



Te Rōpū Whāiti
Ngāpuhi Technical Working Group

Te Rōpū Whāiti Report



Options for a United Approach

Background

At a hui held at the Whitiara Marae, Te Tii on 21 July 2011, the hui issued a clear message that they wanted to see a united approach to the settlement of their Tiriti o Waitangi claims.

Te Rōpū o Tūhoronuku (Tūhoronuku) and Te Kotahitanga o Ngā Hapū Ngāpuhi (Kotahitanga) have both indicated a preference for a united Ngāpuhi settlement process.

To facilitate this desire, the concept of a technical group was suggested which would generate a range of settlement processes and sequences that could be put forward to Ngāpuhi hapū, whānau and claimants for consideration.

Te Rōpū Whāiti (Technical Working Group)

Tūhoronuku and Kotahitanga agreed to establish a working group, Te Rōpū Whāiti, comprising representatives from both parties to develop a process that enables Ngāpuhi to facilitate a settlement on behalf of Ngāpuhi and enables claimants in Te Paparahi o Te Raki inquiry to have their issues heard before the Waitangi Tribunal (Stage 2 hearings).

Both parties agreed that the Technical Working Group will consist of four representatives from each group. They are:

Tūhoronuku: Sam Napia, John Klaricich, Lorraine Toki and Kirsti Luke
Kotahitanga: Moana Tuwhare, Jason Pou, Rowena Tana and Willow-Jean Prime

Te Rōpū Whāiti Terms of Reference

The Terms of Reference for Te Rōpū Whāiti were signed on the 15th and 16th of November 2011. These terms of reference outline the key issues as being:

1. The sequencing of Waitangi Tribunal Hearings, Settlement Negotiations and other processes ancillary to the process;
2. The role of hapū, whānau and claimants and how they are represented in the settlement process;
3. The role of Te Rūnanga-Ā-Iwi-O-Ngāpuhi

In addition to these three key issues Te Rōpū Whāiti will develop and agree on a business case and funding structure.

Te Rōpū Whāiti is required to report back to Tūhoronuku and Kotahitanga jointly on the recommendations and by agreement both organisations will report back to Ngāpuhi through a joint presentation.

A copy of the Terms of Reference is included in this report as appendix "A".

Report

This document forms the Te Rōpū Whāiti report to the parent groups. This report outlines options for progression to settlement and highlights those options conducive to a united approach to complete hearings and negotiations. It also includes several broad hearings and negotiation structures, sequences and timelines.

To some degree both process have already commenced. The Waitangi Tribunal has completed Stage 1 hearings in February 2011 and has commenced preparing for Stage 2 hearings. And, Tūhoronuku completed seeking a Mandate from Ngāpuhi in September 2011, with an application to the Crown to recognise this mandate pending.

The report is in five parts:

PART 1 - SEQUENCING/TIMING

PART 2 - STRUCTURE FOR REPRESENTATION

PART 3 - THE ROLE OF THE RŪNANGA

PART 4 - BUSINESS CASE & FUNDING STRUCTURE

PART 5 - RECOMMENDATIONS

Where possible Te Rōpū Whāiti have attempted to mutually agree on issues and findings. Where differing views prevailed varying points of view have been respected and reported inclusively.

It should be noted the Terms of Reference explain no authorities have been delegated to Te Rōpū Whāiti. Decision making rests with the 'parent groups' Tūhoronuku and Kotahitanga o Ngā Hapū Ngāpuhi.

PARENT GROUPS

Te Rōpū o Tūhoronuku

Te Rōpū o Tūhoronuku (Tūhoronuku) was established in 2008 to concentrate leadership toward the Ngāpuhi settlement negotiations driven by the very personal desire to raise the standard of care and prosperity amongst and between Ngāpuhi whānau, hapū and communities. The 11 of the 15 representatives who make up Tūhoronuku are appointed by Ngāpuhi: Hapū; Kaumātua and Kuia; Ngāpuhi domiciled in Auckland, Wellington and the South Island and Te Rūnanga-Ā-lwi-O-Ngāpuhi.

Between August and October 2011, Tūhoronuku undertook a mandating process to seek approval for Tūhoronuku to represent Ngāpuhi in settlement negotiations with the Crown. That approval was received by way of a 76% postal ballot approval from Ngāpuhi.

Te Kotahitanga o Ngā Hapū Ngāpuhi

Te Kotahitanga met for the first time at Te Kotahitanga Marae, Kaikohe on the 18th of November 2009. Initially the hapū came together because of dissatisfaction with the direct negotiations model being progressed by Te Rūnanga-Ā-lwi-O-Ngāpuhi and its settlement sub-committee, Tūhoronuku and the need for a cohesive approach to hearing.

Hapū quickly focused on a common vision and a united purpose to successfully organise the Initial Hearing during 2010/2011 through its Initial Hearings Organising Kōmiti (IHOK). Te Kotahitanga have continued to hold monthly hui around the Ngāpuhi marae in order to canvass the people, plan and coordinate its efforts in order to realize its vision – "Ngāpuhi Taniwharau" – "Self determination of each hapū and all Ngāpuhi hapū. Since the conclusion of Stage 1 hearings, the focus has now turned to the successful completion of Stage 2 hearings, and continue to consider and develop options for settlement.

PART 1 - SEQUENCING/TIMING

1.1 The Underlying Issues

The following table sets out the primary issues in respect of sequencing of the Stage 2 hearings and the Settlement Negotiations that have been identified through the discussions held to date.

Primary Issue	Tūhoronuku Te Rōpu o Tūhoronuku	Te Kotahitanga o Ngā Hapū Ngāpuhi
Jurisdiction of the Waitangi Tribunal	The Tribunal has no real powers of substance – concern that the Tribunal will have no impact on the resolution of Ngāpuhi issues, wasting our people's time.	Settlement legislation removes the jurisdiction of the Waitangi Tribunal to inquire into and report on claims. Tribunal has binding recommendatory powers in respect of s27B SOE memorialized lands. If negotiations fall over, state owned lands with s27B memorials on their titles can be transferred back. This provides leverage for negotiations and a backstop if negotiations fail. This position has been strengthened since the Haronga supreme Court decision.
Benefits of the Waitangi Tribunal Process	The Tribunal is not necessarily the best forum in which to hear Ngāpuhi's grievances. The Tribunal was originally set up along lines similar to a Truth and Reconciliation commission. That original kaupapa has evolved into a lawyer driven argumentative forum; it is the domain of lawyers and legal argument. Such a forum sometimes delivers findings and recommendations that reflect neither truth nor reconciliation – but rather breeds new conflict between hapū and communities.	Independent Commission of Inquiry 98% of claimants support Stage 2 Waitangi Tribunal Hearings Has mediation functions available Has binding recommendatory powers on s27b SOE Act memorialized land which are available after an inquiry into the breaches in respect of that land Has an established and secure public record archive of all material submitted during hearing Facilitates and strengthens hapū and community working relationships Provides clarity on claim issues for particular groups and an overall picture in respect of Crown breaches

