

Maranga Mai

Final Report

10 August 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 i te Hauāuru
Te Ramaroa titiro ki Whiria te paiaka o te riri, te kawa o Rāhiri
Whiria titiro ki Panguru ki Papata ki ngā rakau tū pāpata, ka tū ki te Hauāuru
Panguru, Pāpata titiro ki Maungataniwha
Maungataniwha titiro ki Tokerau
Tokerau titiro ki Rākaumangamanga
Rākaumangamanga titiro ki Manaia
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*

Tokerau is known as Matakāa to Ngāti Torehina, the hapū kaitiaki of the maunga.

Tīmatanga kōrero

Introduction

Ka whakamaharatia tonutia tātou i poua te mana o ngā hapū e ō tātou rangatira i haina i Te Tiriti o Waitangi, anā hoki, ehara nā Ngāpuhi i haina. He tohutohu tino nui tēnei i waenga i Te Karauna me ngā hapū – me mōhio, me tino tautoko kātahi anō ka mau kia tika, kia pono, ngā whakatau a te Karauna i ngā hē me ngā mamae mō āke tonu.

E whakaae ana te Rōpū Hono nei ki tā Te Rōpū Whakamana i Te Tiriti; hei whakatika i te mana o Te Tiriti, me whakahoki ngā hapū ki te turanga rangatiratanga. Kia oti tika ai, me mau tonu te rangatiratanga me ngā tikanga hapū, ā, me tautoko, me tiaki, me whakamana i ngā whakahaere whakatau.

Ahakoā rā, ko te whakahaere whakatau he neke kotahi noa iho i te mahi whakatau kerēme, ā, he mea nui kia mau tonu, kia mana tonu, kia tiakina tonu, te rangatiratanga me ngā tikanga hapū i ia wāhi o te hīkoi roa atu ki te whakatauranga, ā, ki tua noa atu.

Ko te moemoeā mō ngā hapū me te iwi mai inaianei ki te aohurihuri, kia piki te ora, te kaha, te hauora o ngā whānau me ngā hapū hei kaiwhakanui, whakakaha, whakaora, whakamana i o rātou haukāinga, e tāea ai e tātou katoa ki te tautoko tētahi i tētahi, tae noa ki te oranga nui tonutanga. Mā tenei e tū nui tonu ai a Ngāpuhi nui tonu.

We are continually reminded that our rangatira of our hapū were guaranteed rangatiratanga through Te Tiriti. Further to this Ngāpuhi did not sign Te Tiriti – it was hapū rangatira. This fundamental point in the Crown, Hapū, Te Tiriti relationship must be understood and respected if settlement for Crown breaches of Te Tiriti is to be considered just and enduring.

The engagement group agrees with the Tribunal that in order for the Treaty relationship to be repaired, hapū must be returned to a position of authority¹. For this to happen, it is essential that hapū rangatiratanga and hapū tikanga are respected, protected and enhanced in mandating processes.

However mandating processes are only one step in the negotiation phase of the settlement of our claims. It is just as important that hapū rangatiratanga and hapū tikanga are respected, protected and enhanced at every stage in the settlement process and beyond.

The vision for the future of our hapū and iwi is one which includes our whanau and hapū thriving as strong, healthy, powerful, political, social and economic communities in which we can collaborate and support each other to achieve our full potential. This is what makes Ngāpuhi great.

Siting the decision making authority where it should have always existed and supporting tikanga driven processes throughout our ways of operating is neither new or novel or quaint romanticism, it is where our strength really lies, it is where we can be our true selves and identify with and be proud of who we are as a people. It is a fundamental part of reversing the loss of rangatiratanga, identity and culture and restoring the cultural, social, economic, environmental and political position of ngā hapū o Ngāpuhi.

We encourage all our people to believe this can and will be our reality.

¹ Attachment Six sets out the membership of the engagement group.

Rārangi take

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Kupu whakataki

Preamble

Tēnā tatou ngā hapū whanau Ngāpuhi,

We would like to thank the significant number of Ngāpuhi who took the time to participate in hui and to consider our draft Maranga Mai report and provide feedback. Throughout the process there was a good level of support expressed in principle for the kaupapa of the engagement group and the fact that it represented Ngāpuhi working together to resolve the issues outlined in the Waitangi Tribunal's Ngāpuhi Mandate Inquiry report.

We have considered your feedback carefully and discussed our collective response to it. In most cases we have agreed how best to respond and reflect your feedback. This is reflected in the various points of clarification and additional information included throughout this final report.

Most of your feedback supported real change and evolving the existing mandate. This will need to begin with the transitional phase.

We have recommended next steps for implementing the changes required to evolve the Deed of Mandate.

Those steps would be best carried out by an interim delegation of Tūhoronuku IMA and Te Kōtahitanga continuing to

work equally together in a transition team until the point at which the new structure is in place and the hapū have their teams ready to join the negotiations process and be in a decision-making role.

There is a divergence of views as to whether or not to retain specific urban representation. This is explained in the report.

Further to that we acknowledge the strength of wairua, and the aspirations of our respective hapū, whanau and organisations. We acknowledge that the same strength will need to carry us through a transition phase where it may well be tested as it has been during this process.

Feedback

This final version of the Maranga Mai report reflects feedback provided at hui and wānanga and via written submissions on the draft report and throughout our engagement process. Your feedback and the process by which we considered it may be found at www.govt.nz/treaty-settlement-documents/Ngapuhi/

Nō reira kia ū, kia maia i roto i te kōtahitanga, kia Ngāpuhi ai tatou.

Whakarāpopototanga

Summary of report

In response to the Waitangi Tribunal's September 2015 Ngāpuhi Mandate Inquiry Report, Te Kōtahitanga o Ngā Hapū Ngāpuhi Taiwhenua (Te Kōtahitanga) and the Tūhoronuku Independent Mandated Authority (Tūhoronuku IMA) entered into a focused 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 options and recommendations for a great, hapū-driven, negotiation process which will be able to achieve the best settlement redress for our people. We have worked together to come up with options and recommendations on a pathway which enhances our hapū rangatiratanga and supports whanaungatanga.

The key issues for engagement were the issues and recommendations identified in the Waitangi Tribunal's Ngāpuhi Mandate Inquiry Report and any other issues agreed between the parties.

Our role was to develop options and recommendations that are advisory and non-binding only for our respective hapū and/or organisations to consider.

The parties agreed to:

- provide reasons for any options and recommendations that it makes;
- note any issue where divergence of views is too great to resolve the issue and provide information on the level of agreement within the parties and the reasons why resolution was not achieved on any given issue.

We have no delegated authority to make decisions that are binding on hapū and/or organisations. The engagement was undertaken on a without prejudice basis and support for any options will be subject to the internal processes of each party that chooses to engage.

We have remained mindful that the Waitangi Tribunal, in its Te Paparahi o Te Raki Stage 1 report, He Whakaputanga me Te Tiriti/the Declaration and the Treaty, concluded that *"in February 1840 the Rangatira who signed Te Tiriti did not cede their sovereignty"*. We are also aware of all the hard work undertaken in the Stage 2 inquiry and note the hearings of those claims will conclude in mid-2017.

Preferred pathway - evolve the mandate

Based on your feedback, the preferred pathway is to evolve the existing mandate by making changes that address the issues identified by the Waitangi Tribunal Ngāpuhi Mandate Inquiry Report. This will enable us to proceed together to negotiations with the Crown in a regionally co-ordinated way that enhances hapū rangatiratanga.

We have explored, considered and fully discussed alternative pathways. Those pathways are also informed by the communication and feedback received.

We have agreed on the majority of changes and this summary sets out our points of agreement. We are pleased to say that in consideration of all communications and deliberations there is only one issue where we find a divergence of views and have been unable to reach resolution. This is the question of urban representation. Our report provides information on the impasse that we found ourselves in and we give our reasons and potential options for hapū to consider at pages 28 - 33 or where those issues are raised throughout the report.

We further recommend proceeding into the transition phase which will be most effective if both Tūhoronuku IMA and Te Kōtahitanga work together to design and implement the various steps that need to be taken to transition to the new structure.

Whakarāpopototanga

Summary of report (cont.)

Decision making:

Hapū select representative teams to participate in regional forums, to make decisions about negotiations:

- decisions should be made in the regions by consensus and/or tikanga. If consensus cannot be reached a 75 percent majority is required. In the case of disputes the disputes resolution process will be used;
- each hapū has one vote in its region;
- hapū may participate in more than one region.

Collective Discussion:

There should be a collective forum ("Te Hononga Nui") which forms a space for those hapū teams and representatives to have discussions on issues that affect more than one region and/or all of Ngāpuhi:

- it could make recommendations to the regions;
- it should not make decisions about negotiations.

Mandate and accountability:

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

- it should 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 should have limited authority to fulfil only the administrative functions assigned to it;
- it should not make any decisions about negotiations. It will be directed by the hapū through the regions.

Representation:

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

- hold hui-a-hapū;
- nominate their representatives according to their tikanga;
- choose how many representatives they want;
- 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.

"Urban" Ngāpuhi representation

The engagement team continue to agree (as per the draft Maranga Mai report of 1 April 2016), that hapū decide how to incorporate those living outside the rohe within their hapū teams combined with a focus on the development of a database and communications strategy to improve communications.

As mentioned in the Preamble, there is a divergence of views. In addition to the above proposal, Tūhoronuku IMA members support specific urban representation being retained. The detail of the two proposals around this are set out and explained at pages 28 - 33.

Te Rūnanga-ā-lwi-o-Ngāpuhi representation:

Te Rūnanga-ā-lwi-o-Ngāpuhi should not have a representative role within the proposed structure.

Dispute resolution:

There is a need for dispute resolution processes that can address 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) 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 should discuss this in their regions as part of the transition process set out on pages 51 - 52.

Communication and hapū database:

We recommend the development of hapū communications strategies including the development of databases allowing hapū to communicate with their members.

Police vetting:

We consider it is for hapū to decide on the approach to hapū representatives who may have criminal convictions. We recommend hapū representatives appointed to Te Hononga Iti should have no criminal convictions.

Alternative Options

Although the preferred pathway from the feedback was to evolve the existing mandate, we considered alternative pathways and these are summarised at pages 48 - 50.

The decisions before us

We are at a crossroads. 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

As our terms of engagement note, our task has been to provide options and recommendations for consideration and approval.

We urge hapū to review the full report thoroughly.

Mā ngā hapū anō ngā hapū e kōrero.

Me hohou te rongō

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 kōrero becoming almost commonplace amongst us. Some healing has occurred and 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, Hone Mihaka, commented:

It was particularly encouraging to see for the first time since the beginning of this voyage whānau of both Tūhoronuku and Te Kōtahitanga 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...

*Me hohou te rongō i waenganui
anō i a tātou o Ngāpuhi.*

Te kaupapa Process

Te huarahi o te wā *Our journey to date*

- 176 years of grievances.
- Hundreds of Wai claims filed with the Waitangi Tribunal.
- 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 Te 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 make 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 will 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 longstanding historical claims.

2007	<ul style="list-style-type: none"> 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.
2008	<ul style="list-style-type: none"> Te Rūnanga-ā-Iwi-o-Ngāpuhi (the Rūnanga) starts seeking views about how we want to progress a settlement of our historical claims.
2009	<ul style="list-style-type: none"> 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 15-member Board: Seven hapū representatives (elected by Ngāpuhi hapū) and eight other (urban/kuia/kaumātua and Rūnanga) representatives. In December 2009 Te Kōtahitanga o Nga Hapū o Ngāpuhi (Te Kōtahitanga) held its inaugural hui at the Te Kōtahitanga marae, Kaikohe, and set three strategic goals: <ol style="list-style-type: none"> to prosecute the case through the Waitangi Tribunal that hapū have never ceded their sovereignty (Stage 1 Hearings); to be a coordination point for hapū and claimants to prosecute their Tiriti o Waitangi grievances against the Crown (Stage 2 Hearings); to assist hapū to settle their Tiriti o Waitangi claims with the Crown in a manner that genuinely upheld the mana and tikanga of those hapū.
May 2010	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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”. Voting packs were sent to 29,289 adult Ngāpuhi (18 years and over). Of the 6,794 people who voted, 5,210 (76.4%) vote in support of the mandate and 1,584 (33.6%) oppose it. (The 2013 Census gave the total Ngāpuhi population as 125,601.)

