

Hon Andrew Little
Minister for Treaty of Waitangi Negotiations

Hon Nanaia Mahuta
Minister for Māori Development

Proactive release – Ngāpuhi: Approach to Commencing Negotiations

Date of issue: 14 February 2020

The following document has been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Ngāpuhi Update <i>Oral Item Minute [MCR-19-MIN-022]</i> Cabinet Office 2 April 2019	Some information has been withheld in accordance with: <ul style="list-style-type: none">Section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
2	Ngāpuhi Approach to Commencing Negotiations – Minutes of Decision <i>Cabinet Minute [CAB-19-MIN-0629]</i> Cabinet Office 25 November 2019	Some information has been withheld in accordance with: <ul style="list-style-type: none">Section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
3	Ngāpuhi Approach to Commencing Negotiations <i>Cabinet paper [CAB-19-SUB-0629]</i> Office of the Minister for Treaty of Waitangi Negotiations 25 November 2019	Some information has been withheld in accordance with: <ul style="list-style-type: none">Section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.Section 9(2)(h) of the OIA to protect and maintains legal professional privilege.Section 9(2)(j) of the OIA to enable a Minister of the Crown or any Department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations.Section 9(2)(g)(i) of the OIA maintains effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any Department or organisation in the course of their duty.Section 18(d) of the OIA as the information requested is or will soon be publicly available.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Ngāpuhi: Approach to Commencing Negotiations

Portfolios **Treaty of Waitangi Negotiations / Māori Development**

On 25 November 2019, following reference from the Cabinet Māori Crown Relations: Te Arawhiti Committee (MCR), Cabinet:

- 1 **noted** that the current Tūhoronuku Independent Mandated Authority (TIMA) conditional mandate is now untenable following multiple attempts to find a way forward;
- 2 **noted** that the Minister for Treaty of Waitangi Negotiations and Minister for Māori Development (delegated Ministers) propose to provide Ngāpuhi an opportunity to build a new collective structure, including how takiwā will receive takiwā-specific redress;
- 3 **noted** that delegated Ministers propose to immediately invite mandate proposals from Ngāpuhi to negotiate a collective package [REDACTED]
[REDACTED] **Withheld under Section 9(2)(f)(iv)**
- 4 **noted** that delegated Ministers intend to invite Ngāpuhi to submit proposals for takiwā grouping to negotiate takiwā-specific cultural packages;
- 5 **noted** that, if required, delegated Ministers will report back to Cabinet in February 2020 with a breakdown of associated costs for Crown resources and claimant funding required to support the collective mandate and takiwā negotiations proposal;

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

Withheld OIA section 9(2)(f)(iv)

10 **noted** that the announcement of the proposals in the paper under CAB-19-SUB-0629 is embargoed until 4 December 2019.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Finance
Minister for Treaty of Waitangi Negotiations
Minister for Māori Development
Minister for Regional Economic Development

In Confidence

Office of the Minister for Treaty of Waitangi Negotiations
Office of the Minister for Māori Development

Cabinet Māori Crown Relations: Te Arawhiti Committee

NGĀPUHI: APPROACH TO COMMENCING NEGOTIATIONS

Proposal

- 1 This paper provides next steps for Ngāpuhi and notes our intention to:
 - 1.1 provide Ngāpuhi with an opportunity to build a collective settlement structure, including how takiwā will receive takiwā-specific redress;
 - 1.2 invite mandate proposals to negotiate a collective settlement package¹, which could include a regenerated TIMA mandate;
 - 1.3 invite Ngāpuhi to submit proposals for takiwā groupings to agree takiwā-specific cultural packages; and
 - 1.4 [REDACTED] Withheld under Section 9(2)(f)(iv)
- 2 **Appendix 1** contains a draft press release and key messages about these proposals. **Appendix 2** provides a calendar of the proposed timeline for these proposals.

