ki waho’ and had not heard of Ngāi Te Hapū until after the *Rena* disaster: ‘The first time I heard of Ngāi Te Hapu was when Rangi Butler was at a Tribal meeting and stated that she was putting in a claim on behalf of Ngāi Te Hapu, when asked who they were, she replied it was an individual claim.’⁷⁷³

Similarly, Ms Evans told us her whānau regard ‘Te Patuwai hapu’ as the tangata whenua of Motiti and considers that ‘all previous hapu were superseded to be known as Te Patuwai.’⁷⁷⁴

In introducing her evidence, Ms Chapman spoke of her mamae at being ‘forced, by the very nature of the inquiry forum, to lay out my credentials and whakapapa’, saying it was at odds with Te Patuwai tikanga.⁷⁷⁵

Ms Chapman spoke of Te Patuwai ki Tai and Te Patuwai ki Uta, but rejected the claim that they are separate. On the significance of Motiti’s physical separation from the mainland, she maintained that ‘to . . . imply that a body of water disconnects Te Patuwai ki uta (Mōtiti urī) and Te Patuwai ki tai (Mōtiti urī) is absurd’⁷⁷⁶ and ‘incorrect from a tikanga, whakapapa and ahikā based point of view.’⁷⁷⁷ Ms Chapman explained that she agreed with Te Patuwai rangatira and tohunga that the moana is ‘merely a mass of land covered by water’, and that these underwater landscapes connect whakapapa and the people: ‘The first law of the land, and sea, is a fundamental Māori tikanga, that dictates that all domains of the natural world are inseparable.’

On the status of Ngāi Te Hapū, Ms Chapman claimed that the people now calling themselves Ngāi Te Hapū had revived or resurrected an ancient hapū – ‘a previous and now obsolete identity’⁷⁷⁸ – and that this revival is recent, having occurred since the *Rena* disaster.⁷⁷⁹ She acknowledged the possibility that Ngāi Te Hapū are a ‘conglomerate of hapū . . . linked by common whakapapa’ but argued that the revival of such a grouping is not legitimate unless carried out according to Te Patuwai tikanga. Elaborating, she said it is ‘impossible to exist as this entity without the proven mandate of the descendants of the ancient tribes of Motiti’, that is, without ‘a stringent process of tribal and/or hapū sanctioning’ that includes consultation hui and wānanga. She held that in bypassing this process, those calling themselves Ngāi Te Hapū had excluded Te Patuwai from their mana whenua and mana moana rights on Motiti.⁷⁸⁰

Ruihi Shortland, Puti Koopu, and Briton Williams, witnesses for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, also asserted that the physical distance between Motiti and Whakatāne was immaterial to their identity, and their responsibilities, as Te Patuwai: ‘we understand we are responsible to our mouere

773. Document A41, p 9

774. Document A40, p 2

775. Document A39, p 1

776. Ibid, p 26

777. Ibid, p 25

778. Ibid, p 9

779. Ibid, p 11

780. Ibid

regardless of our being on the mainland. . . . we do not see the ocean in between as some kind of border, as some kind of “ki” statement.’⁷⁸¹

Ms Dickson asserted that many iwi along the Bay of Plenty coastline recognise Motiti as Te Patuwai – that this ‘is common knowledge to everyone.’⁷⁸² She also expressed the view that the Te Patuwai identity is not tied to any one place, but is inherent in the people wherever they may be: ‘our whānau stance is that no matter where we are, we are Patuwai. As Patuwai being born and raised in Tauranga has made me no less Patuwai than my Whakatāne and Mōtiti whānau.’

As such, the Te Patuwai identity serves to unite people across different places:

When our Tauranga, Whakatāne and Mōtiti whānau have come together to represent Patuwai at events . . . it gives us all a sense of belonging and pride. When our kids are competing at school events with their respective schools, they too congregate towards each other under the umbrella of Patuwai . . . and that to me is when Patuwai as a people are one . . . when our rangatahi recognise and can interact with each other under a common bond even though they don’t really know each other because of the distances they actually live.⁷⁸³

Ngarongaro Wikepa, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, was born in 1951 in Tauranga, lives there currently, and is chair of the Motiti Marae Committee. Her parents and three of her grandparents were born on Motiti, and she lived there as a child and later, as a parent, in the 1980s. She argued that the extent to which Te Patuwai people have moved between Motiti and the mainland, and/or taken part in activities to support the tribe at both Motiti and Whakatāne, belies the claim that only those who live on the island today have genuine rights to Motiti:

To say that the present occupants are the ahi kā of Mōtiti simply because they are living there now and they are the only people who should be consulted with, is absolute rubbish. All our whānau have a right to be involved. One must also acknowledge the many hūnaonga ō ngā whānau ō roto i Te Patuwai past and present who have contributed largely to the Te Patuwai whānau/whānui and its tribal affairs at Whakatāne and Mōtiti.

I have two brothers who live on Mōtiti. . . . They retired to the island just like [some of the claimants] because that is home but more importantly because their whakapapa allows them to. . . . During this time my brothers too have played their part in the community, labour and otherwise, [but] they would never call themselves ahi kā and rightly so as many other whānau have come and done their bit and moved on, i.e. back to the mainland.⁷⁸⁴

781. Document A47, p 4 o

782. Document A60, p 7

783. Ibid, pp 12–13

784. Document A51, p 8

3-3-7-3-3 Views on the nature and role of Te Patuwai Tribal

Relevant to the issue of identity are witnesses' views on whether Te Patuwai Tribal has traditionally encompassed Te Patuwai at Whakatāne only – as the claimants argued – or Te Patuwai as a whole – as the interested parties opposing them maintained.

Ms Keepa stated that, up until Te Rūnanga o Ngāti Awa was formed, Te Patuwai in Whakatāne 'never interfered' in Motiti issues. She said that, as frequent visitors to Motiti, Whakatāne Te Patuwai understood that Motiti islanders 'always ran their own affairs' and preferred to do so.⁷⁸⁵

Several claimants used the whakatauākī 'Mā Motiti, mō Motiti'. Mr Matehaere told us it means 'by Motiti, for Motiti', and expresses the view that interests in Motiti and the responsibility to exercise them lie with the people of the island: 'it is all about Motiti. It was not about Te Patuwai or other interests'.⁷⁸⁶ He and Graham Hoete, a kaumātua and longstanding permanent resident of Motiti, also interpreted the whakatauākī to mean 'only Motiti can make decisions for Motiti'.⁷⁸⁷ We heard evidence that this was a modern rather than traditional whakatauākī, with Ms Keepa and Erena Nuku Ulu, a witness supporting the claimants, both saying it was created by John Nuku, a founding member of the Motiti Rohe Moana Trust.⁷⁸⁸

By contrast, Ms Dickson gave evidence that Te Patuwai Tribal 'was our traditionally recognised authority over our three marae and all its uri' and that Te Patuwai 'moved as one people, one hapu with the support of the Tribal when issues arose'. (It had done so, for example, in opposition to proposals to sink the *Taioma* as a dive site near Motiti in 2000 and to subdivide southern Motiti in the mid-1990s, and following the *Rena* disaster of 2011.)⁷⁸⁹

Similarly, Ms Wikeepa maintained that Te Patuwai Tribal is 'an old institution' created by the hapū 'as a result of having three tipuna whare'. She told us that, when the three marae/whare report back to Te Patuwai Tribal, this 'is simply the hapū collective coming together as a whole'.⁷⁹⁰ She emphasised that Te Patuwai Tribal and mainland Te Patuwai have 'always featured' in the activities of the island and 'are and have always been party to any work, hui, (ahi kā) at Motiti'.⁷⁹¹

Liza Faulkner clarified that, in her understanding, Te Patuwai Tribal was set up to maintain the three marae but also to 'look after the interests' of Patuwai on Motiti and wherever else they live.⁷⁹²

785. Document A84, pp 2, 3

786. Transcript 4.1.2, pp 367–368

787. Document A20, p 6; doc A22, p 38

788. Document A21, p 16; see also doc A43(a), p 12

789. Document A60, pp 2–3

790. Document A51, p 6

791. Ibid

792. Document A41, p 8

3.4 WHO ARE THE TANGATA WHENUA: THE PARTIES' POSITIONS

3.4.1 The claimants

The claimants argued that the descendants of Te Hapū who became known as Ngāi Te Hapū were, and continue to be, the tangata whenua of Motiti Island. Ngāi Te Hapū include the karanga hapū – the hapū born on Motiti, who are Ngāti Takahanga, Ngāti Makerewai, Ngāti Kauaewera, and Ngāti Pau.⁷⁹³ The claimants asserted that Ngāi Te Hapū derive their mana on Motiti through the customary rights of whakapapa, Te Hapū's lifting of the tapu, turangawaewae, and ahi kā roa.⁷⁹⁴

On the issue of identity, the claimants accepted that, at some point, Ngāi Te Hapū and some Whakatāne-based tangata whenua became collectively known as Te Patuwai. However, they argued that these groups thereafter retained distinct identities and separate tribal estates at Motiti and Whakatāne (respectively) and did not merge to become one people with one rohe encompassing both places.

As such, the claimants clarified that they are 'not saying that they are not Te Patuwai' but, rather, that 'Ngāi Te Hapū is a more accurate way of identifying those who whakapapa to Motiti'.⁷⁹⁵ They argued that the Te Patuwai identity embraces other hapū, and that Te Patuwai is best understood as a confederacy of hapū rather than a tribal identity.⁷⁹⁶ They claimed that Ngāi Te Hapū and Te Patuwai are not synonymous, arguing instead that Ngāi Te Hapū are 'Te Patuwai ki Motiti', as distinct from 'Te Patuwai ki Whakatāne'. According to the claimants, the key to this distinction is that not all Te Patuwai ki Whakatāne whakapapa to Ngāi Te Hapū.⁷⁹⁷

The claimants further argued that Ngāi Te Hapū/Te Patuwai ki Motiti affiliate not only to Te Patuwai ki Whakatāne but equally strongly to other mainland iwi, including Waitaha, Ngāti Pikiao, Ngāti Whakahemo, Ngāti Pūkenga, and Ngāti Maru.⁷⁹⁸

The claimants acknowledged their whakapapa links to Ngāti Awa but contended that not all Ngāi Te Hapū affiliate with Ngāti Awa and that Ngāti Awa have no mana on Motiti.⁷⁹⁹

Finally, the claimants argued that the Crown's actions – in particular, its preference to deal with larger iwi groups – have played a part in obscuring the distinct identity of Motiti tangata whenua. They acknowledged that many tangata whenua affiliate with Ngāti Awa but contended it is 'highly likely that the way that tangata whenua identify today has been influenced by the Crown's failure to recognise and engage with Motiti directly'.⁸⁰⁰ Claimant counsel also acknowledged that Te Whānau a Tauwhao have 'historical associations' with Motiti.⁸⁰¹

793. Submission 3.3.8, p 1

794. Ibid, p 10

795. Ibid, pp 20–21

796. Ibid, p 21

797. Ibid, p 42

798. Submission 3.3.15, p 6

799. Submission 3.3.8, pp 30, 37, 42

800. Submission 3.3.15, p 30

801. Submission 3.3.8, p 30

3.4.2 The Crown

The Crown did not express an opinion on the issue of who are the tangata whenua of Motiti. It submitted that, in the face of strongly disparate views, it is not for the Crown to decide who is correct in matters of whakapapa, whether in the Treaty settlement or any other context. The question of who are the tangata whenua on Motiti, the Crown submitted, is a matter that it cannot and should not take any further at this point.⁸⁰² It supported the claimants' decision to refer this question to the Tribunal.⁸⁰³

3.4.3 The interested parties

3.4.3.1 *Ngā Hapū o te Moutere o Motiti (Aiavao and others)*

Counsel for Ngā Hapū o te Moutere o Motiti (Aiavao and others) argued that the tangata whenua of Motiti Island and its surrounding waters are Ngāi Te Hapū, being a collective of Ngāti Makerewai, Ngāti Takahanga, Ngāti Kauaewera, and Ngāti Pau. Counsel also referred to this collective as 'Te Patuwai at Motiti', supporting the claimants' position that Te Patuwai consists of two distinct groups.⁸⁰⁴

Counsel stated that her clients supported the claimants' submission that Te Whānau a Tauwhao also have historical associations with Motiti.⁸⁰⁵

3.4.3.2 *Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, Rauahi and Aporina Whānau Trust, Faulkner whānau*

Counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, the Rauahi and Aporina Whānau Trust, and the Faulkner whānau argued that the tangata whenua of Motiti were, and continue to be, Te Patuwai.⁸⁰⁶

Counsel for the Faulkner whānau submitted that the tangata whenua are 'the descendants of those who received interests in the Motiti North block in the 1890s'⁸⁰⁷ and argued that these people identified, and still identify, as Te Patuwai.⁸⁰⁸ He held that within this common identity, sub-hapū had customary land rights on Motiti Island and at Whakatāne, but 'all of these peoples ultimately identified as Te Patuwai'. In his view, this common identity evolved due to the 'kinship and strategic connections between Motiti peoples and those on the mainland'.⁸⁰⁹

Similarly, counsel for the Rauahi and Aporina Whānau Trust argued that Te Patuwai are 'one group' and that they have interests on both the island and the mainland.⁸¹⁰

Counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, and the Rauahi and Aporina Whānau Trust, argued that Ngāi Te Hapū have not functioned as a

802. Submission 3.3.8, p 11

803. Ibid, p 15

804. Submission 3.3.13, pp 7, 23

805. Ibid, p 21

806. Submission 3.3.9, p 3; submission 3.3.10, p 2; submission 3.3.12(b), p 38

807. Submission 3.3.9, p 3

808. Ibid, p 5

809. Ibid, p 6

810. Submission 3.3.10, p 1

distinct tribal group since they took the name Te Patuwai.⁸¹¹ According to these parties and to the Faulkner whānau, claims that a distinct, Motiti-based tribal group exists have emerged only recently and represent an attempt to revive an ancient hapū.⁸¹² According to the Faulkner whānau, the claimants have revived Ngāi Te Hapū ‘in an attempt to create a group apart from Te Patuwai in dealings with the Crown.’⁸¹³

On the question of Ngāti Awa’s relationship to Motiti, counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa rejected the claimants’ argument that Ngāti Awa have no mana on Motiti.⁸¹⁴ Counsel asserted that Ngāti Awa is a confederation or collective of hapū, and it is wrong to say that Ngāti Awa, as a collective, claims Motiti or any other lands. Rather, each hapū of Ngāti Awa holds mana over themselves and their whenua and moana. Accordingly, the rūnanga and other hapū of Ngāti Awa defer to Te Patuwai and Ngāti Maumoana on matters relating to Motiti. The iwi becomes involved in hapū-related matters only when invited, or when Crown policy or law requires iwi-level involvement.⁸¹⁵

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa acknowledged that Te Whānau a Tauwhao are tangata whenua of Motiti,⁸¹⁶ while the Faulkner whānau acknowledged they have traditional interests in Motiti.⁸¹⁷

3.4.3.3 *Ngāi Te Rangi Settlement Trust/Te Whānau a Tauwhao*

The Ngāi Te Rangi Settlement Trust submitted that Te Whānau a Tauwhao are tangata whenua of Motiti, along with Te Patuwai. They also acknowledged that the two groups are closely linked by whakapapa.⁸¹⁸

3.5 WHO ARE THE TANGATA WHENUA: TRIBUNAL ANALYSIS AND FINDINGS

Having presented an account – drawn from the evidence available to our inquiry – of the history of the peoples of Motiti and some of the contemporary issues they have faced, and outlined the parties’ positions on what this evidence reveals, we now turn to the task of determining who the tangata whenua of Motiti are. We begin by considering what it means to be tangata whenua in general, before explaining how we approach our specific task (in section 3.5.2). We then comment on the crucial matters in dispute, before setting out our determination.

3.5.1 What does it mean to be ‘tangata whenua’?

Tangata whenua is a term and concept commonly used and understood, not only in te ao Māori but in contemporary Aotearoa. However, identifying who are the

811. Submission 3.3.12(b), p 69; submission 3.3.10, p 2

812. Submission 3.3.12(b), p 69; submission 3.3.9, p 3; submission 3.3.10, p 2

813. Submission 3.3.9, p 3

814. Submission 3.3.12(b), p 36

815. Ibid

816. Ibid

817. Submission 3.3.9, p 4

818. Submission 3.3.11, paras 5, 7–8, 10

tangata whenua of a particular area is not a straightforward task. It includes considering the exercise of mana whenua and mana moana.

Several witnesses gave accounts of what it means to be tangata whenua of any given area, and the principles on which tangata whenua status rests. Most focused on what it means to hold mana whenua and mana moana, reflecting the view that the tangata whenua of a particular area comprise whānau, hapū, and iwi who have mana or authority in that area. These accounts had much in common. The following are representative of the views we heard.

Dr Moana Jackson, technical witness for the claimants, identified certain principles ‘developed within tikanga’ which determine how mana moana and mana whenua may be acquired and retained.⁸¹⁹ These include place, ancestral connection, intimate association, and tūrangawaewae. In Dr Jackson’s view, both forms of mana emerge fundamentally from the relationship between people and place:

to have mana moana depended more upon the relationship a people established over time with the mana of a particular seascape, as well as the ways in which that relationship was marked through history and tradition. It was the intimate knowledge and respect for place and sea which established the whakapapa entitlement and which most ensured that it was held and exercised according to tikanga as law.⁸²⁰

Claimant witness Nepia Ranapia told us that mana whenua and mana moana may be derived from certain take (customary rights): whakapapa, ahi kā roa, tūrangawaewae, and (in the case of Motiti) te hikinga o te tapu (the lifting of the tapu). He defined tūrangawaewae as ‘the place where the hapū have rights of residence and belonging through whakapapa, rights derived from walking in the footsteps of the ancestor who gave the people their rights.’⁸²¹

Other witnesses outlined the basis on which people hold mana on Motiti in particular, but their accounts implicitly suggested underlying general principles about how mana whenua and mana moana may be acquired and held.

Claimant Mr Matehaere defined Motiti tangata whenua as ‘Māori who whakapapa to a hapū of Motiti’, suggesting that the tangata whenua of a given area are those who whakapapa to that land.⁸²²

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa witness Dr Ngaropo told us that the term ‘tangata whenua’ refers to ‘the people of the land, the hapū and indeed all Māori throughout the country’ and is a concept acknowledging that Māori ‘originate from the land, no matter who it is and no matter where they are from’. Mana whenua, by contrast, relates to ‘our mana to the deities, to the land, and to the ancestors’. Mana whenua may be acquired in various ways, including lighting a fire in a particular place (establishing ahi kā), occupying that place for a long

819. Though his evidence focused on the holding of mana moana, Dr Jackson expressed the view that the relevant principles apply to mana whenua also: doc A18, p 29.

820. Document A18, p 29

821. Document A17, pp 8–9

822. Transcript 4.1.2, p 311

time, naming the land, and working the land to care for one's people. Dr Ngaropo clarified that a person not living on the land may still have mana on it through descent from an ancestor who held mana there.⁸²³

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa witness Mr Takotohiwi spoke of the way in which mana – over the deities, over the land, over the seas, and over the people – exists 'within the marae'. He explained that when people leave Aotearoa they 'leave the mana at their marae'.⁸²⁴

We recognise all these accounts of what it means to be tangata whenua and to hold mana whenua and mana moana, and agree they are key to our considerations.

3.5.2 How we approach the task of determining the tangata whenua of Motiti

As noted in section 3.1, much of the evidence concerning the history of Motiti and the surrounding area is not in dispute. On the other hand, there are instances where accounts of historical events differ. We would be surprised if this were not the case. Throughout Aotearoa, each tribal group holds their own traditions, reflecting the significance they attach to particular leaders and events in their past, to their whakapapa links and political relationships with other groups, and to their connections to their land and waterways.

Our challenge is to address the conflicting evidence and arguments in a way that allows us to answer the question before us. We do so by looking at the key points of difference between the traditions or accounts to see what they reveal about tribal identity. Our aim is to clarify whether Te Patuwai are two distinct groups – Ngāi Te Hapū (Te Patuwai ki Motiti) and Te Patuwai ki Whakatāne – with separate tribal identities and separate rohe at Motiti and Whakatāne (respectively); or a unified tribe which has one rohe encompassing both places, and which affiliates to Ngāti Awa. Clarifying these questions is critical to determining whether Ngāi Te Hapū (Te Patuwai ki Motiti) or Te Patuwai as a whole are tangata whenua of Motiti, and Ngāti Awa's relationship to the island. After drawing conclusions on these central questions, we also consider the status of Te Whānau a Tauwhao and Ngāti Maumoana on Motiti.

Though we focus on the differences between the traditions or accounts, we also keep firmly in view the points where they align. As has become clear from the breadth of evidence we received, there is remarkable consistency in the traditions of Motiti held by different groups. These common points provide a significant body of evidence about the history of the peoples of Motiti and their relationships with one another, and thus a foundation upon which we can base our analysis. Understanding these common points also equips us to assess the significance of the differences between traditions, when it comes to identifying who the tangata whenua are.

In comparing and contrasting the various traditions, we have no intention of trying to meld them together to produce a definitive version, much less to decide which tradition is the 'right' one. Much of the evidence presented to us is 'kōrero i

823. Transcript 4.1.4, pp168–171

824. Ibid, p207

tuku iho, or traditions handed down from ancestors, and it has been long understood that it is inappropriate to analyse such traditions with these purposes in mind.

But this is not to say that historical traditions never change. They are subject to interpretation and reinterpretation over time. This is the case also in this inquiry, where a number of witnesses gave evidence about the significance of particular traditions that are important to them. Where appropriate, we critically consider witnesses' interpretations of the traditions. We also consider the overall consistency of the traditions, and the consistency of individual witnesses' statements about what the traditions signify.

3.5.3 Tribunal discussion of crucial differences between traditions or accounts

In this section we comment on the main points of contention on the question of who are the tangata whenua of Motiti. As noted, these disputed matters generally arise from differing traditions of the past held by tribal groups. Others, however, reflect changes in a witness's position over time, and we note where this is evidently the case.

3.5.3.1 Early settlement of Motiti

As we have shown, the parties largely agreed on the early settlement in the Whakatāne area, but differed on the early settlement of Motiti.

Dr Ngaropo gave evidence that Toi and Awanuiārangi I were early occupants of the island. Dr Ngaropo also referred to Toi, Awanuiārangi I, and his son Awatope travelling to Motiti together and building a pā there called Te Hoe o Awatope (see, for example, sections 3.2.1 and 3.2.6.2).

This evidence was rejected by the claimants in our inquiry. However, elsewhere, Nepia and Daniel Ranapia had formerly expressed a similar view: in the Motiti hapū management plan in 2012, they stated that Awanuiārangi I lived on Motiti alongside the Parehua Upanepane people, and that Motiti was among the many territories over which Toi reigned.⁸²⁵ A map of documented place names of Motiti Island, created by Nepia and Daniel Ranapia, also records a site called 'Te Hoe Awatope'.⁸²⁶

The claimants' inconsistent evidence on this point is somewhat troubling.

3.5.3.2 Awanuiārangi I

There is no dispute that Ngāti Awa descend from Awanuiārangi I. However, other iwi descend from Awanuiārangi as well. The claimants' evidence is that Te Hapū descends from Awanuiārangi I but is not Ngāti Awa. Dr Ngaropo's evidence is that, if you descend from Awanuiārangi I, you are Ngāti Awa. Dispute therefore exists as to the significance of descent from Awanuiārangi I. The claimants argue that Awanuiārangi I was the principal tipuna of the early Ngāti Awa but not the

825. Document A89(a), p 2; Ranapia, Ranapia, Ranapia, Rogers, Waldon, Ngawhika, and Matahaere, *Motiti Island Native Resource Management Plan*, p 29

826. Document A17, p 59

modern Ngāti Awa, who they say comprise only a subset of Awanuiārangi i's descendants – namely, those who descend from Awanuiārangi ii.

This argument is significant to our inquiry as, on the claimants' evidence, Te Hapū descends from Awanuiārangi i but not Awanuiārangi ii. We note that we are not considering here whether Awanuiārangi i is a Ngāti Awa tipuna as defined in the Ngāti Awa Claims Settlement Act 2005. That is a matter for chapter 4 (to the extent it is relevant there).

Despite the claimants' concern, the evidence is clear that Awanuiārangi i is a Ngāti Awa tipuna. That is not in dispute. This is also reflected in the way that Ngāti Awa express their identity.

When giving evidence before us, Dr Ngaropo traced Ngāti Awa's origins back to the time of Maui-tikitiki-a-taranga.⁸²⁷ Dr Ngaropo recited whakapapa from Maui to Toi, and then to Awanuiārangi i. He recited further whakapapa from Awanuiārangi i to Toroa (the captain of the *Mataatua* waka) and down to Awanuiārangi ii. He also recited further whakapapa lines to each of the principal tipuna for the Ngāti Awa hapū. Woven into Dr Ngaropo's evidence was kōrero on the use and occupation of tribal lands by those tipuna and how it relates to Ngāti Awa today.

It is clear to us that Dr Ngaropo, and Ngāti Awa, do not assert that their history starts at Awanuiārangi ii. Rather, they trace their descent from the earliest ancestors to arrive in Aotearoa. This is consistent with the approach taken by many other iwi. The accomplishments of those early ancestors form part of the Ngāti Awa story and the Ngāti Awa identity today. Awanuiārangi i is an integral part of that story. He is a significant tipuna for Ngāti Awa.

That is not to say that all of Awanuiārangi i's descendants are part of the modern day Ngāti Awa, as opposed to the original tribal groups, Te Tini o Awa or the early Ngāti Awa (that occupied the far north). The evidence clearly shows that other significant iwi, such as Tūhoe, Te Ati Awa, Ngāti Ranginui, and Ngāti Kahungunu, also share descent from this tipuna. But those shared whakapapa lines do not mean that Awanuiārangi i is not a significant tipuna in the Ngāti Awa identity.

There are other paramount tipuna in the Bay of Plenty, and elsewhere, from whom multiple iwi similarly descend. For example, Tamatekapua is undoubtedly a paramount tipuna for Te Arawa.⁸²⁸ However, not all of his descendants are Te Arawa. Te Whānau a Apanui also descend from him,⁸²⁹ but that does not make Tamatekapua any less significant in the Te Arawa kōrero.

Accordingly, we accept that Awanuiārangi i is a significant, and founding, ancestor of Ngāti Awa. We also accept that not all of his descendants are part of the modern Ngāti Awa iwi.

827. In fact, Dr Ngaropo started his whakapapa from Io-Matuakore: doc A64(a), pp 5–6.

828. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 19–20

829. Eruera Stirling and Anne Salmond, *Eruera: The Teachings of a Maori Elder* (Auckland: Penguin, 2005), pp 43–44

3-5-3.3 Does Te Hapū descend from Awanuiārangi 11?

It is accepted that Te Hapū descends from Awanuiārangi 1. However, the evidence before us as to whether Te Hapū descends from Awanuiārangi 11 – generally considered a principal Ngāti Awa ancestor – is clearly contested.

Most of the witnesses told us that Te Hapū's paternal grandmother was Tawhia (Ueimua's first wife). On this descent line, Te Hapū descends from Awanuiārangi 1 but not Awanuiārangi 11. However, Dr Ngaropo recited whakapapa identifying Te Hapū's paternal grandmother as Tapa (Ueimua's second wife). On this descent line, Te Hapū descends from Awanuiārangi 1 and 11. This whakapapa was strongly disputed by the claimants and their witnesses.

It is always difficult to resolve a genuine dispute about whakapapa. Such matters are usually reserved for kaumātua and tribal experts rather than judicial bodies. At this stage, we simply note that Te Hapū descends from Awanuiārangi 1 and there is a dispute as to whether he descends from Awanuiārangi 11. Despite this, it is clear that, even on the claimants' evidence, Te Hapū is closely related to Awanuiārangi 11 (his great grandfather Tamatea-ki-te-Huatahi was Awanuiārangi 11's half-brother). At the very least, this indicates a strong connection to Ngāti Awa.

There is also a further whakapapa connection between Te Hapū and Ngāti Awa. Witnesses for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa assert that Te Hapū's first wife Waipai was Ngāti Awa. This was rejected by Nepia Ranapia. In cross-examination, Mr Ranapia accepted that Waipai descends from Ueimua (through his son Te Kato a-Tawhaki) but would not commit to whether she was Ngāti Awa. This is despite earlier statements by Nepia and Daniel Ranapia and others that Waipai was Ngāti Awa.⁸³⁰

Even if Waipai is Ngāti Awa, that does not mean (on that connection alone) that Te Hapū is Ngāti Awa. However, this does further demonstrate the close connections between Ngāti Awa and Te Hapū. It also demonstrates that Te Hapū's son to Waipai, Manu Tuhira, is Ngāti Awa through his mother. As noted, Manu Tuhira and his half-brother Roropukai (from Te Hapū's second wife) went on to found the karanga hapū of Ngāi Te Hapū.

We also note that the Motiti marae and wharehenui Te-Hiinga-o-te-Ra, built by the karanga hapū Ngāti Makerewai, is named after Awanuiārangi 11's father. This choice of name also demonstrates the close links between Ngāti Awa and the karanga hapū of Ngāi Te Hapū.

In sum, while it is not clear whether Te Hapū descends from Awanuiārangi 11, it is clear to us he had strong whakapapa links to Ngāti Awa, including to Awanuiārangi 11. Further, his Ngāi Te Hapū descendants through his union with Waipai may link to Ngāti Awa through her.

3-5-3.4 Ngāti Ruaroa and Ngāti Awa

There is dispute about the tribal identity of Ngāti Ruaroa – the people whom Te Hapū led to Motiti and whom thereafter became Ngāi Te Hapū. Te Patuwai Tribal

830. Ranapia, Ranapia, Ranapia, Rogers, Waldon, Ngawhika, and Matahaere, *Motiti Island Native Resource Management Plan*, p 31

and Te Rūnanga o Ngāti Awa assert that Ngāti Ruaroa were Ngāti Awa. This is due to the hapū's descent from Ueimua, whom Te Patuwai Tribal and Te Rūnanga o Ngāti Awa say was a significant Ngāti Awa ancestor. They also point to the hapū's occupation of Ōhiwa, which they assert is a Ngāti Awa area.

By contrast, claimant witnesses argued that Ueimua occupied Te Urewera as Ngāi Tūranga.⁸³¹ In particular, Daniel Ranapia argued that the Ngāti Awa tribal identity had not emerged in the Urewera area – and possibly not in the Whakatāne area – at the time of Te Hapū and so it is inaccurate to describe Ueimua's descendants as Ngāti Awa. Daniel and Nepia Ranapia previously recorded a different view, however; in the Motiti hapū management plan, they stated that Ngāti Ruaroa were a 'Hapū of Ngāti Awa', and that the Whakatāne area where Ngāti Ruaroa lived under Te Hapū's leadership – Te Horanga, at Ōhiwa Harbour – was 'a territory of Ngāti Awa'.⁸³² Again, we note the inconsistency in these witnesses' statements.

