

MEMORANDUM FOR CLIENTS

Date: 7 November 2017

For: Patuharakeke

Re: **Wai 2561 Ngatiwai Mandate Inquiry Report
Summary of Report**

1.0 The Wai 2561 Ngatiwai Mandate Inquiry Report

- 1.1 On 30 October 2017, the Tribunal released its embargoed version of the Ngatiwai Mandate Inquiry Report, the final version being released to all parties at 4pm on 31 October 2017.
- 1.2 This memo provides a preliminary brief of the Chapters and findings contained within the report. The chapters are as follows:
- (a) *Chapter One: Introduction to the Urgent Inquiry*
 - (b) *Chapter Two: The Parties Positions on the Inquiry Issues*
 - (c) *Chapter Three: Treaty Principles and Standards*
 - (d) *Chapter Four: Is the Deed of Mandate Adequately Representative and Accountable to Hapu?*
 - (e) *Chapter Five: The Crown's Actions in the Mandating Process*
 - (f) *Chapter Six: Findings and Recommendations*

2.0 Introductory Letter

- 2.1 At the outset of the report, Judge Reeves provides an introductory letter to the Minister of Crown/Maori Relations, the Minister for Treaty of Waitangi Negotiations and the Minister providing the new government with a summary of the Tribunal's findings. Within the letter it states,

Nevertheless, the hapū claimants in our inquiry asserted their tino rangatiratanga and we accept that hapū are an essential source of identity and organisation within Ngātiwai.

We find that the Crown failed to fulfil its duty of active protection of hapū tino rangatiratanga and in so doing breached the Treaty principles of partnership and equal treatment.

*Our findings in relation to Crown actions are:
The Crown improperly pressured the trust board into responding to the government's timetable and settlement policies.*

The process of determining the claimant definition was unsatisfactory and incomplete at the time the Deed of Mandate was recognised by the Crown.

The Crown recognised a Deed of Mandate that:

- *does not include mechanisms for individual hapū to consent to the mandate, nor to withdraw from it; empowers an entity, the Ngātiwai Trust Board, that as presently structured is not 'fit for purpose' to represent the hapū named in the Deed of Mandate, including the shared hapū; and*
- *proposes supporting structures or advisory bodies that do not provide meaningful representation of hapū.*

2.2 In terms of Crown policy, Judge Reeves goes on to state that,

There is no clear and robust Crown policy for dealing with the range of interests, including 'shared' interests, that need to be accounted for in Treaty settlement mandates.

Crown policy has had the effect of sharing hapū claims among mandated entities without ensuring hapū are able to exercise tino rangatiratanga.

2.3 Judge Reeves goes on to discuss the fact that in determining prejudice, the Tribunal focussed on hapu claimants: Patuharakeke, Te Waiariki, Ngāti Kororā, Ngāti Takapari, and Te Whakapiko. The letter states that,

The hapū will be prejudiced through their exclusion from representation in the Deed of Mandate, with the result that their historical Treaty claims will be negotiated, settled and extinguished without their consent. The Treaty relationship with the Crown has been damaged and if the mandate continues in its present form will likely be damaged further.

3.0 Chapter One: Introduction

3.1 In this chapter the Tribunal considers who Te Iwi o Ngatiwai is and outlines the background to the Ngatiwai Trust Board ("NTB").

3.2 The Tribunal then lays the factual background that lead to this inquiry and details the parties who were involved. This includes the primary arguments advanced by the hapu and claimants opposing the Crown's recognition of the NTB Deed of Mandate. The Tribunal also considered the Crown's response and its evidence that it acted in accordance with the principles of the Treaty of Waitangi.