2011-2013	<ul style="list-style-type: none"> The Crown facilitates discussions between Tūhoronuku and Te Kōtahitanga to address concerns raised about the mandate structure. Tūhoronuku agrees to make changes, including: <ul style="list-style-type: none"> increasing hapū representation on Tūhoronuku from seven to fifteen 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; separating Tūhoronuku, legally, from the Rūnanga – Tūhoronuku Independent Mandated Authority (IMA) is created.
March 2013	<ul style="list-style-type: none"> Stage 2 Te Paparahi o Te Raki (Wai 1040) hearings begin.
Mid 2013	<ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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% in support of the mandate 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.
Feb 2014	<ul style="list-style-type: none"> The Minister for Treaty of Waitangi Negotiations and the Minister of Māori Affairs recognise that Tūhoronuku IMA has secured a mandate to represent all Ngāpuhi in Treaty settlement negotiations.
March – Sept 2014	<ul style="list-style-type: none"> Fifteen claimants apply for, and are granted, an urgent Waitangi Tribunal inquiry into the Crown's decision to recognise the Tūhoronuku IMA mandate (Wai 2490). Seventy-two interested parties join the hearing in support of the application and fourteen interested parties join the hearing in opposition to the application.
Nov 2014	<ul style="list-style-type: none"> 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 <i>"in February 1840 the Rangatira who signed Te Tiriti did not cede their sovereignty"</i>. 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 2014 and March 2015	<ul style="list-style-type: none"> The Tribunal holds seven days of hearings in its Wai 2490 Ngāpuhi Mandate Inquiry.
Sept 2015	<ul style="list-style-type: none"> Ngāpuhi Mandate Inquiry Report (Wai 2490) released. This is discussed on page 14 of this report.
Sept – Nov 2015	<ul style="list-style-type: none"> Tri-partite engagement process developed and terms of engagement circulated.
Dec 2015	<ul style="list-style-type: none"> Ngāpuhi engagement group (Te Kōtahitanga, Tūhoronuku IMA and Crown) meetings begin.
Apr 2016	<ul style="list-style-type: none"> Draft version of Maranga Mai released by engagement group for discussion and feedback.
August 2016	<ul style="list-style-type: none"> Maranga Mai final report released. Engagement group meetings end.

Te huarahi o te wā Our journey to date (cont.)

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

The Waitangi Tribunal's Ngāpuhi Mandate Inquiry Report

In September 2015 the Waitangi Tribunal released the Ngāpuhi Mandate Inquiry Report (Wai 2490). 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 considered 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 Ngāpuhi engagement process

In response to the Waitangi Tribunal report, Tūhoronuku IMA, Te Kōtahitanga and the Crown decided to enter into a focused 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 recommendations for a hapū-driven negotiation process, which will be able to achieve the best settlement redress for our people. We have worked together to come up with options and 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. The Crown's role was to provide advice on the Crown's Treaty settlement policies to assist representatives from Tūhoronuku IMA and Te Kōtahitanga in developing workable recommendations. The Crown also provided administrative support for the engagement group. This report represents Ngāpuhi options for Ngāpuhi issues and where appropriate we have noted relevant Crown policy for your consideration.

A full list of participants and the Terms of Engagement are provided at Attachment Six. We acknowledge that some hapū chose not to engage with this process.

Draft report

The options and recommendations in the draft report were jointly developed by the delegated representatives of the engagement team. Our mahi, between December 2015 and March 2016, involved:

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

Both Tūhoronuku IMA and Te Kōtahitanga representatives acknowledge the many additional hui undertaken to inform their discussions. 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 were given feedback in written form – via email or through documents handed over at hui.

The engagement group considered all the feedback it had received (including comments from regional hui and wānanga) and, on 1 April, released its draft Maranga Mai report with recommendations on a pathway forward for settlement negotiations. A summary of all feedback is available at www.govt.nz/treaty-settlement-documents/Ngapuhi/

Te huarahi o te wā Our journey to date (cont.)

Final report

In April and early May 2016, the engagement group held five hui in the rohe, three hui in Auckland and one each in Hamilton, Wellington and Christchurch, to provide Ngāpuhi with an opportunity to engage with us on the draft Maranga Mai report. Hapū and taiwhenua hui were held, along with two Te Rūnanga-a-Iwi o Ngāpuhi Roopu Kūia and Kaumatua hui.

In the report, the group asked for email feedback on the recommendations. We received 151 submissions.

A detailed report summarising the approach the group took in considering the feedback, summarising and addressing the feedback is also available for anyone who wishes to read it. All feedback submissions are also publicly available at www.govt.nz/treaty-settlement-documents/Ngapuhi/

We then prepared this 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.

Te huarahi anga mua

Where we are 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.

Te 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 Attachment 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. Significant work has already been done by Wai claimants over many years.

The next step is pursuing redress for our claims.

Te huarahi anga mua Where we are going (cont.)

The opportunity

We are unique both in size – we are 18.8 per cent 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 per cent under 15 and just 4.5 per cent aged 65 and over) and 19.9 per cent 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.

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 five years could be some of the most important in our history.

We should not be rushed, but each passing month and year we delay entering settlement negotiations means we miss real cultural, social, economic, environmental and political 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;
- 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.

Mā ngā hapū anō ngā hapū e kōrero.

Te huarahi tutuki

How we get there

‘Evolve the mandate’ pathway

The mandate must evolve in order to address the issues identified by the Waitangi Tribunal report.

We have explored, considered feedback and fully discussed alternative pathways.

Feedback supported evolving the mandate and this 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.

We only have a divergence of view in regards to urban representation. This is clarified later in the report.

This pathway 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 coordinated way, driven, directed, and owned by hapū.

Why we would negotiate 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 as recommended in this report - collectively and regionally as Ngāpuhi in a hapū-driven approach - has a number of advantages:

- we will be a stronger, more coordinated 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 per cent of the Māori population);
- it gives us the most strategic options as we work out our future relationships – negotiating as one 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 coordinated 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.

Te huarahi tutuki

How we get there (cont.)

How we do it – proposed structure

The following representative structure is recommended for evolving the mandate. We note this structure is for organising our negotiations and will be wound up at the completion of that project (see page 35 on post-settlement governance). It supports hapū rangatiratanga while also allowing us to mahi tahi for the overall kaupapa of our settlement.

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 six regions and their names in this diagram are indicative only.

How we represent ourselves

Hapū

Hapū decide who will represent their interests. The process by which they will decide the person or team is set out on page 25. This means they are empowered to:

- hold a hui-ā-hapū to determine their tikanga/processes for selecting their representative/team;
- hold hui-ā-hapū and select their representatives according to their tikanga;
- determine kuia and kaumātua representation according to their tikanga;
- determine taitamariki representation and/or involvement according to their tikanga;
- 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

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

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 page 43 for more on this).

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). For issues that only affect some hapū within their respective regions, the expectation is that (consistent with tikanga) only those hapū would be involved in the decision to be made by consensus or by 75 per cent of those hapū. See “Ngā Take Tohetohe – How we will negotiate” on page 39 for further discussion.

The regions will be able to move discussions on issues that cross regional boundaries into Te Hononga Nui.

The regions will appoint/vote on who their representative/trustee to Te Hononga Iti shall be.

Te Hononga Nui – collective forum

The hapū within the regions decide who attends Te Hononga Nui on any given issue that we may need to collectively discuss. Examples of issues that may need to be discussed collectively are the make-up 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 coordinate the negotiations and redress, which affects us all. This forum would also include the involvement of our negotiators.

Through Te Hononga Nui, hapū have the flexibility to come together and determine the best way forward. Te Hononga Nui tikanga will be determined by hapū once the structure is up and

running. 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

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.

We recommend each region be represented by one representative. The region may appoint a proxy to attend if their representative is unable to.

Te Hononga Iti does not need to be a large body because it will be directed by the regional hapū. Its purpose is largely administrative.

There will be no set term of office for representatives to Te Hononga Iti. Appointment will be reviewed by the regions 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.

Te huarahi tutuki

How we get there (cont.)

It will also provide an important administration and mandate role, accountable to Ngāpuhi. It is recognised that funding parameters for the regions and the other parts of the structure will need to be clear. 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. 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.

“Urban” Representation

The engagement team continue to agree (as per the draft Maranga Mai report of 1 April 2016), that hapū decide how to incorporate those living outside the rohe within their hapū teams combined with a focus in the development of a database and communications strategy to improve communications.

There was a divergence of opinion in the engagement group on how urban Ngāpuhi might be represented in the proposed mandate structure and this is further discussed on pages 29 - 33.

We set out two options for consideration of the parties. One in which the hapū take sole responsibility

for how they ensure the voice of their urban members is heard and the other provides for specific urban representation in addition to the above.

Finding the right people for the job

Some feedback asked how we would identify people with the skills needed to be our representatives at the hapū, regional and collective levels. It was suggested guidance might be provided for hapū to use (if they want to), outlining the kinds of skills needed for representative positions within the mandate structure.

Hapū will use their own tikanga to determine their representatives. We know our hapū and people have the skills we need to take us through the settlement process. Sometimes we will need to bring in outside help on specialised topics. But first, let's recognise the skills among our own – for the negotiation process and beyond. We suggest there be work at the regional level to identify our skilled people. We also support the idea of a 'toolkit' – a collection of information that will provide guidance on the kinds of skills and experience that might be useful for different roles at different levels of the mandate structure. No one will be obliged to use this material, but it will be there for those who want it. The final decision on representation will always lie with hapū.

The approach proposes to cater 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 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 in the regions.

There may be a mix of regional negotiators and expert negotiators with specific skills, but that will be determined by the hapū through the regions and may be informed by discussion through Te Hononga Nui.

There need not be a single fixed team of negotiators for all purposes. There is the ability to involve different people, including hapū representatives, at the negotiations table for different purposes. Examples are issues arising at various 'levels' of the negotiation (hapū, regional, collective), or where specific knowledge or skills are required for a particular aspect of redress or for other settlement-related matters such as legal or financial arrangements.

Their role will involve:

Negotiation of proposed redress;

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

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

Who does what? Roles and responsibilities

Hapū/hapū teams

- Hapū decide independently how they are represented in their region(s) (whether by individual or group).
- One or more representatives.
- Gather and document aspirations and interests.
- Communicate and liaise with all members (including Wai claimants) wherever they live for input and feedback.
- Assess and advise level of support required in terms of guidelines, information, resources and advice to fulfil role required of them in this structure.
- Approve negotiations plan and instructions to negotiators.
- Follow agreed processes for dispute resolution and withdrawal.
- Meet 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 Hononga Nui.
- 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).
- Direct mandated entity through regional representatives.
- Decisions by consensus or 75% (each hapū has one vote in region).
- Meet monthly.

Hononga Iti

- Made up of one rep from each region (with one alternative member).
- 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.
- Is 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.
- Negotiate proposed redress.
- Develop options and proposals for regions to decide on.
- Provide strategic skills and advice on negotiations plans at all levels (hapū, regional forums, collective forum).

Ngā rerekētanga

Key changes to the representative structure

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 moves decision making to the hapū and regions.

Hapū representation

Currently:

- There is 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 one nomination is received for a hapū then an 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 choose 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.
- All hapū will be decision makers through their region/s.

Any disputes about a hapū representative or the process used for selecting representatives are the responsibility of the hapū to resolve amongst themselves using their agreed dispute resolution processes.

Ngā rerekētanga

Key changes to the representative structure (cont.)