While the claimants disagreed that Ueimua himself was Ngāti Awa, they did not contest Tā Hirini's claim that the descendants of Ueimua populate many hapū of Ngāti Awa.⁸³³

3.5-3-5 The heke

The main point of disagreement between the parties was whether the heke, which both the claimants and the interested parties said Te Hapū participated in, can be characterised as a Ngāti Awa heke. The claimants contend it is not accurate to do so as it involved other iwi, not just Ngāti Awa. Te Patuwai Tribal and Te Rūnanga o Ngāti Awa witnesses assert that Maruahaira and Ngāti Whakahemo – with whom Te Hapū was closely associated and (in some accounts) accompanied on the heke – were formerly considered Ngāti Awa, and that their Waitaha links were emphasised only later in the Native Land Court.⁸³⁴ These witnesses also alleged that most sources show Ngāi Te Rangi were initially part of the Ngāti Awa confederation. The claimants rejected this argument more generally, but they accepted that Te Rangihouhiri was Ngāti Awa.⁸³⁵

We appreciate the argument that Te Patuwai Tribal and Te Rūnanga o Ngāti Awa are making here. In essence, they say, those tīpuna and their tribal groups were, at that time, part of the Ngāti Awa confederation; thus the heke was a Ngāti Awa one. While there is substance to that argument, it is also clear that Maruahaira went on to found Ngāti Whakahemo and Te Rangihouhiri went on to found Ngāi Te Rangi. Both are separate and distinct tribal identities today. Undoubtedly, the heke also forms an important part of their tribal history.

As such, we cannot say that this was exclusively a Ngāti Awa heke, but we do accept that significant Ngāti Awa tīpuna were involved and this is an important part of the tribal history for all of those iwi.

831. Document A83, pp 37–38

832. Document A83(b), p 12; Ranapia, Ranapia, Ranapia, Rogers, Waldon, Ngawhika, and Matahaere, *Motiti Island Native Resource Management Plan*, p 29

833. Document A85(b), pp 29–30; see also transcript 4.1.2, pp 77–79

834. Document A85(b), pp 5–7; submission 3.3.12(b), pp 26–27

835. Submission 3.3.8, p 32; submission 3.3.1, p 8; transcript 4.1.2, p 69

3.5.3.6 *Lifting the tapu on Motiti*

As noted, all parties agreed Te Hapū lifted the tapu on Motiti when he migrated there. They disagreed about whether he did so relying on his Waitaha whakapapa, or under the mana and on behalf of Ngāti Awa/Te Patuwai.

The claimants argued that the lifting of the tapu is an important part of, and abiding basis for, the distinction between Ngāi Te Hapū and Ngāti Awa, while Te Patuwai Tribal and Te Rūnanga o Ngāti Awa rejected this view.

We leave this matter here, as we have no further evidence on it. Moreover, even if we had, we do not consider this would help settle the question of who are the tangata whenua on Motiti. We say this because, while the lifting of the tapu is clearly an important element in the history, and of much significance to the claimants, it is not the only determinant of the tribal affiliation of Te Hapū's descendants up to the present day.

3.5.3.7 *The origins of Te Patuwai*

The claimants and interested parties acknowledged that the battle at sea known as Te Patuwai brought together the descendants of Te Hapū (Ngāi Te Hapū) and the Ngāti Awa peoples of Whakatāne under the name Te Patuwai. In one version, these groups were always together, the battle of Te Patuwai having occurred before Te Hapū settled Motiti. In another version, they came together later, the battle having occurred well after Ngāi Te Hapū became established on Motiti. Accounts of the exact hapū involved in the battle also varied. The main point, however, is that the event cemented the relationship between those involved. This is confirmed in evidence given in the Native Land Court, including that of Tiaki Rewiri.

As already noted, a central question in this inquiry is whether this and subsequent events saw these groups merge into a unified tribal grouping called Te Patuwai, or whether they took that name but retained separate, distinct tribal identities with separate tribal estates. We return to this question later in this chapter.

We also recognise that, in some accounts at least, Ngāti Whakahemo and Ngāti Pūkenga participated in the battle and the Te Patuwai alliance. The claimants assert that, despite their participation, they were not subsumed into Ngāti Awa and retained their distinct tribal identities. While there is evidence to support Ngāti Whakahemo and Ngāti Pūkenga's participation in the Te Patuwai alliance, we consider that their situation is different from that of Te Patuwai on Motiti and at Whakatāne. First, it is the latter group, and not the former, who adopted Te Patuwai as their principal tribal name and carry it today. Also, there are numerous other events and factors – aside from the name they share – that connect Te Patuwai on Motiti with Te Patuwai in Whakatāne, and these connections strengthen over time. We return to this point below.

3.5.3.8 *The Ngāpuhi raids and the New Zealand Wars*

The parties agree that islanders largely abandoned Motiti during the Ngāpuhi raids and the New Zealand Wars. But they disagree as to who they stayed with during this time – Whakatāne-based people(s) who were part of Te Patuwai, or Te Arawa

groups.⁸³⁶ This evidence is significant because it relates to the question of whether the islanders had a close relationship with other Te Patuwai peoples at the time of the raids and further integrated with them during their stay on the mainland.

Nepia Ranapia asserted the families who did go to Whakatāne lived with Ngāti Pūkeko. Mr Koopu, for Te Patuwai Tribal Committee and Te Rūnanga o Ngāti Awa, said they lived with their Ngāti Maumoana kin, continuing to intermarry and further consolidating and binding their whakapapa.

There is little other evidence demonstrating who whānau lived with after leaving Motiti. The evidence suggests that not all Motiti whānau went to Whakatāne after the raids; some may have moved to other areas and lived with other Mataatua and Te Arawa whanaunga. However, the parties agree that at least some displaced whānau went to Whakatāne. While the claimants do not accept that Te Patuwai on Motiti and Te Patuwai in Whakatāne are one and the same, they do accept they were closely related by intermarriage. Their close connections have been demonstrated through whakapapa, and throughout the series of historical events (previously referred to) leading up to this exodus.

For all these reasons, we consider it probable that whānau who left the island and went to Whakatāne did live with their Te Patuwai (Ngāti Maumoana/Ngāti Ikapuku) relations there, further strengthening those bonds. This would have also occurred when Te Patuwai families left the island again in the 1950s looking for work, and in the 1960s due to the impact of the black rot.

3.5.3.9 Tribal committees

Evidence about the formation and function of tribal committees involved with Motiti is important to our considerations, as it indicates which tribal groups and forums have exercised kaitiakitanga on the island, and under what tribal names. The claimants do not dispute the existence and operation of the Te Patuwai Tribal Committee. But they do dispute that it was based on Motiti from 1903 to 1940 (when it moved to the mainland due to most Te Patuwai whānau relocating there, according to Mr Takotohiwi). Mr Matehaere asserted a different tribal forum operated on the island during this time, namely 'Motiti Tribal'.

The Motiti Island Tribal Committee was created in the late 1940s pursuant to the Māori Social and Economic Advancement Act 1945. As such, it could not have been operating at the time Mr Matehaere was referring to. It is possible that an unconstituted Motiti tribal committee was operating before the late 1940s, but beyond Mr Matehaere's assertion, we saw no evidence to suggest this. Documents and recollections he presented to support his claims about Motiti Tribal's existence all related to the period after 1950.

According to evidence from Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, as well as from Nepia Ranapia, what became known as the Te Patuwai Tribal Committee was established in 1891 (its original name was the Patuwai Native Tribal Council, which it used until the 1930s). We saw evidence of committee

836. To clarify, we are not considering who Te Whanau a Tauwhao lived with during this time.

chairs dating back to 1891 and minutes of a Te Patuwai Tribal Committee meeting in 1933, which recorded:

I tu te hui o te hapu o Te Patuwai, ki Motiti me Pupuaruhe, kia Toroa. Ko te kau-papa o tenei hui he whaka kotahi i te hapu o Te Patuwai, mai i Motiti ki Whakatane nei, i ana mahi, i ana tikanga, i ana whakahaere katoa.⁸³⁷

A gathering of all the subtribes was arranged for Patuwai residing on Motiti to Pupuaruhe through to Toroa. The reason for the gathering was the bringing together of the various hapu associated with Te Patuwai both from Motiti and Whakatane in all their endeavours, protocols and management.

We find this evidence compelling. It shows not only that the Te Patuwai Tribal Committee was operating at this early time but also that it was doing so for both Te Patuwai on Motiti and Te Patuwai in Whakatane. This arrangement continued until the creation of the Motiti Island Tribal Committee in the late 1940s, which then took over the administration of the island until the committee became inactive in about 1968.

The evidence also demonstrates that, while the Motiti Island Tribal Committee was operating, the Te Patuwai Tribal Committee focused on Te Patuwai in Whakatane. With the demise of the Motiti Island Tribal Committee, the Te Patuwai Tribal Committee resumed its wider role of administering affairs on both the mainland and the island.⁸³⁸

While Mr Matehaere argued that, from that point on, the Te Patuwai Tribal Committee did not legitimately represent Te Patuwai on the island (nor had ever represented them traditionally), this is at odds with evidence clearly showing that the marae on Motiti continued to report back to the Te Patuwai Tribal Committee, including while Mr Matehaere was a marae trustee.⁸³⁹ They still operate in this manner today.

3.5.3.10 *The flags at Motiti*

The parties agree that flags are flown on the marae at Motiti displaying the names 'Te Hapū' and 'Te Rangitupukiwaho'. These flags are usually flown together. The claimants assert the 'Te Hapū' flag symbolises that Ngāi Te Hapū survives as a living and functioning tribal grouping today.

We do not accept that the Te Hapū flag does demonstrate this. The flag clearly refers to 'Te Hapū', the tipuna, not 'Ngāi Te Hapū' the tribal grouping. Similarly, the second flag, 'Te Rangitupukiwaho', commemorates another important tipuna, not a tribal grouping.

We acknowledge that Te Hapū is a significant tipuna on Motiti, and is the eponymous ancestor for Ngāi Te Hapū, but we do not accept that flying this flag

837. Document A57(c), p [9]

838. Document A16(a), pp 2020–2118

839. Document A82(b), pp 7–8, 11; transcript 4.1.5, pp 342–343

demonstrates the ongoing function of Ngāi Te Hapū, the iwi. We consider that it is instead a homage to the founding tipuna on Motiti.

3.5.4 Determining the tangata whenua of Motiti

As witnesses in this inquiry have indicated, the tangata whenua of any given area comprise whānau, hapū, and iwi with mana or authority in that area. To hold mana in a particular area, a group requires others to recognise their mana. Mana may also be exercised at different levels within a tangata whenua group. For instance, the right to exercise mana whakahaere over an area may rest with the hapū but not the iwi; or the iwi may exercise mana in some instances and the hapū in others, depending on the kaupapa.

The evidence in this inquiry, and in te ao Māori generally, shows that tangata whenua groups were not fixed in either place or time. Whānau, hapū, and iwi were (and are) dynamic and fluid. This was particularly so before European contact and for a period after. Whānau growth, migration, marriages, battles, conquest, alliances, and other significant events saw new groups emerge which sometimes replaced or subsumed earlier groups. Sometimes hapū disappeared in the wake of the impact of introduced disease in communities.

The relationship between tangata whenua groups and the land can be equally dynamic. Multiple groups may have overlapping or intermingled interests in a particular area of land and thus each hold tangata whenua status, or mana, there.

This rich tapestry of tikanga, whakapapa, and history has to be considered as a whole when determining who are the tangata whenua on Motiti. In our inquiry, three basic traditions about the people of Motiti emerged in the evidence. In one, from Ngāti Awa, separate historical groups at Motiti and Whakatāne unified as Te Patuwai (we refer to this as the ‘unification’ account). In another, also from Ngāti Awa, Ngāi Te Hapū and Te Patuwai are one and the same people and always have been (we call this the ‘unitary group’ account). In a further tradition, relayed by the claimants, Te Patuwai comprises separate groups from Motiti and Whakatāne who remain separate today (we refer to this as the ‘independent groups’ account). We focus first on these three overarching traditions presented by the opposing parties in our inquiry: the ‘unification’ account, the ‘unitary group’ account, and the ‘independent groups’ account. We consider what these traditions signify about the identity of Ngāi Te Hapū and Te Patuwai, taking into account where they are consistent and where they diverge, before determining who are the tangata whenua of Motiti.

3.5.4.1 The ‘unification’ account: our assessment

According to this Ngāti Awa account, the evidence shows a vibrant history connecting Ngāti Awa to the Whakatāne region, from Maui-tikitiki-a-rangi to the arrival of Toi and Awanuiārangi 1. Through Toi, Awanuiārangi 1, and Awatope, this connection spread to Motiti through occupation on the island and the building of the pā Te Hoe o Awatope. These connections to the Whakatāne area continued with the arrival of the *Mataatua* waka and the descent from Toroa to Awanuiārangi 11.

In this account, Te Hapū was born at Ōhiwa, within Ngāti Awa's rohe, and lived with Ngāti Ruaroa, a Ngāti Awa iwi. Te Hapū descended from Awanuiārangi 11 and the rich lineage leading back to Maui. When Te Hapū married Waipai, also from Ngāti Awa, it further strengthened his ties back to the iwi. Te Hapū travelled with Ngāti Awa on the heke leading west, where he used his Ngāti Awa whakapapa and mana to lift the tapu on Motiti. He settled there, founding the karanga hapū on Motiti. By this account, Te Hapū is clearly a Ngāti Awa tipuna and Ngāi Te Hapū is a Ngāti Awa iwi.

The battle at sea, and the Te Patuwai alliance, further strengthened Ngāi Te Hapū's ties back to Ngāti Awa and their Ngāti Ikapuku and Ngāti Maumoana kin. These iwi unified under the Te Patuwai banner, and these close bonds were further strengthened over a prolonged period of intermarrying and travel between Motiti and Pūpūaruhe. The Te Patuwai Tribal Committee was established to administer the affairs on the island and at Pūpūaruhe, and it carried out this role for almost 130 years – except for a relatively brief period when a separate Motiti Island Tribal Committee was established.

According to this account, the tangata whenua on Motiti are Te Patuwai. There is no distinction between Te Patuwai at Motiti and Te Patuwai at Pūpūaruhe. They are the same tribal grouping with interests that spread from Motiti to the mainland.

This account shows that Te Patuwai on Motiti and Te Patuwai at Pūpūaruhe are a unified tribal identity that has developed from an alliance of traditional hapū, and that affiliates to Ngāti Awa.

3.5.4.2 The 'unitary group' account: our assessment

This Ngāti Awa account is very similar to the one just outlined, but dates the battle of Te Patuwai much earlier and gives a different version of the heke. In this tradition, Te Hapū, a rangatira of Ngāti Ruaroa (a Ngāti Awa hapū), and his people, Ngāi Te Hapū, left Ōhiwa directly for Motiti Island, having already decided to settle there. They were attacked on the water by Ngāi Te Kapo en route. After reaching Motiti, Te Hapū renamed his people Te Patuwai in memory of the battle, though their Ngāi Te Hapū identity also persisted for a time. Te Patuwai went on to develop an extensive rohe moana from their island base, and to trade and forge links with mainland iwi along the coast. Some Te Patuwai settled at Pūpūaruhe in Whakatāne, a Ngāti Awa area, reflecting Te Patuwai's affiliation to Ngāti Awa through their ancestor, Te Hapū. Te Patuwai distinguished themselves as both a sea-based and a land-based people, based at Motiti and Pūpūaruhe, and constantly travelled between the two places.

According to this account, like the other, the tangata whenua on Motiti are Te Patuwai, but have been known by this name for longer – 300 years. There is no distinction between Ngāi Te Hapū and Te Patuwai, nor Te Patuwai at Motiti and Te Patuwai at Pūpūaruhe. All Te Patuwai descend from Te Hapū, and whakapapa to Ngāti Awa through him.

This account shows that Te Patuwai on Motiti and Te Patuwai at Pūpūaruhe are

a unified tribal identity comprising a collective of karanga hapū that affiliate to Ngāti Awa.

3-5-4-3 *The 'independent groups' account: our assessment*

In considering the claimants' account, our focus is on the different version of the historical events they support, rather than the particular meaning they attribute to it.

The claimants' account, too, outlines a vibrant history connecting Ngāti Awa to the Whakatāne region from the arrival of Toi and Awanuiārangi 1, and continuing with the arrival of the *Mataatua* waka and the descent from Toroa to Awanuiārangi 11. This account places particular emphasis on the arrival of the *Te Arawa* waka and Te Arawa's association with Motiti through Ngātoroirangi.

In this account, Te Hapū was born at Ruatoki, and later moved to Ōhiwa where he lived with Ngāti Ruaroa, who had ancestral links to Ngāi Turanga. Te Hapū descended from Awanuiārangi 1 and was closely related to Awanuiārangi 11 through his great grandfather Tamatea-ki-te-Huatahi. Te Hapū also descended from the *Te Arawa* waka and had particularly close ties to Waitaha. Te Hapū travelled with Te Rangihouhiri on the heke west, along with Ngāti Awa and Ngāti Pūkenga. After consulting with Waitaha, Te Hapū lifted the tapu on Motiti, relying on his Waitaha whakapapa. He settled there, founding the karanga hapū on Motiti.

At this stage, according to the claimants' account, Te Hapū and Ngāi Te Hapū had separate and independent tribal identities from Ngāti Awa – though both had close whakapapa and historical links to Ngāti Awa iwi along with other Mataatua and Te Arawa iwi.

The battle at sea, and the Te Patuwai alliance, brought Ngāi Te Hapū together with Ngāti Ikapuku and Ngāti Maumoana. From that point on, they collectively identify as Te Patuwai. Although other iwi, such as Ngāti Pūkenga and Ngāti Whakahemo, were also part of this alliance, they do not carry Te Patuwai as their principal tribal identity but remain under their existing tribal name and identity.

The close connections between Ngāi Te Hapū, Ngāti Ikapuku, and Ngāti Maumoana, who all now identified as Te Patuwai, were further strengthened over a prolonged period of intermarriage and travel between Motiti and Pūpūaruhe. The Te Patuwai Tribal Committee was established to administer the affairs on the island and at Pūpūaruhe, and it carried out this role for almost 130 years – except for a relatively brief period where a separate Motiti Island Tribal Committee was established.

On our reading, this evidence demonstrates that Te Hapū and Ngāi Te Hapū did not originally identify as Ngāti Awa, though they had very close whakapapa, and historical connections, to Ngāti Awa tīpuna, hapū and iwi. At the time Te Hapū settled on Motiti, he and Ngāi Te Hapū were a separate tribal grouping in their own right, albeit with whakapapa and historical connections to iwi from Mataatua and Te Arawa. The battle at sea saw them unify with Ngāti Ikapuku and Ngāti Maumoana as Te Patuwai. The evidence further demonstrates that those connections have been reaffirmed and strengthened over hundreds of years of

intermarriage, and movement between the island and the mainland. It shows that today, Te Patuwai are a unified tribal identity that has developed from an alliance of traditional hapū and that affiliates to Ngāti Awa.

Importantly, we do not consider this reading is at odds with Te Hapū and Ngāi Te Hapū having a tribal origin separate from Ngāti Awa. Before the arrival of Europeans in Aotearoa, it was relatively common for hapū and iwi (in whole or in part) to merge with, be subsumed into, or replaced by, new tribal groupings. Examples include break-away groups from the early Ngāti Awa in Northland going on to found Te Ati Awa, Ngāti Ranginui, and Ngāti Kahungunu. The remainder then returned to Whakatāne and consolidated the modern day Ngāti Awa. Even from that group, Te Rangihouhiri went on to establish Ngāi Te Rangi. This evidence was not disputed. As evidence in this inquiry showed, tribal evolution still occurred after settler contact in some places.

In addition, the claimants' key expert witness Nepia Ranapia said in evidence that some of the original karanga hapū on Motiti, Ngāti Tūtonu and Ngāti Pau, were superseded by (or united with) karanga hapū Ngāti Makerewai, Ngāti Takahanga, and Ngāti Kauawera.

3.5.4.4 *Conclusions on the three accounts*

The three accounts referred to earlier all lead us to a similar conclusion: the tangata whenua on Motiti are Te Patuwai, and Te Patuwai on Motiti and Te Patuwai at Pūpūaruhe are a unified tribal identity. Further, Te Patuwai affiliates to Ngāti Awa.

This conclusion is additionally supported by looking at Te Patuwai today. While the claimants assert that Te Patuwai ki Motiti and Te Patuwai ki Whakatāne continue to be separate and distinct tribal groups, we saw little cogent or objective evidence confirming this.

All witnesses who appeared before us identified as Te Patuwai generally, or as Te Patuwai on both Motiti and at Whakatāne – though some also identified differently in each place (for example, as Ngāti Awa at Whakatāne but not on Motiti).⁸⁴⁰ Not a single witness said they were Te Patuwai at one place but not the other (including all of the claimants and their witnesses). Nor was there any evidence to demonstrate the existence of any families who whakapapa to one Te Patuwai group but not the other.

It is also significant that, while Ngāi Te Hapū were referred to in the Native Land Court hearings in the nineteenth century (which we address below), they are largely absent from all subsequent historical records. The later records simply refer to Te Patuwai on Motiti, with many stating Te Patuwai on Motiti is the same group as Te Patuwai in Whakatāne and that Te Patuwai is a hapū of Ngāti Awa (see section 3.2.10.2).⁸⁴¹

Moreover, we place weight not only on the evidence we heard but also on what we saw first-hand during site visits in this inquiry – in particular, the three Te Patuwai marae, and the urupā on Motiti and at Pūpūaruhe. Marae and urupā are

840. Document A82(b), pp 1–2

841. Document A16(a), pp 213, 877, 879; doc A16, p 88

some of the most important, if not *the* most important, sites of significance for iwi and hapū. Marae, their wharehau, and urupā are some of the most compelling evidence one can find to demonstrate who are tangata whenua of a particular area. This is not only because of what those sites represent but because they are fixed, permanent markers of tribal identity and location.

As we have seen, Te Patuwai have two urupā, one at Motiti and one at Pūpūaruhe. We heard evidence that members of Te Patuwai can choose which of these urupā they wish to be buried in. We also saw this first-hand. At the urupā at Pūpūaruhe, we saw that many tipuna whom the claimants rely on as Ngāi Te Hapū tipuna were buried at Pūpūaruhe, including Tiaki Rewiri. We also heard evidence of immediate family members being buried in the different urupā, such as one brother on Motiti and the other at Pūpūaruhe; or a parent on Motiti and the child at Pūpūaruhe. In many cases this was a deliberate decision to emphasise whānau connections to both rohe.

We were also told that the three Te Patuwai marae reflect the unity of Te Patuwai. This is expressed in the names of the marae. The Motiti marae Tamatea-ki-te-Huatahi is named after Te Hapū's great grandfather. The neighbouring Motiti marae, Te-Hiinga-o-te-Ra, is named after Awanuiārangi 11's father. Even the claimants accept that Awanuiārangi 11 is a significant and founding ancestor for Ngāti Awa. The third Te Patuwai marae at Pūpūaruhe, Toroa, is named after the captain of the *Mataatua* waka from whom both Tamatea-ki-te-Huatahi and Te-Hiinga-o-te-Ra descend (he was their grandfather). Tamatea-ki-te-Huatahi was also the son of Wairaka (Toroa's daughter) by her second husband, while Te-Hiinga-o-te-Ra was Wairaka's first husband, with whom she had Awanuiārangi 11. The use of these names clearly demonstrates the connection between Te Hapū and Awanuiārangi 11, under the umbrella of the *Mataatua* waka. This shows a very strong interconnection between Ngāti Awa and the people of Motiti Island. Nepia Ranapia himself agreed with the assertion that these marae names 'memorialised [the] Mataatua relationship'.⁸⁴²

We also heard evidence that the three wharehau are thematically linked, with the maihi each displaying whakairo representing different aspects of the marama-taka – something we saw first-hand when visiting the marae.

On our site visit to Toroa Marae, we observed another reference to Motiti within the wharehau: tukutuku panels depicting the matakātia (yellow pōhutukawa) flower. The claimants impressed upon us that the matakātia was native to Motiti as confirmed by the Royal New Zealand Institute of Horticulture. The presence of the Motiti flower in Toroa Marae demonstrates the close connection with the island. According to evidence from Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, the creation of these panels was coordinated by Hawiki Ranapia, Nepia Ranapia's father.

We consider that this evidence about Te Patuwai today, both of its people and of its most significant sites, supports our conclusion that Te Patuwai is a unified tribal identity.

842. Transcript 4.1.2, p 75

3.5.4.5 Conclusions on how mana is exercised on the island

Our view that Te Patuwai are a unified tribal identity and affiliate to Ngāti Awa is further supported by evidence about the operating structure of Te Patuwai Tribal. We consider this evidence important for understanding the dynamics between the groups at the heart of this issue – those who affiliate to the Motiti marae, Te Patuwai as a whole, and Ngāti Awa – and Ngāti Awa's relationship to Motiti. Below we recap the main features of Te Patuwai Tribal's structure, and outline its implications for the exercise of mana on Motiti.

We were told that Te Patuwai Tribal operates at three levels – iwi, hapū, and marae – enabling communication and feedback between each level.

At the iwi level, representatives from Te Patuwai and Ngāti Maumoana sit on the board of Te Rūnanga o Ngāti Awa. They are 'the link between the iwi and the hapū',⁸⁴³ reporting to the hapū at Te Patuwai Tribal Committee hui on iwi-level decisions, and receiving hapū input to take back to the iwi.⁸⁴⁴ Te Rūnanga o Ngāti Awa may, if appropriate, deal with the Te Patuwai Tribal Committee or the marae committees.

At the hapū level sits the Te Patuwai Tribal Committee, which several witnesses said deals with 'political' matters affecting Motiti and/or the mainland – those involving the Crown, regional councils, or other external parties.⁸⁴⁵ Among other things, Te Patuwai Tribal Committee hui provide a forum for hapū members to air any grievances, and for the committee to report to the hapū on its progress on issues.⁸⁴⁶

At the marae level sit the marae committees, who are responsible for running the marae and do so under their own authority. They have representatives on the Te Patuwai Tribal Committee, and report back to the hapū at that committee's hui.⁸⁴⁷ They and the Te Patuwai Tribal Committee maintain direct links, and the marae committees can request help from the Tribal if need be.⁸⁴⁸

Summarising this structure, which she explained was tikanga based, Adrienne Paul, witness for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, stated that the Te Patuwai Tribal Committee is, '[i]n its essence . . . the mouthpiece of the people based on the people's advice', and maintains its mandate based on its adherence to this structure.⁸⁴⁹

On Ngāti Awa's relationship to Motiti, Te Patuwai Tribal and Te Rūnanga o Ngāti Awa stressed that Te Patuwai are not 'subservient' to Ngāti Awa. Rather, the rūnanga provides technical or financial support 'at the bequest of the hapū' for kaupapa driven by the hapū.⁸⁵⁰ It is the hapū of Ngāti Awa who hold mana whenua

843. Document A55, p5

844. Ibid; doc A47, p10

845. Document A55, p5; doc A57, p5; doc A68, pp2–3

846. Document A55, p5

847. Ibid, p6

848. Document A57, p5

849. Document A55, p6

850. Document A47, p10

and mana moana over their rohe, not the iwi. As such, the rūnanga defers to Te Patuwai and Ngāti Maumoana on matters relating to Motiti.

In our view, this evidence of Te Patuwai Tribal's structure and Ngāti Awa's relationship to Motiti shows that none of the three groups involved – those who affiliate to the Motiti marae, Te Patuwai, and Ngāti Awa – has absolute rights to Motiti to the exclusion of the others. Rather, each group has a different level or kind of kaitiaki interest in Motiti. As such, a multi-tiered structure of tangata whenua and kaitiaki interests operates in respect of the island.

On our reading of Ms Paul's evidence, in practice, the scope of any given kaupapa affecting Motiti will determine which level one engages with, and who one speaks to, to deal with that kaupapa. A system of mana whakahaere, or delegated authority, exists with respect to Motiti, based on reciprocal recognition of marae-based, hapū-based, and iwi-based interests in the island. That recognition is formalised, according to tikanga, by Te Patuwai Tribal's operating structure.

The claimants contested the legitimacy of this structure, arguing that Motiti-related matters should be dealt with on Motiti, not by Te Patuwai Tribal. In our view, the Te Patuwai Tribal structure, if functioning properly, does allow marae-level decision-making on a range of issues affecting the marae at the island. Further, while the claimants argued that political matters affecting Motiti should not be dealt with by Te Patuwai Tribal, this stance was inconsistent with Mr Matehaere's acknowledgement, under questioning, that Te Patuwai Tribal do have an interest on Motiti – a position which suggests they have an interest in such matters.⁸⁵¹ Moreover, it seems to us that, even if political matters are dealt with at the hapū level, this does not preclude their being discussed at the marae level and any views formed there informing decisions at the hapū level. In fact, this is an important facet of effective decision-making within this tribal system. We also note Mr Matehaere's clarification, under cross-examination, that the desire of some people to shift toward 'island-centric' decision-making about 10 years ago was not motivated by any disillusionment with Te Patuwai Tribal's decisions concerning Motiti, but rather, its lack of progress on Motiti-related issues.⁸⁵²

It is also significant that the Te Patuwai Tribal Committee has operated in this role for over 100 years. It was established in 1891 and, other than for a relatively brief period when the Motiti Island Tribal Committee operated from the late 1940s until about 1968, continues to operate to this day. It has done so according to tikanga and with the support of the Te Patuwai people. We accept that the claimants now challenge the legitimacy of Te Patuwai Tribal Committee, but they have done so only recently, and in light of their support for the relatively newly founded Motiti Rohe Moana Trust. Many of the claimants and their witnesses also previously supported the Te Patuwai Tribal Committee (Nepia Ranapia was its chairperson). We consider that their change in stance has been heavily influenced by their desire to establish a new and separate body in the Motiti Rohe Moana Trust.

851. Transcript 4.1.5, pp 342–343

852. Transcript 4.1.2, pp 321, 357

For these reasons, we conclude that the Te Patuwai Tribal structure outlined earlier is the legitimate vehicle for exercising mana over Motiti. We cannot accept that the Motiti Rohe Moana Trust, which operates independently of this structure, is a legitimate body representing and exercising the mana of Te Patuwai on Motiti. Although the Trust initially had the support of the Motiti Marae Committee, it later lost this support. Since then, it has largely operated under the exclusive guidance of individuals who support the Trust, rather than with the support of the Motiti marae and wider hapū.

Responding to criticism that the Trust lacks a mandate, the claimants argued that Te Patuwai Tribal has not itself been through a mandating process.⁸⁵³ We do not think this comparison is meaningful. Te Patuwai Tribal has operated for over 100 years with the support of the hapū, exercising mana whakahaere in respect of Motiti for most of that time.⁸⁵⁴ In our view, the hapū's longstanding recognition and acceptance amounts to a mandate, one which is contingent on Te Patuwai Tribal's adherence to the tikanga-based structure outlined earlier. By comparison, the Trust is a recent, common law trust that has been highly contested since its inception, and has limited support.