Executive summary

- 3 The Crown recognised the mandate of Tūhoronuku Independent Mandated Authority (TIMA) in 2014 on the condition that TIMA would maintain its mandate and engage with the Ngāpuhi claimant community, particularly those who opposed TIMA's their mandate.
- 4 Since 2014, Ngāpuhi leaders and the Crown have worked hard to address the mandate conditions. This has seen significant effort from the leadership of Ngāpuhi – both those who supported the mandate and those who opposed it. It has seen the Crown work with Ngāpuhi over the last five years on two significant Ngāpuhi-wide processes to find ways to allow Ngāpuhi to move forward. However, despite this effort the conditions on the mandate have not been met.
- 5 Given the passage of time and the toll that the processes have taken on Ngāpuhi kaumātua and kuia in particular, as well as the growing frustration of Ngāpuhi takiwā, we are of the view that it is time to provide Ngāpuhi with a new and different opportunity to deal with their claims in a timely way.

¹ Financial and commercial redress, and other shared redress such as He Whakaputanga, te reo Māori, natural resources, and social issues.

6 [REDACTED] Every day of delay is a consequent delay to Ngāpuhi receiving the opportunities that agreement on redress will offer to them both collectively and specific to their takiwā. More generations of Ngāpuhi will not see the benefits of having these long-held grievances resolved.

[REDACTED]
[REDACTED] Withheld under Section 9(2)(f)(iv)

7 For these reasons, continued Crown recognition of TIMA's conditional mandate is no longer tenable. We will move to discontinue the Crown's recognition of the mandate.

8 While we acknowledge that recent changes in TIMA's leadership may enable a new approach to be supported by Ngāpuhi, it is clear that this cannot be under the current Tūhoronuku brand [REDACTED] Withheld under Section 9(2)(g)(i)

9 We see this as an opportunity for Ngāpuhi leadership to lead Ngāpuhi into a new space and design a collective structure as well as one which practically serves the needs of the takiwā and recognises that important whenua within each takiwā should be returned to those takiwā but that the benefits of collective redress must be realised for all Ngāpuhi.

10 To ensure there is an immediate message to Ngāpuhi about the importance of collectivity, we propose the Crown immediately invite new mandate proposals to negotiate a collective settlement package; [REDACTED]

[REDACTED] Withheld under Section 9(2)(f)(iv)

11 Accompanying the call for mandate proposals to negotiate a collective package we also intend to invite Ngāpuhi to submit proposals for takiwā groupings to negotiate takiwā-specific cultural packages.

12 An announcement on these decisions will be embargoed until 4 December 2019. The Minister for Treaty of Waitangi Negotiations intends to meet with Ngāpuhi on 8 December 2019 to discuss next steps. Withheld under Section 9(2)(f)(iv)

13 [REDACTED]

14 [REDACTED]

[REDACTED] Withheld under Section 9(2)(f)(iv)

15 The key messages we intend to deliver to Ngāpuhi through our proposals are:

15.1 the Government has listened and is providing Ngāpuhi leadership an opportunity to build a new collective structure, as well as an offer to receive proposals from takiwā about how they wish to discuss and agree takiwā-specific redress; and

Withheld under
Section 9(2)(f)(iv)

[Redacted]

[Redacted]

Withheld under Section 9(2)(h)

Background

17 As Ministers for Treaty of Waitangi Negotiations and Māori Development, we have delegated authority from Cabinet to recognise mandates from large natural groups to negotiate the settlement of historical Treaty of Waitangi claims [CAB (99) M 11/20 refers].

18 Ngāpuhi is by far the biggest iwi in the country with at least 125,000 people (2013 census). Discussions about a mandate for the negotiation of redress of Ngāpuhi Treaty claims began in 2008. In 2011, 76 percent of the 6,794 Ngāpuhi who voted supported the TIMA mandate.

19 In February 2014, Ministers recognised TIMA as having the mandate of Ngāpuhi to enter settlement negotiations on their behalf, conditional on TIMA engaging with the Ngāpuhi claimant community, particularly those who opposed the mandate. Fifteen parties then challenged the Crown's recognition of the mandate in the Tribunal.

20 In September 2015, the Tribunal found the Crown had not ensured the structure of TIMA adequately protected hapū rangatiratanga, along with other fundamental flaws in the mandate. The Tribunal did not recommend the mandating process be restarted but advised changes to the TIMA deed of mandate were needed. Since then two major attempts have been made to resolve the issues identified by the Tribunal – the Maranga Mai process (in 2016) and the evolved mandate process (in 2018). Both attempts were unsuccessful in evolving TIMA's conditional mandate.

