

Tēnā koutou

Recognition of mandate to represent Ngāpuhi in Treaty settlement negotiations with the Crown

He mihi tēnei ki a koutou i tuku whakaaro mai mō te puka whakamana i Te Rōpū o Tūhoronuku kua oti nei te whakahou i nā tata nei, arā kia noho a Tūhoronuku hei māngai mō Ngāpuhi i ngā whakawhitiwhiti kōrero ki te Karauna e pā ana ki te whakatau i ngā kerēme Tiriti. He take nui tēnei.

Thank you to those who made a submission on the amended Te Rōpū o Tūhoronuku (**Tūhoronuku**) deed of mandate to represent Ngāpuhi in Treaty settlement negotiations with the Crown. This is an important issue.

The submissions process is the final step in a mandating process which has been lengthy – it began in 2009 – and contested. The Tūhoronuku mandate process has received wide publicity, particularly in Te Tai Tokerau, and the people of Ngāpuhi have had a number of opportunities to comment on and take part in the mandate process.

In considering the mandate put before us by Tūhoronuku we have considered:

- a) the robustness of the mandate process carried out by Tūhoronuku;
- b) the views of members of Ngāpuhi as expressed through the 2011 vote – which demonstrated 76% support from those who voted on the mandate – and issues raised in the submissions process (a summary of which is set out in **Attachment A**);
- c) whether the structure of the Tūhoronuku Independent Mandated Authority (**Tūhoronuku IMA**) which is the proposed mandated body, would provide for all Ngāpuhi to be represented; and
- d) changes made to the deed of mandate as a result of feedback from Ngāpuhi and facilitation between various Ngāpuhi parties, including:
 - increased hapū representation on the Tūhoronuku IMA;
 - separation of Tūhoronuku from Te Rūnanga Ā Iwi O Ngāpuhi (**the Rūnanga**); and
 - provision for an independent process for Tūhoronuku IMA representatives.

We are pleased to advise that after full consideration we have decided to recognise the mandate of Tūhoronuku to negotiate a comprehensive settlement of the historical Treaty claims of Ngāpuhi. However, in recognising the Tūhoronuku mandate, we will require the Tūhoronuku IMA to take some additional steps to address issues raised through the submissions process. A summary of the submissions and Crown response can be found attached (**Attachment A**).

Additional requirements on the Tūhoronuku IMA

The issues and the five conditions we have decided to place on the Crown's recognition of the Tūhoronuku mandate are listed below.

1. Develop detailed communication and negotiation plans that recognise specific hapū interests

The newly elected Tūhoronuku IMA trustees will be required to develop and include detailed communication and negotiation plans in the Terms of Negotiation it will sign with the Crown. It is expected that these plans will outline how and when Tūhoronuku will:

- a) regularly communicate with the claimant community to ensure you are aware of progress and provide opportunities for iwi members to participate as appropriate; and
- b) include the claimant community in the negotiation and design of the redress package (which will need to recognise specific hapū interests in cultural and commercial redress). There are a number of options for this including having regionally based working parties or hapū based discussions. The Crown will organise its negotiation team to mirror the approach Ngāpuhi wish to take in negotiations – including exploring options that enable hapū participation in the design of the settlement package.

These actions will ensure it is clear to you, the Ngāpuhi claimant community, how hapū and any other relevant parties will be represented, informed, engaged and included in negotiations or relevant redress.

2. Provide detailed and regular mandate maintenance reports

The Tūhoronuku IMA will be required to report to the Crown on how it is implementing its negotiations and communications plan every three months through regular mandate maintenance reports. Those reports will detail:

- a) internal communications between the Tūhoronuku IMA and the claimant community on negotiations-related issues throughout the three month period; and
- b) any representation issues that arise and how they have or will be addressed.

3. Explore options for the post settlement governance entity early in the negotiations

Treaty settlements generally require iwi to develop new governance arrangements to hold and manage the redress. It is up to Ngāpuhi, and not the Crown, to determine the most appropriate post settlement governance structure and how it should hold and manage the redress provided through the settlement. The Crown is willing to explore options for providing for the devolution of redress to iwi/hapū should this be the desire of Ngāpuhi.

This is a discussion Ngāpuhi can start early in the negotiating process. We have therefore asked the Tūhoronuku IMA to engage with Ngāpuhi on post settlement governance entity options at the agreement in principle stage of negotiations, which is generally earlier than has occurred in other Treaty settlement negotiations. This will ensure there is the opportunity for a robust and full discussion to occur within Ngāpuhi on the shape of the iwi governance in future.

4. Allow votes for elected members only

A number of submitters were concerned about the ability of representatives on the Tūhoronuku IMA to appoint a proxy to make decisions. We will require Tūhoronuku to amend the deed of mandate to ensure only elected members can vote rather than allowing proxy representatives to vote.

