Maranga Mai

The Ngāpuhi Engagement Group's Draft Report

1 April 2016

Ngāpuhi Kōwhao Rau

Ngāpuhi Taniwha Rau

This refers to the diversity of Ngāpuhi and relates to the many hapū within Te Whare Tapu o Ngāpuhi.

He mea hanga tēnei tōku whare

Ko Papatūānuku te paparahi
Ko ngā maunga ngā poupou
Ko Ranginui e titiro iho nei te tuanui

Puhanga-tohorā titiro ki Te Ramaroa e whakakurupaeake ra i te Hauāuru
Te Ramaroa titiro ki Whiria te paiaka o te riri, te kawa o Rāhiri
Whiria titiro ki Panguru ki Papata ki te rākau e tū pāpata ki te tai Hauāuru
Panguru, Pāpata titiro ki Maungataniwha
Maungataniwha titiro ki Tokerau
Tokerau titiro ki Rākaumangamanga
Rākaumangamanga titiro ki Manaia e tū kohatu mai ra i te akau
Manaia titiro ki Tutamoe
Tutamoe titiro ki Maunganui
Maunganui titiro ki Puhanga-tohorā
Ehara āku maunga i te maunga nekeneke, he maunga tū tonu, tū te Ao tū te Po
Ko tēnei te whare tapu o Ngāpuhi.

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Whakarāpopototanga
Summary

In response to the Waitangi Tribunal's September 2015 Ngāpuhi Mandate Inquiry Report, Te Kotahitanga o Ngā Hapū Ngāpuhi Taiwhenua (Kotahitanga) and the Tūhoronuku Independent Mandated Authority (Tūhoronuku IMA) entered into a focussed engagement process in the hope of finding a unified pathway forward towards settlement with the Crown. The Crown, through the Office of Treaty Settlements and Te Puni Kōkiri, also participated in the engagement group, providing advice on Crown policy and other assistance as required.

We came together to look at how the flaws identified by the Tribunal could be remedied and, more broadly, to develop recommendations for a great, hapū-driven, negotiation process which will be able to achieve the best redress for our people. We have worked together to come up with recommendations on a pathway which enhances our hapū rangatiratanga and supports whanaungatanga.

Our recommended pathway

We recommend evolving the existing mandate, by making changes to address the issues identified by the Waitangi Tribunal. This will enable us to proceed together to negotiations with the Crown in a regionally co-ordinated way driven, directed and owned by hapū.

We have explored and considered several alternative pathways. Those alternative pathways, and the reasons we recommend they are not preferred options, are described on pages 43 and 44 of the report. We stress this is a draft report for you to consider and give us your feedback (by 29 April to ngapuhifeedback@justice.govt.nz).

Recommendations

The recommended changes are set out in detail in this report, on pages 17 to 31. We propose the current mandated structure be amended to strengthen hapū rangatiratanga in the settlement process as follows:

Decision-making:

Hapū will select representative teams to participate in [six] 6 regional forums, to make decisions about negotiations:

- Decisions will be made in the regions by consensus and/or tikanga, and if all dispute resolution options have been exhausted, through voting with a 75% majority required;
- Each hapū has one vote in its region;
- Hapū may participate in more than one region.

Discussion:

A collective forum made up of hapū representative teams will form a space for those hapū representatives to have discussions:

- It may make recommendations to the regions;
- It will not make decisions about negotiations.

Mandate and accountability:

A legal entity will provide hold the mandate and accountability responsibilities as well as providing administrative and logistical support to the hapū through the regions:

- It will fulfil the function of holding the mandate for negotiations on behalf of the people and hapū of Ngāpuhi and reporting to the Crown on mandate maintenance;
- In order to hold the mandate, the Crown requires us to have a legal entity.
- The regions will decide who participates in governing the operational entity;
- It will have limited authority to fulfil only the administrative functions assigned to it;
- It will not make any decisions about negotiations but will be directed by the hapū through the regions.

Representation:

Hapū will decide who will represent their interests. This means they are empowered to:

- Hold hui-ā- hapū;
- Nominate their representatives according to their tikanga;

- Choose how many representatives they want;
- Decide how to incorporate "urban" (those living outside the rohe) within their hapū teams;
- Determine Kuia and Kaumātua representation according to their tikanga;
- Establish processes and structures to ensure hapū members living outside the rohe are kept up to date and have opportunities to contribute.

Te Rūnanga-Ā-iwi-O-Ngāpuhi:

Will not have a representative role within the proposed structure.

Dispute resolution:

There is a need for a dispute resolution process that addresses disputes within hapū, between hapū, within regions and between regions.

Withdrawal:

We recommend a mechanism for hapū to withdraw from the mandate

Post-settlement governance:

Both the Crown and the Waitangi Tribunal have suggested we begin discussion on the make-up and structure of a Post Settlement Governance Entity (PSGE) or Entities as early as possible. There are many options for how we manage our redress for a positive outcome for our people, and these may include multiple PSGEs.

Name for the mandated structure:

Feedback has suggested there is wide support for adopting a new name to reflect the amended structure and the pathway to negotiations. Hapū representatives will discuss this in their regions as part of the transition process set out on page 38.

The decisions before us

We are at a fork in the road. There are many pathways we could take from here. The decisions we make now about how we want to organise to negotiate Treaty settlement redress are crucial. They will set the path for future generations of our hapū and Ngāpuhi katoa.

It is time for us to decide which pathway to take. If we choose to move forward together on a pathway to negotiations, only we, the hapū and people of Ngāpuhi, can make the necessary decisions and make it work.

Where to from here: next steps

The engagement team with Ngāpuhi input has developed this recommended pathway forward. There would be number of steps required to get our recommended pathway to settlement underway.

We urge everyone to review the full report thoroughly.

We are inviting all Ngāpuhi to give us your further feedback and comments by 29 April 2016. We will consider your feedback, adjust the recommendations as necessary, and release a final report on 6 May 2016.

Me hohou te rongo
Our challenge

At the outset it needs to be acknowledged that the primary challenge for the engagement team and for Ngāpuhi is how we best recognise and enhance the mana and rangatiratanga of the hapū of Ngāpuhi whilst also ensuring our whanaungatanga and desire for unity and excellent coordination can be improved and given practical effect. Balancing hapū autonomy with a collective and unified iwi wide approach will continue to challenge us all through the process but it is envisaged that we will develop and strengthen our tikanga for striking this important balance.

Another significant challenge has been and will most likely continue for some time yet, the environment of mistrust, of acrimonious relationships and talking past each other which has resulted in negative and destructive behaviours, views and korero becoming almost commonplace amongst us. It has taken a real shift in thinking and approach from all sides of the engagement team to overcome this reality but as a small team of Ngāpuhi we are delighted to say we were able to. Some healing has occurred and the environment has changed into a positive collaborative approach on which trust in each other and our motivations continues to be built.

We are very conscious that this healing and this shift throughout Ngāpuhi katoa will take time and effort on all our parts and that establishing growing and maintaining our unity, trust and collaboration is all our challenge moving forward.

As one of our hui attendees commented:

"It was particularly encouraging to see for the first time since the beginning of this voyage whanau of both Tūhoronuku and Te Kotahitanga sitting, laughing, sharing the same space, the same air enjoying each other's input. Last night's display was an example of what the pathway towards reconciliation and healing should someday look like for all of Ngāpuhi..."

We hope that these recommendations go a long way to resolving the issues that have been a major part of the impediment to our unity of purpose and will allow the necessary healing.

Me hohou te rongo I waenganui anō I a tātou o Ngāpuhi.

Te Kaupapa

Te huarahi o te wā

Our journey to date

- 176 years of grievance
- Te Paparahi o Te Raki (Northland) Inquiry
- Almost a decade-long debate about a Ngāpuhi-Crown settlement
- A mandate process was undertaken
- Ngāpuhi Mandate Inquiry Report
- This engagement process - reflection about how we can do it better

Te huarahi anga mua

Where we're going

- We're nearing the end of the hearings phase of the Waitangi Tribunal's Paparahi o Te Raki Inquiry
- We're moving into settlement negotiations to seek redress
- We're strong when we work and move together - we have done it before and we can do it again

Te huarahi tutuki

How we do it

- The hapū of Ngāpuhi are numerous - we have an opportunity to do this journey together
- We evolve the current mandate to enhance hapū rangatiratanga
- We develop a database and communications strategy
- Our hapū decide participation and representation
- We negotiate collectively in a regionally co-ordinated way
- We ensure clear accountability and resourcing
- We have a live discussion about how we manage our settlement redress.

Te huarahi o te wā Our journey to date

For almost a decade we've debated about how we'll organise to represent ourselves in negotiations with the Crown for the settlement of our historical (pre-1992) Treaty claims.

We've carried out that debate alongside our work on collating and presenting evidence to the Waitangi Tribunal on our long-standing historical claims.

2007	The Ngāpuhi Design Group recommends to the Waitangi Tribunal that it replace its five hearing districts for Northland with a single inquiry – Wai 1040: Te Paparahi o Te Raki - because splitting Ngāpuhi-Nui-Tonu could be divisive, hinder the ability of people to present their case without segmentation between districts and eventually present the Crown with an opportunity to exploit artificial boundaries and negotiate a settlement with those who finish hearings first.
May 2010	The Waitangi Tribunal begins Stage 1 of its Te Paparahi o te Raki (Northland) inquiry – about the meaning and effect of He Whakaputanga o Te Rangatiratanga o Nu Tireni/the Declaration of Independence of New Zealand; and Te Tiriti o Waitangi/the Treaty of Waitangi at February 1840.
2011	The Waitangi Tribunal Stage 1 hearings completed. Tūhoronuku, having held more than 50 hui in our rohe and in large centres outside of Northland and in Australia since 2009, asks us to vote on whether it has a mandate to represent us in Treaty settlement negotiations. The resolution put to us is Tūhoronuku "...is mandated to represent Ngāpuhi in negotiations with the Crown for the comprehensive settlement of all Ngāpuhi historical claims and Crown breaches against Te Tiriti o Waitangi/The Treaty of Waitangi". Of the 6,794 people who voted, 5,210 (76.4%) vote in support of the mandate and 1,584 (34%) oppose it.
March 2013	Stage 2 Paparahi o Te Raki (Wai 1040) hearings begin.
Mid 2013	The Crown seeks submissions on the amended deed of mandate - 1,259 (36%) submit in support and 2,221 (63%) in opposition. **Key reasons given for opposing the mandate include:** • The representative structure does not allow a hapū-led process and increased hapū representation is undermined by trustee nomination, election, replacement and dispute processes • The vote of 76.4% support was too low • Recognition of the mandate will undermine the ability of Wai claimants to have their claims heard by the Tribunal • The lack of a hapū withdrawal mechanism.
Dec 2014 and March 2015	The Tribunal holds seven (7) days of hearings in its Wai 2490 Ngāpuhi Mandate Inquiry.
Sept 2015	Ngāpuhi Mandate Inquiry Report released.
Sept – Nov 2015	Tri-partite engagement process developed and terms of engagement circulated.

