



Office of Hon Christopher Finlayson

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Minister for Treaty of Waitangi Negotiations
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Chair
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Tēnā koe Sonny

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

We write to advise of the Crown's conditional recognition of the mandate of Te Rōpū o Tūhoronuku (**Tūhoronuku**) to represent Ngāpuhi in direct negotiations with the Crown towards the comprehensive settlement of all Ngāpuhi historical Treaty of Waitangi claims.

We consider the process followed by Tūhoronuku to gain the support of the Ngāpuhi claimant community was open and transparent and that Tūhoronuku has demonstrated that it has sufficient support to represent Ngāpuhi. We are satisfied that the structure of the Tūhoronuku Independent Mandated Authority (**IMA**) is accountable to the claimant community.

We acknowledge your hard work and that of the Tūhoronuku board in developing the mandate and making amendments to respond to the concerns of the wider Ngāpuhi community.

Submissions received on the Tūhoronuku Deed of Mandate

As you will be aware the recent submissions process was a final opportunity for Ngāpuhi to offer their views on the amended deed of mandate (**DoM**). This submissions process followed on from the 2011 vote on the Tūhoronuku DoM where 76% of those who voted supported the mandate. We received around 2,500 submissions (including late submissions) expressing opposition to the mandate. The key issues for those submitters were:

- a desire to have historical claims heard by the Waitangi Tribunal before entering direct negotiations with the Crown;
- a concern that the Tūhoronuku IMA will not support hapū mana and will be controlled by Te Rūnanga Ā Iwi o Ngāpuhi;
- lack of withdrawal mechanism for hapū;
- a desire to negotiate with the Crown as hapū or through smaller groupings within Ngāpuhi; and

- opposition to the inclusion of a number of Wai claims in the mandate.

Many of the other issues raised relate to the level of assurance for hapū that their interests will be well represented by the existing structure.

As you are aware the Crown supports Ngāpuhi having the opportunity to continue the Waitangi Tribunal hearings. The Crown welcomes the recent decision of the Crown Forestry Rental Trust to resume funding of the Stage II hearings.

We are aware Tūhoronuku is open to negotiations and a settlement which recognises Ngāpuhi hapū interests. Any Ngāpuhi settlement will have to recognise different layers of interest in specific redress and in various co-governance arrangements. Tūhoronuku will have representation from all hapū through five takiwā, urban Ngāpuhi and kuia and kaumātua. All of these interests will need to be balanced throughout negotiations. It is apparent the inclusion of hapū in decision making remains integral to the continued robustness of the mandate.

Differing interests can be recognised in a numbers of ways, for example, by devolving settlement assets to hapū (either individually or to hapū clusters based on takiwā) or by holding assets collectively and providing for specific roles for hapū or sub-groups through future iwi governance. A collective financial and commercial redress package could be negotiated for Ngāpuhi with a mechanism for allocating the redress within Ngāpuhi if this is the approach the iwi wish to take. Those are fundamentally decisions that Ngāpuhi will need to make and are likely to be informed by redress availability.

We also received submissions from the representative entities for Te Aupōuri, Te Roroa and Ngāti Whātua o Kaipara expressing concern that the Ngāpuhi-Nui-Tonu area of interest in Tūhoronuku's DoM 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 DoM. 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 DoM.

Te Aupōuri, Te Roroa and Ngāti Whātua 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. Tūhoronuku will ensure that consultation is undertaken in the next three months with the above iwi and also ensure there is clarity with all overlapping iwi regarding who Tūhoronuku represent.

Conditions on recognition of the deed of mandate

Our decision to recognise the mandate is conditional on Tūhoronuku undertaking the following five measures to address concerns raised through the submissions process.

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 these plans will outline how and when Tūhoronuku will:

- a. regularly communicate with your claimant community to ensure they 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.

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 arrangements. The Crown is willing to assist by exploring 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 want the Tūhoronuku IMA to engage with Ngāpuhi on post settlement governance entity options at the agreement in principle stage of 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 Tūhoronuku IMA 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 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 confirm their claimant definition with overlapping iwi

We require Tūhoronuku to seek meetings with Te Aupōuri, Te Roroa and Ngāti Whātua o Kaipara within the next three months to confirm that you do not seek to represent their iwi interests and your mandate is from those within Te Whare Tapu o Ngāpuhi.

We also 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 DoM.

We consider these measures will provide additional assurance to the Ngāpuhi claimant community on how they will be represented, informed, consulted and included. These

conditons will also begin a process to address the concerns of other iwi. We look forward to working with Tūhoronuku towards the final settlement of all the historical Treaty of Waitangi claims of Ngāpuhi.

Nā māua, nā



Hon Christopher Finlayson
Minister for Treaty of Waitangi Negotiations

Hon Dr Pita R. Sharples
Minister of Māori Affairs