



Office of Hon Christopher Finlayson

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08 APR 2013

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Tena koutou

The Minister of Māori Affairs and I have been considering your feedback on the proposed deed of mandate changes and the next steps. I acknowledge the process has been lengthy and I know this has created some pressure for all parties. However the decisions we need to make are significant and their implications long lasting.

Process to date

It is useful to reflect on the mandating process to date. I have asked officials to summarise Crown engagement with you both. This summary is set out in the attached table.

In 2008 Te Rūnanga a-iwi-o Ngāpuhi (the Rūnanga) began consulting Ngāpuhi on how they wanted to progress the settlement of their historical claims. Thirteen hui were held in 2009 during the course of which it became apparent there was significant support in some quarters, along with opposition from others, to the Rūnanga seeking a mandate. The Rūnanga then embarked on a second round of 14 consultation hui, to ask the people of Ngāpuhi for their views on which body should hold the mandate to negotiate a Treaty settlement on their behalf.

Following that, the Rūnanga set up a sub-committee (Tūhoronuku) which presented a draft strategy for a deed of mandate and proposed a representative model to progress Ngāpuhi settlement negotiations at 14 hui between June and August 2010. In January 2011 Tūhoronuku presented their mandate strategy to us. We endorsed it because the process Tūhoronuku proposed to undertake met the Crown requirements of providing all Ngāpuhi the opportunity of participating in the mandate process.

The Crown publicly advertised Tūhoronuku's mandate strategy and 28 submissions were received which raised several concerns. Tūhoronuku delayed the commencement date for the mandate hui and vote process to allow time to address those issues. From this point, we engaged with both Tūhoronuku and Kōtahitanga to try and assist you to agree on a unified pathway to Ngāpuhi (as summarised in the attached table).

Tūhoronuku began its formal mandate process and commenced a series of 20 hui throughout New Zealand and Australia, which were also attended by Kōtahitanga. We are satisfied that attendees had opportunity to hear all of the arguments both for and against the mandate arrangements proposed by Tūhoronuku. The mandate ballot was held over a six week period in August-September 2011. Of the 29,839 voting papers sent out, the deed of mandate was voted on by 6,759 Ngāpuhi members with 5,210 (76 percent) of the total votes

cast in favour of the mandate and 1,584 (23 percent) of voters opposing it. While this fell below the range of mandate results (84 – 100 percent support) previously recognised by the Crown, 76 percent is a significant level of support for a mandate.

In assessing next steps we looked at the issues of concern that had been raised by members of Ngāpuhi throughout the mandate process. These covered three broad areas:

- a. the role of the Rūnanga in the proposed mandated entity;
- b. the sequencing of and support for Waitangi Tribunal hearings if negotiations were to proceed; and
- c. the hapu representation role including concerns hapu would not have a majority on the proposed mandated entity and that the election process for hapu representatives was not sufficiently transparent.

We were advised in that process by the Rt Hon Jim Bolger, who had been working with Tuhoronuku, Kōtahitanga and Ngāpuhi claimants since June 2011, to facilitate discussion on those issues. We decided to provide further support to assist Ngāpuhi to try to resolve those issues before taking the next step in the mandating process. As a result the Roopu Whaiti Joint Working Group was established in late 2011. The resulting Roopu report set out the parties' differing views but did not provide a resolution. We then asked Mr Tukoroirangi Morgan to undertake further work with you.

Progress made

Considerable effort has gone into this process and it is pleasing that many issues have been dealt with and some progress has been made. In particular it has led to Tūhoronuku agreeing to:

- a. the mandated body becoming a separate legal entity to the Rūnanga;
- b. an increase in the board representation from 15 to 22;
- c. hapu representation increasing to become 15 of 22 members (a majority) and being elected on a regional basis (the original proposal was for 7 representatives); and
- d. a new election being held (if a mandate is recognised) for all trustees.

Notwithstanding that progress, when we met with you in October 2012, full agreement had still not been reached on the way forward. As a result we proposed the establishment of a further working group, to work through remaining issues to see if agreement could be reached, before we decided whether to advertise the deed of mandate. We expected it would also provide a forum for the parties to further consider some outstanding matters relating to the representational make-up of the proposed mandate entity. However, following the decision by Kōtahitanga not to participate in the working group, it was clear the working group approach could not proceed.