Regional representation

Currently:

- Hokianga
- Kaikohe-Waimate-Taiāmai
- Te Pewhairangi
- Whangarei ki Mangakahia
- Whangaroa

New proposal:

- Hokianga
- Kaikohe-Waimate-Taiāmai
- Te Pewhairangi
- Whangarei
- Whangaroa
- Mangakahia

The six regions and their names in this proposal are indicative only.

Some feedback has suggested we have more regions or different regions to those proposed in the draft report. The engagement team have agreed to recommend no more than six regions, on the understanding that this is subject to further discussion, as suggested below. We think limiting the number of regions will promote agreed approaches between hapū in settlement negotiations. Adding regions will add to the burden in negotiations for hapū who cross regions, as well as increasing administrative costs when we will be working from a global funding budget. We note also it is anticipated we will set up negotiation working groups to deal with specific negotiation or redress issues, and this may also lessen the need for new regions.

In the Terms of Engagement we agreed to set out different viewpoints where agreement could not be reached. Our recommendation is for no more than six regions. That means a decision must ultimately be made as to the number of regions. Currently, the Tūhoronuku IMA

structure is based on five regions and Te Kōtahitanga structure has six regions.

The difference is that Mangakahia stands separate to Whangarei in the Kōtahitanga structure.

Te Kōtahitanga provided the following explanation of the Mangakahia Taiwhenua:

Initially the lands of Mangakahia were included within the Whangarei region but in December 2011 it was decided at a regional hui that Mangakahia hapū whanau would form their own region. This was not an effort to separate from their whanaunga in Whangarei, but to provide an opportunity for each to focus on their own hapū and rohe issues. In turn each region is supportive of the other. They believe having their own region is essential in being able to voice their concerns regarding the actions of the Crown and the impacts of those actions on the whanau, hapū and iwi of Mangakahia. Stage 2 hearing preparations and

whakawhanaungatanga with other hapū of Whangarei and other northern rohe is a continuing part of their process. They have maintained their own representatives and have hosted hearings and other hui, including hui for the engagement process.

Hapū representatives, once appointed, will need to discuss the configuration and names of all regions. We expect they will consider a number of factors, including good reasons for supporting the recommendation, natural alliances, budget implications and organisational efficiencies. Hapu were largely self-sustaining. Natural alliances within a region is also in itself not a new concept. Feedback from the hui and wānanga noted that hapū can still work together in smaller groups within regions, which may lessen the need to create new regions.

This will need to be fully discussed and determined by hapū for all regions during the transition phase.

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 according to their own tikanga.

We consider these changes will support hapū empowerment and enhance kuia and kaumātua participation across Ngāpuhi hapū. We confirm our recommendation for hapū to determine kuia and kaumātua representation according to their own tikanga, because we consider this will provide for wider

involvement of kuia and kaumātua throughout the settlement process. Kuia and kaumātua have helped to get us where we are and their kōrero will continue to guide decisions.

We acknowledge our recommendation is a change to the existing Tūhoronuku IMA

structure (that provides for kuia and kaumātua on the Board to be the 'voice' of all). We note our recommendation does not preclude kuia and kaumātua members of Ngāpuhi being appointed by their hapū (or region) to be involved at any level of the proposed structure.

Ngā rerekētanga

Key changes to the representative structure (cont.)

Urban representation

According to the 2013 Census, just over 40 per cent of us live in Auckland, and we also have sizeable populations in Waikato (10.7 per cent), the Bay of Plenty (6.4 per cent), Wellington (5.9 per cent) and Canterbury (4.4 per cent). We do not know how many of us live outside New Zealand and nor do we have data of who is connected with hapū at home.

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;
- it does not strengthen existing hapū networks outside the region;
- it assumes our people outside the regions are not part of their hapū nor can be represented by their hapū. This assumption is flawed in some but not all cases.

The negotiation and settlement process presents an opportunity to strengthen our hapū by encouraging reconnection 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, if hapū adopt this approach. This approach is referred to as proposal A

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.

Proposal A (through hapū):

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

Tūhoronuku IMA members of the engagement group propose this following approach, referred to as proposal B:

Proposal B (through hapū plus specific urban representation):

Proposal A, plus:

- Five representatives of urban Ngāpuhi form an urban forum and participate as of right at Te Hononga Nui.
- One of the five representatives sits on Te Hononga Iti as a trustee.

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 coordinate a group of regional representatives and, if appropriate, negotiators, to hold hui in major centres of the Ngāpuhi population at least 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).

A number of hui expressed support for enhanced communication. The representative structure would be accountable for ensuring any agreed opportunities which are outlined in communications plans for participation, are provided.

There was considerable debate over this issue resulting in a divergence of opinion within the engagement group.

We have outlined that both parties agree with proposal A and that it is important to include, connect and consult as widely as possible with Ngāpuhi wherever they reside.

We also acknowledge feedback included both urban and hapū-based opinion and that both spoke strongly, but it is fair to say that the team was unable to fully agree on how to weight those opinions against each other and as a result have two proposals for hapū to consider.

We also acknowledge that although we have some information on the internal location of Ngāpuhi we have a significant lack of knowledge on external populations including for example Australia who are completely left out of the discussion.

Ngā rerekētanga

Key changes to the representative structure (cont.)

Te Kōtahitanga engagement team option on urban representation – Proposal A

The primary focus of Te Kōtahitanga is that hapū tikanga, and hapū rangatiratanga be respected protected and enhanced during the mandate process and in our opinion proposal A accurately reflects that. The Waitangi Tribunal's Ngāpuhi Mandate Inquiry Report says "in order for the Treaty relationship to be repaired, hapū must be returned to a position of authority" and accordingly it is not appropriate to delegate that authority externally, nor provide for representation that has the potential to do so. Further to this proposal A as it stands does not preclude representation by hapū members who live outside the kainga, in fact it allows for it.

The Tribunal also states:

"We do not consider the dispersal of hapū populations to be an insurmountable problem in these very important circumstances where the hapū look to redress the injuries of the past and position themselves and their mokopuna to go forward. Nor do we see their requirement of such a crucial decision be made by hapū coming together to be unreasonable in this context, where the question is how their claims against the Crown are to be settled. We have no doubt that those who are interested will come home to their marae to make their opinion known if they are at all able, and that provision can be made for those who can not. We heard evidence about

how this is being done already with the use of video conferencing or other live technology or social media." (Chapter 5.2.1(6)).

We advocate that communication has a significant role in this issue and believe that a well defined communication plan that connects with as many Ngāpuhi as possible will ensure that there is opportunity for hapū members wherever they reside to participate. We advocate that a good plan will not be limited to only a few areas.

We acknowledge that at urban engagement hui it was clear that our whanau wanted to participate, many stated that they were connected directly to hapū and were satisfied with that and others expressed disappointment that the current urban model failed to communicate with them.

We also acknowledge that after the draft report was released some regions did not provide further feedback on this issue, yet participated well during the lead up to the draft report and its recommendations on this issue. Whangaroa for example do not support a one size fits all approach and are clear they wish to make decisions as a region once their hapū representatives are in place.

We are strongly of the view therefore that it is truly difficult to weigh the level of support from feedback when hapū are yet to transition into their representative roles and effect the communications strategy and decision making. This is a crucial decision and it is for hapū to make.

Since its inception in 2009, Te Kōtahitanga have met consistently with hapū whanau; hui have been held on marae throughout the kainga and including Tamaki, and all of those hui along with the recent feedback and Tribunal report inform our position here.

We are also of the view that proposal B has not been tested by the hapū or the regions. We believe this needs to happen otherwise it could cause prejudice to them.

Tūhoronuku IMA engagement team option on urban representation – Proposal B

In addition to the recommendation that hapū decide how to incorporate those living outside the rohe within their hapū teams and a hapū database be developed to enable improved communications, the Tūhoronuku IMA members of the hapū engagement process consider that there should remain, dedicated urban representation on any Ngāpuhi negotiation structure moving forward.

The Waitangi Tribunal did not make any recommendations or findings in relation to urban representation. Nor was urban representation one of the flaws the Tribunal found in the mandate.

The reasons the Tūhoronuku IMA members of the hapū engagement process consider that there should remain dedicated urban representation on any Ngāpuhi negotiation structure moving forward includes:

- the majority of submissions on the urban representation issue did not support the Maranga Mai proposal on this point;

- although the majority of feedback in the regional hui, workshops and wananga did support the proposal, there was limited inclusion of urban Ngāpuhi in this phase of the development of the Maranga Mai draft report;
- submissions that were from the directly affected group, i.e urban Ngāpuhi supported the retention of separate urban representation and these were given greater weight (as they are the directly affected);
- there is concern that many Ngāpuhi are disconnected from their hapū and there is a risk urban Ngāpuhi will be further dispossessed if the starting point is hapū affiliation;
- many urban Ngāpuhi have different concerns to their hapū concerns and these should be able to be voiced directly rather than through a hapū lens;
- some hapū do not have the capacity to connect with their urban members;
- the original proposal did not require that hapū connect with their urban members leaving some doubt as to how effective this approach might be if hapū simply couldn't or chose not to incorporate their urban whanaunga in their hapū teams or ensure urban members participation throughout the process in some way;
- providing separate representation for urban members does not need to interfere with or be seen as being in competition with hapū also taking this responsibility.

The proposal set out below is not intended to replace hapū taking responsibility for their hapū members that live outside of the rohe but is intended to be complementary to it and provide for Ngāpuhi people who:

- identify as Ngāpuhi; and
- have been disconnected from their hapū for generations and no longer know which hapū they are from; or
- know who their hapū are but no longer have the means or confidence to participate through hapū processes.

The principle of strengthening our people, whanau, hapū and iwi through reconnection, growing knowledge and understanding of our whakapapa and connections is absolutely fundamental to strengthening Ngāpuhi both at home and away. The expectation is that Ngāpuhi wherever we are will commit to reconnecting and strengthening our identities. Similarly the expectation is that our hapū will grow and strengthen their networks, capabilities, capacity and processes to ensure their people can be confident and are connected. This is something we envisage will happen over time and will be supported throughout the negotiation process and

post settlement. The goal is that all of our people are strong in the knowledge of their whanau, hapū and iwi identities, therefore separate urban representation in the immediate future is not intended to replace the position of hapū. Ideally it would be phased out over time. This may take generations, given the disconnection has also been intergenerational.

We regard the urban representation model below significantly strengthens the current Tūhoronuku approach in that:

- it provides geographic representation across the whole country;
- the representatives for each of these geographic areas will be informed by hubs of Ngāpuhi throughout their areas thereby making their representation more effective;
- these hubs and these representatives can also coordinate with hapū to provide a cohesive and coordinated approach where this is desirable and may assist with the hapū reconnection focus.

Ngā rerekētanga

Key changes to the representative structure (cont.)

Tūhoronuku IMA engagement team proposal

Combination of:

1. Hapū, where possible, should have a liaison mechanism with their urban members.
2. Regular cycle (minimum every 6 months) of urban hui.

Points in the settlement process at which urban hui are held should be stated, e.g.

- Aspirations
- Crown offer
- Agreement in Principle
- Initialling of a Deed of Settlement
- Post-settlement governance entity options

3. Urban Ngāpuhi representatives participate as of right at Te Hononga Nui and its meetings. Urban Ngāpuhi select their urban representatives through a monitored voting procedure which retains the four existing urban seats and adds one further seat for Waikato / Bay of Plenty.

4. The five urban Ngāpuhi representatives gather in their urban forum to make decisions about negotiations (similar to the decision making within regions).
5. One representative selected from the urban forums sits on Te Hononga Iti as a trustee (making the number of trustees either six or seven).
6. Create and support urban hubs to meet and discuss key matters and feed into urban representatives and/or hapū. These are the proposed five urban regions:

Hubs*	Urban Regions
Tauranga Ngaruawahia Hamilton	▶ Waikato / BOP
Christchurch Invercargill Nelson	▶ South Island
Wellington Gisborne Hawkes Bay/ Wairarapa Manawatu/ Wanganui Taranaki	▶ Lower North Island
Regional hubs	▶ Central/ N. Auckland
Regional hubs	▶ South Auckland

* Hubs are indicative only

This provides for:

- urban aspiration to have their collective voice heard;
- meets urban desire to offer their expertise and other resources to assist the process;
- preserves specific urban representation on Ngāpuhi-wide issues and on administrative support body;
- ensures dedicated representatives are effective and supported in their roles.