2008

Te Rūnanga-Ā-Iwi-O-Ngāpuhi (the Rūnanga) starts seeking views about how we want to progress a settlement of our historical claims.

2009

The Rūnanga forms a sub-committee, Te Rōpū o Tūhoronuku (Tūhoronuku), to progress the Treaty settlement mahi in parallel with the mahi being done by claimants for the historical Waitangi Tribunal hearings..

Tūhoronuku begins holding consultation hui

It develops a proposed representative structure of a fifteen (15) member Board: Seven (7) hapū representatives (elected by all Ngāpuhi hapū) and eight (8) other (Urban/Kuia/Kaumātua and Rūnanga) representatives.

2011-2013

The Crown facilitates discussions between the Tūhoronuku Independent Mandated Authority (Tūhoronuku IMA) and Te Kotahitanga o Ngā Hapū o Ngāpuhi (Kotahitanga) to address concerns raised about the mandate structure. The Tūhoronuku IMA agrees to make changes including:

- increasing hapū representation on Tūhoronuku from seven (7) to fifteen (15) to provide majority governance for hapū representatives;
- introducing the election of hapū representatives onto Tūhoronuku by Hapū Kaikōrero on a regional basis;
- a reduction in Rūnanga representation; and
- separating Tūhoronuku, legally, from the Rūnanga.

Feb 2014

The Minister for Treaty of Waitangi Negotiations and the Minister of Māori Affairs recognise that the Tūhoronuku IMA has secured a mandate to represent all Ngāpuhi in Treaty settlement negotiations.

March – Sept 2014

Fifteen (15) claimants apply for, and are granted, an urgent Waitangi Tribunal inquiry into the Crown's decision to recognise the Tūhoronuku IMA mandate.

Nov 2014

The Waitangi Tribunal releases its Te Paparahi o Te Raki Stage 1 report, He Whakaputanga me Te Tiriti/the Declaration and the Treaty.

The Tribunal's essential conclusion is that "in February 1840 the Rangatira who signed Te Tiriti did not cede their sovereignty."

It makes no conclusions about the sovereignty the Crown exercises today or how the Treaty relationship should operate in a modern context - that's a Stage 2 matter.

Dec 2015

Ngāpuhi engagement group (Kotahitanga, Tūhoronuku and Crown) meetings begin.

The Waitangi Tribunal's Ngāpuhi Mandate Inquiry Report

In September 2015 the Waitangi Tribunal released The Ngāpuhi Mandate Inquiry Report. It made the following statements and findings on the Tūhoronuku IMA mandate and the mandating process (Attachment One provides a fuller report summary).

What the Crown's Treaty duty was

"We agree with the claimants' argument that, when the issue is a mandate to negotiate the settlement of claims brought by and on behalf of Ngāpuhi hapū, the Crown's primary Treaty duty is to protect those hapū. And we agree, as the Crown argued, that there is also a responsibility to ensure that all Ngāpuhi have an opportunity to be involved, a challenging task given the modern reality of a dispersed Ngāpuhi population."

The Crown Breached its Treaty Obligations

The Tribunal considers hapū rangatiratanga to be central to Ngāpuhi tikanga. It found the Crown, in recognising the mandate, had breached the Treaty by failing to ensure that the structure of the Tūhoronuku IMA sufficiently protects hapū rangatiratanga. It identified the following flaws:

- The omission of hapū from the definition of Ngāpuhi privileges the individual over the hapū;
- The process for selecting Hapū Kaikōrero does not ensure that hapū control who will represent them in negotiations;
- Board members and negotiators were appointed despite only a minority of hapū having selected Hapū Kaikōrero;
- There is no workable withdrawal mechanism when the clear ability to withdraw would give hapū currently opposing the Tūhoronuku IMA the confidence to become involved, knowing they are not trapped if they lose faith in their mandated representatives.

The Tribunal also considered the following did not protect hapū rangatiratanga:

- The Crown's insistence that Ngāpuhi settle as a single entity has overridden any opportunity for hapū to collectivise in natural groupings of their own choice;
- The settlement timeframe is such that hapū will very likely lose the opportunity to seek binding recommendations from the Tribunal.

How Parties Engaged in the Mandating Process

"We are satisfied that all involved (the Tūhoronuku IMA, the claimants before us, and the Crown) made a considerable effort to meet the expressed desire of Ngāpuhi to move together to settlement in the challenging circumstances caused by a large dispersed population and different approaches to that goal...There is ample evidence of the parties having engaged in good faith and of making genuine efforts to accommodate differences."

Should the Crown withdraw its recognition of the Tūhoronuku IMA Mandate?

"We could recommend that the Crown withdraw its recognition of the mandate, and that the mandating process be re-run. Although this was urged on us by some claimants, we consider that would be neither a practical or constructive outcome. We recognise there is broad support for settlement within Ngāpuhi and momentum towards settlement should not be stopped dead in its tracks. Although we consider the flaws we have identified in the Tūhoronuku IMA structure to be fundamental, we also consider they can be remedied without restarting the entire mandate process. Once remedied, the Tūhoronuku IMA will be capable of leading a negotiation on behalf of hapū".

Concluding comments

"It is clear that, in order for the Treaty relationship to be repaired, hapū must be returned to a position of authority. For this to happen, it is essential that hapū rangatiratanga and hapū tikanga are respected, protected and enhanced in mandating processes. In addition to our formal recommendations , we hope that all parties will build on the very real progress that has already been made and continue to strive for the restoration of Ngāpuhi Social, Cultural and Economic position, the Crown's honour and the Treaty relationship itself."

The full Tribunal report can be found at waitangitribunal.govt.nz.

The Ngāpuhi engagement process

In response to the Waitangi Tribunal report, Te Kotahitanga o Ngā Hapū Ngāpuhi Taiwhenua (Kotahitanga), the Tūhoronuku Independent Mandated Authority (Tūhoronuku IMA) and the Crown decided to enter into a focussed engagement process in the hope of finding a unified pathway forward.

We have come together to look at how the flaws identified by the Tribunal could be remedied and, more broadly, to develop options and recommendations for a hapū driven, negotiation process which will be able to achieve the best redress for our people. We have worked together to come up with recommendations on a pathway to settlement with the Crown which enhances our hapū rangatiratanga and supports whanaungatanga.

The Crown, through the Office of Treaty Settlements and Te Puni Kōkiri, also participated in the engagement group, providing advice on Crown policy and other assistance as required. A full list of participants is provided at Attachment Three. We acknowledge that some hapū chose not to engage with this process.

The recommendations in this draft report have been jointly developed by the delegated representatives of the engagement team. Our mahi, since December 2015, has involved:

- twenty two (22) meetings of the Ngāpuhi Hapū Engagement group;
- six (6) regional hui around Te Taitokerau in February 2016 to gather feedback on the issues;
- regular reports back to Ngāpuhi (through fortnightly reports, Kotahitanga taiwhenua and working party hui, information on the Tūhoronuku IMA website, Facebook and media networks); and
- six (6) wānanga in Te Taitokerau (one (1) in Tāmaki Makaurau) in March 2016 to feed into our draft recommendations.

Hundreds of people attended the hui and wānanga. The issues we asked them to provide their whakaaro on included:

- how should hapū choose their representation?
- how should Kuia, Kaumātua and those of us living outside the rohe be included in the representation structure and the negotiations process?
- should Te Rūnanga Ā Iwi o Ngāpuhi have a seat on the mandated entity?
- what should the process for hapū withdrawal from the mandate be?
- what should the representative structure be?
- how many regions should there be in the representative structure?
- should we change the name of the mandated entity?

In addition to feedback given to us through the regional hui and wānanga we have been given feedback in written form - via email or through documents handed over at hui . A summary will be available by the time of the final report.

This process has been about pausing to consider our options, listening to the views expressed and thinking about what they mean for where we go next. From that, we've put together this draft report and are now bringing draft recommendations back to you to consider. We want your feedback by 29 April 2016. Feedback can be sent to ngapuhifeedback@justice.govt.nz.

Te huarahi anga mua
Where we're going: achieving redress for our claims

We are conscious Ngāpuhi is the last major iwi to settle with the Crown. We have been waiting for 176 years. The Crown has acknowledged negotiations to redress our historical grievances are long overdue.

The Paparahi o Te Raki hearing process is drawing to an end. We have navigated that process together. We will finish presenting our evidence in October and final closing submissions will be made in April next year. Once the Crown's closing submissions have been presented in June 2017 the Tribunal will go into its report writing phase.

The timeframe for a Tribunal report is currently unknown. Previously it has taken the Tribunal at least two years and, in the case of Te Urewera (where it released its report in stages), over ten years to release a full report on a district inquiry (see Appendix six for information on Tribunal reporting times). We acknowledge the timing of a Tribunal report is of concern to some people. The Tribunal has recently stated that the "direct negotiations process is somewhat unpredictable and the Tribunal would be open to hearing parties' views on an early report if the negotiations necessitated that kind of assistance from the Tribunal."

The Crown has acknowledged we have legitimate historical grievances. The next step is pursuing redress for our claims.

The opportunity

We are unique both in size – we are 18.8% of the Māori population - and the extent to which we are made up of strong, autonomous hapū. These are our strengths. The collective mana of Ngāpuhi is huge. We have a predominantly young population (with 35.4% under 15 and just 4.5% aged 65 and over) and 19.9% of us live in Northland. Many of us whakapapa to more than one Ngāpuhi hapū.We have the opportunity to design a unique negotiations process, led by our hapū, for the benefit of all of us. It can also help build and strengthen the hapū and Ngāpuhi katoa and connections with each other wherever we live.

We have the opportunity to design a unique negotiations process, led by our hapū, for the benefit of all of us. It can also help build and strengthen the hapū and Ngāpuhi katoa and connections with each other wherever we live.

The work that has gone into mandating gives us the opportunity of entering into negotiations with the Crown, within a relatively short timeframe, to settle our historical claims. The next 5 years could be some of the most important in our history.

We should not be rushed, however each passing month and year we delay entering settlement negotiations means we miss real Cultural and Economic opportunities for our hapū and people in terms of:

- Having significant influence and decision-making over what happens in our rohe;
- Exercising Kaitiakitanga over natural resources;
- Growing and using the quantum and commercial assets we will receive as redress;
- Taking advantage of business opportunities that constantly arise and are taken up by others in our rohe; and
- Using settlement resources to aid the development of our people.

We believe it is our collective view as Ngāpuhi katoa that it is now time to embark on the settlement journey together. That will allow us to ensure that when we pass the baton on to our future generations it is lighter, not heavier.

The decisions before us

We are at a fork in the road. There are many pathways we could take from here.

The decisions we make now about how we want to organise to negotiate redress are crucial. They will set the path for future generations of our hapū and Ngāpuhi katoa. It is up to us to decide whether we proceed through that journey together or not. Whichever pathway we decide on, only we the hapū and people of Ngāpuhi can empower that pathway to work, make the necessary decisions and move Ngāpuhi to negotiations.
Mā ngā hapū anō ngā hapū e kōrero.

