

17 APRIL 2018

REPORT TO TUHORONUKU ON MEETING WITH MINISTER LITTLE

I write this report in my capacity as one of two board members appointed by Tūhoronuku, and as the single appointed kaikōrero for Te Rūnanga-ā-iwi o Ngāpuhi, to develop a negotiations process to support a Ngāpuhi wide settlement. I deem it a privileged to be appointed as such.

BACKGROUND

TIMA Authority

- a. Tūhoronuku Independent Mandated Authority (“Tūhoronuku”) holds the mana of the Deed of Mandate which Ngāpuhi voted on in August and September 2011.
- b. This means it is the responsibility of Tūhoronuku to negotiate a settlement of all crown breaches against Te Tiriti o Waitangi that have impacted on Ngāpuhi.
- c. In September 2011 this Mandate was bestowed upon Tūhoronuku by Ngāpuhi with a vote of 76.4%. Some 7,000 Ngāpuhi voted
- d. On 31 March 2012 Tūhoronuku handed the Mandate to the Crown.
- e. On 14 February 2014 the Crown conditionally recognised this mandate.

WAITANGI TRIBUNAL URGENT HEARING AND FINDINGS

- f. The Waitangi Tribunal convened an Urgent Hearing of 15 claims, primarily from Ngāpuhi hapu and collectives of hapu regarding the Crown’s recognition of the Tūhoronuku IMA mandate.
- g. The Tribunal found that the strength of hapū autonomy to be a defining characteristic of Ngāpuhi. As such, any entity seeking to represent Ngāpuhi in settlement negotiations had to produce clear evidence of hapū support for its mandate.
- h. The Tribunal also found that the Crown had a primary Treaty duty to actively protect the rangatiratanga of Ngāpuhi hapū in deciding how and by whom they would be represented in settlement negotiations. The Crown failed in this duty by recognising the mandate of Tūhoronuku in the absence of clear evidence of Hapū support for its mandate. Further, the Tribunal also advised that the structure and processes of Tūhoronuku undermined hapū and their ability to make crucial decisions affecting the settlement of their claims.

- i. The Tribunal identified flaws in the structure and processes of Tūhoronuku and found the Crown to have breached the Treaty. It did not, however, believe that the Crown should withdraw its recognition of the mandate and require that a new mandate process take place.
- j. The Tribunal believed that there was broad support within Ngāpuhi for negotiations towards settlement and that flaws identified in the Tūhoronuku mandate could be remedied, stating that once remedied, that Tūhoronuku will be capable of leading a negotiation on behalf of hapū.
- k. The Tribunals report stated that all participants in its inquiry wish to proceed to settlement.

At issue is when and how that should happen.

- l. Two different approaches to those questions have developed within Ngāpuhi, under different leaderships and leadership structures, drawing on different power bases and hapū. While at the same time these same hapū themselves are divided over how best to proceed.
- m. The Tribunal strongly encouraged groups to proceed together with negotiations with the Crown either as one entity or in parallel but with a unified and coordinated approach and in either case with the knowledge that several settlement packages could be negotiated.

TRIBUNALS SEVEN RECOMMENDATIONS:

The Waitangi Tribunal recommended seven key remedial actions.

- i. The Crown must halt its negotiations with the Tūhoronuku IMA to give Ngāpuhi necessary breathing space to work through the issues that have been identified.
- ii. Hapū must be able to determine with their members whether they wish to be represented by the Tūhoronuku IMA.
- iii. Those hapū that wish to be represented by the Tūhoronuku IMA must be able to review and confirm or otherwise the selection of their hapū kaikōrero and hapū representatives, so that each hapū kaikōrero has the support of their hapū.
- iv. Ngāpuhi hapū should have further discussions on the appropriate level of hapū representation on the board of the Tūhoronuku IMA.

- v. the Crown should require as a condition of continued mandate recognition that a clear majority of hapū kaikōrero remain involved in the Tūhoronuku IMA.
- vi. there must be a workable withdrawal mechanism for hapū who do not wish to continue to be represented by the Tūhoronuku IMA.
- vii. If they exercise their choice to withdraw, Hapu must be given the opportunity and support to form their own large natural groups.
- n. The Tribunal further advised: *‘We have weighed this approach against likely prejudice to those individuals and hapū who presently support the Tūhoronuku IMA and want the current negotiations to continue without pause. We acknowledge that the process we recommend will take time and could potentially delay settlement. We also acknowledge there is a risk that some groups will choose to leave the mandated structure, but we consider it is crucial that the Crown and Ngāpuhi take the opportunity now to resolve the fundamental issues we have identified, before negotiations proceed further’.*

It is from this background that various reports were commissioned by the Crown and different approaches taken to try to move these negotiations forward. There have been a number of avenues explored to get Ngāpuhi moving toward a great settlement for all Ngāpuhi. Thus far proving to be elusive.

