



Office of Hon Christopher Finlayson

Attorney-General

Minister for Treaty of Waitangi Negotiations

Minister for Arts, Culture and Heritage

26 JUN 2013

Pita Tipene and Rudy Taylor
Co-Chairs
Te Kōtahitanga o Ngā Hapū Ngāpuhi
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Tēnā kōrua

Thank you for your letter of 31 May 2013 outlining your remaining concerns about the Tūhoronuku deed of mandate. We are able to advise that Te Rōpu o Tūhoronuku (Tūhoronuku) have provided us with an addendum to their deed of mandate which reflects the following changes:

1. Provision for a new election, overseen by an independent returning officer, being held (if a mandate is recognised) for trustees;
2. An increase in membership of the board from 15 to 22 and hapū representation increasing to become 15 of 22 members (a majority) and being elected on a regional basis; and
3. Separation of Te Rōpū o Tūhoronuku from Te Rūnanga ā Iwi o Ngāpuhi and establishing Tūhoronuku as an independent entity.

We note that these changes are in response to issues you have raised. We have, however, also considered the further points outlined in your letter and provide a response below.

Police vetting and criminal checks for nominees

We note your concerns that:

- i. police vetting should be a requirement for all nominees as a matter of course;
- ii. the nominee criteria do not state what constitutes ineligibility as a nominee in respect to a police vetting check;
- iii. the vetting criteria do not specifically deal with those convicted of violent offences and other such matters; and
- iv. those hapū kaikōrero nominated to Tūhoronuku Independent Mandate Authority (TIMA) will not be subject to the police vetting clause.

The Crown does not require deeds of mandate to include police vetting clauses. Tūhoronuku have, however, amended the deed of mandate to allow for police vetting when an eligibility dispute arises and credible prima facie evidence is provided to show the nominee does not meet the nominee criteria. They use the criteria outlined in the Charities Act 2005, Companies Act 1993, Mental Health

Act 1992 and Protection of Personal and Property and Rights Act 1988. TIMA nominees will have to meet general nominee criteria including police vetting if necessary.

Whilst these criteria do not specifically deal with violent offences they do provide a series of robust statutory disqualifications. We do not consider it appropriate that the Crown insist on further requirements that are above and beyond statutory requirements already in place for officers of charitable entities.

Election processes for hapū kaikōrero

We note your concern that hapū will only be able to elect hapū kaikōrero to TIMA and this will preclude a 'best person for the job' approach. The process outlined in the addendum to the deed of mandate allows for the hapū themselves to choose their hapū kaikōrero from which the regional hapū representatives are nominated. The election process sets out the purpose for which hapū are electing a representative. We are therefore confident that hapū will be aware their hapū kaikōrero may potentially sit on the TIMA and hapū will elect representatives accordingly.

Withdrawal mechanism in the amended deed of mandate

You have also suggested that the deed of mandate include a mechanism for withdrawal of hapū who do not wish to be included in the deed of mandate. You have pointed to some examples where you consider that a mandated body has prescribed a way for hapū to seek to withdraw from the mandate.

The mandate Tūhoronuku sought was from the Ngāpuhi claimant community as a whole and was for a comprehensive settlement of all historical Ngāpuhi claims. While hapū support is important (and hapū have been provided with specific representation on the proposed mandated entity) the mandate was not sought on a hapū basis. The hapū have not given a mandate such that a mandate can be withdrawn by hapū.

We note that the Tūhoronuku deed of mandate provides for hapū to withdraw their hapū kaikōrero (and to rejoin later) from TIMA should they wish. This is intended to recognise hapū autonomy in deciding how they will participate in that entity rather than a withdrawal of mandate from Tūhoronuku to negotiate a settlement of all Ngāpuhi claims.

Given the nature of the mandate sought by Tūhoronuku, the number of Ngāpuhi hapū and the time and resources dedicated to progress a single Ngāpuhi settlement that is comprehensive of all Ngāpuhi claims, building in clauses allowing for hapū to withdraw would fundamentally undermine the Tūhoronuku mandate and future settlement negotiations.

The Ngāpuhi claimant community could, of course, withdraw mandate from Tūhoronuku. The process to withdraw mandate would need to be as robust and thorough as the process through which the mandate was conferred on Tūhoronuku.

The Crown is realistic that not all within any iwi will necessarily agree with the course being taken by mandated entity. It is important that any mandated entity for Ngāpuhi takes positive steps to maintain its mandate throughout negotiations. If issues of mandate arise during the course of negotiations the Crown would expect those issues to be addressed appropriately.

Next steps

As indicated in our letter to you on 31 January 2013, we consider that significant progress has been made to address concerns raised during the mandate process in 2011. We acknowledge the lead you

have taken in achieving that progress. We are now at a stage where we consider it appropriate to advertise the Tūhoronuku deed of mandate and seek submissions from wider Ngāpuhi on whether there is sufficient support for a mandate to be recognised. Ultimately it is for Ngāpuhi to decide through a fair and open process. Feedback received will inform any final decision on whether to recognise the deed of mandate.

We propose advertising the amended deed of mandate in early July 2013 and will notify the Tribunal of our intention. All documents relating to the amended deed of mandate and trust deed will be publicly available on the OTS website from the date of advertising. We emphasise that moving to advertise the deed of mandate is not recognising a mandate and no decision on this has been made.

Finally we note this is a significant opportunity for Ngāpuhi to both continue in Waitangi Tribunal hearings and enter settlement negotiations in 2014. While we acknowledge there still remain some differences of view we encourage you to give serious consideration to progress a collaborative approach to the settlement of all Ngāpuhi claims.

Nā māua nā



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Minister for Treaty of Waitangi
Negotiations



Hon Dr Pita R Sharples
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