



PRESENTATION ON PROPOSAL FOR NGĀPUHI TREATY SETTLEMENT NEGOTIATIONS

August 2018

NGĀPUHI NEGOTIATIONS AT A GLANCE



- DOM – Deed of Mandate
- TON – Terms of Negotiation
- AIP – Agreement in Principle
- IDOS – Initialled Deed of Settlement
- Deed of Settlement
- Legislation introduced
- Legislation passed

BACKGROUND

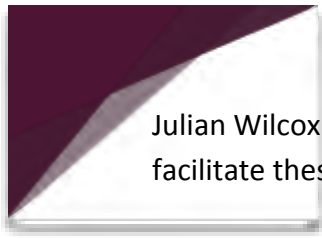
Between March and July 2018 seven meetings were held between Hon Andrew Little as Minister for Treaty of Waitangi Negotiations, Sonny Tau and Hone Sadler as representatives of Tūhoronuku and Pita Tipene and Rudy Taylor as representatives of Te Kotahitanga o Nga Hapū o Ngāpuhi Taiwhenua (**Te Kōtahitanga**), (the **Principals**).

The Principals have met in good faith in an endeavour to find ways to progress the Ngāpuhi Treaty Settlement negotiations.

In May 2018 the Principals engaged as advisors David Tapsell (for the Minister) Jason Pou (for Te Kōtahitanga) and then in June, Willie Te Aho (for Tūhoronuku) (the **Advisors**). This was done in an effort to bring together the various views coming out of the meetings and to make collaborative recommendations on a possible way forward based on the positions of the Principals.

On 15 June 2018, following instructions from Principals, the Advisors provided a Report for the Principals that set out a number of recommendations for their consideration (**Report**).

The Principals subsequently met again to further discuss the issues.



Julian Wilcox was invited as a facilitator to the later hui between the Principals. He will facilitate these hui also.

PURPOSE OF THESE HUI

While some progress was made in discussions between the Principals over the last six months not every member agreed on the resolution of key issues including the recommendations set out in the Report.

The Principals therefore consider it timely to update Ngāpuhi on the state of discussions between the Principals, seek feedback and answer any questions. That is the purpose of these hui.

No vote or resolution is sought from these hui.

Following these hui the Principals will decide if there is enough of a shared view within Ngāpuhi to enable movement forward, or not.

It is important that the Principals are confident there is adequate support before they move forward because the proposals, if agreed, will take some time and effort to implement including:

1. likely require changes in Crown policy at various levels which in turn would require Ministerial and/or Cabinet approvals; and
2. will require changes to the Tūhoronuku rules and certain deed of mandate documentation; and
3. will require further resourcing especially at the hapū level.

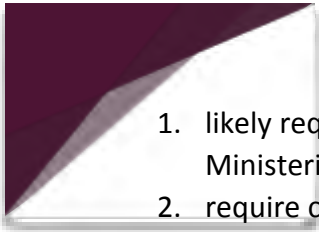
If there is adequate support, then the Principals will engage again after the hui and clarify all of the detail and mechanics that will be required to implement the proposed changes. This will be discussed with Ngāpuhi also.

EVOLUTION OF THE MANDATE

In its Wai 2490 Report the Waitangi Tribunal did not say that the Crown should withdraw mandate recognition of Tūhoronuku – rather it said measures should be taken, broadly speaking, to strengthen hapū involvement and control.

The Report similarly proposes that a number of measures be taken to strengthen hapū involvement and control without withdrawing the mandate of Tūhoronuku – thereby evolving the mandate.

As noted earlier the Report states that the proposals if agreed will:

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1. likely require changes in Crown policy at various levels which in turn would require Ministerial and/or Cabinet approvals; and
 2. require changes to the Tūhoronuku rules and certain deed of mandate documentation; and
 3. require further resourcing especially at the hapū level.

Changes/approvals to the Deed of Mandate and Tūhoronuku rules will be actioned if *there is an adequate level of support shown from Ngāpuhi*.

The Advisors noted in the Report that the Principals have expressed a clear willingness to proceed to Settlement negotiations as soon as reasonably practicable and that a consideration of what is best for Ngāpuhi is required by all sides to enable movement forward.

THE PROPOSALS

In the context of *Evolution of the Mandate* the proposals seek to strengthen hapū involvement and control, and take account of a number of the Tribunal recommendations, while at the same time still recognising the mandate of Tūhoronuku, albeit in an evolved manner.

This can be achieved a number of ways as noted below.

If the proposals are implemented there could be one Settlement, but multiple settlement packages.