The Minister of Māori Affairs and I then reviewed the situation. The next stage in the process would be to advertise the deed of mandate. This stage of the mandate process gives the claimant community a further opportunity to comment directly to Ministers on the proposed mandate. We considered the process to date, issues raised and responses and decided it would be useful to set out the basis on which we would be willing to advertise the deed of mandate. That included reduction of Rūnanga representation on the mandated body from two to one, and introduction of processes that would increase transparency of the proposed election process, including the appointment of an independent returning officer. We conveyed this to you both in our correspondence of November 2012.

Tūhoronuku advised on 7 December 2012 that they agreed in principle with the changes requested but asked for further details on some aspects before conveying a final view.

Officials subsequently met with Tūhoronuku to discuss the details they sought before taking a final view. In those discussions officials also conveyed further matters Kōtahitanga had raised with us in relation to the mandated entity. Those were that Kōtahitanga considered:

- a. all nominees to the Independent Mandating Authority should be vetted by the police; and
- b. members of the Independent Mandated Authority should be prohibited from being appointed as negotiators.

Tūhoronuku indicated they would amend the deed of mandate to include a police vetting process should a dispute arise and a clause prohibiting members of the Independent Mandated Authority from being appointed as negotiators.

Kōtahitanga wrote to us on 21 February 2013 seeking the following further changes to the representation structure:

- a. removal of the seat allocated to the Rūnanga;
- b. urban representation should be reduced in number from 4 to 3 (as each of the 5 hapū region only has 3 representatives);
- c. replacement of the dedicated seat each for kaumātua and kuia with a kaumātua and kuia nominated by each taiwhenua/ hapū region (including the urban block). These kaumātua and kuia would then form an advisory board with a membership of six kaumātua / kuia to guide the Independent Mandated Authority.

Next steps in process

It is clear from those responses that there remain differences of view over the most appropriate representative structure. The decision for the Minister of Māori Affairs and me is whether to advertise the revised deed of mandate (amended to incorporate agreements which have been reached between Kōtahitanga and Tūhoronuku) and test the mandate with wider Ngāpuhi or whether to require you to make further efforts to reconcile your views. We are mindful that these issues have been well canvassed by both parties over the last 18 months. Significant compromises have been made and it appears to the Minister of Māori Affairs and me that the amendments made to the deed of mandate process to date strike a balance between the concerns of Tuhoronuku and Kōtahitanga, whilst maintaining the integrity of the deed of mandate voted upon by Ngāpuhi.

It is not clear that further discussion will result in the shift in views required for complete agreement to be reached. One suggestion that has been put by Kōtahitanga is that we advertise both parties' proposals for a representative structure. It is not appropriate for us to do that. The people of Ngāpuhi have been extensively consulted on the proposed Tūhoronuku mandate and have voted on it. The vote indicated a significant level of support for the Tūhoronuku deed of mandate. The next stage in this process is for the Crown to advertise that mandate and seek further views from Ngāpuhi on whether there is sufficient support for us to recognise a mandate for Tūhoronuku.

We are aware it is 18 months since the people of Ngāpuhi voted upon the mandate. We think it is time to complete that process by advertising the deed of mandate and seeking submissions from Ngāpuhi on whether there is sufficient support for a mandate to be recognised. Ultimately that is for Ngāpuhi to decide through a fair and open process.

Feedback received will inform any final decision on whether to recognise the deed of mandate.

Potential timeframe

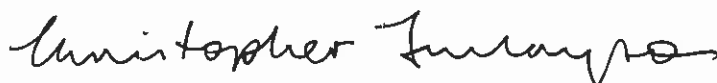
Discussions are still required around amending the deed of mandate and claimant definition. We intend to advertise the deed of mandate around June 2013. We emphasise that moving to advertising the deed of mandate is not recognising a mandate; no final decision on this has been made.

The advertising period is proposed to take place over a six week period from June 2013, allowing a decision to be made on whether to recognise the deed of mandate in August 2013. If the deed of mandate were recognised it would be followed by an election process starting in September-December 2013 and allow for the establishment of the independent mandated entity from February 2014.