Primary Issue	Tūhoronuku Te Rōpū o Tūhoronuku	Te Kotahitanga o Ngā Hapū Ngāpuhi
<p>Funding - CFRT will not fund both processes at the same time</p>	<p>Funding should not determine what is the best approach for Ngāpuhi. Funding for lawyers is the high cost of the process, it creates difficulty in bringing funders to the table. Despite this, funding is accessible through the collaboration of both Negotiation and Hearings processes. Certainly forms of funding are available.</p>	<p>CFRT have issued a blanket NO on funding a parallel process.¹</p> <ul style="list-style-type: none"> • 25 November 2011 Report to Appointors • November 2011 Letter from CFRT to Claimants • 17 January 2012 Rōpū Te Rōpū Whāiti meeting with Key Stakeholders <p>Funding for the lawyers is not the primary concern nor relevant to CFRT funding hearing costs.</p>
<p>Implications of the Direct Negotiations process</p>	<p>The process is open because only Ngāpuhi can vote and thus approve the Settlement, not Tūhoronuku or the Rūnanga. For this reason Ngāpuhi whānau, hapū and communities must be involved in critical design areas and approving key negotiation milestones.</p>	<p>The process is private and confidential/ Closed forum</p> <p>Limited information to claimants whose claims are directly affected</p> <p>There does not appear to be strategy in place for ensuring Ngāpuhi whānau, hapū and communities be involved in critical design areas and approving key negotiation milestones.</p> <p>Issues raised above.</p>

Primary Issue	Tūhoronuku Te Rōpū o Tūhoronuku	Te Kotahitanga o Ngā Hapū Ngāpuhi
<p>Urgency of Settlement - further delays will cost Ngāpuhi</p>	<p>Stage 1 Hearings has been completed. Ngāpuhi are being denied cultural and economic development and revival opportunities. Foreign parties are progressively benefiting at the cost and expense of Ngāpuhi people. Settlement is one tool and cure to urgently reverse the cycle of poverty of Ngāpuhi whānau, hapū and communities.</p>	<p>Settlement is not a cure to Ngāpuhi cultural, economic development and revival.</p> <p>The Tribunal Hearings process has benefits that supports cultural development and revival.</p> <p>Settlement should not be at the cost of either:</p> <ul style="list-style-type: none"> • Claimants right to be heard before the Tribunal, and • The unity of Ngāpuhi through working together on common goals
<p>Demand on Human Resource if both processes are done in parallel</p>	<p>A collaborative process rather than a merged model best supports a share of human resource and capability. Lawyers concentrate on legal processes such as the Tribunal; Tūhoronuku focuses on negotiations thereby allowing all bases to be fairly covered. Human and other resources are better deployed non-adversarially kano ki te kano. A shared leadership approach can manage the resources required. There is leadership available that can promote both processes in a way that ultimately serves Ngāpuhi people.</p>	<p>Each process requires significant human and other resource - will progressing the two at the same time be viable given the stretched resources that currently exist.</p> <p>In some cases the necessary resources are limited or not available at all.</p> <p>It is still not clear how Tūhoronuku anticipates the "collaboration" is to occur</p>

Options 1A - Current Track/ Timeline

The timeline below is the current Hearings timetable² and projected negotiations timeframes which reflects the two separate processes continuing uninterrupted on their current paths.

Jurisdiction

The Office of Treaty Settlements has agreed in the case of Ngāti Manawa and Ngāti Whare to reserve the jurisdiction of the Tribunal and pass settlement legislation for those groups. This in effect means they can achieve settlement and the Tribunal can still issue its report minus the recommendations to remove prejudice. A similar approach could be taken here which would ensure the ability of the claimants and the Tribunal to continue the hearings process through to completion regardless of the timing of settlement.

This step would usually be implemented at the Terms of Negotiation phase.

Funding

It should be noted that according to the current track outlined below the respective (current) timelines will conflict in late 2012, early 2013 once funding for hearings is no longer available. This means for claimants that the sub-regional hearing phase will not have the financial support necessary to go ahead, unless this can be secured prior to the Terms of Negotiation phase.

If the current funding policy remains in play the options for sequencing of the processes that do not raise funding issues or adequately cater for the funding issues are:

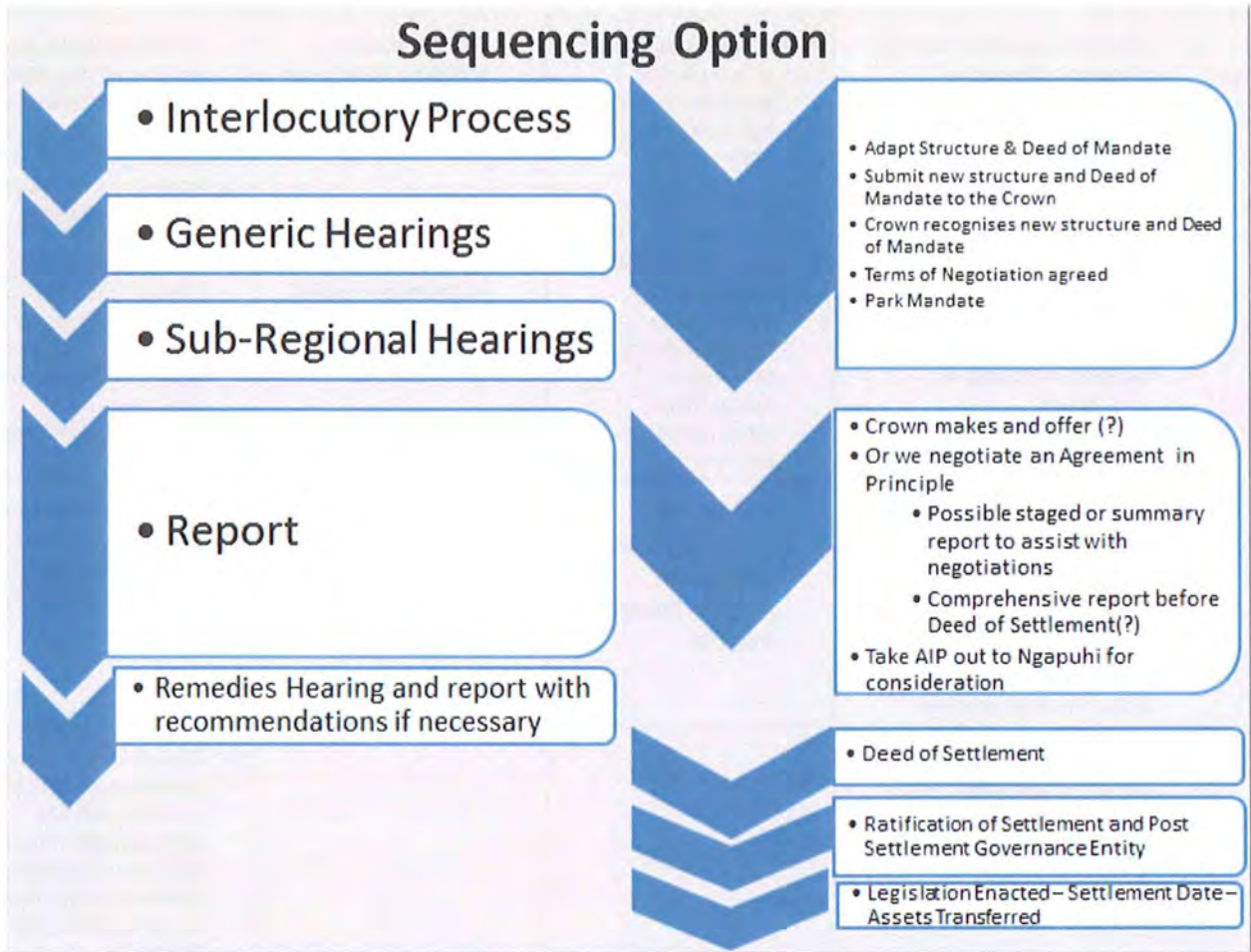
- a. Delay Settlement Negotiations until after hearing - (see Option 1B below);
- b. Agree not to compete for the same pool of funding - Tūhoronuku does not apply for CFRT funding;
- c. Source an alternative to CFRT funding for hearing;
- d. Lobby CFRT to review its funding position in this case;
- e. Undertake a merged hearing and negotiation process - (see Option 1C below).