Cultural Redress Negotiations

At the moment all direct negotiations with the Crown would occur with 3 to 6 negotiators that are appointed by the Tūhoronuku governance board. That includes cultural redress negotiations. This is shown in *Diagram One*.

The Report proposes that Regional Negotiation Bodies now (**RNB**) undertake the task of negotiating directly with the Crown over cultural redress properties, historical accounts and cultural putea. This is not just a functional change it is a meaningful one.

This potential change is shown in *Diagram Two* and proposes:

- 1) There will be a RNB for each Taiwhenua;
- 2) Up to 5 trustees will be appointed by the relevant Hapū Kaikōrero for each of the RNBs - to be responsible for RNB establishment, function and activities;
- 3) The RNB trustees must include 1 Urban and 1 Kuia kaumatua representative for each RNB;

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- 4) Each RNB will appoint one or two negotiators to negotiate with the Crown in respect of cultural redress properties, historical accounts and cultural putea; and
 - 5) The RNB will “link” to the *Central Negotiation Body* by the *Ngāpuhi Negotiation Protocol* (see below)

While it is not immediately relevant the Report also notes that, if the hapū want, when negotiations are complete hapū can also seek to establish regional Post Settlement Governance Entities (**PSGE**) to receive their cultural redress properties, cultural putea and record their historical accounts.

Commercial Redress Negotiations

In all the meetings between the Principals the Crown has been clear that commercial redress negotiations including quantum need to occur centrally on behalf of all Ngāpuhi.

However, the Crown has further said:

- a. It is up to Ngāpuhi to decide what a new PSGE will be to receive the commercial redress; and
- b. After Settlement the new Ngāpuhi PSGE is able to deal with its commercial redress as it sees fit (including divestment out to the regional PSGE’s if this is what Ngāpuhi want).

Central Negotiation Body

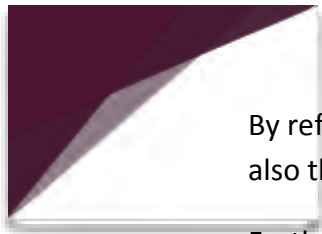
Because the Crown still recognises the mandate of TIMA the commercial redress negotiations with the Crown will occur with 3 to 6 negotiators that are to be appointed by the TIMA governance board (referred to hereafter for current purposes as the *Central Negotiation Body* (**CNB**)).

The Report has proposed that a number of important changes be made to the CNB as noted below.

Repopulation and Refresh of Hapū Kaikōrero and Te Whare Tapu o Ngāpuhi

It has been some time since there has been any active engagement with the Crown. Some questions have been asked about the nature of representation at both the Hapū Kaikōrero and Te Whare Tapu o Ngāpuhi levels.

The Report therefore suggests that the ability to repopulate these members would go a long way to building trust and enabling a refresh.



By refresh we mean of both the appointed Te Whare Tapu o Ngāpuhi members and also the elected Hapū Kaikōrero members, *if that is what the respective hapū want.*

Furthermore, given the Tribunals comments on the Hapū Kaikōrero election process we recommend that this election process be a hapū based tikanga driven process. It must be a clear process and give all hapū members the ability to participate.

Urban Representation on the CNB

The Principals were not able to agree on this. The Advisors have put up the following options for consideration:

- a. The status quo applies – 4 Urban Representatives are elected by urban Ngāpuhi; or
- b. 4 Urban Representatives are appointed through the Hapū Kaikōrero process/group; or
- c. 4 Urban Representatives are appointed by the Urban Representatives on the RNB.

Kuia/Kaumatua Representation on the CNB

The Principals were not able to agree on this. The Advisors have put up the following options for consideration:

- a. The status quo applies – 2 Kuia/Kaumatua Representatives are elected by Ngāpuhi over 55; or
- b. 2 Kuia/Kaumatua are appointed by the Kuia/Kaumatua Representatives on the RNB.

Rūnanga Representation on the CNB

The Principals were not able to agree on this. Options here include:

- a. Keep Rūnanga Representative; or
- b. No Rūnanga Representative; or
- c. Rūnanga Representative but only until the Settlement Date.

HAPŪ WITHDRAWAL

The Report also recommends that clear rules be put in place to enable hapū to withdraw from the CNB (and by definition the RNB) if that is what they want.

Again the withdrawal process should be a hapū based tikanga driven process which is clear and gives all hapū members the ability to participate.



NAME CHANGE

All of the Principals agreed that the name of the CNB should be something other than TIMA.

CERTAINTY

The Report mentions the importance of certainty for any new arrangements within the evolved mandate. It is proposed that this can be secured by:

- a. Agreement on a “Ngāpuhi Negotiation Protocol” that governs behaviours and expectations between Ngāpuhi on all material matters including the relationship between the CNB and RNB’s; and
- b. New Terms of Negotiation that the Crown will enter into with the CNB and RNB’s; and
- c. Amendment to the TIMA (CNB) rules and deed of mandate documents as required to reflect any new agreed arrangements.

