
IN THE WAITANGI TRIBUNAL

WAI 2341

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

An application for urgency by RUDOLPH TAYLOR, LIZZIE MATARORIA-LEGG, HEREMOANANUIAKIWA KINGI and others, on behalf of themselves and a number of hapū who support Te Kōtahitanga o Ngā Hapū O Ngāpuhi

MEMORANDUM OF THE CROWN

26 June 2013

CROWN LAW

TE TARI TURE O TE KARAUNA

PO Box 2858

WELLINGTON 6140

Tel: 04 472 1719

Fax: 04 473 3482

Counsel Acting:

A K Irwin / R M Hogg

MAY IT PLEASE THE TRIBUNAL:**Introduction**

1. On 27 October 2011 the Deputy Chairperson of the Tribunal adjourned this proceeding *sine die* and directed the Crown to notify the Tribunal if the Crown intends to take any steps regarding Ngāpuhi mandate issues.¹
2. The Crown does now intend to take steps regarding Ngāpuhi mandate issues. The purpose of this memorandum is to update the Tribunal on what has happened since this matter was adjourned and to advise the Tribunal of the proposed steps forward.
3. This memorandum is for the Tribunal's information and does not seek any directions.
4. Our instructions on these matters are as follow.

Events since October 2011

5. In late 2011 the Crown provided financial support to the Roopu Whaiti Joint Working Group, made up of representatives from Tūhoronuku and Te Kōtahitanga. It was tasked with work-shopping solutions to outstanding mandate issues. The resulting report set out the parties' differing views but did not provide a resolution.
6. The Crown asked Mr Tukoroirangi Morgan to provide further facilitation to the parties. As a result of this and earlier processes, Tūhoronuku agreed to the following changes:
 - 6.1 the mandated body becoming a separate legal entity to the Rūnanga;
 - 6.2 an increase in the board representation from 15 to 22;
 - 6.3 hapū representation increasing to become 15 of those 22 members (a majority) and being elected on a regional basis (the original proposal was for 7 representatives); and

¹ Memorandum-directions of the Chairperson of 27 October 2011, Wai 2341, #2.5.5 at 5.

- 6.4 a new election being held (if a mandate is recognised) for all trustees.
7. Notwithstanding that progress, by late 2012 full agreement had not been reached on the way forward. The Crown proposed the establishment of a further working group, to work through remaining representational issues before a decision on whether to advertise the deed of mandate. However, Te Kōtahitanga decided not to participate in the working group, so this approach did not proceed.
8. The Minister of Māori Affairs and the Minister for Treaty of Waitangi Negotiations considered the situation and informed the parties in November 2012 that they would be willing to advertise the deed of mandate on the basis of the above changes and an additional change whereby the Rūnanga representatives on the mandated body be reduced from two to one. The Ministers also suggested amendments to the election process provisions to improve clarity and transparency, including the appointment of an independent returning officer.
9. On 7 December 2012 Tūhoronuku advised that they agreed in principle with the changes, but asked for further details on some aspects before conveying a final view.
10. Te Kōtahitanga raised the following considerations:
- 10.1 all nominees to the Independent Mandating Authority should be vetted by the police; and
- 10.2 members of the Independent Mandated Authority should be prohibited from being appointed as negotiators.
11. 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.

12. On 21 February 2013 Te Kōtahitanga wrote to the Crown seeking the following further changes to the representation structure:
 - 12.1 removal of the seat allocated to the Rūnanga;
 - 12.2 urban representation should be reduced in number from 4 to 3 (as each of the 5 hapū regions only has 3 representatives); and
 - 12.3 replacement of the dedicated seat 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.
13. Te Kōtahitanga have also requested that the Tūhoronuku name be changed to reflect the new structure of the mandated body.
14. These further changes were not agreed to by Tūhoronuku.
15. More recently, and on 31 May 2013, Te Kōtahitanga wrote to the Crown seeking further changes to the deed of mandate. Ministers have recently responded to this letter.

Way forward

16. The issues described above have been well canvassed by both parties over the last 18 months. It is clear that there remain some differences of view by Te Kōtahitanga and Tūhoronuku, but it is not clear that further discussion will result in the shift in views required for complete agreement to be reached.
17. In the Crown's view, significant compromises have been made and the amendments to the deed of mandate process to date strike a fair balance between the concerns of Tūhoronuku and Te Kōtahitanga, whilst maintaining the integrity of the deed of mandate voted upon by Ngāpuhi.
18. Te Kōtahitanga has suggested that the Crown advertise both parties' proposals for a representative structure. The Crown does not consider this to be appropriate, as 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. It is that mandate, as amended, that Tūhoronuku has asked the Crown to recognise.

19. The Crown has therefore decided to advertise Tūhoronuku's mandate, as amended through the facilitation process. The Crown will seek further views from Ngāpuhi on whether there is sufficient support for the Crown to recognise a mandate for Tūhoronuku. The Crown intends to advertise the mandate **in early July 2013**.

20. The steps that follow after the advertisement of the amended deed of mandate, and the likely associated timeframes, are:

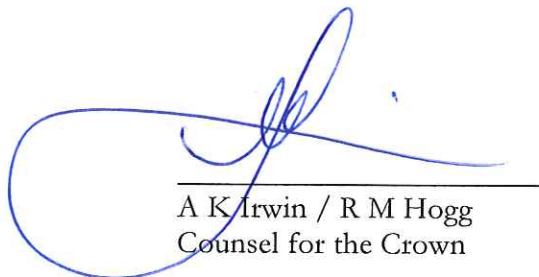
20.1 Public submissions will be sought on the amended deed of mandate **by mid-August 2013**.

20.2 Ministers would then decide whether or not to recognise the amended deed of mandate **in mid-September 2013**.

20.3 If Ministers decide to recognise the amended deed of mandate, independent elections will occur for the independent mandated authority **during October-December 2013**.

20.4 If Ministers decide to recognise the amended deed of mandate, and after elections, the Crown would enter discussions with the independent mandated authority towards the signing of terms of negotiation **in the first quarter of 2014**.

26 June 2013



A K Irwin / R M Hogg
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal
AND TO: Claimants and their counsel