Te huarahi tutuki
How we get there

Our recommended pathway

Having assessed various options we consider the best approach is, in line with the Waitangi Tribunal report, to build on the work already done and work together on getting the best redress we can from the Crown for our historical claims.

The pathway we recommend is to evolve the existing mandate, by making changes to address the issues identified by the Waitangi Tribunal, which will enable us to proceed together to negotiations with the Crown in a regionally co-ordinated way, driven, directed, and owned by hapū.

Why we recommend negotiating collectively without re-starting the mandate process

The Waitangi Tribunal strongly encouraged us to proceed together. It said:

"We also accept that the Crown (and many Ngāpuhi) genuinely believe it will enhance Ngāpuhi's position, post settlement, if they come together in one negotiating entity." We tend to agree.

"For our part, and subject to the recommendations we make below, we strongly encourage claimant groups to proceed together. This may involve them negotiating with the Crown as one entity, or in parallel but with a unified and coordinated approach, and in either case with the knowledge that several settlement packages can be created."

Negotiating with the Crown collectively and regionally as Ngāpuhi, in a hapū driven approach, has a number of advantages:

- We will be a stronger, more co-ordinated voice in the challenging discussion ahead of us with the Crown
- We will have more leverage in negotiations if we are working for all of Ngāpuhi (being almost 20% of the Māori population)
- It gives us the most strategic options as we work out our future relationships – negotiating as one (1) doesn't mean a one size fits all approach. We need to be flexible in our approach and develop redress to address our hapū, pan-hapū, regional and collective interests.
- Most importantly, it provides the best opportunity for us to work through our inevitable debates about our respective hapū interests without encouraging unnecessary divisions and delays
- It ensures we proceed together and complete the process together
- It gives us transparency between ourselves and the benefits of pooling our skills, resources and expertise for our common good

The existing deed of mandate was intended to enable a co-ordinated approach but the Tribunal told us we need to strengthen it in significant ways to protect hapū rangatiratanga. We set out how we think that can be done in this report.

We are stronger if we move through this process together as hapū. Our whakapapa and whanaungatanga means we can, and should do that. We have an opportunity to leave behind past divisions and hurt and move forward together in a spirit of healing and manaakitanga.

How we do it

We recommend the following representative structure. We note this structure is for organising our negotiations and will be wound up at the completion of that project (see pp. 25 on post settlement governance).

This structure has significantly shifted the roles, responsibilities and power from a Board (see Tūhoronuku IMA structure in Attachment Two) and moved decision making to the hapū and regions.

Our proposed structure



The names and regions represented in this diagram are indicative only. Your feedback has suggested it may be necessary to have six (6) or more regions.

We recommend the six (6) regions as detailed above. We are aware some hapū proposed additional regions. Hapū representatives, once appointed, will need to discuss the configuration and names of regions. We expect they will consider a number of factors including good reasons for adding new regions, natural alliances, budget implications and organisational efficiencies. Feedback from the hui and wānanga noted that hapū can still work together in smaller groups within regions (and in negotiations) which may lessen the need to create new regions.

We propose meetings as follows:

Hapū: Bi-monthly meetings
Regions: Monthly meetings
Te Hononga Nui (with Te Hononga Iti and the negotiators attending): Three monthly or as required
Te Hononga Iti: Six weekly

This will ensure all the parts of the structure are working to plan, prepare and co-ordinate for the negotiations (see pp. 28-33 for information on negotiations).

How we represent ourselves

Hapū

Will decide who will represent their interests. The process by which they will decide the person or team is set out on page 22. This means they are empowered to:

- hold hui ā hapū and select their representatives according to their tikanga;
- determine Kuia and Kaumātua representation according to their tikanga; and
- establish processes and structures to ensure hapū members living outside the region are kept up to date and have opportunities to contribute to the hapū interests and aspirations.

Hapū representatives will organise themselves in regions:

Regions

Those hapū representatives will exercise the vote of the hapū in regions, if decisions need to be made by vote (when a consensus cannot be reached).

The regions are a practical way in which hapū can organise, communicate and work together on their collective regional interests.

The regions will be able to move discussions on issues that cross regional boundaries into the Collective Forum (Te Hononga Nui).

The hapū in the regions will ultimately determine our negotiation plan and strategy as well as who will participate in any redress working groups which we will need to set up to drive our negotiations (see 23 for more on this).

Te Hononga Nui - Collective Forum

The hapū within the regions decide who attends the collective forum on any given issue which we may need to collectively discuss. Examples of issues that may need to be discussed collectively are: the makeup of the negotiation team, our negotiation plans, and Crown offers. This will enable us to understand each other's concerns, aspirations and interests and assist us to strategically co-ordinate the negotiations and redress which affects us all.

This forum is not able to make decisions but provides a space for the affected hapū to discuss an issue and make recommendations to the regional forums for the hapū to ultimately decide.

Te Hononga Iti – Kaitiaki Trust

The hapū in the regions will decide the representation on the legal entity – which we have called Te Hononga Iti for now. The representative can be, but does not have to be, a hapū representative(s). The roles and responsibilities of the representatives will be limited because hapū, in the regions, will retain control of the entity through their decision making processes.

The feedback on the question of how many representatives we should have on Te Hononga Iti was quite varied - between one (1) and three (3) from each region. Some saw advantage in keeping the trust small given the size of its roles, others thought having more than one would share the responsibility and accountability. Others did not seem to understand the role or purpose of the representation on Te Hononga Iti.

Our view is it does not need to be a large body because they will be directed by the regional hapū. Its purpose is largely administrative. Our recommendation is that there be one representative from each of the regions appointed as representatives.

There will be no set term of representatives to Te Hononga Iti. Appointment will be reviewed annually. The region can replace representatives at any time (by consensus or vote of the region).

This element of the structure meets the Crown requirement for a legal entity, with legal liability and will "hold" the mandate for negotiations and settlement of all Ngāpuhi historical Treaty of Waitangi grievances on behalf of the people and hapū of Ngāpuhi. It will also provide an important administration and mandate role, accountable to Ngāpuhi. Some feedback indicated that there are other ideas around how these roles could be met.

It is important to understand that Te Hononga Iti should have the minimum power necessary to fulfil its role. Have a look and tell us if we've got the balance right. It is worth emphasising that this structure is proposed for negotiations only and that under this proposal decision making is with the hapū. We do, however, think post settlement governance work will need to consider how we develop appropriate legal entities which suit Ngāpuhi hapū rangatiratanga.

The approach we propose caters for a robust negotiations process across all the necessary levels. This includes the hapū directly, across hapū, within and across our regional connections or alliances and on a Ngāpuhi-wide basis as well as on an issue specific level when needed. This will provide the requisite level of flexibility that would be required across any Ngāpuhi negotiation.

Who appoints negotiators?

The negotiators will be the primary interface with the Crown. They will be selected by, and accountable to, the hapū representatives.

There may be a balance of expert negotiators with specific skills and regional negotiators, but that will be determined by the hapū through the regions and may be informed by discussion through the collective forum.

Their role will involve:

Negotiation of proposed redress;

Developing options and proposals for hapū and regional forums to decide on; and

Provide strategic skills and advice on negotiation plans, at all levels (hapū, regional forums, collective forum).

Roles and responsibilities

Hapū/hapū teams

- 1 or more representatives
- Hapū decide independently how they are represented in their region(s) (whether by individual or group)
- Gather and document aspirations and interests
- Communicate and liaise with all members wherever they live for input and feedback
- Approve negotiations plan and instructions to negotiators
- Follow agreed processes for dispute resolution and withdrawal
- Meets bi-monthly.

Hononga Nui

- Discussion space for issues that cross multiple regions
- Hapū and regions decide attendance (flexible)
- Makes recommendations only to regions for the regions to ultimately decide
- Meets three monthly or as required.

Regions/regional representatives

- Made up of hapū representatives
- Establish regional aspirations and interests
- Establish Ngāpuhi-wide aspirations and interests based on recommendations of collective forum
- Establish overall negotiations plan + strategy including:
  - Milestones and timelines
  - Process for addressing overlapping claims
  - Dispute resolution
- Set up negotiating tables and appoint negotiators (in consultation with hapū)
- Directs mandated entity through regional representatives
- Decisions by consensus or 75% (each hapū has one vote in region)
- Meets monthly

Hononga Iti

- Made up of 1 or 2 reps from each region
- Holds mandate for settlement of Ngāpuhi historical claims on behalf of Ngāpuhi
- Directed by regional reps
- Ensures compliance with agreed negotiation and communications plans
- Reports on mandate maintenance to Crown
- Conduit for claimant funding to be distributed in accordance with negotiations and funding plans
- Has legal liability
- Employs staff as directed by regions
- Monitors and reports on disputes and withdrawal
- Monitors the accountability of regions (including identifying issues and divergences for regions to resolve)
- Meets every six weeks.

Negotiators and negotiation working groups

- Primary interface with the Crown
- Negotiates proposed redress
- Develop options and proposals for regions to decide on
- Provide strategic skils and advice on negotiation plans.

Ngā rerekētanga
Key changes to the mandated representative structure and appointment processes

These proposals would mean a number of important changes to the existing mandated representative structure. The key change is that it shifts roles, responsibilities and power from the Board and moved decision making to the hapū and regions.

Hapū representation

Currently:

- One Hapū Kaikōrero per hapū
- Independent Returning Officer calls for nominations for Hapū Kaikōrero within the five Whare Tapu o Ngāpuhi regions
- The nomination period is 21 days
- If only one Hapū Kaikōrero nomination is received for a hapū then an election hui is not required and that nominee is accepted as the Hapū Kaikōrero
- If more than nomination is received for a hapū then a election hui is held
- 21 days public notice is given for the hui
- Voting is undertaken by those at the hui by way of paper ballot, or online or by postal vote
- Hapū Kaikōrero then nominate and appoint 15 Regional Hapū Representatives
- Regional Hapū Representatives sit on the Tūhoronuku IMA Board (the final decision making entity).

New proposal:

- Hapū hold hui-ā-hapū, on their marae with 21 days public notice, to decide the process by which they will chose their representatives. Public notice is required to provide all hapū members the opportunity to participate
- Hapū may decide to choose their representatives at the hui and or use a postal ballot or other voting process (which will mean notifying and holding a second hui)
- Records are kept of hui and the tikanga used for appointing representatives in case the process is contested
- Hapū are not restricted to one hapū representative. They can choose to use a team with a range of appropriate skills, knowledge and experience rather than an individual to represent their interests in the process
- The number and make-up of teams is flexible and could be adjusted from time to time to meet the hapū needs
- Some hapū may decide to work with other hapū through a single team
- Each hapū will have one vote in its region/s
- Hapū may participate in more than one region.

Kuia and Kaumātua representation

Currently:

- All Ngāpuhi over the age of 55 can vote in elections for one Kuia and one Kaumātua to sit on the Tūhoronuku IMA Board.

New proposal:

- Each hapū will determine Kuia and Kaumātua representation on their hapū teams according to their own tikanga.

We consider these changes will support hapū empowerment, more closely connect Kuia and Kaumātua with their hapū, and enhance Kuia and Kaumātua participation across Ngāpuhi hapū.