Tūhoronuku IMA members of the engagement group consider the existence of two options need not cause confusion for the parties, including the hapū who will decide which option they prefer. The two options are not mutually exclusive, in that both can be provided for. That is where some hapū support separate urban representation this does not override or undermine those hapū who want to take this responsibility on for themselves.

Questions and answers on the Tūhoronuku IMA engagement team proposal

Q: There are concerns that separate urban representation will reduce hapū rangatiratanga. Is this correct?

A: The separate urban representatives have **no right of veto** of the hapū and / or hapū regional decisions by urban representation.

Q: How are decisions made by Te Hononga Nui?

A: Te Hononga Nui is not a decision making forum but a discussion forum. It may make recommendations back to the hapū in the regions for decisions to be made. All regions and any urban representation need to come together to consider issues collectively within Te Hononga Nui. The right of participation on the Te Hononga Nui ensures all hapū are informed of any urban Ngāpuhi desires, aspirations, needs etc., for the purpose of discussion (and where necessary decisions by hapu in the regions) and the representatives can likewise take information back to their urban area's so that there is a regular flow of information and understanding of all issues being discussed at home.

Q: What sorts of decisions would urban representatives be making?

A: It is envisaged they would be focused on how best to support urban Ngāpuhi voices being part of:

- Settlement aspirations
- Crown offers on redress
- Agreement in Principle
- Deed of Settlement
- Post-settlement governance entity options

For example the hubs and the representatives for that urban area could work out amongst themselves the best way to input into the process and communicate together and develop the budget and plans for that to take place.

Urban Ngāpuhi proposals for the negotiations process such as settlement aspirations would always need to be discussed at the Hononga Nui forum and considered by the hapu within their regions as they will be matters that affect Ngāpuhi katoa.

Q: Why is there an urban seat on Te Hononga Iti?

A: The single seat (1 out of 6 or 7 (depending on the number of taiwhenua regions for negotiations)) on Te Hononga Iti is not a decision-making role, but a support role for the whole structure. As it is administrative and 'holds the mandate' an urban member on that body ensures their needs in the negotiation process are also being supported.

Ngā rerekētanga

Key changes to the representative structure (cont.)

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 may also be benefit in Te Rūnanga-ā-iwi-o-Ngāpuhi continuing to provide a means of communication with their database (until such time as we can create our own database(s)).

Post settlement: how we manage our redress

The structure for negotiations 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 or structures – what the Crown calls Post Settlement Governance Entities (PSGEs) – 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 this as early as possible. Our decision on how our PSGE/s will work and what they will look like is as important as the decision on the final settlement package. We recommend the hapū and regions decide how to progress PSGE development as a distinct workstream. We agree with the Waitangi Tribunal when it said in its Ngāpuhi Mandate Inquiry Report: “We suggest that discussions on the make-up and

structure of the PSGE (or PSGEs) should begin as early as possible” in the settlement process.

We also note it is a mandate condition that the PSGE/s discussion is underway early, with a consultation round around the time we reach an Agreement in Principle to engage our people in this discussion.

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 in the transition phase.

Ngā rerekētanga

Key changes to the representative structure (cont.)

Withdrawal mechanism

The existing mandate sets out that the mandate conferred on Tūhoronuku IMA 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.

We acknowledge that some hapū consider they should not be regarded as parties to the existing mandate because they never agreed to it. The development of a workable withdrawal clause ensures there is a well-evidenced process for a hapū decision to withdraw. The Waitangi Tribunal Ngāpuhi Mandate Inquiry Report also recommended a workable withdrawal mechanism.

If more than one hapū or a whole region seeks to withdraw, a coordinated process needs to be followed to ensure

the decision is a representative one. This would require each of the hapū involved to hui and decide according to its own tikanga.

In the settlement process, Wai claimants are parties to settlements through the large natural groupings with which they affiliate. If hapū withdraw from a mandate then, to the extent any Wai claim comes within the settlement interests of the hapū, the Wai claim will also be withdrawn.

An important element of the process is to ensure as many members of the hapū as possible 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, as well as the likely additional demands on the time, resources and expertise of the hapū involved – all of which could delay the opportunity for that hapū to complete a settlement with the Crown.

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.

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

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

Hapū withdrawal from mandate:

1. Individual hapū hold a hui-a-hapū to consider whether to withdraw from the mandate. The hui must be publicly advertised at least 21 days in advance. The venue, date, time and purpose of the hui must be stated, as well as the resolutions to be put and how to obtain information about 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, Te Hononga Nui 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 Te Hononga Nui 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 Te Hononga Nui 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 in advance. 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 sets out how to obtain information about consequences of withdrawal, and information 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, Te Hononga Nui and Te Hononga Iti in writing of their intention to seek the withdrawal of mandate. This is to be co-signed by 60 per cent of the hapū representatives or by a certain number (at least 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' notice 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.

Crown consideration of hapū or mandate withdrawal

This section has been added by the Crown to explain its assessment processes for mandate withdrawal.

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 assess whether:

- to recognise the withdrawal on the basis of the process undertaken;
- to negotiate separately with the group who has withdrawn;
- the remaining level of support for the mandate is sufficient to continue negotiations.

Ngā rerekētanga

Key changes to the representative structure (cont.)

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 IMA 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 Te Hononga Nui and make a decision.

Currently:

Tūhoronuku Independent Mandated Authority.

Proposed:

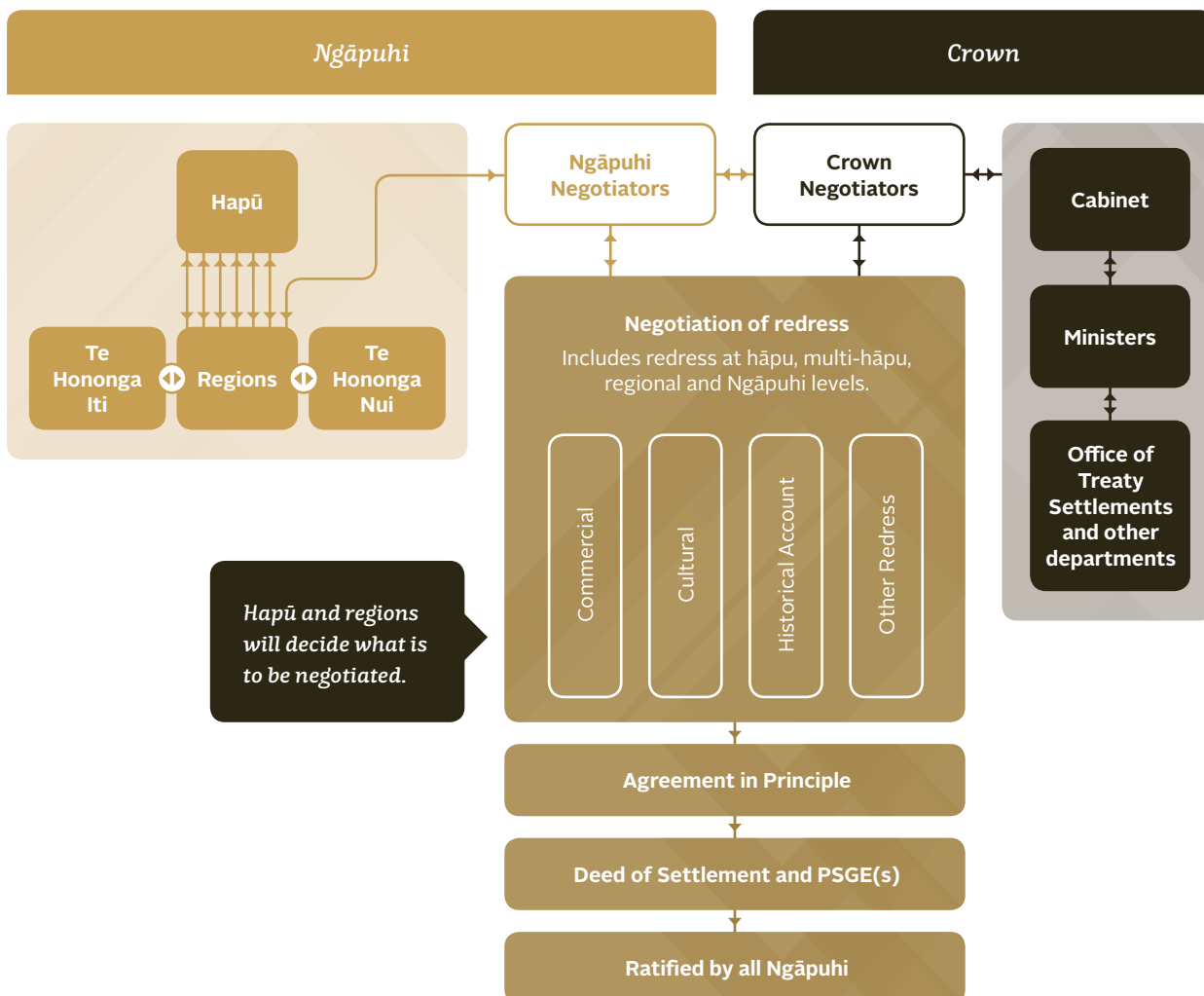
The group recommends our hapū representatives discuss this in their regions and in Te Hononga Nui and make a decision.

Ngā take tohetohe

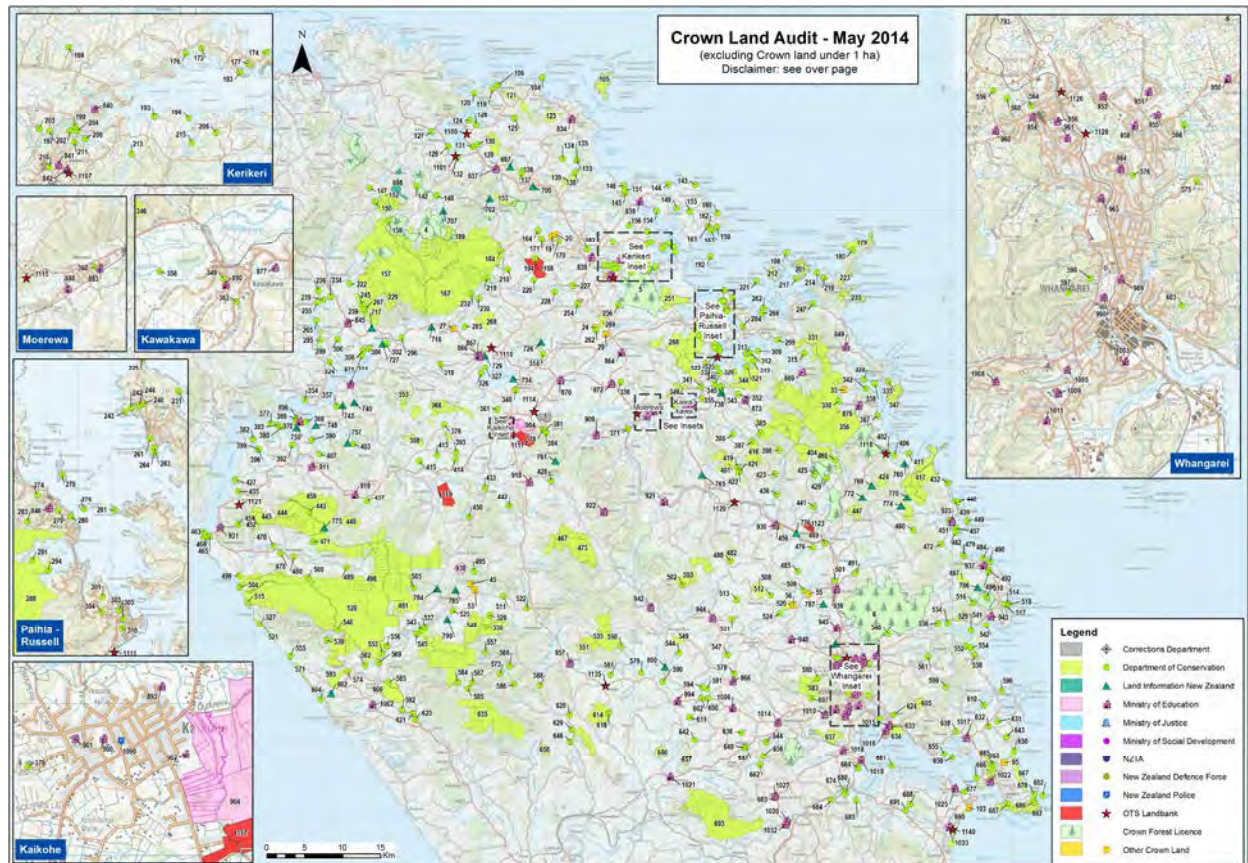
How we will negotiate

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 workstreams 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



Ngā take tohetohe How we will negotiate (cont.)



