

9 September 2019

Rahui Papa
Negotiator
Te Whakakitenga o Waikato

By email: rahuip@tainui.co.nz

Teena koe

Waikato-Tainui remaining claims draft deed of mandate

Thank you for meeting on 18 July to discuss the Waikato-Tainui remaining claims deed of mandate. This letter confirms my understanding of our respective positions on claimant definition and the proposed time limit for hapuu inclusion/withdrawal that we discussed.

I note the draft deed of mandate reflects the different Waikato-Tainui and Crown positions on the above matters. The draft deed of mandate records we have different positions and the Crown positions are provided in appendices. Te Arawhiti publishing the draft deed of mandate is not an endorsement of Waikato-Tainui's position on these matters. We intend to publish this letter on the Te Arawhiti website to help inform the Waikato-Tainui claimant community.

Claimant definition

The draft deed of mandate includes Waikato-Tainui's position on claimant definition. This claimant definition includes all 33 hapuu of Waikato-Tainui. I understand you want the claimant definition described in this way to reflect Waikato-Tainui identity, for continuity with the previous Waikato-Tainui settlements, and because you consider all 33 Waikato-Tainui hapuu have a continuing interest in the outstanding Wai 30 claim.

Claimant definition is core to the Crown's Treaty settlement framework. It is fundamental for any settlement that all claims associated with the group of people described by the claimant definition are proposed to be settled. This means hapuu and their claims "go together," i.e. if hapuu are in, or out of, the mandate then so are all their claims. By "all claims", the Crown refers to all the remaining historical Treaty of Waitangi claims, whether registered with the Waitangi Tribunal ("Wai claims") or unregistered, arising from acts or omissions by the Crown prior to September 1992.

The Crown's view is it is problematic to include all 33 hapuu in the claimant definition for the mandate when seven of the hapuu have had separate settlements or mandate recognition, and a further seven hapuu have chosen to be outside the mandate at this time. This has implications for those Wai claims listed as currently included in the draft deed of mandate, but that relate to one or more of the hapuu that are currently outside the mandate.

The Crown's position is that the current claimant definition for the mandate is the 19 hapuu which are listed in Appendix A of the draft deed of mandate.

Hapuu inclusion in or withdrawal from the mandate

The draft deed of mandate includes a withdrawal and inclusion mechanism for hapuu. Waikato-Tainui seek a cut-off date at Agreement in Principle signing for hapuu withdrawal or inclusion in the mandate. The Crown does not. I note that hapuu withdrawal mechanisms in other mandates do not have a cut-off date.

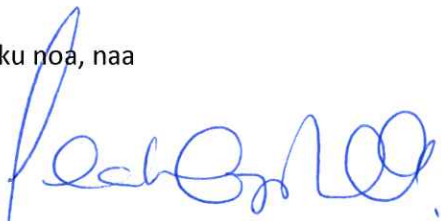
We agreed, in order to better inform ourselves of the views of Waikato-Tainui hapuu, to specifically seek hapuu submissions on the proposal for a cut-off date for hapuu to withdraw from or be included in the mandate.

I understand you consider allowing hapuu to still be able to come in or out of the mandate after an agreement in principle would be unfair to those hapuu who have already agreed to join the mandate, may create unworkable negotiations and create inefficiencies. I understand you want to have certainty regarding which claims the package you are negotiating covers, as does the Crown. As we discussed, you intend to seek a comprehensive agreement in principle and carry out extensive engagement in your claimant community before any agreement in principle is signed. You consider that hapuu will therefore have sufficient certainty about the negotiated redress at that point to confirm their position in the mandate.

The Crown shares your desire for certainty but wants to see as many claims settled as possible and not restrict the inclusion of claims by having a time limit. Equally, we do not want to limit the ability of hapuu to exercise their right to choose not to have their claims settled. The Crown's position is the potential for inclusion and withdrawal needs to remain until the initialling of a deed of settlement.

I am advised Te Arawhiti officials have been working alongside your team in the development of the draft deed of mandate and are continuing discussions on these matters. I look forward to continuing our work together to find solutions and advance your proposed mandate.

Naaku noa, naa



Leah Campbell
Regional Director