We acknowledge the Trust's sustained commitment to protecting the Motiti rohe moana, the extensive work it has done to advance this kaupapa in the courts, and its successes in that arena, which have resulted in legal recognition and significant protection for parts of the rohe moana. In undertaking this work, the Trust has clearly asserted mana, or tino rangatiratanga, over Motiti. However, the holding of tino rangatiratanga involves more than the assertion of authority. It also requires the 'respect, loyalty, and trust' of the Māori community on whose behalf that authority is being asserted. Rangatiratanga is a reciprocal relationship of obligation between leaders and supporters in a community, and as such, it binds the community.⁸⁵⁵ With these principles in mind, and given the Trust's lack of support from the wider hapū – including many people who whakapapa to Motiti – we consider that the assertion of mana or tino rangatiratanga by the individuals who support the Trust does not contradict our conclusion on who the tangata whenua of Motiti are.

3.5.4.6 Conclusions on specific aspects of the claimants' argument that Ngāi Te Hapū are the tangata whenua of Motiti, with a separate and distinct tribal identity

In this section, we pay particular attention to what we consider is the strongest evidence in favour of the claimants' argument: the Native Land Court records, the expert customary evidence from claimant witnesses, and the support from Te Arawa.

853. Submission 3.3.15, p 35

854. The only exception is the period when the Motiti Tribal Committee operated on the island, from the late 1940s to about 1968.

855. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: GP Publications, 1998), p 25

3.5.4.6.1 Analysis of the Native Land Court evidence

The claimants' argument that Ngāi Te Hapū are the tangata whenua of Motiti, and remain a separate and distinct tribal identity today, relies heavily on evidence presented in the Native Land Court from 1867 to the late 1890s. We accept that this evidence affirmed that Te Hapū was a principal ancestor for Motiti who conferred rights to the land; that his settlement of Motiti gave rise to Ngāi Te Hapū and the karanga hapū; that these groups have a centuries' long association with Motiti, many karanga hapū being active at the time of the cases; and that in outlining their claims to Motiti, many witnesses emphasised Te Hapū's Waitaha and Te Arawa whakapapa.

For us, however, the crucial point is that the Native Land Court evidence consistently showed that the karanga hapū were hapū of Te Patuwai. This aspect of the evidence came through both in testimony and in the wording of the court's decisions. In every case, all witnesses who said they belonged to one or more karanga hapū, and/or were Ngāi Te Hapū, identified these groups with Te Patuwai. For example, in the 1867 title investigation, nearly all those claiming rights by descent from Te Hapū advanced their claim on behalf of the 'Patuwai tribe' or 'Te Patuwai', and the resulting award of land was made to 'Te Patuwai'.⁸⁵⁶ The Motiti B block (in southern Motiti) was later awarded to 187 individuals of Te Patuwai. During the 1891 case to determine relative interests in Motiti North, Tiaki Rewiri appeared on behalf of the karanga hapū Ngāti Te Uru, Ngāti Kauaewera, Ngāti Pau, Ngāti Takahanga, and Ngāti Makerewai, arguing that these were the hapū 'rightfully belonging to Te Patuwai'.⁸⁵⁷ The court determined interests in the land based on connection to these hapū, and, in 1894, partitioned the land on the same basis.

We acknowledge that in the 1895 case to partition Te Patuwai land at Pekapekatahi, Tiaki Rewiri argued that the Te Patuwai people of Motiti and of Whakatāne were distinct. As previously outlined, he argued that the two groups had different ancestors and, through them, different tribal estates. He also argued that the name Te Patuwai properly denoted descendants of the Ngāti Awa ancestors Taiwhakaaea and Te Puia only, while those who claimed descent from Te Hapū were properly known as Te Ngāi Te Hapū.⁸⁵⁸

We do not consider this evidence conclusive, for several reasons. First, other witnesses in the same case disagreed with Tiaki Rewiri, claiming that Te Patuwai were one group.⁸⁵⁹ Secondly, in the 1905 case to partition Te Patuwai land at Pūpūaruhe, Tiaki Rewiri suggested the shares be distributed almost equally among Te Patuwai who lived permanently on Motiti and Te Patuwai who lived at Pūpūaruhe – despite maintaining his stance that Te Hapū had no mana over Whakatāne lands.⁸⁶⁰ This

856. Document A16, pp 42, 44, 46–47, 51–52. As noted in section 3.2.9.2.1, the exceptions included a witness who said Ngāti Pūkiao also had rights through Te Hapū and a witness who affiliated to Ngāti Pūkenga and claimed through Te Hapū: doc A16(a), pp 2481, 2516.

857. Document A16(a), p 2557

858. Document A16(a), pp 2957, 2964

859. Document A85(b), p 17; doc A16(a), pp 3056–3057

860. Document A16, p 33

approach suggests that, in this case at least, Tiaki Rewiri accepted that Te Hapū's descendants on Motiti had acquired land rights at Whakatāne through intermarriage with the people there.

Thirdly, the Tribunal has previously criticised the Native Land Court process,⁸⁶¹ and historians have discussed the limitations of the evidence given there and indicated it must be treated with caution.⁸⁶² We agree with witnesses for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa that a cautious approach to the Native Land Court evidence presented in this inquiry – and one which is mindful of the wider context in which that evidence was given – is required.⁸⁶³

As noted in section 3.2.9, the 1867 Motiti title investigation took place only two years after James Fulloon was killed at Whakatāne. This event led the Crown to take military action against Ngāti Awa, to pronounce them rebels and, in 1866, to confiscate much of their land. In 1865, the Crown also branded Ngāi Te Rangi as rebels and declared their lands subject to confiscation, including any parts of Motiti found to belong to the iwi. In the Crown's conflicts with both Ngāti Awa and Ngāi Te Rangi, Te Arawa groups featured strongly among the forces fighting with the Crown. This provides a very important context within which the evidence presented to the Native Land Court must be assessed. This was accepted by Dr O'Malley, who gave expert historical evidence on behalf of the claimants.

A similar point was made by Dr Angela Ballara in her research report for the central North Island inquiry. She observed that Native Land Court witnesses learned to highlight particular descent lines 'for the purposes of the Court', and that 'their choices often seemed to reflect the "kūpapa" versus "rebel" stances of particular hapū in the wars of the 1860s and 1870s', resulting in 'a tendency to emphasize Arawa connections at the expense of Mataatua'.⁸⁶⁴ Dr O'Malley also drew on aspects of Dr Ballara's report when presenting his own evidence, as did claimant counsel in her submissions.

In respect of the Native Land Court evidence raised in this inquiry, we consider that, given the political context, it would have made sense for those seeking recognition of their claims in the court to distance themselves from iwi the Crown viewed as rebels. It would also have made sense for witnesses to align themselves with iwi considered 'loyal' by the Crown. As such, we think the emphasis that Te Patuwai witnesses in the court placed on Te Hapū's Waitaha/Te Arawa whakapapa, and their relative silence on his Ngāti Awa links, reflected their understanding that the court would look more favourably on certain affiliations; thus their case would be strengthened. For this reason, while we have carefully considered the Native Land Court evidence, we do not accept that we can simply adopt those parts which favour the claimants' case.

861. See, for example, the Tribunal's *Te Urewera* report, which summarises previous Tribunal findings relating to the Native Land Court: Waitangi Tribunal, *Te Urewera*, 8 vols (Wellington: Legislation Direct, 2017), vol 3, pp 1006–1022.

862. Wai 1200 RO1, doc A65, pp xii, 613; Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 43–51.

863. Document A16, p 44; doc A85, pp 5–6.

864. Wai 1200 RO1, doc A65, p 613.

Our reluctance to do so is further bolstered when the actions of Tiaki Rewiri outside the court process are considered. Tiaki Rewiri is one of the key Native Land Court witnesses upon whom the claimants rely. However, in 1901, he and 49 others of Te Patuwai petitioned the Native Minister to exclude Motiti from the Te Arawa Maori Council boundaries. They further requested that he ‘exempt us & our Island of Motiti from the operation of . . . any Council whatsoever, let it remain a Maori reserve for us and for our children’. The petitioners identified themselves as ‘the members of the hapu and tribe of Te Patuwai hapu of Ngati Awa residing at Motiti (Island) and at Whakatane’.⁸⁶⁵ This is in direct contrast to evidence Tiaki Rewiri gave in court. After the 1901 petition and subsequent petitions and lobbying, the boundaries of the Mataatua district were changed to include Motiti in 1931.⁸⁶⁶

As noted earlier, Tiaki Rewiri was also buried at Pūpūaruhe urupā in Whakatāne. When we visited the urupā we were interested to see the monument that commemorates him. It bears an inscription crediting Tiaki Rewiri with having brought Motiti under the authority of the second Mataatua council:

He kaumatua marama tenei no runga ia Mataatua na ana ka riro a Motiti ki raro i te mana o te kaunihera o Mataatua tuarua.⁸⁶⁷

A revered elder statesman of Mataatua who ceded the authority of Motiti to the second Mataatua Council.

Our analysis of the Native Land Court evidence also departs to some extent from Dr O’Malley’s, for the following reasons. First, Dr O’Malley’s discussion of Te Whetuki’s evidence in the 1867 case did not always reflect the record accurately, in that he used ‘Ngai Te Hapū’ where the minutes said ‘Te Patuwai’ (see page 67, footnote 359). Secondly, Dr O’Malley did not comment on the contradictions in Tiaki Rewiri’s evidence, or the doubt they cast on the reliability of his 1895 testimony that Te Patuwai at Motiti and Whakatāne were distinct peoples. Thirdly, while Dr O’Malley accepted Native Land Court evidence that (in his words) ‘all the descendants of Te Hapū were called Te Patuwai’, he seems to have gone a step further and equated ‘all the descendants of Te Hapū’ with ‘Ngāi Te Hapū’, positing their existence as a distinct group within Te Patuwai. For example, summarising evidence from the 1894 rehearing, Dr O’Malley stated:

The court heard that some of those who were Te Patuwai were not descended from Te Hapū and had no rights on Motiti. On the other hand, all of the descendants of Te Hapū were called Te Patuwai. In other words, while all of Ngāi Te Hapū were Patuwai, the two groups were not synonymous.⁸⁶⁸

865. Document A16(a), p 213; doc A16, p 88

866. Document A16, p 91

867. Document A57, p 21

868. Document A16, p 71

From the Native Land Court evidence, it was not clear to us that Te Hapū's descendants collectively identified and functioned as a distinct group within Te Patuwai at the time of the cases – under the Ngāi Te Hapū name or any other. We say this because, as noted earlier, most witnesses in the court who named Te Hapū as their ancestor identified with one or more specific karanga hapū, and/or with the wider grouping 'Te Patuwai'.

Fourthly, Dr O'Malley also placed much emphasis on Native Land Court testimony that Te Hapū was the 'first ancestor' on Motiti, reading it as very strong evidence that Te Hapū's descendants were an independent tribal group and rightfully remain so today. We consider that other evidence from the late-nineteenth and early twentieth century is *also* critical to determining whether Te Hapū's descendants remain an independent tribal group with distinct rights on Motiti. Finally, while Dr O'Malley acknowledged that the political climate at the time of the Native Land Court cases could have influenced witnesses to emphasise their Te Arawa whakapapa, he still appears to have taken their testimony largely at face value. This is despite his acknowledgement that other evidence from the late-nineteenth century onward shows Motiti people identifying as Ngāti Awa.

3.5.4.6.2 The expert customary evidence from claimant witnesses

During our inquiry, Nepia Ranapia was a key witness for the claimants. He told us he had spent many years building his knowledge of the traditional history and whakapapa of the tangata whenua of Motiti, and that within his tribal affiliations, he now holds the traditional status of tohunga pukenga rangahau mātauranga (historian). All who gave evidence in support of the claimants deferred to him as the expert on Motiti.⁸⁶⁹

Nepia Ranapia's evidence was that, according to tikanga, Ngāi Te Hapū hold mana whenua/mana moana on Motiti due to their ancestral links to the land and sea; and in the context of this tikanga, 'the Te Patuwai hapū at Motiti Island and Whakatane/Pupuaruhe respectively are different hapū with separate tribal estates.'⁸⁷⁰ He argued that the perception that the two hapū are one is a 'confusion' arising from the use of the same name and ignorance of the relevant history.⁸⁷¹ In line with this view, he held that Te Patuwai Tribal is not the correct entity to deal with Motiti issues: 'We are not asking Whakatane or the Tribal Committee for help. We want Motiti issues to be dealt with on Motiti.'⁸⁷² He further argued that 'Ngāi Te Hapū cannot come under Ngāti Awa because they are not Ngāti Awa.'⁸⁷³

Nepia Ranapia's son, Daniel Ranapia, also gave detailed evidence based largely on nineteenth-century written sources about events and relationships in respect

869. Document A33(a), p 3; doc A22, p 2

870. Document A17, p 23; doc A89, p 2

871. Document A17, p 23

872. Ibid, p 50. Elsewhere, Nepia Ranapia stated: 'My father was the last chairman of the Motiti Tribal Committee. When he passed away, the Patuwai Tribal in Whakatane took over, as many of our people had moved there. My father would never have let that happen, he grew up on Motiti and he understood the whakapapa of Motiti': *ibid*, p 48.

873. Ibid, p 48

of Te Hapū's origins, the tribal alliances and affiliations of Motiti people, and the basis of land rights on Motiti. While Daniel Ranapia does not hold the same kaumatua status of his father, he still addressed us in some detail on whakapapa, tribal history, tribal identity, and tribal association. His research supported the claimants' position that Ngāi Te Hapū me ōna karanga hapū are the tangata whenua on Motiti, and that they are a separate and distinct tribal identity to Te Patuwai at Pūpūaruhe, and to Ngāti Awa.

We emphasise from the outset that we do not take issue with Nepia Ranapia's status as a kaumatua of Motiti, or as a tribal historian. Nor do we take issue with his son also giving evidence on such matters based on his research and the teaching he has received. However, aspects of their evidence were strongly contested by the interested parties. Most significantly, we were repeatedly presented with evidence which clearly demonstrated that both men have previously made statements, or prepared documents, which directly contradict the evidence they presented to us in this inquiry.

In 2010, as chair of Te Patuwai Tribal, Nepia Ranapia wrote to the Department of Internal Affairs stating that Ngāti Awa is the recognised iwi of Motiti Island; that the Te Patuwai Tribal Committee and Te Rūnanga o Ngāti Awa are the legal entity for Motiti; that the Te Patuwai Tribal Committee is the longstanding administrator of Motiti; and that the Motiti Rohe Moana Trust has no mandate to represent the people of Motiti. He urged the department to 'work with Tangata Whenua Te Patuwai Tribal and Te Runanga o Ngati Awa through the appropriate channel'.⁸⁷⁴

In 2012, as chairman of the Korowai Kahui o Te Patuwai Tribal Council, Nepia Ranapia wrote to the Motiti Rohe Moana Trust reiterating that Te Patuwai Tribal is the longstanding and 'traditional' administrative entity for Motiti Island, and declaring that the structure of the Trust had 'cut across *Kawa & Tikanga*' by creating an iwi under the name Ngā Hapū o te Moutere o Motiti. He also asserted that the creation of the Trust and the iwi 'trampled' on the mana of the tīpuna and on the elders of Te Patuwai hapū and whānau whanui.⁸⁷⁵

At some point after his tenure as Te Patuwai Tribal Committee chair ended in 2013, Nepia Ranapia changed his position, instead supporting those who had established the Trust and Ngā Hapū o te Moutere o Motiti. Under questioning, he explained that he changed his position because he discovered new information about the origins of the hapū of Motiti, that is, about Ngāi Te Hapū,⁸⁷⁶ and about the creation of the Trust.⁸⁷⁷

Along with his change in position, Mr Ranapia's statements about his tribal affiliations to the island shifted. In this inquiry, he gave his primary affiliations as Ngāti Kauaeuera, Ngāti Pau, and Ngāti Takahanga, 'the principal hapū of Ngāi Te Hapū'.⁸⁷⁸ Under cross-examination, he acknowledged that, in a previous case

874. Document A40(a), pp 9–10; doc A40, p 9

875. Document A40(a), p 2

876. Transcript 4.1.5, pp 193–194, 202

877. Ibid, p 199

878. Document A17, p 3

about the Motiti hapū management plan, he had given evidence that: ‘My name is Nepia Ranapia and I live on Motiti Island. . . . My Hapu at Motiti Island is Te Patuwai. Te Patuwai is a sub-tribe of Ngāti Awa. Having said that, in the times before colonisation, we were underneath the banner of Ngāti Te Hapu.’⁸⁷⁹

In explanation, Mr Ranapia said that ‘Motiti Patuwai is not recognised by Crown authorities’ and that to deal successfully with such authorities – in that particular case, to progress the hapū management plan – ‘you have to be recognised by an iwi’ or ‘recognised as an iwi’. As such, he still affiliated that way when necessary:

Q: Okay, so for those purposes you are – Te Patuwai is the name and Ngāti Awa is the iwi?

A: Yes, stand by that.⁸⁸⁰

We accept that people may affiliate differently in different contexts, and that understandings of tribal history may evolve as new research comes to light. Despite that, we are surprised to see so dramatic a change in position in such a short space of time, and particularly on something so fundamental as tribal identity. We saw little new evidence that had recently come to light which could have influenced such a fundamental reversal. The Native Land Court evidence, which was heavily relied on, has always been available since the relevant hearings in the nineteenth century. We were not presented with any new or revealing research or material that had come to light in the six years before our inquiry that would seemingly influence such a striking change in position. This has affected the weight we are prepared to place on Nepia Ranapia’s evidence on the ongoing existence of Ngāi Te Hapū over generations and their status as an independent tribal group with unique rights on Motiti.

Even if we accept Mr Ranapia’s explanation for his change in position, this shift tends to indicate that Ngāi Te Hapū is a recently revived hapū identity, not a hapū identity that has continued to be prominently used and recognised by other groups in recent generations.

Both Nepia and Daniel Ranapia provided other contradictory statements. The name ‘Te Hoe Awatope’ appears on a map of documented place names of Motiti Island they created in 2012 for the Motiti hapū management plan.⁸⁸¹ Dr Ngaropo told us this was a pā established by Toi, Awanuiārangi I, and Awatope. In the same plan, Nepia and Daniel Ranapia and others stated that Ngāti Ruaroa were a ‘hapū of Ngāti Awa’ and that Waipai was Ngāti Awa. (In this inquiry, Daniel Ranapia said Ngāti Ruaroa were not Ngāti Awa,⁸⁸² and Nepia Ranapia would not commit to whether Waipai was Ngāti Awa.)

879. Submission 3.3.12(b), p 77; transcript 4.1.2, p 106

880. Transcript 4.1.2, pp 106–107

881. Document A17, p 59

882. Document A27, p 8. ‘Te Hapū[s] . . . father was a descendant of Ueimua, whose father was Tamatea ki te Huatahi, and he was Ngāti Ruaroa. The Tamatea ki te Huatahi whānau does not belong to Ngāti Awa.’

We also saw a map that Daniel Ranapia and his father created in 2008 which recorded the tribal affiliation of various early pā sites on Motiti as ‘Ngāti Ruaroa and Ngāti Awa.’⁸⁸³ These contradictory statements also affect the weight we are prepared to place on Daniel Ranapia’s evidence that Te Patuwai of Motiti and Te Patuwai of Whakatāne are distinct peoples with separate tribal estates.

Other witnesses who gave evidence on behalf of the claimants made statements (in this inquiry or in earlier unrelated matters) that did not sit comfortably with the argument that Ngāi Te Hapū are a separate and distinct tribal grouping, and always have been. For example, Ms Keepa recalled under cross-examination: ‘We were just one, Whakatāne/Motiti were one. I mean in that sense saying Patuwai ki Motiti because they were on Motiti, Patuwai ki Whakatāne because they were in Whakatāne, but we were still one.’⁸⁸⁴

Ms Haimona gave evidence that Ngāi Te Hapū was not widely spoken of or acknowledged as she was growing up, even by those who whakapapa to Motiti. Mr Hoete, in his 2007 submission on the Motiti Island district plan, wrote that the tangata whenua on Motiti were ‘Patuwai/Maumoana.’⁸⁸⁵ Indeed, Ms Butler was the only person among the claimants and their witnesses to state that she was brought up Ngāi Te Hapū.⁸⁸⁶

Of course, not all the evidence presented by Te Patuwai Tribal and Te Rūnanga o Ngāti Awa was uncontroversial either. For example, the evidence from Dr Ngaropo that Te Hapū was a direct descendant of Awanuiārangi 11, and his assertions about the karakia Te Hapū recited to lift the tapu on Motiti, were strongly contested by claimant witnesses. But a genuine dispute over customary evidence is different to key witnesses presenting core evidence in this inquiry that directly contradicts their earlier statements (as is the case with Nepia and Daniel Ranapia).

We also acknowledge the evidence and earlier statements from Te Patuwai Tribal and Te Rūnanga o Ngāti Awa witnesses that refer to Ngāti Maumoana as the tangata whenua/Ngāti Awa hapū on Motiti, which is at odds with their assertions that the tangata whenua are Te Patuwai. However, we consider this evidential inconsistency is different to the Ranapias’ change in position: those Te Patuwai Tribal and Te Rūnanga o Ngāti Awa witnesses did not assert Ngāti Maumoana as a separate and distinct tribal identity, but considered Ngāti Maumoana part of the Te Patuwai identity. We address the question of Ngāti Maumoana further below.

Finally, we comment on the phrases ‘Motiti ki uta’ and ‘Motiti ki waho’, or ‘Te Patuwai ki uta’ and ‘Te Patuwai ki waho’. The claimants took these phrases to mean that Te Patuwai of Whakatāne and Te Patuwai of Motiti are distinct. However, in our view, these phrases do not refer to a distinction between people, but to the fact that the people reside in two places – both on the mainland and on Motiti.

883. Submission 3.3.12(b), p 29; transcript 4.1.2, pp 518–519

884. Transcript 4.1.5, p 374

885. Document A20(a), p 5

886. Document A86, pp 1, 5

3.5.4.6.3 What about Te Arawa support for the claimants?

In determining who are the tangata whenua on Motiti, we recognise the evidence given by witnesses on behalf of Te Arawa, which essentially supports the claimant argument. We also acknowledge the considerable standing of those witnesses, Te Ariki Morehu and Muriwai Ihakara, who are recognised experts in Te Arawa on whakapapa and tribal history.

Support and recognition from neighbouring iwi is a legitimate marker of tribal identity and status as tangata whenua. To receive such support from two esteemed elders, as in the present case, is significant. In fact, their support is some of the most compelling and persuasive evidence in favour of the claimants, and we have considered that evidence carefully.

In general, where tribal history is in dispute, ‘third-party’ iwi may recount their kōrero but will generally defer to the tribal histories of those iwi or hapū concerned. The same applies in the present case. Mr Ihakara made clear, both in his written evidence and in his oral presentation, that he did not seek to trample on the evidence presented to us from those appearing in this inquiry. Rather, he and Mr Morehu were simply recounting the Te Arawa kōrero.⁸⁸⁷

This is further shown by Mr Ihakara deferring to Nepia Ranapia as the expert on Motiti history. Such deference derives not only from Mr Ranapia’s expertise and standing but also from his close association with Motiti. As we have noted, our critical analysis of Mr Ranapia’s changing position has affected how much weight we are prepared to place on the conclusions he has drawn based on the various historical accounts and evidence in the claimants’ favour.

Finally, the fact that there are differences between the kōrero of Te Arawa and that of Te Patuwai Tribal and Te Rūnanga o Ngāti Awa is unremarkable. Native Land Court and other records (including oral traditions) show that different iwi often retain different tribal histories or accounts of the same events, and assert different tribal associations with a particular area. In this context, the differing view from Te Arawa simply reflects their own tribal history. While we have carefully considered their evidence, in the context of this inquiry, we do not think it can displace the conclusions we have drawn from the primary evidence given by the claimants, and by Te Patuwai Tribal and Te Rūnanga o Ngāti Awa.

3.5.4.6.4 Have Crown actions undermined Ngāi Te Hapū identity, as claimants allege?

During our inquiry, the claimants noted that in recent generations, people who whakapapa to Motiti have become more likely to affiliate with Ngāti Awa.⁸⁸⁸ They acknowledged that hapū identity can evolve over time, but suggested this particular shift in identity was ‘highly likely’ to have been influenced by the Crown, rather than relationships between tribal groups and other factors. In particular, the claimants argued the Crown’s preference for dealing with larger iwi and its

887. See, for example, doc A87, p1; transcript 4.1.3, p100.

888. Submission 3.3.8, pp 86, 96

‘failure to recognise and engage with Motiti [tangata whenua] directly’ had played a role in ‘obscuring’ the distinct identity of Motiti tangata whenua.⁸⁸⁹

Moreover, the fact that Motiti tangata whenua are sometimes referred to as Ngāti Awa and sometimes as Te Arawa in ‘many different sources’ also indicates they are ‘hard to categorise’ in iwi terms, the claimants argued. This inability to be categorised may present problems for the Crown, but, in the claimants’ view, it further proves they belong only on the island, not in any mainland territory.⁸⁹⁰

The Tribunal has previously found that the Crown has contributed to the loss of hapū tribal identities elsewhere – for instance, by prioritising one tribal group within an area and overlooking another who also belong there.⁸⁹¹ In our inquiry, however, we have seen no evidence that Crown recognition, or lack of it, has influenced an erosion of tribal identity, or shifting affiliations, among Te Hapū’s descendants.

Te Patuwai are not a ‘large natural grouping’ of the sort the Crown has typically preferred to deal with. They have not enjoyed the kind of Crown recognition that could influence members of Ngāi Te Hapū to identify as Te Patuwai rather than Ngāi Te Hapū.

We acknowledge that, since Ngāti Awa’s Treaty settlement, Te Patuwai have had access to settlement resources, and to the Crown, through their representatives on Te Rūnanga o Ngāti Awa. This may have influenced members of Te Patuwai to identify as Ngāti Awa, as the claimants assert. But even if that were the case, such a Crown influence dates back only to the 1990s and 2000s. In such circumstances, we would expect to see clear evidence of an earlier, separate, and distinct Ngāi Te Hapū grouping operating and exercising customary rights on Motiti throughout the historical record up to the time of this Crown influence. That evidence is simply not there.

As we have already found, the evidence in fact demonstrates that Ngāi Te Hapū was an ancient tribal grouping that united with other hapū as Te Patuwai, or itself took the name Te Patuwai. This process occurred under tikanga, not Crown influence, and long before the Crown’s ‘large natural grouping policy’ came into play.

3-5-4-7 The question of Ngāti Maumoana

We have also considered the assertion by Te Patuwai Tribal and Te Rūnanga o Ngāti Awa that Ngāti Maumoana are tangata whenua on Motiti. Their evidence on this point has left us without a clear understanding of why this would be so, and with doubts about the purpose of this assertion.

First, when looking at the points where the evidence aligns, and those points which are disputed according to the Ngāti Awa kōrero, a general theme emerges: the tangata whenua on Motiti are Te Patuwai, and Ngāi Te Hapū is an ancient tribe (either Ngāti Awa or very closely related to Ngāti Awa) which was subsumed

889. Submission 3.3.15, p 30; submission 3.3.8, p 96

890. Submission 3.3.15, pp 30–31

891. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 3, pp 1042–1043

within Te Patuwai. There is very little historical evidence (either in the historical record or in tribal customary evidence) to demonstrate that Ngāti Maumoana exercised rights as tangata whenua on Motiti. This is where some of the evidence concerning Ngāti Maumoana remains unclear for us.

Several witnesses told us that Ngāti Maumoana and Te Patuwai are one and the same. It is not clear whether these witnesses are saying that Ngāti Maumoana were one of the tribal groups who fought in the battle on the water when Te Patuwai was born, or whether this is an alternative name by which some refer to the Te Patuwai members on Motiti.

Our uncertainty is clouded further by evidence about the representatives of Te Rūnanga o Ngāti Awa. We were told that each of Ngāti Awa's constituent hapū has a representative on the rūnanga's governance board. Originally, there was one representative for Te Patuwai who represented the interests of those members both on Motiti and at Pūpūaruhe. Following calls for two seats to provide greater representation for the Te Patuwai interests, a separate seat was established under the name Ngāti Maumoana for those Te Patuwai members on Motiti. Some witnesses said this was to ensure greater recognition and representation of the Motiti whānau and hapū.⁸⁹² Tā Hirini said that the ancient hapū Ngāti Maumoana were revived by kaumātua in the early 1980s during the Ngāti Awa Trust Board's establishment.⁸⁹³

It is not clear to us whether the allocation of the Ngāti Maumoana name to Motiti was an administrative step to justify two seats on the rūnanga or reflected an earlier, tikanga-based process re-establishing a tribal group with historical standing on the island.

We also note that there is some support from the claimants for the proposition that Ngāti Maumoana have mana on Motiti. As mentioned, Mr Hoete named 'Patuwai/Maumoana' as the tangata whenua on Motiti when making submissions on the Motiti district plan.

When reviewing the evidence, we do not think there is sufficient basis to determine that Ngāti Maumoana has separate and independent tangata whenua status in relation to Motiti.

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa do not claim that Ngāti Maumoana exist as a separate and distinct group on Motiti. Nor do they assert that it is Ngāti Maumoana, and not Te Patuwai (or the ancient tribe Ngāi Te Hapū) who have mana there. Rather, they seem to say that Ngāti Maumoana is part of the Te Patuwai identity. While we acknowledge that kōrero, it does not change our overall conclusion that Te Patuwai has mana on Motiti.

3.5.4.8 Are Te Whānau a Tauwhao tangata whenua of Motiti?

This inquiry has focused on Ngāi Te Hapū, Te Patuwai, and Ngāti Awa. It is those tribal groups who were at the centre of the dispute with the Crown that led to this inquiry. It is those groups, and their history, whakapapa, and kōrero, that have dominated this inquiry, and our report.

892. Transcript 4.1.4, pp 624–625

893. Document A85(b), pp 18–19

Despite that, we acknowledge Te Whānau a Tauwhao, and Ngāi Te Rangi, who have both participated in this inquiry. They assert that Te Whānau a Tauwhao, one of the 11 hapū communities of Ngāi Te Rangi, are also tangata whenua on Motiti.

That has not been universally accepted. In particular, Nepia Ranapia disputed that Te Whānau a Tauwhao are tangata whenua on Motiti. However, he was in the minority. Even claimants, such as Mr Matehaere, appeared to accept that Te Whānau a Tauwhao are tangata whenua on Motiti.⁸⁹⁴ There is unequivocal support for Te Whānau a Tauwhao from Te Patuwai Tribal and Te Rūnanga o Ngāti Awa.

In addition, even though the bulk of the evidence before us did not focus on Tauwhao, the evidence we did see clearly demonstrates their association with the island. Tauwhao had, and his resulting hapū retain, strong whakapapa and historical associations with the island, including through occupation and battles. Their interests were recognised by the Native Land Court in awarding Motiti lands. The vast majority of witnesses who appeared before us accepted they are tangata whenua on the island.

Accordingly, we have little hesitation in concluding that Te Whānau a Tauwhao are also tangata whenua of Motiti.