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 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.

What this map shows is, outside of public conservation land, there is about 17,500 ha of Crown land in our rohe, much of which is Crown forest licensed land. Around 10,000 ha of that land is also in the areas of interest of other groups who don't yet have Treaty settlements; discussions will be needed with them. Crown land in our rohe includes 16 properties held in the Crown landbank that are available exclusively to Ngāpuhi and 21 properties in which other groups also have interests. The challenge and the opportunity for us is to be imaginative about what we want for the land, and other aspects, of the redress we negotiate.

A settlement usually includes negotiating the following elements of redress, 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 acknowledgments of breach and grievances.
- Crown apology.

Cultural Redress

- Vesting of sites such as tūpuna maunga.
- Statutory recognition over Crown land.
- Official place name changes.

Natural Resources

- Redress over natural resources (e.g. 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 (e.g. landbank properties and Crown forests).
- Sale and leaseback or Rights of first refusal over non-surplus Crown land.

Ngā take tohetohe

How we will negotiate (cont.)

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. This includes how they might use and build on the work already done by Wai claimants (including Tribunal site visits).

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

- hapū interests and aspirations documents;
- regional interests and aspirations document;
- 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.

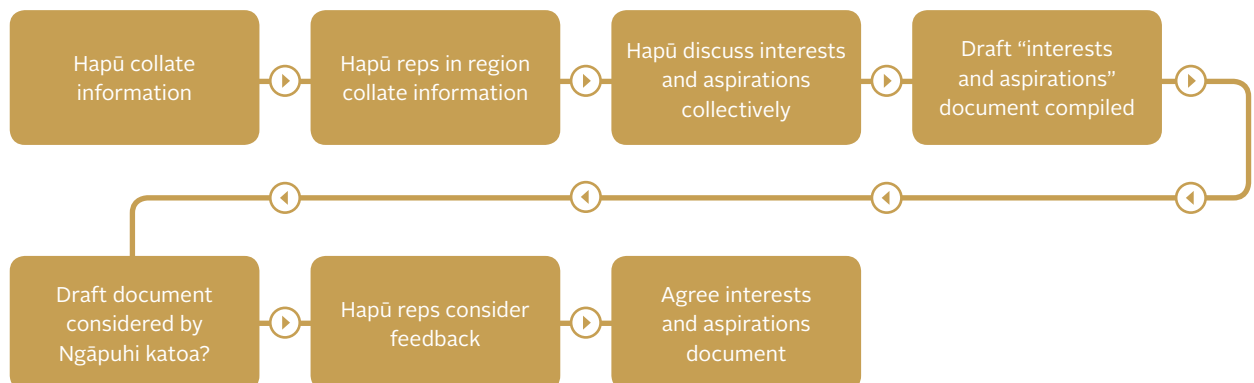
Hapū representatives will then participate in their regional forums and discuss how their interests differ or can align. This will establish regional interests and aspirations.

Where required, these hapū and regional aspirations and interests will feed into Te Hononga Nui 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.

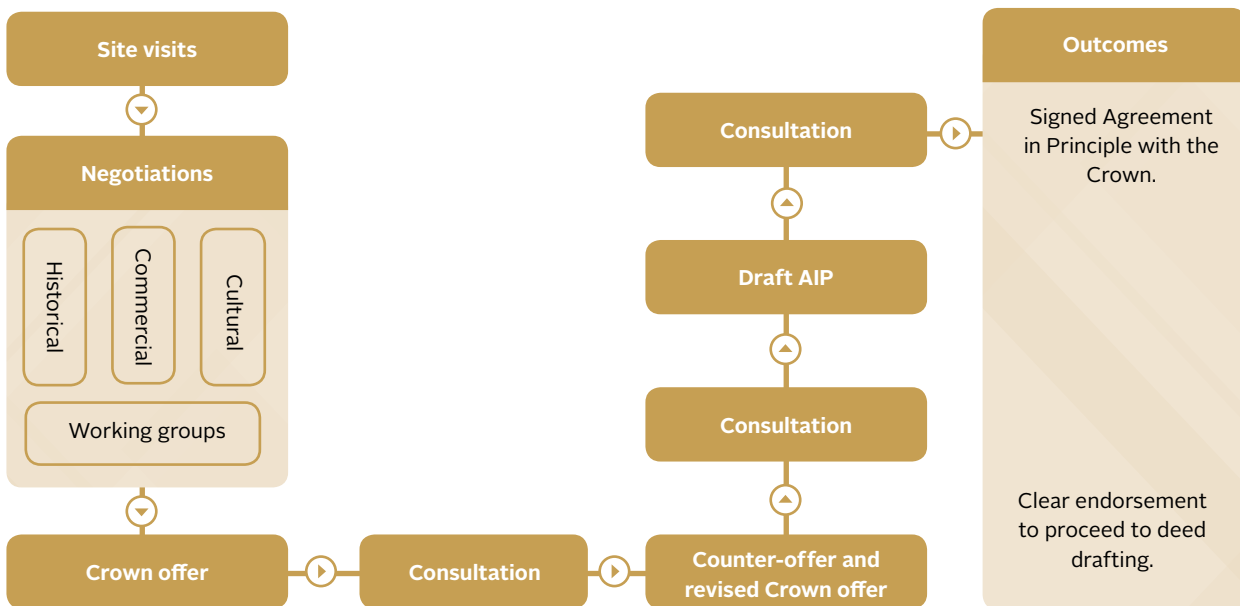
How we bring these to bear in negotiations

Through determining hapū, regional, and Ngāpuhi-wide interests 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.



Phase two – negotiations to Agreement in Principle



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:

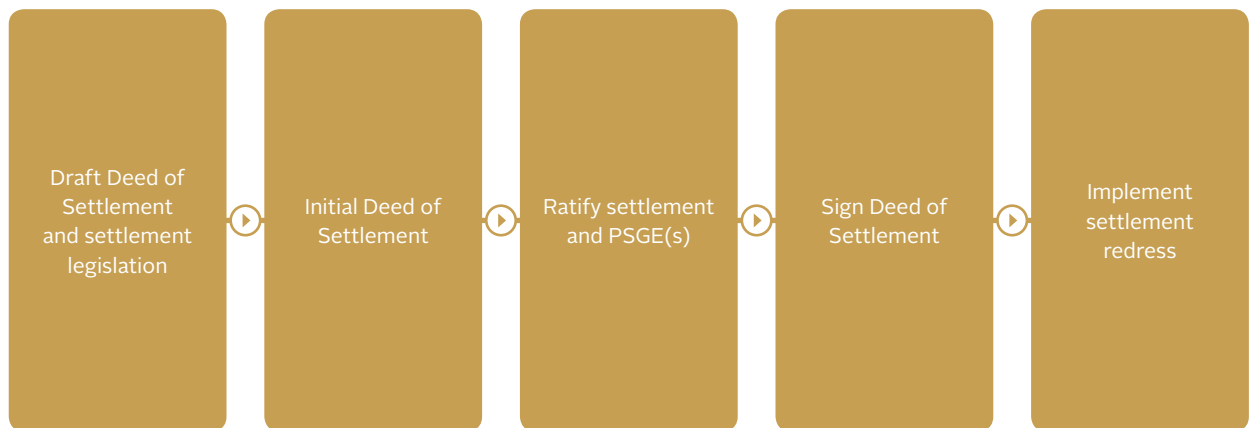
- hapū from three regions identify an interest in a culturally and historically significant site, but not all of the hapū in each region have an interest in the site;
- those hapū with interests in the site meet together, and with the negotiator(s), to discuss those interests and their aspirations for 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 a 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 we will negotiate (cont.)

Phase three – from Agreement in Principle 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 taitamariki, 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, on pages 51 - 52, 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, and to include a schedule for hui in urban areas;
- **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 per cent of Ngāpuhi are under the age of 15, and a further 30 per cent are 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-a-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 pātaimai

Frequently asked questions

about the 'evolved' mandate approach

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 per cent of the hapū would decide.

For issues that only affect some hapū within their respective regions, ONLY those hapū would be involved in the decision to be made, by consensus or 75 per cent 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 Te Hononga Nui. 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 workstreams 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 we suggest take place following this report, hapū would appoint their representatives and those representatives would 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.

As part of their role and responsibilities, hapū representatives will ensure Wai claimants are aware of and can be involved in the gathering of hapū interests and aspirations. Similarly, 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 negotiations, plans and strategies are developed. The work of Wai claimants to date is extensive and likely to be of considerable use to inform both the pre-negotiation phase and negotiations. We encourage the hapū and the claimants to work closely together throughout the process.

9. How will this be funded?

Mandated entities receive claimant funding from the Crown and (if they are eligible) the Crown Forestry Rental Trust (CFRT). The Crown's claimant funding budget for Ngāpuhi has been set at five times the Crown benchmark because of the size of Ngāpuhi and the number of hapū. This money is not intended to fund the whole process; it's viewed by the Crown and CFRT as a contribution towards achieving negotiations outcomes. CFRT funding is provided against agreed timeframes; there is no added money if the process takes longer.

The Crown does not decide how funding will be allocated to support our negotiating structure – it is up to us to determine that. It will, however, seek to be assured that we are responsibly managing our funding to reach agreed milestones and workplans.

All this means that making the available funding effective will require from Ngāpuhi good planning, clear objectives and transparency in the process.

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 options and recommendations in this report will be considered by all hapū and Ngāpuhi katoa involved in the process. These options and 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 per cent is required by the hapū of Ngāpuhi to demonstrate a required level of support.

14. Will a new mandate be necessary?

This pathway 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. What happens if the Tūhoronuku Independent Mandated Authority board oppose the changes?

The expectation is that the Tūhoronuku IMA board members will continue to support the Maranga Mai proposal as a whole, which will strengthen unity and trust. This will reflect the proposed changes in evolving the mandate and

allow Ngāpuhi to move forward. If the Tūhoronuku IMA board members do not agree to the package of changes all parties will have to consider their next steps. There is a range of alternative options, some of which are outlined on pages 48 - 50.

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

The Tūhoronuku IMA 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. Our view is hapū must decide for themselves who represents them. Hapū might encourage disclosure of criminal convictions from those who might represent them, and allow for their people to request vetting. We propose that, for hapū who wish to use either a disclosure process or police vetting, examples be available of requisite forms – particularly to authorise release of criminal history records.

The mandated entity is a charitable trust, and the law excludes persons with certain convictions from being trustees on a charitable trust. However, we recommend that representatives on Te Hononga Iti should not have any criminal conviction history – proposed representatives should make full disclosure of all convictions and should agree to police vetting if requested.

Huarahi atu

Alternative options proposed for consideration

We have explored and considered other options. We note there may be more options, including variations on the options discussed here.

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 for how we might organise to negotiate together to our hapū and Ngāpuhi katoa to vote on.