NGĀPUHI HEARINGS & SETTLEMENT - CURRENT TRACK	
HEARINGS	NEGOTIATIONS & SETTLEMENT
11 November 2011 Draft Claimant Statement of Generic Issues	January 2012 Draft the Draft Deed of Mandate
24 November 2011 Judicial Conference	
10 February 2012 Draft Claimant Statement of Generic Issues	March 2012 Submit Draft Deed of Mandate to OTS
5 March 2012 Draft Crown Statement of Position & Concessions	To end of March 2012 Begin consultation on the Technical Group's options and findings. Undertake to further incorporate views and robust conclusions from this and wider Ngāpuhi engagement.
12 March 2012 Judicial Conference	
29 March 2012 Final Crown Statement of Position & Concessions Draft Claimant Statement of Local Issues	
3 May 2012 Draft Tribunal Statement of Issues	Beginning April – End May 2012 OTS to begin formal public consultation process – further opportunity to refine input from those who have not participated into the Dec to March 2012 process.
22 May 2012 Judicial Conference	
28 June 2012 Final Tribunal Statement of Issues	June – August 2012 Respond and finalise issues arising from public submission process.
Mid 2012 Receipt of Stage 1 Tribunal Report Stage 2 Generic Hearings Begin	
Dec 2012 Generic Hearings Completed Point of conflict/clash of processes	September – October 2012 Achieve Ministerial endorsement for mandate. Initiate business case for CFRT funding for Terms of Negotiation. Recruit negotiating team.

NGĀPUHI HEARINGS & SETTLEMENT - CURRENT TRACK	
HEARINGS	NEGOTIATIONS & SETTLEMENT
Dec 2014 - 2015 Sub Regional Hearings Completed (approx 16 Hearing weeks). Themes and hearings venues to be coordinated.	February – July 2013 Terms of Negotiations Begin – Principles, protocols and high level goals & objectives from negotiations affirmed. 6 months culminate in a Terms signing ceremony.
2015 or beyond Tribunal Report completed.	October 2013 – July 2016 Agreement in Principle discussions begin – the key redress framework is formed based on Stage 1 report, sub-regional SOI's and concessions granted in 2012.
	July 2016 – July 2019 Deed of Settlement negotiations begins – legal instruments are drafted from agreed AIP redress mechanisms. Settlement legislation is drafted.
	2018 Post-settlement Governance Entity work begins.
	July 2019 Deed of Settlement is initialled and ratification begins.
	November 2019 Deed of Settlement ratification process ends.
	2020 Legislation enters the house. PSGE ratification is completed.
Mid 2020 Settlement is complete and transferred. Ngāpuhi PSGE is mandated and operational.	

CONTINUE WITH NEGOTIATIONS PLANNING AND PREPARATION AND SUBMIT DEED OF MANDATE EARLY 2012		POSTPONE COMPLETION OF DEED OF MANDATE PROCESS & HALT NEGOTIATIONS TO 2014 OR EARLIEST DEC 2012	
PROS	CONS	PROS	CONS
<ul style="list-style-type: none"> Enables Ngāpuhi to move to refine and develop a Negotiations approach with Ngāpuhi and the Office of Treaty Settlements and identify planning and resourcing fundamentals. 	<ul style="list-style-type: none"> A stalling to the cultural and economic revival of Ngāpuhi people and communities. 	<ul style="list-style-type: none"> Funding easier to achieve without both processes running at the same time. 	<ul style="list-style-type: none"> An abject denial and rejection of the mana and support of those Ngāpuhi who have directed support and continuance of engaging in an Ngāpuhi negotiations track.
<ul style="list-style-type: none"> Requires formal and public consultation to occur. Allows further and wider hapū, whānau and community Ngāpuhi groupings to participate. 	<ul style="list-style-type: none"> Some do not believe that the public submission / consultation process provides a constructive development process. 	<ul style="list-style-type: none"> Likely to receive Te Kotahitanga support. 	<ul style="list-style-type: none"> Mandate likely to lapse (definitely for 2014) and may need to repeat. Significant frustration caused by those who supported current Tūhoronuku process.
<ul style="list-style-type: none"> Wider consultation enables a wider pool of input and identification of options to galvanise the strategy and negotiation vehicle(s). It provides an avenue for Ngāpuhi people not engaged in the Hearings process. 	<ul style="list-style-type: none"> Lack of 100% support amongst the Iwi and likely mandate recognition litigation. 	<ul style="list-style-type: none"> Better able to gel as a collective as a result of working through differences in the Tribunal process. 	<ul style="list-style-type: none"> Lapsed mandate a serious waste of resource / Ngāpuhi investment.
<ul style="list-style-type: none"> Take advantage of an ideal political environment with a newly mandated government ensuring that Ngāpuhi issues take prominence. 			<ul style="list-style-type: none"> Risk of further alienating people, hapū and Ngāpuhi communities not participating in the Tribunal claimant process but who prefer and want the option to participate in settlement issues.
<ul style="list-style-type: none"> Consultation and the iterative process into constructing the final DOM and negotiating entity can mutually assist the Hearings process by providing an end goal and objective. 			<ul style="list-style-type: none"> Still requires generally a year or more administration following submission to achieve DOM. This will mean that negotiations do not actually start until early 2016.
<ul style="list-style-type: none"> Enables timetable of 2020 settlement date to be achieved. A delay will delay Ngāpuhi development. 			

Option 1B - Delay Negotiation until after Sub Regional Hearing Complete



Pro's	Con's
<ul style="list-style-type: none"> • Allows hearings to continue without funding impediments • Provides a single and united Ngāpuhi process 	<ul style="list-style-type: none"> • Delays Negotiation • Mandate may go stale - would require renewal

Options 1C - Merged Hearing and Negotiation process

In light of the respective objectives and priorities, an option that was canvassed, was the merging of negotiation and hearings into one process. This would mean that instead of having two separate parallel processes taking place, largely in isolation, that one agreed process incorporating both Tribunal hearings and negotiations be amalgamated into a single track.

This option anticipates the respective groups essentially being a single group - working closely together on a single outcome where both objectives (of hearing and settlement) are provided for in a meaningful and non-competitive way.

An example could see negotiations taking place around the time of the generic hearings on the generic issues raised in hearing (insofar as they were relevant to the redress discussions). This option would assume some fundamental points such as:

- a. The negotiation team would participate and inform hearing preparation and presentation which would in turn inform the negotiations themselves;
- b. The Crown would need to participate meaningfully in the hearing process;
- c. Such active participation could be used to ensure the ongoing integrity of any mandate achieved.
- d. There would be a joint and agreed approach to how the Tribunal process would inform the negotiation process and vice versa by all parties (Claimants, negotiating body, OTS the Tribunal and CFRT) prior to hearings beginning and in the development of the Terms of Negotiation.
 - For example whether the Tribunal could be used as a circuit-breaker if a deadlock arose in the negotiation;
- e. Claimants could participate actively in the development and refinement of negotiation issues and bottom lines and consideration of specific redress options;

This option reduces the timeframes forecasted in the standard sequencing table outlined above and would meet the objectives of a faster (in time) settlement and support for stage 2 hearings.