3.3 The key issues stated in the Tribunal's Statement of Issues released on 20 July 2016 are as follows:

- a. *How did the Crown require the NTB to demonstrate support and consent for their deed of mandate? To what extent, if any, was that support and consent shown?*
 - b. *To what extent, if at all, did the Crown seek to establish the nature and level of support for groups who opposed the mandate?*
 - c. *To what extent, if any, did the Crown actively protect the position of hapu to exercise tino rangatiratanga?*
 - d. *Did the hapu referred to in the NTB deed of mandate support and/or consent to that mandate?*
 - e. *Does the NTB mandate provide for representation of hapu?*
 - f. *Are the remedies available under the NTB deed of mandate workable?*
 - g. *Are the claimants prejudicially affected, or likely to be prejudicially affected, by the Crown's recognition of the NTB deed of mandate? If so, to what extent?*
 - h. *Was the Crown's decision to recognise the NTB mandate consistent with the principles of the Treaty of Waitangi/Te Tiriti o Waitangi?*
 - i. *What structures are currently available to Ngatiwai for use as a mandated entity for Treaty settlement purposes?*
 - j. *What is the relationship between the claimants' hapu that are listed in the NTB deed of mandate and the marae listed in section 14 of the NTB deed of mandate?*
 - k. *If the Tribunal concludes any of the claims are well-founded, what, if any, practical recommendations should the Tribunal make?*
- 3.4 In terms of the Tribunal's approach to the issues, the focus of the inquiry as determined by Judge Savage was whether the Crown acted in breach of Treaty principles by recognising the mandate of the NTB without the proper support and consent of the hapu named within the deed ("the central theme"). The Tribunal concluded that in order to answer the central question of consent, there are two fundamental issues it must focus on:
- a. Whether the NTB appropriately accountable to and representative of hapu? and
 - b. How did the Crown's actions influence the outcome of the mandating process?

4.0 Chapter Two: The Parties Positions on the Inquiry Issues

- 4.1 In the initial stages of the inquiry, it was confirmed by the Tribunal that all parties would be able to be heard on the central issue. This chapter summarises the positions of the parties on each of the issues set out above.
- 4.2 The Tribunal sets out the parties' positions on the following matters:
 - a. Whether and how hapu are recognised and represented within the Deed of Mandate;
 - b. What accountability to hapu is provided;

- c. The central issue of hapu consent to the mandate; and
- d. The Crown's actions in respect of the mandate.

4.3 For the purpose of this memo we will not repeat those positions here.

5.0 Chapter Three: Treaty Principles and Standards

5.1 In this chapter, the Tribunal identifies the Treaty principles it considers relevant to the fundamental issues and how the principles might apply to the particular circumstances of this inquiry.

5.2 The Tribunal reiterates that the central theme of the inquiry concerns hapu rangatiratanga and that to address this issue it considers the key Treaty principle is the Crown's duty to protect actively the tino rangatiratanga of the groups affected by the NTB's Deed of Mandate.

5.3 The Tribunal makes reference to the minimum standards identified in the Wai 2490 Ngapuhi Mandate Inquiry Report as being those by which to assess the Crown's duty of active protection in a mandating context. The Tribunal states that those minimum standards seem to provide an appropriate test of the Crown's conduct in the circumstances of the Ngatiwai mandate.

5.4 It is acknowledged that the circumstances in this inquiry are not the same as those of the Wai 2490 Ngapuhi Mandate Inquiry and so evidence relating to how tino rangatiratanga has operated in the context of Ngatiwai and the groups who brought claims in the inquiry is set out by the Tribunal.

5.5 Previous Tribunal reports that were relied on in this report include:

- a. *The Pakakohi and Tangahoe Settlement Claims Report (2000);*
- b. *The Te Arawa mandate reports (2004, 2005, 2007);*
- c. *The Tamaki Makaurau Settlement Process Report (200);*
- d. *The East Coast Settlement Report (2010); and*
- e. *The Ngapuhi Mandate Inquiry Report (2015).*

5.6 The Tribunal then outlined why they consider that the Treaty principles of partnership and equal treatment, and the duty of active protection are of fundamental importance to the Crown's role, and are closely linked in the context of mandating.