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 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 or six regions with each region seeking regionally based settlements.

This is similar to evolving the existing mandate, except each region would hold its own mandate. This would require a fresh mandating process so would take more time.

This would provide a level of regional autonomy, while preserving the opportunity to work together on shared redress. Working in parallel would also allow us to utilise our combined population and number of hapū as negotiation leverage with the Crown. Negotiating in parallel would also make it easier for collective redress to be negotiated. There is a possibility we could complete our settlements at the same time.

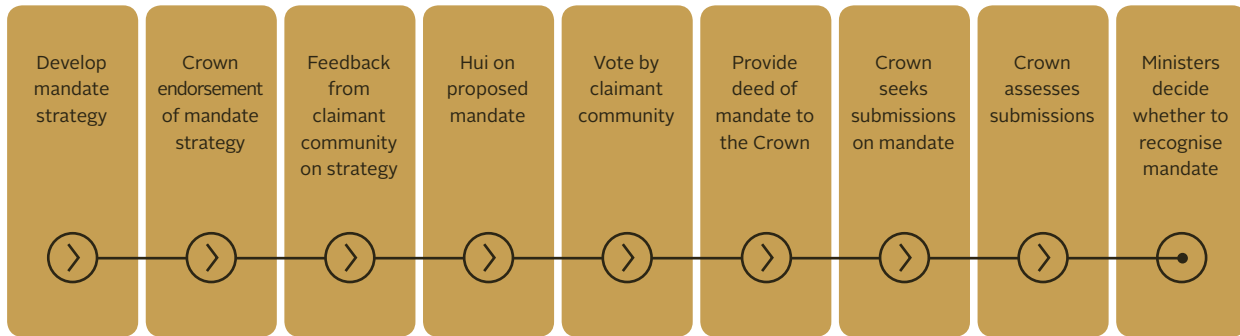
There would, however, be additional time and effort required if regions do not already have the necessary governance structures (such as regional databases to

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. It will be challenging to get all regions completing the mandating process (shown on the following page) and being ready to negotiate in parallel. This would mean we are more likely to default to the fourth pathway outlined on the following page.

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 more time in negotiations than others.

There is a risk that some redress achievable by Ngāpuhi katoa may not be available to individual regions, because the redress won't fit within the region's settlement package (or will take up so much of the package that difficult choices must be made). There could potentially be combined redress agreed collectively by the regions, but this will face the practical challenge of achieving the coordination and timing of settlement processes for all of the regions that will be required for parallel negotiations.

The mandating process



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 Crown Forestry Rental Trust, because regions must have Crown forest lands in their region to be eligible.

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

This would involve hapū forming into regions, seeking separate mandates as described above but with each region working to its own timeframe.

This approach could provide an increased level of regional autonomy. Where interests of hapū cross regions, there would still need to be a level of resolution of overlapping interests. Sometimes groups find it more difficult to reach agreement on overlapping claims when they are not at the same stage of negotiation. This means the Crown (rather than groups with overlapping interests) may have to make decisions on an appropriate allocation of redress because groups cannot agree.

The Waitangi Tribunal encouraged the Crown to support alternate Ngāpuhi groupings – realistically it will take time for alternate groupings to form and develop the necessary infrastructure to undertake a mandating process.

Each region would need to develop a database to communicate with hapū members, wherever they live.

If negotiations proceed on separate timeframes, the Crown will have to manage its work programme to manage all the negotiations and may not have the resources to engage with everyone when they want (because that would mean halting or delaying other settling groups outside Ngāpuhi). That may mean some regions face a further delay to entering negotiations.

When groups in an area are settling at different times, the Crown's Treaty obligation is to ensure it is offering appropriate redress to the first settling group while retaining its ability to provide sufficient redress for any remaining settlements. The Crown must also ensure it is maintaining fairness so similar claims (by land loss, severity of grievance and size of settling groups) receive similar levels of redress. This means the Crown starts making these assessments at the time of the first settlement in the area when not all parties will be involved in the process.

Some groups have achieved collective redress when separately mandated and working on different settlement timeframes. This has generally either meant a separate collective settlement is negotiated (e.g. Tamaki Maunga) although the provision of important

redress may be delayed until the last group has settled (e.g. Taranaki Maunga). In other cases, this has required the creation of complicated holding mechanisms (with the Crown holding unsettled groups' shares), which remain in place until those groups have settled. In some cases, differing timeframes can limit the ability to negotiate collective redress because participating groups are at different stages and can't make a collective negotiation viable. This is why the Waitangi Tribunal has strongly encouraged claimant groups to proceed together either as a single entity or more than one mandated entity proceeding in parallel.

It may be difficult (more difficult than described above for regional negotiations) 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 at the end of the Wai 1040 Te Paparahi o Te Raki Inquiry and – should the Tribunal find that Ngāpuhi has well-founded claims the Crown breached the Treaty in its historical dealings with Ngāpuhi – asking the Tribunal to make recommendations to the Crown on what remedies for those breaches

Huarahi atu

Alternative options proposed for consideration (cont.)

should look like. The remedies may be recommendations that are non-binding on the Crown or, in relation to specific types of land discussed below, binding on the Crown. The Tribunal would also have to recommend to the Crown who the redress should go to.

The land the Waitangi Tribunal can make binding recommendations over is Crown forest licensed land and current or former State-owned enterprise land with a memorial on the title entered under section 27B of the State-Owned Enterprises Act. The 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 Tribunal for remedies for Treaty breaches. The Tribunal came to this conclusion because it considered it unlikely the Wai 1040 Te Papanahi o Te Raki Tribunal would be able to report in full before a settlement was reached.

As the Tribunal was aware in making its finding, it is not possible to seek remedies through the Tribunal until the Tribunal has issued a report stating we have well-founded claims. The timing for that is uncertain. The reporting timeframes for some past Tribunal Inquiries is set out in Attachment Five. Once the Tribunal has agreed we have well-founded claims, the remedies process must then begin. The time to achieve an outcome – which may not include binding recommendations – is also uncertain.

Some of the land the Tribunal could make binding recommendations over will be available through negotiations – for example, Crown forest land and Puketotara Farm. Other land (which is now in private ownership) is not. There is, however, Crown land in our rohe which may be of more importance to us and which the Tribunal has no power to make binding recommendations over. 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 negotiate with the Crown 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 those groups may feel compelled to join the litigation process to protect their interests.

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

It is important to note the Tribunal's jurisdiction to make binding recommendations remains right through the settlement negotiation process up until settlement legislation is introduced into Parliament. Before settlement legislation is introduced, we would have assessed what we have negotiated in settlement against what could be available under the Tribunal's binding recommendatory powers, and we can make an informed 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 an outcome 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.

Ngā hua taketake

Where to from here: Transition

Next steps

We recommend proceeding to the transition phase. This will be most effective if both the Tūhoronuku IMA and Te Kōtahitanga continue to work equally together in a transition team to design and implement the various steps that need to be taken to transition to the new structure. This is a short term arrangement until the new structure is populated. These are the next steps and indicative timeframe for evolving the mandate:

**Final report
immediate action**
August

- Identify amendments required to Tūhoronuku IMA Deed of Mandate and Trust Deed, including dispute resolution and hapū withdrawal mechanism.
- Submit evolved mandate structure to Crown for consideration.
- Develop resource toolkit to support hapū, should they wish.

The engagement group proposes that a transition working group is established to lead the transition work and its role and composition be guided by the following principles:

- exercise shared decision making and accountability;
- appoint three representatives from Tūhoronuku IMA and Te Kōtahitanga engagement teams to a small joint project team to progress the transition work, providing project management, financial management, communication / engagement and hapū liaison);
- work to a timeframe that delivers what Ngāpuhi needs to get underway;
- make it a short-term project (3-4 months).

**Transition
steps (hapū and
transition working
group)**

September 2016 -
November 2016

HAPU REPRESENTATION APPOINTMENT BEGINS

Hapū hold hui-ā-hapū to:

- agree decision making processes for selection of hapu teams
- appoint hapū teams
- decide on their preferred urban representation option
- identify their region/s
- record hui outcomes

The engagement group proposes the transition working group lead the following transition steps:

- Prepare information and recommendations on budgets and project plans to share with regions once representatives are appointed.
- Develop and implement process to confirm hapū lists in order to have them finalised by the end of the transition phase, with each region given the opportunity to work through them and review lists before they are finalised.
- Scope work to develop databases.
- Develop information on roles and responsibilities of representatives at hapū, regional and collective levels
- Scope funding sources and budget / resource requirements (including working with Crown Forestry Rental Trust and Crown).
- Establish process for collective discussions for making and documenting recommendations to regions.
- Establish draft '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 / Terms of Agreement) to reflect accountability and commitment to process and agreed timelines.

- Develop procedures and processes to guide financial management.
- Communicate withdrawal options and consequences relating to Crown policy constraints to hapū and people of Ngāpuhi.
- Prepare information on communications strategy for regions to consider.

Regional Representative Appointments (transition working group and those hapū reps appointed)

October 2016 - November 2016

REGIONS ARE ESTABLISHED

Hapū teams hold regional hui to:

- Confirm 'terms of reference' for how hapū within the region will work together
- Confirm their region and the hapū included within that region
- Choose regional representatives to mandated entity, regional coordinators and regional teams to participate in Te Hononga Nui.

The transition working group project team work at this point would include the following.

- Develop budgets planning and funding allocations for negotiations for hapū in regions to consider.

The engagement group proposes that each region begin preparations as soon as their representatives at hapū and regional levels have been appointed. This work could include the following.

- Facilitate finalisation of hapū lists with regions
- Begin developing hapū / regional / collective aspirations / interests (ongoing).
- Undertake workshops with Crown on how the negotiations process works.
- Initiate work on establishing funding sources, budget development and project planning.
- Feed into process to finalise hapū lists.
- Consider and implement discussion on name change.

STRUCTURE FULLY POPULATED

Handover and preparation for negotiations

December 2016

- One-month transition working group handover to Te Hononga Iti and Regions.
- Finalise and agree name.
- Te Hononga Iti finalise any further changes to Deed of Trust, Deed of Mandate or Deed of Mandate Addendum.

Regional representatives and hapū representatives could begin work on the following:

- Gather hapū / regional / collective aspirations / interests (ongoing).
- Work with Crown to establish process for addressing external overlapping claims.
- Consider and finalise budgets and funding allocations for negotiations.

TRANSITION WORKING GROUP DISBANDS

Complete preparations for negotiations

December 2016

Hapu, Regions, Hononga Iti and Hononga Nui (where appropriate):

- Collate all hapū aspirations / interests documents.
- Prepare negotiations plan, including strategy, parameters for negotiations, timelines / milestones.
- Set up and appoint negotiating teams / working groups, negotiators.
- Finalise and agree process for collective discussions and documentation of discussions and recommendations to regions.
- Finalise and agree '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.
- Process for discussion on post-settlement governance options at hapū, regional and collective level.

I roto i te mahi tahi me te Kōtahitanga ka haere mua a Ngāpuhi

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;
- 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 also said there are seven key remedial actions that need to take place:

"First, the Crown must halt its negotiations with the Tūhoronuku IMA to give Ngāpuhi necessary breathing space to work through the issues that have been identified.

Secondly, hapū must be able to determine with their members whether they wish to be represented by the Tūhoronuku IMA.

Thirdly, those hapū that wish to be represented by the Tūhoronuku IMA must be able to review and confirm or otherwise the selection of their hapū kaikōrero and hapū representatives, so that each hapū kaikōrero has the support of their hapū.

Fourthly, Ngāpuhi hapū should have further discussions on the appropriate level of hapū representation on the board of the Tūhoronuku IMA.

Fifthly, the Crown should require as a condition of continued mandate condition that a clear majority of hapū kaikōrero remain involved in the Tūhoronuku IMA.

Attachment one

Waitangi Tribunal Ngāpuhi Mandate Inquiry Report: summary of findings (cont.)

Sixthly, there must be a workable withdrawal mechanism for hapū that do not wish to continue to be represented by the Tūhoronuku IMA.