Urban representation

According to the 2013 Census just over 40% of us live in Auckland and we also have sizeable populations in Waikato (10.7%), the Bay of Plenty (6.4%), Wellington (5.9%) and Canterbury (4.4%). We do not know how many of us live outside New Zealand.

The Tūhoronuku IMA currently has specified representation for some urban areas. There are, however, some drawbacks with this approach:

- It is not possible to have geographic representatives for all the areas where Ngāpuhi live (so people in some areas are better represented than others);
- It may be difficult for one representative to do the work necessary to represent all people in a geographic area; and
- It does not strengthen existing hapū networks outside the region.

The negotiation and settlement process presents an opportunity to strengthen our hapū by encouraging re-connection of our people no matter where we live. We want to ensure that all Ngāpuhi have their say about how Ngāpuhi negotiates settlement of its historical claims with the Crown and where needed, reconnect with hapū.

That was supported at the regional hui - which gave us a strong message that the participation of all Ngāpuhi is important and valued. The preference was for those whanaunga who live outside the rohe to be represented through their hapū to enhance those connections. The proposed changes to the representation structure also allow more direct representation and participation through hapū.

Currently:

- Those residing in Central/West Auckland, South Auckland, Wellington and the South Island can nominate and vote for a representative on the four "urban" seats on the Tūhoronuku IMA Board.

New proposal:

- Hapū decide how to incorporate those living outside the rohe within their hapū teams
- Focus on developing database to enable improved communications.

We recommend opportunities for participation of whanaunga who live outside the rohe in the negotiation process be strengthened. This includes:

- Hapū incorporating in their hapū teams a non-resident member or person responsible for their non-resident hapū members, either as a point of contact or as a coordinator of communications and hui outside of the region;
- Placing a responsibility on the representative structure to provide opportunities, through electronic means, for all Ngāpuhi to feed into settlement aspirations work – whether this is facilitated through hui throughout the country or through electronic means;
- Hapū holding hui in Auckland, Hamilton and other key population areas;
- Placing responsibility on the representative structure to co-ordinate a group of regional representatives, and if appropriate negotiators, to hold hui in major centres of the Ngāpuhi population twice a year and/or at key points in the negotiations process (i.e. aspirations gathering, review of draft negotiation strategy, the Crown offer, and pre-initialling of a Deed of Settlement).

The Auckland hui expressed support for enhanced communication. The representative structure would be accountable for ensuring any agreed opportunities – outlined in communications plans - for participation are provided.

Te Rūnanga ā-iwi-o-Ngāpuhi representation

Currently:

- The Rūnanga has one seat on the Tūhoronuku IMA Board.

New proposal:

- No Rūnanga representation.

Te Rūnanga-Ā-iwi-O-Ngāpuhi has played an important role in starting the mandate process and getting us to this point. That work is acknowledged.

The feedback from the hui and wānanga was that it is not necessary for the Rūnanga to have a seat on our representative structure. It was noted that hapū representatives may decide there is some benefit in fostering a relationship with Rūnanga and with other existing entities within Ngāpuhi. There would also be benefit in Te Rūnanga-A-Iwi-O-Ngāpuhi continuing to provide a means of communication with the 50,000+ Ngāpuhi registered on their database (until such time as we can create our own database(s).

Post settlement: how we manage our redress

The structure we are recommending will have a short lifespan. It is a vehicle to get us to the point where the best possible settlement redress for the hapū of Ngāpuhi is agreed and delivered.

By this point we will need to have thought about and established a new structure(s) - what the Crown calls Post Settlement Governance Entities - to receive and manage the redress.

There are many options for how we manage this redress for a positive outcome for our people. It could involve holding our redress collectively or having multiple entities. Both the Crown and the Waitangi Tribunal have suggested that we begin discussion on the make-up and structure of the Post Settlement Governance Entity or Entities as early as possible.

That's a conversation for Ngāpuhi to have over the next few years.

Dispute resolution:

There is a need for a dispute resolution process that addresses disputes within hapū, between hapū, within regions and between regions. Further workable dispute resolution processes will need to be developed.
We would like to hear any views you have on good dispute resolution processes. Please provide this in your feedback.

Withdrawal mechanism

The existing mandate sets out that the mandate conferred on Tūhoronuku by the people of Ngāpuhi can be withdrawn through a process as robust and thorough as the process by which the mandate was conferred.

The Waitangi Tribunal found there was a lack of clarity about that withdrawal mechanism and that the lack of an adequate hapū withdrawal mechanism contributed to the Crown's failure to protect hapū rangatiratanga. It noted that having the clear ability to withdraw would give hapū currently opposing the mandate the confidence to become involved, knowing they are not trapped if they lose faith in their mandated representatives.

The feedback provided at the wānanga and hui suggests a strong preference for Ngāpuhi to proceed together and for the representative structure to be improved so that hapū want to be a part of it rather than withdraw. Any withdrawal process needs to have clear steps so that everyone affected by the potential withdrawal is aware of the process and has the opportunity to have their say.

Attachment Three sets out proposed mechanisms for hapū to withdraw from the mandate and for a total withdrawal of the mandate to negotiate, for your consideration.

An important element of this process is ensuring all members of the hapū or, in the case of withdrawal of the mandate, Ngāpuhi understand the consequences of the decision to withdraw. This includes the Crown policy to negotiate with large natural groupings, its mandate requirements, and its finite resourcing and nationwide negotiation work programme commitments – all of which could delay the opportunity for that hapū to complete a settlement with the Crown.

It is important that any hapū contemplating withdrawal be alive to these very real possibilities and make an informed decision.

The Waitangi Tribunal noted that:

"...hapū-by-hapū negotiations and settlement is not a realistic expectation. For smaller groups who decide to go it alone, should that opportunity be given, there is a very real possibility that they will not secure the specific redress they desire and that the settlement of their claims will be long delayed."

A new name for the mandated entity to represent a new stage?

As Tūhoronuku, the kite of Rāhiri (the great Ngāpuhi ancestor), soars high in the sky, it reminds us of the story of how our tūpuna Rāhiri settled the dispute and united Ngāpuhi through his two sons, Uenuku and Kaharau.

It serves also as a metaphor for the dreams and aspirations of the Ngāpuhi nation.

Your feedback suggests wide support for changing the name of Tūhoronuku Independent Mandated Authority to reflect this new stage. Some of us have different interpretations of whether Tūhoronuku historically united us while others felt it did not include them. Some felt the taonga and stories of Tūhoronuku need to be preserved and not associated with the settlement process.

The group recommends our hapū representatives discuss this in their regions and in the collective forum and make a decision on a name.

Currently:

Tūhoronuku Independent Mandated Authority.

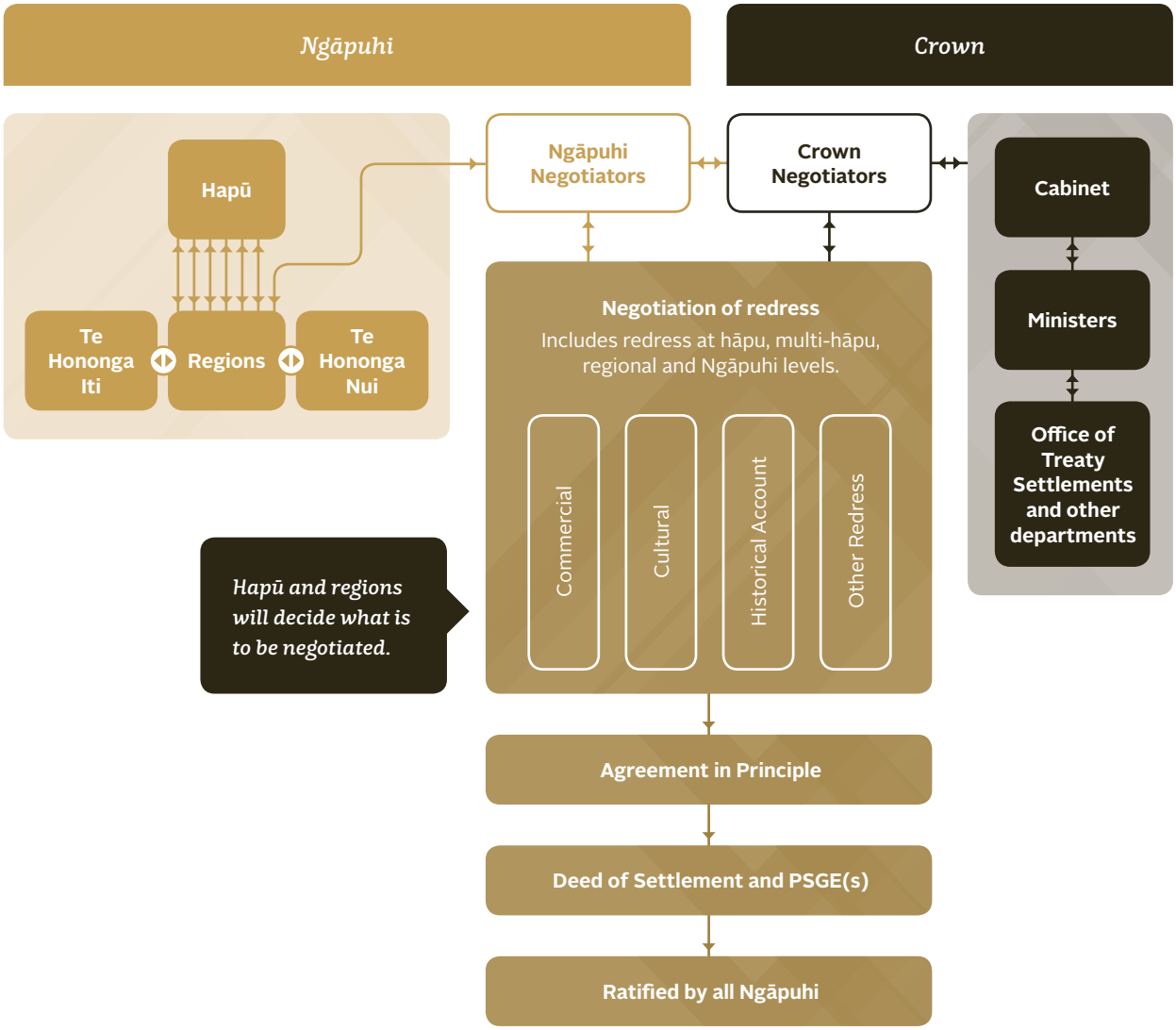
Proposed:

The group recommends our hapū representatives discuss this in their regions and in the collective forum and make a decision on a name.