Since the emergence of the Waitangi Tribunals Report on the Urgent Inquiry, Tūhoronuku have been working hard on how they might address the issues with the Mandate outlined in the Tribunal, set out above.

A group calling themselves Kotahitanga continue to oppose the Crown’s efforts for what they say are flaws in the Tūhoronuku Mandate.

The National Government was unable to commence negotiations. With the change of Government, it has hopefully breathed new life into these korero.

In late 2017 and early 2018 the new Minister of Treaty of Waitangi Settlements, the Hon Andrew Little, visited the north on several occasions to meet first, with the mandated entity Tūhoronuku, and secondly with the opposing group Kotahitanga. Minister Little also met with Ngāpuhi in all regions, culminating in a Ngāpuhi wide hui at Waitangi. The Minister wanted to get the feel of the land and hear firsthand what people on the ground were saying.

The Minister then invited appointed members of Tūhoronuku and Kotahitanga to join him for discussions. The Minister reported to this group that when he went around

Ngāpuhi meeting in different rohe he got consistent messages from these hui. He reported that:

- The people were critical of both Kotahitanga and Tūhoronuku – *that has to be expected;*
- The overwhelming message I got from meetings throughout the rohe and regions was - *Minister get on with it, whatever decision you make, we will live with it* – I don't want that. I would sooner have full agreement amongst us all;
- There is no agreement from Tūhoronuku for Maranga Mai – *so we need to work around that position;*
- We are meeting for a korero as there is an expectation from Ngāpuhi that we will move forward;
- *“Do not let the weight of the moment overwhelm us.”*
- The Crown has legal restrictions on what we can and can't do;
- The Crown is very clear what we need to do from the Tribunal report perspective;
- We must explore all options and see if we can find a way forward together;
- We do not want to start afresh with a new Mandate, that takes too long and very costly;
- A partial Commercial Settlement can be put together relatively quickly once agreement is reached.

At the first meeting with Minister Little, a model was put to our group that he felt might take Ngāpuhi forward, or at least provide a basis for korero.

I have reported on the first two meetings with the Minister and this report is on the third meeting.

MEETING UPDATE 15 APRIL 2018

- We again met with Minister Little on 15 April in Auckland to further our talks
- I feel that we got a lot done at this meeting although there are still some big holes to fill – *at least the Minister knows where people are hung up and can see whether they will move or not*
- Minister Little had David Tapsell with him, David being a lawyer who has been involved in many Te Tiriti o Waitangi settlements – *was involved in his own iwi settlement*
- His address was around what a PSGE might look like out in the regions. He also provided korero around what is possible in the overarching Ngāpuhi wide PSGE – *this was very useful*
- There is a fundamental difference between what Tūhoronuku sees as an ideal situation for Ngāpuhi, relative to what Kotahitanga kaikōrero are talking about
- Basically, Kotahitanga wants everything dealt with in six regional PSGE's – *including commercial redress*
- They want the Maranga Mai report implemented in its entirety – *it is a report not a mandate*

- Hone has stated that Tūhoronuku will oppose the implementation of the Maranga Mai report in its fullest but remain open to some of the good suggestions contained in that report that can be transferred to the Mandate.
- Hone and I insist that not everyone is involved at hapū level
- That the majority of Ngāpuhi live in cities and in many cases do not know who their hapū are – *the Tūhoronuku mandate process includes all, the door remains open for all, Kotahitanga will alienate and disenfranchise the majority of Ngāpuhi if they are not involved*
- Kotahitanga and its followers have this flawed vision of **ALL** Ngāpuhi coming home and getting involved through their respective hapū – *We don't agree with this notion.*
- We point to the fact that the powerhouse iwi in this country are Ngai Tahu and Waikato Tainui, why? - *because they kept their settlement together and worked with critical mass to get to where they are today – economic heavyweights*
- We can see throughout the country evidence of smashing reasonably large iwi into small pockets with duplicated organisational structures sucking up funding – *this is what is being promoted by Kotahitanga*
- Examples are, Ngāti Kahungunu, Tauranga Moana, Te Tau Ihi - eight iwi at the top of the South Island and right next door to us Ngāti Whatua – *all have no influence in their respective regions whatsoever*
- We do not want a repeat of that situation for Ngāpuhi – *we do recognise however, some autonomy for our hapū in the regions and must work toward providing that assurance. The Tūhoronuku mandate provides for this and can be strengthened.*
- Kotahitanga raised the issue of Rudy and Pita getting onto the Mandated body as of right – *Hone replied that the door is always open and if they come through their respective hapū onto Tūhoronuku like all others did there is no issue*
- I stated that if Kotahitanga think we are going to step aside from our responsibilities on Tūhoronuku and let someone else take over the mandate without following a robust process – *they are deluding themselves*
- If Kotahitanga believe that by breaking Ngāpuhi up into little pockets of hapū based organisations and calling that Tino Rangatiratanga – *they are deluding themselves.*