3.5.5 Findings: the tangata whenua of Motiti

In the preceding analysis, we have highlighted crucial evidence relating to whether Te Patuwai comprise two distinct groups – Ngāi Te Hapū (Te Patuwai ki Motiti) and Te Patuwai ki Whakatāne – with separate tribal identities and separate tribal rohe at Motiti and Whakatāne (respectively); or are a unified tribal grouping with one rohe encompassing both places, and which affiliates to Ngāti Awa. Our purpose in doing so has been to clarify whether Ngāi Te Hapū, Te Patuwai, and indeed any other group are tangata whenua of Motiti. Our analysis of the evidence about Motiti from the time of first occupation to the present has led us to some consistent conclusions. On the basis of those conclusions and the analysis that supports them, we make the following findings:

- ▶ Te Patuwai on Motiti, and Te Patuwai at Pūpūaruhe, are a unified tribal identity;
- ▶ Ngāi Te Hapū is an ancient tribe that unified with other iwi under the common identity of Te Patuwai;
- ▶ Ngāi Te Hapū has not continued to function as a separate and distinct tribal grouping to the present day, but is an integral part of the Te Patuwai identity;
- ▶ Te Patuwai is affiliated to Ngāti Awa;
- ▶ Te Whānau a Tauwhao have strong whakapapa and historical associations with the island, including through occupation. The vast majority of witnesses who appeared before us accepted they are tangata whenua on the island.
- ▶ Ultimately, we therefore find that Te Patuwai and Te Whānau a Tauwhao are the tangata whenua of Motiti.

894. Transcript 4.1.2, pp 365–366

CHAPTER 4

**TE PĀNGA O NGĀ KEREEME WHAKAPAPA MAI I A TE HAPŪ /
DID THE NGĀTI AWA CLAIMS SETTLEMENT ACT 2005
SETTLE MOTITI ISLAND CLAIMS BASED ON
WHAKAPAPA FROM TE HAPŪ?**

4.1 INTRODUCTION

This chapter addresses the second of the three core issues the Tribunal has selected for determination: did the settlement of the Ngāti Awa historical claims in the Ngāti Awa Claims Settlement Act 2005 (the Act) settle Motiti Island claims based on whakapapa from Te Hapū?

To determine this issue, we must analyse whether Motiti claims based on descent from Te Hapū fall within the meaning of Ngāti Awa historical claims as set out in section 15 of the Act.¹ This chapter begins by outlining the positions of the claimants, the Crown, and interested parties. We then consider the legal principles that apply, and the purpose and scheme of the Act, before addressing our central question: does the Act settle Motiti claims based on descent from Te Hapū?

4.2 THE PARTIES' POSITIONS**4.2.1 The claimants**

The claimants argued that the Act did not settle historical Treaty claims based on descent from Te Hapū, as Te Hapū was not a Ngāti Awa ancestor.² Their counsel submitted that, while the Act lists 'Te Patuwai' as one of the 22 hapū of Ngāti Awa, in the context of the Act, this name refers to Te Patuwai tūturu/Te Patuwai ki Whakatāne, as distinct from Te Patuwai ki Motiti (Ngāi Te Hapū).³ They also submitted that, although Motiti is included in Ngāti Awa's area of interest, as that area is defined in the Act, this does not imply Ngāti Awa have the strongest interest in the island or that the Act supports such an interpretation.⁴ They further argued that Ngāti Maumoana were wrongly included in the Act on the premise that they affiliate to Motiti, when in fact they do not.⁵

1. Sections of the Act are hereafter referred to using the abbreviation 's'.

2. Submission 3.3.8, pp 58, 59

3. Ibid, p 59

4. Ibid, p 66

5. Ibid, pp 59, 72

4.2.2 The Crown

The Crown submitted it ‘has not conclusively determined’ whether the Act settled the claims of Te Hapū’s descendants, as it could not reach a clear view on the key question of whether Te Hapū was a Ngāti Awa ancestor.⁶ The evidence on this key question was ‘conflicting and . . . contradictory’, it submitted, and was now a matter for the Tribunal to determine.⁷

4.2.3 The interested parties

Ngā Hapū o te Mouere o Motiti (Aiavao and others) supported the claimants’ position on the Act’s implications.⁸ Te Patuwai Tribal and Te Rūnanga o Ngāti Awa opposed it, arguing that the Act did settle Te Patuwai’s claims relating to Motiti (as well as their claims relating to Whakatāne).⁹ They took the view that Te Hapū was a recognised ancestor of Ngāti Awa.¹⁰ They also submitted that Motiti was only included in the Act because it is part of the rohe of Te Patuwai, who are covered by the settlement.¹¹ The Rauahi and Aporina Whānau Trust similarly asserted that the Act did indeed settle the claims of Te Hapū’s descendants.¹² The remaining interested parties expressed no view on the issue.¹³

4.3 TRIBUNAL ANALYSIS

This issue raises questions of law and fact. We first determine the legal principles that apply, before turning to analyse the Act and the arguments presented to us, taking into account our findings on who are the tangata whenua of Motiti.

4.3.1 What legal principles apply?

When interpreting legislation, the meaning of the Act must be ascertained from its text and in light of its purpose.¹⁴ The Act is to be read as a whole, so that individual provisions are not treated as standing alone but are considered in context as part of the Act. This has been referred to as considering relevant provisions within the scheme of the Act. The scheme is derived from reading all of the provisions, together with the long title and any statements of purpose contained in the Act.¹⁵

Generally, the subjective intentions of those involved in drafting the legislation are inadmissible when determining the meaning of the legislation. The meaning

6. Submission 3.3.14, pp 14–15

7. Ibid, p 14

8. Submission 3.3.13, pp 29–31

9. Submission 3.3.12(b), pp 81, 83

10. Ibid, p 74

11. Submission 3.3.8, p 84

12. Submission 3.3.10, p 23

13. Submission 3.3.9, p 3

14. Interpretation Act 1999, 5(1)

15. *Commerce Commission v Telecom Corporation of New Zealand Ltd* [1994] 2 NZLR 421 (CA), *Haira v Burberry Mortgage Finance & Savings Ltd* [1995] 3 NZLR 396 (CA)

of the legislation is to be determined objectively and not based on the subjective intentions of the drafters.¹⁶

4.3.2 What is the purpose and scheme of the Act?

The title to the Act is the Ngāti Awa Claims Settlement Act 2005.¹⁷

The Act commences with an extensive preamble in both te reo Māori and English. The preamble sets out the background to the settlement, and a historical account which forms the basis of the apology from the Crown to Ngāti Awa. The historical account also includes a statement of Ngāti Awa's rohe.

The purpose of the Act is set out in section 3:

3 Purpose

The purpose of this Act is to—

- (a) record the acknowledgements and apology given by the Crown to Ngāti Awa in the Ngāti Awa deed of settlement dated 27 March 2003 and signed by the Minister in Charge of Treaty of Waitangi Negotiations, the Honourable Margaret Wilson, for the Crown, and by Dr Sidney Moko Mead, John Mahiti Wilson, Bernard Paul Quinn, Joseph Mason, and Pouroto Nicholas Hamilton Ngaropo for Ngāti Awa; and
- (b) give effect to certain provisions of—
 - (i) the Ngāti Awa deed of settlement, which is a deed that settles the Ngāti Awa historical claims; and
 - (ii) the ancillary deeds of settlement, which are deeds that settle the ancillary claims.

Section 5 is a guide to the overall scheme and effect of the Act. That section is not intended to affect the interpretation or application of the provisions in the Act, the deed of settlement, or the ancillary deeds of settlement.¹⁸ The guide outlines the Act as follows.¹⁹

Part 1 of the Act includes preliminary provisions relating to the purpose of the Act, and records the acknowledgements and apology given by the Crown to Ngāti Awa. Part 2 defines terms used in the Act, including the key terms Ngāti Awa and Ngāti Awa historical claims.

Part 3 provides that the settlement of the Ngāti Awa historical claims and the ancillary claims is final, and deals with related issues, including:

- (a) the effect of the settlement on the jurisdiction of a court, tribunal, or other judicial body to consider the Ngāti Awa historical claims and the ancillary claims;

16. *New Zealand Greyhound Racing Association v New Zealand Racing Board* [2017] NZHC 1771, *Accident Compensation Corporation v Ng* [2020] NZCA 274

17. Ngāti Awa Claims Settlement Act 2005, s 1

18. *Ibid*, s 5(1)

19. *Ibid*, s 5(2)–(9)

- (b) consequential amendments to the Treaty of Waitangi Act 1975;
- (c) the effect of the settlement on certain resumptive memorials; and
- (d) miscellaneous matters relating to the settlement.

Part 4 deals with cultural redress and includes provisions relating to the following matters:

- (a) the issue of protocols to the Ngāti Awa governance entity;
- (b) the vesting in the Ngāti Awa governance entity of the fee simple estate in cultural redress properties;
- (c) an acknowledgement by the Crown of the statements made by Ngāti Awa of their cultural, spiritual, historical, and traditional association with certain statutory areas, with provision for entering into deeds of recognition in relation to certain statutory areas, together with provisions as to the effect of these instruments;
- (d) the establishment of a joint advisory committee to perform specified functions in relation to certain cultural redress properties and retained sites;
- (e) the establishment of a joint management committee to perform specified functions in relation to reserves;
- (f) the grant of renewable Nohoanga entitlements over certain Nohoanga sites;²⁰
- (g) the change of place names and assignment of place names to specified locations; and
- (h) the preferential right to purchase authorisations if the Minister of Conservation offers authorisations for specified areas.

Part 5 contains provisions relating to the transfer of commercial redress properties and related matters. Part 6 relates to Awanuiārangi 11 title. It provides that Ngāti Awa may hold land in the name of Awanuiārangi 11 and may declare such land as protected land.

Part 7 deals with the settlement of the ancillary claims, and includes provisions vesting the fee simple estate in:

- (a) Pukaahu, in the Pukaahu governance entity;
- (b) the Rangitaiki 60c settlement land, in the Rangitaiki 60c governance entity; and
- (c) the Waiohau settlement land, in the Waiohau governance entity.

There are 16 schedules contained in the Act. These schedules:

- (a) describe the cultural redress properties;
- (b) describe the Nohoanga sites;
- (c) describe the areas over which statutory acknowledgements are made, and set out the texts of Ngāti Awa's statement of association with those areas;
- (d) list place names to be altered and a place name to be assigned; and
- (e) describe Pukaahu, the Rangitaiki 60c settlement land, and the Waiohau settlement land for the purposes of the ancillary claims.

20. Nohoanga are seasonal occupation sites.

4.3.3 Does the Act settle Motiti Island claims based on descent from Te Hapū?**4.3.3.1 The key sections of the Act**

As already noted, the key question in this chapter is whether Motiti claims based on descent from Te Hapū fall within the meaning of the Ngāti Awa historical claims as set out in section 15 of the Act. That section states:

15 Settlement of Ngāti Awa historical claims final

- (1) The settlement of the Ngāti Awa historical claims effected under the Ngāti Awa deed of settlement and of the ancillary claims effected under the ancillary deeds of settlement and this Act is final, and on and from the settlement date, the Crown is released and discharged from all obligations and liabilities in respect of those claims.
- (2) Subsection (1) does not limit the acknowledgements expressed in, or the provisions of, the Ngāti Awa deed of settlement or the ancillary deeds of settlement.
- (3) Despite any other enactment or rule of law, on and from settlement date, no court, tribunal, or other judicial body has jurisdiction (including, without limitation, the jurisdiction to inquire or further inquire into, or to make a finding or recommendation) in respect of—
 - (a) any or all of the Ngāti Awa historical claims, the Pukaahu historical claims, the Rangitaiki 60c historical claims, or the Waiohau historical claims; or
 - (b) the Ngāti Awa deed of settlement or the ancillary deeds of settlement; or
 - (c) the redress provided under this Act or under the Ngāti Awa deed of settlement or the ancillary deeds of settlement; or
 - (d) this Act.
- (4) Subsection (3) does not exclude the jurisdiction of a court, tribunal, or other judicial body in respect of the interpretation or implementation of the Ngāti Awa deed of settlement, the ancillary deeds of settlement, or this Act.

Section 15(3) ousts the jurisdiction of this Tribunal to inquire into the Ngāti Awa historical claims, the deed of settlement, or redress provided under the settlement. However, section 15(3) does not exclude our jurisdiction to interpret the deed or the Act, which is our task here.

Some of the arguments and evidence advanced by the parties seek to inquire into the settlement itself. Our jurisdiction to do so has clearly been ousted. We address this further below.

In order to determine the effect of section 15, we have to examine a number of provisions in the Act, and then ascertain the meaning of those provisions in light of its text and the purpose of the Act as a whole. Section 11 of the Act also provides general guidance that Parliament intends that the provisions in the Act are interpreted in a manner that best furthers the agreements expressed in the deed of settlement and the ancillary deeds of settlement.

The term ‘Ngāti Awa historical claims’ is defined in section 14 of the Act:

14 Meaning of Ngāti Awa historical claims

- (1) In this Act, Ngāti Awa historical claims—

- (a) means every claim (whether or not the claim has arisen or been considered, researched, registered, notified, or made on or before the settlement date) that Ngāti Awa (or a representative entity) had at, or at any time before, the settlement date, or may have at any time after the settlement date, that—
 - (i) is, or is founded on, a right arising—
 - (A) from the Treaty of Waitangi (Te Tiriti o Waitangi) or the principles of the Treaty of Waitangi (Te Tiriti o Waitangi); or
 - (B) under legislation or at common law (including in relation to aboriginal title or customary law); or
 - (C) from fiduciary duty; or
 - (D) otherwise; and
 - (ii) arises from, or relates to, acts or omissions before 21 September 1992
 - (A) by, or on behalf of, the Crown; or
 - (B) by, or under, legislation; and
- (b) includes every claim to the Waitangi Tribunal to which paragraph (a) applies, including—
 - (i) the following Wai 46 (Ngāti Awa/Eastern Bay of Plenty) claims that related exclusively to Ngāti Awa (or a representative entity):
 - (A) a general claim of 11 March 1988:
 - (B) an amended claim of 18 July 1989:
 - (C) an amended claim of 8 November 1990:
 - (D) an amended claim of 16 December 1990:
 - (E) a consolidated claim of 8 April 1994:
 - (F) an amended claim of 12 September 2000 (Wai 46 Doc No 1.3(e)); and
 - (ii) the following claims, as far as they relate to Ngāti Awa (or a representative entity):
 - (A) Wai 12 (Motiti Island):
 - (B) Wai 23 (Putauaki):
 - (C) Wai 206 (White Island and Whale Island):
 - (D) Wai 501 (Tarawera Forest Claim No 2):
 - (E) Wai 819 (Waiohau Block No 2 and Rangitaiki Block No 38):
 - (F) Wai 1001 (Whakatāne Township Flooding claim); but
- (c) does not include the following claims:
 - (i) Wai 411 (Tarawera Forests claim) filed with the Waitangi Tribunal on 14 June 1993 and amended on 26 April 2000:
 - (ii) Wai 888 (Whakatāne Sawmill claim) filed with the Waitangi Tribunal on 1 February 2001:
 - (iii) the ancillary claims:
 - (iv) any claim that a member of Ngāti Awa or a hapū, group, family, or whānau referred to in section 13(1)(b) had at, or at any time before, the settlement date, or may have at any time after the settlement date, that is, or is founded on, a right arising from being descended from an ancestor who is not a Ngāti Awa tipuna:

- (v) any claim based on descent from a recognised ancestor of Te Tawera to the extent that the claim is, or is founded on, a right arising from being descended from an ancestor other than Awanuiārangi II:
 - (vi) any claim that a representative entity may have to the extent that the claim is, or is founded on, a claim referred to in subparagraph (iv).
- (2) In this Act,—
- representative entity** means—
- (a) the Ngāti Awa governance entity:
 - (b) any person (including any trust or trustees) acting for, or on behalf of,—
 - (i) the iwi, or collective group, referred to in section 13(1)(a)(i) [*sic* – section 13(1)(b)(i)]:
 - (ii) any 1 or more of the individuals referred to in section 13(1)(a)(ii) [*sic* – section 13(1)(b)(ii)]:
 - (iii) any 1 or more of the hapū, groups, families, or whānau referred to in section 13(1)(b).

Section 13 of the Act defines ‘Ngāti Awa’ as:

13 Meaning of Ngāti Awa

- (1) Ngāti Awa—
- (a) means nga uri o nga hapū o Ngāti Awa (the descendants of hapū of Ngāti Awa); and
 - (b) includes—
 - (i) the collective group composed of individuals referred to in subparagraph (ii); and
 - (ii) every individual who is—
 - (A) descended from a Ngāti Awa tipuna:
 - (B) a member of a hapū, group, family, or whānau referred to in subparagraph (iii) and (iv); and
 - (iii) the hapū of Ngāti Awa; and
 - (iv) any hapū, group, family, or whānau composed of individuals referred to in subparagraph (ii).
- (2) In this section and section 14, Ngāti Awa tipuna means a person who exercised customary rights—
- (a) by virtue of being descended from—
 - (i) Awanuiārangi II:
 - (ii) a recognised ancestor of any of the hapū of Ngāti Awa; and
 - (b) at any time after 6 February 1840 predominantly in relation to the Ngāti Awa area of interest.
- (3) In this section,—
- customary rights** means rights according to tikanga Māori (Māori customary values and practices), including the following:
- (a) rights to occupy land:
 - (b) rights in relation to the use of:

- (i) land:
- (ii) natural or physical resources

hapu of Ngāti Awa means—

- (a) the following 22 hapu being:
 - (i) Ngāti Hokopu—Te Whare o Toroa:
 - (ii) Ngāti Hokopu—Te Hokowhitu a Tu Ki Te Rahui:
 - (iii) Ngāti Wharepaia:
 - (iv) Ngāti Pūkeko:
 - (v) Ngāti Rangataua:
 - (vi) Ngai Tamapare:
 - (vii) Te Patuwai:
 - (viii) Ngāti Maumoana:
 - (ix) Ngai Taiwhakaea II:
 - (x) Ngāti Hikakino:
 - (xi) Ngai Te Rangihouhiri II:
 - (xii) Te Tawera:
 - (xiii) Nga Maihi:
 - (xiv) Te Pahipoto:
 - (xv) Ngai Tamaoki:
 - (xvi) Ngai Tamawera:
 - (xvii) Tuariki:
 - (xviii) Warahoe:
 - (xix) Ngāti Hamua:
 - (xx) Ngāti Awa ki Tamaki Makaurau:
 - (xxi) Ngāti Awa ki Poneke:
 - (xxii) Te Kahupake; and
- (b) the following tribal identities, which are incorporated into the hapū listed in paragraph (a):
 - (i) Ngāti Ahi:
 - (ii) Ngāti Hinanoa:
 - (iii) Ngāti Irawharo:
 - (iv) Kahurere:
 - (v) Ngāti Nuku:
 - (vi) Te Patutatahi:
 - (vii) Te Patutahora:
 - (viii) Ngāti Tapatahi

Ngati Awa area of interest means the area identified in attachment 1.1 of the Ngāti Awa deed of settlement as the area that Ngāti Awa identifies as its area of interest together with the adjacent waters and offshore islands.

- (4) For the purposes of the definitions of Ngāti Awa and Ngāti Awa tipuna, a person is descended from another person if the person is descended from the other person by—
 - (a) birth; or
 - (b) legal adoption; or
 - (c) Māori customary adoption in accordance with the custom of Ngāti Awa.

The offshore islands included in Ngāti Awa's area of interest are defined in section 12 as:

offshore islands—

- (a) means the following islands situated in the Bay of Plenty:
 - (i) Motiti Island:
 - (ii) Tokata Island:
 - (iii) Rurima Island:
 - (iv) Moutoki Island:
 - (v) Moutohorā (Whale Island):
 - (vi) Whakāri (White) Island:
 - (vii) Te Paepae o Aotea (formerly Volkner Rocks); and
- (b) includes any islands, islets, or rocks adjacent to those islands.

All of the above definitions largely mirror the definitions in the deed of settlement.²¹

The inclusion of Motiti in Ngāti Awa's area of interest is also consistent with the rohe of Ngāti Awa as set out in the preamble to the Act:

Te Rohe o Ngāti Awa

- (16) E whakaponono ana a Ngāti Awa, i mua o te tau 1866, koia te tangata whenua, ā, nōna te tino rangatiratanga e hora ana i ētahi wā, ki runga i ngā whenua ka whai nei: *ngā moutere o Motiti*, o Rurima, o Mou-tohorā, Te Paepae o Aotea, Whakaari, a Ohakana rāua ko Uretara (he moutere ēnei kei te whanga o Ōhiwa), ngā wai mai i te wahapū o Waihi ki Ōhiwa; te whenua, ngā ngahere, ngā roto, ngā awa me ngā repo, mai i te wahapū o Waihi ki te raki, ā ka whai haere i te takutai tae rawa ki Ōhiwa, mai i te wahapū o Waihi anō, ka huri whaka-te-hau-ā-uru ki te awa o Pongakawa, ki te moutere o Rotoehu (tae rawa ki te papa o te roto o Rotoehu me te ngahere o Rotoehu), ā, mai i Rotoehu ki Te Haehaenga, tae atu ki te roto o Rotomā ki ngā whenua o Pokohu, o Tuararangaia me Matahina ki te tonga, ā, atu i reira ki te Whanga o Ōhiwa:

Rohe of Ngāti Awa

- (16) Ngāti Awa claim that prior to 1866 they exercised tino rangatiratanga as tangata whenua from time to time over their rohe including: *the islands of Motiti*, the Rurima group, Moutohorā (Whale Island), Paepae o Aotea (Volkner Rocks), Whakāri (White Island), Ohakana, and Uretara (both the latter 2 islands being situated in Ōhiwa Harbour); the seas from Waihi Estuary near Maketu to Ōhiwa Harbour; the land, forests, lakes, rivers, and swamps bounded to the north by the coastline from Waihi Estuary to Ōhiwa, to the west from the Waihi Estuary along the Pongakawa River to Lake Rotoehu (including the lake itself and the Rotoehu Forest), from Lake Rotoehu to Te Haehaenga, and including Lake Rotoma to the

21. Deed of Settlement to Settle Ngāti Awa Historical Claims, 27 March 2003, cls 1.2 –1.3. Though the wording in the Act is expressly differently we consider the differences are minor or incidental and do not affect our findings in this chapter.

Pokohu, Tuararangaia, and Matahina lands to the south and from there to Ōhiwa Harbour. [Emphasis added.]

As set out in section 13, Ngāti Awa means ‘ngā uri o nga hapū o Ngāti Awa’, the descendants of hapū of Ngāti Awa. It includes the collective group; every individual who is descended from a Ngāti Awa tipuna; the hapū of Ngāti Awa; and any hapū, group, family, or whānau composed of individuals in those groups.

Section 13 of the Act defines and lists 22 hapū as the hapū of Ngāti Awa. They include Te Patuwai. We have already found that the descendants of Te Hapū are Te Patuwai, Te Patuwai are tangata whenua on Motiti, Te Patuwai are a hapū of Ngāti Awa, and there is no separate and distinct Te Patuwai group on Motiti. That is, Te Patuwai are a single indivisible group based at Pūpūaruhe and Motiti. Accordingly, Te Hapū’s descendants are descendants of a hapū of Ngāti Awa and fall within the definition of Ngāti Awa in section 13 of the Act. We return to the question of descent from a Ngāti Awa tipuna below.

We now turn to consider the meaning of Ngāti Awa historical claims according to section 14 of the Act. These historical claims are defined in three tranches. Section 14(1)(a) refers to Ngāti Awa historical claims generally. Section 14(1)(b)(i) refers to the Wai 46 claim being the primary claim filed with the Waitangi Tribunal that relates exclusively to Ngāti Awa. Section 14(1)(b)(ii) refers to various other claims filed with the Tribunal, as far as they relate to Ngāti Awa.

In section 14(1)(a), Ngāti Awa historical claims means every claim Ngāti Awa had at, before, or after the settlement date arising from te Tiriti concerning acts or omissions by or on behalf of the Crown, or by or under legislation prior to 21 September 1992. We have already found that the descendants of Te Hapū are Ngāti Awa under section 13 of the Act. Any historical claims to Motiti based on descent from Te Hapū therefore fall within the general definition of Ngāti Awa historical claims set out in section 14(1)(a) of the Act. We note that this does not include any contemporary claims, being claims arising from acts or omissions by or on behalf of the Crown, or by or under legislation, after 21 September 1992.

Section 14(1)(b)(i) refers to the Wai 46 claim being the primary and exclusive Ngāti Awa claim. That claim did not include claims to Motiti and so any claims to Motiti based on descent from Te Hapū are not captured there.

Section 14(1)(b)(ii) refers to further specific claims that are included as Ngāti Awa historical claims as far as they relate to Ngāti Awa. The first claim listed at section 14(1)(b)(ii)(A) is Wai 12, which is named as a Motiti Island claim.

The Wai 12 claim was filed on 4 May 1984 by Andrew Nuku, the secretary for the Motiti Island Advisory Committee. The claim was filed ‘on behalf of the owners of Motiti Island in the Bay of Plenty.’²² The claim raised opposition to Motiti Island falling under the authority of the Tauranga County Council. The claim states that ‘[t]he people of the island are totally unanimous in their opposition to any change in local body control of their tiny island.’²³

22. Wai 12 ROI, claim 1.1

23. Ibid

The Tribunal reported on the Wai 12 claim on 21 May 1985. The report states:

Motiti Island is located off the Bay of Plenty coast between Mount Maunganui and Maketu. It is populated by people of two tribes, Patuwai, a subtribe of Ngāti Awa of the Whakatane district, and Whanau a Tauwhao, a subtribe of Ngai Te Rangi centred on Tauranga and Mount Maunganui, Patuwai occupying the northern half and Te Whanau a Tauwhao the southern half.

In May 1984 the Motiti Advisory Committee, which appears to be virtually the same body as the Patuwai Tribal Committee, made claim to the help of the Waitangi Tribunal in preserving the status quo. The Tribunal was asked whether it could persuade the Local Government Commission to set aside its scheme.

We are of [the] opinion that the islanders' claim was not a claim within section 6 of the Treaty of Waitangi Act 1975 and that we could not consider the relief sought in it. If it was a proper claim, we are of [the] opinion that the claimants were not without an adequate right of hearing before the Local Government Commission. At this stage an amended claim has not been filed.

For those reasons we decline to enquire further into the claim as filed, without prejudice to the claimants' right to file a re-formulated claim if they wish.²⁴

Section 14(1)(b)(ii) of the Act provides that the Wai 12 claim is a Ngāti Awa historical claim as far as it relates to Ngāti Awa. We consider that at least part of the claim did relate to Te Patuwai on Motiti and to Ngāti Awa.

Mr Nuku filed the claim as the secretary of the Motiti Island Advisory Committee. The claim was submitted on behalf of the owners of Motiti. When reporting on the claim, the Tribunal found that Motiti was populated by two tribes: Patuwai, a subtribe of Ngāti Awa, and Te Whānau a Tauwhao, a subtribe of Ngai Te Rangi. This is consistent with our findings in chapter 3. The Tribunal also commented in 1985 that the Motiti Advisory Committee appeared to be the same body as the Patuwai Tribal Committee. We too have commented on Te Patuwai Tribal being the long-standing representative of Te Patuwai interests at both Pūpūaruhe and Motiti. The claim concerned the administration of the island by local government. This has been an ongoing issue for those on Motiti for some time.

We accept that section 14(1)(b)(ii) of the Act provides that Wai 12 was only included as a Ngāti Awa historical claim as far as it relates to Ngāti Awa. This implies that part of this claim does not relate to Ngāti Awa. Claimant counsel Karen Feint QC argued that this proviso recognises that Te Patuwai ki Motiti are a separate and distinct group. We have already rejected this argument as a matter of fact in our decision on who are the tangata whenua of Motiti. We also consider

24. Waitangi Tribunal, *Report of the Waitangi Tribunal on a Motiti Island Claim* (Wellington: Waitangi Tribunal, 1985), pp 2–3

that this interpretation is not available taking into account the provisions of section 14 of the Act and the Wai 12 claim.

The Wai 12 claim was brought on behalf of the owners on Motiti. There is no indication that the claim was brought on behalf of Te Patuwai at Pūpūaruhe. If Ms Feint was right, this would mean that the claim was brought by Te Patuwai on the mainland, who (on her argument) have no interests on the island. That is not sensible and is contrary to the claim being submitted on behalf of the owners of the island.

We have also found that the tangata whenua on Motiti are Te Patuwai and Te Whānau a Tauwhao. This is consistent with the findings of the Tribunal in the Wai 12 report. The proviso in section 14(1)(b)(ii) that Wai 12 is included as a Ngāti Awa historical claim only as far as it relates to Ngāti Awa is intended to preserve the claims of Te Whānau a Tauwhao, which were not included in the Ngāti Awa settlement.

As such, any claims to Motiti based on descent from Te Hapū are included in the Wai 12 claim, and the definition of Ngāti Awa historical claims, in section 14 of the Act, to the extent they relate to the island coming under the authority of the Tauranga County Council. The inclusion of this specific Te Patuwai claim concerning Motiti Island also supports our earlier finding that historical Te Patuwai claims (including those based on descent from Te Hapū) fall within the general definition of Ngāti Awa historical claims in section 14(1)(a) of the Act.

Having found that claims to Motiti based on descent from Te Hapū fall within both the general definition of Ngāti Awa historical claims and the specific Wai 12 claim, we now consider whether the claims to Motiti also fall within the exceptions to the Ngāti Awa historical claims, set out in section 14(1)(c)(iv) of the Act. This section provides that the Ngāti Awa historical claims do not include any claim that a member of Ngāti Awa or a hapū, group, family, or whānau referred to in section 13(1)(b) had at, before, or after the settlement date, founded on a right arising from descent from an ancestor who is not a Ngāti Awa tipuna.

Ms Feint argued that Te Hapū is not a Ngāti Awa tipuna; thus, any claim to Motiti based on descent from Te Hapū is an exception to the definition of Ngāti Awa historical claims in the Act. ‘Ngāti Awa tipuna’ is defined in section 13(2) as:

a person who exercised customary rights—

- (a) by virtue of being descended from—
 - (i) Awanuiārangi II;
 - (ii) a recognised ancestor of any of the hapū of Ngāti Awa; and
- (b) at any time after 6 February 1840 predominantly in relation to the Ngāti Awa area of interest.

‘Customary rights’ means rights according to tikanga Māori (Māori customary values and practices) and includes rights to occupy the land, and rights in relation to the use of the land and natural or physical resources.²⁵

25. Ngāti Awa Claims Settlement Act 2005, s 13(3)

It is accepted that Te Hapū exercised customary rights on Motiti. Motiti is also included within the Ngāti Awa area of interest, being one of the offshore islands listed in section 12 of the Act.

There are two categories of descent in section 13(2) of the Act. A Ngāti Awa tipuna can exercise customary rights by virtue of descent from Awanuiārangi 11 or by virtue of descent from a recognised ancestor of a hapū of Ngāti Awa.

Section 13(2)(a) of the Act does not separate Awanuiārangi 11, and a recognised ancestor of any of the hapū of Ngāti Awa, with an 'and' or an 'or'. Despite that, no one has argued that a Ngāti Awa tipuna must exercise customary rights by virtue of being descended from Awanuiārangi 11 *and* a recognised ancestor of a hapū of Ngāti Awa. Junior counsel for the claimants, Mr Fletcher, agreed that in order to be captured by this definition a person could descend from Awanuiārangi 11 *or* a recognised ancestor of any of the hapū of Ngāti Awa. We agree that this is the proper interpretation of these provisions.