This option is likely to satisfy CFRT's current funding policy as the hearing process would be directly resulting in settlement.

This option would require further exploration, discussion and agreement with the other key parties before it could be implemented. The process diagram below is suggestive only and is subject to agreement of parties. Order and timing of Generic Hearing themes is yet to be determined. Similarly the commencement of negotiations is subject to a number of significant factors.

Key points of process

- Provides a single and united Ngāpuhi process - One group working collectively on common goals - not a parallel process

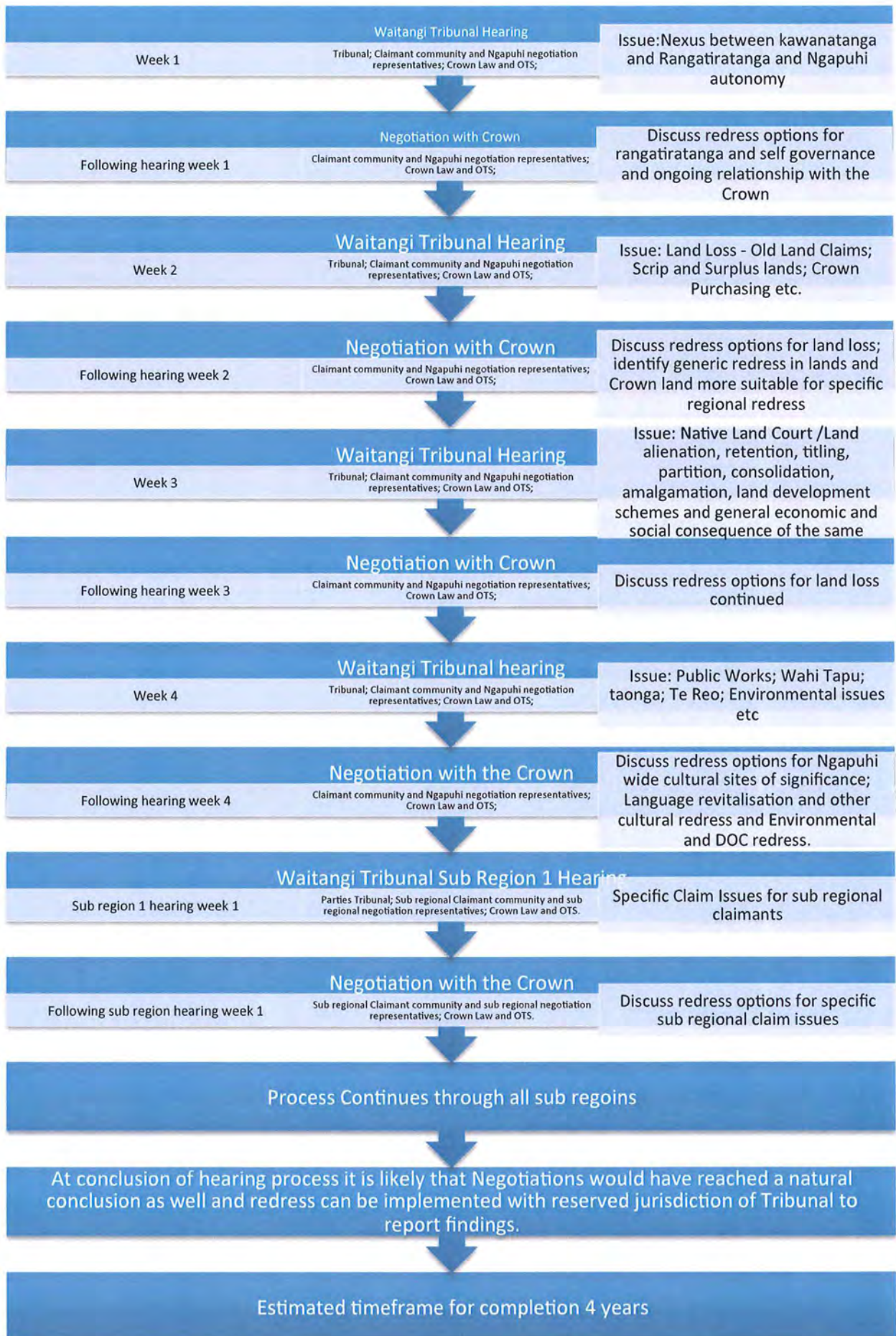
Ngāpuhi Collective

- Responsible for Generic Hearings prep and presentation
- Responsible for negotiation of Generic Ngāpuhi Redress
- Single negotiation on common issues/redress

Regional Collective

- Responsible for Sub regional hearings prep and presentation
- Responsible for negotiation of specific regional claims redress

Separate and possibly tandem with generic negotiations on regional issues/redress where overlap in timing and issues arises



Pro's	Con's
<ul style="list-style-type: none"> • Provides a single and united Ngāpuhi process • Hearings continue and directly inform negotiation <ul style="list-style-type: none"> • The power, strength and influence of the korero presented in hearing is directly and simultaneously conveyed to the Crown negotiators • Negotiation is not stalled and timeframe for completion of negotiation significantly reduced and builds on negotiation preparation completed to date. • Crown participates in hearing in a more hands on way and claimants participate in negotiation in a more hands on way • More cohesive approach as claimant community and negotiation representatives work together; • Provides a direct relationship between grievances and redress - where redress options allow • Tribunal readily available to circuit break and or mediate negotiation if or when talks are stalled <ul style="list-style-type: none"> • Provides an ongoing and independent panel to assist parties to resolve and redress breaches of Te Tiriti when needed 	<ul style="list-style-type: none"> • Requires agreement by all parties including Tribunal and Crown • Needs to have robust set of processes to get support; • Labour and resource intensive • Timing of Negotiation discussions/issues may not correspond directly with Tribunal issues and likely to be some disjoint in issues • Some grievances/ hearing issues will not have any direct redress options that relate to them - disjoint in issues being heard and redress available • Timing of generic and sub region specific redress likely to overlap in both time and issues - could become bottlenecked • May require adjustments to be made from time to time to standard hearing timetable to direct hearing time to settlement talks. This could shorten time available for standard tribunal hearings.
<ul style="list-style-type: none"> • Final Settlement completed together • Is likely to be funded by CFRT as meets requirement of a single process which achieves settlement • Requires agreement by all parties including Tribunal and Crown • Needs to have robust set of processes to get support; • Allows participation of all parties including non-claimant hapū at intervals, which they wish to participate in. • Allows an expert approach at the points it is required. 	<p data-bbox="868 1176 1126 1207">Te Rōpū o Tūhoronuku</p> <ul style="list-style-type: none"> • The process remains separate (one controlled by OTS, the other by the judiciary). • Creates a stretch of HR resources. • Utilises generic skills when specialist and technical skills are required - does not enable an expert approach on key issues. • Potentially locks out other hapū who do not wish to participate in the hearings process but who may choose to engage in the negotiations process. • Negotiations are stalled while approach is determined. Current mandate successfully achieved is disrespected

It should be noted that this option has not been done before in any other hearing and settlement process and would be unique to Ngāpuhi.³ This option is also a significant divergence from the standard Crown approach settlement.

