



# Ngati Whatua Historical Treaty Claims

Moving Towards Negotiation and Settlement

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## Moving Towards Negotiation and Settlement

### Introduction

Te Runanga o Ngati Whatua was constituted by Te Runanga o Ngati Whatua Act 1988 and is a Maori Trust Board under the Maori Trust Boards Act 1955. It is the sole representative body and authorised voice to deal with issues affecting the whole of Ngati Whatua.

Since 1992, the Runanga has carried out a key role in progressing the iwi claims of Ngati Whatua through the claim, Wai 303. Over that period, the Runanga has established and maintained relationships with Ministers of the Crown and key organisations involved with the preparation, presentation and negotiation of Ngati Whatuas claims. These include the Office of Treaty Settlements (OTS), the Waitangi Tribunal and the Crown Forestry Rental Trust (CFRT).

The Runanga has managed the Wai 303 claim on behalf of all of Ngati Whatua to ensure the iwi moves forward and settles its historical claims. In addition, the Runanga is committed to providing a unified approach across Ngati Whatua hapu who have not yet been settled. The Runanga views the resolution of Ngati Whatuas claims as being for the ancestors of Ngati Whatua, those living today and future generations.

### What should be done now?

To date, the division of Ngati Whatuas claims between several Tribunal inquiries has been costly both in terms of resources and time and has also delayed the negotiation and settlement of those claims. The question before the iwi at this time is whether to continue to progress down the Tribunal path as part of the Northland Inquiry, or proceed directly to negotiations with the Crown.

There are two distinct processes for addressing Treaty claims:

- a The first is to have claims heard by the Waitangi Tribunal. The Tribunal then produces an independent report which contains findings and recommendations to the Crown.
- b The second option is to bypass the Tribunal process and proceed to direct negotiations. Often a claimant group might head down the Tribunal path but then shift to direct negotiations with the Crown. Alternatively, it can begin the direct negotiations process after completing the Tribunal process.

A Tribunal inquiry can often help to define the claim issues to be settled and the seriousness of the Treaty breach and prejudice. The Tribunal's recommendations are however not binding on the Crown; the Crown is free to make its own determination on claims. The Tribunal process can take at least 3-4 years and will not provide redress in relation to Ngati Whatuas claims. Ngati Whatua would still need to enter into direct negotiations with the Crown at some point for the settlement of the outstanding claims. Delaying that process will reduce the parity of that settlement in relation to other settlements. In other words, the real value of the settlement will diminish.

The direct negotiations path is faster and less costly than the Tribunal path. It is sometimes referred to as a short-cut to reaching settlement. When considered against the income forgone in settlement investments, as well as the parity issue referred to above, the Runanga sees clear benefits with this option. That said, entering direct negotiations will mean that some claims will not be heard and researched as part of a Tribunal inquiry. However, direct negotiations also allow targeted research to be undertaken to assist the negotiations. The Runanga has already commenced a research programme which will investigate the issues raised in Wai 303 regarding the iwi grievances.

The Runanga is of the view that, on balance, the direct negotiations path is strongly preferable. The Runanga believes it is in the best interests of the iwi that it progress to direct negotiations to settle the remaining claims, for the betterment of Ngati Whatua.

### **What is a Treaty settlement?**

A Treaty settlement is an agreement between the Crown and a claimant group to settle all of the claimant groups historical Treaty claims against the Crown. It is usually made up of the following:

a **Historical Redress**

This includes the Historical Account which provides an outline of historical events that are agreed between the Crown and the claimant group, Crown Acknowledgements of Treaty breaches and the Crown Apology.

b **Cultural Redress**

Cultural redress is the instrument used to safeguard the claimant groups rights to customary areas, where the group may wish to negotiate for the authority to manage, control or own sites, areas or customary resources on Crown-owned land with which the claimant group has traditional and cultural associations

c **Financial and Commercial Redress**

This is made up of an overall quantum or value in dollar terms agreed between the Crown and the claimant group in settlement of their historical claims against the Crown

The settlement is expressed in detail in a document known as a 'Deed of Settlement'. Legislation is usually required to fully implement the Deed of Settlement.