To the extent that any ambiguity remains, section 11 says the provisions in the Act are to be interpreted in a manner that best furthers the agreements set out in the deed of settlement. A 'Ngāti Awa tipuna' is defined in the deed of settlement as:

Ngāti Awa Tipuna means an individual or individuals who:

- (a) exercised Customary Rights by virtue of being descended from:
 - (i) Awanuiārangi 11; *or*
 - (ii) a recognised ancestor of any of the Hapū of Ngāti Awa; and
- (b) exercised the Customary Rights referred to in paragraph (a) of this definition predominantly in relation to the Area of Interest at any time after 6 February 1840; [Emphasis added.]²⁶

We now return to consider whether Te Hapū falls within this definition of a Ngāti Awa tipuna. As noted in our earlier chapter, Dr Ngaropo recited whakapapa demonstrating that Te Hapū descends directly from Awanuiārangi 11. Based on that whakapapa, Te Hapū would clearly fall within the definition of a Ngāti Awa tipuna per section 13(2)(a)(i) of the Act. That whakapapa was controversial in that it was strongly disputed by the claimants and was not widely known by others who gave evidence in this inquiry. But, ultimately, it is not necessary for us to make a decision about that descent line.

Even if we put that whakapapa aside, we consider that Te Hapū is a recognised ancestor of a hapū of Ngāti Awa. Te Patuwai is named as one of the 22 hapū of Ngāti Awa. This includes Te Patuwai on Motiti and Te Patuwai at Pūpūaruhe who are a single indivisible entity. Te Hapū is a recognised ancestor of Te Patuwai. All of those who gave evidence before us (for the claimants and for the interested parties) recited whakapapa back to Te Hapū. The Native Land Court records demonstrate that the rights of Te Patuwai on Motiti were asserted through descent from Te Hapū.

26. Deed of Settlement to Settle Ngāti Awa Historical Claims, 27 March 2003, s1.2.2, p 29

Ms Feint argued that Te Hapū is not a Ngāti Awa tipuna as he does not descend from Awanuiārangi 11. She submits that Ngāti Awa repeatedly place prominence on Awanuiārangi 11 as being the paramount and eponymous ancestor for Ngāti Awa. She emphasised that, as Te Hapū did not descend from Awanuiārangi 11 and he could also whakapapa to Te Arawa, he was not a Ngāti Awa tipuna within the definition of section 13 of the Act.

We do not accept this argument. We agree that Te Hapū can whakapapa to Te Arawa. However, he can also whakapapa to Mataatua. We have analysed this evidence in detail in chapter 3.

There is no question that Awanuiārangi 11 is a significant tipuna for Ngāti Awa. His prominence is referred to extensively by Ngāti Awa. However, he is not their only tipuna. Dr Ngaropo told us that, when looking at whether one is Ngāti Awa, you must look at both Awanuiārangi 1 and Awanuiārangi 11.

Ms Feint disputes this approach, arguing that, were this the case, all descendants of Awanuiārangi 1 would be Ngāti Awa, when there are many iwi who descend from Awanuiārangi 1. Ms Feint's argument oversimplifies the complex connections of Mataatua whakapapa. Not all descendants of Awanuiārangi 1 are modern day Ngāti Awa; one has to look more closely at both the whakapapa and the history of the particular descendants. It is also the case that not all descendants of Awanuiārangi 11 are modern day Ngāti Awa. Ngāi Te Rangī also descend from Awanuiārangi 11. In the same way that descent from Awanuiārangi 11 must be properly considered, so too must descent from Awanuiārangi 1.

If Parliament intended that the term 'Ngāti Awa tipuna' was to be limited to those who descend from Awanuiārangi 11, the definition in section 13 of the Act would have said so. It does not. There are two clear and separate categories: descent from Awanuiārangi 11 or descent from a recognised ancestor of any of the hapū of Ngāti Awa. When interpreting these provisions this must be given practical effect. On a plain reading, the two separate categories demonstrate that not all Ngāti Awa tipuna descend from Awanuiārangi 11 for the purpose of section 13(2) of the Act.

We find that:

- ▶ Te Hapū is a Ngāti Awa tipuna per section 13(2) of the Act;
- ▶ Te Patuwai on Motiti are a hapū of Ngāti Awa per section 13 of the Act; and
- ▶ any historical claims to Motiti based on descent from Te Hapū were settled as a Ngāti Awa historical claim per sections 14 and 15 of the Act.

4.3.3.2 Does the 1840 rule affect our findings?

The definition of a Ngāti Awa tipuna in section 13 of the Act refers to a tipuna who exercised customary rights at any time after 6 February 1840. Te Hapū clearly did not exercise rights after 1840 as he was a very early ancestor who died prior to the arrival of Europeans. This does not affect our decision.

The claimants are asserting unsettled claims based on descent from the tipuna Te Hapū. Both claimants and interested parties who appeared before us asserted mana on Motiti based (at least in part) on descent from Te Hapū. Our analysis earlier has focused on Te Hapū, responding to the claim before us. The key issue

for us is that those who were exercising customary rights at any time after 1840 were descendants of Te Hapū and so are included in our analysis.

4.3.3.3 Are Ngāti Awa's statutory acknowledgements relevant?

Counsel for Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, Spencer Webster, referred us to the statutory acknowledgements contained as schedules to the Act. He contends that the statements of association in those statutory acknowledgements demonstrate that Te Hapū is a Ngāti Awa tipuna.

A statutory acknowledgement is a form of non-exclusive redress which demonstrates the association of Ngāti Awa with an area for the purposes of dealing with relevant consent authorities, the Environment Court, and Heritage New Zealand Pouhere Taonga.²⁷ Under section 40 of the Act, the Crown acknowledges the statements made by Ngāti Awa of their cultural, spiritual, historical and traditional association with those areas.

Schedule 8 to the Act sets out the statutory acknowledgement concerning Ōhiwa Harbour. This states:

The traditions of Ngāti Awa illustrate the cultural, historical, and spiritual association of Ngāti Awa to the Ōhiwa Harbour. For Ngāti Awa, traditions such as these represent the links between the world of the gods and present generations. These histories reinforce tribal identity, connection, and continuity between generations and confirm the importance of Ōhiwa Harbour to Ngāti Awa.

There are a number of important Ngāti Awa pā sites and wāhi tapu in the Ōhiwa Harbour, which demonstrate Ngāti Awa connections with the harbour. Generations of Ngāti Awa have watched over Ōhiwa from such places. One such wāhi tapu was Te Horonga o Ngai Te Hapū (the bathing place of Te Hapū). Te Hapū was the son of Tāroakaikaha, the founding ancestor of the Patuwai hapū of Ngāti Awa who are now located at Pupuāruhe, Toroa Marae and Mōtiti Island.

Schedule 10 sets out the statutory acknowledgement concerning the Whakatāne River. This states:

Throughout this period a number of hapū of Ngāti Awa resided along the Whakatāne River including Ngāti Maumoana, Ngai Te Hapū, Ngāti Ikapuku, Te Patuwai, Ngāti Pūkeko, Te Whānau a Taiwhakaea, Ngāti Hinanoa, Ngāti Kama, Ngāti Tāpiki, and Ngāti Hokopū. The Whakatāne River was a life and spiritual source for those people. All of these hapū had various pā, kāinga and wāhi tapu along the banks of the river.

These statements clearly refer to Ngāti Awa's association with Ngai Te Hapū and Te Hapū. The statement concerning Ōhiwa Harbour refers to Te Hapū as

27. Ngāti Awa Claims Settlement Act 2005, ss 41, 54

the founding ancestor of the Patuwai hapū of Ngāti Awa who are now based at Pūpūaruhe, Toroa Marae, and Motiti. The statement concerning the Whakatāne River refers to Ngāi Te Hapū as a hapū of Ngāti Awa. When interpreting legislation, we have to take into account the Act as a whole – including the schedules. This lends weight to Mr Webster’s arguments that these statements of association are relevant when deciding whether Te Hapū is a Ngāti Awa tipuna.

Despite this, there are express limitations on the effect of the statutory acknowledgements. The purpose of statutory acknowledgements is to require relevant consent authorities, the Environment Court, and Heritage New Zealand Pouhere Taonga to have regard to the statutory acknowledgements; to require relevant consent authorities to forward summaries of resource consent applications to Ngāti Awa; and to enable Ngāti Awa to cite the statutory acknowledgements as evidence of their association with the statutory areas and proceedings before a consent authority, the Environment Court or Heritage New Zealand Pouhere Taonga.²⁸

The statutory acknowledgements do not have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights in relation to, those areas.²⁹ The statutory acknowledgements cannot be taken into account in the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw. No person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw may give any greater or lesser weight to Ngāti Awa’s association with those areas than that person would give if the statutory acknowledgement had not been made.³⁰

Taking into account both the purpose of, and the limit on, these statutory acknowledgements, there is some ambiguity as to what can be made of them when interpreting section 15 of the Act. At the very least, these statements in the schedules demonstrate that, at the time the settlement was entered into, Ngāti Awa asserted Te Hapū as a Ngāti Awa tipuna. Ultimately, we have not found it necessary to place any weight on these statements when determining the effect of section 15 of the Act. Instead, we have limited our analysis to interpreting the body of the Act as referred to earlier.

4.3.3.4 What other matters should be taken into account when assessing the Act?

Both the claimants and interested parties referred to various other matters which they say are relevant when assessing the Act. These include:

- ▶ evidence from one of the Ngāti Awa negotiators on what was intended when the Act was passed;
- ▶ the views of the territorial authority for Motiti;
- ▶ whether the Wai 46 claim included a claim to Motiti;
- ▶ whether Ngāti Awa obtained a mandate from those on Motiti to settle their claims; and
- ▶ whether the Ngāti Awa settlement provided relief for Motiti claims.

28. Ngāti Awa Claims Settlement Act 2005, s 41

29. Ibid, s 57

30. Ibid, sch 8

In our consideration of the Act, either we have not taken these various matters into account or they do not affect our finding. We explain our reasons in each case here.

Professor Tā Hirini Mead was one of the negotiators for Ngāti Awa when they settled their claims. He gave evidence as to what was intended when certain provisions were included in the deed of settlement and the Act. Tā Hirini is a well-known and respected leader both within Ngāti Awa and in te ao Māori generally. We do not question the credibility or the reliability of his evidence. However, we recognise that the subjective intention of the parties is generally inadmissible when seeking to ascertain the meaning of legislation.³¹ We have not taken that evidence into account when assessing the meaning of the Act earlier.

Ms Feint referred us to the position of the Department of Internal Affairs as the territorial authority of the island. This has no bearing on this exercise. The subjective position of a Government department that had no involvement in the settlement, and was expressed many years after the settlement was entered into, is irrelevant when interpreting this legislation.

Ms Feint also argued that the Wai 46 claim did not include a claim to Motiti. She submitted that, as the Ngāti Awa settlement settled the Wai 46 claim, it cannot have been intended that any claims to Motiti would also be included. Te Patuwai Tribal and Te Rūnanga o Ngāti Awa advised that the Wai 46 claim focused on the raupatu suffered by Ngāti Awa. That is not surprising, given that raupatu has been recognised as one of, if not the most, egregious of Crown Treaty breaches. In any event, Ms Feint's argument overlooks the fact that the definition of Ngāti Awa historical claims is not limited to the Wai 46 claim. If this was intended, Parliament would have said so.

Ms Feint also raised the deed of mandate and the mandating process concerning the settlement. The claimants presented evidence on whether the mandate Ngāti Awa obtained to settle the Ngāti Awa historical claims included a mandate from those on the island. This is outside the purview of our jurisdiction and is irrelevant. While mandate is part of the settlement process, inquiring into whether Ngāti Awa had a sufficient mandate to settle any claims to Motiti is an inquiry into the legitimacy of the settlement itself. Our jurisdiction to do so is expressly ousted by section 15(3) of the Act. While we have retained our jurisdiction to interpret the provisions in the Act and the deed, this does not extend to assessing whether Ngāti Awa had a sufficient mandate to settle the claims defined in the Act. Parliament has also directed us to further the agreements in the deed of settlement when interpreting the Act.³² The deed of mandate is not so included.

Ms Feint raised a similar issue that the settlement did not provide any redress concerning Motiti. We place no weight on this. Treaty settlements are negotiated agreements between iwi and the Crown. Settlement redress is often a result of compromise. The fact that a settlement does not provide redress for a particular

31. *New Zealand Greyhound Racing Association v New Zealand Racing Board* [2017] NZHC 1771; *Accident Compensation Corporation v Ng* [2020] NZCA 274

32. Ngāti Awa Claims Settlement Act 2005, s 11

area, or a particular issue, does not affect the definition of whether such areas, issues, or claims have been settled. This argument also seeks to inquire into the settlement itself, which is prohibited by section 15(3) of the Act.

To the extent this is relevant, we note that clause 1.10.1(xiv) of the deed of settlement states that the redress the Crown provided, or will provide, includes provision for consultation in relation to any future review of local government administration of offshore islands. The offshore islands include Motiti.

4-3-3-5 Do the findings concerning Ngāti Whakahemo and Tūwharetoa ki Kawerau apply?

Ms Feint referred us to decisions concerning Ngāti Whakahemo and Tūwharetoa ki Kawerau, who faced similar issues as to whether they were, or should be, included in settlement legislation. She contends that the approach taken in those cases applies here.

In *Ririnui v Landcorp Farming Limited*, the High Court had to consider whether all of Ngāti Whakahemo's claims had been settled by the Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (Affiliate Settlement Act).³³ Ngāti Whakahemo were listed as a 'sub-group' of Ngāti Pikiao in that legislation. Despite that, Justice Williams found that Ngāti Whakahemo's claims based on descent from Maruahaira were not settled. Ms Feint emphasised the following finding:

[11] Although Ngāti Whakahemo has in the past been listed as a hapū of Ngāti Pikiao, that affiliation seems to have been political rather than genealogical. That distinction is important because in tikanga Māori, land rights are derived by descent, not by political affiliation.³⁴

Ms Feint says the same applies in relation to Te Patuwai ki Motiti, which she says is a separate and distinct group from Te Patuwai ki Whakatāne although they share political affiliations. We have already rejected Ms Feint's argument as to a separate and distinct tribal identity on Motiti. The decision in *Ririnui* can also be distinguished from the present case.

The Affiliate Settlement Act settled the 'affiliate historical claims'. Schedule 1, part 1, of that legislation defines the collective groups that together constitute the affiliate. This includes Ngāti Pikiao as follows:

Ngati Pikiao (excluding Ngati Makino)—

(a) means—

- (i) the collective group composed of—
 - (A) individuals descended from 1 or more Ngati Pikiao Ancestors; and
 - (B) individuals who are members of the subgroups referred to in paragraph (b)(i); and
- (ii) every individual referred to in subparagraph (i); and

33. *Ririnui v Landcorp Farming Limited* [2014] NZCCLR 20

34. *Ibid* at [11]

(b) includes the following subgroups:

- (i) Ngati Tamateatutahi, Ngati Kawiti, Ngati Te Rangiuuora, Ngati Hinekura, Ngati Te Takinga, Ngati Tutaki-a-Hani, Ngati Tutaki-a-Koti, Ngati Paruaharanui, Ngati Hinerangi, and Ngati Whakahemo; and
- (ii) any whanau, hapu, or group of individuals composed of individuals referred to in paragraph (a)(i).

Schedule 1, part 2, defines a 'Ngāti Pikiao Ancestor' as follows:

Ngati Pikiao Ancestor means an individual who exercised customary rights—

- (a) by virtue of being descended from Pikiao; and
- (b) predominantly in relation to the area of interest at any time after 6 February 1840.

The term 'affiliate historical claims' is defined in section 12. Noticeably, this *excludes* 'A claim that a member of the Affiliate, or an iwi, hapu, whanau or sub-group referred to in any of the definitions of collective groups in Part 1 of Schedule 1, may have that is, or is founded on, a right arising as a result of being descended from an ancestor who is not an Affiliate Ancestor.'³⁵

The definitions in the Affiliate Settlement Act were significant as Ngāti Pikiao ancestors were limited to those who descend from Pikiao. As Ngāti Whakahemo could whakapapa to Maruahaira, and as Maruahaira did not descend from Pikiao, their claims based on descent from Maruahaira were not included in that settlement. As Justice Williams found:

[16] Ngati Whakahemo is in fact included as a 'sub-group' of Ngati Pikiao according to sch 1, Part 1. But Part 2 of the First Schedule lists the relevant descent line as follows:

Ngati Pikiao Ancestor means an individual who exercised customary rights—

- (a) by virtue of being descended from Pikiao . . .

[17] Thus, because Maruahaira's descent line is separate from that of Pikiao, the 2008 Act does not settle the core Ngati Whakahemo claims – that is, those claims derived from its primary descent line through Maruahaira – despite the fact that Ngati Whakahemo is listed as a sub-group of Ngati Pikiao.³⁶

That approach does not apply to Te Patuwai. As noted earlier, the Ngāti Awa settlement legislation defined Ngāti Awa tīpuna in two tranches. This was not limited to those who descend from Awanuiārangi 11, but included a recognised ancestor of any of the hapū of Ngāti Awa. This is an important distinction that did not apply to Ngāti Whakahemo.

35. Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008, s12(s), sch 1, pt 3

36. *Ririnui v Landcorp Farming Limited* [2014] NZCCLR 20 at [16]–[17]

Ms Feint also referred us to the Tribunal's findings in the *Ngati Awa Raupatu Report* concerning Tūwharetoa ki Kawerau. She submitted that through intermarriage and whakapapa, Tūwharetoa ki Kawerau can qualify as a Ngāti Awa hapū. Tūwharetoa ki Kawerau's rohe also lies entirely within Ngāti Awa's area of interest. Despite this, the Tribunal found that Tūwharetoa ki Kawerau should receive a separate settlement from Ngāti Awa 'on account of their distinctive lines' from Te Arawa.³⁷

Ms Feint suggested that this finding has ramifications for interpreting the Act. She argued that, though Tūwharetoa's Kawerau-based descendants belong to Ngāti Awa hapū, 'it does not follow that [he] is a recognised ancestor of a Ngāti Awa hapū' – because '[his] whakapapa is distinctly associated with Te Arawa'.³⁸ The Tribunal's findings concerning Tūwharetoa ki Kawerau do not apply here. The *Ngati Awa Raupatu Report* reported on the Wai 46 claim. The Tribunal found:

Ngati Awa claim that the Tuwharetoa hapu are part of Ngati Awa and that the Tuwharetoa hapu should be included in the Ngati Awa settlement. That issue is dealt with in chapters 2 and 11. We conclude that there should be a separate settlement with Tuwharetoa ki Kawerau on account of their distinctive lines.

However, as was not unusual in Maori society, the hapu of the Kawerau area identified under the name of their ancestor, Tuwharetoa. He is an ancestor of different background and lineage associated with the Arawa descent group. Through intermarriage, these people could identify with either Ngati Awa or Te Arawa, although the named ancestor is distinctly associated with the latter. It would not be unusual if they identified with either or both, according to the occasion. We are satisfied that, for the purposes of the raupatu claims, the Kawerau hapu are able to stand separately as Tuwharetoa if they choose. Their whakapapa shows that they are part of Ngati Awa but that they also have a separate line that they are entitled to call. By calling that line today, they emphasise their separate claim and that they were not part of those Ngati Awa hapu that engaged in acts that the Government saw as rebellion.

What is apparent, therefore, is that both Ngati Awa and Tuwharetoa jointly claim several hapu groups. Counsel for the Tuwharetoa claimants conceded that Ngati Hikakino and Ngai Te Rangihouhiri were also strongly connected to Ngati Awa. He explained that, in traditional terms, the business of those hapu on the coast east of Wahieroa (a point midway between the mouths of the Tarawera and Rangitaiki Rivers) was done on behalf of Ngati Awa, and to the west on behalf of Tuwharetoa. We would observe that, despite the ambiguities in the customary allegiance, these hapu seem firmly aligned to Ngati Awa today. Perhaps more complicated, as adverted to above, is the situation of the Tawera– Umutahi hapu. Tuwharetoa counsel submitted that this hapu had never been allied to Ngati Awa, and Umutahi Marae in Matata was identified by various Tuwharetoa ki Kawerau witnesses as a specifically Tuwharetoa marae. As

37. Waitangi Tribunal, *Ngati Awa Raupatu Report*, p 3

38. Submission 3.3.8, p 65

mentioned, the Ngāti Awa affiliated section of this hapu no longer use the marae as a result of the recent debate. However, one Tawera–Umutahi witness, Pouroto Ngaporo, acknowledged affiliations both ways and stressed the hapu's support for the Ngāti Awa claim, rather than that of Tuwharetoa. He also explained that the Tawera hapu consists of two sub-groups Umutahi and Tuariki, centred upon Umutahi and Tuariki Marae respectively. We think that those who choose to align with either claimant group do so correctly, and our suspicion arises more where the blood connections are denied. The Matata district, as John TH Grace wrote in his work Tuwharetoa, was an area of significant intermarriage between Tuwharetoa and Ngāti Awa, and the customary interests there of both groups need to be acknowledged.

Throughout the hearings at Wairaka and other marae, there was unanimous support for the prosecution and settlement of the claim through Te Runanga o Ngāti Awa, save only to the extent that some chose to identify with the separate claim for Tuwharetoa ki Kawerau. By the time of the hearings, it was settled that Tuwharetoa ki Kawerau were represented through Te Runanga o Tuwharetoa ki Kawerau. We are satisfied that the Government should endeavour to settle the claims through these two bodies and apportion relief. In our view, the supporters of the Tuwharetoa ki Kawerau claim are entitled to stand alone in any settlement. This is because Tuwharetoa have a distinct lineage and their claim is based upon their different role in the relevant events.³⁹

The Tribunal issued this report prior to the Ngāti Awa settlement. It concluded that there *should* be a separate settlement with Tūwharetoa ki Kawerau. We are not considering whether there *should* be a separate settlement with Te Hapū's descendants concerning Motiti. We are considering whether those claims *are* included in the settlement. We have a very different task to the panel which issued the *Ngāti Awa Raupatu Report*.

It is also clear that the Tribunal's findings in that report were taken into account in the Ngāti Awa settlement. The report was issued in 1999. The deed of settlement was signed in 2003. The Act was enacted in 2005. In order to preserve Tūwharetoa ki Kawerau's claims, the Act specifically excluded those claims from the definition of 'Ngāti Awa historical claims':

(1) In this Act, Ngāti Awa historical claims—

(c) does not include the following claims:

(v) any claim based on descent from a recognised ancestor of Te Tawera to the extent that the claim is, or is founded on, a right arising from being descended from an ancestor other than Awanuiārangi II;⁴⁰

39. Waitangi Tribunal, *Ngāti Awa Raupatu Report*, pp 3, 13, 20–21, 131

40. Ngāti Awa Claims Settlement Act 2005, s 14(1)(c)(v). This exclusion mirrors the relevant provision in the deed.

There was no finding in the *Ngāti Awa Raupatu Report* that claims based on descent from Te Hapū should receive a separate settlement. Nor was there an express provision in the deed or the Act that excluded such claims from the definition of the Ngāti Awa historical claims. Rather, those claims fall within the definition of Ngāti Awa historical claims.

4.3.3.6 Finding

For the reasons outlined in the preceding chapter, we find that any historical claims to Motiti based on descent from Te Hapū were settled as a Ngāti Awa historical claim through the deed of settlement and the Ngāti Awa Claims Settlement Act 2005.

CHAPTER 5

**TE TIROHANGA O TE WHAKAPAPA /
THROUGH ITS KINSHIP REVIEW, HAS THE CROWN
PROPERLY INFORMED ITSELF OF THE IDENTITY OF
THE TANGATA WHENUA OF MOTITI ISLAND?**

5.1 INTRODUCTION

This chapter addresses the last of the three core issues the Tribunal has selected for determination: through its kinship review, has the Crown properly informed itself of the identity of the tangata whenua of Motiti Island? Although the final issue to be addressed in our report, it is the central point of dispute between the claimants and the Crown, and thus the primary issue for determination in our inquiry. At stake is whether the Crown has upheld the tino rangatiratanga of the hapū of Motiti by properly informing itself of their interests, including their tribal identity, through its kinship review. In this chapter, we consider whether the review complied with the principles of te Tiriti in both its process and its outcome.

First, we provide some context by briefly surveying the Crown's engagement with the tangata whenua of Motiti since the late-twentieth century, and commenting on the implications and extent of that engagement. This contextual analysis also informs our suggestions (set out in chapter 6) about how the Crown should engage with the tangata whenua of the island in the future.

5.2 RECENT HISTORY OF CROWN ENGAGEMENT WITH TANGATA O MOTITI

This section does not analyse the Crown's recent engagement with the people of Motiti in great detail, nor determine whether te Tiriti was breached in the course of this relationship. Instead, it provides a high-level overview of engagement on a range of issues, including administration of the island; the *Rena* disaster; the Motiti district plan; applications under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA); and Treaty settlement negotiations.

5.2.1 The Crown's role as territorial authority for Motiti

As alluded to in chapter 1, the Crown is the territorial authority for all parts of Aotearoa that sit outside the boundaries of a district (territorial authority area), including offshore islands such as Motiti. Various Crown ministries have fulfilled this role over time.

After the Minister of Works assumed planning responsibility for Motiti in 1972, the Ministry of Works and Development became the territorial authority for the

island under the Local Government Act 1974.¹ Under the Local Government Act 2002, the role of territorial authority passed to the Minister of Local Government, with the Minister sometimes delegating responsibility to the Associate Minister of Local Government. This Act remains in force today.

The Department of Internal Affairs supports the Minister or Associate Minister of Local Government in their role as territorial authority.² A Crown witness told us the department does not collect rates from inhabited islands such as Motiti, and has 'limited resources' for this work.³

5.2.2 Crown engagement in the late-twentieth century

Until the early 2000s, when the Department of Internal Affairs commissioned a draft district plan for Motiti, the Crown had little involvement with Motiti and its people.⁴

The few instances of previous engagement documented in the evidence included some relating to governance arrangements for the island. These were a subject of dispute between the Crown and tangata o Motiti from the early 1970s to the early 1990s. During this period, the Crown tried several times to transfer governance of the island to the Tauranga County Council, but met with strong opposition from Motiti islanders in each case. Opposing a proposed transfer in 1980, the Motiti Island Objection Committee wrote:

We the elected delegates of the people of Motiti Island submit that because of our deep historical and emotional association with Motiti Island we are better fitted than any other body to administer and preserve the dignity of what to us is a cherished heritage.

Motiti Island . . . has been settled, developed, cared for and cherished by our people for many generations and any take over by the Tauranga County Council would be a forced invasion of our human rights.⁵

Throughout the 1980s, the member of Parliament for Eastern Māori, Peter Tapsell, supported the islanders' efforts to remain independent of a local territorial authority. In 1986, he advised them that the Government had decided the administration of Motiti and Mayor Islands must 'eventually' pass from the Ministry of Works to a local authority, but that 'we are looking at the possibility of some legislation which might provide permanent protection for the owners of Motiti Island'.⁶

1. Document A16, pp 119–120. Dr O'Malley gave a date of 1972 but noted that the Tribunal gives a date of 1966 in its *Report of the Waitangi Tribunal on a Motiti Island Claim* (Wellington: Waitangi Tribunal, 1985).

2. Document A81, p 1

3. Ibid

4. Ibid, p 2; doc A43(a), p 14

5. Document A23(a), vol 1, no 23, p 140

6. Ibid, no 41, p 173

In the event, the island remained under the authority of the Crown into the twenty-first century.

5.2.3 Engagement by the Department of Internal Affairs

5.2.3.1 *Development of the Motiti Environmental Management Plan (or Motiti district plan)*

As noted in chapter 3, the Department of Internal Affairs commissioned a consultant planner to prepare a district plan for Motiti in 2004. After an 11 year process of drafting, submissions, revisions, mediation, and appeals in the Environment Court and High Court, the plan was formally approved by the Minister of Local Government in 2016.⁷

The Crown engaged with various rūpū Māori while developing the plan. The key stages in its development are noted below.

5.2.3.1.1 From initial drafting to hearing commissioners' final decision in October 2009

In early January 2005, the consultant planner (who from this point became the Department of Internal Affairs's agent) attended a hui at Motiti, along with Tā Hirini Moko Mead and 'several others'. There, Te Rūnanga o Ngāti Awa invited Te Patuwai and Maumoana to help develop the Ngāti Awa Natural Resources Management Strategy. It was envisioned that the strategy would include 'environmental management and kaitiakitanga provisions for Motiti Island'.⁸

Later that month, the agent attended another hui of about 60 people held on Motiti to discuss the district plan.⁹ Erena Nuku Ulu, witness for Ngā Hapū o te Moutere o Motiti (Aiavao and others), gave evidence in our inquiry that three governance options were presented at the hui: establishing a new council specific to Motiti, placing the island under the governance of Ngāti Awa, or placing it under the governance of the Crown. According to her evidence, local people favoured the first option but Crown officials told them they had to choose between the latter two.¹⁰

The Crown publicly notified an initial draft of the proposed plan in December 2006 and sought submissions on it by early 2007.¹¹ In response, Environment Ngāti Awa (a unit within the rūnanga) submitted that the Department of Internal Affairs should fund the creation of a hapū management plan for northern Motiti, as part of a larger project of providing for environmental management of the island.¹²

7. Document A81, p 11

8. Document A63(a), pp 2–3

9. Keith Frentz and Rebecca Eng, *Motiti – Tuhua Plan: Newsletter 2* (newsletter, Tauranga: Beca Planning, March 2005); doc A43(a), p 14

10. Document A43(a), p 14

11. 'Development of the Motiti Island Environmental Management Plan', Department of Internal Affairs, https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Other-Services-Development-of-the-Motiti-Island-Environmental-Management-Plan?OpenDocument, accessed 1 February 2021

12. Document A63(a), p 10

The department agreed, allocating funding for such a plan in 2008 and making its agent available to help develop it, at the discretion of those tangata involved (namely, a working party formed by Te Patuwai Tribal).¹³

After receiving submissions on the proposed district plan – in which many tangata o Motiti contested the Crown's right to impose a plan on Motiti, and objected to the plan's lack of provision for cultural heritage – commissioners appointed by the Minister of Local Government deferred finalising it. Among other things, they called for the preparation of a hapū management plan that could help guide the drafting of appropriate heritage provisions. After another round of submissions in 2009, the commissioners finalised the district plan, although no hapū management plan had been developed in the meantime. They considered that other amendments made to the proposed district plan since 2007 afforded appropriate heritage protection, and the district plan could be further amended if and when a hapū management plan was produced in future.¹⁴

The claimants told us that some tangata whenua on the island 'refused to participate' in the planning process because they did not want a district plan.¹⁵ As noted in section 3.3.5, counsel for Te Rūnanga o Ngāti Awa and Te Patuwai Tribal stated that the Te Patuwai Tribal Committee did not recognise the Crown's authority to prepare a plan, so effectively boycotted the process.¹⁶

5.2.3.1.2 The appeals process, 2010–15

As noted in section 3.3.5, two Māori parties appealed the plan in 2010: Graham Hoete and Simmone Hoete, supported by the Motiti Rohe Moana Trust (the Trust); and Nadia Haua, supported by Te Rūnanga o Ngāti Awa and the Motiti Marae Committee. The Minister of Local Government, supported by the Department of Internal Affairs, was the respondent to the appeals, which (as previously outlined) proceeded through the Environment Court from 2010 to 2014. During this period, the Department of Internal Affairs engaged with some rūpū Māori o Motiti as part of efforts to resolve concerns about the plan.