³ Although it was floated in the CNI but did not eventuate
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PART 2 – Models of Representation for the Mandated Negotiation Entity

The Ngāpuhi Mandated Iwi Entity has a clear and (in most cases) singular responsibility - that is to settle and resolve the historical Te Tiriti claims of Ngāpuhi with the Crown for and on behalf of the Ngāpuhi people. The mandated negotiation entity has a duty to stay refreshed and connected with the settlement needs of Ngāpuhi – the mandate, other areas also include strategic and tactical planning, analysing and testing opinions, sourcing excellent advisors and at times media and political lobbying.

This section considers models of representation that could support the existing framework to best affect the settlement outcomes for the Iwi. It also sets out where the existing framework is not supported and would be a redesign.

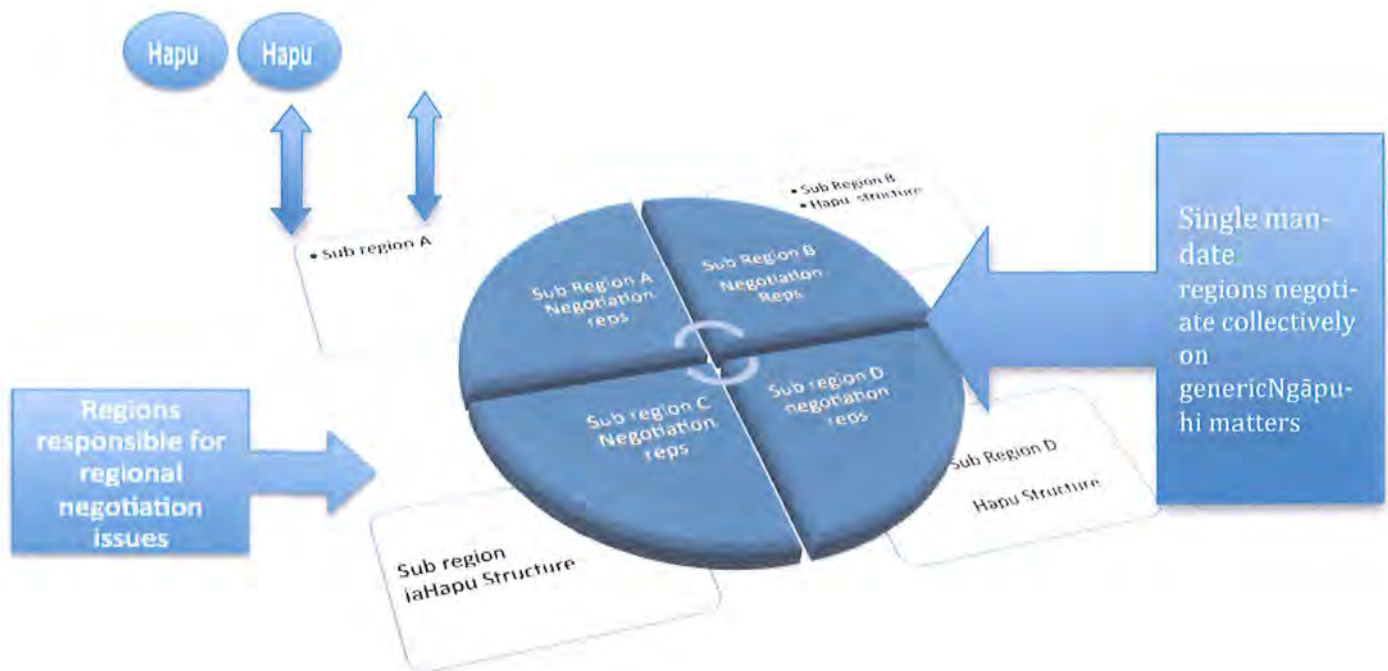
It is likely that a model which incorporates the key components of the existing structure will be considered as an adjustment to it and will not require going through another mandating process. Those key components of representation are made up of:

- Ngāpuhi hapū;
- Kaumātua and Kuia;
- Ngāpuhi residing outside the rohe; and
- Te Rūnanga-Ā-Iwi-O-Ngāpuhi Ngāpuhi

However, a model that does not include the above elements of representation, would be a total redesign of the existing structure and therefore would require a further mandating process to be completed.

In respect of Hapū representation, each model below assumes hapū who are active and seek to participate can do so but are not required to. Each model allows hapū to engage in the process if and when they are ready.

Option 2A: Single Mandate with Regional Hapū Structure



Key points of model

Hapū collectives

- Formalise regional hapū structure
- Appoints Regional Reps and Negotiators

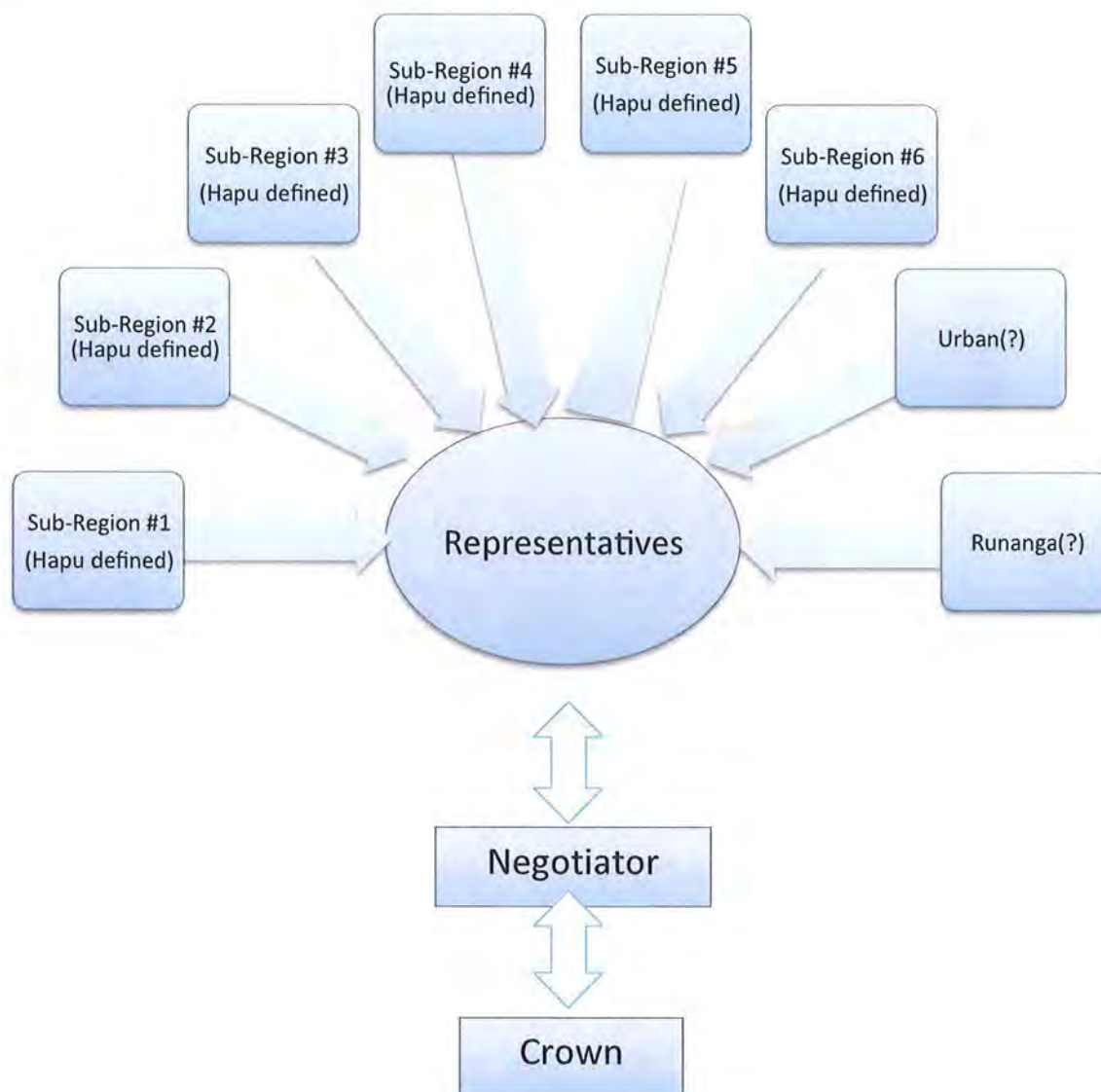
Regional Collectives

- Forms a Ngāpuhi Collective structure
- Could incorporate an urban and Kaumātua and kuia representative each (adjustment to existing structure) or not (redesign of existing structure)