As part of the settlement, the claimant group accepts that the settlement is fair and final and settles all of the historical claims of the claimant group, whether they have been lodged at the Waitangi Tribunal or not. Both the Crown and the claimant group accept that it is not possible to fully compensate the claimant group for their grievances. Redress instead focuses on providing redress in recognition of the claimant groups historical grievances, on restoring the relationship between the claimant group and the Crown, and on contributing to a claimant groups economic development.

## What are the steps involved in a negotiation?

The key steps involved in a negotiation are as follows:

|   |   |   |
|---|---|---|
| STEP 1:<br>Preparing claims for negotiation | Claims                                  | Crown agrees claims are well-founded and confirms claimants are a large natural group               |
|   | Mandate                                 | Crown recognises mandate  |
| STEP 2:<br>Pre-negotiations                 | Terms of Negotiation                    | Both parties agree to ground rules for negotiation  |
| STEP 3: Negotiations                        | Agreement in Principle                  | Agreement reached on the redress proposed for the Deed of Settlement                                |
|   | Deed of Settlement                      | The detail of the final settlement of the claim   |
| STEP 4:<br>Ratification and Implementation  | Ratification by claimant group members  | Sufficient majority required of claimant group to sign Deed of Settlement                           |
|   | Governance entity reviewed and accepted | Structure appropriate to receive settlement assets ratified by claimant group and reviewed by Crown |
|   | Settlement legislation                  | Makes the Deed of Settlement operational where legislation is required to achieve this              |
|   | Implementation                          | OTS co-ordinate and monitors implementation of the Deed of Settlement                               |

## What is a mandate?

When a claimant group chooses representatives and gives them the authority to enter into negotiations with the Crown on their behalf, this is known as conferring a mandate. The mandate to negotiate only gives the mandated representatives the authority to negotiate a draft Deed of Settlement with the Crown. The claimant group (Ngati Whatua) will then determine whether the draft Deed of Settlement is accepted or not.

Mandating is the name given to the process by which a claimant group authorises a representative group to enter into negotiations on their behalf. In this case, the Runanga is seeking a mandate from Ngati Whatua to negotiate with the Crown on their behalf.

At the end of its mandating process, the Runanga will submit a Deed of Mandate to the Crown. The Deed of Mandate defines the claimant group, the claim area and makes it clear who has

authority to represent the claimant group in negotiations. The Deed explains how the mandated body obtained the mandate and how it proposes to be accountable to the claimant group. The Crown will need to be satisfied that the representative group is properly mandated to negotiate on behalf of the claimant group for the settlement of their historical claims. If it is satisfied, it will recognise the representatives mandate to commence settlement negotiations with the Crown.

### **What is the Runangas mandate proposal?**

The Runanga is seeking a mandate from Ngati Whatua to enter into direct negotiations with the Crown on their behalf for the comprehensive settlement of all of the remaining historical claims of Ngati Whatua, excluding the claims associated with the South Kaipara Claims Committee. In other words, the proposal is that the Runanga would be the mandated body.

The Runanga is of the view that it is the most appropriate organisation to carry out these negotiations. The Runanga has been in existence for almost 20 years and is well known within Ngati Whatua. It has a positive track record in representing the iwi and, in our view, has the widespread confidence and support of Ngati Whatua. There are also clear efficiency gains to be made with using the Runanga given its existing infrastructure and administrative support.