5.7 The Tribunal goes on to discuss rangatiratanga and tikanga generally and how it has been addressed in past reports. The Tribunal states that,

At the heart of the Treaty relationship is a partnership between kāwanatanga and tino rangatiratanga. Tino rangatiratanga is guaranteed to Māori by article 2 of the Treaty and has been expressed as 'the highest

chieftainship’ and as ‘full authority’. This guarantee imposes upon the Crown a duty of protection, which – in the words of the Court of Appeal – is ‘not merely passive but extends to the active protection of Maori people in the use of their lands and waters to the fullest extent practicable.’

5.8 The Tribunal then examines the evidence of how tino rangatiratanga is expressed among the groups involved in the inquiry in order to better understand, in the context of settlement negotiations, the Crown’s Treaty obligations to Ngatiwai and to hapu included in the Deed of Mandate.

5.9 The report states that hapu rangatiratanga was asserted most strongly by the Patuharakeke and Te Waiariki, Ngati Korora and Ngati Takapari claimants. The Tribunal then states that it is clear that, both historically and today, tino rangatiratanga has been exercised on a number of levels among the various communities that affiliate to Ngatiwai.

5.10 The Tribunal goes on to state that,

We consider that, to protect actively the tino rangatiratanga of the Ngātiwai Trust Board, Te Iwi o Ngātiwai, and the hapū and whānau communities that come partially or wholly within the mandate, the Crown had an obligation to protect actively their ability to maintain their whanaungatanga relationships and their right to make their own decisions.

5.11 The Tribunal concludes by stating that it considers the minimum standards established by the Ngapuhi mandate Tribunal remain relevant to assessing the Crown’s performance of its duty of active protection. The minimum standards identified by the Wai 2490 Ngapuhi Mandate Inquiry provide that the Crown has obligations to:

- a. *ensure that it is dealing with the right Māori group or groups, having regard to the circumstances specific to that claimant community so as to protect its intra-tribal relationships;*
- b. *practically and flexibly apply the large natural groups policy according to the tikanga and rangatiratanga of affected groups;*
- c. *allow for an appropriate weighing of interests of groups in any recognised mandated entity, one that takes into account factors including the number and size of hapū, the strength of affected hapū, and the size and location of the population; and*
- d. *recognise that the structure of the mandated entity must allow for hapū interests to be tested and heard.*

6.0 Chapter Four: Is the Deed of Mandate Adequately Representative and Accountable to Hapu?

- 6.1 In this chapter the Tribunal analyses the extent to which the Crown actively protected the tino rangatiratanga of hapu in the mandating process.
- 6.2 In doing so the Tribunal discusses the claimant definition, the research used to determine it, the structure of the NTB and whether it is fit for the purpose of settlement negotiations, whether hapu consented to their inclusion in the mandate and whether the withdrawal mechanism is workable for hapu.

Claimant Definition

- 6.3 It is stated that the issue here for the Tribunal is not which hapu are part of Ngatiwai, but whether the Crown took reasonable steps to act practically and flexibly in applying its large natural groups policy according to the tikanga and rangatiratanga of the hapu affected.

- 6.4 The Tribunal states that the establishment of the claimant definition was an internal trust board process in consultation with the Crown that did not take into account or protect the tikanga and rangatiratanga of the hapu affected.

- 6.5 The Tribunal went on to comment that,

...the position of individuals who can pick and choose among their multiple hapū identities according to the occasion ... cannot be compared to the position of the hapū with multiple whakapapa connections ... It is the hapū that declares and defines its wider identity. The hapū is the autonomous group with tino rangatiratanga over its lands and resources, not the individual, as has been held by the Waitangi Tribunal since as far back as the Ōrākei inquiry.

- 6.6 The Tribunal highlighted the absence of evidence that the Crown made any attempt to inform itself of the tikanga of the affected hapu, or of their processes for group decision making which is a threshold standard for the principle of active protection.