In 2010, for instance, the department worked with the Trust to commission an independent researcher to prepare a cultural heritage report. The report was intended to help the court to consider the appeals, and could inform the district plan.¹⁷ It was completed in 2012. Mr Hoete told us that, while the department 'initially engaged' with the Trust – presumably referring to this time period – it later ceased this engagement.¹⁸

In November 2010, departmental officials met with members of Te Rūnanga o Ngāti Awa (including the rūnanga's Te Patuwai and Maumoana representatives),

13. Document A63(a), p 11

14. Doug Arcus, Alan Watson, and Wiremu Puke, 'Motiti Proposed District Plan: Final Decision of Hearings Commissioners' (Wellington: Department of Internal Affairs, 2009)

15. Transcript 4.1.2, pp 21–22, 330

16. Transcript 4.1.3, p 191

17. Document A23(a), vol 4, no 203

18. Document A20, p 9

Te Patuwai Tribal, and Environment Ngāti Awa to discuss how the plan would treat cultural heritage.¹⁹ The meeting was partly an attempt to build relationships between the Crown and the people of Motiti, as a fortnight earlier, the Te Patuwai Tribal Committee had issued a notice to the department, and the Trust, ‘prohibiting [their] access and engagement on Motiti Island’.²⁰

In its interim decision on the district plan in 2012, the Environment Court directed the department to engage with tangata whenua to integrate the hapū management plan (which had by then been developed) with the district plan.²¹ The court made a final decision on the Motiti district plan in 2014. After it dismissed an appeal against the plan by Graham and Simmone Hoete in 2015, it recommended the plan become operative.²²

As outlined in section 3.3.5, the overall outcome of the planning process was that many tangata o Motiti regarded the district plan with unhappiness and unease. The claimants acknowledged the final plan was a ‘big improvement’ on the initial draft, but argued that it removed decision-making from tangata whenua and undermined their tino rangatiratanga.²³ Te Rūnanga o Ngāti Awa and Te Patuwai Tribal expressed a similar view, saying that the Crown’s status as territorial authority for Motiti, and its assertion of that authority through the district plan, impinged on the mana motukahe of Motiti hapū.²⁴

Hauauru Rae, a Crown witness and former Department of Internal Affairs official, told us that litigation over the district plan had ‘defined DIA’s relationship with the people of Motiti for nearly 10 years’, and that the Trust’s position on the plan ‘has subsequently defined [its] relationship’ with the department.²⁵

5.2.3.2 *Other engagement by the Department of Internal Affairs*

Over several years in the early 2010s, the Department of Internal Affairs gave feedback on the Bay of Plenty Regional Council’s proposed Regional Coastal Environmental Plan as it affected Motiti. Among other matters, the department raised concerns about whether the plan would adequately protect wāhi tapu on the island. The department later considered the council had addressed its concerns, so chose not to appeal the plan. The Trust were unhappy it had made this decision without first seeking the Trust’s views.²⁶

In 2011, the Crown again sought to transfer authority over Motiti to the Tauranga City Council. The Trust submitted against the proposal, arguing that the Crown

19. Document A63(a), p 12

20. Ken Stephen and Jessica Andrew, memorandum, Environment Court, ENV-2010-339-6, 30 November 2010, <https://www.dia.govt.nz/pubforms.nsf/URL/MotitiIslandCounselForTheRepondentsMemorandumUpdatingTheCourt.pdf>, p 1.

21. Document A23(a), vol 4, no 211, p 2376

22. Ibid, no 229, p 2775

23. Transcript 4.1.2, pp 21–22

24. Document A47, p 16; submission 3.3.12(b), pp 94–95

25. Document A81, p 4

26. Ibid, p 5

had not shown how it would devolve its Treaty obligations to the council and that an agreed plan for recognising tangata whenua interests on Motiti must be in place before any such transfer occurred. The Crown abandoned the proposed transfer when the effects of the *Rena* disaster overtook the island (see section 5.2.4).²⁷

5.2.3.2.1 Engagement in response to the filing of the current claim

In 2015 and 2016, the Department of Internal Affairs engaged with the claimants as part of wider Crown efforts to resolve their claims without litigation. Mr Rae told us that, after the difficulties of the district plan process and the Crown's handling of the *Rena* disaster, the department recognised that it needed to 'build bridges' with the people of Motiti, including building their trust in the department, and to formalise 'the way it would work' with them.²⁸ In 2016, he observed to colleagues that 'the nature of [the department's] relationship' with the people of Motiti had led to 'deep seated mistrust of the Department'.²⁹

During this engagement, the claimants sought variations to the district plan so that it better provided for cultural heritage protection, decision-making by tangata whenua, and infrastructure. After reviewing how it could work differently with the people of Motiti, the department responded that the plan's cultural heritage provisions were sufficient, as the court had determined. The department also advised that the issue of tangata whenua decision-making would best be addressed outside the framework of the plan, by implementing new governance arrangements and exploring partnership between the department and the people of Motiti. Finally, the department said it needed to learn more about infrastructure problems to decide on solutions. Noting that the district plan could not be varied in response to the issues the claimants had raised as the court had already ruled on them, the department advised that the best way forward would be for the Crown to approve the plan. After that, the plan could (in principle) be changed.³⁰ The department, in partnership with tangata whenua and landowners, committed to creating a strategy for implementing the district plan and building groups' understanding of it in the meantime.³¹

In April 2016, the department advised the claimants that the Minister of Local Government would approve the plan and sought further discussion with them about how it could resolve their grievances.³²

During this period, department officials interacted with other Motiti groups at open hui held as part of the kinship review. Mr Rae gave evidence that, apart from the Trust, there had until then 'been little engagement by tangata whenua with DIA'.³³ In March 2016, the department made plans to work with the Motiti Marae Committee to hold a hui with all relevant groups to explain how the district plan

27. Document A81, p 12

28. Ibid, p 5

29. Document A23(a), vol 2, no 85, p 341

30. Document A81, pp 8–9

31. Ibid, p 10

32. Document A81(a), p 5

33. Document A81, p 8

works. However, the hui never eventuated; Mr Rae said he had to turn his attention to other pressing matters relating to Motiti.³⁴

5.2.3.2.2 Engagement since the current claim was renewed

When the claimants renewed their urgency application in May 2016, the Department of Internal Affairs was ‘initially disappointed’. Later, though, it supported the grant of urgency, believing an inquiry might prompt the Government to ‘establish more fit for purpose governance arrangements for Motiti’ – whether by transfer to a local district authority or ‘another form of governance’.³⁵ The department also felt that an inquiry into the kinship review would be helpful for its own engagement purposes.³⁶

Subsequently, claimant Ms Butler invited Mr Rae to visit Motiti for an informal hui with herself and Nepia Ranapia. On the same trip, he also met members of the Faulkner whānau in Tauranga.³⁷ In 2017, Mr Rae attended a Te Patuwai Tribal Committee hui in Whakatāne to discuss civil defence and emergency matters, the district plan, and resource consents.³⁸

In early 2018, the department planned an open hui on Motiti to ‘[build] relationships and [gain] an understanding of the long-standing issues and concerns held by many people of Motiti Island’.³⁹ The Associate Minister of Local Government was to attend. However, she ultimately decided to postpone the hui until our inquiry was complete.⁴⁰ Had it proceeded, this would have been the first time a Minister had visited the island.⁴¹

In April 2018, Te Patuwai Tribal wrote to the Minister of Local Government, who was also the Minister of Māori Development, seeking to ‘establish a direct relationship’ with her in order to ‘move forward for the benefit of our people’. They spoke of their ‘struggle’ in dealing with multiple Government and court processes over the previous decade, officials’ ‘exhausting lack of consultation and knowledge . . . about us’, and the need for a single Crown official, such as the Minister, to have ‘a holistic view of all the issues our island faces’.⁴² A meeting was arranged, but the Minister was ultimately unable to attend.⁴³

5.2.3.2.3 Crown engagement required by the district plan

As the entity responsible for administering the newly operative Motiti district plan, the Department of Internal Affairs processed several resource consent applications to subdivide land in southern Motiti in 2016 and 2017. The department

34. Ibid, p10

35. Ibid, p12

36. Ibid

37. Ibid, p13

38. Ibid, p15

39. Document A80, p 2

40. Ibid, p 3

41. Submission 3.3.8, p 91

42. Document A40(a), p 11

43. Document A47, p 15; doc A80, p 3

gave evidence that it had ‘published all information, either physically or online, that tangata whenua would need to have their say on the applications’, but claimant Umuhuri Matehaere said they had not been notified or informed of the consents.⁴⁴

In 2016, the department also came into conflict with the claimants over its failure to enforce the district plan after a whare was partially built on the airstrip in northern Motiti. As the plan explicitly prohibited building on an airstrip, the claimants asked the department to issue an abatement notice stopping further construction. The department declined, saying that, if the whare did not comply with the plan (which the department would need to determine itself), it preferred the landowners concerned meet to ‘find alternative solutions to formal enforcement’.⁴⁵ In taking this stance, the department saw itself as supporting a tikanga-based approach that ‘empower[ed] Motiti hapū in decision-making under the district plan’.⁴⁶ However, claimant witness Aubrey Hoete viewed it as a case of the Crown abdicating its responsibility to enforce the plan and transferring this burden to tangata whenua, though they had not wanted a plan in the first place.⁴⁷ The claimants applied to the Māori Land Court for an injunction halting the construction, which the court granted.⁴⁸

5.2.4 Crown engagement following the *Rena* disaster

After the *Rena* struck Otaiti reef in October 2011, the Crown engaged with individuals representing Motiti and Te Patuwai on its initial response and subsequent recovery efforts. It also consulted Ngāti Awa, the Korowai Kahui o Te Patuwai Tribal Council, Ngāi Te Hapū Incorporated, and the Trust about the *Rena* owners’ resource consent application to leave the wreck on the reef.

As noted in section 3.3.6.4, Betty Dickson was chosen to liaise with Maritime New Zealand on behalf of Motiti Island on the disaster response. She told us that the Crown had assumed the Department of Conservation would undertake this role, but that Te Patuwai whānau did not want this and elected her instead: ‘we were not about to be represented by a government entity, something we have always avoided’.⁴⁹ As response liaison, Ms Dickson was part of an iwi liaison forum working within Maritime New Zealand to facilitate communication between Māori and local and central government.

Tangata o Motiti were also represented in official groups tasked with overseeing and implementing recovery work. Each group comprised iwi, local government, and central government representatives. Elaine Rangi Butler was the iwi coordinator for Motiti within the *Rena* Environmental Recovery Plan team.⁵⁰ Nepia Ranapia was the iwi representative for Motiti on the *Rena* Environmental

44. Document A29, p 11; transcript 4.1.2, p 330

45. Document A81(a), p 10

46. Ibid

47. Transcript 4.1.2, p 468

48. Document A81(a), p 16

49. Document A60, p 6

50. Wai 2393 ROI, doc A33(a), pp 1, 8–9, 72

Recovery Steering Group.⁵¹ An iwi leader for Motiti also sat on the *Rena* (Long-term) Environmental Recovery Governance Group.⁵² The evidence suggests the Ministry for the Environment contracted iwi participants to undertake these roles.⁵³

The Trust had sought to work with Maritime New Zealand on the disaster response and with the Ministry for the Environment on recovery, seeking to be a ‘key partner’ in the *Rena* Long Term Environmental Recovery plan.⁵⁴ However, this did not happen. A claimant in the Tribunal’s *Rena* inquiry recalled that the Trust met with the Ministry for the Environment in early 2012 to discuss their concerns, but their ‘expectations of good faith engagement between the Trust and the [ministry]’ were not met. Consequently, the Trust did not pursue further engagement.⁵⁵

We saw evidence that the Crown officials leading recovery efforts attended at least one hui on Motiti Island, in early 2012. At the hui, tangata o Motiti indicated, among other things, that they wanted to be in control of their rohe and wanted tangata whenua to clean up the beaches.⁵⁶

From November 2013 to June 2014, the Crown sought iwi and hapū views on whether it should support a resource consent application by the *Rena*’s owners to leave the wreck on Otaiti reef.⁵⁷ The Ministry for the Environment contacted several Motiti-affiliated groups as part of this process: Te Rūnanga o Ngāti Awa, Ngāi Te Hapū Incorporated, the Trust, and the Korowai Kahui o Te Patuwai Tribal Council. All groups except the Tribal Council wanted to meet with the Crown. The Crown met with Ngāti Awa, and with the Trust,⁵⁸ but not Ngāi Te Hapū Incorporated (as they and the ministry could not agree who should pay travel costs).⁵⁹ The Minister for Local Government, in her capacity as territorial authority for Motiti, also wrote to iwi and hapū during this period encouraging them to take part in the Crown’s consultation process.⁶⁰

As an adjunct to consultation, the Crown commissioned a report into customary interests in Otaiti to assess which groups have interests in the area, what the reef means to them, and how full or partial wreck removal would affect the reef’s

51. Ibid, p1

52. Ibid. Other iwi represented in these groups were Maketu (Te Arawa), Te Arawa, and Te Moana a Toi.

53. See, for example, ibid, p72.

54. Ibid, pp 15–16

55. Document A23(a), vol 5, no 298, p3874

56. Wai 2393 ROI, doc A33(a), pp 12–13

57. The ship’s owners did not lodge their application until late May 2014, but the Crown had anticipated they might since 2012, when it signed a deed with the owners committing it to consider supporting such an application.

58. Other groups with whom the Crown were Ngāi Te Rangi, the Mataatua District Māori Council, and the Tapuika Iwi Authority.

59. Waitangi Tribunal, *The Final Report on the mv Rena and Motiti Island Claims* (Wellington: Legislation Direct, 2015), pp 4, 53

60. Wai 2393 ROI, doc A33(a), pp 143–144, 146–147

cultural value.⁶¹ Completed in May 2013, the report was prepared from written sources, and no discussions were held with tangata whenua.⁶²

In its 2014 *Rena* inquiry, the Tribunal found that the Crown's consultation with Māori had been neither meaningful nor robust, and breached te Tiriti.⁶³ It found further that the Crown breached the principles of te Tiriti by failing to consult with Māori at all before entering into various deeds with the *Rena*'s owners in 2012.

The report also noted that the Department of Internal Affairs' agent, who was effectively the local planning officer for Motiti and responsible for resource management matters relating to the island, was working on behalf of the *Rena*'s owners to advance their consent application. As such, people of Motiti could not approach him for information about the application or advice about how to formally respond to it. As the Tribunal's *Rena* report noted, this was a direct conflict of interest that worked against the interests of tangata whenua.⁶⁴

Shortly after the *Rena* inquiry, the Crown made a whole-of-government submission partly opposing the *Rena* owners' resource consent application. The Minister of Local Government made no separate submission in her capacity as territorial authority for Motiti, though the Tribunal had suggested in its *Rena* report that she do so.⁶⁵

5.2.5 Engagement by the Office of Treaty Settlements and the Ministry for Primary Industries

Between 2010 and 2012, the Motiti Rohe Moana Trust evidently engaged with the Office of Treaty Settlements about environmental and resource management matters relating to Motiti, and the issue of unsettled historical claims.⁶⁶

In 2013, however, the Trust expressed disappointment that the Office of Treaty Settlements had not contacted them about the Ngāti Pūkenga settlement, and advised they wanted to discuss a separate historical settlement for Motiti islanders.⁶⁷ Trust members and Office of Treaty Settlements officials met in Tauranga to discuss these issues in April 2013. There, the Trust expressed concern that Motiti's Treaty claims were 'slipping through the cracks'.⁶⁸ Officials advised that the Crown's policy was to negotiate with large natural groups, and that the Crown considered the Ngāti Awa settlement had settled the claims of Motiti Island, at least in part, with remaining claims to be settled through the Ngāi Te Rangi (Te Whānau a Tauwhao) settlement.⁶⁹ Afterwards, officials agreed to arrange a facilitated meeting between the Trust, the Department of Internal Affairs, Ngāi Te Rangi, Ngāti Awa, the Te Patuwai Tribal Committee, and other interested parties

61. Document A23(a), vol 5, no 284, p 3607

62. Ibid, p 3608

63. Waitangi Tribunal, *Final Report on the mv Rena and Motiti Island Claims*, p 57

64. Ibid, p 56

65. Ibid, pp 37–38

66. Document A23(a), vol 5, no 267, p 3506; doc A79, p 6

67. Document A22, p 26; doc A22(a), app 13, p 74

68. Document A22, p 26; doc A22(a), app 16, p 80

69. Document A79, p 6

to ‘untangle the complicated web of contemporary and historical issues, identify common goals for Motiti Island and a plan to reach these goals without the need for further litigation.’⁷⁰ The meeting never went ahead, however. Following the Trust’s application for an urgent Waitangi Tribunal hearing into the *Rena* disaster (Wai 2391) in May 2013, the Crown ceased contact with the Trust, telling them that this ‘litigation has intervened in our conversation on these issues.’⁷¹

During this period, tangata o Motiti also sought legal recognition of their interests in the island through Crown-administered processes.

In 2010, the Trust sought recognition of customary interests under the Seabed and Foreshore Act 2004. However, their application was adjourned as a Government review of the legislation was then underway.

In 2012 and 2013, five parties applied under the Marine and Coastal Area (Takutai Moana) Act 2011 for rights recognition in the Motiti rohe moana:

- ▶ Umuhuri Matehaere, Graham Hoete, and the Motiti Rohe Moana Trust on behalf of Ngā Hapū o te Moutere o Motiti for the recognition of customary marine title.
- ▶ Nepia Ranapia and Korowai Kāhui o Te Patuwai Tribal Council on behalf of Manamoana o Ngāti Te Hapū (Te Patuwai hapū) for the recognition of customary marine title and protected customary rights.
- ▶ Umuhuri Matehaere and Graham Hoete on behalf of Nga Uri o Nga Tupuna (descendants of the original owners of the western Mōtiti B Blocks abutting the territorial sea), for the recognition of customary marine title.
- ▶ Elaine Rangi Butler and Buddy Mikaere on behalf of Ngāi Te Hapū Incorporated, for the recognition of customary marine title and protected customary rights.⁷²
- ▶ Te Rūnanga o Ngāti Awa on behalf of Ngāti Awa, for the recognition of customary marine title and protected customary rights.⁷³

To help assess these and other applications, the Office of Treaty Settlements commissioned a preliminary historical appraisal of customary interests in the marine and coastal area between Papamoa and Matata. The resulting report, which was researched from written sources and completed in August 2013, found they were ‘complex’ and ‘highly contested.’⁷⁴ The Crown declined the first four applications in light of this complexity and the number of competing claims; the Crown was also unsure whether the applicants had authority to represent the groups on whose behalf they were claiming. It welcomed further applications if and when ‘information becomes available demonstrating that representation issues between the groups with long-standing presence in the area have been addressed.’⁷⁵

70. Document A22, p 27; doc A22(a), app 16, p 79

71. Document A22, p 27; doc A22(a), app 18, p 86

72. Document A23(a), vol 5, no 299, p 3879

73. Ibid, no 291, p 3761. Te Rūnanga o Ngāti Awa later applied to the High Court under the MACA Act.

74. Ibid, no 290, p 3712

75. Document A22(a), app 4, p 9

The Crown commented on these applications in 2014 during the Waitangi Tribunal's *Rena* hearings, noting that the situation at Motiti was not straightforward, with '[a] range of complex and overlapping customary interests' on the island 'at hapū and iwi level'. According to the Crown, it had actively sought to 'assist the applicants claiming customary rights in this area' to 'resolve some of the mandating issues present in the Mōtiti area'. It had

offered to provide expert facilitation for a hui between Mōtiti Rohe Moana Trust and Te Patuwai Tribal Council as far back as 13 April 2012, and also, on 10 October 2013, offered to attend a hui with all Mōtiti applicant groups. These efforts have either not been taken up, or have not proven successful.

Ultimately, the Crown was not able to enter into negotiations with the four groups for rights recognition under the Act. This had nothing to do with *Rena* or the Wreck Removal Deed entered into with the Crown, but rather was mainly due to the groups not being able to resolve representation issues – notwithstanding the Crown's efforts to assist.⁷⁶

Tangata o Motiti have also engaged with the Ministry of Primary Industries in recent years. In an effort to further restore sea life that had begun to recover within the exclusion zone placed around Otaiti reef after the *Rena* disaster, the Trust applied under section 186A of the Fisheries Act 1996 to ban fisheries activity in the area for a further two years. According to a claimant witness, the ministry held at least one hui as part of its consultation process, which the Te Patuwai Tribal Committee and other tangata o Motiti attended.⁷⁷ The Minister declined the application on the basis that tangata whenua did not support it.⁷⁸

In March 2016, the Ministry of Primary Industries liaised with Motiti marae reservation trustees to investigate allegations of poaching on Motiti.

Since 2018, the Crown has suspended its engagement with tangata o Motiti while our inquiry is in progress.⁷⁹

5.2.6 Comments on the history of Crown engagement

The preceding discussion of the Crown's recent engagement with people of Motiti Island reveals that, since the early 2010s at least, the Crown has known that multiple groups claim interests in Motiti and that internal conflict exists about who represents the island's interests. It is also clear to us that the Crown's relationship with tangata o Motiti has been strained, in large part due to the district planning process but also because of the Crown's engagement after the *Rena* disaster. Some of this tension has resulted from the Crown's engagement with groups, such as the Trust, whom others consider have no mandate to represent Motiti. Tension

76. Document A23(a), vol 5, no 299, pp 3879–3880

77. Transcript 4.1.3, pp 185–186

78. Ibid, p 89

79. Document A80, pp 2–3

has also resulted from the Crown failures identified in the Tribunal's *Rena* report (cited earlier), which let the people of Motiti down in the wake of a major environmental disaster that greatly affected them. Finally, it is evident that the Crown was aware that, until the district planning process, its involvement with the people of Motiti had been minimal and that it lacked an effective relationship with the hapū of the island.

5.3 PROCESS AND OUTCOME OF THE KINSHIP REVIEW

The remainder of this chapter addresses the claimants' central argument that the Crown failed to properly inform itself of the identity and interests of Motiti tangata whenua through its kinship review, thereby breaching te Tiriti. We describe the review and how the Crown's process unfolded, then outline the parties' positions, before presenting our analysis, conclusions and findings. Finally, we consider what, if any, prejudice was suffered as a result of established breaches.

5.3.1 What was the kinship review?

As indicated in chapter 1, the origins of the kinship review lie in the claimants' urgency application to the Tribunal in May 2015. After being notified of the application, the Crown decided to engage with the claimants on the issues it raised in an effort to resolve them without litigation.⁸⁰ As part of this engagement, it initiated the project that became known as the 'kinship review'.

According to Dr John Armstrong, who gave evidence on behalf of the Crown, the aim of the kinship review was to assess the claimants' argument that the historical Treaty claims of Ngāi Te Hapū were not settled by the Ngāti Awa settlement because, they alleged, Te Hapū did not descend from Awanuiārangi 11. Making this assessment required the Crown to look into the tribal identity of the groups concerned, specifically, 'the relationship between Te Patuwai and Ngai Te Hapu, and whether those groups are synonymous'.⁸¹

Over 12 months from July 2015, the Office of Treaty Settlements (OTS) researched these issues and drafted a report. Officials engaged with the claimants and others with interests in Motiti to discuss the issues under review and successive drafts of the report.

In a 'final' draft report, completed in May 2016, OTS found that the Native Land Court evidence supported no 'conclusive view' about whether Te Hapū was a Ngāti Awa ancestor, and thus, whether Ngāi Te Hapū are distinct from Te Patuwai and have unsettled historical claims. However, based on other historical evidence from the late-nineteenth to the mid-twentieth century, along with information gathered from people with interests in Motiti during the review, OTS found that it 'cannot see a distinct group that is separate from Patuwai today'. On this basis, the report concluded that 'at this stage, OTS officials' understanding remains that the people who descend from Te Hapū are part of Patuwai and can benefit from the Ngāti

80. Document A79, p1

81. Document A66, pp1–2

Awa settlement.’⁸² The Crown later emphasised that, as this ‘final’ version of the report was still a draft, its conclusion was preliminary rather than final.⁸³

The kinship review process itself consisted of several streams of activity, sometimes running concurrently. Dr Armstrong, a senior researcher at OTS, undertook research and report-drafting, periodically meeting with colleagues and the claimants to discuss drafts of the report. Meanwhile, OTS was meeting and corresponding with the claimants, and several wider hui involving the claimants, other tangata whenua groups, and Crown and local body officials took place. OTS also met separately with representatives of Te Rūnanga o Ngāti Awa and Te Patuwai Tribal, respectively. The chronology of these engagements was largely as follows.

- ▶ *20 July 2015*: An initial teleconference between the claimants and the Crown, including Dr Armstrong, took place to ‘discuss and agree the purpose and agenda for an initial kanohi ki te kanohi meeting’, according to Sue van Daatselaar, then principal adviser at OTS.⁸⁴ The teleconference was also a means to introduce officials to the claimants and ‘initiate contact and discussion’ between them, she said.⁸⁵ As the meeting was ‘in confidence’, no minutes were filed in evidence.
- ▶ *28 July 2015*: A kanohi ki te kanohi meeting between the claimants and Office of Treaty Settlements staff (Ms van Daatselaar and Tim Fraser) took place in Tauranga.⁸⁶ According to Ms van Daatselaar, officials clarified that OTS would work with the claimants on the issues of Motiti’s historical Treaty claims and the Tauranga Moana Framework, and help ‘find pathways for discussion’ with other Crown departments about the claimants’ other grievances. Officials also advised that in light of new information the claimants had supplied – suggesting that some groups with interests in Motiti had unsettled historical claims⁸⁷ – OTS would first seek ‘to understand the identity of the people represented by the claimants through further research and further discussions with the claimants.’⁸⁸ According to the Crown, the meeting’s agreed outcomes were that:
 - a. OTS will analyse whether the new information and assertions in Wai 2521 demonstrate that there are kinship groups with interests in Motiti whose historical claims have not been, or are about to be, settled by the Crown;
 - b. NHTMM [Nga Hapū o te Mouere o Motiti] will indicate sources of historical information on their identity to support this work;
 - c. OTS will test our understanding with NHTMM and other affected parties (the

82. Document A66(b), p 59

83. Submission 3.3.14, p 46

84. Document A79, p 10; doc A66, p 2

85. Document A79, p 10. The Crown did not file minutes of the teleconference, saying it took place ‘on a without prejudice basis.’

86. Document A79, p 11

87. Document A79(a), p 184

88. Document A79, pp 11–12

Ngāti Awa post settlement governance entity, other Motiti groups and TMIC [Tauranga Moana Iwi Collective]); and

- d. OTS will work with NHTMM to identify potential pathways in relation to the contemporary issues raised within the Wai 2521 statement of claim.⁸⁹

► *August 2015*: Over the next few weeks, the claimants and OTS remained in discussion about ‘researching and considering the identity of Maori with interests and connections to Motiti’, which Ms van Daatselaar explained was ‘becoming known by shorthand as the “Kinship Review”’. The Crown devised a work process for the review, anticipating that:

- a. OTS initial analysis and comments by the claimants would be completed by the end of August,
- b. OTS would finalise its preliminary advice and seek the Minister’s preliminary views in early September, and
- c. other affected stakeholders and parties would be consulted following that and a final decision from the Minister in relation to the ‘unsettled claims’ issue would be sought by the end of September.⁹⁰

According to Crown records, the claimants supported the short timeframe proposed by the Crown, wishing ‘to progress things as fast as possible’.⁹¹ In the event, the review took longer than expected, and its timeframe was extended several times.

- *5 August 2015*: OTS informed all groups it knew had links to Motiti about the claimants’ urgency application and resulting kinship review, and invited them to indicate sources of information that could help with the review. Groups contacted were the claimants, Te Rūnanga o Ngāti Awa, Ngāti Whakahemo, Ngāti Pūkenga, Ngāi Te Rangi, Ngāti Ranginui, Ngāti Makino, and Ngāi Te Hapū Incorporated (in each case, through representatives) along with the relevant territorial authorities and Bay of Plenty Regional Council. The Crown also said it would update these ‘interested parties’ on the review’s timeframes and progress.⁹²
- *21 August 2015*: Claimant Mr Matehaere advised OTS that the claimants had decided to return to the Waitangi Tribunal to seek an urgent inquiry. However, they wanted Dr Armstrong’s kinship review research process to continue and remained willing to participate in it.⁹³ Officials and claimants continued to correspond about the review, with the claimants supplying further relevant information.⁹⁴

89. Document A79(a), p 54; doc A79, p 13

90. Document A79, pp 13–14; doc A79(a), p 57

91. Document A79(a), p 57

92. Document A79, pp 14–15; doc A79(a), pp 182–202

93. Document A79(a), pp 59–60

94. Document A79(a), pp 61–181

- ▶ *10 September 2015*: Ms van Daatselaar provided the claimants and those interested parties already contacted about the review with an update on progress. She acknowledged the complexity of whakapapa links and associated rights on Motiti, and that OTS were not whakapapa experts. She also clarified its 'primary task' at that stage was 'to try and develop an understanding of the main relationships and issues that is sufficiently clear to enable us to engage in discussions with the various groups from an informed position'.⁹⁵ The update listed research sources consulted and yet to be consulted, and advised that next steps would include 'consultation on initial findings with interested parties before we can advise our Minister of the findings'.⁹⁶
- ▶ *July–October 2015*: Meanwhile, Dr Armstrong had begun research for the kinship review after the initial teleconference on 20 July 2015. He told us that his initial task was to evaluate the claimants' assertion that Ngāi Te Hapū's claims were not settled by the Ngāti Awa settlement on the basis that Te Hapū did not descend from Awanuiārangi 11.⁹⁷ This required him to consider 'the relationship between Te Patuwai and Ngai Te Hapu and whether those groups are synonymous'.⁹⁸

During this period, Dr Armstrong and other officials began reviewing records of the Ngāti Awa settlement process.⁹⁹

- ▶ *23 October 2015*: OTS sent the claimants what it called an 'initial' kinship review report (so termed because officials were still seeking relevant information at the time).¹⁰⁰ This report made the 'initial evaluation' that 'Ngāi Te Hapū are included in the definition of Ngāti Awa for the purposes of Treaty settlements'.¹⁰¹ It also appealed to Ngāi Te Hapū o te Moutere o Motiti for information about the role of Ngāi Te Hapū and Motiti residents in the Ngāti Awa mandate and settlement processes, viewing this as an important gap in the research.
- ▶ *4 November 2015*: At a meeting to discuss the report and other issues, the claimants told officials it focused overly on the claimant definition in the Ngāti Awa Claims Settlement Act, rather than exploring who the people of Motiti are. They considered it engaged with little of the available evidence on that question.¹⁰² Dr Armstrong agreed with the claimants that the claimant definition had been 'the wrong place to start', and that the Crown now 'needed to test whether or not its interpretation of that claimant definition matched what was occurring in the world'.¹⁰³ The claimants proposed, and

95. Document A79(a), p 67

96. Document A79, pp 15–16; doc A79(a), p 183

97. Document A66, pp 2–3

98. Ibid, pp 1–2

99. Document A79, p 16

100. Document A66, pp 3–4. The title of this report was 'Initial OTS Report on Wai 2521 Claim that Ngāi Te Hapū Historical Claims Have Not Been Settled': doc A66(b), p 5.