### **What is the Runangas vision for the settlement?**

The vision of the Runanga is to create a strategic and durable settlement for all of Ngati Whatua, and in doing so, ensure that the iwi achieves:

- a a comprehensive, robust and fair settlement of all outstanding historical claims of Ngati Whatua
- b a settlement within as short a time as possible but consistent with the first objective
- c a settlement which will provide for acknowledgements, apologies and redress which properly satisfy the outstanding grievances of Ngati Whatua

### **How does the mandate proposal relate to the South Kaipara Claims Committee?**

The mandate proposal does not include the claims associated with the South Kaipara Claims Committee as these will form the subject of separate negotiations. The Minister in Charge of Treaty of Waitangi Negotiations, Hon Dr Michael Cullen, has agreed that the Crown will negotiate with the South Kaipara Claims Committee regarding the settlement of their claims. This will occur through a parallel but separate process to the negotiations that would be led by the Runanga for the settlement of the iwi claims and all other remaining claims. In other words, there will be two streams of negotiations.

### **Who would be covered by the mandate?**

OTS requires that a representative group specify who it is negotiating on behalf of. The Runanga would be negotiating on behalf of all of Ngati Whatua in terms of the settlement of the Ngati Whatua iwi claims. The claimant group therefore includes all individuals, whanau and hapu within the iwi of Ngati Whatua who descend from the tupuna, Haumoewarangi and other recognised tupuna.

This definition is consistent with the Runanga Charter and Te Runanga o Ngati Whatua Act 1988. Therefore, all 19 hapu of Ngati Whatua are included as are all 35 marae of Ngati Whatua.

The Runanga would also be negotiating on behalf of those hapu who have unsettled claims who are not aligned with the South Kaipara Claims Committee.

### What historical claims would be settled?

The mandate proposal refers to negotiating the settlement of the remaining claims. This can be separated into three groups as follows:

- a the Ngati Whatua iwi claims
- b claims of hapu which have not yet been the subject of settlement negotiations
- c claims of hapu who have been in settlement negotiations but who have unsettled claims outside their settlement area of interest.

The claims associated with the South Kaipara Claims Committee are not included.

Under the mandate proposal, the Runanga would negotiate the full and final settlement of the following claims:

| WAI NO. | NAME   |
|---------|--|
| 303     | Te Runanga o Ngati Whatua Claim                                  |
| 121     | Ngati Whatua lands and fisheries (known as Manukau whanau claim) |
| 313     | Waimamaku land claim   |
| 719     | Kaipara Land and Resources (Pirika Ngai Whanau) Claim            |
| 887     | Ngawaka Tautari Lands  |
| 1045    | Ngati Marua  |
| 1046    | Ngati Whatua Tuturu  |

The mandate proposal also includes the negotiation of a number of partial settlements. The settlement will only be considered to be partial because there are other iwi interests involved in the particular claims. Therefore, only the Ngati Whatua interest can be, and would be, settled. Any claims arising from other descent lines will not be settled under this negotiation. The claims that fall within this group are listed below.

| WAI NO. | NAME  |
|---------|---|
| 188     | Opanake and other land claims                 |
| 279     | Te Ketu and Hioro Kata Lands                  |
|         | Te Uruamo whanau                              |
| 504     | South Whangarei District Claim                |
| 619     | Ngati Kahu o Torongare/Te Parawhau Hapu claim |
| 683     | Weretapou Tito – Te Parawhau                  |
| 688     | Nga Hapu o Whangarei claim                    |
| 763     | Kapehu Blocks and Rating claim                |
| 857     | Opanake Blocks et al                          |
|         | Ngati Whatua ki Maunganui                     |
| 861     | Taitokerau District Maori Council             |
| 985     | Hokianga regional lands claim                 |
| 1114    | Te Taou                                       |
| 1343    | Ngati Torehina                                |

### What historical claims would NOT be settled?

The claims associated with the South Kaipara Claims Committee do not form part of the mandate proposal and would not therefore be settled as part of these negotiations.

Further, for the avoidance of doubt, the Wai claims that have been, or are in the process of being, settled as part of the Te Roroa, Te Uri o Hau and Ngati Whatua o Orakei do not form part of the mandate proposal and will not be settled again

### What area will be covered by the negotiations?

OTS has a requirement that the area to be covered by the claims be defined. This is known as the Area of Interest.