- 6.7 In terms of research on whakapapa, hapu and the claimant definition, the Tribunal commented that it is difficult to understand how the Crown could have reasonably satisfied itself that the research provided sufficient information about the circumstances of the claimant community, particularly whether hapu had been correctly included in the mandate.

Representation and Accountability

6.8 In this section the Tribunal comments on the absence of evidence to suggest that marae committees or NTB trustees elected by marae have any authority to make decisions or speak for hapu on matters involving Treaty claim settlements. The Tribunal highlights that the NTB trust deed makes it clear that the duty of NTB trustees is to make decisions on behalf of all Ngatiwai beneficiaries. It states that,

If trustees do not represent the particular interests of their marae, they cannot represent their hapū. In this way, the trust deed has the effect of obstructing hapū, and in particular shared hapū, from making decisions and maintaining whanaungatanga relationships when it comes to Treaty negotiations.

6.9 The Tribunal noted that there is no evidence to demonstrate that the Crown took steps to ensure it was dealing with the right group or groups within Ngatiwai and to appropriately weigh those interests.

6.10 On this issue the Tribunal concluded by stating that,

The structure of the Ngātiwai Trust Board makes inadequate provision for hapū interests to be tested or heard, or for hapū to exercise rangatiratanga according to their tikanga, in relation to Treaty settlement negotiations.

Did Hapu Consent to the Mandate?

6.11 In respect of the vote, the Tribunal did not support the Crown's conclusion that the 82% who voted in favour of the mandate demonstrated a broad base of support and that it was reasonable to rely on the vote as indicating that hapu supported the mandate. The Tribunal found that there simply was no information to support such conclusion,

It cannot be assumed that the hapū with which those individuals identify also support the mandate. The voting was by individuals and neither hapū nor marae affiliations were asked for. Thus, the vote has nothing to tell us about the hapū that may support or oppose.

6.12 In terms of the submissions process, the Tribunal's position is that the submissions provided the only opportunity at that point for those with concerns about the claimant definition, and the extent to which hapu and other groups were partially included in the mandate, to voice their opposition or consent.

6.13 The Tribunal was satisfied that the hapu representatives in this inquiry had demonstrated that they have gained support from their communities to speak on their behalf, according to their tikanga at hui-a-hapu.

Withdrawal of Consent

- 6.14 The Tribunal acknowledged that even though the withdrawal mechanism provided in the NTB Deed of Mandate was not hapu specific it was an improvement on that contained in the Tuhoronuku IMA. However, it considered that this does not make it more affordable for a group that wishes to initiate withdrawal of the mandate.
- 6.15 The report states that this is because that group is still required to organise, run, and fund nationwide hui to seek the support of the entire claimant community. *“If the withdrawal process is unaffordable, it cannot be said to be workable.”*
- 6.16 In terms of not having a hapu specific withdrawal mechanism, the Tribunal noted its understanding for the NTB’s desire to keep all remaining Ngatiwai claims within a single settlement, but highlighted issues arising from the NTB agreeing to release Te Kapotai from the mandate, as well as the two hapu who had previously settled separately.
- 6.17 Finally, on the issue of withdrawal the Tribunal states that,

If hapu are named as part of the mandate then our view is that, just as the mandate should provide a mechanism to secure hapū consent, it requires a mechanism which allows them to withdraw. The issue gets to the essence of what the Crown considers hapu to be. The names of hapū were included in the Deed of Mandate to ensure that all hapu claims were included, but the Crown does not appear to accept that hapu need a voice in settlement negotiations.