Ngāpuhi Collective

- Appoints Common Redress negotiators
- Single mandate – One Ngāpuhi settlement
- Single negotiation on common issues/redress
- Separate and possibly tandem negotiations on regional issues/redress i.e. Hokianga responsible for its specific redress and likewise for other regions
- Hapū structures can be unique for each region
- Hapū negotiation reps speak for their region only and work collectively with other regional reps on common Ngāpuhi issues/redress
- Supports principles of Kotahitanga while recognising and respecting principles of autonomy / Kōwhaorau

The following diagram is a slight variation of this option.



This model can be utilised in various ways to achieve settlement as follows:

- Single Collective Mandated Entity of Reps from each Sub-Region who collectively appoint negotiators who negotiate a Collective Interests Settlement only
- Each Sub-Region also has their own parallel negotiations for their specific settlement redress
- Single Collective Mandated Entity of Reps from each Sub-Region
- They collectively appoint negotiators who negotiate a Collective Interests Settlement and negotiate each Groups Specific Settlements Redress
- Single Collective Mandated Entity of Reps from each Sub-Region
- They collectively appoint negotiators who negotiate a Single Comprehensive Collective Settlement for all regions

Pros	Cons
<ul style="list-style-type: none"> • Provides for regional autonomy and a representative hapū structure; • Can proceed with current (but reworked) single negotiation process; • Potentially more cohesive approach as regions unlikely to split off on their own – more reason to work together; • Ensures a consistency of approach between regions; • Provides more opportunity and reason to collaborate and support each other and reduces cross claims issues becoming problematic; • Regional redress can potentially be negotiated in tandem allowing for fairer outcomes • Final Settlement completed together; • Post-settlement establishment phase seamless as unified working relationships tried and tested. • Not silo-ed. Resources are consolidated, better shared knowledge of neighbouring hapū communities' needs and issues. • Is consistent with Stage 2 hearing organisational structure 	<ul style="list-style-type: none"> • Heavy beauracracy and cost. • Does not allow full independence of either hapū or regions; • May restrict the overall quantum that gets offered Ngāpuhi groups; • Needs to have robust set of processes to get support; • Needs assurances/agreement that Hapū Rangatiratanga be empowered through structure and processes; • Assumes hapū want to be represented in regions; • Assumes hapū have been consulted on representation by region;

Set up Steps for Structure

1. Regions Develop and Formalise Hapū Representation Structure
2. Terms of Reference for Hapū Structure
3. Develop Agreement in Principle between Regions and
4. Terms of Reference for Collective Reps
5. Establish Financial and Administration support base and processes
6. Regions Appoint Reps to Ngāpuhi Collective Structure
7. Appoint Regional Negotiators (may be one and the same people but not necessarily)
8. Ngāpuhi Collective Structure appoints Common Issues/redress negotiators (Can be from regional negotiators also but does not have to be)

Option 2B: Multilateral Approach with Separate Mandates

Option B is an approach similar to that set out in Option A; however, in this model it is envisaged that each region would hold its own mandate and be directly accountable to those that sit within it while still providing for a single negotiation process.

The rationale behind the splitting of the mandate is to increase accountability back to the many hapū by decentralizing authority within the structure and providing for a higher level of autonomy within the process which will need to address the issues of the most populous iwi in the country. In terms of current Crown settlement process, this model conceptualizes Ngāpuhi as a collective of large natural groupings in the way that the Crown has dealt with those of Te Hiku o Te Ika.

Like Option A, the structure would be based upon sub-regions. The need to cater for the urbanized population of Ngāpuhi could be accommodated by either designating one of the sub-regions as an 'urban' one or requiring an urban component within each of the sub regions. Ultimately, however, in order to ensure the observation of Te Tiriti o Waitangi, it is important to ensure against subsuming the views and aspirations of hapū.

This model enables each sub region to decide how they are to collectivise and come together to work with the rest of the collective without the collective insisting on determining who they are.

The process envisaged is essentially an inclusive multilateral approach which would facilitate the many hapū who affiliate to Ngāpuhi and to have a voice in this significant settlement without being subsumed by or within a collective.

Key points of model

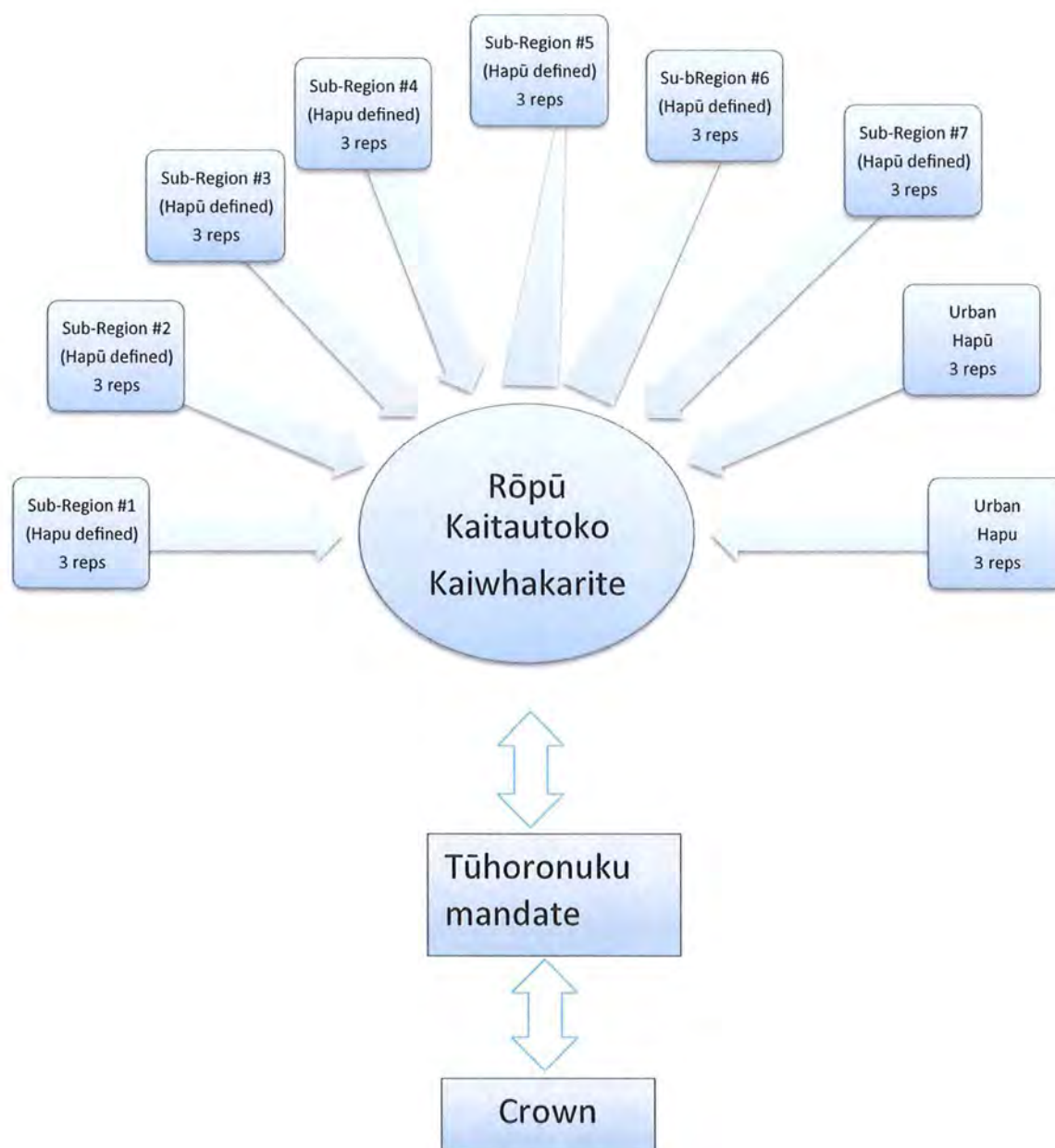
- Formalize regional hapū structures
- Appoint Individual Negotiators
- Design and affirm terms of engagement in and among themselves to form a Ngāpuhi Collective structure
- Determine points of commonality within redress for consolidated approach
- Single negotiation on common issues/redress
- Parallel negotiations on distinct regional issues/redress
- Hapū can collectivise in their own way for each region
- Sub-regional negotiators speak for their region only while working collectively toward the progression of the common goals of Ngāpuhi as a whole
- Emphasizes respect for principles of autonomy / Kōwhaorau while providing avenues for Kotahitanga
- Is inconsistent with current mandate which will require revisiting