FUNDAMENTALLY THE GROUPS ARE APART IN THESE AREAS:

Issue	Tūhoronuku Position	Kotahitanga Position
Number of Regions in Ngāpuhi Settlement	5 regions. As per the Mandate. To split Mangakahia off will mean that region contain only 9 Hapu. All other regions must service about 22 Hapu each. They expect to be treated the same.	6 Regions as per Maranga Mai. Because one Mangakahia Kuia requested Mangakahia have a separate region to Whangarei, Kotahitanga want that change from the Mandate.

<p>Model for Settlement of all crown breaches against Te Tiriti o Waitangi that impacted on Ngāpuhi</p>	<p>Five regions setup to deal with hapū specific issues, sites of historical and cultural significance, i.e. Maunga, Whenua, awa, Takutai Moana to be negotiated directly with the Crown. Historical account.</p> <p>One overarching settlement PSGE dealing with Ngāpuhi iwi wide issues</p> <p>Quantum, constitutional issues, He Whakaputanga and Te Tiriti o Waitangi, Te Reo o Ngāpuhi, Cultural revitalisation, Health, Education, Housing, Apology, Financial and Commercial redress</p> <p>These redress items belong to Ngāpuhi katoa and to regionalise people into areas is impossible as many living in the cities do not know who their hapū are.</p> <p>This is where the centrally held funds will generate the finances to build Ngāpuhi into an economic force that will rival any iwi in Aotearoa if given the ability to flourish.</p>	<p>Everything settled in the 6 Regions.</p> <p>Full PSGE's established in each region.</p> <p>Break Ngāpuhi into six regions and negotiate separately across everything.</p> <p>To them this is Hapu Tino Rangatiratanga</p>
<p>Kaumatua Kuia, Urban and Te Rūnanga-a-iwi o Ngāpuhi representation on any Ngāpuhi settlement body – regional or central</p>	<p>Kaumatua and Kuia, Urban, Te Rūnanga-a-iwi o Ngāpuhi representatives as per the mandate Ngāpuhi voted on in 2011 and to be included in any model dealing with Ngāpuhi issues.</p> <p>Kaumatua and Kuia as they are the guiding influence for any</p>	<p>No positions on regional organisations for these people</p> <p>Urbans, Kaumatua and Kuia will be adequately taken care of as they must come through their respective hapū. No Te Rūnanga-a-iwi o Ngāpuhi on any settlement organisation.</p>

	<p>Ngāpuhi organisation.</p> <p>Include Urbans as they make up 80% of the 125,601 Ngāpuhi who registered in the 2013 census</p> <p>Te Rūnanga-a-iwi o Ngāpuhi as they are the only mandated entity who represent Ngāpuhi – their registered members have confirmed they be included and involved, they have a proven track record of successfully managing a settlement asset - currently managing a \$55M asset on behalf of Ngāpuhi.</p>	
<p>How are the five - six regions going to be funded?</p>	<p>The Crown to fund these regional centres for the next 30years. Need to build capacity within these regions then resource them to carry out their tasks on behalf of the respective regions.</p> <p>Stated to the Crown that they need to fund these centres as it is their idea to split Ngāpuhi up into little pockets.</p> <p>Tūhoronuku gave an example of Te Rūnanga-a-iwi o Ngāpuhi with an operational Budget of \$4.3m for this financial year to run its operation.</p> <p>Tūhoronuku believes there should be some sort of regional organisation in each region that is responsible for taking care of local needs. This could be similar to the FNDC structure who have ‘wards’.</p>	<p>Each region will be self-funding, therefore in the Kotahitanga scenario it would cost 6 x \$4.5M = \$27M per annum approx.?</p> <p>Over 30 years that would be at a cost of \$810M.</p>

	The central Ngāpuhi body needs to give consideration on how they might assist resource these centres if Crown pulls out. The Constitution could possibly be the place to fetter the Ngāpuhi wide PSGE to regional edifices, including annual dividends?	
Status of the Maranga Mai Report	<p>Tūhoronuku is vehemently opposed to the implementation of Maranga Mai in its entirety. Maranga Mai is a lawyer written gobbledigook of legalistic rhetoric with recommendation that will keep Ngāpuhi on a litigious merry-go-round for the next 150 years</p> <p>Tūhoronuku remain open to taking out areas that will address the findings of the urgent tribunal hearing and put into an addendum to the mandate.</p>	Want the Marangai Mai report implemented in its entirety.