Conclusion

- 6.18 In terms of representation, accountability and consent, the primary issues identified by the Tribunal were:
- a. *the shifting boundaries and identities within the claimant definition;*
 - b. *the scope of the research that has been undertaken to support the claimant definition;*
 - c. *the trust board’s structure as set out in its deed;*
 - d. *the fact that the additional advisory bodies added for settlement purposes will do little to provide hapū with appropriate representation during the negotiations process;*
 - e. *the limitations of a vote of individual members as a measure of hapū support for the mandate; and*
 - f. *the absence of a workable system for hapū to withdraw support from the mandate.*

7.0 Chapter Five: The Crown's Actions in the Mandating Process

- 7.1 In this chapter, the Tribunal examines the Crown actions leading up to the recognition of the NTB's Deed of Mandate.
- 7.2 The Tribunal first refers to Ngāti Manuhiri and Ngāti Rehua being allowed to be settled separately from the rest of Ngātiwai. It is noted that the NTB originally agreed to this, but during the Mandate inquiry they stated that they 'regretted' the decision and wanted the rest of the iwi to remain united as significant damage had occurred to relationships within Ngātiwai. The Tribunal is of the view that it appears that the decision to settle the two hapu separately had negatively impacted on whanaungatanga.
- 7.3 The Tribunal refers to a letter sent to the NTB in October 2012 offering the option of buying shares in the state-owned energy companies which would be offset against a future settlement. However, this option was only available if Ngatiwai was recognised as a Large Natural Grouping ("LNG"). Further correspondence between NTB and the Crown further emphasised the importance of a speedy settlement process. The Tribunal suggests that this was done to pressure NTB to achieve its own settlement goals.
- 7.4 In 2013 a Treaty claims manager was appointed and three information sharing hui were held to discuss whether to participate in the Wai 1040 inquiry or proceed to direct negotiation. The NTB advocated for the latter. A draft mandate strategy was released after these hui. Hapu names to be included were left blank, and no specific Wai claims were mentioned apart from those to which NTB were a party. In July 2013 a revised mandate strategy was submitted to the Crown. This version added 13 present day hapu, 44 historical hapu and 32 Wai claims. The strategy acknowledged that some hapu were included in other LNG. On 24 July, five days after the mandate strategy was submitted, it was endorsed by the Crown. This was acknowledged by the Crown as an error in its process, as it had endorsed it without receiving submissions.
- 7.5 The evidence surrounding the development of the mandate strategy demonstrates that it was driven by other policy priorities, particularly the self-imposed 2014 deadline to settle all historical claims. The NTB said it felt pressured into responding to the Crown's timetable. The Tribunal identified a pattern of the NTB focussing on maintaining cohesion at the expense of involving hapu, whanau and Wai claimants in its decisions. In the Tribunal's view, this was a high-risk strategy.
- 7.6 Due to the hasty nature of these events, there was no proper process for hapu and others to provide their views to the Crown before the strategy was endorsed. This was completely contrary to the process the Tribunal had suggested in the *East Coast Settlement Report*. There were two further serious mistakes made by the Crown:

- a. The Crown 'instructed' the NTB to include a further 14 Wai claims in the strategy, and left it to the NTB to explain their addition to the claimants. Only after they were included were the claimants asked to provide feedback as to their inclusion;
- b. The Crown advised the NTB to implement the mandate strategy, including mandate hui and voting, without addressing the submissions that had been made during the flawed submissions process.

As a result, NTB included Waiariki in its mandate but not until after the vote had been held. The hapu had not been consulted at all. Due to the errors and the voting process itself, the Tribunal has genuine doubt whether the outcome of the vote represented the intent of Ngātiwai members of the 'shared hapū'.

7.7 The Tribunal also examines the Crown's actions regarding the advertising, submissions and response to submissions surrounding the NTB Deed of Mandate. The deed was advertised on 12 July 2014 and additional bodies and positions were proposed to provide advice to the NTB from hapu, marae, Rangatahi and Wai claimants. During the submissions process, 144 submissions of a total of 269 opposed the deed. There were four main issues identified, which were:

- a. Lack of communication;
- b. Preference of Wai claimants to have claims heard through Tribunal;
- c. Concerns with operation of NTB; and
- d. Inclusion of Te Waiariki, Patuharakeke and Te Kapotai.