Finally, if they exercise their choice to withdraw, hapū must be given the opportunity and support to form their own large natural groups.

We acknowledge that the process we recommend will take time and could potentially delay settlement. We also acknowledge that there is a risk that some groups will chose to leave the mandated structure, but we consider it crucial that the Crown and Ngāpuhi take the opportunity now to resolve the fundamental issues that we have identified before negotiations proceed any further.”

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;

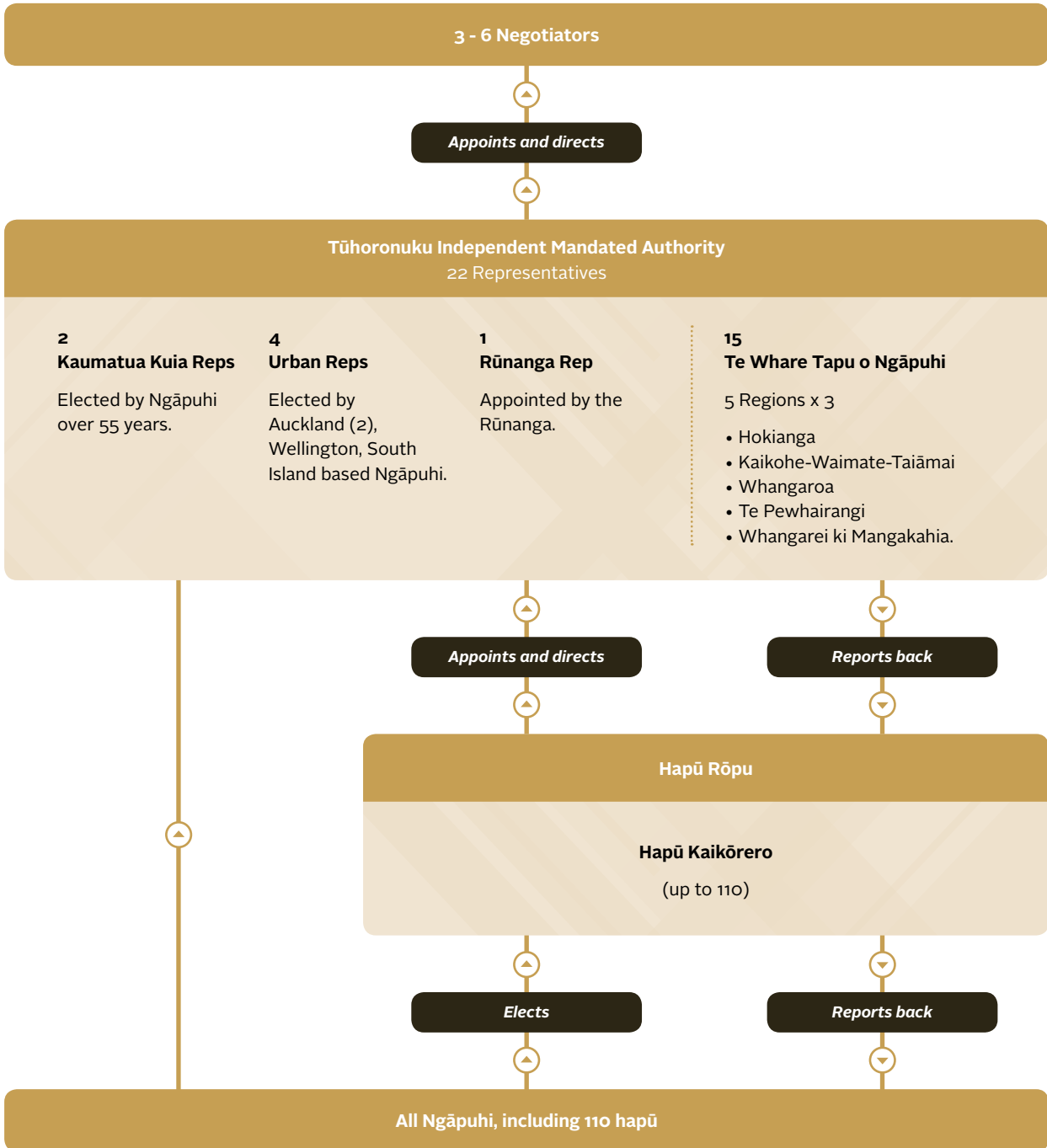
- that the Tūhoronuku IMA Deed of Mandate has been amended to include a workable withdrawal mechanism for any hapū which does not wish to continue to be represented by Tūhoronuku IMA;
- the Crown should require as a condition of continued mandate recognition that a clear majority of hapū kaikōrero remain involved in Tūhoronuku IMA.

The Tribunal also recommended the Crown support hapū that 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

How does the ‘evolve the mandate’ approach compare with the Waitangi Tribunal’s recommendations?

<p><i>Tribunal findings that hapū rangatiratanga is not supported by Tūhoronuku IMA in the following ways</i></p>	<p><i>How the ‘evolved’ mandate approach meets the Tribunal findings and recommendations</i></p>
<p>The omission of hapū from the definition of Ngāpuhi privileges the individual over the hapū.</p>	<p>Hapū are included in the definition of Ngāpuhi.</p>
<p>The process for selecting hapū kaikōrero does not ensure that hapū control who will represent them in negotiations. Hapū kaikōrero can be and have been appointed on the basis of single nominations, in circumstances where hui-a-hapū have resolved not to appoint a hapū kaikōrero.</p>	<p>New requirement for hapū representatives to be approved / appointed / elected at hui-a-hapū in accordance with their tikanga. Hapū will determine their processes.</p>
<p>Board members and negotiators were appointed despite only a minority of hapū having selected hapū kaikōrero, leaving little doubt that the claims of some hapū would be the subject of negotiation without their representation, input, or consent.</p>	<p>Hapū will need to decide whether they wish to be represented under a changed mandate or not. If the changes in this report are adopted hapū will be the decision makers and the drivers of the Ngāpuhi negotiations process. There should be a workable withdrawal mechanism if a hapū wishes to stand outside the mandate.</p>
<p>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.</p>	<p>The engagement group has developed a workable withdrawal mechanism (see page 36).</p>

Tribunal findings that hapū rangatiratanga is not supported by Tūhoronuku IMA in the following ways

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 the 'evolved' mandate approach meets the Tribunal findings and recommendations

If there is support for evolving the mandate in accordance with the changes identified in this report then there will still be a single mandate. Hapū will select representative teams to participate in up to six regional forums (the configuration of which is yet to be determined by the hapū themselves). This will allow Ngāpuhi to proceed together to negotiations with the Crown in a regionally coordinated way, driven, directed and owned by hapū.

The group has developed a workable withdrawal mechanism for any hapū seeking to collectivise in an alternative manner and establish a different large natural grouping.

Hapū have the opportunity to weigh this up when deciding whether to support the changes identified in this report at hui-a-hapū. Hapū will have the opportunity before signing any settlement to assess what is possible to achieve by negotiating and what might be achieved through the Waitangi Tribunal's binding recommendation powers. They can then make a decision on the best way to proceed.

Attachment three

How does the 'evolve the mandate' approach compare with the Waitangi Tribunal's recommendations?

<i>Tribunal recommendations</i>	<i>Engagement group response</i>
<p>The Crown should halt its negotiations with Tūhoronuku IMA to give Ngāpuhi necessary breathing space to work through the issues that have been identified.</p>	<p>Following the release of the Tribunal report immediate action was taken to establish a tripartite process that included the Crown, Tūhoronuku IMA, and affected claimant parties. Negotiations have been paused during this period.</p>
<p>Hapū must be able to determine with their members whether they wish to be represented in the Tūhoronuku IMA in the negotiation of their settlement of historical claims.</p>	<p>Hapū enabled to make a decision to support the new proposals through hui-a-hapū to be held during the transition phase, or stand outside the new structure by availability of a workable withdrawal mechanism. The engagement group has developed and proposed a negotiations model which enhances hapū rangatiratanga. This model has been presented to Ngāpuhi and it is for hapū to discuss and decide whether they support this new approach.</p>
<p>Those hapū that wish to be represented by the Tūhoronuku IMA must be able to review and confirm or otherwise the selection of their hapū kaikōrero and hapū representatives, so that each hapū kaikōrero has the support of their hapū.</p>	<p>New requirement for hapū representative(s) to be approved/ appointed / elected at a hui-a-hapū according to hapū-defined processes.</p>
<p>Ngāpuhi hapū should have further discussions on the appropriate level of hapū representation on the board of the Tūhoronuku IMA.</p>	<p>One of the aims of this process has been to find ways to enhance hapū participation and representation at every level of the negotiations structure. The engagement group has proposed a structure that would ensure hapū are the decision makers and drivers of the Ngāpuhi negotiations at a regional level. There is majority support for shifting the decision-making role from the board to the hapū working within regions. It is proposed that the board be evolved so it comprises a reduced number of representatives - appointed from the regions - in a supportive and administrative role.</p>

<i>Tribunal recommendations</i>	<i>Engagement group response</i>
<p>The Crown should require as a condition of continued mandate recognition that a clear majority of hapū kaikōrero remain involved in the Tūhoronuku IMA.</p>	<p>The hapū will determine their support or otherwise for the evolved structure during the transition phase by holding hui-a-hapū and determining whether or not they support the proposals and, if they do, appointing their hapū teams.</p>
<p>If hapū exercise their choice to withdraw, hapū must be given the opportunity and support to form their own large natural groups.</p>	<p>This is a matter for those groups who do withdraw and the Crown to discuss.</p>

Does this option go beyond what the Waitangi Tribunal recommended?

Some of the feedback we received suggested that our proposals went beyond what the Waitangi Tribunal said was needed to “remedy the flaws” in the Tūhoronuku IMA mandate. These comments applied particularly to the

changes proposed to the Tūhoronuku IMA itself. The engagement group did not take the view that the Waitangi Tribunal’s recommendations set limits on our thinking about what’s best for Ngāpuhi in settlement negotiations. We

sought to evolve the Tūhoronuku IMA mandate in a way we hope will receive broad acceptance in Ngāpuhi that the tikanga of hapū rangatiratanga has been properly reflected.