5. Tūhoronuku to provide clarity with overlapping iwi on their claimant definition

We also received submissions from the representative entities for Te Aupōuri, Te Roroa and Ngāti Whatua o Kaipara expressing concern that the Ngāpuhi-Nui-Tonu area of interest in Tūhoronuku's deed of mandate could suggest Tūhoronuku purports to represent their iwi interests. The Crown's recognition is that Tūhoronuku represent the hapū within Te Whare Tapu o Ngāpuhi (i.e. not other iwi within the area of interest outlined in the deed of mandate). We will require Tūhoronuku to agree the technical terms of the claimant definition with the Crown for inclusion in the Terms of Negotiation, based on those whose ancestors descend from the ancestor Rāhiri and exercised customary interests in Te Whare Tapu o Ngāpuhi including the hapū listed in the amended deed of mandate.

Te Aupōuri, Te Roroa and Ngāti Whatua o Kaipara also note that while Tūhoronuku has already consulted with some overlapping iwi it is yet to consult with them. They seek clarification that Tūhoronuku only seeks to represent those hapū within Te Whare Tapu o Ngāpuhi (ie. those who have representation within Tūhoronuku's representation structure) and not their iwi. We will ensure that consultation is undertaken by Tūhoronuku in the next three months with the above iwi and also ensure there is clarity with all overlapping iwi regarding who Tūhoronuku represent.

Next steps

Crown recognition of mandate is the first step in the negotiations process. It recognises that the mandated entity has the support of the majority of Ngāpuhi and provides sound structures (see **Attachment B**) for representation of, and accountability to, Ngāpuhi.

The next step for Ngāpuhi is to elect 22 new members through an independently monitored election process to represent their interests. This is a unique process and an exciting opportunity for all of Ngāpuhi to have their say in who is involved in leading them through their settlement negotiations.

Throughout the negotiation process, Ngāpuhi will have the opportunity to shape the settlement redress package and how the redress will be held and managed. At a later date Ngāpuhi members will also need to determine who will have the responsibility of representing Ngāpuhi on a post-settlement governance entity.

The Crown's recognition of the Tūhoronuku mandate does not predetermine any of these matters. As with all Treaty settlements, any settlement package agreed between the Crown and Tūhoronuku will need to be ratified by the members of Ngāpuhi before the Deed of Settlement is signed.

We have seen what other iwi have been able to achieve with their Treaty settlements. The redress available for a Ngāpuhi settlement will be comparable in size to the largest Treaty settlements agreed thus far. There will be significant cultural redress available including the ability to play a role in the management of land of cultural significance to Ngāpuhi. In addition there will be a Crown apology and an agreed historical account informed by iwi evidence at Waitangi Tribunal hearings.

The sooner a settlement can be resolved, the sooner Ngāpuhi can make decisions around the redress provided and how this contributes to building a better future for all Ngāpuhi.

We encourage all Ngāpuhi to participate in the upcoming election process for the Tūhoronuku IMA. Following the elections process and the selection of negotiators, substantive negotiations can begin.

Nā māua, nā

Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

Hon Dr Pita R Sharples
Minister of Māori Affairs

Background to Tūhoronuku mandate

Te Rōpū o Tūhoronuku originally formed as a sub-committee of Te Rūnanga Ā Iwi O Ngāpuhi. Following around 60 hui held by the Rūnanga during 2008-2011, a vote was held between August-September 2011 on the Tūhoronuku deed of mandate. Of the 29,389 Ngāpuhi who received the voting pack, 23 percent (6,794) voted with 76 percent (5,210) in favour of the mandate.

During 2011-2013 Tūhoronuku and Te Kōtahitanga o Ngā Hapū o Ngāpuhi (Te Kōtahitanga) held discussions to address concerns raised about the mandate. Following these discussions, Tūhoronuku agreed to amend its deed of mandate in various ways to address the key concerns raised by Te Kōtahitanga.

In July 2013 the Crown publically advertised the amended Tūhoronuku deed of mandate and sought submissions on it by 18 August 2013. That process is now complete.

Issues raised in the submissions process

Over 3500 Ngāpuhi made submissions within the advertised time period. Many of the submissions received were in various template forms and raised a number of common themes.

- 63% (2,221) expressed opposition to the amended deed of mandate: and
- 36% (1,259) supported it.

The remainder raised issues which did not indicate support or opposition. Late submissions did not change the ratio of opposition and support.

The key themes raised in submissions in support of the mandate included:

- a) approval of the changes to increase hapū representation on a regional basis;
- b) support for an independent entity to be elected for negotiations; and
- c) support for an independent returning officer to oversee the elections for that entity.

The key themes raised in submissions opposing the mandate included:

- a) a desire to have historical claims heard by the Waitangi Tribunal (**the Tribunal**) before entering direct negotiations with the Crown;
- b) a concern that the Tūhoronuku IMA will not support hapū mana and will be controlled by Te Rūnanga ā Iwi o Ngāpuhi;
- c) lack of withdrawal mechanism for hapū;
- d) a desire to negotiate with the Crown as hapū or through smaller groupings within Ngāpuhi; and
- e) opposition to the inclusion of a number of Wai claims in the mandate.