The geographical area that would be covered by the negotiations would be the traditional rohe of Ngati Whatua which is expressed as Tamaki ki Maunganui i te Tai Hauauru and Tamaki ki Manaia i te Rawhiti. The northern boundary is expressed as Manaia titiro ki Whatitiri, Whatitiri titiro ki Tutamoe, Tutamoe titiro ki Maunganui. The northern neighbours are various hapu of Ngapuhi. The southern boundary is expressed Te Awa o Tamaki. The southern neighbours are various hapu of Tainui.

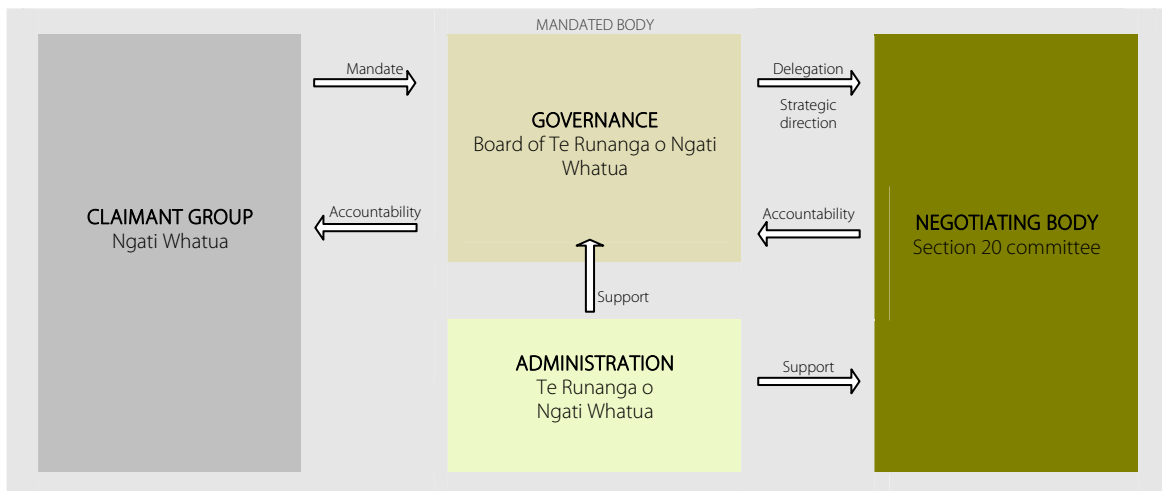


## How does the Runanga propose to organise itself to undertake the negotiations?

The term negotiation structure is often used to describe how a group organises itself to undertake settlement negotiations. The Runanga has developed a negotiation structure for this purpose. The following principles have guided and informed its development:

- a Ensure measures and procedures honour and respect the tikanga of Ngati Whatua
- b Promote collaboration and co-operation across Ngati Whatua
- c Respect the autonomy and mana of individual hapu
- d Ensure effective and appropriate representation of Ngati Whatua
- e Recognise the importance of the use of traditional structures and relationships
- f Build on existing structures and processes as much as possible
- g Ensure regular reporting to beneficiaries and meaningful consideration of their views.

In terms of organisational arrangements, there will be four components within the negotiation structure: Ngati Whatua iwi, the Board, the Runanga, and the negotiating body that will be established. The diagram below illustrates the relationship between each group.



The Board of the Runanga would carry out a steering group type role, with responsibility for matters such as holding the mandate for negotiations and the accountability relationship with the iwi, overseeing the process and setting the strategic direction for the negotiations.

The administration arm of the Runanga would be responsible for overseeing the day-to-day operation of the negotiations. It would ensure the proper implementation of policies and work plans, compliance with statutory requirements and contractual obligations, and would also ensure that funds are managed appropriately.

While the Runanga would be the mandated body, for timeliness and to optimise efficiency, the Board would delegate the task of carrying out the negotiations to a negotiating body (known as a section 20 committee). The Negotiating Body would be delegated the task of negotiating a draft Deed of Settlement.