7.8 After a series of hui, where concerns were raised with the current Marae model, officials considered the mandate to be 'robust'. The Tribunal found it difficult to understand how they arrived at this conclusion. Their conclusion was that valid issues were raised concerning the inclusion of hapu, but the Crown did not treat them as substantive matters and did not take sufficient steps to address them. Between December 2014 and March 2015, the NTB implemented its engagement plan. Despite governance being identified as a real issue, communication and engagement was offered as the solution.

7.9 In the Tribunal's view the Crown did not take reasonable steps to address the problems identified with the mandate. While officials were concerned about the risk of litigation, the greater risk should have been whether the Crown's actions would breach the principles of Te Tiriti. The Crown did not have a clear view of its Treaty obligations to hapu and were therefore not prepared to insist that any substantive changes be made. This thinking permeated officials' advice to ministers when making the decision to recognise the mandate. The Minister of Maori Development sought to downplay the significance of submissions opposing the mandate, and

recognised it despite anticipating claims being made to the Waitangi Tribunal.

- 7.10 In concluding this chapter, the Tribunal notes that while the Crown argued that it only has a limited role in mandating processes, the evidence shows that the Crown influenced the timing, pace, form and scope of the mandate at all stages. In the panel's view the Crown used its influence to suit its own settlement priorities and this involvement occurred at all levels.

8 Chapter Six: Findings and Recommendations

- 8.1 The Tribunal begins the chapter by noting that the central question that must be determined is whether the Crown has breached the principles of the Treaty of Waitangi by recognising the NTB mandate without the consent of the hapu named in it.
- 8.2 In assessing whether the Crown has breached the principle of active protection, the Tribunal relies on the standards outlined previously in the Ngapuhi mandate inquiry. In applying these standards to the facts, the Tribunal states that the Crown failed to actively protect the tino rangatiratanga of the hapu included in the Deed of Mandate. In particular the Tribunal notes that the Crown prioritised accelerated settlement over active protection. In its view, the NTB was clearly not ready to settle, as evidenced by the NTB not having the necessary research to determine which hapu were Ngatiwai and which were not when the mandate strategy was being prepared in 2013.
- 8.3 The Tribunal concluded that the Crown breached its duty to ensure that intratribal relationships were protected during the settlement process. It identifies Crown actions as being the major contributing factor to the rifts that exist among the groups involved in the mandate.
- 8.4 The Tribunal specifically states that the NTB structure is not fit for settlement purposes. While it is appropriate as a fisheries settlement body, it should not have been recognised to negotiate a Treaty settlement representing a population with such a large proportion of 'shared' hapu. The trustees do not represent any hapu, due to the wording of the trust deed. While the NTB has focussed on designing a proper PSGE, the Tribunal emphasises that questions of representation and accountability are too important to be left for later. In recognising the mandate of the trust board, the Crown has not met its obligation to recognise that the structure of the mandated entity must allow for hapu interests to be tested and heard.
- 8.5 The Tribunal states that hapu did not consent to their inclusion and that there is no workable withdrawal mechanism. In reaching this conclusion, the Tribunal notes that the research upon which the mandate was made is deficient in many ways. The Tribunal further observes that while Te Kapotai

was allowed out, other hapu have been kept in. The reason for this was unclear and did not follow any withdrawal process contemplated in the Deed of Mandate.

Findings

8.6 The Tribunal's findings in relation to Crown actions are:

- a. The Crown improperly pressured the trust board into responding to the government's timetable and settlement policies.
- b. The process of determining the claimant definition was unsatisfactory and incomplete at the time the Deed of Mandate was recognised by the Crown.
- c. The Crown recognised a Deed of Mandate that does not include mechanisms for individual hapu to consent to the mandate, nor to withdraw from it; empowers an entity, the Ngatiwai Trust Board, that as presently structured is not 'fit for purpose' to represent the hapu named in the Deed of Mandate, including the shared hapu; and proposes supporting structures or advisory bodies that do not provide meaningful representation of hapu.
- d. There has been unequal treatment of hapu. Some were settled separately or released from the Deed of Mandate, as compared to other hapu who remain within the Deed of Mandate and have no mechanism to withdraw.
- e. There is no clear and robust Crown policy for dealing with the range of interests, including 'shared' interests, that need to be accounted for in Treaty settlement mandates.
- f. Crown policy has had the effect of sharing hapu claims among mandated entities without ensuring that hapu are able to exercise tino rangatiratanga.