101. Document A66(b), pp 6, 10

102. Document A79(a), p 212

103. Transcript 4.1.5, p 125

officials agreed, to hold a workshop/hui with other groups with interests in Motiti 'to work through the evidence on who the people of Motiti are'.¹⁰⁴

Plans for this hui/workshop changed several times. The initial plan was to invite two representatives each from Ngāti Awa, Ngāi Te Rangi, and Te Arawa groups (Whakahemo, Makino, and Pikiao),¹⁰⁵ but the claimants later proposed a two-step process: an initial hui just for hapū who were tangata whenua of Motiti – the claimants identified them as Ngāi Te Hapū, Te Patuwai ki Motiti, Te Whānau a Tauwhao, and Ngāti Whakahemo – followed by a second hui with representatives from iwi (Ngāti Awa and Ngāi Te Rangi) also.

- 3 December 2015: After agreeing a format and invitees for the first hui, which had been scheduled for 11 December 2015, OTS sent invitations to representatives of Ngāi Te Hapū Incorporated, the Te Patuwai Tribal Committee, Tauwhao Te Ngare Trust, Ngāti Whakahemo, Korowai Kahui of Te Patuwai Tribal Council, and the Motiti Rohe Moana Trust, inviting each to nominate up to two representatives to attend. The Te Patuwai hapū representative from Te Rūnanga o Ngāti Awa was also invited. The Trust attached to the email supporting information about the hui's theme – 'Ko wai rā ko ngā tangata whenua ahi kā o te mouere o Motiti?' – and groups were invited to supply their own information ahead of the hui.¹⁰⁶ Office of Treaty Settlements staff were to attend as observers.

In the following days, officials were contacted by concerned people who had learned of the hui through others. Some wished to attend, some were unaware of the kinship review and the claim that had prompted it, and some expressed concern about the mandate of the claimants and the Trust to represent them in the process.¹⁰⁷ Some invitees were also unaware of the review and why it was being undertaken – including the Te Patuwai Tribal chair, and the Te Patuwai representative for Te Rūnanga o Ngāti Awa. At this time, it emerged that an official within Te Rūnanga o Ngāti Awa, with whom Ms van Daatselaar had been communicating about the review, had not shared information about the review with Te Patuwai and Ngāti Maumoana representatives.¹⁰⁸ Many people who contacted officials were also concerned at the short notice given for the hui.

To accommodate these concerns, the Crown proposed delaying the hui, but the claimants insisted it proceed on 11 December. They and the Crown ultimately agreed to change the hui to an 'information gathering and sharing' session about the kinship review and the claimants' claim more broadly, postponing the substantive hui on 'who are the people of Motiti' until the new year.¹⁰⁹

104. Document A79(a), p 213; doc A66, p 4

105. Document A79(a), p 213

106. Ibid, pp 231–232

107. Document A79, p 2; doc A79(a), pp 276–279

108. Document A79(a), p 276; doc A26, p 7

109. Document A79(a), pp 280–282

- *8 December 2015*: Officials sent a revised invitation to the original recipients, as well as ‘all people who had either contacted us directly as an individual [about the hui] or who had been cc-ed into the [original] email by others.’¹¹⁰ A draft revised invitation, approved by claimant counsel, opened up attendance to ‘individuals’, as well as two representatives of each group.¹¹¹
- *11 December 2015*: The information gathering and sharing hui was held in Tauranga and attended by 19 people. It consisted of a short presentation by OTS, a presentation by Nepia Ranapia on the history and whakapapa of Motiti and its people (which was cut short due to time constraints), and open-floor discussion.¹¹²
- *Mid-December 2015*: After the hui, some claimants were unhappy at the number of people who had attended. Atarangi Sayers recalled that the hui was ‘flooded by people from Te Patuwai Tribal Committee’, although the Crown had agreed that ‘each group would have two representatives only.’¹¹³ Ms van Daatselaar maintained at the time, and before us, that the claimants had agreed to open this hui up to ‘all people with questions (rather than representatives from each group).’¹¹⁴

Ms van Daatselaar explained that, when OTS embarked on the kinship review, it was aware it would need to engage with groups other than the claimants to resolve the issues in question. She stated that the claimants were told of this at the outset: ‘We explained . . . that while we would work with the claimants in good faith to develop a joint plan to discuss and attempt to resolve [the] issues . . . we would [also] need to engage with other groups and individuals.’¹¹⁵

However, it was not until concerned people contacted officials about the 11 December hui that the Crown realised its approach needed to be still more open and inclusive:

We therefore advised the . . . claimants that while we would continue to work with them as the lead claimants on the plan and the agenda for each hui [and to agree an appropriate facilitator], we would need to hold open hui inviting all of those who assert interests in Motiti Island.¹¹⁶

According to Ms Daatselaar, the Crown’s commitment to engage with other groups ‘placed some tension’ on its relationship with the claimants, who ‘considered they had the mandate to speak for the uri of Motiti Island.’¹¹⁷

110. Document A79(a), p 318

111. Ibid, p 281

112. Ibid, pp 286–288

113. Document A26, p 7

114. Document A79(a), p 318; doc A79, p 21

115. Document A79, p 2

116. Ibid, pp 2–3

117. Ibid

- *4 February 2016*: A substantive hui to workshop the question ‘Ko wai rā ko ngā tangata whenua o te moutere o Motiti? Who are the people on the island?’ was held in Tauranga. The pānui for the hui advised that anyone could attend, invited recipients to notify others of the hui, invited key groups to present (the claimants, Korowai Kahui o Te Patuwai Tribal Council, Te Patuwai and Ngāti Maumoana hapū and Tribal Committee, Te Whānau a Tauwhao ki Moutere Trust, and Ngāti Whakahemo), and attached relevant material supplied by the claimants.

Eighty-nine people attended the hui, including the claimants, 70 others with interests in Motiti – including the chairs of Te Rūnanga o Ngāti Awa and Te Patuwai Tribal – and representatives of the Crown and Bay of Plenty Regional Council.¹¹⁸ Nepia Ranapia again presented on whakapapa and history, and claimant Graham Hoete on the claimants’ perspective of the issues. OTS also presented, saying it was mainly there to listen. It emphasised that the goal of the hui was to establish who it should be consulting about Motiti Island’s interests and how these interests related to the Ngāti Awa Settlement. In particular, Ms van Daatselaar said officials needed to understand whether Ngāti Awa had actively consulted Motiti residents during the mandating process; and whether anyone had objected to the listing of Te Patuwai as a hapū of Ngāti Awa, or to Motiti’s inclusion in the Ngāti Awa area of interest.¹¹⁹ Questions and open-floor discussion followed each presentation. The hui ended with a private kōrero between tangata whenua groups, at which they agreed to call a further hui to ‘consider the establishment of a representative voice for the Island’.¹²⁰

At the close of the private kōrero, a majority of those present voted for a motion that the Te Patuwai Tribal Committee facilitate the process for the next hui. After the kōrero, the claimants were unhappy that the Crown facilitator had allowed the vote to occur, saying that in this context, the election of one group into a position of authority ‘served to undo the realisation that the groups needed to work together’.¹²¹

- *February–March 2016*: After the 4 February hui, OTS informed all tangata whenua groups it would work with the claimants, the Te Patuwai Tribal Committee, and representatives of other groups on ‘the plan for the next hui – where it is held and how it should be run’.¹²² It encouraged groups to meet together to agree an approach to the hui. Groups ultimately agreed to a ‘neutral’ venue in Tauranga suggested by the Crown (after failing to agree on one themselves), and a hui date of 7 May 2016. Ultimately though, this hui did not proceed in the form originally envisioned; by late April 2016, when OTS sent an invitation/pānui to all groups, its focus had shifted to discussion

118. Ibid, p 46; doc A79(a), pp 396–407

119. Document A79, pp 25–27

120. Ibid, pp 27–28, 29

121. Ibid, p 29; doc A79(a), pp 414, 420

122. Document A79(a), p 425

of the draft kinship review report. The reasons for this were not clear to us from the evidence. Meanwhile, in early March, officials and the claimants had held a teleconference to discuss kinship review progress and other matters.¹²³

In January and March 2016, officials also met with other relevant parties to discuss the review – with Tā Hirini, to hear ‘his recollection of ratification of the Ngāti Awa settlement by Motiti and his understanding of whakapapa for the island’;¹²⁴ with the Te Patuwai Tribal Committee, to hear their view on whether the Ngāti Awa settlement left outstanding historical claims and which groups have the authority to speak for Motiti’s interests;¹²⁵ and with the chair of Te Rūnanga o Ngāti Awa, to clarify his view (expressed at the 4 February hui) that the Ngāti Awa settlement did not settle historical claims relating to Motiti.¹²⁶ According to Crown minutes of this last meeting with the chair, he clarified that his statement ‘was based on the fact that the Ngāti Awa settlement did not provide any specific redress related to Motiti’ but was not meant to imply that ‘Te Patuwai people on Motiti are not Ngāti Awa’; rather, he considered that ‘Patuwai hapū on Motiti Island and the Patuwai hapū at Whakatāne are all Ngāti Awa.’¹²⁷

Officials reported back to the claimants on these meetings¹²⁸ and updated all groups on ‘kinship review’ activities over these months.

- 22 April 2016: Officials sent the claimants a ‘draft’ kinship review report, which – along with the same sources previously consulted for the ‘initial’ draft – now drew on Native Land Court minutes, historical material presented by Nepia Ranapia, and information and views shared at kinship review hui.¹²⁹ The draft report found that the evidence offered no ‘conclusive support for the . . . claim that Ngāi Te Hapū and its karanga hapū are distinct from Patuwai of Ngāti Awa’, but suggested that over the last 140-odd years, most Motiti people had identified as Te Patuwai/Ngāti Awa:

The Native Land Court minutes we have considered are inconclusive, while other historical evidence strongly suggests that from at least the mid-1870s to the mid-twentieth century, most residents of Motiti described themselves as Patuwai and Ngāti Awa. Further, contemporary statements by Ngāti Awa and individuals with interests in Motiti Island suggest that many people consider the descendants of Te Hapū on Motiti Island to be Ngāti Awa.¹³⁰

123. Document A79, p 35

124. Ibid, p 24; doc A79(a), pp 393–395

125. Document A79(a), pp 469–470

126. Ibid, pp 467–468

127. Ibid, p 467

128. Ibid, p 493

129. Document A66, pp 5–6. The version was titled ‘Draft Report on the Nature of the Relationship between Ngāi Te Hapū and Patuwai of Ngāti Awa’: doc A66(b), p 13.

130. Document A66(b), p 22

On this basis, the report made the same provisional findings as the ‘initial’ report: ‘that the people who descend from Te Hapū are part of Patuwai and can benefit from the Ngāti Awa Treaty settlement.’¹³¹

- *27 April 2016*: At a meeting with officials to discuss the report, the claimants asserted that OTS had not fully investigated the historical evidence, including key Native Land Court minutes.¹³² Officials asked the claimants to respond formally, stating whether they disagreed with the report’s analysis or whether factual information was missing that would shed light on ‘whether Te Hapū can be considered a Ngāti Awa ancestor.’¹³³ OTS officials reiterated that they were not whakapapa experts, and as such, were not qualified to make a call on this ‘fundamental issue.’¹³⁴ At a follow-up meeting with claimant counsel, OTS said it thought further historical work by the Crown was unnecessary, and that, while it had found the historical evidence inconclusive, ‘more importantly, [it] didn’t find a distinct group today which [it] could work with on historical settlement matters.’¹³⁵
- *2 May 2016*: Officials sent an amended draft report (including some changes suggested by the claimants)¹³⁶ to the claimants and all interested parties.¹³⁷ Though substantively the same, its findings further noted that the historical evidence supported no conclusions about whether the historical claims of Ngāi Te Hapū and its karanga hapū remained unsettled; and ‘contemporary statements by Ngāti Awa show[ed] that they believe . . . their 2005 Treaty settlement did settle historical claims on Motiti.’ The draft report concluded that OTS would not be recommending a separate historical Treaty settlement to the Minister. The Crown sought feedback and submissions on the draft report by 16 May 2016, later extending the date to 23 May 2016.¹³⁸
- *7 May 2016*: The third and final major hui was scheduled for this date. It would include all attendees of the previous hui, including the claimants, the Te Patuwai Tribal Committee, and representatives of other groups. However, a day before the hui, the claimants advised OTS that they would not attend and had instead decided to return to the Tribunal to renew their application for urgency (which had been adjourned while the parties sought to resolve the claims).¹³⁹ Claimant counsel told Ms van Daatselaar that the claimants

appreciate the work that the OTS officials have put into this kaupapa in good faith, however the problem really is that there isn’t any one government

131. Ibid

132. Document A79(a), pp 524, 525

133. Document A79, pp 36–37

134. Ibid, p 36

135. Document A79(a), p 528

136. Document A66, pp 6–7

137. Document A79(a), p 499

138. Ibid; doc A79, pp 40–41. The date of 23 May was agreed at the 7 May hui: doc A79(a), p 554

139. Document A23(a), vol 2, no 124, p 585

department that can take responsibility for resolving a very complex situation. In addition, the Wai 2521 claimants seek an opportunity to lay out the history and culture of Motiti in evidence . . .¹⁴⁰

In our inquiry, claimant counsel told us that the claimants had not attended the hui because 'OTS had not revised its report and they had decided to return to the Tribunal'.¹⁴¹

Despite the claimants' absence, the hui went ahead. Seventy people attended, including representatives of the Crown. Presentations and discussion focused on the draft kinship review report and the Tauranga Moana Framework. On the kinship review, Ms van Daatselaar told attendees that past and present evidence had revealed three alternative views of the relationship between Ngāi Te Hapū and Te Patuwai. They were either

- a. two groups coming from two separate whakapapa and land estates, and who have remained separate today; or
- b. two groups completely intertwined – past and present – 'all Patuwai are Ngāi Te Hapū and all Ngāi Te Hapū are Patuwai'; or
- c. separate historical groups who have melded over time until today.¹⁴²

Ms van Daatselaar explained that the 'strong view' expressed in recent years was that the groups were intertwined. This perspective, along with contemporary statements by Ngāti Awa that their settlement had settled Motiti's historical claims, had led officials to the report's conclusion.¹⁴³

- ▶ *May–June 2016:* After the 7 May hui, OTS received 93 submissions on the draft report, 89 supporting its findings and four opposed.¹⁴⁴ All submissions in support were made on a template created by Te Patuwai Tribal stating that the submitter 'support[s] the Te Patuwai Tribal decision to oppose the Wai 2521 and support[s] the report in its entirety'.¹⁴⁵ Thirteen submitters using this template made additional comments.¹⁴⁶

Of the opposing submissions, three were made by people involved in this inquiry, including one by the claimants. These three submissions gave a range of reasons for opposing the report's findings. It was argued that what makes Ngāi Te Hapū distinct is not Te Hapū's whakapapa but the 'absolute geographical separation' effected by Te Hapū's decision migrate to the island;¹⁴⁷ it was also submitted that, as other groups who are closely linked by whakapapa nonetheless have separate identities and Treaty settlements, this should be

140. Document A23(a), vol 2, no 124, p 585

141. Submission 3.3.8, p 106

142. Document A79, p 41

143. Ibid

144. Ibid, p 46

145. Document A79(a), p 618

146. Ibid, p 573

147. Ibid, p 577

possible for Ngāi Te Hapū.¹⁴⁸ Opponents of the draft report also pointed out that, according to Tā Hirini's 1994 research report, Motiti was not part of Ngāti Awa's area of interest by the 1860s. The fourth submission argued that the Ngāti Awa settlement did not apply to the people of Motiti because they had not been involved in the settlement process nor received any benefits from the settlement.¹⁴⁹

- *2 June 2016:* After reviewing submissions, OTS informed the Minister of Treaty of Waitangi Negotiations that it could not identify a distinct Ngāi Te Hapū group that was separate from Te Patuwai today, and recommended he make a preliminary decision that there was no distinct group with whom the Crown could reach a Treaty settlement. It set out the grounds for this advice as follows:

On the balance we understand that the people who descend from the ancestor Te Hapū largely consider themselves today to be Patuwai. Despite this it is not possible for us to draw a conclusion about whether or not Te Hapū should be considered a Ngāti Awa ancestor or whether it is appropriate to view Ngāi Te Hapū and the karanga hapū as distinct from Patuwai. We are also not in a position to draw a definitive conclusion on whether there are unsettled historical claims in relation to Motiti Island.

Accordingly we are only able to advise you on whether there is a distinct natural group that the Crown could settle with for the purposes of a Treaty settlement.¹⁵⁰

In the briefing, officials expressed support for a 'priority' Tribunal inquiry on the issue of the identity of Ngāi Te Hapū, noting that the Motiti community had 'mixed views' on the report's findings, and that a hearing would 'assist the Crown in its dealings with Motiti Island into the future'.¹⁵¹

The Minister later issued a preliminary decision that Ngāi Te Hapū were not a distinct group for the purposes of historical Treaty settlement.¹⁵² He received feedback on the decision from the claimants and Nepia Ranapia. However, the Minister issued no final decision, instead awaiting the outcome of this inquiry.

- *June–July 2016:* Officials finalised the kinship review report in light of submissions.¹⁵³ Among other things, the report included the officials' analysis of a page of Native Land Court evidence from the 1895 Pekapekatahi case concerning the relationship between Ngāi Te Hapū and Patuwai which one of the claimants had submitted. The findings of this 'final' draft of the Crown's report were the same as those of the 2 May draft.

148. Document A79, pp 577, 584

149. Document A79(a), p 620

150. Ibid, pp 632–633

151. Ibid, p 635

152. Ibid, pp 637–638

153. Ibid, pp 628–630

5.3.2 Parties' positions on the kinship review

5.3.2.1 *The claimants' position*

The claimants argued that the kinship review was a 'wholly inadequate (if well-meaning) attempt by the Crown to properly inform itself of who the tangata whenua of Motiti Island are'.¹⁵⁴ They criticised both the methodology of the review and the validity of its findings.

The claimants argued that the Crown had 'avoided engaging' directly with kaumātua, and the review therefore failed to engage with the traditional knowledge and cultural perspectives of Ngāi Te Hapū.¹⁵⁵ Further, the Crown had failed to approach the review with an open mind, instead beginning from the assumption that Ngāi Te Hapū claims had been settled by the Ngāti Awa (Te Patuwai) settlement, and that 'the onus was on the claimants to persuade [the Crown] otherwise'.¹⁵⁶

The claimants contended that in preparing its kinship review report, the Crown had not adequately reviewed the relevant Native Land Court minutes, or thoroughly reviewed the available evidence. Instead, the report 'cherry pick[ed] a fraction of the available records that support[ed] its conclusions', they alleged. They further argued the report reached 'broad and erroneous conclusions', failed to examine Ngāi Te Hapū's identity, and failed to understand the basis of their mana whenua on Motiti. Finally, the claimants argued the Crown had failed to understand the whakapapa evidence, and additionally, failed to engage the necessary expertise to help it do so.¹⁵⁷

The claimants argued that, overall, the kinship review 'was never really an inquiry into who Ngāi Te Hapū are',¹⁵⁸ let alone a 'tikanga based assessment' of this question, but 'an inquiry into whether . . . the Motiti people satisfy the Crown's [large natural groupings] policy'.¹⁵⁹

The claimants criticised the Crown for failing to reach a conclusion about whether Te Hapū was a Ngāti Awa ancestor, while at the same time concluding that Ngāi Te Hapū were part of Te Patuwai and could thus benefit from the Ngāti Awa Treaty settlement. They argued that, 'if OTS was unable to reach a decision on the fundamental issue of whether Te Hapū is a Ngāti Awa ancestor, it follow[s] that the Crown could not determine the overarching question of whether Ngāi Te Hapū claims have been settled'.¹⁶⁰

The claimants sought findings that the kinship review breached the Treaty principles of partnership, active protection, and equal treatment, as well as the right to identity expressed in the United Nations Declaration on the Rights of Indigenous Peoples.

154. Submission 3.3.8, p 98

155. Ibid, p 99

156. Ibid, p 100

157. Ibid, pp 99–105

158. Ibid, p 103

159. Ibid, p 99

160. Ibid, p 98

5.3.2.2 The Crown's position

The Crown submitted that the purpose of the kinship review was to 'evaluate the assertion made in the [claimants'] urgency application that the claims of Ngāi Te Hapū (and of the eight karanga hapū) were not settled through the Ngāti Awa Treaty . . . Settlement Act 2005'. It submitted that this meant assessing whether Ngāi Te Hapū fell within the claimant definition in the Act, which, in turn, meant determining whether 'Te Hapū is a recognised ancestor of any of the hapū of Ngāti Awa'.¹⁶¹ The review would thereby inform the Crown 'whether there may be unsettled historical claims in relation to Motiti Island'.¹⁶²

The Crown submitted that it was never the purpose of the kinship review to determine 'the interests of the tangata whenua of Motiti Island'.¹⁶³

The Crown maintained that in undertaking the review, it 'went to some lengths' and 'as far as it could' to 'understand the identity of the hapū and the tangata whenua of Motiti'. However, it then 'stepped back when appropriate',¹⁶⁴ having learned there were 'strongly held, and starkly different' views on issues of whakapapa and identity among those who claim interests on Motiti.¹⁶⁵ The Crown argued that these were not issues it could or should resolve. For this reason, it did not finalise the kinship review and reached 'no final conclusions' as a result of it.¹⁶⁶ Consequently, counsel submitted, the Crown had made 'no final decision . . . on whether or not there are unsettled claims, or whether or not there should be a negotiation for the purposes of agreeing an historical settlement', and was instead awaiting the Tribunal's findings in this inquiry.¹⁶⁷

The Crown rejected the claimants' criticisms that its review was methodologically flawed, including their claim that the Crown should have begun the review by talking to Ngāi Te Hapū kaumātua. It argued that this criticism was based on an 'erroneous understanding of the original purpose of the "kinship review"', which was not to determine who the tangata whenua of Motiti are. Moreover, the Crown argued, others who assert interests in Motiti would inevitably have criticised the Crown for 'talking to the wrong people' had it started the review this way.¹⁶⁸ The Crown submitted that it eventually became aware, however, of 'a need to discuss the issues, kanohi ki te kanohi, with . . . kaumātua and others with relevant knowledge',¹⁶⁹ and from that point onward, sought to be as inclusive as possible.¹⁷⁰

161. Submission 3.3.14, pp 49, 50. Some of these Crown submissions directly quote evidence by Crown witnesses.

162. Ibid, p 49

163. Ibid, p 48

164. Ibid, pp 7–8

165. Ibid, p 51

166. Ibid, p 48

167. Ibid, p 8

168. Ibid, pp 54–55

169. Ibid, p 55

170. Ibid, p 57

5.3.2.3 *The interested parties' positions***5.3.2.3.1 Ngā Hapū o te Moutere o Motiti (Aiavao and others)**

This party supported the claimants' position on this issue. They held that the Crown had 'applied a flawed methodology from the outset which resulted in very broad and erroneous conclusions in its "kinship review", thereby causing prejudice to all descendants of Te Hapū at Motiti'.¹⁷¹

Like the claimants, Ngā Hapū o te Moutere o Motiti (Aiavao and others) submitted that the review began from the wrong starting point, the Crown failed to comprehensively review the available evidence, and the review focused on whether Ngāi Te Hapū fitted the Crown's large natural groupings policy instead of whether their historical claims had been settled.

They too sought findings that the review breached the Treaty principles of partnership, active protection, and equality of treatment, as well as the right to identity expressed in the United Nations Declaration on the Rights of Indigenous Peoples.

5.3.2.3.2 Te Patuwai Tribal and Te Rūnanga o Ngāti Awa, the Rauahi and Aporina Whānau Trust, and the Faulkner whānau

Te Patuwai Tribal and Te Rūnanga o Ngāti Awa submitted that the kinship review was 'about as thorough a process as has been adopted' concerning the interests of the tangata whenua of Motiti. They expressed concern that the Crown had 'dealt mainly with the claimants' on the review, but acknowledged that it 'did then expand' the review process to include Te Patuwai and others. In their view, the kinship review's findings that "'Te Hapū are part of Te Patuwai and can benefit from the Ngāti Awa Treaty Settlement'" were 'accurate'.¹⁷²

The Rauahi and Aporina Whānau Trust considered that the Crown's engagement with Motiti tangata whenua during the kinship review was 'not . . . without issues', but that on the whole, Crown officials had 'done their best to be as inclusive' as possible.¹⁷³ They also considered that the kinship review's 'inconclusive' result was understandable, given the complexity of Motiti's history and the patchiness of the historical record.¹⁷⁴

The Faulkner whānau submitted that, if the Crown had required the Trust to 'establish their mandate', a review into the identity of tangata whenua would not have been necessary. In their view, the kinship review was a 'misdirected' Crown attempt to inform itself of the interests of the tangata whenua. The Faulkner whānau nonetheless agreed with the review's findings, which they consider confirm that the tangata whenua are Te Patuwai.¹⁷⁵

171. Submission 3.3.13, p 34

172. Submission 3.3.12(b), p 89

173. Submission 3.3.10, p 24; transcript 4.1.4, p 664

174. Submission 3.3.10, p 12

175. Submission 3.3.9, pp 3, 13

5.4 TREATY ANALYSIS AND FINDINGS

5.4.1 The review process: Treaty analysis and findings

In this section, we assess whether the kinship review process outlined above enabled the Crown to properly inform itself of the interests and identity of the tangata whenua of Motiti. To do so, we consider whether the process was inclusive and transparent, and fulfilled the Crown's duties to consult with Māori, to involve them in decision-making, and to preserve and promote whanaungatanga (or amicable tribal relationships). We consider what these Treaty duties require of the Crown in the settlement context in particular, especially where it must deal with conflict about customary interests.¹⁷⁶ These duties, as we stated in chapter 2, derive from the principles of partnership and equal treatment, and the Crown's duty to actively protect tino rangatiratanga.

5.4.1.1 Tribunal analysis of the process

As noted in chapter 2, te Tiriti requires the Crown to understand who groups are and how they relate to each other and to their rohe.¹⁷⁷ As we see it, this was essentially what the Crown was trying to do through its kinship review. The Crown also has a duty to consult with Māori on matters of importance to them and to make informed decisions.¹⁷⁸ Where matters are important to more than one group, the Crown has a duty to consult with all affected groups, and to do so and form its opinions in an open and transparent way. The Tribunal has previously stated that in the settlement context, the Crown must apply an 'ethic of openness', and follow the principle that 'if material . . . is to be relied upon in settlement negotiations, it is available to all'.¹⁷⁹ It must involve all affected groups in its deliberations, and tell them about the views it forms about their claims and histories.¹⁸⁰ Such actions are required by its duty to act reasonably and in good faith.¹⁸¹ As the kinship review was important to or would affect various groups who claim tangata whenua status on Motiti, key questions in assessing the review's Treaty compliance are thus whether it was inclusive and transparent.

Early in the process – but not before it had begun engaging with the claimants – the Crown informed all groups it knew of with links to Motiti about the review. It told them why it was being undertaken, and invited them to supply relevant information. When subsequently contacted by individuals and groups who

176. In doing so, we draw on relevant Waitangi Tribunal reports identified in chapter 2, including *The Ngāti Tūwharetoa ki Kāwerau Settlement Cross-Claim Report* (Wellington: Legislation Direct, 2003), *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), and *The Te Arawa Settlement Process Reports* (Wellington: Legislation Direct, 2007), among others.

177. Waitangi Tribunal, *Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 3, p 1031

178. Waitangi Tribunal, *Te Arawa Settlement Process Reports*, pp 29–30

179. Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, p 109

180. *Ibid*, p 101

181. *Ibid*

were unaware of the review and/or sought deeper involvement, the Crown was responsive, including them in its communications and opening hui up to all who claim interests in Motiti. After the 11 December 2015 hui, the Crown became more proactive in seeking to inform all relevant people of upcoming hui.¹⁸² It agreed with the claimants to invite a range of groups to present at the first two open hui, and at all three hui, all participants had the chance for input through open-floor discussion. The Crown sent each successive draft report to all known groups with interests in Motiti and sought their feedback.

Through the two widely notified hui, its meetings with non-claimant groups, its requests for information, and requests for feedback and submissions on draft reports, we consider the Crown provided all relevant groups with the opportunity to give their *kōrero* on the issues under review. To this extent, the Crown's process was ultimately inclusive, as it claimed.¹⁸³ However, the process was also flawed in that it failed to include non-claimant groups early enough, nor, initially, in the right way. We discuss both shortcomings below.

From the outset, the Crown was also open with the claimants about its intention to engage with other groups. Generally speaking, it was transparent about the sources it was consulting – though we consider it did err by failing to list all its sources in later drafts of the report (as we discuss below). The Crown also advised all parties of its separate meetings with others (with Tā Hirini, the Te Patuwai Tribal Committee, and the chair of Te Rūnanga o Ngāti Awa) and reported back to the claimants in detail on these meetings. These Crown actions demonstrated an appropriate level of openness and transparency, in our view.

As already indicated, however, we do think some aspects of the Crown's research processes were problematic.

First, given the Crown already knew that interests in Motiti were complex, and that tensions existed among groups who affiliate to the island, it should have planned from the start to engage more actively with groups other than the claimants as part of its research. In its submissions, the Crown stated it had become aware of the 'starkly different' and 'strongly held' views about whakapapa and identity among the people of Motiti only during the review. But as our survey of Crown engagement with Motiti has shown (see section 5.2), as far back as 2012 and 2013, the Crown was aware of deep conflicts and 'representation issues' among the various groups who claimed interests in the island. It had learned of them through the Motiti district plan process, engagement over the sinking of the *Rena*, MACA Act applications, and a 2013 approach from the Trust about the possibility of a separate settlement for Motiti. The Office of Treaty Settlements itself had twice offered to facilitate hui between Motiti groups in 2012 and 2013.

The Crown was also aware of difficulties in its own relationship with Motiti people, particularly as a result of the Motiti district plan and Crown engagement in the aftermath of the *Rena* disaster.

182. See, for example, doc A79(a), pp 341, 385.

183. Submission 3.3.14, p 57

In light of this knowledge, the Crown should have been particularly mindful of its duty to preserve or promote whanaungatanga and obligation to restore damaged relationships when it came to dealing with the claimants' claim. As the Tribunal commented in the *Tāmaki Makaurau Settlement Process Report*, unlike commercial transactions, 'negotiating and reaching a Treaty settlement is quintessentially about restoring damaged relationships'.¹⁸⁴

The evidence shows the Crown sought relevant information from affected groups fairly early (on 5 August 2015, a week after its first kano ki te kano meeting with the claimants on 28 July). However, making contact and asking for information are not the same as active engagement and consultation of the kind that te Tiriti required in this context. The Crown first advised affected Māori groups of the review through a form-letter it sent to all interested parties, including local and central government authorities. (The letter stated 'we are contacting you as interested parties to inform you of the review at the beginning stages; and invite you to indicate sources of information that will be helpful', and promised further information and updates on progress.¹⁸⁵) At that stage, the Crown planned to 'consult' with these non-claimant groups only after it made its preliminary findings and after advising the Minister of those findings.¹⁸⁶ This belated approach to consultation is not appropriate in a context where understandings of tribal identity and affiliation are at stake. As outlined in chapter 2, the Tribunal has previously noted that where the Crown seeks to understand customary interests for Treaty settlement purposes, it should consult all relevant groups *before* forming a firm view, and consultation must include kano ki te kano hui.¹⁸⁷ We consider that, at a minimum, the same obligations apply to the Crown's efforts to understand tribal identity and affiliation for Treaty settlement purposes, where more than one group is affected (again, as was the case here). Both customary interests and tribal identity are inextricably bound up with rangatiratanga, as the Tribunal has observed;¹⁸⁸ it is because these matters are so important in te ao Māori that, whenever they are at stake, Crown consultation must be active and full.