## Will there be policies and processes regarding the operation of the negotiation structure?

The Runanga has developed policies and processes with regard to the operation of the negotiation structure. These can be broadly grouped into the four areas: decision-making, representation, accountability and dispute resolution.

### Decision-making

Decision-making would occur at two levels: the Board level, and the Negotiating Body level. Decision-making on substantive matters (such as redress) would rest with the Board and would be informed by the views of the Negotiating Body as well as any consultation that has been carried out with the wider Ngati Whatua community. To ensure efficiency and timeliness, select powers would be delegated from the Board to the Negotiating Body to enable it to carry out its day-to-day business effectively.

### Representation

The Negotiating Body would follow the Board structure model and will be composed of a representative from each of the five takiwa as well as Runanga representatives (under the Maori Trust Boards Act 1955, a section 20 committee must include at least one Board member).

The appointment, replacement and removal of takiwa representatives will be carried out by each takiwa. The process for appointment will be similar to that which is used for appointing Board representatives. It will consist of each marae reaching agreement on a nominee and putting that nomination to the vote at a takiwa hui. The highest polling candidate within each takiwa will be the takiwa representatives on the Negotiating Body. If a replacement is needed, it will be the next highest polling candidate or if the takiwa prefers, a new election can be called.

The appointment of representatives to the Negotiating Body would not occur until such time that the Deed of Mandate submitted by the Runanga is recognised by the Crown.

### Accountability

Within the negotiation structure, there are two direct lines of accountability. The first line is between the Runanga and Ngati Whatua. The Runanga will have the ultimate responsibility for the negotiations, including ensuring that reporting and communication processes are adhered to. The Runanga currently has a number of existing structures and processes that it uses to report to its beneficiaries and these will be used as much as possible. These include the following:

- a *Reports (both written and verbal) at the annual hui.* The Runanga is required to hold an annual hui to report on its activities and plans for the future. This would include a report on settlement negotiations.
- b *Regular reporting to beneficiaries through the Runanga Poupou hui.* Each marae within Ngati Whatua is represented in this forum and it is the responsibility of each marae representative to keep the people of the marae informed of all happenings at Runanga Poupou hui and to pass on information received from the Runanga office. Their job is also to convey to the Runanga any issues of concern that their marae members might have. This mechanism would be used both to provide update reports on settlement negotiations and where necessary, seek input from the beneficiaries.

The Runanga would also use other communication methods such as newsletters and website updates so that those who are not able to attend hui can obtain updates.

The second line of accountability is between the Negotiating Body and the Runanga. The Negotiating Body will be required to provide monthly updates on progress at Board meetings and verbal updates when required throughout the course of the negotiations. These obligations will be included in the terms of reference for the Negotiating Body. Also, while the Negotiating Body will have a general responsibility and duty to the broader Ngati Whatua community, the collective group will not be directly accountable to Ngati Whatua in terms of having specific reporting obligations. The takiwa representative will have obligations to the takiwa he or she represents. Having said that, both the Negotiating Body and the Board will participate in the presentation of the draft Deed of Settlement to the members of Ngati Whatua.

### **Dispute resolution**

In terms of the process for addressing disputes regarding mandate:

- a If a group has a concern regarding the Runanga's representation of their interests in the negotiations, they would need to inform the Board in writing. The Board would then consider the matter and seek further information as required from the group to ensure it has a clear understanding of the nature of their concern;
- b Once that information has been received, the Board will then consider the matter again and determine whether or not further action is required. If it is the latter, the Board will then meet with the group and if necessary, enter into a dispute resolution process;
- c If the matter cannot be resolved, both parties will agree on the appropriate process for formal withdrawal of mandate.

A statement will be included within the Deed of Mandate that in the event that a dispute relating to the negotiations cannot be resolved, members of Ngati Whatua may take away the authority of some or all of the mandated representatives or replace them. This would be the last point of call if the issue or dispute is not able to be resolved.