Ngā take tohetohe
How will we negotiate

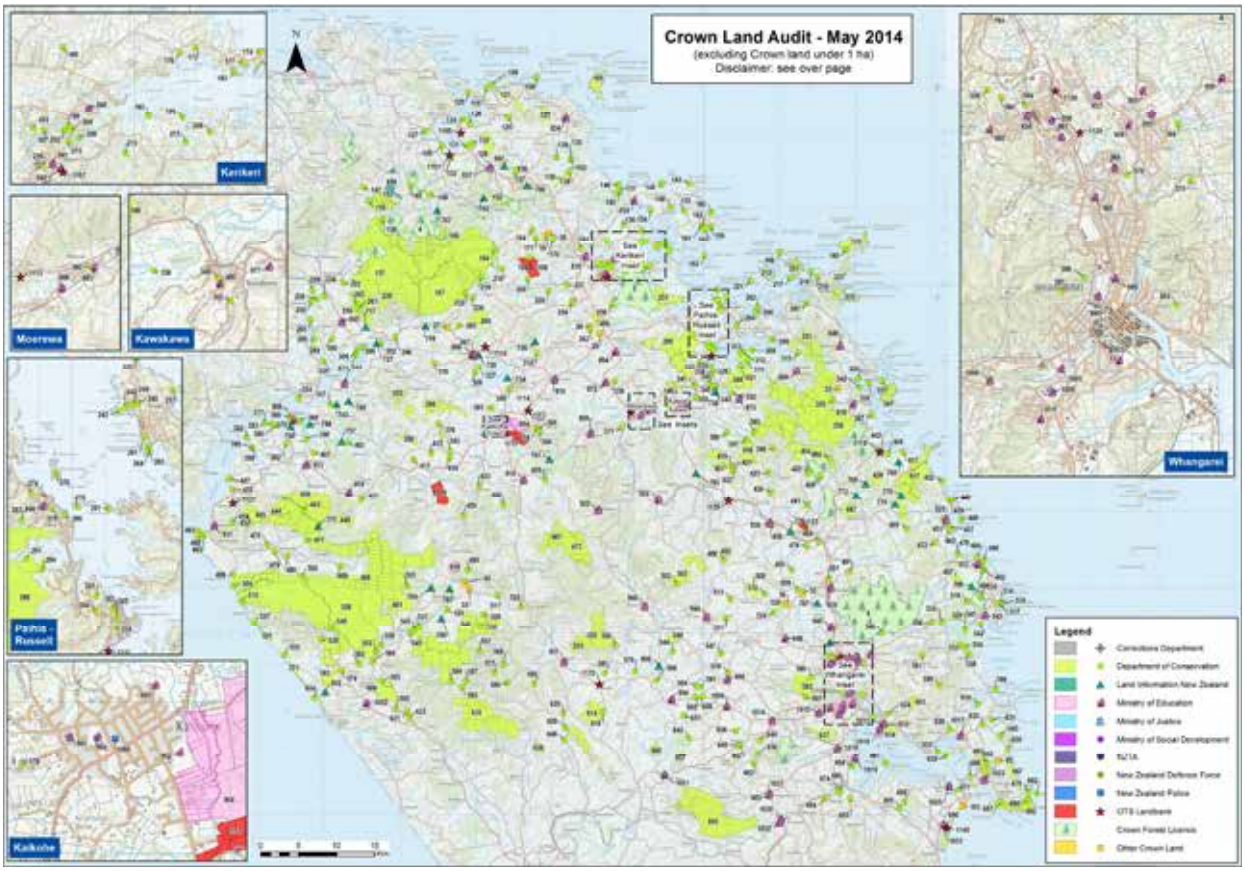
The general framework for negotiations is set out, as a guide, below. It's important to note that our hapū representatives, working through regions and with our negotiators, will have the opportunity to design the negotiations process and determine what the negotiating tables are and what working groups will be required to support them. They will also agree timeframes for the work, what funding will be allocated to which phases of the negotiations process and what processes We will use for addressing our shared or overlapping interests with other iwi.

Proposed negotiations framework



The negotiating process before us will likely be as, or more, challenging on our time, energy and resources than the Tribunal hearings process. The average time taken to negotiate a Treaty settlement is six (6) years (irrespective of the size of a settlement).

The Crown's policy is to provide redress over Crown land only. The redress possibilities include the vesting of culturally important sites, purchase (from quantum) of commercial properties, relationship protocols with Crown agencies, rights of first refusal etc.



Note, this map reflects a preliminary understanding of Crown land in the Ngāpuhi area of interest and has been provided for information purposes only. It is not intended to create any expectation as to what may or may not be negotiated as part of future Treaty settlements in this area and includes areas other iwi have interests in. Not all lands in this audit will be available for Treaty settlement purposes and those that are will be subject to a range of redress options. The Crown will explore potential options for redress during negotiations. Where land is identified as a priority for settlement purposes, specific redress would be negotiated bearing in mind Crown policy and operational parameters.

Ngā take tohetohe
How will we negotiate

A settlement usually includes negotiating the following elements of redress (shown below), but we also have the opportunity to decide what redress we want to seek.

The proposal contained in this draft is considered by the Engagement team to be the best way in which we as a hapū and people of Ngāpuhi can organise ourselves to coordinate a unified approach to the settlement negotiations, which will greatly enhance our ability to achieve the best settlement for our people we possibly can.

We have real strength in unity of purpose and will be able to be far more effective in pushing the boundaries of the standard Crown negotiations policy if we can stand together, work together, debate together and push the envelope together.

There will be several steps in negotiations to get to a settlement. There will be a number of points along the way where the settlement package will be taken out to all Ngāpuhi to debate, discuss and agree.

Crown Apology	• Agreed historical account/s • Crown acknowledgements of breach and grievances • Crown apology
Cultural Redress	• Vesting of sites such as tupuna maunga • Statutory recognition over Crown land • Official place name changes
Natural Resources	• Redress over natural resources (eg. harbours, lakes, rivers)
Relationship Redress	• Protocols setting out relationships with Crown agencies • Enhanced relationships with local government
Commercial Redress	Quantum taken as: • Cash • Crown assets (eg. landbank properties and Crown forests) • Sale and leaseback or Rights of first refusal over non-surplus Crown land

Phase One- Interests and Aspirations

The first step of negotiating will be developing our "Negotiating Brief". It will be up to hapū to decide how they gather and document the aspirations and interests of their members wherever they live.

We recommend there is support including the necessary tools and funding to develop:

- hapū interests and aspirations documents;
- Regional interests and aspirations document and;
- Ngāpuhi-wide interests and aspirations documents.

We recommend the following explanation on the interests and aspirations documents be provided for:

- Why the documents are needed and how they'll be used
- Questions the documents need to address
- Sample aspiration documents from previous iwi-Crown negotiations
- Information on the settlement process (and the remedies process)

Hapū will develop their interests and aspirations documents within a coordinated timeframe with the assistance of consistent communication and resourcing.

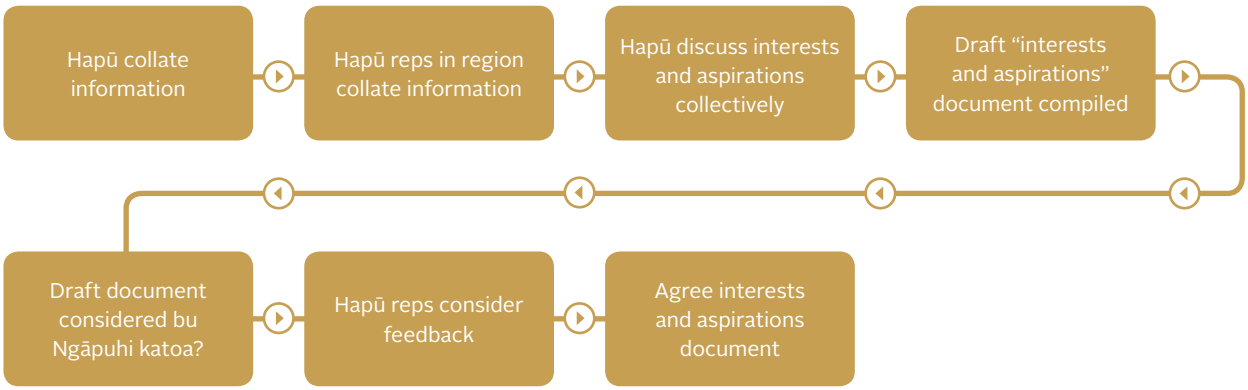
Hapū representatives will then participate in their regional forums and discuss how their interests differ or can align. This will establish regional interests and aspirations.

Where required, these hapū and regional aspirations and interests will feed into the collective forum for matters with a cross-region or Ngāpuhi-wide common interest. Based on these recommendations, the regions will collectively establish any Ngāpuhi-wide interests and aspirations.

How we bring these to bear in negotiations

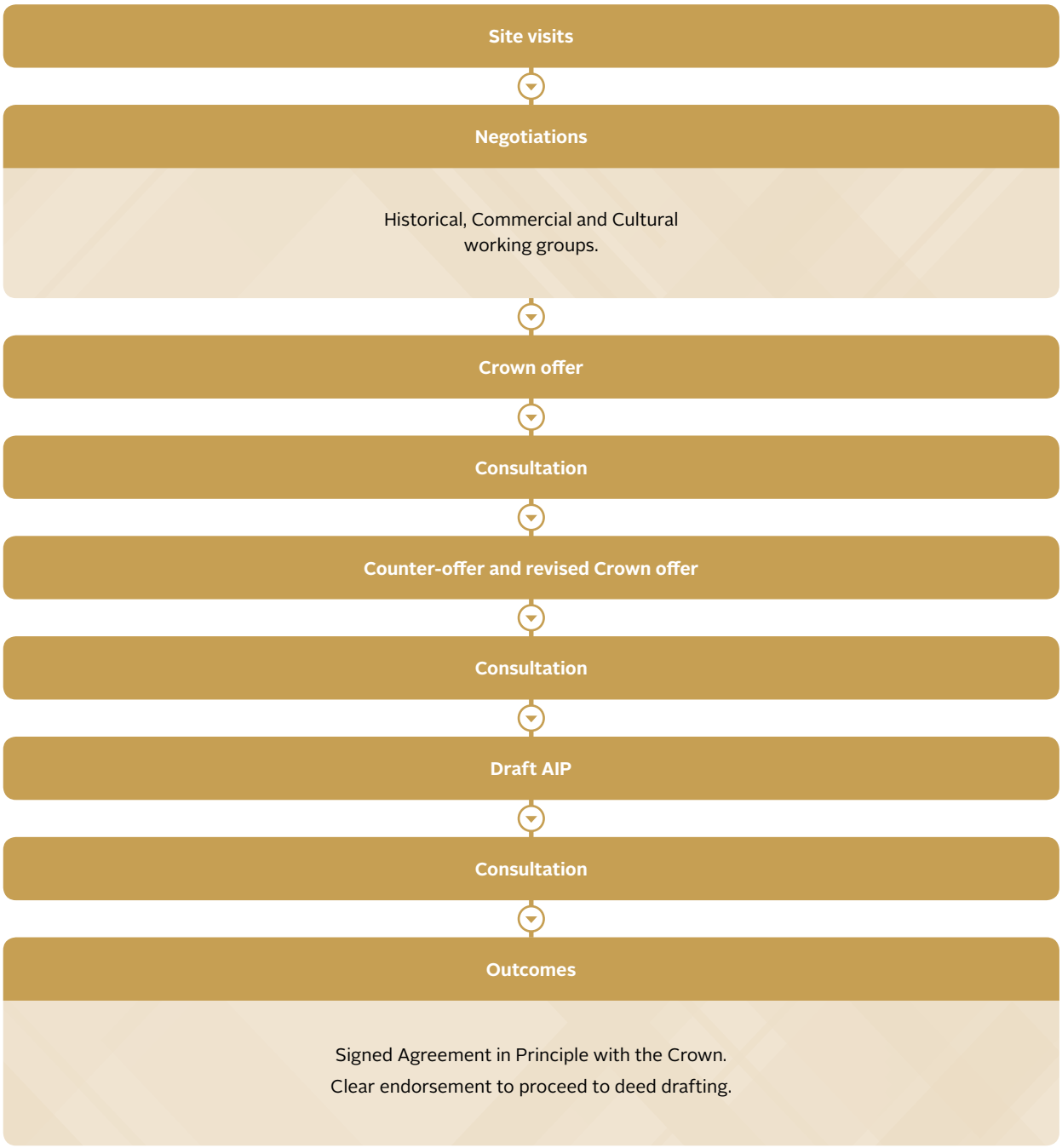
Through determining hapū, regional, and Ngāpuhi-wide interest and aspirations, hapū decide together how their interests will be reflected in negotiations. They will also use these to develop and approve negotiation plans and instructions to negotiators.