8.7 These findings demonstrate that the Treaty principles of partnership, active protection and equal treatment were breached.

Prejudice

8.8 The Tribunal's findings on prejudice focus on the hapu claimants in the inquiry: Patuharakeke, the claimants from Te Waiariki, Ngati Korora, and Ngati Takapari, and also Te Whakapiko.

8.9 The Tribunal found that *"the principal prejudice arises from the Crown's failure to actively protect hapū rangatiratanga in its decision to confirm the mandate of the Ngātiwai Trust Board without the support or consent of the hapū named in the Deed of Mandate."*

8.10 The Tribunal considers that the prejudice has manifested in the following ways:

- a. *Hapū are excluded from decisive representation in the Deed of Mandate.*
- b. *Consent to the Deed of Mandate was obtained by a vote of individual members of Ngātiwai, which privileged individuals over hapū.*
- c. *Hapū will be represented in settlement negotiations by an entity that they have not endorsed.*
- d. *The historical Treaty claims of hapū will be negotiated, settled, and extinguished without their consent.*
- e. *The Crown has imposed its large natural groups policy on the groups and individuals who are included within the Deed of Mandate in a way that is designed to fit the Crown's settlement programme, as opposed to being flexible and reflecting the tikanga of those involved.*
- f. *The Treaty relationship with the Crown has been damaged because whanau, hapū, and the Ngātiwai Trust Board have lost confidence in the Crown and its agencies.*
- g. *Whanaungatanga relationships among hapū, and between hapū and the trust board, have been damaged.*

Recommendations

8.11 **The Tribunal has recommended that mediation occur.** There should be an agreed number of hui involving all parties, including the trust board, conducted by an agreed mediator, mediators, or facilitators, to seek agreed formulae or acceptable solutions. As the Crown is primarily responsible for the poor outcome of the first mandating process, it should fund this reconciliation process.

8.12 **In the event of rejection by the parties, we recommend withdrawal of the mandate and the setting up of a new entity** such as a runanga or taumata, named and organised more inclusively and able to represent all hapu and groups in the inquiry district, whether or not they are Ngatiwai. We consider that, if it is required, the Crown should also fund this second process.

8.13 The Tribunal noted that in either case, the matters to resolve through debate would be as follows:

- a. the claimant definition;
- b. an acceptance by the negotiating body that it represents Ngātiwai *and other iwi or hapū* of the takiwa;
- c. the representation of hapu including kaumatua on the negotiating entity;
- d. decision-making powers for hapu/kaumatua representatives;
- e. a non-exclusive name for the revised negotiating body;
- f. an agreed withdrawal mechanism for single hapu or groups of hapu;

- g. a disputes resolution mechanism; and
- h. a generally accepted model for the post settlement governance entity.

8.14 The Tribunal also suggest that any hapu or group of hapu that has participated in this process in good faith, and still wishes to withdraw at the end of it, should be assisted by the Crown to settle their Treaty claims as soon as possible, including assistance to collectivise into large natural groups and to obtain mandate(s) from their members.

8.15 In making its final remarks the Tribunal concludes that,

The Crown needs to take steps to ensure that its policies concerning 'shared interests' in negotiations are robust enough to avoid the situation that has arisen in this inquiry, where hapū claims are shared among mandated entities without ensuring that hapū are able to exercise tino rangatiratanga within any mandate.

The Crown also needs to ensure that the application of its settlement policies meets its objective which is to achieve robust, durable, and fair settlements, and a restoration of its Treaty relationship with Māori.