21 TIMA and Te Kōtahitanga o Ngā Hapū o Ngāpuhi (Te Kōtahitanga) released the *Maranga Mai* report in August 2016. It outlined a pathway for evolving the TIMA mandate to address the issues identified in the Tribunal's report. However, the two groups could not agree on how to implement the report and the Crown consequently suspended engagement with Ngāpuhi to give them time to address internal issues.

22 In the second half of 2018, Te Rōpū Tūhono² developed a proposal to evolve the TIMA mandate through three rounds of consultation hui. It proposed representation for all Ngāpuhi hapū through their regions and allowed for cultural (but not

² Te Rōpū Tūhono included the Minister for Treaty of Waitangi Negotiations, the Chair and Deputy Chair of TIMA (Hone Sadler and Sonny Tau) and the Co-Chairs of Te Kōtahitanga (Rudy Taylor and Pita Tipene).

commercial) redress to be negotiated by regional negotiation teams. The proposal failed to gain support:

- 22.1 65 percent of Ngāpuhi hapū (72 out of 110) voted against it; and
 - 22.2 51 percent of Ngāpuhi individuals, out of a required 75 percent, supported the proposal.
- 23 Since the Te Rōpū Tūhono evolved mandate proposal, two hapū groupings or processes have emerged to try and develop a resolution of mandate issues:
- 23.1 Kia Anga Mua Ngā Hapū o Ngāpuhi (KAM) is comprised of representatives of a considerable number of the hapū that voted for the evolved mandate proposal. KAM have indicated a willingness to work with TIMA, however they have not yet agreed an approach to this. These hapū have formed a new brand, despite their support for the evolved TIMA mandate.
 - 23.2 The Ngāpuhi Hapū Assembly (Hapū Assembly) was initiated by leaders of hapū who voted against the evolved mandate proposal inviting all Ngāpuhi hapū to discuss how they could work together on a co-ordinated approach to negotiating Treaty settlements. The Hapū Assembly hui have affirmed support for the hapū groupings who have advised they intend to begin their own mandating process.
- 24 Te Rūnanga o Ngāti Hine are already holding hui to seek their own Treaty settlement mandate to negotiate the settlement of their claims. Whangaroa hapū representatives are seeking a separate Whangaroa settlement (they have also initiated litigation against the Crown's continued recognition of the TIMA mandate). Porotī hapū and a coastal Bay of Islands group³ have also advised they wish to seek their own settlements.
- 25 This year we have heard the views of the Ngāpuhi Hapū Assembly, KAM and a range of hapū groupings and individuals on potential ways forward. The Minister for Treaty of Waitangi Negotiations has also held open hui with Ngāpuhi and had discussions with key leaders.

Withheld under Section 9(2)(g)(i)

Proposed way forward

- 26 We consider the best way forward is to provide Ngāpuhi an opportunity to build a new collective settlement structure, including how takiwā will receive takiwā-specific redress. In order to provide this opportunity, joint Ministers will need to discontinue the Crown's recognition of the current TIMA conditional mandate.
- 27 We then propose to immediately invite:
- 27.1 mandate proposals to negotiate a collective package, this could include a regenerated TIMA mandate; and
 - 27.2 takiwā grouping proposals to negotiate takiwā-specific cultural packages.

³ Ngāti Manu, Ngāti Kuta, Patukeha, Te Uri o Raewera, Te Uri Ongaonga, Te Uri Karaka and Ngāti Torehina.

- 28 The collective and takiwā specific processes will need to stay in step. The Crown can ensure this by requiring concurrent collective and takiwā negotiations and packages. This approach has been successfully adopted in other negotiations.

Discontinuing the Crown's recognition of TIMA's conditional mandate

- 29 Once a mandate has been recognised by the Crown, the Crown requires the mandated entity to regularly update the Crown on how it is meeting its mandate requirements through a process of mandate maintenance and reporting. If a mandate is not demonstrably maintained, the Crown may need to discontinue its recognition of that mandate.