- In my view the matters written in the table above are the only matters that keep us apart and must be worked on to try and get agreement
- The Minister remains hopeful that we will come to some arrangement shortly re where we go to from here and move Ngāpuhi forward.
- Pita Tipene will put together his thoughts on where he thinks Ngāpuhi should go with this process and send out for socialising among our group.
- Each person must reflect on where we are in these negotiations and the Minister will wait and see if we need another meeting
- The Minister encouraged the group to meet among ourselves to see if we can advance these negotiations
- Hone and I remain committed to addressing the points raised by the Urgent Tribunal hearing – *no more, no less and recognise that compromise is necessary*

FINALLY TŪHORONUKU PUT THESE QUESTIONS TO THE MINISTER:

1. What are the functions of the proposed regional PSGE's from a Crown perspective?

2. How many Regions will there be? – *need to lock that in as it is very basic?*
3. The cost of running this many organisations is prohibitive and we are mindful of the Tauranga, Ngāti Kahungunu, Te Tau Ihu and Ngāti Whatua examples which we do not want to repeat – *is there a cost estimate the Crown has of running one of these organisations?*
4. The cost of running Te Rūnanga-a-iwi o Ngāpuhi is about \$4.5M this year – if we took that across the six regions suggested by Kotahitanga – that will be \$27M per annum – we know the regions couldn't generate that amount within say 10 years - so that will cost \$270M – *who is going to resource them to achieve that outcome and more importantly, beyond that?*
5. Need to clear up what their respective settlement functions will be, other than negotiating local hapū issues – *What does the Crown see as their functions beyond that if any?*
6. The Crown has stated that it is here to address the findings of the Urgent Tribunal hearing – *will we go beyond those requirements, and if so, what else is there to consider?*
7. The Crown has consistently stated that there will only be one Ngāpuhi settlement – *we need the Crown to assure Ngāpuhi and Tūhoronuku that their intentions haven't altered and that only one settlement will be negotiated.*
8. Can the Crown restate, as it has been, that the Maranga Mai Report does not have the full support of Tūhoronuku, *therefore cannot be fully implemented?*
9. Informed the Minister that as part of the Mandate strengthening, Tūhoronuku has to present a PSGE model to Ngāpuhi for ratification - *Te Rūnanga-ā-iwi o Ngāpuhi has always said it would develop a PSGE model and provide to Tūhoronuku for socialising with Ngāpuhi. That this model is being developed now*

The Minister will come back to Hone and I with the answers to those questions. I believe that once those answers are locked down, that will narrow the scope of our remaining discussions.

PERSONAL OPINION:

Over the years (and it is years) I have observed a leadership developing within Ngāpuhi that is ill fitting, self-serving and lacking foresight. A leadership that has a narrow focus and will never generate an economic base for our Ngāpuhi people wherever they may choose to live. The table above speaks for itself. There is no

reasonable rationale given that comes close to providing me with surety that should we rely on the Maranga Mai report in total we arrive with a comprehensive settlement outcome that will benefit all Ngāpuhi. This is unacceptable in my view.

Further, I am concerned that we are delving into a conversation of rhetoric and blame. All this does is allow those who point the finger to discharge their responsibilities.

There can be no other reason given, other than for a personal agenda that 15 hapu, a handful of people and two misguided leaders hold our Ngāpuhi nation to ransom.

I would prefer that our thoughts focus on an outcome that benefits all Ngāpuhi.

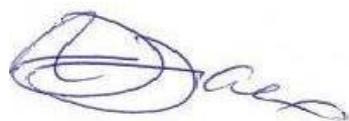
CONCLUSION

If you have read this report you will see that we are not too far away from agreeing on a way forward. And despite what people thought, I think this last meeting was perhaps the most productive for these negotiations so far. We have put our positions on the table and have a starting point. For Tūhoronuku that is Ngāpuhi katoa.

No reira e te poari o Tūhoronuku, e te pōari o Te Rūnanga-ā-iwi o Ngāpuhi, tēnā koutou i whai hakāro kia tukuna ia māo ko Hōne Sadler kia pikau i tēnei take ki mua i te aroaro a te Karauna a muri mai o te ripōata ohore a Te Taraipūnara o Waitangi, mo te Mana kia hakatatū i ngā nawe kātoa o Ngāpuhi mo ngā hara o te karauna i utaina ki runga ia Ngāpuhi, ki raro o te Tiriti o Waitangi.

Ko te tumanako, kia tatū tika ai ēnei tawhā kia anga hakamua ai a Ngāpuhi katoa.

Mauri Ora



Rāniera T Tau
KAIKŌRERO