Early in the negotiations there will be opportunities to take the Crown team around the rohe and discuss significant sites and our aspirations with them. There will also be opportunities for hapū and our representatives to meet directly with the Crown to tell them about the historical grievances associated with a particular area.



Ngā take tohetohe
How will we negotiate

Phase two – negotiations to AIP



We can form working groups to work on issues of common interest within regions or across regions as necessary. Working groups will focus on the interests and aspirations of relevant hapū in relation to the region or kaupapa. They will work with the negotiators on redress options for discussions with the Crown.

Here's an example of how that may work in practice:

- Hapū from three regions identify an interest in a culturally and historically significant site but not all of the hapū in each region have an interest in the site
- Those hapū with interests in the site meet together, and with the negotiator(s), to discuss those interests and their aspirations for redress.
- If their associations and interests differ they may think of ways that any redress could recognise those differences.
- For example, if the site is a historic reserve, and is of importance to all Ngāpuhi but some hapū are ahi kaa, they could:
  - Seek to have the site vested in the ahi kaa hapū collectively (which would require those hapū to set up governance arrangements); or
  - Seek to have the site vested in all Ngāpuhi as an historic reserve but have the ahi kaa hapū appoint the reserve committee which will manage the reserve.

What do we do if the interests of hapū differ?

It's inevitable this will happen. The key for us will be working out how we can shape the redress to meet differing interests.

Ngā take tohetohe
How will we negotiate

Phase three - from AIP to implementation



Communications

We recommend there is a robust communications plan to ensure we reach as many of our people as possible - in various ways that suit different audiences. As we move through the negotiations process we all need to have information, know what's going on and how to contribute.

We want it to be easy for us all – our Rangatahi, our Kuia and Kaumātua and those in between – to be informed, understand the process and its implications. Otherwise we could find there's little or no support for the outcome.

That is also consistent with the Tribunal Report, in which the Tribunal referenced using a broad range of communications tools to ensure both transparency and engagement.

In the transition towards negotiations, page 38, we suggest the hapū working in the regions commence development and begin to implement a cost-effective and efficient communications plan.

The communications plan will include:

- Development and maintenance of hapū databases so we can reach our people
- Hui: scheduled for all groups within the mandated structure at regular intervals, and at minimum, as often as required to consider key decisions.
- A website containing:
  - All settlement information;
  - All relevant documents, including pānui and correspondence;
  - Media statements and coverage;
  - FAQs;
  - Contact information.
- Facebook: it is anticipated Facebook will reach a wide audience. As approximately 34.5 % of Ngāpuhi are under the age of 15, and a further 30% under 29 years of age, this is vital. Links can be provided to the website and other relevant social media sites.
- Twitter: Likewise, Twitter reaches a wide audience, promoting interest and discussion of issues, and can be used to promote access to the website.
- Monthly E-pānui: This newsletter will be distributed on a regular basis to the wider Ngāpuhi community through the website, social media and databases to provide updates on negotiations, media coverage and hui-ā-hapū.

We also think a Ngāpuhi app could be developed to keep us all current with developments direct to our smart phones and devices.

Ngā pātaitai
Frequently asked questions

1. Who makes the decisions?

Representatives (teams or individuals) chosen by their hapū will gather in regional groups to make decisions about negotiations. Hapū will also have a direct say in negotiations through working groups and at the negotiation tables. We expect that all decisions will be well-informed by thorough communication on an ongoing basis with hapū members, including Kuia Kaumātua and members living outside the region.

2. How will decisions be made?

At a hapū level, decisions will be for hapū to determine. At a regional level, by consensus or in the event consensus cannot be reached then a decision of 75% of the hapū would decide.

For issues that only affect some hapū within their respective regions then ONLY those hapū would be involved in the decision to be made by consensus or 75% of those hapū.

3. What decisions will the regions be making?

Regional representatives will gather to establish regional and Ngāpuhi-wide aspirations and interests based on the recommendations of the collective forum. The regional representatives will also establish an overall negotiations plan and strategies, including milestones and timelines, a process for addressing overlapping claims, and a dispute resolution mechanism. They will set up negotiating tables and appoint negotiators, in consultation with hapū. They will also direct the operational legal entity through appointed representatives on the entity.

4. What happens if I am in more than one hapū?

You can participate in the choosing of representatives and decision-making for each of your hapū in accordance with the tikanga of the hapū. Hapū representatives can be chosen to represent more than one hapū.

5. What region will my hapū be in?

During the transition process to negotiations that will take place following this report, it is expected that hapū will appoint their representatives and those representatives will discuss and determine the structure and composition of the regions.

6. Can my hapū be in more than one region?

Yes, as long as the hapū has legitimate interests within those regions. The feedback from the regional hui acknowledges natural and historical alliances.

7. Will all hapū have the same voting powers?

It is anticipated that in the event any decision does come to a vote, each hapū will have one vote in each region within which it participates. Hapū representative teams may determine that some decisions on particular issues should be made only by certain affected hapū, or by more than one region.

8. What happens to my Wai claim?

All historical Ngāpuhi Wai claims will be settled through these negotiations. We expect that Wai claimants (whether individual or representing larger groups) will ensure their hapū representatives and regions are aware of and understand the nature of their interests and aspirations as a negotiations plans and strategies are developed. We also encourage the hapū and the claimants to work closely together throughout the process.

9. How will this be funded?

The process will be funded through the usual way – a combination of claimant funding from the Crown and funding from the Crown Forestry Rental Trust. The Crown does not decide how funding will be allocated to support our negotiating structure – it is up to us to determine that.

10. How will we resolve disputes arising from conflicting interests and aspirations?

It is likely that internal compromises will be required both within hapū and at the regional forums from time to time. Similarly, it is possible that negotiators may receive conflicting instructions from different groups. If these cannot be resolved in the regional or collective forums, an agreed dispute resolution process will need to be initiated.

11. Will the other iwi and hapū organisations including trusts play a role?

Feedback from the hui and wānanga indicated that hapū representatives may decide that there is a benefit in fostering a relationship with Rūnanga and with other existing entities. Who and how those organisations may play a role will be for the hapū, regions and collective forums to determine.

12. How does Te Paparahi o Te Raki fit into this?

The Ngāpuhi claims being heard and reported on in the Waitangi Tribunal's Te Paparahi o Te Raki inquiry help inform why a treaty settlement is necessary. Some of the information collated and presented to the Tribunal will inform hapū interests in potential settlement redress and aspirations for the future. Ultimately all Ngāpuhi claims relating to historical grievances will be settled as part of this process. The Tribunal's final report is not necessary for the completion of negotiations, although it is acknowledged that this is an important step in the settlement process.

13. What level of support will be required to proceed to negotiations under this proposed structure?

The recommendations in this report will be considered by all hapū, and Ngāpuhi katoa involved in the process. These recommendations meet the concerns identified in the Tribunal Report and many of those who have provided feedback. We acknowledge that the Tribunal recommended that at least a support of 65% is required by the hapū of Ngāpuhi to demonstrate a required level of support.

14. Will a new mandate be necessary?

The pathway we are recommending has been designed to enable us to evolve the existing mandate (which would require amendments to the existing Deed of Mandate, mandate addendum and trust deed) rather than start that process again.

15. Will there be any criteria or vetting process for those with criminal convictions?

The Tūhoronuku mandate has eligibility criteria which excludes those with convictions for dishonesty offences from holding representative positions. Feedback before that mandate was recognised by the Crown suggested that the eligibility criteria should be expanded to exclude those who have convictions for other criminal offences. We are interested in your feedback on what eligibility criteria are appropriate.

Ngā hua taketake
Where to from here

Your feedback

We have put together this report and are now bringing it back to you to consider. We are inviting all Ngāpuhi, wherever they live, to give us your feedback by 29 April 2016. Feedback can be provided to Ngāpuhifeedback@justice.govt.nz.

We will consider your feedback and release a final report on 6 May.

Recommended indicative next steps

There are a number of steps required to get our recommended pathway to settlement underway. The Ngāpuhi engagement group recommend the following indicative timeframe and next steps.

Consultation on the recommendations Now-May 2016

- Share recommended pathway with hapū and people of Ngāpuhi
- Respond to questions, provide additional information & clarification as needed
- Consider feedback received
- Distribute final report on recommended pathway
- Communicate withdrawal option and its consequences relating to Crown policy constraints.

Transition steps May-July 2016

- Establish transition working group to lead transition work
- Develop and implement process to confirm hapū lists & develop databases
- Identify and implement amendments required to Deed of Mandate and Trust Deed, including dispute resolution and hapū withdrawal mechanism
- Hui-a-hapū to document tikanga process for selecting representative teams and decision-making processes
- Develop information on roles and responsibilities of representatives at hapū, regional and collective levels
- Hapū choose representatives/teams
- Regional hui to choose regional representatives to mandated entity, regional coordinators and regional teams to participate in collective forum
- Establish process for collective discussions and documentation of discussions and recommendations to regions
- Consider and implement discussion on name change
- Establish "terms of reference" or an agreement on operational principles for how hapū and regions will work together through the negotiations process (akin to a charter) to reflect accountability and commitment to process and agreed timelines.

Preparation for negotiations July-[when?]

- Gathering of hapū/regional/collective aspirations/interests
- Preparation of negotiations plan, including strategy, parameters for negotiations, timelines/milestones
- Establish reporting systems
- Work with Crown to establish process for addressing external overlapping claims
- Establish funding sources, develop budgets and funding allocations for negotiations
- Set up negotiating teams/working groups, negotiators
- Put in place all necessary administrative support
- Establish communications strategy
- Implement development of components of strategy (e.g. website, social media, app for updates/notices)
- Crown to provide information as required to support Ngāpuhi work (ongoing).