- 30 As discussed earlier in the paper, despite significant efforts from TIMA, those opposing the mandate and the Crown, we consider that TIMA's conditional mandate has not been maintained and cannot be evolved to address the issues identified by the Tribunal. In practice, TIMA no longer holds a mandate from Ngāpuhi to negotiate the settlement of their historical claims in any event.

- 31 There are strong grounds for discontinuing the Crown's recognition of TIMA's conditional mandate and providing Ngāpuhi leadership an opportunity to build a new collective settlement structure:

31.1 the mandate recognised by the Crown in 2014 was conditional on TIMA's engagement with the Ngāpuhi claimant community, particularly those who opposed TIMA's conditional mandate, as detailed through three-monthly mandate maintenance reports to the Crown;

31.2 generally, TIMA's mandate maintenance reports have shown limited engagement with correspondents who raise mandate concerns and little proactive work to engage with groups standing outside the TIMA mandate;

31.3 65 percent of Ngāpuhi hapū voted against the 2018 proposal to evolve TIMA's conditional mandate.

31.4 support of TIMA's conditional mandate is decreasing - demonstrated clearly when you compare the 2011 individual vote results that supported the TIMA mandate proposal (76 percent support) with the 2018 evolved mandate process to evolve TIMA's conditional mandate (51 percent support); and

31.5 TIMA has been unable to make sufficient changes to its conditional mandate to demonstrate that it has addressed the concerns in the Tribunal's report, particularly the concern that it does not hold a mandate for the hapū of Ngāpuhi.

- 32 A number of groups and their leaders have communicated to the Crown they are ready for a fresh approach.

- 33 Providing Ngāpuhi an opportunity to build a new collective settlement structure would show Ngāpuhi the Crown has listened and responded appropriately to their concerns.

- 34 Discontinuing recognition of the conditional TIMA mandate is in line with the way the Crown has acted in similar situations in the past, where mandates have been amended, suspended or superseded. For example, in 2017 the Crown suspended recognition of the mandate of Te Rūnanga-a-iwi o Ngāti Kahu to represent Ngāti Kahu in settlement negotiations in response to issues raised by some of its

members. In 2014, Te Aitanga a Mahaki conducted a fresh mandating process to achieve a new mandate, after signing an agreement in principle in 2008, to reflect changes to the coverage of the mandate.

- 35 To mitigate the risks of discontinuing the Crown's recognition of TIMA's conditional mandate and to provide Ngāpuhi with a new opportunity, it will need to be accompanied by immediate calls for mandate proposals to negotiate a collective package as well as for takiwā groupings to submit proposals for the negotiation of takiwā-specific cultural packages.
- 36 A collective Ngāpuhi body is vital to negotiate collective Ngāpuhi redress issues including settlement quantum, sovereignty issues, social issues, te reo Māori, and natural resources redress. Takiwā specific issues would appropriately be negotiated at that level including local cultural redress.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Withheld under Section 9(2)(f)(iv)

[REDACTED]

Withheld under Section 9(2)(f)(iv)

[Redacted]

[Redacted]

Withheld under section 9(2)(f)(iv)

[Redacted]

[Redacted]

[Redacted]

Withheld under Section 9(2)(h)

[Redacted]

[Redacted]

[Redacted]

Withheld under section 9(2)(h)

[Redacted]

Crown resource implications

█ [Redacted]

█ [Redacted]

Withheld under Section 9(2)(f)(iv)

Ngāpuhi sovereign fund

51 [Redacted]

Withheld under Section 9(2)(f)(iv)

52 The Minister for Treaty of Waitangi Negotiations considers a fund has the potential to support Treaty settlement negotiations by:

Withheld under Section 9(2)(f)(iv)

52.1 demonstrating the value of reaching settlement, [Redacted]

52.2 fostering a more collaborative partnership between the Crown and Ngāpuhi through investment processes;

52.3 [Redacted]

52.4 [Redacted]

53 [Redacted]

█ [Redacted]

55 [Redacted]

█ [Redacted]

Withheld under Section 9(2)(f)(iv)

[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Withheld under section 9(2)(f)(iv)

[REDACTED]

[REDACTED]

Withheld under section 9(2)(f)(iv)

[REDACTED]

[REDACTED]

Withheld under section 9(2)(f)(iv)

[REDACTED]

Next steps

61 We intend to announce the following decisions on 4 December 2019:

61.1 the Crown has discontinued its recognition of TIMA's conditional mandate;

61.2 the Crown invites proposals from Ngāpuhi for a new collective mandate; and

61.3 the Crown invites Ngāpuhi takiwā groupings to submit proposals for takiwā-specific cultural packages.

