



## Office of Hon Christopher Finlayson

7 APR 2017

Professor Margaret Mutu  
Chairperson  
Te Rūnanga-ā-Iwi o Ngāti Kahu  
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Tēnā koe

### **Te Rūnanga-ā-iwi o Ngāti Kahu mandate issues**

We are writing to set out our views on your proposed mandate reconfirmation project plan and to provide you with information on how we will approach the mandate issues in the context of a Waitangi Tribunal remedies process.

As you are aware, for some time now representatives of some Ngāti Kahu marae and some Ngāti Kahu members have challenged the mandate of the Rūnanga to represent them in Treaty settlement matters. Some raised concerns in the 2012 Waitangi Tribunal remedies inquiry. In 2015 and 2016 Minister Finlayson advised you of submissions Ngāti Kahu members made to the Crown about their lack of support for the Rūnanga. They included concerns the Rūnanga is not fully representative in its approach and has not provided opportunities for open discussion on settlement matters.

We first asked the Rūnanga to undertake a mandate reconfirmation in June 2016. We provided an extension so as not to disrupt your preparations for the 20 July 2016 Court of Appeal hearing. If a mandate reconfirmation process had then been initiated with some urgency it could have been nearing completion. Circumstances have changed since we made the request. The Court of Appeal recently found the Waitangi Tribunal made errors in its Ngāti Kahu remedies inquiry and on 21 March 2017 the Tribunal called for submissions on next steps in that inquiry.

### ***Remedies Process – Suspension of Crown Recognition of Mandate***

The Rūnanga, and the other claimants who have sought remedies, will shortly decide whether to return to pursuing redress for the Ngāti Kahu historical claims through the Waitangi Tribunal's remedies jurisdiction rather than seeking to negotiate a comprehensive and final settlement of all Ngāti Kahu claims with the Crown. If so, mandate issues will be for the Tribunal to consider. If the Tribunal makes binding recommendations it will have to decide the recipient or recipients of the properties or compensation.

We consider it important the mandate and representation issues are addressed whichever pathway representatives of Ngāti Kahu pursue for receiving settlement redress for your

historical Treaty claims. A key objective of the Crown – which we hope is shared - is to ensure any settlement redress is provided to an entity that has the confidence of those it seeks to represent. Accordingly we have given some consideration to how the issues with your mandate might be addressed if the Rūnanga chooses to continue to pursue remedies.

If, as we expect, the Rūnanga chooses to continue to pursue the remedies option we consider the most appropriate course is to suspend the Crown recognition of the Rūnanga mandate. This recognises that mandate issues have not yet been resolved and are very unlikely to now be resolved before a reconvened remedies inquiry. Given our concerns regarding the mandate maintenance of the Rūnanga and the unresolved mandate issues discussed by the Tribunal in its remedies report (see page 94), it would not be appropriate as matters presently stand for the Rūnanga to be held out as the Crown recognised representative for all of Ngāti Kahu.

We do not consider it appropriate to ask Ngāti Kahu members to reconfirm the Rūnanga mandate to negotiate a settlement with the Crown should the Rūnanga continue to pursue a different avenue for redress. We think it is better to let the remedies process run its course and then assess the mandate situation.

The Crown will reassess its approach to a Ngāti Kahu mandate after the remedies hearing taking into account any recommendations made by the Tribunal on the matter.

### ***Proposed Mandate Reconfirmation Plan***

While we acknowledge the Rūnanga may proceed with remedies we will also provide feedback on the draft project plan you provided on 28 February 2017, should you prefer to re-enter negotiations with the Crown for a comprehensive settlement.

We acknowledge your proposed process has good coverage of the Ngāti Kahu claimant community (hui with marae, Wai claimants and whanau, and in urban areas) and would provide all Ngāti Kahu with an opportunity to be informed and vote on the mandate reconfirmation. We are, however, concerned that it:

- appears to propose the mandate to be reconfirmed is a 'mandate to settle' Treaty claims of Ngāti Kahu rather than a mandate 'to negotiate the settlement of all Ngāti Kahu historical claims'(with the proposed final settlement being approved by Ngāti Kahu members);
- does not set out any mechanisms for the intensive engagement required to resolve the issues raised by representatives of three of your marae (eg. mediation);
- proposes hui for only 14 of your 15 marae (it would be helpful to know if this is an error or if there is a marae you do not propose a hui with);
- proposes an eighteen month timeframe for the reconfirmation (which we appreciate is reduced from the three years you originally advised would be necessary) but which is longer than we would expect for a group that is regularly engaging with and maintaining its mandate from its members and which is likely to be of concern to those members of Ngāti Kahu who are want their issues addressed.

Finally, the staffing (12 people working between 20-35 hours a week for 18 months) and budget of almost \$1.5 million, is also more in the range of what we would expect for an entire Treaty settlement process. The Crown would contribute \$118,000 claimant funding to your costs if you were seeking a mandate at the beginning of the process. Given the Rūnanga

should already have structures and processes in place for communicating with and getting the views of your people we consider the reconfirmation process should be able to be achieved with 80% of that amount. Therefore a Crown contribution of \$94,400 has been approved should you proceed to mandate reconfirmation.

Nā māua

Handwritten signatures in blue ink. The signature on the left is 'Christopher Finlayson' and the signature on the right is 'Te Ururoa Flavell'.

Hon Christopher Finlayson  
**Minister for Treaty of Waitangi  
Negotiations**

Hon Te Ururoa Flavell  
**Te Minita Whanaketanga Māori**