Finally, we want to acknowledge that we are all currently involved in Stage 2 of the Waitangi Tribunal's Te Paparahi o Te Raki hearings. As the Crown submitted at those hearings, we remain committed to participating in that process. The Crown has already accepted Ngāpuhi have well-founded claims and has made substantial admissions of Treaty breach. Where the evidence warrants it in the current stage of hearings, the Crown will consider further breach concessions.

The Crown has long signalled it is open to entering Treaty settlement negotiations alongside the Tribunal hearings. If a mandate is recognised and negotiations do commence, it would provide a unique opportunity to align the hearings and negotiation processes.

Naku noa, na



Hon Christopher Finlayson

Minister for Treaty of Waitangi Negotiations

CC: Minister of Māori Affairs, Hon Dr Pita Sharples

Summary of Crown engagement to assist conciliation between Tūhoronuku and Kōtahitanga

Date	Who/what	Key points
12.03.11	Officials meeting with Kōtahitanga. (Followed the public submission process on Tūhoronuku mandate strategy).	<p>Kōtahitanga conveyed concerns with the Tūhoronuku mandate approach:</p> <ul style="list-style-type: none"> • Claimants want to progress to stage 2 Waitangi Tribunal hearings. • Tūhoronuku cannot be trusted to lead a parallel hearings and settlement negotiations process. • Connection with the Rūnanga is problematic due to diminishing support in rohe. <p>Officials explained the pre-mandate stage is about internal iwi discussion and that the ideal result would be conciliation between Tūhoronuku and Kōtahitanga.</p>
14.04.11	Officials discussion with Tūhoronuku.	Tūhoronuku advised the commencement date for the mandate hui and vote process would be postponed by 3 months to allow more time to resolve issues raised in the 28 public submissions received on the mandate strategy.
09.05.11	Ministerial correspondence to both parties.	Offered Crown facilitation aimed at achieving consolidation between the two groups. Suggested the Rt Hon Jim Bolger as a potential Crown facilitator.
24.05.11	Ministerial meeting with both parties.	<p>Agreement to consider Minister Finlayson's offer of facilitation.</p> <p>Tūhoronuku agreed to further postpone commencement of the mandate hui and vote process to allow for facilitation (from 1 July to 29 July 2011).</p>
10.06.11	Facilitation meeting with both parties.	<p>Preliminary meeting to introduce Mr Bolger.</p> <p>Broad agreement on terms of facilitation and date set for a second meeting.</p> <p>Commitment to facilitation from Tūhoronuku but not from Kōtahitanga.</p>
27.06.11	Kōtahitanga meet with facilitator.	Described Kōtahitanga organisation and purpose and set out their position on the Waitangi Tribunal process and direct Treaty settlement negotiations.
27.06.11	Tūhoronuku meet with facilitator.	Described Tūhoronuku organisation and purpose and set out their position on the Waitangi Tribunal process and direct Treaty settlement negotiations.
27.06.11	Facilitation meeting at Whitiara Marae with both parties.	<p>Joint agreement to participate in facilitated discussions at an open hui.</p> <p>Tūhoronuku agreed to further postpone the commencement of the mandate hui and vote process (from 1 July to 31 July 2011).</p>
21.07.11	Facilitation meeting with both parties - open to all Ngāpuhi members	Joint agreement to consider the facilitator's suggestion to form a small working party to work towards achieving agreement on a pathway forward for Ngāpuhi (attended by approximately 300 people).
29.07.11	Facilitator meeting with Kōtahitanga.	Kōtahitanga confirmed they would continue to consider participation in a small working party and requested Tūhoronuku further delay the commencement of the