62

Withheld under Section 9(2)(f)(iv)

63 The Minister for Treaty of Waitangi Negotiations plans to meet with Ngāpuhi on 8 December 2019 to discuss next steps and officials will hold information hui in January and February 2020 in the rohe on what proposals for a collective mandate and takiwā groupings need to include, and the expected timeline for 2020.

64 A draft press release and key messages about these proposals are attached as **Appendix 1**.

65 A calendar of planned activity over the next 12 months is attached as **Appendix 2**.

Consultation

66 Crown Law were consulted in the drafting of this Cabinet paper. The Treasury and the Provincial Development Unit within the Ministry for Business, Innovation and Employment were consulted on the drafting of the sovereign fund content only.

Financial implications

67 There are no financial implications arising directly from this paper,

Withheld under section 9(2)(f)(iv)

Proactive release

68 We intend to release this paper proactively making any necessary redactions within 30 business days of final Cabinet decisions. However, should further time be required, I may delay the release further to ensure we have engaged with the key parties.

Human rights

69 The proposal outlined in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

70 There are no legislative implications arising directly from this paper.

Regulatory impact analysis

71 No regulatory impact statement is required to give effect to historical Treaty settlements.

Publicity

72 Following Cabinet consideration of this submission, and decisions by us on the mandate, we intend to announce our decision and next steps on 4 December 2019; the decisions are embargoed until then.

Recommendations

73 The Minister for Treaty of Waitangi Negotiations and the Minister for Māori Development recommend that the Committee:

1 **note** the current Tūhoronuku Independent Mandated Authority conditional mandate is now untenable following multiple attempts to find a way forward;

2 **note** we propose to provide Ngāpuhi an opportunity to build a new collective structure, including how takiwā will receive takiwā-specific redress;

3 **note** we propose to immediately invite mandate proposals from Ngāpuhi to negotiate a collective package, [REDACTED]

[REDACTED] Withheld under section 9(2)(f)(iv)

4 **note** we intend to invite Ngāpuhi to submit proposals for takiwā grouping to negotiate takiwā-specific cultural packages;

[REDACTED]

[REDACTED] Withheld under section 9(2)(f)(iv)

[REDACTED]

[REDACTED] Withheld under section 9(2)(f)(iv)

[REDACTED]

[REDACTED]

[REDACTED]

10 **note** the announcement of these proposals is embargoed until 4 December 2019.

Authorised for lodgement

Hon Andrew Little
Minister for Treaty of Waitangi Negotiations

Hon Nanaia Mahuta
Minister for Māori Development

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Withheld under section 9(2)(g)(i)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Withheld under section
9(2)(g)(i)

■

Appendix 2: 12-month calendar of proposals

December 2019	January 2020	February 2020	March 2020	April 2020	May 2020
<ul style="list-style-type: none"> 4 Dec: Advise TIMA and Ngāpuhi and announce publicly <ol style="list-style-type: none"> Mandate next steps Fund proposal to be developed 8 Dec: MfToWN visits the North to deliver key messages 	<ul style="list-style-type: none"> 16 – 22 Jan: Te Arawhiti teams in Northland delivering information hui [Redacted] 	<ul style="list-style-type: none"> [Redacted] 	<ul style="list-style-type: none"> [Redacted] 	<ul style="list-style-type: none"> [Redacted] 	<ul style="list-style-type: none"> [Redacted]

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
<ul style="list-style-type: none"> [Redacted] [Redacted] 	<ul style="list-style-type: none"> [Redacted] [Redacted] 	<ul style="list-style-type: none"> [Redacted] [Redacted] [Redacted] 	<ul style="list-style-type: none"> [Redacted] [Redacted] 	<ul style="list-style-type: none"> [Redacted] [Redacted] 	<ul style="list-style-type: none"> [Redacted] [Redacted] [Redacted]

Proposed redaction under Section 9(2)(f)(iv) and 9(2)(j)