Attachment four

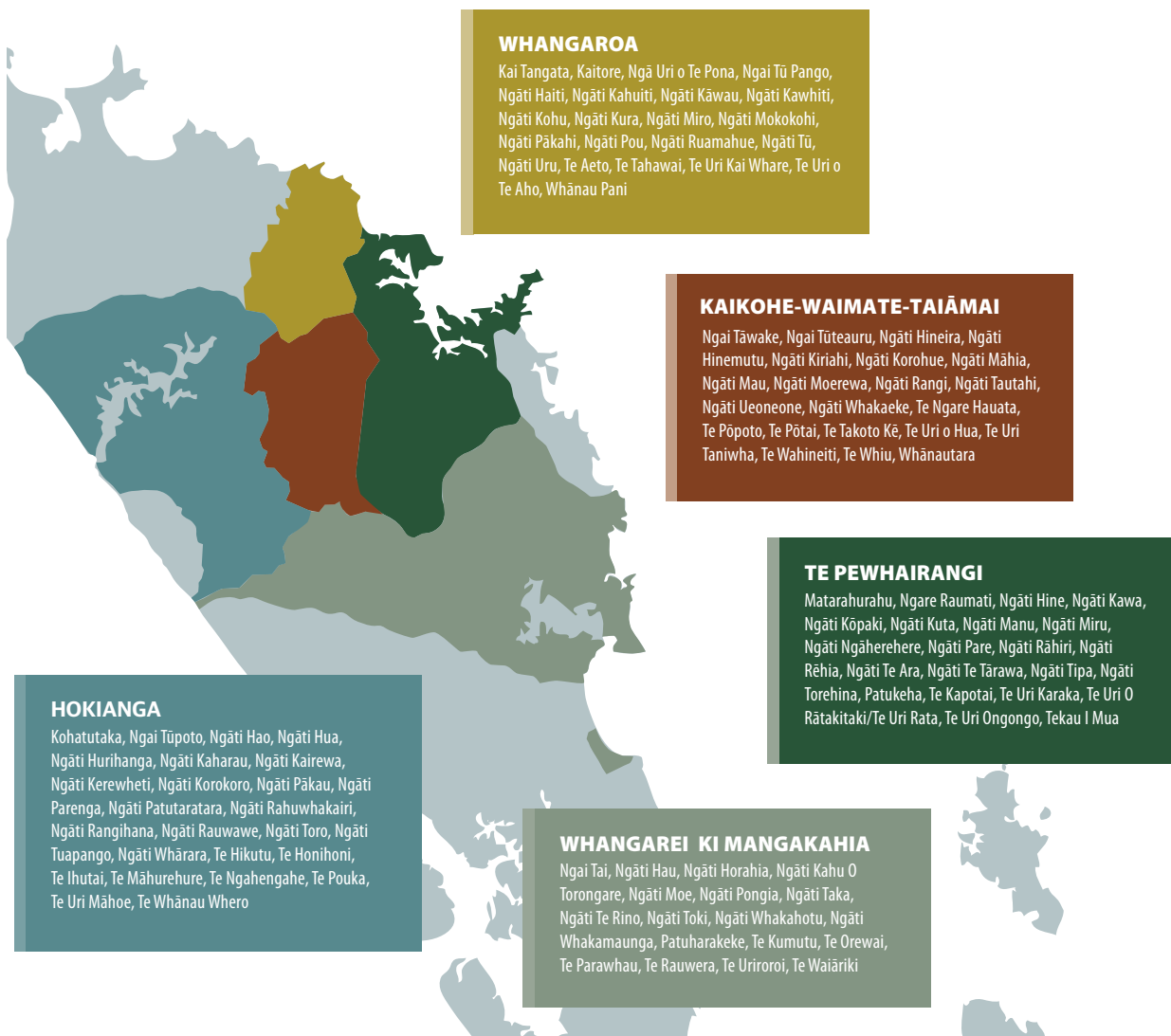
Ngāpuhi hapū

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.

This is the hapū list in the Tūhoronuku IMA deed of mandate. Finalising the hapu list is one of the transition steps set out on pages 51-52.

Te Whare Tapu o Ngāpuhi Regional Hapū Map



The above map shows the hapū regions represented in the Tūhoronuku IMA board structure. The Tūhoronuku IMA deed of mandate describes the map as follows: “For the purposes of hapū representation in settlement negotiations, Te Whare Tapu o Ngāpuhi

has been divided into five regions: *Hokianga, Kaikohe-Waimate-Taiāmai, Whangaroa, Te Pewhairangi and Whangarei ki Mangakahia.* These five regions are for administrative purposes only and do not necessarily reflect the rohe of Te Whare Tapu o Ngāpuhi”.

This report suggests Whangarei ki Mangakahia might be split into two regions, but also recommends that hapū representatives, once appointed, hold discussions about the hapū regions.

Attachment five

Waitangi Tribunal reporting times

<i>Inquiry</i>	<i>Hearing weeks</i>	<i>Hearing time</i>	<i>Reporting time</i>
Te Roroa	9	1 year 11 months	2 years 10 months
Muriwhenua	15	3 years 10 months	6 years 7 months
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 six

Membership of the engagement group

Te Kōtahitanga o Ngā Hapū o Ngāpuhi Taiwhenua

The following from Te Kōtahitanga 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 Kaipō (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);
- Daniel Kaio (Whangaroa);
- Nora Rameka (Kaumātua Kuia);
- Kipa Munro (Tūhoronuku IMA Project Team);
- Nicole Anderson (Tūhoronuku IMA 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 Māori 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 Davis;
- Jaclyn Williams;
- Frances Lawton;
- Michael Hollis.

Others

The following have attended meetings of the engagement group:

- Hone Sadler (Tūhoronuku IMA Chair);
- Kara George (Tūhoronuku IMA Deputy Chair);
- John Klaricich (Tūhoronuku IMA Kaumātua Kuia);
- Erin Shanks (Tūhoronuku IMA, Urban Representative);
- Pita Tipene (Te Kōtahitanga);
- Rudy Taylor (Te Kōtahitanga).

Attachment six

Terms of engagement

Kaupapa

Attempt to resolve the issues in the Waitangi Tribunal's Ngāpuhi Mandate Inquiry Report and provide options for consideration and approval.

For the avoidance of doubt the engagement will be undertaken on a without prejudice basis and the ratification of any options will be subject to the internal processes of each party that chooses to engage.

The Parties

The Parties participating in this engagement process are:

- a. Te Kōtahitanga o Nga Hapu Ngāpuhi Taiwhenua;
- b. Tūhoronuku IMA;
- c. the Crown; and
- d. any other party to the Urgent Inquiry who have agreed to engage in this process.

Note that it will be up to each party to determine how they are to be represented during this engagement process.

Background

1. On 14 February 2014, The Crown recognised, conditionally, the mandate of the Tūhoronuku Independent Mandated Authority (Tūhoronuku IMA) to negotiate a settlement of the historical claims of Ngāpuhi.
2. 15 claims, primarily from Ngāpuhi hapū and collectives of hapū, relating to the Crown's recognition of the Tūhoronuku IMA mandate were heard and reported on by the Waitangi Tribunal. The Waitangi Tribunal's Ngāpuhi Mandate Inquiry Report was released in pre-publication form on 11 September 2015. The Tribunal found that the claims were mostly well founded.
3. The Tribunal found that the strength of hapū autonomy is a defining characteristic of Ngāpuhi. As such, any entity seeking to represent Ngāpuhi in settlement negotiations had to produce clear evidence of hapū support for its mandate. It found that the Crown had a primary Treaty duty to actively protect the rangatiratanga of Ngāpuhi hapū in deciding how and by whom they would be represented in settlement negotiations. The Crown failed in this duty by recognising the mandate of the Tūhoronuku IMA in the absence of clear evidence of hapū support for its mandate. Further, the structure and processes of the Tūhoronuku IMA undermined hapū and their ability to make crucial decisions affecting the settlement of their claims.
4. The Tribunal identified flaws in the structure and processes of the Tūhoronuku IMA and found the Crown to have breached the Treaty. It did not, however, believe that the Crown should withdraw its recognition of the mandate and require that a new mandate process take place.
5. The Tribunal believed that there was broad support within Ngāpuhi for negotiations towards settlement and that flaws identified in the Tūhoronuku IMA could be remedied, stating that once remedied, the Tūhoronuku IMA will be capable of leading a negotiation on behalf of hapū. It stated all participants in its inquiry wish to proceed to settlement. At issue is when and how that should happen. Two different approaches to those questions have developed within Ngāpuhi, under different leaderships and leadership structures, and drawing on different power bases and hapū, though hapū themselves may be divided over how best to proceed.
6. The Tribunal strongly encouraged claimant groups to proceed together which may involve a negotiation 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.
7. Parties have agreed to a focused engagement process to try and address the issues in the Tribunal's report in the hope that they can be resolved and an agreement can be reached on a way forward.

Key Issues

8. The key issues for engagement will be the issues and recommendations identified in the Waitangi Tribunal's Ngāpuhi Mandate Inquiry report. The Waitangi Tribunal recommended:
- 1) first, the Crown must halt its negotiations with the Tūhoronuku IMA to give Ngāpuhi necessary breathing space to work through the issues that have been identified;
 - 2) secondly, hapū must be able to determine with their members whether they wish to be represented by the Tūhoronuku IMA;
 - 3) thirdly, those hapū that wish to be represented by the Tūhoronuku IMA must be able to review and confirm or otherwise the selection of their hapū kaikōrero and hapū representatives, so that each hapū kaikōrero has the support of their hapū;
 - 4) fourthly, Ngāpuhi hapū should have further discussions on the appropriate level of hapū representation on the board of the Tūhoronuku IMA;
 - 5) fifthly, the Crown should require as a condition of continued mandate recognition that a clear majority of hapū kaikōrero remain involved in the Tūhoronuku IMA;
 - 6) sixthly, there must be a workable withdrawal mechanism for hapū who do not wish to continue to be represented by the Tūhoronuku IMA; and
 - 7) finally, if they exercise their choice to withdraw, hapū must be given the opportunity and support to form their own large natural groups.
- 8.1 In addition the Tribunal recommended or suggested:
- 1) that the Crown support hapū which withdraw from the 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. This will involve the Crown supporting and encouraging hapū, through the provision of information and financial support, to form into large natural group(s), and to obtain mandate(s) from their members;
 - 2) that nominations for hapū kaikōrero be decided on home marae and, if more than one nomination is received, that a voting process open to all hapū members, wherever located, be held;
 - 3) that discussions on the make-up and structure of the PSGE(s) should begin as early as possible, or at the least be open and transparent, as this is also likely to give hapū further confidence to join the Tūhoronuku IMA;
 - 4) that a minimum of 65 per cent of the total number of hapū named in the amended deed of mandate would need to continue their support of the Tūhoronuku IMA;
 - 5) hapū should have the opportunity to discuss and consider whether the current level of hapū representation on the board of Tūhoronuku IMA is appropriate to support their settlement aspirations;
 - 6) the Crown should also be prepared to 'wind back' the terms of negotiation if further hapū join the Tūhoronuku IMA as a result of the process we have recommended;
 - 7) 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;
 - 8) 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's social, cultural and economic position, the Crown's honour, and the Treaty relationship itself.
- 8.2 Any other issues agreed between the parties.

Conduct of Affairs

9. The parties agree to engage on the issues in good faith and in a way that is transparent and enhances the mana of the hapū of Ngāpuhi and Ngāpuhi as a whole in general.

Attachment six

Terms of engagement (cont.)

Role and process

10. The Parties will:
 - 1) develop options and recommendations that are advisory and non-binding only to their respective hapū and/or organisations to consider;
 - 2) provide reasons for any options and recommendations that it makes;
 - 3) note issues where divergence of views is too great to resolve the issue and provide information on the level of agreement within the parties and the reasons why resolution was not achieved on any given issue.
 - 4) report back to their respective hapū and/or organisations at appropriate intervals. To this end, a fortnightly written report will be produced and will be circulated to all interested parties.
11. The Office of Treaty Settlements in liaison with the parties shall take responsibility for organising and providing notice of the engagement hui including: the setting of meeting dates, times, and venues which shall in so far as is possible accommodate the availability and proximity of the parties.
12. Minutes of meetings shall be recorded and circulated to all parties in attendance at any given hui.

Facilitation

13. An independent facilitator is not deemed necessary. Parties will take responsibility to ensure that the process is facilitated by ensuring milestones are met within agreed deadlines.

Decision Making

14. The Parties shall have no delegated authority to make decisions that are binding on their hapū and/or organisations.
15. The ratification of any ideas developed will be subject to the internal processes of each party that chooses to engage.

Timeframe

16. All parties shall endeavour to engage meaningfully with a view to resolving the various issues by 31 March 2016. This timeframe can be amended through agreement of all parties.

Resourcing

17. The Crown shall resource the parties to participate fully in this process to ensure there is the greatest opportunity to resolve the issues by 31 March 2016.
18. The level of resourcing shall be agreed in advance between the parties and the Crown.
19. Resourcing shall include administration overheads, an agreed meeting fee, travel, accommodation, record taker and drafter and where necessary the commissioning of appropriate experts.

Media

20. All media statements about the engagement process including progress that are proposed for release by any party during the timeframe of the process shall be by agreement between all parties. Agreement shall not be unreasonably withheld but where agreement cannot be reached on key messages then there is to be no media statements or interviews about the engagement process whilst the process remains underway.

Withdrawal From the Engagement Process

21. All parties are participating in the engagement process willingly. Any party may withdraw from the engagement process at any time by giving notice to the other parties.

Rights Not Affected

22. The engagement process does not in any way limit or prejudice any party's legal rights or the ability to exercise such rights.