Attachments

Attachment one

Waitangi Tribunal Ngāpuhi Mandate Inquiry Report: summary of findings

The Waitangi Tribunal described Ngāpuhi as unique in size and to the extent it is made up of strong, autonomous hapū. It sees hapū rangatiratanga as central to Ngāpuhi tikanga. It saw the protection of hapū rangatiratanga as the core duty of the Crown in the Ngāpuhi mandating process.

The Tribunal was satisfied all involved in the mandating process made a considerable effort to meet the expressed desire for Ngāpuhi to move together to settlement. It found the Crown's involvement in the mandating process was typified by regular, genuine, high level engagement over many years.

It found that the Crown failed to actively protect hapū rangatiratanga in recognising the Tūhoronuku IMA mandate because:

- The omission of hapū from the definition of Ngāpuhi privileges the individual over the hapū;
- The process for selection of Hapū Kaikōrero does not ensure that hapū control who will represent them in negotiations;
- The Crown recognised the mandate of an empty structure. Subsequent appointments of board members and negotiators proceeded despite only a minority of hapū having selected Hapū Kaikōrero;
- The Crown's insistence that Ngāpuhi settle as a single entity has overridden any opportunity for hapū to collectivise in natural groupings of their own choice;
- The settlement timeframe is such that hapū will very likely lose the opportunity to seek binding recommendations from the Tribunal; and
- There is no workable withdrawal mechanism when the clear ability to withdraw would give hapū currently opposing the Tūhoronuku IMA the confidence to become involved, knowing they are not trapped if they lose faith in their mandated representatives.

The Tribunal also recognised, however, that there is broad support for settlement within Ngāpuhi, and said that momentum towards settlement should not be stopped dead in its tracks.

It stated "Although we consider the flaws we have identified in the Tūhoronuku IMA structure to be fundamental, we also consider that they can be remedied without restarting the entire mandate process".

The Tribunal did not recommend the Crown withdraw its recognition of the Tūhoronuku IMA mandate. It stated that once the issues it identified had been remedied "the Tūhoronuku IMA will be capable of leading a negotiation on behalf of hapū".

The Tribunal recommended negotiations with Tūhoronuku IMA be put on hold until the Crown can be satisfied of the following matters:

- That Ngāpuhi hapū have been given the opportunity to discuss and confirm or otherwise whether they wish to be represented by Tūhoronuku IMA in the negotiation of the settlement of their historical claims;
- That hapū who wish to be represented in the Tūhoronuku IMA have been given the opportunity to confirm or otherwise their Hapū Kaikōrero and the hapū representation on the Tūhoronuku IMA board;
- That Ngāpuhi hapū have been given the opportunity to discuss and confirm or otherwise whether they consider there is an appropriate level of hapū representation on the Tūhoronuku IMA board;
- That the Tūhoronuku IMA Deed of Mandate has been amended to include a workable withdrawal mechanism for any hapū which does not wish to continue to be represented by Tūhoronuku IMA; and

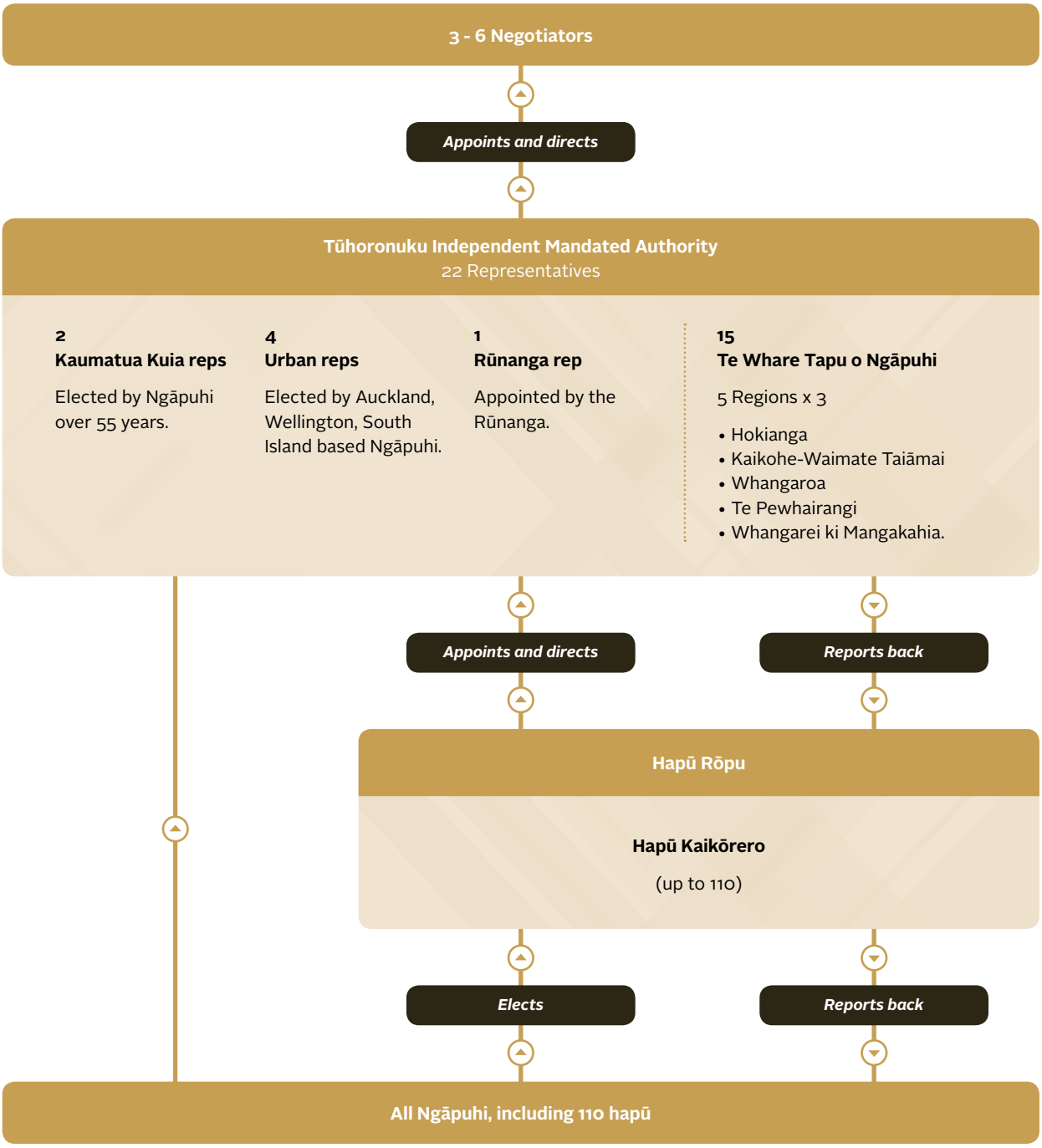
- The Crown should require as a condition of continued mandate recognition that a clear majority of Hapū Kaikōrero remain involved in Tūhoronuku IMA.

The Tribunal also recommended the Crown support hapū which withdraw from Tūhoronuku IMA to enter into negotiations with the Crown to settle their Treaty claims as soon as possible and, preferably, at the same time as other Ngāpuhi negotiations.

The Tribunal noted, however, that "the claimants for their part should be aware, as they say they are, that hapū-by-hapū negotiations and settlement is not a realistic expectation. For smaller groups who decide to go it alone, should that opportunity be given, there is a very real possibility that they will not secure the specific redress they desire and that the settlement of their claims will be long delayed".

Attachment two

Tūhoronuku IMA structure



Attachment three

Alternative pathways considered by the engagement group

We have explored and considered five alternative pathways and it is our recommendation that these not be considered as preferred options, for the following reasons.

1. Continue with the existing mandate without changes

While substantial work has gone into getting the current deed of mandate to this point, the debates within Ngāpuhi and the findings of the Waitangi Tribunal have highlighted that some significant changes are needed to strengthen and enhance hapū rangatiratanga. Unless changes are made the current division will continue and further litigation is likely. This would further damage our cohesion, absorb our scarce resources and delay our progress.

2. New mandate, negotiate as one entity

Under this approach a group would put a new proposal, to vote on, to our hapū and Ngāpuhi katoa for how we might organise to negotiate together.

We would, however, lose the significant progress made to date. It would take considerable time and resource to start a new mandate process from the beginning. It would require access to a Ngāpuhi database (to enable communication with as many Ngāpuhi as possible). Mandating processes take, on average, two years. The Tūhoronuku IMA mandate process took six (6) years.

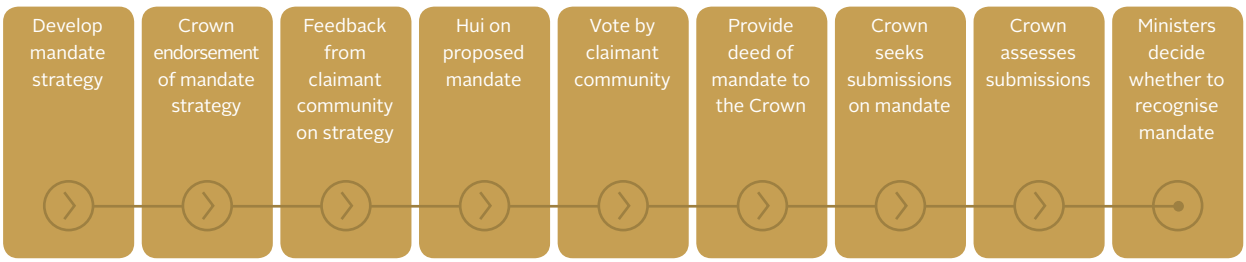
The Waitangi Tribunal said the flaws it identified in the current Deed of Mandate can be remedied, without restarting the mandate process.

3. New mandates for multiple region-based entities, negotiating in parallel

Under this approach hapū could form five (5) or six (6) regions with each grouping of hapū region seeking a mandate from people to regionally based settlements. This is similar to our recommended proposal except each region would hold its own mandate and be accountable to those that sit within the region.

This would provide a level of regional autonomy while preserving the opportunity to work together on shared redress. There is a possibility we could complete our settlements at the same time.

There would, however, be additional time and effort required if regions do not already have the necessary governance structures (such as regional databases to enable communication with the members or all hapū in the region) in place. The regions would need to be determined and agreed by hapū. There is a risk some hapū may not want a solely regional approach. All regions completing the mandating process (outlined below) and being ready to negotiation in parallel will be challenging. This would mean we are more likely to default to the 4th pathway.



Trying to negotiate in parallel could cause tension between hapū as some may feel others are holding them back if some regions take longer to achieve a mandate or want to take a more time in negotiations than others. It would weaken the negotiating leverage and likely mean that less would be achieved through settlement.

It is also possible, depending on how regions are formed, that some will not be eligible for funding assistance for the negotiations process from the CFRT.

4. New mandates for multiple region-based entities, negotiating separately on own timeframes

This would involve hapū forming into regions with each region working to its own timeframe. Each region would need to develop a database to communicate with hapū members, wherever they live.

This approach could provide an increased level of regional autonomy but where interests of hapū cross region, there would need to be still need to be a level of resolution of overlapping interests.