NEXT STEPS

Following these hui the Principals aim to meet again to assess all feedback and determine next steps.

Biography – Chief Crown Negotiator, Sir Brian Roche

- From Hawkes Bay.
- Chief Crown Negotiator on Treaty settlements (Ngāti Awa, Taranaki Whānui Wellington, Waikato-Tainui River) and a major contributor to the successful outcome of the Ngāi Tahu settlement.
- Served as the CEO of New Zealand Post between 2010 and 2017.
- Project Manager for the successful bid to secure the hosting rights to Rugby World Cup 2011.



Biographies of Technical Advisors

Willie Te Aho

- From Te Tairāwhiti and attended Hato Petera College.
- Involved in the negotiations of Ngāti Whātua o Orākei, Ngāti Koroko Kahukura/Karapiro, Ngāti Haua, Tauranga Moana, Te Pūmāutanga o Te Arawa, the Central North Island Forestry settlement, and Rongowhakaata.
- Lead negotiator for Te Aitanga a Mahaki.

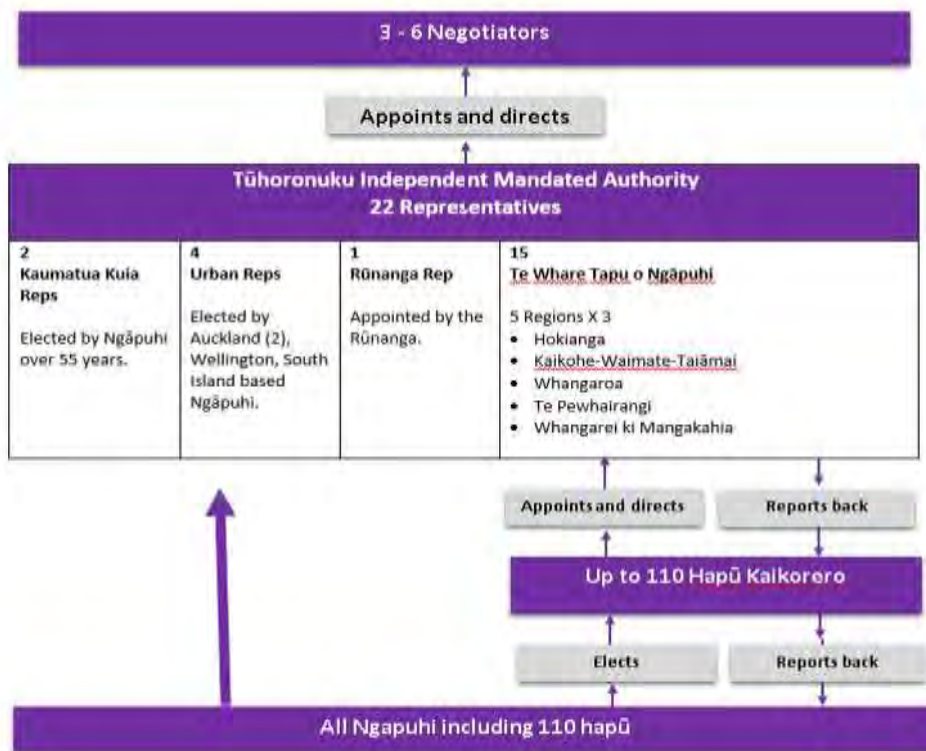
Jason Pou

- Worked around Treaty settlements for last 15 years, including negotiating and facilitating the negotiation of settlements as well as acting in opposition to them within the Waitangi Tribunal and before the High Court, Court of Appeal and Supreme Court.
- Played particular role in Ngāpuhi Waitangi Tribunal process, including the challenge to the current mandate.

David Tapsell

- Ngāti Whakaue/Tainui.
- 25 years' experience as commercial lawyer.
- Lead negotiator for Te Arawa lakes and has advised over 15 iwi on their own Treaty settlement negotiations and post settlement governance arrangements
- Trustee and director on the Ngati Whakaue Pukeroa Oruawhata Trust, one of the very first Treaty Settlements, for over 15 years.
- On the board of Lotto NZ, the New Zealand Maori Arts Institute and Te Arawa Management Limited.
- Currently Chief Crown Negotiator on a number of Settlements including Ngāti Maniapoto, Ngāti Maru and most recently Ngāti Whātua and Kaipara Harbour.

Current Tūhoronuku structure



Evolved structure for negotiations