Pro's	Con's
<ul style="list-style-type: none"> • Provides for regional autonomy and a representative hapū structure; • Increased transparency and accountability • Potentially more cohesive approach as regions unlikely to split off on their own – more reason to work together; • Provides opportunity and reason to collaborate and support each other and reduces cross claims issues becoming problematic; • Distinct and obvious remedies can be negotiated in parallel decreasing the wait for remedy while increasing buy into the process • Final Settlement completed together; 	<ul style="list-style-type: none"> • Does not allow full independence of either hapū or regions; • Needs to have robust set of processes to ensure against fraying of the whole • Will require intensive and sustained teamwork from sub regional representation and the Crown. • More expensive, involves a duplication of administration as the same operations are repeated across individual structures. • Siloed approach, harder to maintain a collective Ngāpuhi wairua - likely to be diluted through emphasis on regional over Ngāpuhi. • Does not build on existing mandating process and is a redesign requiring a new mandating process • Ignores the capability and willingness of 'all' hapū to arm up for the process. • Increased confusion and frustration as disparate levels of reporting occurs between cluster groups. • Increased competition between cluster groups. Crown better able to divide and rule between larger number negotiating entities.

There are various ways in which this model could achieve settlement as follows:

1. Each Sub-Region has their own mandate and they appoint their negotiators who do a Collective Negotiation of Collective Interests only, Each Sub-Regional also has their own parallel negotiations for their own Specific Settlement Redress
2. Each Sub-Region has their own mandate and they appoint their negotiators who do a Single Collective Negotiation for the Collective Interests Settlement and each Sub-Regions Specific Settlement Redress.
3. Each Sub-Region has their own mandate and they appoint their negotiators who do a Single Collective Negotiation for a Single Comprehensive Collective Settlement

Option 2C: Regional Hapū Structure with 2 Urban Regions



Key points of model

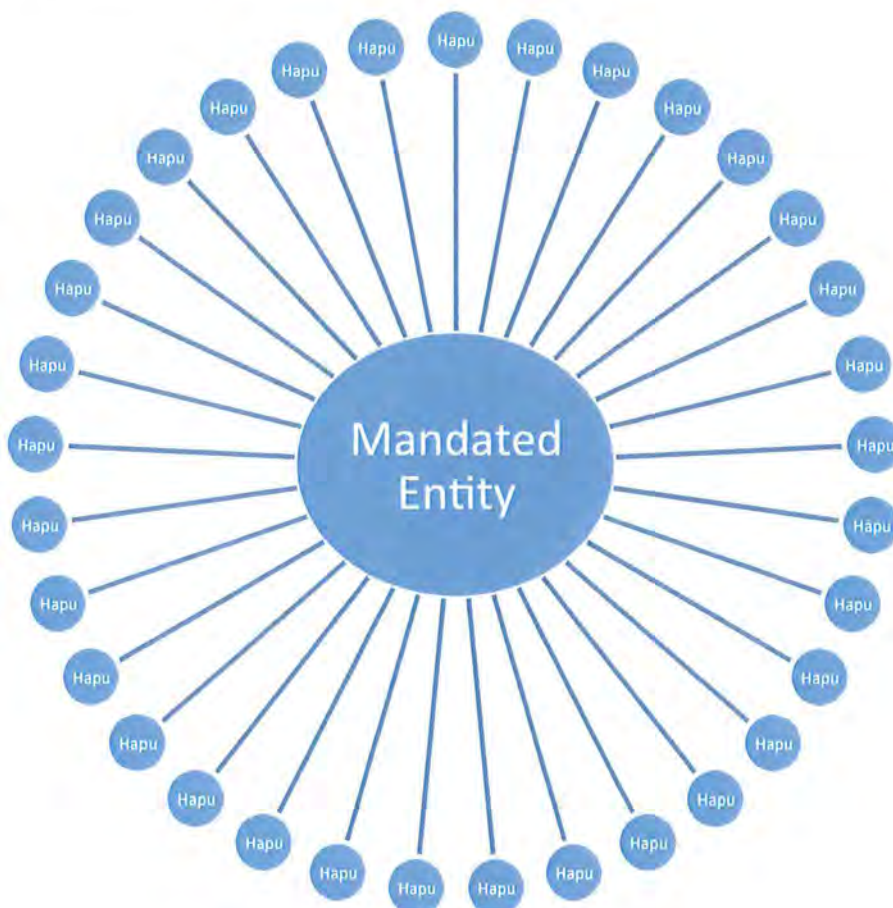
- Retain Tūhoronuku - One mandate
- Rūnanga investment in hapū development strategy
- Kaitautoko and Kaiwhakarite have to be same people - a small group of specially skilled people who know governance and cultural systems and every sub region "take".
- Sub regions would be particular to each grouping

Pro's	Con's
<ul style="list-style-type: none"> • Provides for regional autonomy and a representative hapū structure; • Hapū autonomy protected but avoids large numbers in representation; • Can proceed with current (but reworked) single negotiation process; • Potentially more cohesive approach as regions unlikely to split off on their own – more reason to work together; • Ensures a consistency of approach between regions; • Provides more opportunity and reason to collaborate and support each other and reduces cross claims issues becoming problematic; • Regional redress can potentially be negotiated in tandem allowing for fairer outcomes • Final Settlement completed together; 	<ul style="list-style-type: none"> • Does not allow full independence of either hapū or regions; • May restrict the overall quantum that gets offered Ngāpuhi groups; • Needs to have robust set of processes to get support; • Needs assurances/agreement that Hapū autonomy be empowered through structure and processes; • Does not provide the next level of structural support for hapū to feed into the regions - this is assumed

Option 2D – Tūhoronuku Model

The current Tūhoronuku structure proposed in the mandating hui has very similar building blocks as considered in the models above. A further model option could be achieved through a review or revision of the present operating framework.