The Waitangi Tribunal strongly encouraged claimant groups to proceed together. Negotiating separate settlements on differing timeframes can severely limit the ability to negotiate collective redress or may mean those in negotiations first effectively set the settlement agenda (if some regions are yet to mandate). It will be difficult for us to utilise collective leverage against the Crown in this scenario.

5. Do not negotiate with the Crown (seek remedies through the Waitangi Tribunal)

This would mean waiting until the Waitangi Tribunal has reported and then asking it to make binding – and non-binding – recommendations to the Crown on what our redress should be. The Tribunal would also have to recommend to the Crown who the redress should go to

This pathway is inconsistent with the desire to proceed to settlement. Negotiations provides the opportunity for Te Tiriti partners to talk directly to each other rather than communicate through a third party.

The Waitangi Tribunal made a finding, in its Ngāpuhi Mandate Inquiry Report, that in recognising the Tūhoronuku IMA mandate the Crown had effectively removed the capacity for hapū to seek binding recommendations from the Waitangi for remedies for their Treaty grievances. The land the Tribunal can make binding recommendations over is Crown forest licensed land and former State Owned Enterprise land with a section 27B memorial on its title. It came to this conclusion because it considered it unlikely the Wai 1040 Te Paparahi o Te Raki Tribunal would be able to report in full before a settlement is reached.

It is not possible to seek remedies through the Waitangi Tribunal until the Tribunal has issued a report stating we have well-founded claims. The timing for that is uncertain.

Some of the land the Tribunal can make binding recommendations over will be available through negotiations. Other land (which is now in private ownership) is not. The Tribunal is not, however, able to make binding recommendations over other Crown lands in our rohe which may be of more importance to us. Nor can binding recommendations from the Tribunal provide us all the types of redress that are available through a negotiated settlement. If the Tribunal made non-binding recommendations in relation to those lands =we would still have to get the Crown to negotiate to get redress over those lands.

The remedies process can also be divisive and expensive. Any Wai claimant whose claim the Tribunal has found is well-founded can seek binding recommendations from the Tribunal. If that claim is for land which is of interest to others, including hapū, then they may have to join the litigation process to protect their interests.

It is important to note the Tribunal will retain its jurisdiction to provide binding recommendations until settlement legislation is introduced. Before settlement legislation is introduced we would have assessed what we've negotiated in settlement against what could be available under the Tribunal's binding recommendatory powers and made a decision about which way to proceed.

6. Use an alternative forum e.g. the United Nations or World Court

We could take our claims for redress to an international forum. Seeking assistance from an alternative international forum such as the United Nations or the World Court will cause considerable delay and expense. Nor is there any certainty that those bodies could provide us with a better outcome than that we can negotiate ourselves. International forums will generally require us to deal with the government before they consider our claim. They may also send us back, to deal directly with the government, after they have considered our claim.

Attachment four

Recommended hapū withdrawal mechanism

The engagement group recommends the following hapū withdrawal process, which is based on models used in other negotiations:

Hapū withdrawal:

1. Individual hapū hold a hui ā hapū to consider whether to withdraw from the mandate. The hui must be publicly advertised at least 21 days before. The venue, date, time and purpose of the hui must be stated as well as the resolutions to be put and the consequences of withdrawal.
2. The Crown must provide a statement of potential consequences including Crown policy that withdrawal means that hapū will no longer be in negotiations and whether the Crown is likely to consider a hapū to be a large natural grouping suitable for negotiations and the timing of those negotiations, mandating requirements etc. If it did, it may be a considerable delay before negotiations could commence.
3. If the initial hui supports withdrawal the hapū gives 30 days written notice to the region, collective forum and Te Hononga Iti of its intention to withdraw from the mandate including the reasons for proposing withdrawal and the consequences of withdrawal.
4. Within the next 30 days the region and/or collective forum and the individual hapū hold at least two hui to discuss and attempt to address relevant issues leading to the decision to withdraw. The region and/or collective forum has the right of response at those hui to encourage them not to withdraw. If this resolves the issues the representatives report back to their hapū.
5. If not resolved, the individual hapū then holds another hui a hapū to confirm the intention to withdraw. It needs to be advertised 21 days before. The venue, date, time and purpose of the hui must be stated as well as the resolutions to be put and the consequences of withdrawal.
6. Each advertisement must give consequences of withdrawal, and they must also be given at each hui and prior to motions being put.
7. If all requirements are met for withdrawal as described above the hapū would provide written notice to Te Hononga Iti.

Withdrawal of mandate:

1. Those seeking to withdraw the mandate must inform the regions, collective forum and Te Hononga Iti in writing of their intention to seek the withdrawal of mandate. This is to be co-signed by 60% of the hapū representatives or by a certain number (possibly 5,000) of adult members of the iwi.
2. Meet with Te Hononga Iti to try to resolve the matters that led to the effort to withdraw the mandate.
3. If the matter is not resolved, organise a series of publicly notified hui at which the proposal to withdraw the mandate will be discussed. At least 21 days noticed must be given in national and regional media, advertisements must outline the purpose of the hui, provide background to the concerns raised and state the resolution to be put to the hui. Consequences of the decision must also be outlined;
4. A Crown observer from Te Puni Kōkiri is to attend the hui.

Under either scenario (total or hapū withdrawal) the Crown would look at the process followed (in terms of whether it gave all affected people the opportunity to participate) and the level of support relative to the size of the claimant group. Ministers would then need to assess whether:

- To recognise the withdrawal on the basis of the process undertaken;
- To negotiate separately with the group who has withdrawn or whether their claims will continue to be covered by the negotiations; and
- Whether the remaining level of support for the mandate is sufficient to continue negotiations.

Attachment five

Ngāpuhi hapū

Kai Tangata, Kaitore, Kohatutaka, Matarahurahu, Ngā Uri o Te Pona, Ngai Tai, Ngai Tāwake, Ngai Tū Pango, Ngai Tūpoto, Ngai Tūteauru, Ngāre Raumati, Ngāti Haiti, Ngāti Hao, Ngāti Hau, Ngāti Hine, Ngāti Hineira, Ngāti Hinemutu, Ngāti Horahia, Ngāti Hua, Ngāti Hurihanga, Ngāti Kaharau, Ngāti Kahu o Torongare, Ngāti Kahuiti, Ngāti Kairewa, Ngāti Kawa, Ngāti Kāwau, Ngāti Kawhiti, Ngāti Kerewheti, Ngāti Kiriahi, Ngāti Kohu, Ngāti Kōpaki, Ngāti Korohue, Ngāti Korokoro, Ngāti Kura, Ngāti Kuta, Ngāti Māhia, Ngāti Manu, Ngāti Mau, Ngāti Miro, Ngāti Miru, Ngāti Moe, Ngāti Moerewa, Ngāti Mokokohi, Ngāti Ngāherehere, Ngāti Pākahi, Ngāti Pākau, Ngāti Pare, Ngāti Parenga, Ngāti Patutaratara, Ngāti Pongia, Ngāti Pou, Ngāti Rāhiri, Ngāti Rahuwhakairi, Ngāti Rangi, Ngāti Rangihana, Ngāti Rauwawe, Ngāti Rēhia, Ngāti Ruamahue, Ngāti Taka, Ngāti Tautahi, Ngāti Te Ara, Ngāti Te Rino, Ngāti Te Tārawa, Ngāti Tipa, Ngāti Toki, Ngāti Torehina, Ngāti Toro, Ngāti Tū, Ngāti Tuapango, Ngāti Ueoneone, Ngāti Uru, Ngāti Whakaeke, Ngāti Whakahotu, Ngāti Whakamaunga, Ngāti Whārara, Patuharakeke, Patukeha, Te Aeto, Te Hikutu, Te Honihoni, Te Ihutai, Te Kapotai, Te Kumutu, Te Māhurehure, Te Ngahengahe, Te Ngare Hauata, Te Orewai, Te Parawhau, Te Pōpoto, Te Pōtai, Te Pouka, Te Rauwera, Te Tahawai, Te Takoto Kē, Te Uri Kai Whare, Te Uri Karaka, Te Uri Māhoe, Te Uri o Hua, Te Uri O Ratakitaki/ Te Uri Rata, Te Uri o Te Aho, Te Uri Ongongo, Te Uri Taniwha, Te Uriroroi, Te Wahineiti, Te Waiāriki, Te Whānau Whero, Te Whiu, Tekau I Mua, Whānau Pani, Whānautara.

Attachment six

Waitangi Tribunal reporting times

Inquiry	*Hearing weeks*	*Hearing time*	*Reporting time*
Turanganui ā Kiwa	9	7.5 months	2 years 4 months
Te Urewera (report issued in 6 parts)	13	1 year 8 months	3 years 10 months (part 1) 10 years 6 months (part 6)
Wairarapa Ki Tararua	9	11.5 months	5 years 3 months
Whanganui land	18	2 years 9 months	5 years 6 months
Te Paparahi o Te Raki	Stage one: 5 Stage two: 26	10 months 4 years 6 months	3 years 9 months To be determined

Attachment seven

Membership of the engagement group

Te Kōtahitanga o Ngā Hapū o Ngāpuhi Taiwhenua

The following from Te Kotahitanga have been participating in the discussions:

- Willow Jean-Prime (Technician), Patu Hohepa (Technician), Rowena Tana (Ngā Hapū o Te Takutai Moana – not including Ngāti Kuta/Patukeha), Hone Tiatoa (Te Waimate-Taiāmai), Anaru Kira (Papa Hapū o Whangaroa), Hona Edwards (Whangarei), Sharon Kaipo (Mangakahia), Claire Morgan (Hokianga – not including Ngāti Korokoro)

Tūhoronuku Independent Mandated Authority

The following from the Tūhoronuku IMA have been participating in the discussions:

- Moana Tuwhare (Kaikohe-Waimate-Taiāmai), Mere Mangu (Te Pewhairangi), Helene Leaf (Hokianga), Wiremu Hori (Whangaroa), Nora Rameka (Kaumātua Kuia) Kipa Munro (Tūhoronuku Project Team)

Office of Treaty Settlements

The Office of Treaty Settlements (OTS) is a government department tasked with directly negotiating the settlement of the historical claims of Maori under the guidance and direction of Cabinet.

The following from OTS have been participating in the discussions:

- Nigel Fyfe, Deputy Secretary - Lead Negotiator, Maureen Hickey, Negotiations Manager, Katherine Gordon, Principal Advisor, Thomas Bisley, Sam Anderson, Rosie Batt and Aaron Randall (Analysts)

Te Puni Kōkiri

Te Puni Kōkiri (TPK) is a government department that provides advice to Ministers on Māori issues. TPK can also assist claimant groups with information on mandate and governance issues.

The following from TPK have participated in the discussions:

- Tui Marsh, Cheryl Davies, Jaclyn Williams, Frances Lawton.

Others

The following have attended meetings of the engagement group:

- Hone Sadler (Tūhoronuku IMA Chair), Kara George (Tūhoronuku IMA Deputy Chair), Erin Shanks (Tūhoronuku IMA, Urban Representative), Pita Tipene (Te Kotahitanga), Rudy Taylor (Te Kotahitanga).