We also note the Tribunal's previous comment, cited in chapter 2, that, when the Crown begins a settlement process with one group in an area where related groups have interests, it should convene an initial hui with all groups in the area to 'explain . . . what the Crown [is] doing' there and 'how it would be going about it'. The Crown must take this approach to meet its partnership obligations to all groups.¹⁸⁹ Again, we consider these same obligations apply when the Crown

184. Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, p 18

185. Document A79(a), pp 182–202

186. Document A79, p 14; doc A79(a), p 57

187. Waitangi Tribunal, *Te Arawa Settlement Process Reports*, pp 29–31, 74; Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, pp 89–90

188. Waitangi Tribunal, *Wairarapa ki Tararua Report*, vol 3, p 1042; Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 2, pp 504–505

189. Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, p 19

undertakes a process to determine whether a claimant group is, or is not, part of a larger, related group for settlement purposes.

We further note that the Crown's initial workplan for the review allocated very little time for what was an extensive work process, allowing six weeks for the completion of a research report, and a further month to reach a final ministerial decision. In our view, the initial workplan was evidently geared to providing the Minister with an early date by which he could make a decision. This approach ran counter to the Crown's Treaty obligations to allow time for the use of tikanga-based processes to resolve questions of customary interests, rather than rushing to make decisions itself.¹⁹⁰

Secondly, and in a similar vein, the Crown's approach to planning the kinship review was flawed. As noted in chapter 2, if the Crown is to uphold the tino rangatiratanga of Māori and engage in genuine partnership under te Tiriti, it must be willing to share responsibility, control, and decision-making with Māori. In undertaking the review, the Crown had an opportunity to involve all affected Māori groups in the design of the process itself. It did not take this opportunity.

It is true that the kinship review was not an entirely Crown-controlled process. When embarking on it, the Crown worked with the claimants to 'develop a joint plan to discuss and attempt to resolve [the] issues'. They continued to jointly plan the review as it progressed (the claimants played a key role in planning and setting the agenda for hui, for example). Later, the Crown made an effort to involve other groups in decision-making: after the open hui on 4 February 2016, it invited all groups who had attended – comprising all affected groups – to plan and set the agenda for the next major hui.

Nevertheless, the Crown would ideally have included all groups – not *only* the claimants – in the initial design of the review. Instead, at that early stage, it treated affected Māori groups as though their interests in the review were comparable to those of other interested parties – as is clear from the form-letter it sent all interested parties on 5 August 2015 (cited earlier). The Crown took this approach although it understood the review was significant for certain Māori groups; as Ms van Daatselaar noted a week after this letter was sent, the review's stakeholders included 'people who are potentially directly affected (other Motiti people who consider their claims are settled within the Ngāti Awa claim).'¹⁹¹ While the Crown acted rightly in reaching out to affected Māori groups, we think it failed to afford them their proper place in the process at that stage. A different environment for exploring the issues would have been created had such groups been included at the outset, as co-designers of the process. As it was, the Crown did not meet any of these groups until five months into the process – at the 11 December 2015 information gathering and sharing hui.

As discussed in chapter 2, the Tribunal has previously commented on how the

190. See, for instance, Waitangi Tribunal, *Te Arawa Settlement Process Reports*, pp 65, 75; Waitangi Tribunal, *Ngāti Tūwharetoa ki Kawerau*, p 67.

191. Document A79(a), p 57

Crown should deal with conflicts about customary interests – specifically, overlapping claims (or cross-claims) – in the settlement context. It has found the Crown's role in the first instance is 'one of facilitation and consultation rather than arbitration.' The Crown should focus on providing 'conciliatory measures' (such as mediation or facilitated hui), and only if they fail, take steps to decide the issues itself.¹⁹² In the *Te Arawa Settlement Process Reports*, the Tribunal argued the Crown must allow time for Māori to use their own customary processes to resolve such conflicts, rather than impose its own process.¹⁹³ In the *Hauraki Settlement Overlapping Claims Inquiry Report*, the Tribunal similarly stressed the need for the Crown to 'promote, allow for, and facilitate tikanga-based processes' between groups with overlapping claims, 'especially at the start of negotiations'.¹⁹⁴ That report post-dates the kinship review and our inquiry, but its recommendations are pertinent. Of the tikanga processes that could be used to resolve disputes about overlapping claims, the Tribunal said 'all parties would be expected to share and test evidence of their interests, develop mutual understandings, and resolve issues'.¹⁹⁵ Further, 'all parties should participate in the design of the process. If the parties cannot agree, the Crown should consider appointing an independent expert to assist with this'.¹⁹⁶

We see strong parallels between the Crown's role when groups with overlapping claims are involved in settlement negotiations, and its role in assessing the claimants' claims about tribal identity in the kinship review. Here too, a claimant group made claims that had significant implications for other groups, including for their customary rights. We consider that, at the least, the Crown should have noted these parallels, and adopted an approach similar to that appropriate for resolving overlapping claims – one that prioritises the need for discussion between all groups.

Thirdly, the Crown's historical research process was flawed. As the review concerned the identity of Ngāi Te Hapū, we consider it would have been more appropriate for officials to start their research by meeting kanohi ki te kanohi with the claimants and with kaumātua who identify as Ngāi Te Hapū. As it was, Dr Armstrong first met the claimants in person some months into the research process, and after an initial draft report was complete.¹⁹⁷ Meeting with the claimants and kaumātua who identify as Ngāi Te Hapū at the start would have enabled the Crown to listen to their understandings of whakapapa, and how Ngāi Te Hapū

192. Waitangi Tribunal, *Ngāti Tūwharetoa ki Kawerau*, p 67; Waitangi Tribunal, *The Hauraki Settlement Overlapping Claims Inquiry Report* ((Lower Hutt: Legislation Direct, 2020), p 17

193. Waitangi Tribunal, *Te Arawa Settlement Process Reports*, pp 48, 56

194. Waitangi Tribunal, *Hauraki Settlement Overlapping Claims*, p 117

195. Ibid, p 89

196. Ibid, p 90

197. Ms van Daatselaar's evidence suggests that Dr Armstrong first met with the claimants in person at the 4 November 2015 hui to discuss the initial draft report and other issues (doc A79, p18; doc A79(a), p208), though minutes of that meeting simply record its location as 'teleconference' (doc A79(a), p211). The evidence was clear that Dr Armstrong was physically present at the 11 December 2015 hui (doc A79(a), p286) and at subsequent major hui.

relate to Te Patuwai and to Ngāti Awa. This approach would have been not only more culturally appropriate but also more methodologically sound, given the importance of traditional knowledge in interpreting certain historical sources – particularly Native Land Court testimony. We acknowledge that Dr Armstrong met the claimants by teleconference on 20 July 2015, but this seems to have been an introductory meeting at which the issues were not discussed in any depth (Dr Armstrong could not recall the details of that conversation, and noted he used the claimants’ statement of claim to guide his initial research).¹⁹⁸ We also acknowledge the care with which Dr Armstrong assembled and analysed his written sources (apparent in working notes filed in evidence).¹⁹⁹

While officials failed to kōrero with kaumātua at the outset, we do acknowledge that they were exposed to Ngāi Te Hapū traditional history through Nepia Ranapia’s presentations at hui, to other groups’ kōrero at hui, and to tangata whenua understandings of tribal history and affiliation via various documents. Examples include the Motiti hapū management plan, statements of claim to the Waitangi Tribunal relating to Motiti, evidence from *Rena* resource consent hearings, submissions on the Motiti district plan, and MACA Act applications. We also note that many of these documents should have alerted officials to conflicts and representation issues among the people of Motiti, and the need to tread carefully in conducting the kinship review as a result.

Fundamentally, the three problems we have highlighted in the Crown’s approach to the kinship review reflect its lack of tikanga expertise. During the review, and before us, the Crown maintained that the original purpose of the review was not to determine who the tangata whenua are. Yet, it was essentially looking at evidence on this very question. As Dr Armstrong stated, his guiding research questions were whether Te Hapū was a Ngāti Awa ancestor, and whether Ngāi Te Hapū and Te Patuwai are synonymous. Both concern who people are. When such questions are at stake, the voices of all the people concerned should be central to efforts to answer them. If the Crown had sought and received adequate tikanga expertise, it would have recognised this from the start.

In our view, when the Crown is faced with questions about who people are – and especially, where there are conflicting views on these questions – its proper role, in the first instance, is to support the groups concerned to engage with each other to explore these questions and try to reach agreement. This is a more desirable, and more tika, approach than the Crown undertaking research independently with a view to making findings itself – albeit in consultation with groups. In this supporting role, the Crown could focus its research efforts on finding and sharing relevant evidence with the groups concerned to support their discussion. If these discussions break down or yield no agreement, the Crown could make its own assessment of the evidence and comment on whether it considers it conclusive or not, and why. Where the question of ‘who are the tangata whenua’ is highly

198. Document A79, p 10; doc A79(a), pp 22, 45–46; transcript 4.1.5, pp 169–170

199. Document A66(c); doc A23(a), vol 2, nos 108, 110, 111

contested, however, we believe the Crown is right to be cautious (a point we revisit below).

Having analysed the kinship review process as a whole, we now draw conclusions about it.

5.4.1.2 *Was the process inclusive and transparent?*

On the basis of the evidence we received, we consider that the Crown did, for the most part, try to be open, transparent, and inclusive when conducting its kinship review. In these respects, we consider the Crown acted in good faith throughout the process (something the claimants acknowledged to the Crown). Nevertheless, the Crown's initial view of when and how affected groups should be included fell short of its obligations in some ways, as we outline below.

5.4.1.3 *Did the process fulfil the Crown's duty to consult with Māori?*

In respect of consultation, we consider the Crown's initial work plan for the kinship review was not Treaty compliant, in terms of its obligations to affected groups. The consultation the Crown envisaged in its initial work plan would not have allowed affected groups to 'meaningfully participate' in the review process, and was culturally inappropriate, given issues of tribal identity were at stake. The Crown should have engaged with all relevant groups at the outset. Convening an initial hui to inform affected groups of the claimants' claim, and of the resulting need to clarify issues of identity among Te Patuwai and Ngāi Te Hapū, would have been a logical place to start, and consistent with the Crown's partnership obligations.

We acknowledge, however, that the Crown departed from its initial plan. It ultimately recognised the need to consult with affected groups earlier in the process, *kanohi ki te kanohi*, and acted accordingly. It also recognised the need to provide a forum for all groups to discuss the issues with each other, and did so. As a result, all relevant groups ultimately had the chance to share and test their *kōrero* on the issues under review through participation in the process. In this important respect, we consider the Crown ultimately met its duty of consultation to all groups.

5.4.1.4 *Did the Crown fulfil its duty to involve Māori in decision-making?*

We consider the Crown did not adequately fulfil its duty to involve Māori in decision-making from the start of the kinship review process, as it invited affected groups to take part in decision-making only later. It also failed to recognise that the culturally appropriate way for the Crown to tackle the identity issues the claimants had raised was to support and promote *tikanga* based processes among the groups concerned, rather than make its own assessment of the issues. In this respect too, the Crown failed to adequately fulfil its duty to involve Māori in decision-making.

Again, we acknowledge the Crown took steps to rectify these failings during the process, by providing a forum for groups to discuss the issues with each other, and inviting all groups (after the 4 February hui) to plan how this forum would work. But these Crown actions – which came some months into the process – only partly mitigate the original shortcoming.

5.4.1.5 *Did the Crown fulfil its duty to preserve or promote whanaungatanga or amicable tribal relations?*

We consider the Crown's failure to engage fully with all groups at the outset of the review process, and to invite all groups to participate in the initial design of the process, meant it did not fully meet its duty to promote whanaungatanga, or amicable tribal relations. Given the Crown's prior knowledge of conflicts between these groups, it should have approached the review with a heightened awareness of the need to promote whanaungatanga and avoid further damaging relationships between them. We did not receive evidence that the Crown had or acted on such an awareness at the outset. However, we recognise the Crown's subsequent efforts to ameliorate the situation.

Finally, we note that we received little evidence about prejudicial effects arising from the kinship review process. What allegations of prejudice we did receive mainly concerned the review's findings (and the methodology by which the Crown arrived at them); we consider those allegations when addressing the review's outcome (section 5.4.2).

5.4.1.6 *Findings on the kinship review process*

The Crown's failure to involve all parties in the initial design of the kinship review process had several negative effects. It meant the process moved and changed as it went along, as the Crown belatedly sought to properly accommodate all parties in it. It caused distress to the claimants and interested parties, at times, and did not help to remediate already tense relationships. It also strained the Crown's relationship with the claimants, once the Crown moved to involve other groups more fully. However, as we have said already, the Crown did act in good faith during the process in some respects, and ultimately sought to involve all parties.

Based on the conclusions we have reached in this section, we find that some aspects of the process were clearly flawed. The Crown

- ▶ failed to engage with all groups (the claimants and all affected groups) at the outset of the process;
- ▶ failed to invite all groups to participate in the initial design of the process; and
- ▶ failed to support and engage in a tikanga based process to resolve the questions the review sought to answer, and instead made its own assessment of them.

We also find, however, that the Crown acted rightly in taking corrective action during the process to make it more inclusive, departing from its initial approach. We find that in the particular circumstances of this case, the Crown's corrective action, whilst not immediate, was early and inclusive enough to effectively outweigh the prior shortcomings of the process.

Weighing all the relevant evidence, we do not find that the kinship review process breached the principles of partnership and equal treatment.

However, in light of its evident flaws, we do offer suggestions about how the Crown may improve such a process in the future (see chapter 6).

5.4.2 The review outcome: Treaty analysis and findings

Having examined the kinship review's process, we now consider the Treaty compliance of its outcome. We assess the integrity of the kinship review report, and of the Crown actions that resulted from the review.

5.4.2.1 *Were the Crown's findings based on sound methodology?*

The claimants argued that the 'kinship review' report (in all its iterations) suffered methodological flaws. They claimed that rather than genuinely exploring who the people of Motiti are, the review started from the assumption that Te Hapū was an ancestor of Te Patuwai, and Te Patuwai are a hapū of Ngāti Awa (as per the Ngāti Awa claimant definition). They say the review focused on Ngāi Te Hapū's Ngāti Awa links and ignored evidence of their links to other iwi; it considered only a small portion of the available evidence; and it failed to reach conclusions about the whakapapa evidence.²⁰⁰

Dr Armstrong countered that the Crown did start the review with an open mind. He also asserted that the report's emphasis on the Ngāti Awa claimant definition was understandable, given the claim it was assessing (that Ngāi Te Hapū's historical claims were not settled by the Ngāti Awa Treaty settlement). Dr Armstrong pointed out that the Crown had expanded the report in line with claimant feedback and, during the review, none of the claimants suggested the Crown should consider Te Patuwai's links to Te Arawa. The report was sufficiently researched and informed by more sources than it cites, Dr Armstrong said (a claim supported by documents filed in evidence), although he also acknowledged it was less comprehensive than Dr O'Malley's report.²⁰¹

In these arguments, we see conflicting ideas about the purpose of the report and the form it should have taken. The claimants sought a report that fully explored the identity of Ngāi Te Hapū and their relationship to Te Patuwai and Ngāti Awa, and set out all the relevant evidence. From the Crown's perspective, the report had a narrower purpose – to assess whether Ngāi Te Hapū's historical claims had been settled by the Ngāti Awa settlement, and thus, whether a separate settlement was needed (which required considering whether Te Hapū was a Ngāti Awa ancestor, and whether Ngāi Te Hapū and Te Patuwai were synonymous). Indeed, Dr Armstrong drew a distinction between the broader purpose of the kinship review as a whole – which included finding out who groups were and who the Crown should be engaging with – and the narrower purpose of the report itself. However, as previously noted, he also stated that the initial draft report's focus on the Ngāti Awa claimant definition had been the wrong place to start.

While the kinship review report was less comprehensive than it could have been, we think that, for the most part, the Crown surveyed enough evidence to

200. Submission 3.3.8, pp 100–103

201. Transcript 4.1.5, pp 106–109. Working notes filed in evidence included document A66(c) and document A23(a), vol 2, nos 108, 110, 111.

form a reliable picture of the issues it was considering. It found that there are conflicting traditions about whether Te Hapū was a Ngāti Awa ancestor, and whether Te Patuwai and Ngāi Te Hapū were, and are, separate groups. It also inferred that today, many Māori with interests in Motiti consider Te Hapū's descendants on Motiti to be Ngāti Awa. These were appropriate conclusions to draw from the evidence the Crown considered, and they align with the facts we have determined elsewhere in this report. The Crown also reported that it 'cannot see a distinct group that is separate from Te Patuwai today', a finding we also consider justified in light of the contemporary evidence the Crown reviewed – and which, again, aligns with our own findings.

We agree with the claimants that the Crown did not cite adequate evidence for its finding that 'from at least the mid-1870s to the mid-twentieth century, most residents of Motiti [probably] described themselves as Patuwai and Ngāti Awa'.²⁰² This is not a reliable inference to draw from the three censuses (1887–1881) and one electoral roll (1949) the Crown cited, particularly as iwi affiliation was not self-described in the censuses – as the Crown itself noted.²⁰³ However, as outlined in section 3.5, we consider that further evidence from the early to mid-twentieth century does in fact support a similar finding.

We also consider that, in the interests of transparency, the Crown should have appended a full list of all sources it reviewed in researching the various iterations of the draft report. This would have given stakeholders a clearer understanding of the basis on which the Crown reached its findings.

5.4.2.2 *Should the report have reached conclusions on the key issues?*

The claimants criticised the Crown for reaching no conclusion on the key question of whether Te Hapū was a Ngāti Awa ancestor, nor on whether it is appropriate to consider Ngāi Te Hapū distinct from Te Patuwai of Ngāti Awa. They suggested that, if the Crown lacked the whakapapa and tikanga knowledge to determine these questions, it should have engaged someone with the required expertise to help it do so.²⁰⁴

The questions the Crown left unanswered are inextricably tied to the question of who the tangata whenua of Motiti are. In our view, if the Crown reaches a point where it is not clear who the tangata whenua are – especially where this question is highly contested – then it should proceed very cautiously, in any context where Crown recognition of iwi or hapū interests is at stake. The Crown needs a certain level of expertise to engage with issues of tribal identity at all. It is therefore reasonable to expect the Crown to call on expertise when considering such issues, and to inform itself. But it is also reasonable for the Crown to refrain from making determinations about tribal identity where there is significant dispute on the subject, as was the case here. Expert advice to the Crown on whether Te Hapū was a Ngāti Awa ancestor would not have resolved that dispute, as it would still

202. Submission 3.3.8, pp 98, 101–102

203. Document A66, p 11; doc A66(b), p 26; see also submission 3.3.8, pp 107–108

204. Transcript 4.1.5, pp 102–103; transcript 4.1.2, pp 20–22

have left the Crown with the formal responsibility to decide the issue; that is, in the role of arbiter. We agree with the Crown that the Crown is not the right party to settle such disputes. As such, we consider the Crown's stance that it 'went as far as it could' to understand the key issues of identity and 'stepped back when appropriate' was fair.²⁰⁵ In the circumstances, refraining from drawing conclusions and leaving the kinship review report in draft were the responsible actions to take. The Crown could have been subjected to severe criticism if it opted to make a decision on such a highly contested question of whakapapa and tikanga.

Although it stepped back from making a conclusive determination about tribal identity, the Crown still had an obligation to resolve the questions of identity which the claimants' claim had raised and the kinship review had failed to answer. Its decision to support a priority Tribunal inquiry into these questions was an appropriate course to resolve them.

5.4.2.3 Findings on the outcome of the kinship review

In line with the views we have reached in the preceding analysis, we find that, for the most part, the conclusions the Crown reached in its kinship review were responsibly drawn from sufficient evidence, and align with the facts. We also find that, where the Crown refrained from drawing conclusions, it did so with good reason. We therefore find that the kinship review's outcome – both the preliminary findings of the report and the Crown's decision to halt the review, defer a final ministerial decision, and support the claimants' application to the Tribunal – complied with the Treaty principle of partnership, and the Crown's duty to make informed decisions.

5.4.3 Closing comments

We have made no findings of Treaty breach in respect of the kinship review, but have found its process was flawed (section 5.4.1.6). As previously outlined, the review should have been carried out in a more culturally appropriate way. The Crown's failure to take an inclusive approach with all groups from the outset was counterproductive, and caused confusion and upset for some in the Motiti community. If Ms Van Daatselaar and Dr Armstrong had sought and received advice about how to undertake the research process in a tikanga-consistent way, this could have been avoided, and the review may have had a better outcome.

As we make no finding of Treaty breach, our report contains no recommendations under section 6 of the Treaty of Waitangi Act. However, in light of the flaws we have identified in the review process, we offer suggestions about how it could have been improved (see chapter 6).

205. Submission 3.3.14, p7

CHAPTER 6

**HE WHAKAWHITIWHITINGA WHAKAARO /
SUGGESTIONS****6.1 INTRODUCTION**

Having reached findings on the core issues of our inquiry, we now offer suggestions about how the Crown should deal with disputes about tribal identity in general, whenever its recognition of hapū or iwi interests is at stake (section 6.2). We also offer specific suggestions about how the Crown should engage with the tangata whenua of Motiti Island in the future (section 6.3). In keeping with our inquiry's focus, these latter suggestions focus on the Crown's engagement with Te Patuwai, not Te Whānau a Tauwhao (though they too are tangata whenua of the island, as we found in chapter 3).

The following suggestions are informed by the breadth and depth of evidence we have considered in chapters 3 to 5. We make them with three purposes in mind. First, we hope to assist the Crown to rectify the flaws we have identified in its kinship review process. Secondly, the Crown has requested our guidance on how to engage with the tangata whenua of Motiti.¹ Though we have broadly clarified who it should engage with (namely, Te Patuwai and Te Whānau a Tauwhao), the Crown may also be assisted by some practical guidance on how to engage with Te Patuwai in respect of the island; again, our guidance does not concern the Crown's engagement with Te Whānau a Tauwhao, as they were not a focus of this inquiry. Thirdly, by setting out the model of Crown engagement we consider appropriate for Motiti, we hope to support the Māori parties in any further discussions they undertake, including on matters of representation, as a result of our inquiry.

6.2 SUGGESTIONS FOR THE CROWN'S APPROACH TO DISPUTES OVER TRIBAL IDENTITY IN GENERAL

The following suggestions arise from our findings on the Crown's kinship review process, and in particular, the historical research process the Crown used to assess whether Te Hapū was a Ngāti Awa ancestor, and whether Ngāi Te Hapū and Te Patuwai were synonymous.

We suggest that, where the Crown is faced with disputes about tribal identity:

- In the first instance, its role is to support all groups concerned to explore these questions themselves and try to reach agreement according to tikanga. (The Tribunal has commented in several reports on how the Crown may

1. See, for instance, submission 3.1.18, pp 9–10; submission 3.3.14, p 55.

pursue a tikanga approach to settlement negotiations, most recently – and substantively – in a series of guidelines in the *Hauraki Settlement Overlapping Claims Inquiry Report*.)

- ▶ Tangata whenua should be involved in the design of this process, and in the design of any research process initiated to help resolve the dispute. The Crown should consider how it can assist in this work.
- ▶ The Crown should be mindful that its proper role in the research process, in the first instance at least, may be to collate and share relevant information with the parties concerned, rather than to undertake analysis of the information with a view to reaching conclusions itself.
- ▶ If discussion between the groups concerned breaks down or yields no agreement, the Crown may make its own assessment of the evidence and comment on whether it considers it conclusive or not, and why. However, where the question of identity is highly contested, the Crown should be very cautious about proceeding. Other independent facilitation or resolution processes may need to be considered.

6.3 SUGGESTIONS FOR THE CROWN'S FUTURE ENGAGEMENT WITH THE TANGATA WHENUA OF MOTITI

With respect to Te Patuwai, we consider that the Te Patuwai Tribal structure, if functioning as intended, is the appropriate forum for exercising mana on Motiti (as noted in section 3.5.4.5). Our suggestions for Crown engagement thus focus on this structure. We briefly summarise its key features (outlined more fully in sections 3.3.2.1 and 3.5.4.5) before making suggestions.

6.3.1 Overview of the Te Patuwai tribal structure

Te Patuwai Tribal operates across three levels: marae, hapū, and iwi. At the marae level, each marae on the island (and at Pūpūaruhe) has its own committees and trustees, who operate the marae under their own authority (though the two marae on Motiti are sometimes jointly operated by one committee). At the hapū level, the three marae come together regularly under the banner of Te Patuwai Tribal, the traditional forum that encompasses all members of Te Patuwai. This forum is administered by the Te Patuwai Tribal Committee, which includes representatives of each marae. At the iwi level, Te Patuwai have representatives on the board of Te Rūnanga o Ngāti Awa who liaise between the hapū and the iwi, and represent the hapū's views in iwi-level decision-making (though the rūnanga may also deal directly with the Te Patuwai Tribal Committee or marae committee or committees).² Representation and regular reporting between the marae and Te

2. Technically, one of these representatives represents Te Patuwai and the other Ngāti Maumoana, but effectively both represent Te Patuwai; as noted in section 3.3.6.5, many Te Patuwai Tribal and Te Rūnanga o Ngāti Awa witnesses viewed Ngāti Maumoana as part of Te Patuwai, and some said the Maumoana name is used only in the context of Te Patuwai's representation on the rūnanga.

Patuwai Tribal, and between Te Patuwai Tribal and Ngāti Awa, ensure communication across the three levels.

The marae, hapū, and iwi have different spheres of responsibility and authority. The Motiti Marae Committee or committees (and trustees) have oversight of the marae. Te Patuwai Tribal is the more political body that deals with larger issues affecting the island, particularly those involving external authorities. The iwi has a more strategic focus, supporting Te Patuwai to achieve their goals for the island. This arrangement acknowledges that each of the three groups involved (marae, hapū, iwi) has a different level or sphere of kaitiaki interest in Motiti.

A system of mana whakahaere, or delegated authority, thus exists in respect of Motiti, based on reciprocal recognition of marae-based, hapū-based, and iwi-based interests in the island. Accordingly, when individuals or agencies beyond the island need to engage with Te Patuwai on any kaupapa affecting Motiti, who they speak with and at what level will depend on the nature of the kaupapa. However, the key point of contact for Crown agencies is through Te Patuwai Tribal, who will then involve or refer the Crown agencies to marae, hapū, or iwi parties as appropriate.

It is important to note that a kaupapa may involve all three aspects of the structure. Marae, hapū, and iwi-based spheres of authority should not be thought of as distinct and separate, but as part of a mana motuhake tribal system. For example, it may be appropriate to engage with Te Patuwai Tribal on more political matters, and with the iwi on strategic ones. But if these matters affect the operation of the marae, then it may be appropriate to engage with the marae as well.

Similarly, even where political or strategic issues relating to Motiti do not affect the operation of the marae, this is not to say such issues are not the concern of the marae. On the contrary, discussion of such issues at the marae level is critical if the Te Patuwai Tribal structure is to work well. Forming views on these issues is an important means by which marae communities exercise their mana whakahaere, as their views then inform decision-making at the hapū and iwi levels. When functioning as intended – as a confederation of marae – Te Patuwai Tribal does not ‘take over’ from the marae, but rather, enables each marae to exercise their mana whakahaere collectively.

As previously noted, the operation of the marae at Motiti and Pūpūaruhe, and their practice of coming together under the banner of Te Patuwai Tribal, are a continuation of long-established, traditional structures. These structures are reflected too in the (long-standing) Mataatua names of the whareniui on the three marae, which reinforce the relationship between them. Te Patuwai Tribal’s mana motuhake foundations are also reflected in the purely tikanga basis on which it operates; the forum has resisted interference from colonial structures, having never been incorporated into a Government legislative framework.

6.3.2 What this structure means for the Crown

In our view, this traditional, tribal system of mana whakahaere should guide the Crown’s engagement with Te Patuwai on matters affecting Motiti.

As alluded to earlier, in practice, this means the nature of any given issue will determine which level of the Te Patuwai Tribal structure the Crown engages with, and who it speaks with about that issue.

Accordingly, we suggest that:

- ▶ On all issues concerning Motiti, the Crown should first engage with the Te Patuwai Tribal Committee to receive direction on which entities it needs to engage with – marae, hapū, or iwi – about that issue. Depending on the kaupapa, the Te Patuwai Tribal Committee will connect the Crown with the relevant representatives of the marae, the hapū, or the iwi as appropriate.

At the time of our inquiry, the Motiti Marae Committee was running both marae, but committees specific to Hihitaua/Te-Hiinga-o-te-Ra Marae and Ruakopiha/Tamatea-ki-te-Huatahi Marae are sometimes operational.

Te Patuwai and Ngāti Maumoana representatives on Te Rūnanga o Ngāti Awa, and relevant rūnanga officials, provide the broader connection to Ngāti Awa.

In regard to this approach, we acknowledge that the Te Patuwai Tribal Committee is a legitimate and well-established tribal authority supported by the hapū of Motiti. In our view, a formal mandating process is thus not required as a condition of the Crown's engagement. We also acknowledge that any representative forum must be able to demonstrate continuing support within its community over time.

During our inquiry, the claimants expressed concern that, if Te Patuwai Tribal has decision-making authority with respect to Motiti, then the island will effectively be under the control of Ngāti Awa (as not all Te Patuwai whakapapa to Te Hapū). We think this fear is unfounded. As emphasised in this report, it is the hapū who have mana in respect of Motiti. Ngāti Awa's role is to support Te Patuwai (and their traditional forum, Te Patuwai Tribal) in their decisions and endeavours relating to Motiti, should Te Patuwai request their input. Ngāti Awa have acknowledged that this is the nature of the relationship between the iwi and the hapū.

Finally, we acknowledge that the Māori parties to this inquiry will have their own thoughts about how the Crown should engage with Te Patuwai. In the future, they may, or may not, choose to establish a new entity to represent Te Patuwai's interests in dealings with the Crown. If they do, we consider such an entity would gain its legitimacy through having been established with the support of Te Patuwai Tribal – that is, of Te Patuwai as a whole.

Dated at *Wellington* this *21st* day of *March* 20 *22*



Judge Miharo Armstrong, presiding officer



Dr Ann R Parsonson, member



Associate Professor Tom Roa, member



Tania Te Rangingangana Simpson, member



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- (c) Patrick Young, ‘At the Hui of the Motiti Island Marae Committee’, public notice, *Whakatane Beacon*, 15 June 2016, p 21
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