		mandate hui and vote process.
29.07.11	Facilitator meeting with Tūhoronuku.	Tūhoronuku confirmed they would continue to consider participation in a small working party and questioned what Kōtahitanga would like to achieve in the time allowed by a further delay to the mandate hui and vote process (subsequently further delayed start of process from 31 July to 19 August 2011).
2.08.11	Facilitator teleconference with Kōtahitanga.	Kōtahitanga set out 3 issues for the working party to discuss: <ul style="list-style-type: none"> Processes relevant to addressing the Crown's historical breaches founded upon He Whakaputanga me te Tiriti o Waitangi. Sequencing of these processes and timetabling. Roles of the Rūnanga, Tūhoronuku and Kōtahitanga in these processes. Reiterated request for Tūhoronuku to postpone mandate hui and vote process.
3.08.11	Facilitator teleconference with Tūhoronuku.	Tūhoronuku advised the working party should devise a plan for hearings and negotiations to co-exist, including: <ul style="list-style-type: none"> Resourcing phases and activities; Indicative timeframes; and Not who gets resourced but how resource can be secured for both. Undertook to put Kōtahitanga's request to further postpone the mandate process to Tūhoronuku board (subsequently declined by resolution of the board).
30.09.11	Ministerial meeting with both parties.	Agreement there was a need for unity in moving Ngāpuhi forward with the resolution of their Treaty grievance. <p>Parties undertook to participate in a working group tasked with resolving three outstanding issues identified in the facilitation process:</p> <ul style="list-style-type: none"> Sequencing of Tribunal hearings and settlement negotiations. Hapu representation in settlement negotiations. The role of the Rūnanga in Ngāpuhi settlement negotiations. The Minister advised he did not want to review a deed of mandate (DOM) before the working group had attempted to resolve these issues.
25.11.11	Ministerial correspondence to both parties.	Informed parties the Crown would contribute pre-mandate claimant funding of \$20,000 to assist their working party (named Te Roopu Whaiti).
Nov 2011- Feb 2012	Crown funded working group meetings.	Te Roopu Whaiti met on four occasions and held one meeting with stakeholders (CFRT, TPK and OTS).
02.03.12	Ministerial meeting with both parties.	The parties presented Minister Finlayson with Te Roopu Whaiti Report – the Minister advised he would consider it then provide feedback.
31.03.12	Ministerial meeting with both parties.	Tūhoronuku presented Minister Finlayson with a deed of mandate. <p>The Minister provided feedback on Te Roopu Whaiti Report – it indicated no resolution had been reached between the parties.</p> <p>The parties agreed to participate in facilitated discussion to establish an agreed model for hapu representation building on the original Tūhoronuku structure.</p>

		<p>Tūhoronuku agreed to reconsider the Rūnanga representation on Tūhoronuku if the Minister looked at resourcing.</p> <p>All parties accepted that stage 2 of the Waitangi Tribunal inquiry would continue.</p>
11.04.12	Ministerial correspondence to both parties.	<p>Confirmed key outcomes of 31 March 2012 meeting. The Minister suggested meeting again and sought facilitator suggestions.</p> <p>Acknowledged the DOM submitted by Tūhoronuku and the work undertaken.</p> <p>Advised delegated Ministers (Minister Finlayson and Minister Sharples) would await the outcome of the parties' work on the hapu representation and the role of the Rūnanga before taking any steps with the mandate.</p>
May 2012	Tukoroirangi Morgan meetings with both parties.	Initial meetings with the chairpersons of each group to discuss how he could assist.
12.06.12	Ministerial correspondence to both parties	Confirmed Tukoroirangi Morgan's role in working with Ngāpuhi to address issues identified at 31 March 2012 meeting.
June – Sep 2012	Facilitator meetings with both parties	<p>Following 3.5 months engagement with both parties the facilitator submitted a report comprising three elements:</p> <ul style="list-style-type: none"> • Tribunal processes. • Amended representation structure. • PSGE proposals.
16.08.12	Ministerial meeting with Tūhoronuku and facilitator.	<p>Discussed detail of proposed amendments to Tūhoronuku representation model.</p> <p>Minister Finlayson advised delegated Ministers would be in a position to determine next steps in terms of the Crown's response to the DOM submitted by Tūhoronuku once they had considered the facilitator's report.</p>
27.08.12	Ministerial meeting with Kōtahitanga.	Discussed matters arising in facilitation.
08.10.12	Ministerial correspondence to both parties.	<p>Acknowledged groups had not reached agreement through facilitation.</p> <p>Set out the basis upon which delegated Ministers would be prepared to advertise a Tūhoronuku DOM – a view reached based on their assessment of:</p> <ul style="list-style-type: none"> • The Tūhoronuku mandate strategy. • Issues raised in the 28 public submissions on the mandate strategy and throughout the Tūhoronuku mandate process concerning the level of hapu representation, election processes and the role of the Rūnanga. • Concessions made by Tūhoronuku during Mr Bolger's facilitation.
24.10.12	Ministerial meeting with both parties.	<p>Set out DOM changes Ministers required – following on from 8.10.12 meeting</p> <p>Agreement to a working group of both parties to progress changes</p>
29.10.12	Ministerial correspondence to both parties.	<p>Confirmed outcome of 24.10.12 meeting.</p> <p>Attached a timeframe and a process for the working group to action the changes.</p>
30.10.12	Tūhoronuku correspondence to	Confirmed Tūhoronuku working group members.