Option 2E – All Hapū Model



Key points of model

- Single Mandated Entity of representatives from each hapū (x however many participating hapū)
- Hapū representatives appoints Negotiators who negotiate a Single Comprehensive Settlement

PART 3 - THE ROLE OF TE RUNANGA-A-IWI-O-NGAPUHI

Four possible pathways have been identified as follows:

1. Status quo - Structure remain supported financially by the Rūnanga and the Rūnanga have representation on the structure;
2. The Rūnanga opts out of representation on Te Rōpū o Tūhoronuku once the Rōpū becomes financially independent;

Te Rōpū Whāiti

3. The Rūnanga opts out of representation now and Te Rōpū o Tūhoronuku continues to be funded by the Rūnanga through a contractual arrangement;
4. Redesign a completely new entity that is separate from the Rūnanga and Tūhoronuku and is not funded by the Rūnanga.

Te Kotahitanga parties are interested in the role and influence of the Te Rūnanga-Ā-Iwi-O-Ngāpuhi over Tūhoronuku and by connection the negotiations process. Tūhoronuku regards itself as a separate entity, created for a singular and separate purpose from Te Rūnanga-Ā-Iwi-O-Ngāpuhi. Tūhoronuku has been grateful for the faithful assistance and loyal contribution provided by the Rūnanga to enable our progress to date. These discussions have been successful in formalising open and welcome invitation to further discussions on these relationship issues and on the potential pathways identified above.

Tūhoronuku is however a subcommittee of the Rūnanga and is subject to the Rūnanga's Trust Deed requirements.

PART 4 – BUSINESS CASE AND FUNDING STRUCTURE

It is difficult to do a funding structure and business case for so many different variations. It is our recommendation that this be left until after a preferred option is agreed and therefore only done once.

PART 5 - RECOMMENDATIONS

Te Rōpū Whāiti faced challenges with underlying differences. That aside, Te Rōpū Whāiti has met the purposes of the Terms of Reference agreed and signed by Te Rōpu o Tūhoronuku and Te Kotahitanga o Ngā Hapū Ngāpuhi and have identified various ways in which a united Ngāpuhi approach can be achieved.

Overall however, the unification of the respective groups, purposes and processes will largely come down to the will of our key leaders to agree on a unified approach and maintain that path. Therefore, Te Rōpū Whāiti have not made any recommendations about what the preferred approach should be but recommend that Te Rōpu o Tūhoronuku and Te Kotahitanga o Ngā Hapū Ngāpuhi:

RECOMMENDATIONS:

1. **Receives** the Final Report and findings of Te Rōpū Whāiti.
2. **Discuss** the preferred option(s) and undertakes future decision making informed by the findings of the Report and the discussion.
3. **Discuss and Agree** a process of taking these options out to wider Ngāpuhi - whether through a series of wānanga type hui or some other approach.
4. **Maintain** open lines of communication between parties.
5. **Agree** to future and ongoing discussion on the role of the Rūnanga with Tūhoronuku.
6. **Discuss and Agree** on having further stakeholder meetings on the preferred option(s) to ensure required support is there for the preferred option(s).
7. **Discuss and Agree** on the terms for the completion of the business case for the preferred option(s).

Te Rōpū Whāiti Terms of Reference

Introduction

1. At a hui held at the Whitiara Marae, Te Tii on 21 July 2011, the hui issued a clear message that they wanted to see a united approach to the settlement of their Te Tiriti o Waitangi claims.

Kaupapa

2. To facilitate this desire, the concept of a technical group was suggested which would generate a range of settlement processes and sequences that could be put forward to Ngapuhi hapu, whanau and claimants for consideration.
3. Te Rōpū o Tuhoronuku (Tuhoronuku) and Te Kotahitanga o Nga Hapu Ngapuhi (Kotahitanga), have both indicated a preference for a united Ngapuhi settlement process and have agreed to establish a working group, Te Rōpū Whāiti, comprising representatives from both parties to develop a process that enables Ngapuhi to facilitate a settlement on behalf of Ngapuhi and enables claimants in Te Paparahi o Te Raki inquiry to have their issues heard before the Waitangi Tribunal (Stage 2 hearings).

Key Issues

4. Key issues for Te Rōpū Whāiti to traverse will be:
 - The sequencing of Waitangi Tribunal Hearings, Settlement Negotiations and other processes ancillary to the process;
 - The role of hapu, whanau and claimants and how they are represented in the settlement process;
 - The role of Te Runanga-a-Iwi o Ngapuhi

In addition to these three key issues Te Rōpū Whāiti will develop and agree on a business case and funding structure.

Membership

5. The membership of Te Rōpū Whāiti shall be four members appointed by Tuhoronuku and four members by Kotahitanga.

Facilitator

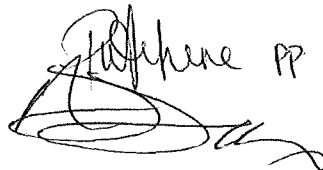
6. A facilitator will be appointed by mutual agreement between Tuhoronuku and Kotahitanga. The facilitator will attend all meetings and contribute on an as needed basis.

Quorum

7. A quorum shall comprise a minimum of three members from Tuhoronuku and three members from Kotahitanga.

Decision Making

8. Te Rōpū Whāiti will:
 - a. have no delegated authority;

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- b. provide options and recommendations that are advisory and nonbinding;
- c. provide options and recommendations for Ngapuhi hapu, whanau and claimants to consider
- d. provide reasons for any options and recommendations that it makes.
- e. be guided in their discussions by their respective parent groups;
- f. make decisions by consensus. No other means of decision making shall be recognised; and
- g. note issues where agreement cannot be reached and will provide information on the level of agreement within the group and the reasons why agreement was not achieved.

Conduct of Affairs

- 9. To ensure the most efficient and effective use of time, the following shall apply:
 - a. the setting of meeting dates, times, venues shall be confirmed through agreement of members of Te Rōpū Whāiti;
 - b. minutes of meetings shall be recorded and will be made available to Tuhoronuku and Kotahitanga immediately.

Reporting


- 10. Te Rōpū Whāiti shall report back to Tuhoronuku and Kotahitanga jointly on the recommendations and by agreement both organisations will report back to Ngapuhi through a joint presentation.

Tenure

- 11. Te Rōpū Whāiti will regulate its own processes to ensure that it completes its role by December 16th 2011. This deadline can be extended through agreement by both parties.

Resourcing

- 12. The Crown shall resource members of TRW to participate fully in this process.
- 13. The level of resourcing shall be agreed to in advance between the parties and the Crown.
- 14. Resourcing shall include administration overheads, an agreed meeting fee, travel, accommodation, the facilitator and where necessary the commissioning of appropriate experts.
- 15. The Office of Treaty Settlements and/or Te Puni Kokiri shall maintain a presence at all meetings of Te Rōpū Whāiti as an independent observer.

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