Below we provide a response to these concerns.

Tribunal hearings

The Crown acknowledges that many Ngāpuhi wish to have their Treaty claims heard by the Tribunal. We recognise that Ngāpuhi have well founded historical Treaty claims. The Crown has already conceded in the Te Paparahi o Te Raki inquiry that numerous Crown actions and omissions have breached Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. These include breaches in relation to the 1844-46 war, the application of surplus land and pre-emption waiver policies, Crown land purchasing practices, the operation and impact of the native land laws, twentieth century land administration, and the resulting virtual landlessness of many Ngāpuhi hapū.

The opportunity to have your historical grievances heard through the Tribunal hearings and receive a report on them is an important part of the reconciliation and settlement process. The Crown supports this process and demonstrated its commitment to it by providing exceptional funding to allow Tribunal hearings to continue in 2013. We welcome the recent decision by the Crown Forestry Rental Trust to fund the second rotation of stage 2 of the Tribunal's hearings (currently expected to be completed in 2015). We are committed to participating in those hearings by making further acknowledgements of Crown wrong-doing where appropriate.

Many of the issues that Ngāpuhi are raising in the Tribunal can only be resolved through direct negotiation with the Crown. Some overlap between the Tribunal hearings and the negotiation process will allow Ngāpuhi and the Crown to identify grievances and address these during the negotiations process.

Role of hapū

Many submitters expressed concern that the Tūhoronuku IMA does not allow for a hapū-led process. There is also concern that the decision by Tūhoronuku to increase hapū representation is undermined by the processes for trustee nomination, election and replacement and dispute resolution.

The Tūhoronuku IMA structure provides a basis for representation for all Ngāpuhi interests. Each hapū elects a representative. Representatives (known as hapū kaikōrero) from each of the 109 Ngāpuhi hapū then come together into their five respective takiwā. Each of the five takiwā then elect three representatives on to the Tūhoronuku IMA. These 15 regional hapū representatives make up 15 of the 22 positions on the Tūhoronuku IMA.

This means that hapū now elect the majority of trustee positions on the Tūhoronuku IMA. Under the initial Tūhoronuku proposal hapū were to elect 7 of 15 representatives. The other seats on the Tūhoronuku IMA are held by a kuia and a kaumātua, four Ngāpuhi ā Rohe (urban) representatives and a Rūnanga representative. We consider this structure provides for comprehensive representation of Ngāpuhi.

The Tūhoronuku IMA processes for the nomination and replacement of representatives and dispute resolution are generally consistent with standard governance processes for a mandated entity.

In addition, the amended deed of mandate incorporates a number of measures to address concerns raised by members of the Ngāpuhi claimant community. These include:

- separation of Tūhoronuku from Te Rūnanga Ā Iwi O Ngāpuhi and the establishment of the Tūhoronuku IMA;

- a fresh and independently overseen election process for the Tūhoronuku IMA;
- a reduction in Rūnanga representatives from two to one; and
- the increase in hapū representatives.

Hapū Withdrawal Mechanism

Opposing submitters have also raised concern that the deed of mandate does not provide for individual hapū to withdraw their mandate from the Tūhoronuku IMA. This reflects the fact that the mandate was sought from the Ngāpuhi claimant community as a whole rather than on a hapū by hapū basis, and the preference for a single Ngāpuhi settlement process.

As with all mandated entities, the Crown will require the Tūhoronuku IMA to take active steps to maintain its mandate throughout the course of negotiations and respond appropriately to any issues that arise. If groups within Ngāpuhi did wish to withdraw from the Tūhoronuku mandate during negotiations, they would need to follow a process as robust as that followed by Tūhoronuku to gain a mandate.

If hapū or groupings within Ngāpuhi do wish to withdraw from Tūhoronuku in future, the Minister of Māori Affairs and the Minister for Treaty of Waitangi Negotiations would need to assess whether:

- a) to recognise the withdrawal of the hapū or group on the basis of the process they have undertaken;
- b) the Crown should negotiate separately with the group who has withdrawn or whether their claims will continue to be covered by the negotiations; and
- c) the level of support for the Tūhoronuku IMA remains sufficient to continue negotiations.

Desire for separate negotiations with hapū and Wai claims

Through the submissions a number of hapū and Wai claimants have said they wish to represent themselves in Treaty settlement negotiations or be represented by a smaller grouping than Ngāpuhi.

Tūhoronuku have sought a mandate from Ngāpuhi on the basis that there will be a single Ngāpuhi settlement process. That allows your negotiators and the Crown to develop a settlement package that contains a wide range of redress and also reduces time and cost of reaching a settlement for both Ngāpuhi and the Crown.

A single negotiation process can also be designed to address the interests of hapū while reducing overlapping claims issues, as these can be addressed internally within Ngāpuhi with all hapū participating in the process together. A single Ngāpuhi settlement will mean Ngāpuhi Nui Tonu can progress as one and realise the full potential of a settlement package.