	Ministers.	
31.10.12	Kōtahitanga correspondence to Ministers.	<p>Advised they would not participate in the working group. Reiterated key issues:</p> <ul style="list-style-type: none"> • Rūnanga influence – disagree with 2 Rūnanga seats. • Hapū role in negotiation process not guaranteed by amendments. • Waitangi Tribunal process should be completed first. • All applicants to mandate body should undergo criminal record checks.
28.11.12	Ministerial correspondence to both parties.	Sought feedback by 07.12.12 from the parties on delegated Ministers' proposal for DOM changes (reduced Rūnanga representation from 2 seats to 1 seat).
7.12.12	Tūhoronuku correspondence to Ministers.	<p>Advised they agree in principle to the proposal of delegated Ministers for changes to their DOM.</p> <p>Provided draft documentation to bring proposed changes into effect and sought to engage with officials on the detail of the proposed changes.</p>
7.12.12	Kōtahitanga correspondence to Ministers.	<p>Did not agree with proposals. Suggested a number of changes:</p> <ul style="list-style-type: none"> • Rūnanga representation removed. • Urban and kuia/kaumatua representation elected through the regions. • Revert back to Tūhoronuku's original hapu representative election process. • DOM document to set out negotiation strategy and roles of representatives. • Criminal checks for all nominees. • DOM to include a withdrawal mechanism for hapu not wishing to participate.
11.12.12	Officials meeting with Kōtahitanga.	Further discussion on above issues. Kōtahitanga raised an additional issue with the name "Tūhoronuku" given the connotations attached to it.
11.12.12	Officials meeting with Tūhoronuku.	Further discussion on Tūhoronuku's response to the Ministers' proposal.
31.01.13	Ministerial letter to both parties.	<p>Outlined decision on matters arising out of responses to 28 Nov letter:</p> <ul style="list-style-type: none"> • Representation structure to remain the same. • Elections as per original Tūhoronuku approach but independently run. • No withdrawal mechanism. <p>Set out next steps for progressing changes.</p>
01.02.13	Tūhoronuku correspondence to Ministers.	Tūhoronuku confirmed agreement to changes required and next steps. They sought to meet officials to develop and finalise the detail of the DOM changes.
06.02.13	Ministerial meeting with Kōtahitanga.	<p>Kōtahitanga raised two key issues:</p> <ul style="list-style-type: none"> • Police vetting of all nominees for the mandated body. • Concern with the Tūhoronuku brand. <p>Kōtahitanga undertook to provide a written response to the Ministerial correspondence of 31.01.13.</p>
13.02.13	Officials meeting with Tūhoronuku.	Worked through the detail of the election process and initial discussion on claimant definition work required.

21.02.13	Kōtahitanga correspondence to Ministers.	<p>Kōtahitanga raised 6 key issues:</p> <ul style="list-style-type: none"> • The mandate vote outcome (76% in support) shows a lack of support. • The Rūnanga seat should be removed. • Accept need for urban representatives but the original decision for 4 seats was 'arbitrary'. • Remove kuia/kaumatua representation from mandated body (replace with a kuia/kaumatua advisory board). • Police vetting of all nominees to the mandated body. • Each region to select their own negotiator & maintain control to 'hire & fire'. <p>Requested to meet with officials to finalise this structure and suggested advertising their structure alongside the amended Tūhoronuku DOM.</p>
27.02.13	Officials meeting with Tūhoronuku.	Worked through the detail of the election process.
28.03.13	Officials meeting with Tūhoronuku	Discussion on the claimant definition attended by 13 kuia and kaumatua invited by Tūhoronuku.